Submission No. 027

SUBMISSION TO QUEENSLAND PARLIAMENT

in 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

Health Professionals Australia Reform Association (HPARA)

www.HPARA.org.au

Introduction

HPARA is an association of health professionals who are concerned about the dysfunctional regulation and administration of health and health matters across the spectrum in Australia and how these dysfunctions affect all health professionals in general and in particular .

It is a proven fact that many if not most health professionals are subject to psychological abuse and mental stress as a direct result of their employment. It can be shown much is due to the oppressive dysfunction of the Regulator and related agencies.

The objective of HPARA is to increase public awareness of the said dysfunction, bring the matters to the attention of Governments and to lobby for reform and equity.

Such is necessary to improve the delivery of health services across the nation.

HPARA believes a broadly based Royal Commission along the lines of those into child sexual abuse is necessary to expose all of the perpetrators of abuse and relieve Registrants from avoidable psychological abuse and resultant distress and to actuate reform protocols.

HPARA welcomes this limited inquiry and presents the following submissions on behalf of our many health profession members - doctors, dentists nurses and allied regulated professions. This submission addresses the inquiry under the headings listed in the Referral Notice.

1. Operations of the health services complaints management system , the Health Ombudsman and National Boards and Agencies

HPARA recognises there are deep rooted political, social, cultural, educational, attitudinal, perceptive and legislative issues at the basis of this increasing problem creating complex issues.

HPARA has the benefit of the professional experiences of a large number of dissatisfied and concerned Health Registrants in their dealings with the both the former system of regulation and that now under the National Law.

Many of our members are or have been practising in Queensland, and have been in the system before, during and after the Bundaberg and Patel era. The era has been recognised as a watershed moment where dysfunction in the system was recognised and admitted.

Regretfully the consensus of our members and particularly members who have or still are practising in Queensland is that nothing has really changed in the past decade for the better, and with the changes to National Law, things have actually become worse.

There is still widespread confusion about who is who and who is really in charge with Federal and National agencies and bodies apparently operating in Queensland simultaneously and independent of State based agencies. This confusion extends to the Regulators themselves who do not appear to understand the legislation nor the limits of their power and jurisdiction.

The result is chaos.

In short the plethora of changes and new legislation has confused everyone from the top down and the result is frankly, a shambles. Lawyers, not patients, are the main beneficiaries and are enjoying a decade long picnic at the expense of the industry, and particularly the mental and financial health of individual health professionals.

Registrants of all kinds and particularly overseas graduates e.g. OTDs are bearing the brunt of Regulator action and actions which can only be described as an abuse of power, of democratic processes and universal human rights. Other health professionals are also injured in the fallout.

Regretfully those supposedly representing the interests of health professionals, such as the Australian Medical Association (AMA) and Royal Colleges, are blind to their members concerns and of some Fellows' antics and have done nothing, repeat nothing, over the past two decades to address the regulatory issues nor represent their constituents concerns to the Regulators nor their political masters.

The recent RACS investigation into bullying is an example of a lot of hot-air achieving nothing of substance since there has been no redress of the wrongs perpetrated by bullies, yet admitted such has taken place . Those who are known to have abused their Fellows or their trainees are simply not being challenged by the Colleges. The more recent change of leadership has led to an inexplicable reversion to the past.

Part of the bullying culture is the internal bullying of fellow health workers which to a large extent is condoned by the Regulators and fuelled by internal anxieties created by the regulatory system itself.

Protective cliques have developed and the core members of such cliques protect each others' backs and marginalise those not in the clique –colloquially known as the old boy's clubs.

When there were but four Medical Schools in Australia and few OTDs things were different, but there has been a large change in demographics and with the increase in local medical schools and OTDs . There is now a broader diversity of medical education and methods of treating patients so that all things are not equal across the board. One size does no longer fit all.

There are in fact no published or recognised State or National standards that a registrant can aspire to reach or by which to treat and manage patients and most are conveniently developed after the event by the regulator and by means of which the registrant is judged. These standards are mostly arbitrary, and unreliable .

These comments in regard to bullying also apply to the Medical Indemnity Companies, previously termed Medical Defence Organisations (MDOs). Since the new Insurance Legislation (passed in 2004) these appear to have subtly morphed from mutual funds to private corporations with a focus on cost-saving and profits for their share holders rather than adequate representation of their policy holders .

All of the health professionals HPARA have surveyed have a common theme to their complaints about the new nationally based Regulator.

They are :

1. The Regulator's actions are invariably aggressive, brutal, offensive, uncaring, and hostile.

2. The Regulator fails to investigate adequately or professionally - and often not at all.

3. The Registrant is treated like a convicted criminal even before the investigation commences (that is if there actually is one) and "guilt" of the Registrant is assumed up front and recorded as such.

4. The Regulator rarely obtains a statement of facts from a Registrant before making allegations.

5. The practices and procedures of natural justice, due process and procedural fairness are rarely if ever followed never-mind applied to what the letter of the law demands.

6. The Regulator regularly follows a scripted agenda during which threats are invariably made to the status of a Registrant's practising certificate as leverage for "co-operation".

7. The agenda includes the regular use of sham reviews and sham peer reviews.

8. If a Registrant resists the allegations and/or the methods and processes of the Regulator, the full fury and powers of the Regulator are unleashed without mercy.

9. The stress imposed on legally unsophisticated professionals whose lives have been focussed on the personal service and delivery of their compassion and skills can be indescribable.

10. There are no adequate avenues of redress. The Queensland Ombudsman can or do nothing to intervene if and when approached. Further it appears that the Ombudsman is not familiar with the term "natural justice" when approached about blatant breaches.

11. MDOs are reluctant to use the law on behalf of an aggrieved Registrant - there is public knowledge only of one successful attempt to spike the Regulators guns in the past two decades in Queensland.

12. Those who have suffered from mandatory reporting often describe the process as "Kafkaesque".

13. Opinions obtained by the Regulator in contested issues regularly do not align with current accepted practice. Many instances are a pure sham. Much has recently been said in the media about such practices in insurance matters. See item 7 above

14 Contested issues that reach Tribunals are marred by the lack of true peers on the adjudicating panel to assist the Tribunal.

15. Rules of evidence are not observed in respect of the seriousness of the consequences if unreliable evidence is heard and admitted.

16 The standards of proof are accordingly low if unreliable evidence is admitted.

17. Penalties and punishment are rarely in accordance with the degree of severity of the offence – no cognisance is taken of the cost of enduring world wide effect of a negative finding against any health registrant on his/her subsequent career and employment/financial stability.

18. Penalties are based on punishment and not on rehabilitation or re-education regardless.

19. Insurers (MDOs) fail to represent Registrants adequately in most instances and are part of the bullying culture.

Ways in which the health services management system might be improved

For these reasons HPARA recommends a full blown reform with a complete rethink and rewrite across the whole spectrum of regulation of health professionals.

HPARA recommends that the whole system should be discarded and a fresh start made. Piecemeal readjustments and re-organisation or existing authorities under another name have not and will not work in the future.

Recommendations

Existing Legislation is redrafted to accommodate the following_

(i) The investigation of health related incidents, adverse outcomes and alleged unprofessional practice is too important to be carried out by inexperienced amateurs who have never practised in the health industry nor trained as an investigator.

HPARA recommends that a completely independent and impartial investigative body be established, directed and staffed by genuine health professionals trained and versed in investigative techniques and a complete discard of the present adversarial system, replacing it with the inquisitorial system adopted in many European and other nations and ideal for disputes of this nature.

(ii) Mandatory reporting to be abolished. Non bona fide complaints should attract serious penalties as this clause is frequently abused as a method of impeaching a professional colleague who is viewed as a competitor or innovative practitioner- or indeed for many other motives. .

(iii) The existing Health Ombudsman will receive ALL health service related complaints and determine which matters are referred for proper investigation. Referrals will only take place if at first mediation methods are unsuccessful. The Ombudsman determines what actions are necessary following receipt of reports from the independent investigative body. If disciplinary action is considered appropriate, or mediation fails , the matter is referred further to the Registrants Board.

(iv) The existing Regulator AHPRA will maintain the Registers of Health Professionals , and develop and maintain comprehensive up to date and accessible Standards of practice of each discipline based on established international (not domestic) best practice. These will be used as the yardstick if any disciplinary procedures by the Health Ombudsman are deemed necessary.

(v) The Registrants Board will determine the need for disciplinary action on receipt of the investigative reports from the Health Ombudsman. Such which will focus as a first principle on re-education and rehabilitation and not punishment. Extreme circumspection will be required about what details (if any) are released to the public.

(vi) Tribunal hearings will be carried out by a Tribunal of genuine peers of the accused - only if matters remain in dispute. The Tribunal President will be a serving Supreme Court Judge with the standards of evidence and other Tribunal practices along those Supreme Court lines and the Uniform Civil Procedure Rules.

(vii) Expert evidence, if required at any stage in the process by any party to the eventual chain of events will be obtained independently from the said Tribunal which will be convened as required to refer the agreed facts to a genuine peer of the Registrant accused. Neither the Ombudsman nor the

Regulator will be allowed to procure expert evidence other than through the Tribunal process described.

(viii) Insurance Legislation needs to be re-worked in order to return to the Mutual form of insurance driven by the best interests of the health industry, rather than the private interests of shareholders.

Conclusion

HPARA thanks the Queensland Parliament for the opportunity to present the consensus views of a cross section of Australian and Queensland Registrants who have experienced first hand the dysfunction of the present system

Our Committee members would be pleased to have the opportunity to address your Committee and respond to any questions.

Don Kane (Chairman) *MB.BS* (UQ), *FRACP*, *FCCP*
Health Professionals Reform Association
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