Queensland Law Society

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Office of the President

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Our ref: HS – MC

Committee Secretary
Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee
Parliament House
George Street
Brisbane Qld 4000

By email: health@parliament.qld.gov.au

Dear Committee Secretary

Health Transparency Bill 2019

Thank you for the opportunity to provide comments on the Health Transparency Bill 2019 (**the Bill**). The Queensland Law Society (**QLS**) appreciates being consulted on this important piece of legislation.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been compiled with the assistance of the QLS Health and Disability Law, Occupational Disciplinary Law and Elder Law committees, whose members have substantial expertise in this area. QLS has had limited time to review the Bill and therefore does not attempt to comment on all aspects of the Bill in this submission. Lack of comment on parts of the Bill should not be taken as an endorsement of those provisions.

With respect to the Bill we raise the following:

- potential difficulties with the way various types of information are described for the purpose of the Bill
- lack of appropriate limits on the type of information that may be prescribed by regulation to be requested
- various issues with the proposed changes to the *Health Ombudsman Act 2013.*

Health transparency

Types of information and definitions

QLS has concerns about the way in which some types of information covered by the Bill are described and the unintended consequences that may flow from such drafting.

In the view of QLS, the definition of *patient outcome information*[1] is vague and will be difficult to apply. It is not clear what is meant by the 'impact on patients of a health service'[2] and how it will be determined that changes in health are 'attributable to the health service'[3] nor is it clear how a health facility is to determine and provide data on whether the 'facility achieved the best possible outcome for the person's health'.[4] These definitions do not provide a sufficiently clear framework to appropriately limit any future regulations and QLS urges that the definitions be given further consideration. Should the information that is requested not be properly defined, it is unlikely that it will be possible to make reasonable comparisons between facilities.

QLS is also concerned that the patients to which some *activity information, patient outcome information*[5] or *residential care information*[6] relates could be identifiable where the facility in question generates only a small pool of data. This may be the case in small facilities in rural and remote locations. Parliament may consider making exceptions to publishing this type of information in appropriate circumstances. Alternatively, allowing for data addressing multiple facilities operated by the same entity to be aggregated (eg by region) where the data set it small may alleviate privacy concerns, though this would need to be balanced against the possibility that aggregated data could obscure information about low performing facilities.

Requests for information

The Bill does not provide any limits on the time periods to which requested information may relate. It ought to make clear that it will only apply to information relating to the date on which a regulation prescribing information for the purposes of the act comes into force or later. It would be unfair and overly burdensome to expect facilities to collate retrospective data where information may not have previously been collected in a manner that corresponds to the data prescribed by the regulation.

Given also that residential aged care facilities will only have 15 business days to respond to a notice requesting information[7] and that there is no minimum time prescribed for health facilities to respond to a request for information[8] the breadth of data sought should be appropriately limited to what can be practically collated within the time available. QLS notes that it is anticipated that data will be collected quarterly and considers this reasonable but is concerned that there is no such limit in the Bill.

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[1] Clause 9
[2] Clause 9, line 17
[3] Clause 9, line 20
[4] Clause 9, lines 23 to 25
[5] Clause 9
[6] Clause 10
[7] Clause 15
[8] Clause 19 requires that a notice requesting information must allow a 'reasonable period.

Utility of published data

QLS notes that the draft Health Transparency Regulations tabled with the Bill only contemplate requiring residential aged care facilities to report on average daily resident care hours at this stage. While QLS can see the value in being able to compare facilities, it does not appear that the comparison will be meaningful where there is no contextual information around the model of care provided at the facility or the care needs of the residents and no information about the qualifications/skill mix of staff providing the care.

For true comparisons to be made, additional data will also be important. For example, in light of the recent Earle Haven crisis, it would be useful to capture data such as, the proportion of residents who are subject to restrictive practices, what type and for how long.

Changes to the *Health Ombudsman Act 2013*

QLS is concerned about several of the proposed amendments to the *Health Ombudsman Act 2013* (**HOA**).

Health Ombudsman's powers re unregistered health practitioners

The Bill proposes to allow the health ombudsman to make final prohibition orders in relation to the practice of unregistered health practitioners, a power which currently vests in QCAT. QLS would prefer that such a significant power remain with the tribunal, given the impact on individual's rights to practice in their chosen field.

However, if the power to prohibit the practice of unregistered practitioners is to vest with the health ombudsman, with a right to apply to QCAT for review, QLS is of the view that it is essential that QCAT be empowered to grant a stay or make an order varying the health ombudsman's decision while the application to QCAT is on foot.[9] While QLS recognises that the health ombudsman's decision to prohibit a practitioner's practice will be made where the health ombudsman is satisfied that the practitioner poses a serious risk, there may still be circumstances in which a stay or variation could be appropriately ordered by QCAT. For example, where a health practitioner is in Australia on a working visa and is required to maintain their employment in order to stay in the country, a prohibition on their ability to practice can have significant consequences in the immediate term while the application to QCAT is being progressed.

In respect of proposed section 90Q, QLS is of the view that matters relating to practitioners' health should be excluded from publication.

There are several matters that are unclear in the Bill in relation to prohibition orders that are limited to a particular time period. Firstly, it is unclear what mechanisms are in place to effect the removal of an order at the end of the time period. QLS submits that the Office of the Health Ombudsman should be required to notify the practitioner that the order is no longer in effect. Secondly, there does not appear to be provision for the removal of published information about the expired order from the Office of the Health Ombudsman's website.

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[9] Clause 45

Constitution of QCAT

Clause 44 seeks to amend section 97 of the HOA to remove the requirement that QCAT be constituted by a judicial member for certain types of disciplinary proceedings, including review of the decision of the health ombudsman to issue final prohibition orders in relation to unregistered health practitioners. QLS does not consider that the appropriate solution to delays in QCAT is to fundamentally change the manner in which matters of great significance to the individuals concerned are dealt with. QLS is of the view that matters relating to the ability of individuals to continue in their profession should continue to be heard by judicial members (or at the very least, senior members) and that QCAT should be adequately resourced to allow that to occur.

Division 2B

QLS is concerned that the proposed division 2B, under which the National Agency[10] may require referral of a complaint where the Office of the Health Ombudsman has determined to take no further action. This creates the potential for health practitioners to be subjected to a second investigation following completion of the health ombudsman process, which can cause significant strain on the practitioner, and may create inefficiencies between the two agencies.

If you have any queries regarding the contents of this letter, please do not hesitate to contact [redacted]

Yours faithfully

Bill Potts
President

[10] The Australian Health Practitioner Regulation Agency