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The Health & Community Services Committee
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Dear HCSC

SUBMISSION

RE: HEALTH OMBUDSMAN BILL - 2013

Thank you very much for inviting submissions regarding the proposed establishment of a Health Ombudsman. Congratulations to Mr Springborg for having the courage to take on the challenge presented by this behemoth. As a private citizen with first hand experience of the current Health Care Complaints system, I find this determination to establish a more effective, transparent and acceptable means of dealing with Health Care complaints both laudable and timely. The reality is that the present system is convoluted and inefficient, lacking in transparency, accountability and commonsense and often distorted by downright bias. The public is definitely being short-changed. Their vulnerability, trust and good faith are being abused. It is heartening to note many good, practical suggestions in all the submissions put forward thus far.

In some parts of the AMA's submission however vested interests are definitely to the fore (as I daresay one might expect of a body established to protect medical practitioners and providers). Apart from that, far from 'streamlining' the present clumsy system, the AMA appears intent on adding even more layers to it.

1. In a civilized, functioning society, *everyone* needs to be *accountable*, whether they be private citizens, mechanics, doctors, whoever. However, because of the vast reach and impact a medical practitioner's actions have on the well-being and public safety of society as a whole, it is even more imperative that medical practitioners be held accountable for their actions. This is surely a 'given' that comes with 'the territory', onerous as it may be. If one cannot commit to such a compulsory ethical requirement, then surely it would be better to choose a career other than healthcare.
2. Medical practitioners are not the only people who need to earn a living. Private citizens also have families to feed, support and care for. Damage done to *one patient* by a medical practitioner will almost inevitably negatively impact on a whole group of people, to a greater or lesser degree, whether family or friends: financially, emotionally, psychologically.
3. Therefore, the 'light touch' recommended by AMA QLD when it comes to 'disciplining' a healthcare professional is akin to asking for 'special (=preferential) consideration' for that individual – and this is surely not fair or justifiable under natural law. The AMA is also concerned that medical practitioners may not feel confident that a new system is 'fair' towards them. However, note for example the current APHRA (Queensland) ruling that, whereas no complainant is entitled to a process of Review for a decision handed down by APHRA, medical practitioners have every right to request and be granted a full review of any APHRA decision they are not happy with.
4. It does seem that there will definitely be provision for the Health Ombudsman to seek counsel from a panel of medical experts. I note again the AMA's insistence on the 'necessity' for select 'committees and panels of clinicians' ('Standing Boards') to 'ensure' that the Health Ombudsman has access to a certain level of expertise and 'clinical input' so that *practitioners* will feel confident that the system is 'fair' to them. While certainly an excellent aspiration in theory, if such 'Standing Boards' are so effective and have such integrity and expertise, why was it necessary for the Health Minister's recent actions, i.e., to get rid of the members of the local Board of the AMA? Surely what is being touted here is a re-run of what has been happening to date – a defunct system plainly shown to be seriously unbalanced and dysfunctional.

At the end of the day, I have no doubt that most (if not all) people who make complaints about medical practitioners do so in good faith and not out of malice. As already pointed out in another submission to the HCSC Committee, many of these complaints can be resolved relatively easily. Relatively few are at the extreme end of the spectrum. However, where Medical Misconduct is involved it does need to be addressed frankly and fairly, for the sake of public health and safety. The defensive, mendacious, even bullying attitude of some in the medical profession (and related bodies) must be seen for what it is.

I will now refer to my own experience as a private citizen healthcare complainant as an example, because I believe my experience highlights current problems the public faces when undertaking a foray into the only Healthcare Complaints management labyrinth it has recourse to. No doubt like the majority of other complainants, my original complaint to the HQCC was made because I did not want some other prospective 'victim' to have a horrible medical experience similar to my own. Seeking some form of re-dress through a *bona fide* Health Care Complaints system seemed a more desirable (and far less stressful) option than getting into full-scale litigation. My complaint (regarding my case management and surgery at the hands of a Brisbane practitioner) was submitted after I had made a formal complaint to the private hospital where the surgeon in question has a private practice. [That in itself was quite an experience. The first complaint letter and medical records I sent to this hospital were "lost" by the hospital. I duly sent everything off again. Eventually I received a reply. None of the core issues in my complaint were addressed and I was

told to go back to the practitioner, as, although he did have a private practice at that hospital, he was not actually a hospital employee. Clearly, the hospital did not want to get involved]. I had also been famously overcharged for services rendered (according to my private Health Care fund and the AMA in Canberra. It was AMA ACT because I could never get in touch with AMA QLD, no matter how hard I tried).

I did seek to obtain a medico-legal expert submission in support of my complaint, but found that there was *not one* medico-legal expert on the whole East Coast of Australia in the field I needed. When I finally found a firm in Victoria who did have a medico-legal expert in the relevant field, I was told that this expert only became involved when hired by lawyers to give evidence in litigation procedures. I also found that local specialists in the field, while supportive in a one-on-one consultation, were very wary (even downright afraid) of becoming embroiled in a formal complaints process that might pit their medical opinion against that of a local colleague with whom they rub shoulders at conferences and cocktail parties. Indeed, in one instance in which I sought a 'second opinion', the doctor in question hastened to tell me straight up that he was a good buddy of my treating specialist and, as such, supported everything his colleague said. In the event, in my particular case, this led to quite dire consequences. [Yet the AMA is stridently insisting that *medical practitioners* are the ones who really need 'protection'].

When I lodged my post-surgery complaint with the HQCC and subsequently received their 'ruling', it immediately became clear to me upon reading the very skimpy 'feedback' their 'independent clinical advisor' provided that EITHER (a) their clinical advisor had absolutely no specific knowledge at all of my particular medical condition and the current treatment(s) available for it OR (b) he/she knew the surgeon involved, so had decided to just accept the surgeon's version of events, despite all the hardcore documentary evidence available that proved conclusively that the surgeon had actually lied through his teeth in his own submission to the HQCC.

For all these reasons, I reiterate: it is essential to closely examine the ways in which the AMA insists that TRANSPARENCY, NATURAL JUSTICE AND PROCEDURAL FAIRNESS should be ensured *for medical practitioners*. In my own case, if the principles of natural justice (common law) had prevailed – and if I lived in Canada, where such cases have already been successfully prosecuted – the surgeon who operated on me would have been held to account for the assault /battery and trespass to the person that he was guilty of.

Before making my complaint to the HQCC, I not only did extensive personal research on my own medical case but also sought expert opinion regarding my case management. I scrutinized the HQCC's Complaint Guidelines. The practitioner who treated me had indeed breached many of the best practice norms and ethical standards stipulated by both the HQCC and the national AMA. However, the HQCC was not prepared to stand by or uphold these prescribed clinical and ethical standards.

I was stunned by the apparent ignorance and lack of perspicacity, thoroughness and commonsense displayed by the HQCC. The core issues of my complaint were completely sidestepped. Easier peripheral issues were dealt with 'in a kind of way'. At times, despite my consistent politeness, the tone of the HQCC staff bordered on something akin to cynical and arrogant condescension. To his credit, my original case manager did suggest that I should seek a review of the HQCC decision 'not to take any further action' against the medical provider in question. However, when I requested a review of this decision, I met a brick wall. There being no medico-legal experts that I could access on the Australian East Coast for support, I had consulted and then nominated 3 overseas specialists with international experience for the HQCC to get in touch with. However, they did not bother to do this. I pointed out (supplying complete, hard copy factual documentary evidence and a formal Statutory Declaration) that the specialist in question had repeatedly lied and resorted to obfuscation throughout his own submission to the HQCC. Still, they were either unable or unwilling to connect the dots – or simply did not think that there was anything wrong with **perjury** on the part of a medical practitioner. Whether this was due to complete incompetence, poorly trained personnel or fear of the threat of legal action on the part of the medical provider in question (a pugilistic, threatening and psychologically bullying character) I do not know. At any rate, although clearly guilty of Medical Misconduct, this practitioner was/is home free to roat again.

Finally: I am unsympathetic to the AMA's complaint that 'medical practitioners may lose their livelihoods for periods of more than a year'. If the shoe fits, a medical practitioner must wear it, in the same way that other members of society must when they cross the line. As the victim of a disinterested, unscrupulous, greedy surgeon, I myself came perilously close to being incapacitated to the extent that I would have lost my livelihood (as well as a job that gives me great satisfaction) **forever**. I do not for one moment believe that I was his first victim. He has probably been getting away with this for years – because he knows he *can* get away with it.

Yours sincerely

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