Submission No. 006
Received 3 August 2016

SUBMISSION TO QUEENSLAND PARLIAMENT

To the

INQUIRY INTO THE PERFORMANCE OF THE QUEENSLAND HEALTH OMBUDSMAN'S FUNCTION PURSUANT TO SECTION 179 OF THE HEALTH OMBUDSMANS ACT 2013

AND

RELATED MATTERS OF THE HEALTH COMPLAINTS SYSTEM

by

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SUMMARY

This submission addresses the issues at the core of the scope of this inquiry and represents the comments, opinions and perspective of a highly qualified, experienced and senior health Registrant (now retired) based on his personal experience and knowledge and makes recommendations of what urgent actions he recommends be taken .

The authors 10 recommendations (second last page) are based on the Doctrine of Separation of Powers and the accepted practices now carried out in the aviation and aero-space industries world-wide where previously there had been similar regulatory issues and blame cultures.

The aero-space solutions developed have been shown not only to be adopted in all advanced nations but effective and contributory to increasing public safety and convenience when using aviation services and has promoted culture changes and practices in the industry from top to bottom.

Adopting and adapting these successful aviation initiatives to Health matters will cause the paradigm shift necessary from which to attach the other necessary adjustments to Health Regulation in Queensland and hopefully greater Australia.

The reasons for these changes are explained in the narrative . Those readers who are not intimately involved in the existing complaints process should find the discussion educational and informative and the ten recommendations to have merit.

INTRODUCTION

This is a very welcome inquiry and the call for public submissions to the management , workings and overall Health Service Complaints system is well overdue considering the background of long standing and continuing proven admitted regulatory and administrative dysfunction in Queensland well prior to the Bundaberg Inquiry and its following issues , which culminated in the fall-out from the eventual Chesterman Inquiry (which did not include any public submissions or indeed any remedies to those victims the report identified and recognised in the scandalous determinations and outcome). NOTE The final Police Report concluded late 2015 has yet to be released.

From any interested perspective the past nor the present system has/is clearly not functioning as intended and has not and is not serving the interests of Queensland, the Citizens of Queensland, and particularly those Registrants who are closely connected in Health and the Health Industry as employees or small business contributors, despite the tinkering at the edges and rearrangement of deck-chairs that have taken place since (say) 2000.

Queensland citizens and particularly Health Registrants deserve better !

What is required is an urgent major reform in perception, methods and application of the reasons for Health Regulation, the application of worlds best practices and urgent statutory publication of the Standards that Health Registrants are required meet at each and every patient encounter.

There are however many individuals and organisations, occupying comfortable niches in the system and taking personal and/or commercial advantage of the present continuing dysfunction and contributing to those dysfunctions if only by resisting changes necessary .

Of great concern also, there are many (mainly disaffected Registrants and ex-Registrants)who through no fault of their own who have suffered seriously as a consequence of the past and present dysfunctions , with apparently little chance of and few avenues of redress for the life changing effects inflicted upon them by the said dysfunctions- which I will address in later paragraphs.

I am sure also that there are patients who have had little or no redress for damages caused directly or indirectly by the unsatisfactory Regulatory systems and how the system operates- for example 60% all those considered and identified by the Chesterman Inquiry in 2013 mentioned above.

Generally, and particularly in the "informed community" (regretfully not big enough) there is a widespread concern and serious loss of trust, respect and confidence in the operations of Health Regulators and those other bodies related to the Regulatory function in Queensland who have allowed or even co-operated in this situation developing ,and in the questionable willingness and ability of the Health Ombudsman to act as an effective watchdog on the Regulator and regulated activities and obtain redress for any disaffected Registrant or patient who's only other recourse might be unaffordable civil litigation.

VALIDATION OF MY PERSPECTIVE

I am a mature aged citizen and resident of Queensland , a user of health services and former provider of health services in Queensland since 1985 . I practised as a Medical Practitioner for 41 years , 24 of those in Queensland, and claim to have considerable insight and experience into the delivery of health services here and elsewhere in the World.

My wife, two sons, brother, sister ,sister-in-law, nephews and nieces are all active professionals in the health industry or its immediate related services. As a family we have lived, breathed and provided health services to various communities for more that 50 years.

I do not have a narrow or restricted experience or views as I have travelled and worked in industries other than health here in other parts of the world-and experienced how things can be done differently and effectively. I have also seen how things can go badly and wrong due to failure of a regulatory regime .

As a legal practitioner I qualified 16 years ago and was involved in health matters and regulatory matters in civil aviation. I claim to have a better than average persons understanding an insight into legal aspects of health issues and regulatory issues .

As a long time professional aviator (45 years) and ex-serviceman (9 years) have also experienced industrial cultural issues at the root of similar industry problems that Health is facing –and in the past have contributed to some reforms . Also as a former aero-medical specialist trained and involved in aircraft accidents and incident investigation I am more than familiar with techniques of investigation –and the pitfalls.

I am also personally aware of a number of my colleagues and other Registrants who have had conflicts with the Regulators and improperly or unfairly dealt with. My personal knowledge I believe is but just the tip of a massive iceberg of similar and discontented Registrants

Since 2004 I have had conflict with the Health Regulator(s) myself in Queensland and accordingly have unique personal experiences of how these Regulators actually function. In particular the Health Regulators have totally failed to address my several complaints about deficiencies their systems that I have personally addressed to them over long periods.

I thus welcome this inquiry and my contribution follows as addressing this issues and the public airing of my views based on my personal knowledge and experience is long overdue .

A. THE HEALTH COMPLAINTS MANAGEMENT SYSTEM

From a Health Providers (Registrant) view point the present system is too opaque, unaccountable, secret and mysterious and inaccessible . It is also inefficient, unpredictable and at times utterly incompetent , wilfully blind, biased hostile, sometimes frankly malicious and frequently denies Health providers natural justice and due process.

It is overly sensitive to the media and public opinion itself but uses such as a tactical weapon against perceived health miscreants by defamatory press releases which serve to gain the high moral ground and tactical advantage in disputes and serve to alert plaintiff lawyers to a potential feeding frenzy by means of a large media and public relations division.

The Regulator(s) operate deliberately at arms length from Registrants (no person to person meetings in order to de-humanise the Registrant to a mere slip of paper) invariably through surrogate big-end of town lawyers with intent to bully and intimidate Registrants and suffocate dissenters with threats. Registrants are treated with undisguised contempt at all regulatory levels and not with respect and consideration that the dedicated professionals deserve- most of whom are severely traumatised when accused of un-professionalism .

The Ombudsman's functions do not adequately deal with the fall-out from the broad inadequacies of the Regulatory system in Queensland and thus leave many complainants dis-satisfied and with no other recourse but to consult a Plaintiff-lawyer , that is if they are patients. But what about the Registrant poorly dealt with by the Regulator and MDO? (Medical Defence Organisation) who has paid a considerable price for medical defence insurance which is largely ineffective ? .

It is particularly sad that both the Federal and State Governments have combined to treat a section of the Nations top professionals who serve in the caring professions contemptuously and as potential if not actual demons and appear to go out of their way to deny accused Registrants natural justice ,due process and procedural fairness in investigations and disciplinary process' and procedures, all in an overtly oppressive and hostile fashion.

Such incongruity manifests itself in scenes reminiscent of "Yes Minister" TV programmes. Some would describe it as Kafkaesque. For these and many more many are clamouring for a Royal Commission on a national basis since the Regulatory dysfunction is not confined to Queensland and frankly the new National Law(s) have made matters worse nationwide. Many Registrants have been severely damaged unjustly and unnecessarily.

Understandably there are many individuals and related organisations (private and public) who have vested interests and a cosy niche in the dysfunctional status quo as their types have been and still are reaping the benefits of the dysfunction and will continue to do so until matters are rectified.

Such persons and organisations will (naturally) be opposed to and add inertia to any proposals for change. These cosy-niche operators include sections of the Health professions who provide "expert reports" to the Regulators, lawyers of course, particularly the Plaintiff Lawyer industry who are riding a wave of prosperity on the back of the Regulators tsunami approach , and Medical Indemnity Insurers-all of whom are part of the problem by contributing or doing nothing to change the regulatory methodology where some are paralysed to inaction .

The AMA and the Royal Colleges appear to be blind to the current issues affecting their members and Fellows and contribute to the inertia to change and the diminishing political recognition and ineffectiveness of their own organisations by doing nothing . This makes them part of the problem since they have been party to the deafening silence on Regulatory Issues for many years and just kow-tow to the regular turns of the regulatory thumb-screw instead of leading the nation and their craft groups.

The new National Law (probably deliberately) has omitted the former statements in the Health Practitioners Act (1999) of the requirement for Regulators to adhere to principles of natural justice and due process in the operation of the new National Act with the result that Star-Chamber-like process and procedures can now be and are carried out with impunity, lack of redress and to the considerable financial and serious mental health issues of any Registrant victim . Such unconstitutional measures and process are core issues and fuel malcontent across the industry.

The process of law is being misapplied for the convenience and imbalance of power of the Regulator and its operatives and the Ombudsman is apparently not equipped or prepared to intervene to ensure that natural justice due process and particularly procedural fairness actually takes place -either by mis-direction of Government or oversight in enabling legislation, and displays another form of inertia and paralysis in the system.

Somehow there is a pervading view at administrative levels that the ends justifies the means. Regretfully the "ends" does not represent better health care but just political posturing and the creation of a (false) impression to voters that the Regulators(Government) are doing their job protecting the interests of the State and Nation . In the end it is all about votes , and frankly that is all politicians really care about-the next election. I make no apology for stating the obvious.

In effect Health Registrants are still being short-changed and psychologically threatened and abused for political gain and it is apparent that no real lessons have been absorbed at least in Queensland by Governments or Civil Servants from the past Bundaberg saga. The abuse is serious , because it serves an ulterior and perverted purpose.

It is trite to observe that despite the past attempts at rearrangement of the deck-chairs the whole system is (still) wrong and needs a complete refashioning since it is not serving its purpose ie to improve health outcomes.

I would point out (as also an experienced aviator) that Australian civil aviation (CASA) has also had a long history of similar conflicts between hostile regulation and the industry over many years- with very little resolution of issues or progress for the past 20 or 25 years. (over 30 damning public inquiries) I am told the new CEO of CASA just sacked 61 top-level managers last week (mid July 2016) because of that lack of diligence to the issues. There may be more sackings to come.

Maybe the Health Minister(s) Sate and Federal will need to take a lesson from the CASA CEO at the end of this inquiry

B. Ways in Which the Health Services Complaints Management System be Improved-

1. Introduce an Inquisitorial System

This is not rocket-science but an obvious solution to the persisting and recurring vexed questions. "What actually went wrong and how can it be prevented" ?

The present Regulatory system of dealing with complaints of any kind is highly defensive of Government, (therefore inherently biased) aggressive and adversarial when it should be co-operative, considerate and inquisitorial – thereby it creates immediate hostility and conflict of interest in the inquirer and the inquiry. Naturally the truth is seldom laid bare, but scapegoats are created.

Instead of the objective being to find the true cause in order to improve the system and prevent similar occurrences across the board, the present Government inspired methods are all about avoiding and re-attaching the blame and imposing punishment preferably on an individual (often in contradistinction to the real facts and circumstances) but one which might satisfy the perceived "victims" and voters. In effect it is well known that the "best liar wins" these sorts of issues in our present adversarial system. And they do in these matters too for sure!

Since the outcome is often predetermined by the said bias in the system no lessons whatsoever are learned from such exercises (other than how to continue to deceive the public) since they suppress and avoid the truth and create a class of otherwise innocent victims - and such practices only breed distrust, anxiety and resentment across all Health Registrants.

This approach also breeds a standard modus-operandi of blame shifting and obfuscation and buck-passing , the manufacture of sham reviews and procurement of sham "expert "reports, and scandalous public announcements harnessing the media claiming the high-moral ground which are all too common and contribute to the professional destruction of the selected victim Registrant. Such has become the acceptable culture within the unreal parallel world occupied by the Regulator and their operatives. Win at any cost is the motto.

This is best exemplified by the many examples of public-hospital stuff-ups where blame is usually attached to one "rogue operator' so that systemic errors are fudged and scapegoats manufactured by sheer weight of the clamour (mostly by the real perpetrators) to distance themselves by attaching early blame to others . The prime Queensland example of course is the Patel affair.

The media, eager for scandal to boost circulation and sales are willing to oblige and broadcast and embellish the falsities which are trotted out by the PR departments and media advisors of Governments and Hospitals (public & private) aiming to get the mid-set of the public cemented in their favour.

In-truth and today's systems real fault can rarely be applied solely to a single Health Registrant since there are so many links and twists and turns to the chain of causation of an incident or adverse outcome . Often the real causality is hidden for lack of the will to investigate appropriately because of the fear of what true findings would reveal. In other words the outcome is fudged , or deliberately sabotaged. Once more I refer the reader to the Bundaberg and Patel experience for confirmation of this statement. Sir Humphrey Littleton would certainly agree with this statement.

Hence a broader inquisitorial and true scientific approach by experienced and dedicated professionals is the only real solution. It is strange in these days of evidenced based medicine and scientific methods of diagnosis we still judge our heath professionals performance on emotive reasoning and destroy them by media scandal. Such is kangaroo court and lynch-mob mentality. Our heritage?

2. Separation of Powers the Australian Constitutions Answer

By combining all functions into one body (AHPRA) as in the past and at as at present, there is an unconstitutional breach of the Separation of Powers Doctrine. One body simply cannot Regulate, Register, Set Standards, Investigate, Police and Prosecute and demand and apply sanctions without breaching the Constitution and involving huge conflicts of interest and breaching the democratic rights of Health providers- and accordingly and invariably the process is always –(repeat always) corrupted by this one fact alone. This has gone on for years and it just does not work!

To comply with the Constitution and the Doctrine the Investigator needs to be remote from the complainant and the prosecutor and there should be no common administrative interest of the separate parties in the outcome. Our Constitution demands this.

The investigator and the prosecutor also need to be physically and administratively remote from the Regulator.

Just how on earth then has this present arrangement by- passed the Constitutional guarantees for so many years ? No wonder it is not working as it should!

3. Australian Health Safety Bureau ? Not just a good idea but an imperative!

Hence I propose there needs to be a completely independent body set up to competently and professionally to investigate health complaints /issues/adverse outcomes ,and establish the true and real facts and the chain of causation of serious health incidents along the principles that have been very successfully applied for Aircraft Accidents & Incidents where the *blame culture* was replaced by a *safety culture* 30 or more years ago with predictable improvements in outcomes.

In Australia , and in all advanced economies Aviation incidents/accidents are investigated by dedicated expert bodies totally remote from the Regulator the Prosecutors and providers of commercial aviation services ie remote from vested interests and interference.

In Australia the ATSB (Australian Transport Safety Bureau) investigates all transport accidents and incidents (particularly aviation) . Their purpose is to find out the truth , the facts and the causation without (political) fear or favour.

The Regulator (CASA) these days has nothing to do with such process'. CASA issue licences and approvals monitor standards-most of which follow universally accepted and documented lines . The standards are no longer sucked from an Inspectors thumb at whim and for the occasion.

Should CASA see fit (following the findings of the independent ATSB investigation) to prosecute or sanction an aviator then they have to follow due process and in which if there is a perceived emergency, the power to change a licence ,certificate or approval is fettered by having to show cause to the Federal Court within 24 hours to extend the initial time period (restricted effectively to 24 hours) .

The reader should compare this democratic and scientific process with that of our past and current Health Regulators! The conclusion is obvious.

Why can't Health Professionals have the same protection from the law by the law, just as the Aviators do?

My proposed solution is for a health ATSB ie Australian Health Safety Bureau. Let us substitute the proposed Australian Health Safety Bureau,(Queensland) for the investigative powers of AHPRA. This imperative alone will resolve 99% of the perceived problem areas overnight -and at no extra cost.

And if there is an urgent case for the change or suspension of a Practitioners privileges and right to work let that be put immediately to a Federal Court Judge (as takes place in the aviation regulatory system) - and not a mere Tribunal President

4. Contributory Patient Factors and Obligations to be Investigated

The Regulators recognise there are (at least) two factors in any complaint – the complainant (usually a patient) and the provider(usually a Registrant. Incongruously the focus for attaching blame is always on the provider (Registrant). In aviation , it is the airplane , the engineers, and the pilot. All are open questions at the start of any investigation.

In Health issues there are currently no reciprocal powers or rights to or even interest to investigate the patient component of the equation. The recipient and beneficiaries of health services-have the obligations of frank disclosure , compliance , common sense , decency and reporting back and such should be met so that the economic and effects and effectiveness of treatment are actually met .

Investigation of patient factors and patient components should comprise part of every complaint process.

Such is necessary because the privilege of relatively "free medicine" is frequently and commonly abused by individuals -and wilful and self destructive behaviour (termed non-compliance) often leads to health complaints which when not properly investigated , compensation not only is sought, but provided. Presenting as a patient brings with it serious obligations which in our society and system need to be not only spelt out but policed and reinforced to establish balance in the Regulatory systems and regimes.

ie there are those patients who set out the deliberately mislead the practitioner with ulterior purposes.

There are equivalent fraudulent misuse of "insurance" in many industries -and health is no exception.

In my considerable experience patient factors are a large contributor to adverse health outcomes and in each case the possible, potential and actual contribution of the

patient (and sometimes that of their carers) need to be identified and considered. In some issues the entire cause of the failure of treatment are “patient factors” something that is invariably overlooked by investigators who invariably have tunnel vision.

It must be conceded and recognised that in many health matters we are still living in the past using outdated and unreliable methods and most often to satisfy emotive pressures for perceived better (political) outcomes at the expense of health outcomes. This simply has to change

5. Standards

Any and all standards have to set beforehand –not after the event. Standards have to be set universally, and fairly and have to codified in ways that can be available, understood and met so that such is clear to both provider and patient at the time of delivery. Such has to be adjusted for State, Regional and Rural variations in services since availability, and delivery are variable across the State and Nation. .

The present common and abhorrent system (of retrospective and selective determination of applicable standards) is unfair and dangerous as an adverse event is usually manipulated fact and circumstance-wise to fit into a pseudo-standard (or pseudo-expectation) manufactured or imported from inter-state or elsewhere and determined (invented) for the occasion by the sensitivities of the investigator/prosecutor with the explicit intention to implicate the selected victim- sometimes years after the event. How unfair is that ?

In my experience , and because of the lack of Separation of Powers in the Regulator, too often it is possible to manipulate facts, circumstances and their effects to fit a faux-standard that is not only readily manufactured or procured for the occasion but is invariably and creatively retrospective and tailored for the selected victim and the low-level procedures of a Tribunal where regretfully , but conveniently for the Regulator rules of evidence and standards of proof are whimsical to say the least..

Standards of materials, design and performance in other trades and professions are and have been set and codified decades ago to meet Regulations and serve as guidelines and performance indicators and targets for manufacturers , suppliers and tradesmen at the coal face but such can not only be readily be achieved but can be readily identified even in retrospect years later when and what they were or were-not or did not -without having to resort to lying and cheating and dishonesty and manipulation and the not-so clever tricks of Barrister and Lawyers. .

Just why has the Health professions lagged so far behind industry and got itself to this un-satisfactory state of affairs?

6. Sanctions

The power to suspend , alter or restrict a Registrants scope of practice other than in dire emergency needs to be fettered far far more than at present. Again as explained in above paragraphs and following the example set in Civil Aviation, emergency powers should only last long enough to arraign the Registrant before the Federal

Court / Tribunal – who will hear the allegations and determine if , when and how such powers are continued, applied, withdrawn or modified - and give orders for reviews if necessary and speedy resolutions.

A prime need for this is the frequent knee-jerk responses of the Regulator to mandatory reporting notifications.

7. Disciplinary Procedures

Whilst perhaps QCAT is fractionally better than the former Medical Tribunal there are still many irregularities that stack the odds against a defendant Registrant from obtaining justice. They are:

(a) Jurisdiction

There is no stated $ value for the jurisdiction of QCAT as per normal Courts although the largest sum mentioned in the Rules are " matters over $10,000" . Many issues if found against a Registrant have serious and long lasting career effects which are calculable and in some cases amount to many millions of dollars over the working lifetime. Some determinations cause unemployment, banishment and bankruptcy.

Despite the extremely high financial, reputational and employment risk to Registrant the rules of evidence designed for a Tribunal with matters rarely exceeding $10,000 in value and the general avoidance of legal representation do not equate to the inherent risks of the emotive issues and low threshold of admissibility of evidence and the casual procedures which make a mockery of the claims that for Health Registrants the highest end of the scale of natural justice standards are purportedly delivered and the purported high Briginshaw Civil standard of proof -is simply not achievable when the process is so weak and admissible evidence standards so low.

It is really a farce. Everyone regularly involved in the process must know that – all except the Registrant who in his/her naivety is unfamiliar and out of his comfort zone and totally reliant on those in charge and representing him/her to navigate the pitfalls.

Such claims are a contradiction of the actual rules and practices in place, which might well be suitable for a garden-fence dispute but not when a career ending and multi-million dollar issues are in dispute.- and where the costs alone to a looser may reach well over AUD$1,000,000 . Such claims of "fairness" are contradicted by the practices and procedures permitted in QCAT- and I might add a pervading hostile ambience.

To have the application of proper Court Rules and procedure and practices of natural justice and due process subject to the whim or largesse of a Tribunal President is just not acceptable unless the $ value of the dispute is that of the standard "garden fence" for which Tribunal rules were created.

Health Registrants deserve their Regulatory issues to be taken seriously by Government and their civil rights and standards which are afforded to other citizens to be afforded to them also. Why the discrimination?

For disputed Medical Registrant issues the only safe jurisdiction would be the Supreme or Federal Courts largely inaccessible unless the Registrant seizes the initiative and goes against the advice of his/her indemnity insurer.

NOTE I observe that The Defence Forces Disciplinary Tribunal have Supreme Court Judges as President and Deputy President. Do we regard disciplinary proceedings against Health Registrans to deserve a lesser standard of judication?

(b) Tribunal Members Assisting the President

My understanding is that the conduct of a Registrant is meant to be judged by a panel of his/her peers with a judicial President to determine legal issues –including procedural and evidential. In affect a Tribunal of peers, with an extra peer being a representative of the general public.

Unless these participating in the process are true peers of the Registrant (and a real representative of citizens , concerned but not biased or on a personal agenda) there is a serious likelihood of a miscarriage of justice being performed since one of their tasks is to advise the Tribunal on matters of current medical practice and current medical standards and current community expectations.

Regretfully it is rare for a truly competent panel to be assembled -in contradiction of the legislative intent –and while the former Health Practitioners Act (HPA 1999) had provision for the Minister to appoint suitable peers forthwith in situations where a Registrant challenged the competence of a panellist - the new National Law legislation now gives little guidance and is silent on these directives when there are no suitable peers available. .

In my experience the Regulator deliberately and repeatedly has selected persons from the panel of assessors who are unsuitable on the basis of qualification, experience or current practice in the matter(s) in question . These panellists are often semi or fully retired from active practice and only remain Registered in order to fulfil their panel obligations as they are frequently re-cycled year in and year out . My observation is that the Regulator should not be selecting panellists since it offers an opportunity to pervert the system- an opportunity that my observations find the Regulator simply cannot resist.

Such Regulator based panel selections are a perversion of the principles of Tribunals and are a perversion of justice and appear at times to be deliberately made in order to obtain the outcome the Regulator desires. The panellists themselves must be aware of their failings and limitations and must know their presence on the panel is a disservice to the accused Registrant their own profession at large.

Such occurrences are an indictment on the lawyers involved who must know these selections and appointments are a perversion – yet make no effort to correct them because of the adversarial nature of the contest and the economic necessity to win no matter the cost. Such wilful blind eyes are too common but are encouraged by the adversarial nature of the “contest” and the need to “win at any cost’ .

Surely the Tribunal Presidents if not aware at the start of a hearing must develop insight into the knowledge ,experience and suitability of the panellists going forward. I have yet to hear of a Tribunal President who declares a "mistrial" once the fact that a panellist is unsuitable becomes evident.

(c) Sham Peer Review

This term has been coined in the last 10 years or so for the smoke and mirrors charade that occurs not just in Tribunal matters but in lesser assemblies where a professional is being ostensibly judged by a panel of his/her peers. Such occurs in committees assembled in public and private Hospitals to investigate incidents , adverse outcomes and professional conduct but the outcome is predictably pre-determined and rigged by a variety of means.

That such extends to official Tribunals such as in QCAT hearings is no surprise, since false, distorted exaggerated and invented fact and circumstances are prompted by the Regulator and attempts are made (often successful) to gag the Registrant from presenting his/her version of events sometimes with the aid of a compliant Tribunal made easier if the Tribunal has members with little or no experience in the contested areas of practice as described in the paragraph (b) above .

I note that the media are becoming aware of this phenomenon with expose recently of the Commonwealth Bank Insurance arm being perpetrators, and only this week the Victorian Police and Ambulance Associations accusing their Work-cover insurers of this practice ie procuring sham medical reviews and acting on such as if they were valid!

(d) Expert Opinions

Expert opinion evidence made on the basis of a set of accurate and uncontested facts according to the Cochrane Standard (Medical Standard) is level 5 in a 5 level scale of reliability of evidence on which to make a clinical decision . Level 5 is the lowest or weakest evidence .

However here is much higher reliance on "expert evidence" in deciding issues in Courts and Tribunals and the Regulator is adept and schooled in procuring the "expert" opinion (s) they need to be successful, particularly in contested matters.

One of the methods used appears to manipulate the process by feeding the selected "expert" a set of distorted, exaggerated and sometimes false facts in order to commit the expert to a position –which can then be manipulated further by adding or subtracting other issues and thereby subtly and gradually psychologically capture the said expert into the prosecution team, encouraging the expert to become speculative and inventive himself and add to the spectrum of allegations-based on the falsities and distortions the expert himself has been beguiled to make.

Some "experts" joint this process willingly and participate in the sham review. It is a form of perjury in my opinion and perverts the course of justice, and used invariably pre-Tribunal hearing to negotiate admissions from a Registrant.

Such is a dark-art but successful prosecution tactic if not challenged successfully and serves to confuse the defence if the defence is not across the tricks that can be performed with fact and opinion and inhibits and weakens attempts to cross examine the witness.

I should add to complete the picture that any supportive expert opinions of a Registrant's conduct are invariably discarded, buried, and never see the light of day when placed before decision makers (such as Medical Boards) –thus perverting the process ab initio.

Over the years of repeating these tactics and since "win at any cost" is the Regulators creed the Regulator develops a list of go-to pseudo (sham) experts whom they know they can manipulate to their purpose. Regretfully the Health professions have cohorts of quislings who are compliant for a fee and willingly supply sham reviews often subtly and cunningly crafted with deficiencies difficult to detect but designed to be persuasive. Likewise the Insurance industry – and I suspect the Medical Indemnity Insurance is not immune to this for of corrupt conduct – which disadvantages the Registrant and in some circumstances benefits the insurer.

Such is reflected (in my view) throughout the plaintiff law industry and is a problem not just for the Courts and Tribunals but for the majority of PIPA Claims in Queensland settled by out-of-court by negotiation - but still reflect on a Registrants record and on the public information displayed by the Regulator.

Remember these huge settlements (at the very best) are made on the basis of scientifically accepted level 5 evidence (the lowest) described above and universally accepted by the Medical profession. At times of course the expert reports do not even make that "level 5 " status since the expert report in question could be made on uncontested facts , and unless such disputed facts are displayed as disputed the report is a sham and designed to deceive .

Thus justice in these instances is a lottery in which there are many vested interests affecting the spin of the roulette wheel and just where and how the wheel stops.

Sham peer reviews and sham experts and their reports need to be stamped out since they are a form of perjury perversion of the course of justice . Reliance on Expert Witness Codes is weak since redress (if detected) is only available in Supreme and District Courts where only a small percentage of expert witness actually testify.

(f) Appeals

The new Regulations continue the past abhorrent practice of the right of Appeal being subject to "leave to appeal" which is also a whimsical serendipitous and expensive exercise and I understand the chances of gaining "leave" are less than that of obtaining leave from the High Court –which is 100:1 against an Applicant being granted leave.

It is thus too important and too risky to have contested Health Registrant matters heard in lower Courts and in procedurally weaker Tribunals because the rules of evidence are weak, procedures of due process are weak and the rights of appeal for practical purposes non-existent for a disaffected Registrant.

Better avenues of Appeal need to be made and clearly stated . The Judicial (Statutory) Review is not always available.

(g) Representation – Courts-not Tribunals

Contested hearings re Medical matters can be and invariably hostile affairs and are quasi –criminal since the issues almost always include infliction of damage of sorts to the alleged victim by Registrant – indeed some issues can and may end up being eventually referred to the Police as Assault or Grievous Bodily Harm" or in some instances Manslaughter all on the basis of allegations and/or so called evidence adduced.

Such potential fall-out issues are further reasons why these matters must be heard in proper Courts – and under rules applicable to Criminal law. To do otherwise is unsafe and unfair since in Tribunal hearings there is much distortion and hyperbole with exaggerated adjectives and metaphors applied afforded to stimulate the facts and invert the circumstances . Such quasi-perjury has the desired effect to pervert the proper course of justice . Such temptations would not survive for long in the Supreme Court, yet are persuasive and often the decider and determining factor in adverse outcomes for a Registrant in lower echelons .

(h) Indemnity Insurers

Indemnity Insurers are a weak link in the chain of protection for a Registrant as there is a naïve reliance by Registrants on the insurer acting efficiently , properly and thoroughly on a Regulators intervention questioning professionalism..

The Insurers interests and the Registrants interests are far apart . The Insurer is looking for the easiest and cheapest solution to an issue , whereas the Registrant wants to be vindicated in most situations .

For a start the insurer will rarely investigate independently and will respond only to the allegations . At best they will seek a negotiated settlement on the (exaggerated and distorted and often false) facts as claimed by the Regulator . By not investigating they cannot dispute or argue effectively.

Next MDO's are reluctant to obtain real expert reports to support the Registrant and often obtain "token" reports in order to convince the Registrant to submit or negotiate. Token reports are a sham report . The insurers like the Plaintiff Lawyers, have their own reliable "go-to" persons for reports. Compliance with the insurers demands is often gained by use of the token (sham) reports and threats of withdrawal of support or cancellation of the Registrants policy.

Insurers also respond to media , and have been known to act against the Registrants on media reports as if they were the last word on the matter , with the perceived wisdom of the High Court.

These tactics add pressure to the Registrant victim and may contribute to mental health issues developing.

Insurers and relationships with Registrants would be aided by the introduction of the Health Safety Bureau (as proposed) as such means a more accurate and reliable investigation will have provided facts that can be relied upon with a greater degree of confidence since part of the process would be to consult genuine experts where necessary.

C. Performance of the Health Ombudsman

In my view and my experience the Health Ombudsman does his best to protect the integrity of the (bad) system by deflecting complaints about the system and finding reasons (excuses) not to respond to and explore perceived dangerous ground and on perceived dangerous issues for the Government and its various Health Agencies – such as the Regulator and Boards.

Only the exceptional and token case gets through, despite clear breaches and faults in procedures used by the Regulator- and nothing substantial has really been achieved for Registrants to my knowledge since its introduction . If it has, then it has been kept secret.

The best current example is the response of the Health Ombudsman to the Chesterman Report – what has been done by the Health Ombudsman about the 66% of notifications that Chesterman identified in 2013 over the 5 years prior (2008-2013) that were inadequately or improperly dealt with by the then Regulator?

Since the Ombudsman was appointed on the fall-out from the Chesterman Report it would not be contrary to expectations that his first task would be to deal with those 60% of complaints not properly dealt with by the former discredited Queensland Medical Board .

A few apparently egregious examples were referred to the Police not by Chesterman or Health Ombudsman but by the sub-report of Forrester-Hutton The Queensland Police completed their investigations and reports by December 2015 and referred the matters back to thee (new) Regulator Board. In the past 6 months nothing has been heard about the findings , and the alleged perpetrators and the alleged victims are still in the dark.

Where is/was/should not the Health Ombudsman been up front, left, right and centre leading the charge in addressing the wrongs identified to the public and Registrants alike by the sub-report? If not –why not , and if so-where has the Health Ombudsman been these past 3 years? And why?

Has the Ombudsman received a copy of the Police Report? What is happening about the Police Report?

D. National Boards and Agencies Performance

AHPRA

2010 was a year of confusion as suddenly and apparently without warning everything changed . The old HPA (1999) was repealed and the National Act came into being mid-year , together with disbandment of the Medical Tribunal (as a branch of the District Court) and the formation of QCAT with the Health Tribunal now a branch of that Tribunal.

It took legal practitioners a long time to adapt to the new system, and it seems (to me at least) took a couple or three years to establish District court Judge(s) again overseeing the reformatted Medical/Health Tribunal.

Unconstitutional and oppressive mandatory reporting or "dob-in" clauses in National Law which have the odour of totalitarianism just have not worked as it has armed some professional rung-climbers with the means to accelerate their own progress at the expense of competitors, given the response of AHPRA when the receive this information. These clauses in the Regulations need to be abolished forthwith.

Meantime from 2010 onwards there was growing discontent with the performance of AHPRA which was in the view of many, disconnected from the realities of health practitioners difficulties and with the rise and rise of civil litigation, plaintiff lawyer conglomerates and international super-corporations feeding frenzies and the consolidation of the nations individual State abhorrent regulatory practices into one collective -AHPRA .

Additional new aggressive practices emerged from AHPRA and appear to have been orchestrated by imported professional(s) from UK with General Medical Council experience specifically for these purposes at Head Office. Experience of practices in UK which were known to be adversely affecting Registrants and creating a huge increase in premature deaths of Registrants, suicides and serious mental heath issues that exceeded those of UK Armed Forces veterans from the Afghan and Iraq wars were introduced and now take place in Australia under AHPRA's directions with predictable consequences. .

Predicably there has been an increase in Australia of the same conditions across the spectrum of Health Registrants targeted by AHPRA as seen in UK by the tactics of the GMC- Registrants targeted having high incidents of stress disorders, other mental condition and general health issues-and premature deaths and suicides.

The British Parliament this year(2016) has severely clipped the powers of the GMC in an attempt to stop the carnage in UK Medical Registrants.

In Australia we urgently need a Royal Commission into Health Regulation and particularly into the activities and effects of AHPRA on Registrants. There have

been a large number of State inquiries into AHPRA these past 2 years- and each one has found the Regulator not to be discharging their functions adequately.

Medical Board of Australia

The Medical Board of Australia is showing the same tendencies as AHPRA , with little concern for the effects of their own displays of departures from natural justice ,due process and procedural fairness on their victims .

I can quote an example of total abuse of their powers, the adoption of powers they were never endowed with, and the misleading of courts with false statements and documents reaching as far as The High Court of Australia – all in order to pursue an unlawful and vindictive agenda against a Registrant.

E. Other Matters

Recommendations

A ten point plan for the future (and a paradigm shift in policy, process and attitudes)

1. AHPRA and AMB and State Boards to become a regulatory body only and be stripped of any powers to investigate , prosecute or discipline a Registrant . AHPRA is to establish and publish Australian Standards of health practices and procedures and acceptable grades of outcomes based on Level 1 Cochrane authorities Worlds Best Practice as well as maintaining a Register Health professionals . Mandatory reporting clauses will be abolished and replaced by voluntary reporting of issues without penalty to the Health Ombudsman. (as in aviation)

2, Queensland Health Ombudsman is to act as a clearing house for all health complaints (other than PIPA and Workers Compensation) and to rely on the newly developed AHPRA Standards for assessments as in 1 above.. Refers cases to Australian Health Safety Bureau(AHSB) for investigation as necessary. Refers Cases to Medical and Allied Health Boards as necessary for disciplinary action.

3. All necessary investigations are to be performed by the Australian Heath Safety Bureau (AHSB Queensland Division) on referral from the Health Ombudsman and who report back to the Health Ombudsman . AHSB employs dedicated professional medical investigators and not amateur sleuths with deep-rooted personal agendas

4. Queensland Medical Board and Allied Health Boards will receive reports from the Health Ombudsman and determines if disciplinary measures and actions are to be required . All disciplinary matters are to be handled “in-house” and not by Private Solicitors or the Private Bar (similar to functions of DPP)

5. Medical Tribunal activities and Presidents are to be of Supreme Court standard practice and procedure Judges versed in Medical Law and follow normal criminal law practices and procedures Evidence admitted to be on criminal standards. Determinations are to be on genuine Briginshaw standards. Assessor panels to be constituted by Practitioners in current practice and who are genuine peers of any

Registrant referred to the Tribunal. Tribunal does not proceed until genuine Peers are empanelled. Appeals are to be available in all cases.

6. Media and PR sections of AHPRA, Ombudsman and the Health Safety Bureau are barred from media releases in regard to any Registrant until after the conclusion of any disciplinary procedures, including Appeals and reporting MUST be factual.

7. All "expert opinions" necessary or relied upon in any investigative process must comply with Supreme Court expert witness rules.

8. Breaches of rules of natural justice , expert witness rules and "leaks" of confidential matters to media will attract severe penalties.

9. Truth & Reconciliation measures MUST be introduced and the AHSB (Qld) first task should be to robustly and completely respond to the complaints of those who have evidence of being improperly dealt with by former regimes dating back to at least the Bundaberg era. This includes both patients and Registrants .

10 Compensation MUST be available to the victims of past dysfunction of the Regulatory regime-and any future victims . The number of future victims should diminish if the 10 points are introduced

Is Regulation Really Necessary for All Heath Professionals?

There are very good reasons in a civil and advanced society why non-Registered Health Practitioners of all sorts should be permitted to practice in a separate Private and unregulated "system" outside the confines of the existing largely State and Federal funded system ie public/private hospitals and Medicare/AHPRA.

I suggest and recommend that the committee should explore and consider such proposals since many citizens are aggrieved and damaged (sometimes fatally) by the restrictions in and on health services that the Government only allows. This is seen as a Government Monopoly and a "Big Brother" and "Nanny State" approach to health and health issues. Such does not suit all circumstances as is quite evident.

It is a legitimate and proven view that Regulation and creation of monopolies restricts competition, innovation ,accessibility, and affordability and encourages mediocrity. This applies to Health just as much as any other industry. For example read Woolworth's, Coles and Aldi. Right now Australia allows only a Woolworth's Health System. (1 size fits all?)

Many citizens now elect to travel overseas to access vital and essential services available in more advanced nations but not here. Denial of such services locally and totally are perceived as limits on freedom of choice and denial/restriction on civil liberties .

Offered this option many health practitioners might elect to practice outside the National Health System -if such alternatives were available to citizens and

practitioners. Predictably many innovative treatments and methods will be spawned – such would compliment and satisfy the Federal Government pleas for innovation.

Such would be a win-win situation for citizens and Governments as such would offer an alternative to those practitioners who elect to leave Australia because of the perceived restriction on freedoms and over-regulation , and the many citizens who have special needs not available under Australia and Queenslands regulatory system.

To some extent , particularly in the alternative medicine industry and pharmaceuticals this alternative system already exists , and some Regulated professionals and their "clients" particularly Pharmacists enjoy the best of both worlds. Why not extend this to others?

Queensland could lead the Nation by legislating for these provisions which would increase local industry participation, boost employment, relieve pressure on public facilities - and save rising Government costs .

Why not act now if only to relieve financial and other pressures on public facilities?

Disclaimer

This submission is derived from my own personal experience and knowledge. I make no apology for expressing the true facts and my opinions thereby derived. I would be pleased to answer any questions arising from this submission either in writing or orally to the inquiry panel. [redacted]

Russell Broadbent

3 August 2016

[redacted]