

## AMA (NSW) SUBMISSION TO THE QUEENSLAND HEALTH AND COMMUNITY SERVICES COMMITTEE INQUIRY WITH RESPECT TO THE HEALTH OMBUDSMAN BILL 2013

### 1. AMA (NSW)

AMA (NSW) is a medico-political organisation that represents over eight thousand doctors in training, career medical officers, staff specialists, visiting medical officers and specialists and general practitioners in private practice.

AMA (NSW) welcomes the opportunity to make a submission on proposed Health Ombudsman Bill (Qld) ('the Bill'), the operation of which will affect health professionals in Queensland.

AMA(NSW) supports the submission made by AMA Queensland to the Committee and makes the following additional comments on the Bill.

### COMMENTS

We note the Bill would establish Queensland (in common with NSW) as a co-regulatory jurisdiction. AMA (NSW) has substantial experience with assisting members subject to a complaint assessed and investigated under a co-regulatory model. We believe the co-regulatory system in NSW has a number of positive features which the Committee should give consideration to recommending for adoption.

#### *Independence of the Health Ombudsman*

The Bill provides<sup>1</sup> that the Minister may direct the Health Ombudsman to undertake an investigation or inquiry. We believe that this power of the Minister has the potential to influence in an unfavourable way how the independence of the Health Ombudsman is perceived by the public.

We note that in NSW under section 81 of the *Health Care Complaints Act* (1993) the Health Care Complaints Commission (HCCC) is not subject to Ministerial control and direction in respect of the following:

- *the assessment of a complaint*
- *the investigation of a complaint*
- *the prosecution of disciplinary action against a person*
- *the terms of any recommendation of the Commission*
- *the contents of a report of the Commission, including the annual report*

In addition we believe that under the *Health Care Complaints Act 1993 (NSW)* the functions of the Parliamentary Committee<sup>2</sup> and the powers of the HCCC are structured so as to ensure

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<sup>1</sup> Section 18(2)

<sup>2</sup> The functions of the Parliamentary Joint Committee are under section 65 of the *Health Care Complaints Act* :

in our view, appropriate governance and oversight of the HCCC as well as promoting public confidence in the operational decisions made by the HCCC in respect of the assessment and investigation of complaints

We believe it would foster greater public confidence in the independence of the Health Ombudsman if the Bill was amended to the effect that any such power to direct the Health Ombudsman to undertake an investigation or conduct an inquiry rested with a Parliamentary Committee and not the Minister.

### ***Medical Expertise and Experience***

The Health Ombudsman should have access to a wide variety of experts for opinion who have a proven grasp and understanding of medicine and the contemporary nature of the work undertaken by health professionals.

We note section 29 of the Bill proposes that the Health Ombudsman 'may' establish committees and panels to advise about clinical matters. We believe that the Bill would benefit from an amendment to ensure such Panels and Committees must be established and that the Health Ombudsman be required to consult with an appropriately qualified member/s of the panel when investigating a complaint and in particular before taking immediate registration action .

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*(1) The functions of the Joint Committee are as follows:*

*(a) to monitor and to review the exercise by the Commission of the Commission's functions under this or any other Act,*

*(a1) without limiting paragraph (a), to monitor and review the exercise of functions by the Health Conciliation Registry,*

*(b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or connected with the exercise of the Commission's functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed,*

*(c) to examine each annual and other report made by the Commission, and presented to Parliament, under this or any other Act and to report to both Houses of Parliament on any matter appearing in, or arising out of, any such report,*

*(d) to report to both Houses of Parliament any change that the Joint Committee considers desirable to the functions, structures and procedures of the Commission,*

*(e) to inquire into any question in connection with the Joint Committee's functions which is referred to it by both Houses of Parliament, and to report to both Houses on that question.*

*(2) Nothing in this Part authorises the Joint Committee:*

*(a) to re-investigate a particular complaint, or*

*(b) to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint, or*

*(c) to reconsider the findings, recommendations, determinations or other decisions of the Commission, or of any other person, in relation to a particular investigation or complaint.*

*(3) The functions of the Joint Committee may be exercised in respect of matters occurring before or after the commencement of this section*

We believe the requirement<sup>3</sup> in NSW for the HCCC to notify and consult with a professional council before proceeding to investigate or conduct an inquiry into a health professional promotes procedural fairness in decision making, assists in expeditious resolution of complaints and is a model that should be considered for adoption in Queensland.

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<sup>3</sup> Section 10 and 12 *Health Care Complaints Act 1993*

***12 Consultation between the Commission, a professional council and the Registrar***

*(1) Before determining, as a result of the assessment of a complaint, whether to investigate a complaint, to refer the complaint for conciliation, to deal with the complaint under Division 9 or to discontinue dealing with the complaint, the Commission must consult with the appropriate professional council (if any), subject to this section.*

*(1A) If it is proposed, as a result of the assessment of a complaint, to refer the complaint for conciliation, the Commission must also consult with the Registrar.*

*(2) The regulations may prescribe circumstances, such as cases of urgency, where the Commission may consult with a prescribed person on behalf of the appropriate professional council instead of consulting with the professional council itself and where the prescribed person may exercise the other functions of the professional council under this Division.*

*(3) Consultation under this section is to include consultation about any associated complaint, to the extent the Commission and the appropriate professional council or the Registrar consider the associated complaint to be relevant.*