



## Australian Association of Massage Therapists

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Re: Inquiry into the performance of the Queensland Health Ombudsman's functions pursuant to section 179 of the Health Ombudsman Act 2013

Dear Director

Thank you for the opportunity to make a late submission to the aforementioned inquiry.

I appreciate that this is unorthodox, but believe that the significant issues surrounding sexual assault, fraud, illegal prostitution and abuse of 457 visas that plague the massage sector in Queensland could provide valuable information to the inquiry and help protect Queenslanders from unscrupulous therapists.

For some time we have sought assistance to address the loopholes in the self-regulation of massage and other health sectors in Queensland, which continue to enable unscrupulous operators to slip through the system or remain in practice while under investigation.

A recent case in point involving [REDACTED], a massage therapist who recently pleaded guilty to 50 charges, including counts of rape, sexual assault, indecent treatment of a child and recordings in breach of privacy, was an AAMT member. Despite AAMT investigating [REDACTED] actions on more than one occasion at the request of Queensland Police, AAMT had little recourse to take matters to any jurisdiction or alert other professional bodies of our concerns without interfering with the legal case at hand.

Unfortunately for his 17 known victims, [REDACTED] had been able to practice massage and commit these crimes since 2009. Queensland Police finally brought him to justice only after lengthy and extensive investigations. As happens all too often, had more information been available sooner, identifying him and notifying police that he posed a possible risk would have occurred much earlier.

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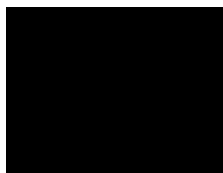
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Additionally, had [REDACTED] been acquitted, there is no mechanism in place to identify him, evaluate his suitability for membership or be aware that his behaviour should be monitored if he chose to reregister with another professional health association, or practice massage. He could easily move locations and continue to prey on more women and children undetected. This is more than often the case.

Our submission explains how this can occur, outlines the implications, and offers a solution to assist the Queensland Health Ombudsman record more useful information and better manage formal and informal complaints as well as work more cooperatively with industry for the protection of health consumers in Queensland.

Yours sincerely

A large black rectangular redaction box covering the signature of Tricia Hughes.

Tricia Hughes  
Chief Executive Officer

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## The problem

Around the country, there are numerous cases of individuals who were members of the AAMT or another health association, or who did not have accreditation with any health association, or any training, who used the pretence of offering legitimate massage services to access their victims.

At present, AAMT and other associations, charged with the responsibility of self-regulating and monitoring members for non-compliance with the new Code of Conduct for Health Workers, only have public access to the Determinations. However, *access to information regarding all formal and informal complaints logged with Queensland's Health Ombudsman and massage associations is essential if self-regulation is to work effectively with government authorities in protecting the public.*

Preventative measures involving mandatory notifications by Association to jurisdictions should also be implemented.

Attachment 4 illustrates that each year cases concerning rape and sexual assault by a massage therapist present in court, the majority of which have a problematic history of unconfirmed complaints and questionable behaviour. For your additional information, Attachment 1 provides three specific examples from Queensland.

Attachment 3, includes extracts from the soon-to-be-published AAMT 2016 complaints report, showing the significant increase in the number of Formal and Informal complaints concerning Misconduct and Notifiable Conduct. Notably, Informal complaints lodged with the AAMT have risen significantly in Queensland. *In October of last year the Queensland Health Ombudsman also requested that professional bodies act to ensure the self-regulation of massage therapists was robust enough for public protection.*

Informal complaints are those that do not progress to the AAMT National Ethic Committee (NEC) or authorities because the complainant does not wish to make the complaint formal, which indicates that many offences continue to go unreported and unprosecuted.

### Attrition in sexual assault complaints

High attrition rates in the area of complaints about alleged sexual offenses masks the extent of the problem.

Attrition of complaints regarding sexual offences is significant and not unique to the massage sector. The 2010 Australian Law Reform Commission's Report 114 pays particular attention to the attrition rate of sexual assault cases in its report *Family Violence – A national legal response*. I provide the following extracts for your reference:

#### *Attrition in sexual assault cases*

*Section 26.11 Research has established that only a small proportion of sexual assaults enter the criminal justice system, and those that do face a range of barriers and filtering mechanisms, which means that few result in a charge, prosecution, or conviction.[4] This steady process of attrition has been the subject of much concern and is well documented.[5]*

### *Statistics on attrition rates*

*26.13 While research indicates that the number of sexual assault cases that reach the point of adjudication is minimal,[6] much of the research into sexual assault has emphasised the difficulty of accurately measuring the extent of sexual assault or rates of attrition.[7]*

*26.14 The primary sources of sexual assault statistics are official police statistics, crime victimisation surveys, and more customised or targeted surveys.[8]*

*26.15 The limited availability of comprehensive statistics is evidently in part due to the very nature of under-reporting of sexual assault, an issue discussed further below, which is inherently difficult to measure accurately. However, the lack of data with respect to those cases which do enter the criminal justice system may also be attributed to factors such as inconsistencies in definitions of sexual assault as well limitations associated with current methods of data collection and evaluation.[9]*

*26.17 More specifically, some of the key published statistics available on attrition rates at various points of the criminal justice system are set out below. The figures relate to data collection across different time periods, jurisdictions and sample sizes, making it difficult to draw any firm conclusions from them. However, the figures do provide a useful statistical overview of sexual assault matters at the investigation, prosecution and trial stages, which is illustrative of the process of attrition.*

*The Australian Bureau of Statistics (ABS) reported that in 2009, 30 days after the initial complaint, an offender had been proceeded against in only 19.8% of sexual assault investigations.[11] Similarly, for incidents of sexual assault recorded by police in 2002, offenders were proceeded against for approximately one in four victims of sexual assault.[12]*

*A 2000–03 Victorian study found that police did not proceed with more than 60% of sexual assault investigations.[13] Offenders were charged in only 15% of cases.[14]*

*New South Wales research showed that only 28% of sexual and indecent assaults against children and 30% of those against adults, reported to NSW police in 2004, were 'cleared' within six months.[15]*

*A 2003 South Australian study noted that 40% of child sexual assault incidents reported in 2000–01 had not been cleared by police when followed up a year later; and 23% of cases were cleared other than through a suspect being apprehended, including because the victim requested no further action.[16]*

*In 2007, the Australian Institute of Criminology (AIC) estimated that less than 20% of sexual offence incidents which are reported to the police result in charges being laid and criminal proceedings being instigated.[17]*

Notably, if the AIC complaints attrition estimate were extrapolated to just the list of convicted sex offenders in massage provided in Attachment 2, in addition to the 84 victims listed, a further 336 victims who alleged sex offenses against a massage therapist went unprosecuted between 2008 and 2016 in Australia.

## AAMT's role in managing complaints

AAMT is at the coalface of these issues on a daily basis.

AAMT is the largest and best-resourced massage and myotherapy professional association in Australia and has been at the forefront of self-regulation, developing professional standards, codes of conduct and quality assurance, and responsive complaints mechanisms such as the NEC. This is now continuing as we develop an improved accreditation process after making significant contributions to the development of the National Code of Conduct for Health Workers and welcoming its introduction in Queensland and other states and territories.

The AAMT membership screening and registration process that operates within the limits of Australian Privacy Law provides some reassurances to consumers about the competency and legitimacy of AAMT member therapists, and assists police and other authorities that investigate Notifiable Conduct cases. On behalf of the AAMT NEC, I regularly attend court hearings to provide evidence, and hear from victims, mostly women and children whose trust was betrayed, and whom the system has failed to protect.

The AAMT's complaints handling process is by design, widely accessible to the public, members, and clients. When Formal complaints reach the courts, the media often approach AAMT for comment. Our policy is to avoid discussing these cases publicly, preferring to work behind the scenes with authorities to bring these people before the courts and protect the public. However, media interest is mounting.

We believe the National Code of Conduct for Health Workers, and a number of highly public and widely discussed investigations concerning offences of a sexual or violent nature have encouraged this growing media interest. In addition to court proceedings, these include:

- The Royal Commission into Institutional Responses to Child Sexual Abuse
- Various States investigating domestic violence against women including the VIC Royal Commission into Violence Against Women
- Alongside Qld, the NSW and SA, governments have also instigated improved access and streamlining of formal complaints handling to dedicated authorities.

In this environment, it is reasonable to expect that media interest will eventually spill over into seeking explanations that are more detailed and announce greater accountability.

In the interests of health consumers, and legitimate massage and myotherapists, we believe a better solution is needed urgently.

### Limited recording and access to complaint information

Our recent meeting with the Queensland Health Ombudsman, Leon Atkinson-MacEwen, followed a request from his office. *His instructions were that the number of complaints and offences in the massage sector was unacceptable and that associations had to do something about it.* AAMT is attempting to do this on many fronts, but without any real recognition and assistance from the Queensland Government and Ombudsman, little will change.

In the first instance, better access for massage associations to complaints information is required if Associations are to conduct valid and useful reference checks of members and new applicants.

Current information is very limited. For example, as at 28 April 2016, the Office of the Queensland Health Ombudsman made the following information available publicly about complaints and offenders:

|            |         |                                  |  |            |   |
|------------|---------|----------------------------------|--|------------|---|
| 13/11/2014 | Conduct | Unregistered massage therapist   | Massage therapist charged with 3 counts of sexual assault against a minor. | 26/05/2016 | Investigation currently paused awaiting outcome of criminal proceedings.    |
| 10/10/2014 | Conduct | Unregistered – massage therapist | Practitioner charged with 3 counts of sexual assault.                      | 24/05/2016 | Investigation currently paused awaiting the outcome of criminal proceedings |

A public search for massage of the Office of the Health Ombudsman's website provides the following with no additional information:

[REDACTED]

Despite the Code, the lack of information allows individuals with a history of Informal and Formal complaints regarding Misconduct logged against them without a conviction to continue to migrate from association to association or from a Registered health profession, masquerading as upstanding therapists while preying on the vulnerable.

Attempting to identify health practitioners with a history of complaints and questionable behaviour without access to their name, a full history of complaints, and membership disqualification from other unregistered health associations is akin to working from behind a blindfold. Even Police checks are limited in capacity and do not uncover a pattern of sexual misconduct or inappropriate behaviour unless charged.

The inability to access and share information with others that are charged with the responsibility of reference checking applications and members, impairs our ability to adequately screen individuals and assist authorities in effectively protecting the public. *Complaint entities are simply unable to effectively monitor and manage the behaviour of high-risk individuals with a history of allegations and complaints, who have not had a conviction.*

*As a result, massage and myotherapy services provide a gateway for people like [REDACTED] to prey on their victims.*

## Finding a solution

AAMT is concerned with creating better systems of detection, education and prevention.

*We are seeking opportunities to work with the Office of the Queensland Health Ombudsman to seek cooperative solutions.*

Importantly, AAMT is not seeking to set up a quasi-judicial system, administered by associations and/or to ignore the presumption of innocence and the right to privacy and protection under the law

for those involved in a complaint. Through AAMT's NEC function, we are well aware and practiced in protecting these rights.

We are also not seeking to create better or alternative systems of prosecution. Prohibition orders enacted in the Code of Conduct for Health Workers, and recognition of corresponding interstate interim orders already does this, but they occur after the fact, often when dozens of victims have already suffered.

While AAMT have the support of its members to manage ethical complaints, it has no legal jurisdiction and limited investigative powers. In the case of complaints and crimes concerning Misconduct of a sexual or fraudulent nature, we do not want to change this.

*We are simply asking for help to strengthen our ability to conduct more comprehensive reference checks on applications for membership, identify, monitor, and manage high risk and problematic individuals, and where necessary confidentially access and report patterns of questionable behaviour to the appropriate authorities.*

Without a more robust and effective complaints system, and despite the Code and the function of the Office of the Queensland Health Ombudsman acting as a deterrent, unscrupulous practitioners can and will continue to enter the massage and myotherapy sector undetected, operate under the radar undetected, and prey on innocent and trusting people undetected.

*We believe that some form of confidential central registry of all complaints logged with health associations and complaints entities and provided under mandate to Queensland's Health Ombudsman, which is then made accessible as a confidential reference check service for health associations, could facilitate a better system of prevention and protection of Queensland's health consumers.*

*We believe that this could be included as part of the inter-jurisdictional information-sharing facilities set up through the National Code of Conduct for Unregistered Health Workers.*

### **A solution supported by the National Code**

The Final Report of the National Code of Conduct for Health care workers makes provisions to address this issue.

In Section 6.17 'Information sharing powers', reference to the *Queensland Ombudsman Act 2013* is made regarding a provision that requires confidentiality of information under the regime, and specifies the circumstances under which confidential information may be disclosed and to whom. These provisions enable confidential information to be disclosed to a government entity with functions that correspond to the functions of the Health Ombudsman under this Act.

Additionally, while the consultations indicated that there was strong support from respondents representing professional associations for closer ties with and legislative powers to exchange information with health complaints entities, it was not recommended that these arrangements be formalised in legislation. Rather, professional associations should be encouraged to reach agreement with health complaints entities concerning protocols for referral of matters and exchange of information. This is what we are attempting to do now.



In Section 7.4 'A national framework for data collection and reporting' of the Code, a common data reporting framework across jurisdictions which should include the collection of the following information is discussed:

- who is lodging complaints (e.g. service users, other health care workers, other interested parties);
- the outcomes of complaints handling (e.g. stage reached, proportion closed following preliminary investigation, etc.);
- when complaints are substantiated/investigated, which sections of the Code have been breached;
- the complainant experience (e.g. overall level of satisfaction with complaints process).

### Precedents for the solution

Working examples already exist.

A central information repository for reference checking is not a new concept. There are working examples of reference check facilities involving a high degree of confidentiality.

Mechanisms for monitoring the activities of Registered health practitioners already exist. For example, the Australian Health Practitioners Regulation Agency's (AHPRA) 2014/15 Annual Report of the National Registration and Accreditation Scheme reported that 1,186 practitioners were under active monitoring in Queensland. This represented 28% of cases nationally.

Through companies like VEDA (<http://www.veda.com.au>), which provides credit checks in Australia and New Zealand, lenders can conduct a credit reference check to assess an applicant's suitability for a loan.

The Australian Securities and Investments Commission (ASIC) provide a reference-checking directory for the financial services industry.

*Our proposal is a logical solution for all health associations because complaints and attrition of complaints about alleged sexual assault and fraud in many other health professions are common.*

A central registry of all complaints for confidential reference checks provides a facility to strengthen significantly the ability of Queensland's private and public sectors to work together to protect and educate health consumers.

For the sake of so many past and future victims, we believe that the solution put forward should be investigated and piloted. As part of finding a long-term effective solution to the issues that plague the massage sector, it can help to better protect Queensland vulnerable health consumers and workers.

## Attachment 1. Recent examples in Queensland

AAMT members who reoffended or committed Notifiable Conduct offenses undetected for a considerable period.

██████████ —AAMT Member Queensland—on public record

- AAMT member since 2009
- Qualified as a Diploma Remedial 2009
- Signed all declarations and maintained currency as required
- AAMT Notified by Queensland Police January 2014
- Rape of 15-yr-old and three counts of indecent assault
- AAMT suspended membership and access to health funds pending investigation by police
- ██████████ threatens AAMT publicly on Facebook
- AAMT advises his lawyer to remove Facebook statements
- AAMT becomes expert witness in case identifying industry standards and assisting Police—30 January 2014
- ██████████ remains able to practice with sanctions around treating, pending Court
- AAMT sources a further Expert Witness directly related to massage September 2014 about another complaint brought forward and committed in 2012
- Police built their case during this time with more allegations, ██████████ remains in practice but suspended from AAMT
- Further fresh allegations in November 2015 going back to 2009, pleads guilty April 2016
- Sentencing 29 April 2016.

██████████ —AAMT Member—Queensland—not on public record

- AAMT member joined May 2013 under false declaration
- Did not state he had been removed from ANTA (QLD)
- Charged with sexual assault ██████████ (Found Not Guilty by Court) insufficient evidence
- AAMT removed him for making false declaration
- ██████████ can continue to practice massage despite posing a risk.

██████████ —Non AAMT Member—on public record

- AAMT contacted as Expert Witness for indecent assault 2013
- ██████████ charged with 12 counts on one woman
- Heard in the ██████████ Court
- Several delays to trial
- Pleaded guilty March 2016 (three years later)
- Completely suspended sentence of 2.5 years on parole.

## Attachment 2. Examples of other convictions and cases

| State    | Offender   | Conviction  | Year & sentence  | No. of reported victims        |
|----------|------------|---|--|--------------------------------|
| WA       | [REDACTED] | 11 counts of indecently touching clients; 1 count of sexual penetration without consent | 2013—awaiting sentencing                               | 7                              |
| NSW      | [REDACTED] | 3 counts of indecent assault  | 2012—2 years ban from practising                       | 1                              |
| WA       | [REDACTED] | 3 counts of sexual assault  | 2012—Served three months of a 12-month sentence        | 2 - 17 and 11-year-olds        |
| Vic      | [REDACTED] | 13 counts including rape and indecent assault   | 2009—16 years  | 13 - including two children    |
| Vic      | [REDACTED] | 6 counts of indecent assault  | 2009—Jail terms not reported                           | 6 - (prior conviction of rape) |
| NSW      | [REDACTED] | Indecent assault  | 2010—4 years 6 months                                  | 1                              |
| NSW      | [REDACTED] | Indecent assault, intercourse without consent   | 10 months suspended                                    | 1                              |
| NSW      | [REDACTED] | Indecent assault  | 2010—2 years   | 1                              |
| QLD      | [REDACTED] | Indecent assault  | 2008—2 year good behaviour bond                        | 1                              |
| NSW      | [REDACTED] | Sexual assault  | 2015—4 years   | 1                              |
| Victoria | [REDACTED] | Digital rape  | 2004—6 months  | 1                              |
| Victoria | [REDACTED] | Indecent assault—repeat offender  | 2014—12 months   | 1                              |
| Victoria | [REDACTED] | Indecent assault—21 charges   | 2015—charged   | 1 teenage girl                 |
| NSW      | [REDACTED] | Assault with Act of Indecency   | 2012—2 year good behaviour bond                        | 1                              |
| Victoria | [REDACTED] | Indecent assault  | 2008—18 months jail—15 years on sex offenders registry | 2                              |
| QLD      | [REDACTED] | Sexual assault  | 2014—Fine \$6,000                                      | 1                              |
| Victoria | [REDACTED] | Sexual assault and offenses   | 2015—3 years   | 7 children                     |
| WA       | [REDACTED] | Sexual abuse  | 2015—9 years 3 months                                  | 16 children                    |
| NSW      | [REDACTED] | Indecent assault  | 2015—banned from practising for 5 years                | 1                              |
| Qld      | [REDACTED] | 50 counts involving rape, sexual assault, privacy breaches                              | 2016—6 years   | 16 women and a child           |
| WA       | [REDACTED] | Sexual penetration without consent, and indecent assault                                | Sentence pending psychological report                  | multiple women                 |



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## Clients report sex assaults from home-based massage therapist

**MACKENZIE RAVN**

THREE women have reported being sexually assaulted while booked in as clients at a home-based massage business in the Gold Coast Hinterland this year.

One of them was attending the business for a second time last week when she says the

male therapist sexually assaulted her, prompting her to contact police and take to social media to warn others.

Since then two others have also reported being assaulted earlier in the year when booked in for a massage at the same home-based business.

The three alleged victims aged 30 to 55 reported the incidents as occurring in January,

April and June of this year.

Detectives believe there could be other victims and are appealing for anyone who has been assaulted or witnessed in-  
appropriate behaviour at a

appropri-  
Cedar Vale residence to report the matter to local police.

Speaking anonymously to the *Bulletin* one of the victims said she had been a customer of the man's once before and

returned last week for another massage.

But not long into her treatment things took a turn and the victim, a massage therapist herself, said she could do nothing but freeze.

"This man is not yet qualified but he is studying and the fact that he is studying made me think that he was prepared to be a professional, so I felt no threat going to his home business," she said.

"The first appointment went fine, we had some conversations and he actually brought up that being a male in the industry meant he would not have to deal with all the males calling up asking for

"happy endings" like I would.

"When it happened I basically just froze and did nothing.

I'm not proud of that but it was out of my control..."

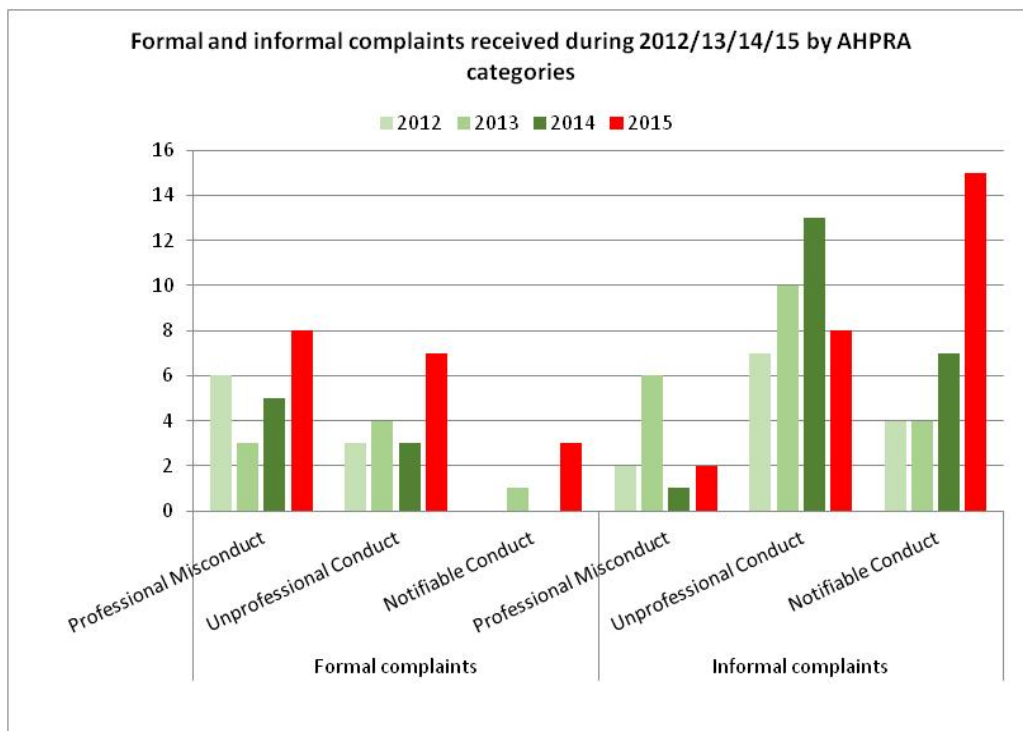
The woman said she reported the incident to police immediately.

Australian Association of Massage Therapists President Paul McCann said incidents such as this tarnished the reputation of legitimate therapists.

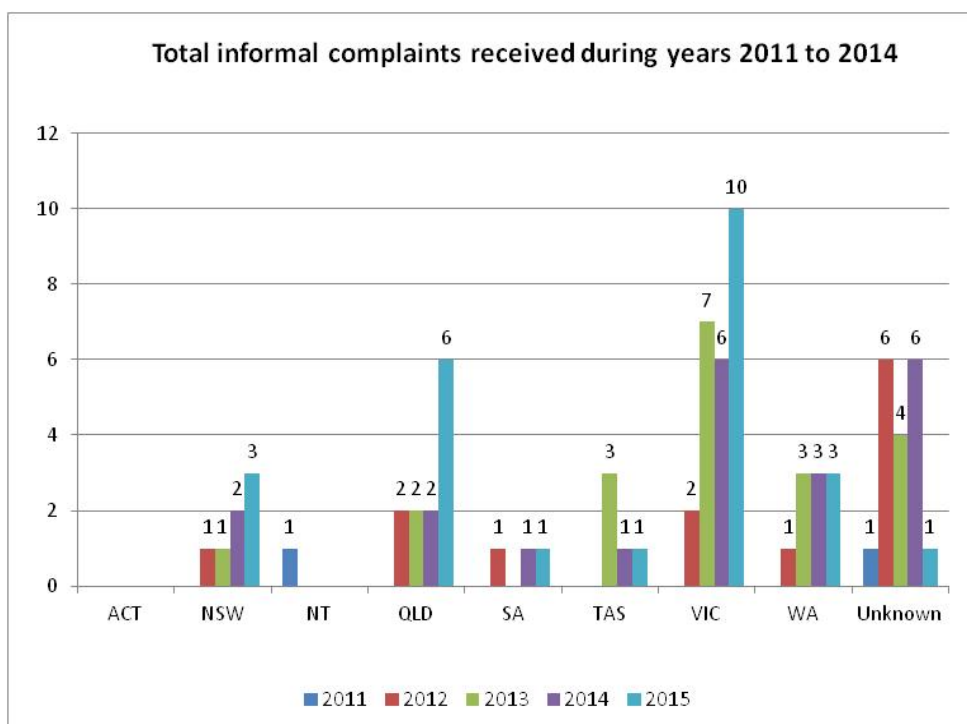
Police investigations into the alleged incident are ongoing.

### Attachment 3 National formal and informal complaints received by AAMT

The graph below shows that Formal and Informal complaints involving Notifiable Conduct have risen significantly.



The following graph shows that a significant increase in complaints about members operating in QLD occurred during the period represented. However, changes to the number of members operating in QLD (0.0%), are negligible and do not augment the increase in the number of informal complaints arising from Queensland.



The following graph shows that AAMT received the highest number of complaints concerning fraud (twelve—12) were lodged about members operating in Queensland, nine (9) operating in VIC, and five (5) in Western Australia.

