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West Moreton Hospital and Health Service

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Inquiry of the Queensland Health Ombudsman (OHO) and functions pursuant to section 179 of the Office of Health Ombudsman Act 2013

Submissions on behalf of West Moreton Hospital and Health Service

Prolonged timeframes with OHO's decision making process

We submit there are undue and lengthy delays regarding OHOs decision making time frame. These include time frames for assessing matters and when deciding to report a matter to the Australian Health Practitioner Regulation Agency (**AHPRA**). Time frames have not been strictly adhered to as a mandated key feature of the Health Ombudsman Bill 2013 (Qld) to improve the health complaints process in Queensland. In addition, no reasonable explanations have been given for the delays. These delays are further aggravated by the inconsistent processes involving AHPRA when dealing with complaints, adding to the delay in resolution of matters.

For example: West Moreton Hospital Health Service (**WMHHS**) has two cases from early 2015 where staff have not yet been informed of any outcome from OHO or AHPRA. Previously, when there was direct reporting to AHPRA for nursing/midwifery, complaints would be reported directly to AHPRA. AHPRA would then make contact with the staff member about the process. It is suggested that OHO could report to AHPRA almost immediately with the evidence provided in the notification of the complaint and then forward any other relevant information for that case as required. Currently OHO assesses the matter, refers it to AHPRA, then the matter is referred back to OHO. This is a waste of resources and time and results in complaints being double handled.

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Further, the OHO may have up to 60 days to complete an assessment of a matter and 12 months to complete investigations (which often goes beyond this deadline). Health service providers and practitioners only have 14 days to respond to complaints by providing a submission. This time frame is too short in order to properly and fairly provide a defence to a case. As a result we are already seeing matters being referred straight to AHPRA. Further, the extended time frames, whilst may be needed, are unfair and unacceptable which adds to the stress for the practitioners and service providers involved.

It is suggested that time frame for submission by practitioner should be extended to either 21 or 28 days. Often those practitioners involved will need to seek assistance from their union, MDO, or hospital lawyer. Further, they may have left the area they were working and now practice elsewhere or be away on leave. This additional time frame would allow time for submissions to be coordinated without prejudicing either party.

Interplay with Coronial matters

Clearer guidelines regarding matters that are also subject to a Coronial investigation/inquest would be useful. These should include an explanation as to whether the OHO will continue to assess a matter that is currently before the Coroner and reasons for its decision.

For example: WMHHS is aware of one matter where the OHO determined to conciliate the matter prior to the inquest proceeding. It is submitted that the inquest process may well deliver for the family the answers it is seeking. If that is the case then the conciliation process we submit is not necessary and any decision to refer to conciliation should be put on hold pending the outcome of the coronial investigation.

However, we acknowledge that in some cases conciliation would be beneficial if the coronial process is going to be lengthy and take up to 2 years to conclude. If that is the case then conciliation would be prudent and if successful the outcome can guide the coroner when it comes to determining the findings.

Absence of expert clinical opinions

Expertise within the OHO is paramount to make decisions regarding referrals to AHPRA. We have had cases where the practitioner has been found to have done nothing wrong (but has been referred to AHPRA) and are delayed within OHO pending an outcome from AHPRA. We understand there is room for the OHO to establish a panel of experts to assist in assessing complaints but this does not appear to be fully utilised and thus the need for mattes to be referred to AHPRA. If clinical opinion can be obtained within the OHO arena then this may reduce the number of matters being referred to AHPRA and in turn reduce the length of time to resolve the complaint. Further, clinical input is necessary to give practitioners confidence that the OHO complaints management system is fair.

If the matter relates to the conduct/competence of a practitioner there should be a process where direct reports are submitted to AHPRA without having to go through OHO, as it is ultimately AHPRA that makes a decision regarding the practitioner's registration.

Differing opinions on standards and duplication with the AHPRA functions

In our experience, in particular matters referred to AHPRA, the OHO in its referral process will indicate to AHPRA that the matter is not one that warrants action affecting a practitioners registration (such as conditions, undertakings, suspension or referral to QCAT), but AHPRA determines otherwise.

The creation of differing standards and thresholds results in inconsistent decisions and confusion for practitioners and consumes and reduces confidence of the decisions that are made by both entities.

Often when one entity completes its assessment and or investigation of a matter, and it is referred to the other entity the process is reignited and repeated only further adding to the delays that already exist in resolving the matter in a timely fashion.

The criteria by which OHO either refer or retain matters is unclear. An effective co-regulatory framework needs to refine the issues to ensure consistent standards and processes, reducing the double handling of complaints with effective triage decisions, particularly regarding vexatious and trivial matters.

OHO investigators need to have the requisite qualifications and experience to undertake investigations. Experience either clinically or investigative, or preferably both.

The reporting of non-clinical issues

When concerns are raised about an employee's conduct which relates to criminal charges and this is referred to the OHO there is significant delay in the OHO taking action. We are aware of one such matter where it took at least one (1) month before any action was taken.

It is anticipated that if the matter was with AHPRA then immediate action would have taken place as a matter of urgency. To date the employee still holds active registration.

Reactivating complaints

In some instances if the consumer is unhappy with an outcome, the OHO are reopening matters, based on differing reasons from the basis of the initial complaint, even when supportive medical opinion for the treatment has been sought.

Closing comments

In our experience, the OHO has had little practical effect in terms of improving the efficiency of resolving health service complaints, and avoiding undue delay in the investigation and decision making process.

In addition, it is unclear how AHPRA and the OHO divide and allocate responsibilities. As such, this has resulted in a complaints management process that duplicates functions and leads to situations of unfair delay and uncertainty for practitioners.

Yours sincerely

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Sue McKee
A/ **Health Service Chief Executive** 10.8.16.
West Moreton Hospital and Health Service