

27 August 2015

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Dear Ms Linard

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Thank you for your invitation to provide a submission on the *Public Health (Childcare Vaccination) and Other Legislation Amendment Bill 2015*.

AMA Queensland is the state's peak medical advocacy group, representing over 6000 medical practitioners across Queensland and throughout all levels of the health system. We have previously advocated publicly on issues of public health, vaccination and the Office Health Ombudsman and both we and our members take a very strong interest in these issues.

Childcare Vaccination

AMA Queensland understands that this bill protects childcare centres from liability if a child's enrolment or attendance is refused or cancelled on the basis of their immunisation status.

If the centre reasonably believes the child is a vulnerable child, and refusing enrolment or attendance would not be in the best interests of the child, the Queensland bill allows childcare centres to choose to enrol or accept their attendance despite the child's immunisation status not being up to date. AMA Queensland believes this approach strikes the right balance between protecting public health and ensuring that vulnerable children are not excluded from interaction with their peers.

Further, we commend the bill for promoting increased vaccination by creating a provision which ensures that if a child has fallen behind on their immunisation, the child may still be admitted through an agreement between the childcare centre and the parent to bring the child's immunisation status "up to date."

By empowering childcare providers to make decisions about who they allow into their care, the bill promotes public health and increases herd immunity through constructive, rather than simply punitive, measures. It is a sensible provision and we support this amendment to the *Public Health Act 2005*.

Office of the Health Ombudsman

AMA Queensland welcomes the opportunity to comment on the amendment to the *Health Ombudsman Act 2013*. While we appreciate and support the necessity of its amendment, we believe that this presents an opportunity for the new Queensland Government to examine the performance of the Ombudsman and find areas for improvement and reform.

AMA Queensland had significant concerns when the *Health Ombudsman Bill 2013* was introduced. In our response (attached), we said the bill had significant flaws and that we had grave concerns about its impact on good clinical practice. The key issues of concern for AMA Queensland were:

- The bill does not ensure adequate independence from government;
- The bill does not ensure that experienced clinical and ethical advice will be sought from health professionals before decisions are made;
- The bill does not ensure that complaints will be dealt with in a timely way;
- The bill detracts from the national registration system

Our submission outlined the principles we believed were essential to an effective medical regulator. AMA Queensland has significant concerns that these principles, as outlined below, are not being adequately met in the current medical regulatory regime.

Principle 1: Protect the public and uphold professional standards: AMA Queensland's primary concern was the protection of the public and the maintenance of high professional standards among the medical profession.

Principle 2: Medical practitioner leadership in health regulation is essential: The expertise and experience of senior medical practitioners is essential in order to appropriately assess the conduct and performance of medical practitioners using a robust evidence-base and benchmarking. Medical leadership must be supported by strong oversight, community involvement and transparent decision-making.

Principle 3: A transparent and fair system: AMA Queensland supported the introduction of a system that is fair and upholds the principles of natural justice for all stakeholders; shows a commitment to independence and impartiality, and is transparent and accountable to the community. A fair system must identify the source of the complaint, whether it is the individual practitioner or the system within which the practitioner operates. A fair system must not expose practitioners to obviously vexatious or spurious complaints. Vexatious complaints undermine the system, use up valuable resources and must be discouraged. Early assessment and triage should confirm the authenticity of the complaint without simply shifting this burden to the practitioner, and quickly identify inappropriate complaints.

Principle 4: Complaints should be dealt with as quickly and as locally as possible: Any health complaints system must ensure that investigations and decisions of complaints are finalised as quickly as possible. Any health complaints system must be adequately resourced in order to complete investigations and decisions in a thorough, impartial and timely manner. Local resolution of complaints, where appropriate, will assist by ensuring system issues are addressed in a timely manner. Any health practitioner regulating officer or body must be in a position to constructively address systematic issues.

Principle 5: A national system: AMA Queensland has consistently supported a national registration scheme to register practitioners nationally through the preservation of the role of the Medical Board of Australia. This has improved transparency for patients and flexibility for medical practitioners working across multiple jurisdictions.

We note that when the *Health Ombudsman Bill* was introduced into Parliament in 2013, the Australian Labor Party in Opposition opposed the introduction of the bill, supporting the comments AMA Queensland and other health stakeholders made in their submissions. AMA Queensland urges the Queensland Government to use this opportunity to conduct an extensive review of the Ombudsman, particularly in relation to how it has performed against the five principles outlined above. We believe that all options for systematic improvement and reform, including further amendments to the legislation introduced by the previous Queensland Government, should be considered. Additionally, resourcing and inter-jurisdictional considerations should be considered to ensure Queensland's Health Ombudsman is operating efficiently, fairly and in the best interests of Queenslanders.

Conclusion

AMA Queensland is supportive of both the amendments to the *Public Health Act 2005* and the *Health Ombudsman Act 2013*. However, we believe that the Government should consider how it can further improve the performance and operation of the Health Ombudsman, either through further amendments or increased resourcing. As always, AMA Queensland is willing to provide its members' knowledge and experience toward fulfilment of this endeavour.

If you require further information in regards to this matter, please do not hesitate to contact Mr Leif Bremermann, Senior Policy Advisor, AMA Queensland on 3872 2203.

Yours sincerely



Dr Chris Zappala
President
Australian Medical Association Queensland

Jane Schmitt
Chief Executive Officer
Australian Medical Association Queensland

cc Minister for Health, Hon Cameron Dick MP



Response to *Health Ombudsman Bill 2013*

This document provides general comments about the *Health Ombudsman Bill 2013* (the Bill). More detailed comments are provided in Appendix 1 (attached).

OVERVIEW

AMA Queensland is the state's peak medical advocacy body, representing medical practitioners across Queensland and throughout the health system. AMA Queensland recognises the important contribution that an effective health complaints management system can have in improving the health system and ensuring that future patients can safely and reliably enjoy a positive health care experience. Our Association is committed to working with Government and the community to improve the safety and quality of our health system.

Our members' interests are to provide the best possible care to the public whilst participating in a fair, efficient and transparent complaints management system that is accountable to the community. Any complaints management system should ensure the required clinical and professional standards are maintained and are subject to ongoing improvements in medicine and health care.

To be effective in gaining public and clinician confidence in the Queensland health system, and restoring a culture of openness and transparency, the health complaints model needs to strike an appropriate balance between patient safety and the recognition of the inherent risks involved when a patient requires medical intervention or treatment. The independence, and perceived independence, of the Health Ombudsman carrying out his or her role will be paramount to achieving that confidence.

PRINCIPLES TO GUIDE HEALTH COMPLAINTS

AMA Queensland advocates for the following principles in the structure and management of any health complaints system.

Protect the public and uphold professional standards

AMA Queensland's primary concern is the protection of the public and the maintenance of high professional standards among the medical profession.

Medical practitioners hold a unique position in society. They provide expert advice and care to Queenslanders, often at vulnerable times in a person's life. They carry a heavy responsibility to discharge their duties ethically with the requisite clinical skill. Any regulatory framework must recognise the inherently risky nature of the work of the profession and the uncertain environment in which medical practitioners operate when assessing whether practitioners have discharged their duties appropriately.

Medical-practitioner leadership in health regulation is essential

AMA Queensland strongly supports medical-practitioner leadership in health care regulation. This leadership supports the legislative intention for clinician engagement in all levels of the health system.

The expertise and experience of senior medical practitioners is essential in order to appropriately assess the conduct and performance of medical practitioners using a solid evidence-base and benchmarking. In addition, medical leadership must be supported by strong oversight, community involvement and transparent decision-making.

A transparent and fair system

AMA Queensland supports a system which: is fair and upholds the principles of natural justice for all stakeholders; shows a commitment to independence and impartiality; and, is transparent and accountable to the community.

A fair and transparent system must cater for, and provide extra support for, vulnerable patient groups who may find it difficult to make complaints: including young people; Aborigines and Torres Strait Islanders; those with mental illness; those experiencing homelessness; those who live in rural areas who may have more limited access to alternative care.

A fair system must identify the source of the complaint, whether it is the individual practitioner or the system within which the practitioner operates. The complaints process often uncovers information relating to systemic flaws during the investigation and review process. That information must be identified in the complaints process, reported, and referred to the relevant body or bodies for immediate action.

A fair system must not expose practitioners to obviously vexatious or spurious complaints. Vexatious complaints undermine the system, use up valuable resources and must be

discouraged. Early assessment and triage should confirm the authenticity of the complaint, and identify apparent vexatious or inappropriate complaints.

Complaints should be dealt with as quickly and as locally as possible

Mr Chesterman identified delay as a result of under-resourcing as one of the key problems with the current system (p41). Any health complaints system must ensure that investigations and decisions of complaints are finalised as quickly as possible. These measures will benefit both complainants and practitioners.

Any health complaints system must be adequately resourced in order to complete investigations and decisions in a thorough, fair and timely manner. Local resolution of complaints, where appropriate, will assist by ensuring system issues are addressed in a timely manner.

A National System

AMA Queensland supports a national registration scheme. AHPRA has undertaken the huge task of registering practitioners nationally. This has improved transparency for patients and flexibility for medical practitioners working across multiple jurisdictions.

USING LEARNING TO IMPROVE PERFORMANCE

When implemented, the new *Health Ombudsman Bill 2013* will be the fourth approach to managing health complaints in Queensland in the past seven years.

Prior to the establishment of the Health Quality and Complaints Commission, the Health Rights Commission ('HRC') was the *independent* body responsible for overseeing complaints about health services and promoting quality improvement in health systems.

In practice, however, evidence provided (and later accepted by the Commissioner) to the Davies Inquiry, challenges this assertion and provides a clear insight into issues relating to the fragility of independence from government, that remain equally relevant today.

"I think this [the events surrounding Dr Patel] happened because there has been a gradual shift within the health care system from the primary goal of providing quality medical services to primarily be fiscally responsible....the system gradually became structured more as a fiscal organisation or corporation and not a healthcare system... The service delivery issue became linked to unrealistic budget allocations and service delivery was made to fit fiscal boundaries, not the need that existed. Budgets became heavily linked to

activity and activity indicators, without fundamentally ensuring there was no erosion of quality.”¹

According to the record of the Davies Inquiry, Dr Thiele then spoke about the politicisation of the health system, as he perceived it. He testified that he had observed a very strong culture within the public healthcare system of *‘pleasing the boss’*. He said that, particularly amongst administrators, as opposed to clinicians, he found that staff were reluctant to ‘discuss real problems’ and, instead, tended to downplay them.²

Any health practitioner regulating officer or body must be in a position to fearlessly address systemic issues including, but extending beyond, complaints about individual practitioners.

The Davies Inquiry was critical of the poor culture existing in health services; variously describing it as:-

- A culture of concealment;
- economic rationalism rather than patient care and safety;
- An unhealthy culture for staff to complain and report incidents; and,
- A culture of bullying.

These findings suggest that without a ‘root and branch’ change in the culture of health services, that structural changes will have little impact on improving the quality of healthcare.

The globally-recognised ‘Building a safer health care system’ report of the Institute of Medicine stated:

‘The biggest challenge to moving toward a safer health system is changing the culture from one of blaming individuals for errors to one in which errors are treated not as personal failures, but as opportunities to improve the system and prevent harm.’³

The Forster Review⁴ described Queensland’s health complaints system as characterised by:

- Inconsistent approaches and lack of coordination;
- Difficulties in gaining local resolution;
- Fear of service closures in rural communities inhibiting people from making complaints

¹ Evidence provided by Dr Thiele; Queensland Public Hospitals Commission of Inquiry, 2005 (223)

² Evidence provided by Dr Thiele; Queensland Public Hospitals Commission of Inquiry, 2005 (231)

³ IOM report - To Err Is Human: Building a Safer Health System (1999)

⁴ Extract from the Review of the Health Quality and Complaints Commission and the Health Quality and Complaints Commission Health Quality and Complaints Commission Act 2006

- Frustrations at delays in resolution;
- Ineffectual management and a lack of staff confidence in managing complaints; and
- Absence of reporting mechanisms to Queensland Health.

The latest Inquiry in the series (the ‘Chesterman Inquiry’) continues to highlight problems in the length of time taken to consider complaint matters; lack of clarity around each agency’s role and responsibilities, and inadequate communication and explanation of decisions to the public and health practitioners.

Notwithstanding these ongoing and unresolved issues, the introduction of the National Law in 2009 has enabled progress to be made in national registration and professional standards-setting across the country. AMA Queensland strongly supports the ongoing role of the National Boards in maintaining consistency of standards and expectations for the profession.

GETTING THE BALANCE RIGHT

Creating greater confidence in health services will only be achieved through genuine collaboration with health professionals and, more broadly, the public at large. It is vital that Government takes wide consultation and the time necessary to get this right.

AMA Queensland supports the Minister’s policy intent but has concerns that the Bill lacks the balance necessary to ensure that medical practitioners and other health professionals have confidence in any proposed changes and that they will be treated fairly and impartially within the health complaints system. In this regard, the broad and unfettered powers provided to the Minister and the establishment of public record reporting in perpetuity, are matters which do not and will not assist in engendering that confidence and trust.

AMA Queensland is also concerned that, in its current form, the *Health Ombudsman Bill 2013* will:

- Drive a risk-management approach to patient care and clinical decision-making;
- Restrict clinical innovation, with practitioners continuing outmoded models of care;
- Increase unnecessary and costly follow-up treatment and care;
- Work against the concept of role delegation, with medical practitioners reluctant to handover the more routine procedures and treatments to practitioners they consider less skilled than themselves; and,
- Lead to a migration of our highly-skilled workforce to other jurisdictions as a result of distrust in the health complaints system, and as a result, in the public sector, a direct impact on the Hospital and Health Services’ ability to achieve the 11 per cent efficiency dividend needed to reach national parity by 2014-15.

AMA Queensland considers that that the Bill proposes a highly interventionist and litigious model which will be burdensome to administer and will undoubtedly lead to increased costs to both the public and private sectors of our health system and to delays for patients accessing that system. *(It is noted, however, that the NSW co-regulatory model is achieving acceptable outcomes without increasing professional registration above the national price.)*

THE BILL FAILS TO DELIVER ON KEY COMMUNITY EXPECTATIONS

Independence

As the provider of public health and hospital services in Queensland, the Minister for Health (and his or her Department) has an inherent conflict of interest when considering health complaint matters. Within a tightening fiscal environment there will be considerable pressure placed on services to cut costs and increase activity. Service quality and system improvements may suffer as a consequence of these decisions.

The public, patients and medical practitioners want an independent umpire. Good public policy dictates that the regulator be at arms-length to government. The Bill fails to provide the level of independence that is sought or required by our community.

AMA Queensland submits that the Bill should be amended to provide for a Health Ombudsman who is accountable to Parliament with similar arrangements to that of the State Ombudsman.

Clinical input

The current provision allowing the Health Ombudsman to establish committees and panels of clinicians to provide advice is inadequate to ensure the Health Ombudsman receives the level of expertise and clinical input necessary to give practitioners confidence that the system is fair.

AMA Queensland has significant concerns that future budgetary pressures will drive the Health Ombudsman to cut back on vital clinical advice – decreasing public and clinician confidence in the fairness of the system.

The Bill should be amended to ensure that the Health Ombudsman must access a variety of standing boards or panels of clinical advisors – with a separate board or panel for each health profession – when making a decision. This should be effective from the time of assessment through to referral to the Director of Proceedings, as is the case in NSW. There may be exceptional circumstances when this is not required (e.g. suspension of registration in the context of criminal charges or incorrect information on the registration record), which can be provided for through an exclusion clause.

Transparency under the Westminster System

There are particular provisions within the Bill which provide powers to the Minister to require information. There is a lack of transparency around the purpose for which information is requested and how it will be used. AMA Queensland has particular concern that confidential information may end up in the public domain.

In order for the public and health practitioner community to retain confidence in the health complaints system, there must be a transparent mechanism for requesting information and recording the purpose for which it is requested – for example, notation in the annual report and reporting to the parliamentary committee.

AMA Queensland has particular concern that decisions about health practitioners will be published prior to the completion of any investigation or judicial process and available indefinitely.

Natural justice and procedural fairness

AMA Queensland is concerned about the unilateral ability of the Health Ombudsman to exercise power to take immediate action without sufficient checks and balances to ensure that the system upholds the basic principles of natural justice.

Furthermore, the breadth of the authority of the Health Ombudsman regarding investigations, coupled with the authority to disclose reports publically, and the potential to notify employers prior to the commencement or completion of an investigation are all areas of significant concern.

There are currently insufficient checks and balances in the Bill in respect of the Health Ombudsman's powers to ensure that practitioners are, and are seen to be, treated fairly throughout the complaints handling process.

Simple, but effective checks AMA Queensland recommends are:

- Ensuring that advice is received from expert health professionals in the same field as the subject of the complaint before a decision is made;
- Review of the decision after a reasonable period (eg.14 days) by the Health Ombudsman, advised by a panel of expert health professionals in the same field as the subject of the complaint;
- Ensure a QCAT review is able to be carried out in a timely manner (eg. 28 days).

Where immediate registration action is taken, registrants should be put on a 'fast track' investigation and QCAT hearing process which takes no longer than six months until a QCAT decision is made.

Value for money

Notwithstanding the indirect system costs outlined above, AMA Queensland is concerned that if the Health Ombudsman takes on the responsibility for mediating all complaints throughout Queensland, the system will be unsustainable and unaffordable.

A Health Ombudsman run model will not provide impetus for health services to improve quality in order to reduce health complaints. Health professionals are not able to support that growth through annual registration payments, which would have to be passed on to patients.

Timeliness and adequate resourcing

AMA Queensland strongly supports that investigations and decisions are completed in a timely manner. While the Bill provides strict time limits for investigations, it will not be possible for the Health Ombudsman to complete investigations within those time limits unless adequate resourcing is allocated to the Ombudsman. AMA Queensland seeks assurances from the Minister that funding will be sufficient to meet the needs of the Ombudsman.

Professional judgement in mandatory notification

The best way to protect the public from practitioners who are suffering impairment is to enable practitioners to seek treatment before a public health or safety issue arises, without fear of losing their registration and employment.

AMA Queensland is deeply troubled by the declining numbers of practitioners in Queensland seeking treatment from their peers since the introduction of the requirement for mandatory notification for health practitioners treating health practitioners. AMA Queensland is concerned that this regulatory regime “drives underground” health issues which could affect performance. This increases the chance that “near miss” events – which could present an opportunity for performance improvement or healthcare treatment – will instead result in adverse patient outcomes.

AMA Queensland welcomes the acknowledgement of this issue by virtue of the amendments in s326(25) of the Bill to the mandatory reporting provisions in s141 of the *Health Practitioner National Law 2009* that would exempt treating health practitioners from making mandatory reports in limited circumstances. However, the amendment does not go far enough and is therefore not sufficient to deter:

- Some health practitioners from seeking treatment; or
- Those who do seek treatment from divulging all the necessary information to permit appropriate care.

Further, as the amendment is inconsistent with the exemption in the relevant legislation in Western Australia, it will create a third legal framework under which medical practitioners will have to operate on this very critical and sensitive issue. The AMA recommends that the Bill be amended to adopt the exemption as it is written in the legislation in Western Australia.

AMA Queensland Response to *Health Ombudsman Bill 2013* – Appendix 1

Section or Part	Title	AMA Queensland understands the policy intent to be:	Problem identified	Solution
Part 1	Preliminary			
s3(2)	Main Objects	To clarify roles and responsibilities of all agencies relevant to the health complaints system in Queensland.	Appears to be an artificial boundary around 'health' agencies.	<p>The Bill would benefit from a greater recognition of the interaction of this Act and other state law and agencies e.g. the <i>Privacy Act</i>, QCAT etc.</p> <p>Expand part (b) to include reference to state agencies.</p> <p>There may also be value in reviewing Rec 13 of the CMC Review Committee Report regarding the need to review complaint handling processes and associated publications to ensure:</p> <p>(a) there is clear guidance on the assessment and categorisation of matters; (b) the assessment and categorisation of matters is communicated clearly to devolved agencies; (c) the requirements of a devolved agency, in dealing with matters, are able to be clearly understood; and (d) the level of monitoring by the CMC of devolved matters is clearly understood by all parties.</p>

Part 2	Health Ombudsman			
s27 and s28	How Health Ombudsman must act; Health Ombudsman generally not subject to direction	That the Health Ombudsman be independent of political and other influence, and be seen to be free of influence, at the same time as assisting the Minister to ensure that the ministerial responsibility of protection of the public is met.	Notwithstanding s28, which requires the Health Ombudsman to act 'independently, impartially and in the public interest', the fact that the Health Ombudsman is subject to the direction of the Minister to conduct an investigation or inquiry, creates the impression that the Health Ombudsman may be subject to the influence of the Minister.	Amend the Bill so that directions to investigate or conduct an inquiry must come from a joint parliamentary committee.
s29	Advisory Committees And Panel	To ensure that the Health Ombudsman may access clinical advice in his or her functions.	<p>Clinical advice should not be an optional extra. No person, even if they are a clinician, will have the necessary experience to decide on the complex choices that are made in clinical practice. The Health Ombudsman must be required to consult closely and seek advice from a range of expert clinicians before making a decision.</p> <p>These clinicians should be employed in a standing council of some kind to ensure that future budgetary pressures do not reduce the quantity or quality of clinical advice sought.</p>	Amend the Bill so that the Health Ombudsman must establish a range of standing clinical councils, with expertise in each of the professional areas, to advise him or her.

Part 3		Health Service Complaints		
s36	Notifications under the National Law	To allow the Health Ombudsman to deal with both complaints made generally and those made under the National Law.	<p>Many complaints made under the National Law are made by health practitioners fulfilling their obligations under the mandatory reporting requirements (s140).</p> <p>These notifications are qualitatively different from those made voluntarily – often there is not a motivation to see an issue to the end, only a desire to know that the problem is being dealt with adequately to ensure patient safety (for example, a notifier may have limited ability to provide additional information or complete a statutory declaration).</p> <p>The management of complaints must recognise the qualitative difference between notifications under mandatory notification provisions and general complainants.</p>	Provision should be made, either in the legislation, regulation, or in the practice of the Health Ombudsman, to differentiate between mandatory notifications and health complaints.
Part 4		How complaints and other matters are dealt with		
s44	Decision to take no further action on a matter	To establish clear boundaries for acceptance of a complaint by the Health Ombudsman.	<p>The period of time for making complaints is now double that provided for in the <i>Health Quality and Complaints Commission Act 2006</i>.</p> <p>AMA Queensland is not aware of any evidence to support this change.</p>	Restore s38(b) (iii) of the <i>Health Quality and Complaints Commission Act 2006</i> , requiring a complaint to be lodged within one year of the matter arising, and the complainant becoming aware of the matter.

Part 6	Local resolution of complaints			
s52	How local resolution may be achieved	That the Health Ombudsman has access to options which are non-litigious, quick and low interventionist, to resolve health complaints.	<p>AMA Queensland supports that the Health Ombudsman has access to local resolution of complaints as part of the suite of available complaint resolution tools. However, AMA Queensland is concerned that if the Health Ombudsman takes on the responsibility for local mediation of all complaints throughout Queensland, the system will be unsustainable and unaffordable.</p> <p>A Health Ombudsman-run model will not provide impetus for health services to improve quality in order to reduce complaints costs.</p>	<p>Policy or regulation should be implemented to require local resolution of complaints by health service providers where possible. The Health Ombudsman may consider charging a fee to health providers where Health Ombudsman local resolution services are utilised.</p> <p>At the election of the complainant, complaints could be made either to the Health Ombudsman or the local body.</p> <p>To ensure complaints processes are transparent, and that serious issues are being elevated to the Health Ombudsman, a register of complaints should be kept and provided to the Health Ombudsman as is the case in NSW.</p> <p>Regulation or policy guidance may be enacted to ensure that local complaints processes are of an acceptable standard.</p>

Part 7	Immediate action in relation to health practitioners			
s58	Power to take immediate registration action	That the Health Ombudsman have the option to suspend registration in order to protect the public from a clear and present risk to persons or threat to public safety or to suspend registration where the practitioner does not meet the requirements for registration.	AMA Queensland is concerned about the unilateral ability of the Health Ombudsman to exercise this power without sufficient checks and balances to ensure that the system upholds the principles of natural justice.	Introduce additional and substantial checks on the powers of the Health Ombudsman, for example; <ul style="list-style-type: none"> - ensuring that advice is received from health professionals in the same field as the subject of the complaint before a decision is made; - review of the decision after a reasonable period (eg.14 days) by the Health Ombudsman advised by a panel of expert health professionals; - allow reviews of the decision by an alternative decision-maker, on the facts of the case, rather than on the decision-making process; - ensure a QCAT review is able to be carried out in a timely manner (eg. 28 days).
s59	Show cause process	To allow the health practitioner the opportunity to provide information to the Health Ombudsman to inform his or her decision, and ensure the appropriate action is taken.	The unilateral power of the Health Ombudsman in this instance violates the principles of natural justice. Without further recourse to challenge the decision on the facts, seek a second opinion, or access administrative review in a timely way, there are not sufficient checks and balances in place to ensure that health professionals are treated fairly. As a result, health professionals may lose their livelihoods for a period of more than a year based on unilateral decision of the Health Ombudsman.	More substantial checks should be put in place, for example; <ul style="list-style-type: none"> - review of the decision after a reasonable period (eg.14 days) by the ombudsman advised by a panel of expert health professionals; - ensure a QCAT review is carried out in a timely manner (eg. 28 days).

<p>s61</p>	<p>Show cause process after taking action</p>	<p>That the Health Ombudsman have the option to suspend registration in order to protect the public from a clear and present risk to persons or threat to public safety or to suspend registration where the practitioner is does not meet the requirement for registration.</p>	<p>AMA Queensland is concerned about the unilateral ability of the Health Ombudsman to exercise this power without sufficient checks and balances to ensure that the system upholds the principles of natural justice.</p>	<p>Given that this restriction represents a denial of natural justice in preference to public safety concerns, it is incumbent on the Health Ombudsman to use it in only the most extreme cases.</p> <p>AMA Queensland advocates that s61 only be used in clearly defined and exceptional circumstances e.g. suspension of registration in the context of criminal charges or where the practitioner does not meet the requirements for registration.</p> <p>In addition, more substantial checks should be put in place, for example;</p> <ul style="list-style-type: none"> - Health Ombudsman must use an established and objective standard of proof when making decisions and record his or her reasoning eg. balance of probabilities. - ensuring that advice is received from health professionals in the same field as the subject of the complaint before a decision is made; - review of the decision after a reasonable period (eg.14 days) by the Health Ombudsman advised by a panel of expert health professionals; - ensure a QCAT review is able to be carried out in a timely manner (eg. 28 days).
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s62	Period of immediate registration action	That the Health Ombudsman continue to have the option to suspend registration in order to protect the public from a clear and present risk to persons or threat to public safety or to suspend registration where the practitioner is does not meet the requirement for registration until a decision is made by QCAT.	<p>The time allowed for the immediate registration action to remain in place is excessive.</p> <p>Investigation by the Health Ombudsman can take up to two years. Following this, listing for a hearing by QCAT can also take years (pp43-44,Chesterman Report, 2012). This means that a practitioner can be deregistered for a period of many years.</p> <p>As many health professionals' registration requires that a practitioner demonstrate recency of practice, this action could effectively end the career of a practitioner, even if registration is reinstated by QCAT</p>	Where immediate registration action is taken, registrants should be put on a 'fast track' investigation and QCAT hearing process which takes no longer than six months until a QCAT decision is made.
s63	Application to QCAT to review	To allow review of the Health Ombudsman decision.	Listing for a hearing by QCAT can take years (pp43-44,Chesterman Report, 2012) leaving health practitioners without effective recourse for excessive amounts of time.	Fast track all applications for review of immediate registration action so that hearings can be held within 28 days of the immediate action being taken.

Part 8	Investigations			
s81	Minister may direct investigation	To assist the Minister to ensure that ministerial responsibility of protection of the public is met.	Notwithstanding s28, which requires the Health Ombudsman to act 'independently, impartially and in the public interest', the fact that the Health Ombudsman is subject to the direction of the Minister to conduct an investigation, creates the impression that the Health Ombudsman may be subject to the influence of the Minister.	Amend the Bill so that directions to investigate or conduct an inquiry must come from a joint parliamentary committee.
s87	To whom investigation report is given	<p>To assist the Minister to ensure that ministerial responsibility of protection of the public is met by overseeing processes and investigation outcomes.</p> <p>AMA Queensland notes that matters referred to the director of proceedings will not be made public. However we continue to seek cogent reasons for allowing the Health Ombudsman to make a copy of other reports public, including the names of health service providers, before a matter has been resolved by the relevant health practitioner board or independently verified.</p> <p>AMA Queensland continues to be concerned about the provision of information to the Minister and staff.</p>	<p>Providing information publically about an investigation, or to the Minister or Parliamentary Committee before the matter has been assessed and adjudicated in QCAT breaches the principles of natural justice.</p> <p>Confidentiality must be maintained until the matter has been assessed by QCAT or the health professional board.</p>	<p>Amend the Bill to:</p> <ul style="list-style-type: none"> - ensure that confidentiality is maintained until all proceedings are finalised; - ensure that the Minister specifies the purpose for which the report will be used when requesting it.

Part 10		QCAT		
ss101-105	Director of Proceedings	<p>To establish a Director of Proceedings as a separate role within the office of the Health Ombudsman who must assess whether matters are suitable to be referred to QCAT or another action.</p> <p>The Director of Proceedings role aims to provide an independent assessment of the investigation and independent decision-making.</p>	<p>AMA Queensland notes that the equivalent position in NSW must consult with the appropriate professional council before determining whether or not a complaint should be prosecuted before a disciplinary body (s90B <i>Health Care Complaints Act 1993</i> NSW).</p> <p>The NSW Director of Proceedings also has legislated independence from the direction and control of the Commissioner, in relation to dealing with any complaint (s90D).</p> <p>AMA Queensland notes that these safeguards are missing from the draft Bill.</p>	<p>Amend the Bill to:</p> <ul style="list-style-type: none"> - ensure that the Director of Proceedings must consult with the health professional board or other health professional panel consisting of experts in the relevant health field before making a decision; - make explicit the independence of the Director of Proceedings' in relation to the decision-making function.
Part 11		Conciliation		
s141 and s149	<p>Conciliator to notify the health ombudsman of public interest issues;</p> <p>Conciliation privileged</p>	To encourage local resolution of complaints where appropriate.	<p>These two sections appear to be contradictory. s149 states that material released during the conciliation process is confidential. However s141 requires the conciliator to notify the Health Ombudsman of certain matters.</p> <p>s 141 will discourage clinicians from entering into conciliation – increasing costs to the system and time taken to resolve disputes.</p>	<p>Clarify the law in this area to better define when a referral must be made to the Health Ombudsman – noting that s141 may work contrary to the stated policy outcome of increased local resolution.</p>

Part 12 Inquiries				
s152	Minister may direct health ombudsman to conduct inquiry	To assist the Minister to ensure that ministerial responsibility of protection of the public is met.	Notwithstanding s28, which requires the Health Ombudsman to act 'independently, impartially and in the public interest', the fact that the Health Ombudsman is subject to the direction of the Minister to conduct an inquiry, creates the impression that the Health Ombudsman may be subject to the influence of the Minister.	Amend the Bill so that directions to investigate or conduct an inquiry must come from a joint parliamentary committee.
Part 13 Minister's role				
s171	Minister may request information or reports from health ombudsman	That the Minister is able to be informed of all occasions where it is identified that a serious matter may arise in relation to a health practitioner to assist the Minister to ensure that ministerial responsibility of protection of the public is met.	That staff in Ministerial offices may not be bound by the same rules of confidentiality as other authorised staff in the complaints process.	Amend the <i>Ministerial and Other Office Holder Staff Act 2010</i> to specifically apply Bill as follows: For the <i>Health Ombudsman Act 2013</i> , a staff member is taken to be an officer of the Health Ombudsman.
Part 16 Appointment of health ombudsman and related matters				
s245	Appointment	To establish that the Minister is responsible for the appointment of the health ombudsman.	AMA Queensland notes that the NSW Health Complaints Commissioner is also appointed by the governor in council at the request of the relevant Minister (s78). However, the NSW legislation allows for a veto by a joint parliamentary committee. This reduces the appearance of possible bias in the appointment of the Commissioner. AMA Queensland would argue for a similar safeguard to ensure that there is no appearance of bias in the choice of appointment to Health Ombudsman.	Amend the Bill to ensure the parliamentary committee has a veto power over the appointment of the Health Ombudsman, or, to ensure the Health Ombudsman is appointed by the Governor in Council on the recommendation of the parliamentary committee.

s250	Removal from office	To establish certain and predictable criteria whereby the Health Ombudsman can be removed from office	<p>AMA Queensland observes that the Health Ombudsman can be removed from office if the Minister is satisfied that the Health Ombudsman ‘has become incapable of performing the health ombudsman’s functions; or, has neglected the health ombudsman’s duties or performed the health ombudsman’s functions incompetently’.</p> <p>AMA Queensland notes that these criteria may be open to interpretation and their flexibility may impact on the ability of the Health Ombudsman to act independently.</p> <p>Independence, and the appearance of independence, is essential if health practitioners are to maintain faith in the health complaints system and continue to participate in it in good faith.</p>	<p>Amend the Bill to provide some more specific criteria for the removal of the Health Ombudsman.</p> <p>Expand the role of the Parliamentary Committee to include power to veto Health Ombudsman removal of office by the Minister.</p>
Part 18 Disclosure of information and related matters				
s272(6)	Confidentiality	To uphold the rights of individuals involved in the complaints process, to engender trust and confidence in the system, and give effect to the principles of natural justice.	<p>That staff in Ministerial offices may not be bound by the same rules of confidentiality as other authorised staff in the complaints process.</p> <p>This section also allows the Health Ombudsman to release confidential information to bodies like the Queensland Police Service without adequately defining the circumstances in which information should be released.</p>	<p>Amend the <i>Ministerial and Other Office Holder Staff Act 2010</i> to specifically apply Bill as follows:</p> <p>For the <i>Health Ombudsman Act 2013</i>, a staff member is taken to be an officer of the Health Ombudsman.</p> <p>Define the circumstances under which information should be released to the QPS. Without sufficient oversight this provision will be open to abuse.</p>

s273	Publication of information about immediate action and QCAT decisions.	To allow information about Health Ombudsman and QCAT decisions to be available publically. These decisions may be available indefinitely.	<p>AMA Queensland is particularly concerned regarding this issue, as unilateral immediate registration action decisions of the Health Ombudsman will also be available. This breaches the principles of natural justice as the decision has not been reviewed by an independent body.</p> <p>AMA Queensland has concerns that clinicians will suffer unfair reputational damage if decisions are published and remain available publically indefinitely.</p>	<p>Amend the Bill so that only decisions of QCAT are published.</p> <p>Amend the Bill so that decisions are removed after a reasonable period of time (AMA Queensland suggests three years of practice, where no further adverse finding has been made.)</p>
Part 19 Particular notices given by health ombudsman				
s279 and s282	<p>Notice to employers about particular serious matters;</p> <p>Notice to employers about other matters.</p>	To alert employers, and other relevant entities, about relevant actions the Health Ombudsman is taking or if the Health Ombudsman has particular concerns about a practitioner.	<p>AMA Queensland strongly advocates that the Health Ombudsman should not be able to share information with employers unless the complaint has been substantiated in some way.</p> <p>AMA Queensland also notes that s282 provides very wide powers to report. AMA Queensland believes there should be tighter criteria for reporting.</p>	<p>Amend s279 (2) include the Private Health Licensing Unit as a source of employment information.</p> <p>Amend s282 to better define the circumstances in which notice may be given.</p>
s283	Notice to education providers about particular serious matters concerning students;	To alert education providers about concerns that a student may have an impairment.	AMA Queensland strongly advocates that the Health Ombudsman should not be able to share information with educators unless the complaint has been substantiated in some way.	Amend s283 to specify under what circumstances or at what time in the process education providers are notified.

Part 20	Other matters			
s288	Prescribed documents about appropriate conduct	To allow regulation to prescribe a code of conduct for health professionals, including a document prepared by the Minister.	<p>AMA Queensland strongly believes that any code of conduct must be based on clinical advice from relevant organisations and should be endorsed by the National Boards.</p> <p>AMA Queensland opposes any political 'code of conduct' and strongly prefers codes based in clinical and ethical practice.</p>	Delete this section in preference to endorsement by the national agency or national boards.
Part 23	Amendment of Health Practitioner Regulation National Law Act 2009			
s326(25)	Amendment of s141 (Mandatory notification by health practitioners)	To ensure that notifiable conduct is brought to the attention of the Health Ombudsman.	<p>AMA Queensland is concerned by the declining numbers of practitioners in Queensland seeking treatment from their peers since the introduction of the requirement for mandatory notification for health practitioners treating health practitioners.</p> <p>AMA Queensland welcomes the acknowledgement of this issue by virtue of the amendments in s326(25). However, the amendment does not go far enough and is therefore not sufficient to deter:</p> <ul style="list-style-type: none"> • Some health practitioners from seeking treatment; or • Those who do seek treatment from divulging all the necessary information to permit appropriate care. <p>Further, the amendment is inconsistent with the exemption in the relevant legislation in Western Australia, creating a third legal framework.</p>	Amend the Bill to adopt the WA exemption to mandatory notification for treating health practitioners.