



Federation of Chinese Medicine &  
Acupuncture Societies of Australia Ltd.  
澳洲全國中醫藥針灸學會聯合會 (National Body)

**FCMA**

ACN: 104 651 523 ABN: 70 199 744 719

All correspondence:  
6 Paisley Street  
Footscray Victoria 3011  
Australia

Tel: +61 3 9689 2678

Fax: +61 3 9689 0872

+61 3 9802 4261

Email: [contactus@fcma.org.au](mailto:contactus@fcma.org.au)

[tchiangl@fcma.org.au](mailto:tchiangl@fcma.org.au)

Web: <http://www.fcma.org.au>

21 June 2013

Mr. Trevor Ruthenburg MP  
Chair, Health and Community Services Committee  
Parliament House  
George St. Brisbane QLD 4000  
[hcsc@parliament.qld.gov.au](mailto:hcsc@parliament.qld.gov.au)

Dear Mr. Ruthenburg,

Re: Health Ombudsman Bill 2013

The Federation of Chinese Medicine & Acupuncture Societies of Australia (FCMA) thanks the Committee for the opportunity to comment on the Health Ombudsman Bill 2013 (the Queensland Bill).

FCMA is aware that the Queensland Bill is to be presented to the Queensland parliament to broaden the powers of the Health Ombudsman. FCMA is one of the leading Chinese medicine professional associations and represents Chinese herbal medicine practitioners and acupuncturists across all states in Australia and is also a representative body for all Chinese medicine associations in Professions Reference Group established by the Australian Health Practitioner Agency (AHPRA). We have reviewed the Queensland Bill and the changes to the powers of the Ombudsman raise serious concerns. The issues are discussed below.

#### Authority of the Ombudsman

The current role of the health Ombudsman in different Australian jurisdictions is to handle complaints, conduct investigations, audit, encourage good practice and make recommendations to other related and appropriate agencies regarding the investigations.

It is stated in the Commonwealth Ombudsman website

([www.Ombudsman.gov.au/pages/about-us/our-history/index.php](http://www.Ombudsman.gov.au/pages/about-us/our-history/index.php)) that:

Our (the Ombudsman) aim is to resolve complaints impartially and quickly. If we cannot assist with a particular complaint, we will explain why, and suggest other avenues for resolving the matter.

We cannot override the decisions of the agencies we deal with, nor issue directions to their staff. Instead we resolve disputes through consultation and negotiation, and if necessary, by making formal recommendations to the most senior levels of government.

With regard to the health practitioner who is being investigated, the Queensland Bill would give the Ombudsman the authority to immediately suspend, or to impose conditions and restrictions on the practitioner's registration and practice. Along with these powers, the Ombudsman also has the authority to publish on a publicly accessible website of the Ombudsman as well as other ways considered appropriate that the practitioner is being investigated. These extensions to the current roles are excessive in authority and the role of the Ombudsman is no longer consultative nor negotiates to resolve disputes.

We strongly recommend that the current authority of the Ombudsman not be extended as it will no longer be an impartial institution.

#### Infringement on the Authority of the Registration Boards (National Boards or their State Boards)

We note that the Queensland Bill will empower the Ombudsman not be required to seek clinical advice from practitioners or the Registration Boards (National Boards or their State Boards under the National Registration and Accreditation Scheme) prior to taking immediate action. When the Ombudsman is given the authority to take immediate action regarding suspension or to impose restrictions on the practitioner, it infringes on and overrides the authority of the National Boards or their State Boards under AHPRA. It is very clear that the role of Commonwealth or state Ombudsman is to make recommendations to the authorities or agencies relevant to the case. We would like the National Boards or their State Boards to decide as to what action/s to be taken with the practitioner when recommendation/s is/are being made by the Ombudsman. We maintain that the National Boards or their State Boards have the appropriate and suitably qualified practitioners and personnel on its membership to make decisions regarding the registration as well as the management of the health and discipline of the practitioner. It is also important that clinical advice be sought by the Ombudsman prior to even making the recommendation to suspend or to restrict a practitioner. The most appropriate agency for such advice would be from the National Boards or their State Boards or other professional entities.

It is noted that, with good reasons, there is no obligation for agencies to comply with the recommendations of the Ombudsman. On the website of the Law Handbook ([www.lawhandbook.org.au/handbook/ch21s04s02.php](http://www.lawhandbook.org.au/handbook/ch21s04s02.php)), states that:

There is no obligation for agencies to comply with the Ombudsman's recommendations. Where the Ombudsman makes recommendations, however, the principal officer of the authority may be requested to notify the Ombudsman within a specified time of the steps that have been or are proposed to be



taken to give effect to the recommendations or, if not such steps have been or are proposed to be taken, the reasons for the inaction.

The changes to the authority of the Ombudsman by the Queensland Bill to restrict or to suspend a practitioner, the Ombudsman is no longer impartial, blemish the rule of natural justice, and amounts to being dictatorial. The extension of authority goes beyond the current brief of the Ombudsman in the various states and the Commonwealth.

#### Human Rights

The Ombudsman is recognised as an institution to uphold human rights. If the Ombudsman were to be given the authority to immediately suspend or to impose restrictions on the practitioner as well as to publish in an accessible website before the investigation is completed, it would infringe on the rights of the practitioner. These actions must be taken with proper consultation with practitioners and relevant agency. It is the right of the practitioner to show cause and to defend him/herself. On completion of the investigation by the Ombudsman and even on further investigation (as in referral to the Civil and Administrative Tribunal) that the complaint was found to be wrong, and that there is no misconduct being committed by the practitioner, his/her reputation and the practice would have been damaged.

The Ombudsman, by publishing on a website and to register a suspension on the AHPRA register, incriminates a practitioner prior to being proven of the misdeeds. Even when at the end of the investigations that the practitioner had not been found to have done anything wrong, the initial actions of the Ombudsman might leave an indelible mark on the reputation of the practitioner for many years into the future. The Ombudsman would not have upheld the rights of the person. It is expected that the Ombudsman consults with and make recommendations to the National Boards or their State Boards and other entities regarding suspension and restrictions and to leave these decisions to the relevant agencies and, for them to take action.

#### Length of Investigation

The Queensland Bill does not give a timeframe for the Queensland Civil and Administrative Tribunal (QCAT) to investigate a case. With the current load and expected long delays, QCAT will not be able to investigate matters quickly. Delays will also prolong the suspension and restrictions on the practitioner and it will affect the practitioner's ability to resume work and to earn a living.

#### Investigation without Complaint

It is further noted by the FCMA that the Queensland Health Minister may direct the Health Ombudsman to carry out investigation even without a complaint. This execution of power is punitive. Unless there is a reason to investigate a practitioner, an investigation need not be instigated. An unnecessary investigation takes the focus of the Ombudsman away from necessary, urgent and important investigations. If the unnecessary investigation finds that there has been no misdeed been committed by the practitioner, the suspension, restrictions

and publication would be most detrimental to the reputation of the practitioner. The Ombudsman would have totally violated the human rights of the practitioner, acted in a very punitive fashion and destroyed the very principle of the office of the Ombudsman.

The FCMA has very serious concerns regarding the Queensland Bill as highlight above. The association urges that the changes not be brought into effect.

Sincerely yours,



Professor Tzi Chiang Lin PhD. JP.  
President, FCMA