

7 April 2017



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Dear Mr Kirby

I am writing to you today in regards to your request for feedback on the draft bill to amend the *Health Ombudsman Act 2013*.

AMA Queensland is the state's peak medical advocacy group, representing over 6000 medical practitioners across Queensland and throughout all levels of the health system. We value and believe in the work doctors do, and have previously advocated publicly on the performance of the Office of the Health Ombudsman (OHO) via a detailed discussion paper, which we have attached for your reference.

As would be clear both from our attached discussion paper and the evidence we provided at the recent Parliamentary enquiry, AMA Queensland's view on the performance of the OHO is not a particularly favourable one. We note that the system has resulted in an increasing number of complaints to the OHO, many of which are quite likely vexatious in nature, and this has resulted in cost overruns for the OHO and an inability to meet its mandated timeframes despite the augmented funding it has been given. This leads us to question if the new system has actually provided a tangible improvement to patients and the health system more broadly.

It is our view that the best change the Government could make would be to abandon the OHO entirely and return to the national system. In 2016 approximately 15% of the entire medical workforce was subject to a complaint which is far in excess of all other states and territories. There remains no evidence of increasing misconduct or suboptimal professionalism among Queensland doctors with no greater rates of suspension or referral to QCAT. It could be concluded then that this increasingly costly medical regulatory system that lacks transparency and coordination, has produced no tangible benefit. Lastly, in the pursuit of patient safety – which AMA Queensland agrees is of paramount importance – there must be consideration of the welfare and imposition on doctors created by this oppressive regulatory system in the face of absent evidence to justify the increased complexity and cost.

In the short term, it is possible that some amendments could go some way to making the OHO a more efficient regulator within current constraints, and some of the recommendations made by the committee could help achieve this.

In regards to the specific amendments raised in your summary paper, AMA Queensland offers the following advice.

Related National Law Changes to the Health Ombudsman Act

AMA Queensland notes that the proposed amendments to the *Health Ombudsman (HO) Act* include an alignment with the *National Law Bill* to allow the HO to seek practice information regardless of the manner of engagement.

This amendment will allow the HO to be able to require the practitioner to notify all places of remunerated and voluntary practice (e.g. contracts, partnerships, service company arrangements) of any conduct or

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performance action against that practitioner. AMA Queensland agrees with the general principle that if a practitioner has conditions placed on them and their practice in Hospital A, that the patients in Hospital B are afforded similar and appropriate protection.

However, if these provisions are read too broadly there is a risk of unintended consequences.

AMA Queensland notes that whilst this does exclude home visits, there is the potential for a practitioner to be required to notify all of the staff specialists at a hospital clinic if the practitioner had rooms in the hospital. Alternatively, a practitioner who uses rooms in a practice, but has no association with that practice, may be required to notify all other practitioners who use those rooms.

It has been raised with AMA Queensland that some medical boards in other jurisdictions have a natural tendency to apply provisions in a far-reaching manner. There are circumstances where the board in these jurisdictions have ordered extraordinarily onerous arrangements for practitioners who have made an error, such that they can't realistically practice. The impact this has on the practitioner can be disastrous, but the impact it can have on service delivery also needs to be considered. For example, limiting a practitioners scope of practice and extra resourcing required to monitor the practitioners activity can have an enormous impact on service delivery. So it is vitally important that these provisions are not used by the Health Ombudsman in a similar manner, as this is not their intent.

AMA Queensland supports the intent of these amendments and understands that in certain circumstances the HO and a practitioner place of practice needs to be aware of performance action taken against that practitioner. However, the potential impact on not only the practitioner but for service delivery can be huge, so there needs to be sensible limits and safeguards to ensure that they are applied in a judicious manner.

AMA Queensland would also like to take this opportunity to state our strong opposition to the part of the National Law which allows the Ministerial Council to appoint a community member of a National Board as Chairperson.

The chair is a very influential and challenging position. This person needs to be able to consider complicated matters that require a detailed understanding of the medical profession. As you may be aware when the Queensland Government reconstituted the State Medical Board in 2014 it appointed a chair from a different profession – a problem which was only recently resolved. This created consternation and significant loss of confidence in the work of the Board among Queensland medical practitioners. AMA Queensland argues strongly that it is essential that the Chair of the Medical Board of Australia remains a medical practitioner. AMA Queensland will vigorously oppose a non-medical practitioner Chair being considered for such a crucial appointment.

Health Ombudsman Act Changes

The remaining proposed changes to the Health Ombudsman Act (HO Act) canvassed in the document relate primarily to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee Report No. 31's fourth recommendation, which required the Queensland Government to "consider introducing amendments to the Act suggested by the Health Ombudsman himself in his submission to the committee."

AMA Queensland supports some of the Ombudsman's changes in principle, however we reserve full judgement on these until such time as we are able to view a draft of the bill with the final wording of the amendments. However, there are two amendments which we have some concerns with and do not support unless some significant safeguards are also provided.

To assist the Department in drafting the bill and its provisions which relate to the Ombudsman's proposed amendments, AMA Queensland offers the following advice.

1. *Enabling the Health Ombudsman to review his or her own decision to take immediate action under part 7 of the HO Act, on application by the practitioner or on the Health Ombudsman's own initiative*

The Health Ombudsman suggested inserting new provisions to:

- allow the Health Ombudsman to review his or her decision to take immediate registration action or make an interim prohibition order, on application by the affected practitioner or on the Health Ombudsman's own initiative
- allow the Health Ombudsman to vary an immediate registration action decision or immediate prohibition order on his or her own initiative

AMA Queensland cautiously supports this move in principle (subject to viewing the final amendment in the draft legislation) as it appears to provide health practitioners with a more effective review avenue when they have been made subject to an immediate action. However, this amendment underscores why the veracity of a complaint needs to be thoroughly determined before the OHO takes such a serious action.

2. *Clarifying that after taking immediate action under part 7, the Health Ombudsman may continue an investigation already underway into the matter which gave rise to the immediate action, rather than starting a new investigation*

AMA Queensland supports this amendment in principle, subject to viewing the final form the amendments to 64(a) and 75(a) takes.

3. *Enabling a health service being investigated by the Health Ombudsman, and the relevant complainant (if any), to waive the right to receive three-monthly notice about progress of the investigation*

AMA Queensland does not support this measure. Firstly, progress should be something the OHO would *want* to communicate. And secondly, if an investigation is taking three months or more, it is clearly a complex investigation, which makes a progress report potentially vital to a practitioner who is under investigation and to their MDO.

Further, issuing a progress report serves as an accountability measure for the OHO. For example, AMA Queensland has provided assistance to members where an investigation has been unnecessarily protracted and where the progress reports were crucial in not only determining that the basis of the complaint had little substance, but highlighting the regulator's own failures and the need for the investigation to be urgently progressed. If a progress report had not been issued in cases like these, the agencies involved could not have been held accountable for their delays. The impact that this could have on natural justice, not to mention a timely resolution to an investigation, is deeply concerning. The requirement to issue a progress report also hopefully inserts decision-points within the investigative process to allow remedial action to be taken more quickly by the medical regulator.

Furthermore, the OHO's rationale that the issuing of these reports is an administrative burden is not an argument which AMA Queensland accepts. This rationale makes us believe that the OHO may promote the waiver of a progress report as a means toward ensuring that they meet their time frames and as a cost saving exercise, at the expense of a practitioner receiving important progress information on what is obviously a complex investigation. A fundamental premise, not achieved, of the HO Act and revised medical regulatory structure within Queensland was to shorten investigative timelines. The failure to do so despite significantly greater administrative effort and cost is an obvious failing of the hybrid regulatory system within Queensland that does not exist in most other states and jurisdictions within Australia.

If the Government acts contrary to our advice and includes this amendment in the bill at all, the Act should make provision that in the instance where someone has waived their right to a progress report, they can similarly later request to once again be provided with three monthly reports without question, and a report on progress to date should be promptly provided if more than three months has passed since the initial waiver was given.

4. Clarifying that, in addition to the existing grounds in section 44, the Health Ombudsman can decide to take no further action on a complaint or other matter if it is in the process of being resolved by the Health Ombudsman or another entity

The Health Ombudsman suggested amending section 44 (Decision to take no further action on a matter) to expand the grounds on which the Health Ombudsman may decide to take no further action in relation to a matter to include that the Health Ombudsman reasonably considers the matter is being adequately dealt with by the Health Ombudsman or another entity.

The Health Ombudsman's rationale is that this would allow the Health Ombudsman the discretion to take no further action in relation to a complaint being dealt with by another entity. In order for us to give this due consideration, we would need to understand what the definition will be for the term "other entity." We therefore highly recommend that when the bill is drafted, consideration is given to inserting a definition for the term entity. We will make further comment on this at that time.

Un-actioned Committee Report Recommendations

It is the view of AMA Queensland that the remaining recommendations on reform for the Office of the Health Ombudsman (OHO), contained within the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee Report No. 31, released in December 2016, could provide some efficiencies in helping the OHO and AHPRA to reach timely conclusions to investigations.

We note that with the exception of the Committee's third recommendation, which requires the OHO and AHPRA to work together, the Government has accepted these recommendations and will do further policy work with the Department of Health.

For the benefit of this work, AMA Queensland will address our thoughts on the recommendations and the suggested amendments below.

Recommendation 1: That the Queensland Government investigate the merits of amending the Health Ombudsman Act 2013 to introduce a joint consideration process for health service complaints between the OHO and AHPRA and the National Boards.

AMA Queensland supports this recommendation if it can be shown to improve the time it takes to handle and finalise complaints and increases medical input into early triage and decision-making. It must be recognised that an intended aim of such an early triage, medical informed assessment would be to allow fewer cases to proceed through to formal investigation. AMA Queensland is also concerned that without proper resourcing, even this new process could fail to inefficiency.

In this context, AMA Queensland would implore the Queensland Government to examine the resourcing of the Office of the Health Ombudsman as part of its response to the Committee's report and as part of the next budget cycle. Given the 2015-16 budget for the OHO of \$14 million proved to be insufficient due to the organisation completing that year with a budget overspend of 15 per cent,¹ there should be scope for a discussion on whether further resourcing is needed. Alternatively, given the requirement to bring greater medical scrutiny and triage to matters as early as possible, it may be more appropriate to consider the resourcing implications for QBMBA and AHPRA, being the bodies required to provide the additional clinical and regulatory expertise currently deficient from OHO processes.

¹ OHO, Annual Report 2014-15, 2015, p 56

Beyond extra funding, we believe systemic change at the triage level is vitally important. OHO staff who take complaints may benefit from better training that could more easily identify vexatious complaints and help them to triage incoming complaints more efficiently. This may help reduce the number of complaints to the OHO which, as we noted at the start of this submission, are increasing exponentially with no apparent upsides for patient safety or, for that matter, health practitioners.

The timeframes, as outlined in the *Health Ombudsman Act 2013 (Qld)*, are an important development and should be regarded as sacrosanct. If the OHO is unable to meet these timeframes without a budget overspend and the resources it currently has, this must be addressed. Fair allocation of resources to support the workloads of both AHPRA and the OHO to work collaboratively to resolve complaints effectively and efficiently in the public interest is paramount.

Recommendation 2: That the Queensland Government consider options for ensuring that potentially serious professional misconduct matters, which may also raise issues about a health practitioner's health or performance, are able to be dealt with, as whole, rather than being split between the OHO and AHPRA and the National Boards.

AMA Queensland supports this recommendation provided these complaints are dealt with by AHPRA and the National Boards as a whole, rather than the OHO, in order to provide a seamless standard and process across the country in regard to these matters and to promote efficiency.

Recommendation 3: The Office of the Health Ombudsman, AHPRA and the National Boards produce a joint plan, which identifies the information needs of all parties and any barriers to the sharing of information, and sets out an agreed approach for resolving any data issues that prevent the production of nationally-consistent data about health service complaints.

AMA Queensland supports this recommendation.

Conclusion

In closing, we thank the members of the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee for their time and consideration in their review of the OHO's performance. We also thank the Queensland Government and Queensland Health for their work and dedication towards ensuring that Queensland's health regulator is as robust as can be.

We trust that this information will be of assistance to the Government as it considers the implementation of the committee's own recommendations and other changes to the HO Act.

If you require further information or assistance in this matter, please contact Mr Leif Bremermann, Senior Policy Advisor, on 3872 2222.

Yours sincerely



Dr Chris Zappala
President
Australian Medical Association Queensland