

11 July 2017



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The Committee Secretary
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To the Committee Secretary

I am writing to you to respond to your request for feedback on the *Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2017*.

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) and the regulation system.

As this Bill has both national implications via the amendments to the National Law and implications for Queensland alone due to the co-regulatory system that exists here, we will address our comments on the Bill to those sections individually. We will also limit our comments to those parts of the Bill that have a direct impact on doctors.

Ministerial Council May Appoint a Community Member as Chairperson

At the outset, we are pleased to note that the provision which would have allowed the Ministerial Council to appoint a community member as Chairperson of a National Board has been removed from the first tranche of the Bill. We have strongly opposed this proposed provision from its inception and again reiterate our opposition to it being included in any future tranches of the Bill.

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 committee members 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 created consternation and significant loss of confidence in the work of the Board among Queensland medical practitioners. The Queensland Government remedied this problem in December 2016, and we applauded them for this decision. This is why it is all the more confusing and frustrating that the Queensland Government would consider playing host to legislation which allows the same problem to occur at a National level.

AMA Queensland argues strongly that it is essential for the Chair of the Medical Board of Australia to remain a medical practitioner. AMA Queensland will continue to vigorously oppose a non-medical practitioner Chair being considered for such a crucial appointment should this proposal reappear in future tranches of the Bill.

National Board may ask registered health practitioner for 'practice information'

The Bill replaces section 132 of the National Law to allow a National Board to require a registered health practitioner to provide details of all the persons practice arrangements regardless of the manner of the arrangement.

AMA Queensland agrees with the general principle that if a practitioner has conditions placed on them and their practice in Hospital A, then patients in Hospital B should be afforded similar and appropriate protection. For this reason, we support the intent of these amendments. However, this should be limited to the specific conditions placed upon the practitioner and not to other aspects of their practice.

Mandatory Reporting

Committee members may be aware that the issue of suicide amongst members of the medical profession has been brought to the fore in recent months with the tragic death of Dr Andrew Bryant and the story of a junior doctor who wrote of losing three colleagues to suicide within the space of a year¹.

The DLA Piper Report into Doctors Health Programs highlighted that, despite having a high level of health literacy, doctors have difficulty accessing health care.² Although mandatory reporting was introduced to be a patient protection, it has created a barrier to doctors accessing medical treatment from general practitioners and psychiatrists. This is a direct result of doctors fearing being mandatorily reported and ruining their career. This creates an unfortunate yet unique position for health practitioners in that they cannot access treatment without fear of being reported.

AMA Queensland has long advocated for a change to Queensland's mandatory reporting laws, beginning with the release of Part Two of our *Health Vision* in 2015, in which we advocated that Queensland enact the same exemption to its mandatory reporting laws as that which operates in Western Australia.

In Western Australia, when a health practitioner forms a reasonable belief of impairment in the course of providing health services to another health practitioner or student, they are not required to mandatorily report that person.³ It should be noted that this does not prevent them or others, such as fellow practitioners, hospital staff or management, from making a voluntary report if they believe there is a danger to patients. This amendment to mandatory reporting received support from all the major political parties in Western Australia, and allows a health practitioner to see a general practitioner or psychiatrist and get help for their condition without fearing that the treating doctor will report them.

AMA Queensland believes it is crucial to have healthy doctors and that this leads to healthier patients. Although this Bill does not make any amendment to mandatory reporting laws in Queensland or other jurisdictions, we would like to take this opportunity to suggest that the next tranche of the Bill amends these laws to provide the same exemption to that which exists in Western Australia.

¹ <http://www.smh.com.au/comment/three-of-my-colleagues-have-killed-themselves-medicines-dark-secret-cant-be-allowed-to-go-on-20170209-gu9crd.html>

² DLA Piper (2014) *Report on Doctors Health Services*. Retrieved from <http://www.medicalboard.gov.au/News/2014-04-10-media-release.aspx>

³ Goiran, N et al (2014) Mandatory reporting of health professionals: The case for a Western Australian style exemption for all Australian practitioners. *Journal of Law and Medicine*, 22, 209-220. Available at <http://www.abc.net.au/cm/lb/6118382/data/journal-of-law-and-ethics-article-data.pdf>

Amendments to the Health Ombudsman Act 2013

In regards to the amendments in this Bill which relate to the *Health Ombudsman Act 2013*, AMA Queensland offers the following feedback.

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

AMA Queensland supports this amendment. It provides health practitioners with an additional review avenue when they have been made subject to an immediate action by allowing them to apply to the OHO to vary an immediate registration action for a review of its decision. However, the need for this amendment underscores why the veracity of a complaint needs to be more thoroughly determined before the OHO takes such a serious action.

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.

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

The Bill amends section 84 to allow a person to waive their right to receive a three monthly progress report, provided the waiver is given by written notice. The waiver will be given on a voluntary basis and only if the health service provider or complainant does not wish to receive the reports. The waiver will be able to be revoked at any time and in such a case, the person will recommence receiving progress reports.

AMA Queensland does not support this measure. Regular progress notices communicated to parties to a complaint is a crucial aspect of a health service complaints system which helps to instil public confidence. They also serve as an accountability measure for the OHO and should assist with complaints being resolved in a timely manner.

The inclusion of this amendment also runs counter to what is happening at a national level with AHPRA, who recently updated the Federal AMA on the results of a survey they conducted into their own notifications experience. AHPRA's survey revealed that while the vast majority of respondents felt that they understood the outcome and the reasons for the Medical Board of Australia's decision, many respondents did not feel that they were regularly updated on the progress of their notification. As a result, AHPRA is reviewing how and how often they update a practitioner. It is difficult to understand why the OHO would wish to seek ways in which it could reduce its communication when AHPRA has acknowledged that better and possibly more frequent communication is a preferred outcome.

During the inquiry into the performance of the OHO held by the Health, Communities, Disability Services and Domestic Violence Prevention Committee (HCSDVPC) in 2016, the OHO's submission to the inquiry stated the issuing of these reports is a "considerable administrative burden."⁴ However our understanding from advice provided to us by the Health Ombudsman is that at least 50 of its investigations are, at time of writing, on hold. It is our view that the importance of ensuring that complainants and those complained about receive their three monthly updates and the accountability this creates for the OHO to complete investigations in a timely manner outweighs any administrative burden.

⁴ See p.10 of Annexure A in OHO Submission to HCSDVPC Inquiry,
<http://www.parliament.qld.gov.au/documents/committees/HCSDVPC/2016/PerformanceOHO/submissions/045.pdf>

In a letter provided to AMA Queensland on 22 June 2017, the OHO states that approximately 45% of its open investigations (397 initiated as at April 2017) commenced as a result of information provided in mandatory notifications made under the *Health Practitioner Regulation National Law (Queensland)*. The OHO argues that in these circumstances, the notifier discharging their statutory obligations may not have the same interest in receiving notifications as a complainant, who is more actively invested in the process. It has been suggested that this forms part of the administrative burden the OHO refers to and that feedback they have received from notifiers has been part of the reason for the inclusion of this amendment.

Whilst we do not accept that a party who made a mandatory notification would be less interested in the matter, if it were decided in this matter to give an option not to provide three monthly reports, then this option should be provided **only** to the complainant/notifier, with those requesting same being given the opportunity to opt back in at any time. This would reduce our concerns surrounding this proposed amendment and would remove much of the administrative burden the OHO refers to.

Immediate powers

AMA Queensland does not support the expansion of the powers of the Health Ombudsman to allow it to take immediate action “in the public interest”. We share the concerns noted by Avant in their feedback to the draft Bill in April 2017, in that the notion of “public interest” is far too broad and open to interpretation.

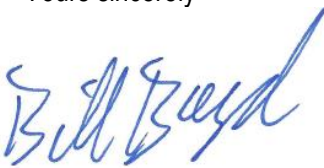
Conclusion

In closing, the operation of the Queensland health service complaint agency is an important issue for AMA Queensland and our members. We thank the HCDSVPC for the opportunity to provide comment on this Bill. We believe it is important to ensure that the handling of complaints is undertaken in a fast, fair and transparent manner in order to retain the trust and confidence of both the profession and the public. With some exceptions, we believe the amendments in this Bill will go some way towards ensuring this can occur.

However, further improvements are required to ensure that the current Queensland framework functions as effectively as possible. AMA Queensland looks forward to working with the Government to ensure that future tranches of this Bill and any further amendments to the OHO will make the system as robust as it can be.

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

Yours sincerely



Dr Bill Boyd
President
Australian Medical Association Queensland