Avant Mutual Group Limited

Submissions to the Health and Community Services Committee with respect to the Health Ombudsman Bill 2013

1. About Avant

Avant Mutual Group Limited ("Avant") is Australia's leading medical defence organisation and one of Australia's leading mutuals, offering a range of insurance products and expert legal advice and assistance to over 60,000 medical and allied health practitioners and students in Australia.

We have over 13,000 members in Queensland, representing around 55% of its medical practitioners and medical students and around 22% of our national membership.

As a member-owned organisation, our remit is to advocate strongly on behalf of our members, in particular where their professional reputation or ability to practise are potentially put at risk.

We have offices throughout Australia, providing personalised support and rapid response to urgent medico-legal issues. Our Queensland office assists Queensland Health Practitioners in complaints managed by the Australian Health Practitioner Regulation Agency (AHPRA), Health Quality and Complaints Commission (HQCC) and the Queensland Board of the Medical Board of Australia (QBMBA).

As such, we have significant experience in dealing with the issues arising from the proposed introduction of a Health Ombudsman, and it is from this perspective that we provide our submissions on the Bill introduced into Parliament on 4 June 2013.

2. Our primary concerns with the Bill

2.1 Impact on national consistency

Avant supports the strengthening of the health complaints management system in Queensland. It is clearly important from an overriding public interest aspect but also to provide a robust system to protect the rights of the individual health practitioner.

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We note that the Bill would establish Queensland as a co-regulatory jurisdiction. We consider that Queensland does not need to take the step of adopting a co-regulatory system simply to strengthen the state's health complaint entities. Avant supports the National Registration and Accreditation Scheme for reasons of national consistency and to support health practitioners being able to work freely within Australia. State and territory governments have invested heavily in building the National Scheme which has been recognised as a leading scheme in the international health regulatory field. There are clear advantages to enabling health practitioners to practise consistently across state borders, and as such, the registration, disciplinary and complaints handling process should be national.

Adopting a co-regulatory model runs counter to the national consistency which the national registration regime introduced in 2010. In our view, the proposed new regime may potentially lead to good doctors who are practising quite satisfactorily moving interstate to practise, potentially reducing the supply of competent medical practitioners.

In our view, the key issues impacting on patient safety will not be addressed solely by the adoption of the proposed new regime and would be better addressed by improving the existing, nationally consistent complaints handling process. However, it appears inevitable that the Bill will be passed, and the remainder of our submissions are provided based on that assumption.

2.2 Features of an effective complaints handling process

The following are in our view the key features of an effective complaints handling process for the medical profession:

a) There is a clear transparent process for patients to make complaints or raise concerns about competence or misconduct;
b) Allegations should be investigated by a body with sufficient investigatory powers, an understanding of the practice of medicine and an understanding of the role of a regulator in protecting the public;
c) The investigatory body should be independent from government but accountable to it;
d) The rights of health practitioners to practise their profession and to be given all relevant material being considered by an investigatory body and a sufficient opportunity to respond to that material, should be supported by the legislation and the process; and
e) Investigations should be completed within a reasonable period of time.

(a) Clear and transparent process

The Bill addresses point (a) by requiring that all complaints be made to the Health Ombudsman (sections 13, 33, 36 and 41). This makes the process clearer and avoids the duplication which occurs under the current system, and we have no issue in this regard.

(b) Investigation by body with appropriate experience/knowledge

In terms of point (b), the Bill provides powers to investigate complaints and deal with complaints (Parts 2, 3, 4, 5, 6, and 8).

Unfortunately the Bill fails to ensure that the Ombudsman has an appropriate understanding of the practice of medicine. That can only be assured if the Ombudsman is a medical practitioner with substantial clinical experience. Even then one practitioner

will not have the specialised knowledge and experience to allow informed decisions to be made across the spectrum of medical practice. A clinical advisory council is of assistance, but is not sufficient. We note section 29 allows the Ombudsman to establish committees and panels of appropriately qualified persons to advise and support the Ombudsman in the performance of his or her functions. In our submission this does not go far enough and the section should require the Ombudsman to consult a panel, following the model of the Health Care Complaints Commission (HCCC) in New South Wales.

We are deeply concerned that under the Bill immediate registration action could be taken without reference of a complaint to a suitably qualified and experienced medical practitioner, and without any notice to the practitioner. Fair decisions in relation to potentially serious misconduct by medical practitioners can only be made if the relevant decision making power rests with their true peers, who can judge clinical decisions and professional conduct in their context. As such the immediate action decision should in our submission be made by the Queensland Board of the Medical Board of Australia (we understand that the Health Minister intends to appoint a new QBMBA so the new body could fulfil the role).

(c) *Independence of Health Ombudsman*

In terms of point (c), the necessary level of independence essential for the effective performance of the investigatory role is compromised by the nature and extent of the powers given to the Minister generally, and more specifically the powers to direct the Ombudsman to investigate matters and hold inquiries.

In our view, the Minister is effectively conflicted under the proposed new regime, as he can direct the Ombudsman to conduct investigations or inquiries which in many cases will look not only into the conduct of a medical practitioner, but also into the provision of a range of services for which the Minister is responsible (including hospitals, administrative and nursing staff).

In addition, the Bill concentrates key powers in the Minister and the Ombudsman, without sufficient oversight or checks and balances on the exercise of those powers and we are concerned about the lack of accountability for their exercise.

An example of the powers which could allow the Minister to control the way the Ombudsman performs his or her function is section 288(2) which allows the Minister to prepare a Code of Conduct or similar document which provides “guidance” about the performance of functions under the Act. Directive material should only be prepared in Avant’s submission by Parliament or an independent expert committee.

The Ombudsman should be responsible to a Parliamentary Committee and not be directed by the Minister as currently proposed. Other models exist which provide this greater independence such as the model of the HCCC in New South Wales.

Greater oversight by a Parliamentary Committee would, in our view, deliver an appropriate level of accountability in the absence of any Board or similar governance structure being introduced at the Ombudsman level.

(d) Natural Justice

In terms of point (d), the Bill does not provide us with comfort that the new regime will afford natural justice to medical practitioners, nor does it provide sufficient direction about the need to observe procedural fairness in the investigatory process. In our view,

the Bill should remove the power to take immediate action without notice to the practitioner (section 59(4)) and instead allow the decision maker to reduce the time which the practitioner has to respond to a notice proportionately to the risk of harm to the public.

Further the prohibition contained in section 100 on QCAT making an order which stays the immediate action decision is the most extraordinary example of a government removing rights otherwise available to Queensland medical practitioners. That section must be removed and QCAT must have the same review powers for immediate action decisions as for other administrative decisions.

In addition the Bill should direct that all relevant material gathered by or available to the Ombudsman should be provided to the doctor with sufficient time for this to be considered and for a response to be made.

(e)Timeliness of investigations

Timeliness of investigations is addressed in sections 3(2), 15 and 85 of the Bill. We support the proposal to introduce statutory time limits for investigations, as this has been a major concern under the current system.

Most investigations ought to be concluded within 6 months, or for complex matters within 12 months, which is the time indicated by sections 15 and 85. However, Avant wishes to ensure that investigations are carried out as quickly as practicable (and not left until many months have passed) and is also concerned that the Ombudsman can give him or her self further extensions of 3 months for a further year. Extensions should only be granted by a separate body based on a careful review of the reasons given for its necessity and should be given only by QCAT or the Parliamentary Committee, not the Ombudsman or the Minister.

The Bill contains extremely short timeframes (7 days) for the Ombudsman to decide how to proceed with complaints. Whilst we agree with short timeframes so that matters can be dealt with expeditiously, those timeframes should be workable. Timeframes that are too short will inevitably lead to poor decision making. This highlights the need for a discretion on the part of the Ombudsman where there is good reason to allow an extension of not more than 14 days for a response.

We welcome the Bill's statement in section 85 that the health ombudsman must complete an investigation as quickly as is reasonable in all the circumstances. However this should be subject to the proviso that the medical practitioner has been provided with all relevant information on which to base his or her response to a complaint. We note that the Ombudsman is required to keep a register noting times by which investigations are to be completed as well as the reason for any extensions. Avant recommends that this requirement be measured, and that measurements be reported annually in a publically available report.

3. Detailed submissions

3.1 Clear, transparent process

Generally a principle of disciplinary action is that once some action is taken which could impose any adverse consequences, the subject of the action should not be put to the risk of further penalty. In the Bill, section 42 provides that the Ombudsman may take more than one relevant action to resolve a matter. This is appropriate where the initial action is just an assessment. However if the matter is referred to the Medical Board and the

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Board imposes conditions on the practitioner's registration the practitioner should not also have to face any other action which could result in a penalty.

Recommendation 1

Section 42 be amended to state that more than one action can only be taken if the circumstances do not offend the principle against imposing double penalties or which may expose a practitioner to a risk of double adverse action. In addition, to avoid duplication of resources the section should specify that where more than one action is taken, the actions should be taken consecutively, rather than concurrently, unless the Ombudsman can be satisfied no duplication of resources on the part of the Ombudsman or the health practitioner would be caused by taking simultaneous actions.

Transparency is a goal of the Bill which we support, however this can only be achieved by the inclusion of a section which requires that all relevant material be provided to a practitioner to enable a full response to be made to any concerns about conduct or competence. The Bill provides protections for persons who give information to the Ombudsman in good faith. It should go further and direct the provision of relevant information to the person the subject of a complaint.

Recommendation 2

Insert a new section in the Bill, as follows:

Section 276A Requirement for full disclosure

(1) Whenever the Ombudsman or a national board is required to inform a registered health practitioner or student of the receipt of a complaint or notification or to give a registered health practitioner a notice to show cause or a notice of a decision or a requirement to undergo an assessment the Ombudsman and the Board or any entity or person acting as its agent must provide, to the practitioner or student as soon as practicable any and all documents and relevant information as are within the Board's or its agent's possession, or within its power to obtain, including:

- *(a) Copies of any complaint, notification or statement making allegations against the practitioner or student;*
- *(b) Copies of all medical or hospital records including pathology reports, radiology films, correspondence or other clinical records relevant to the issues under assessment or investigation or the subject of possible action;*
- *(c) Copies of all expert opinions or reports or notes or memoranda setting out the substance of such opinions and reports obtained by the Board or its agent or provided to the Board or its agent by another statutory entity or entity with power to refer matters to the Board such as the HQCC, Coroner, Police, Medicare; and*
- *(d) A copy of any investigation report relating to the practitioner or student together with copies of all documents annexed to that report or referred to in the report and within the Board's possession or power or the possession or power of its agent.*

Provision of this information will greatly assist in speeding up the resolution of complaints and avoid the Ombudsman and medical practitioners entering into protracted debates about procedural fairness, and ensure that patient safety is promptly protected.

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It is in everyone's best interests that complaints of a serious nature are handled as quickly as possible and on the basis of the best available evidence.

3.2 Resourcing

For investigations to deliver appropriate outcomes and protect patient safety, the investigatory body must be properly resourced. Without proper resources the objects set out in section 3(2) of the Bill of effectively and expeditiously dealing with complaints will not be met. We note that the HQCC referred in its 2012 Annual Report to resourcing issues preventing it from achieving its timeliness KPIs and other service quality standards.

Avant submits that it is vital that the Health Ombudsman will be properly resourced to deliver against the objectives of the Bill. Otherwise, the same criticisms will be levelled at the Ombudsman and the Minister as have been directed to the HQCC. If under-resourcing leads to poor decisions being made or the wrong regulatory outcomes, the Ombudsman and the Minister will undoubtedly be the subject of direct criticism.

3.3 Qualifications of Ombudsman and necessity to take appropriate advice

As stated above, the Health Ombudsman should be a suitably qualified and experienced medical practitioner. Medical practice occurs across an extraordinary range of specialisations. There are currently 23 specialties recognised by the Medical Board of Australia and over 100 subspecialties. As it takes about 7 years or more to achieve a specialist registration the possibility that one individual can make informed decisions across such specialised areas is non existent. As such it is vital that the Ombudsman be directed by the legislation to seek appropriate advice before making any significant decisions except in cases of urgency where the Ombudsman should still seek advice as per the HCCC model.

Recommendation 3

Amend section 246 of the Bill to provide for the Ombudsman to be a medical practitioner with at least 10 years clinical experience, and if the person is no longer in clinical practice that the person not have been out of clinical practice for more than 5 years.

Also amend section 29 along the lines of the NSW Health Care Complaints Commission Act 1993 (HCCC Act):

29 (1)Before determining, as a result of the assessment of a complaint, whether to take any relevant action, the Ombudsman must consult with the appropriate professional committees or panels subject to this section.

(2) The regulations may prescribe circumstances, such as cases of urgency, where the Ombudsman may consult with a prescribed person on behalf of the appropriate professional council instead of consulting with the professional panel or committee 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 Ombudsman considers the associated complaint to be relevant.

3.4 Role of an investigator

In our experience, some investigators or regulators feel their role is to be an advocate for patients and hence try to find evidence to support a complaint, rather than assess or investigate it impartially and if the evidence indicates the complaint is without substance to make a finding to that effect. There should be a statement of principle in the preliminary part of the Bill to this effect.

Recommendation 4

Insert a section 4A in the Bill, as follows:

4A It is a principle of early resolution action, assessments, investigations, immediate action decisions, conciliation and inquiries that evidence be looked at objectively and impartially, and decisions on what action to take be made based on appropriate evidence to the relevant standard.

3.5 Independence of Health Ombudsman

An essential characteristic of all effective investigatory bodies is that they are independent from government. This provides confidence on the part of those who may bring complaints or be the subject of complaints. It is also likely to reduce the number of costly and time-consuming judicial review actions before the courts and tribunals of the jurisdiction, with a substantial saving in legal costs and a quicker path to a patient protection, if needed.

We note that in NSW, under section 81 of the HCCC Act, the HCCC is specifically said to not be 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.

We submit that a provision like this should be included in the Health Ombudsman Bill.

In addition we submit that a similar model of oversight as established under the HCCC Act be adopted in the Health Ombudsman Bill. Section 65 of the HCCC Act establishes a joint parliamentary committee which has as its functions:

(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.

We submit that this model will give appropriate independence and transparency. Greater oversight by a Parliamentary Committee would, in our view, deliver an appropriate level of accountability in the absence of any Board or similar governance structure being introduced at the Ombudsman level.

The current Bill states only that the Ombudsman is "*generally not subject to direction*" (excluding the Minister's power to direct that an investigation or inquiry be conducted), and this is not sufficient. Above we noted section 288(2) which allows the Minister to prepare a Code of Conduct or similar document to provide "guidance" about the performance of functions under the Act. This is one of the powers that could allow the Minister to control the way the Ombudsman performs his or her function. Directive material should only be prepared in Avant's submission by Parliament or an independent expert committee.

As mentioned above, under the regime proposed in the Bill, if poor decisions are made or the wrong regulatory outcomes are reached, the Ombudsman and the Minister will undoubtedly be the subject of direct criticism.

Recommendation 5

Adopt section 81 of the HCCC Act and adopt a provision similar to section 65 of the HCCC Act.

Recommendation 6

Delete section 288(2) of the Bill.

3.6 Procedural fairness

We are deeply concerned with section 59(4) of the Bill, which allows the Health Ombudsman to take immediate action without giving a medical practitioner the right to make a submission (before the action is taken and based on all the available evidence) whether the proposed action should be taken, or whether some other action can be taken which provides an equivalent level of protection for the public. This is contrary to established principles of administrative decision making and would undoubtedly be challenged via QCAT in many instances, as practitioners' livelihoods and reputations would be at stake.

Action to suspend a practitioner's registration is extremely serious. It can be virtually impossible for a practitioner to recover reputationally, personally and professionally from such a decision even when, after a full investigation, the allegations on which the immediate action was based, are not substantiated. This power is one which in all but the most grave circumstances should only be exercised by a court or tribunal after a hearing in which evidence is fully and properly tested. It has been accepted under the

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National Law that the power can be exercised by the Medical Board, but only after the doctor in question had been given an opportunity to make a submission. Accordingly, we strongly object to the Health Ombudsman being given this broad and potentially devastating power without adequate Parliamentary scrutiny. We consider this power should only be exercised by the body empowered by Parliament to register and supervise the practise of medical practitioners – in this case the QBMBA.

We note that the Forrester Report suggested (but gave no valid evidence to support its suggestion) that the requirement to give a practitioner notice exposed the public to risk of harm. Logic would suggest that any practitioner receiving notice of serious allegations being made against him or her would do everything within his or her power to ensure no thing further happened to reinforce the concerns. As such giving notice to the practitioner should enhance public safety rather than put it at risk.

Recommendation 6

Delete section 59(4) of the Bill

If despite this recommendation the Government wishes to be the only jurisdiction in Australia where immediate action power is wielded by a single individual we submit that subparagraph 59(1)(b) of the Bill should be amended to state that the period of time to respond is generally 14 days but in cases of a very high level of threat to patient safety, the period of notice can be shortened to as little as 48 hours. In cases of shortened notice the post decision process set out in section 61 can be followed to allow a practitioner to make a further submission if the initial time did not allow for a full response. Then paragraph 59(4) should be deleted.

In addition we strongly contend that section 100 of the Bill has no place in a fair and just society and should be deleted. If immediate action is taken, a medical practitioner should have the same rights as every other Queenslander to have the action reviewed and, where appropriate, have the action stayed. Stays are not given lightly and have been refused in cases where the public interest required this. Examples can be provided on request. . Therefore there is no need to remove the right to seek a stay in appropriate circumstances, particularly where it can take 12 months to have a final decision made on an application for review.

3.7 Time frames for investigations

A proper investigation should be completed in the shortest possible time to ensure that evidence is obtained whilst it is still reasonably fresh, complainants are not left in limbo and practitioners do not have the stress of trying to work for extended periods with the possibility of adverse action hanging over their head.

We believe that most investigations (even of a complex or serious nature) can usually be completed within 6 months. Once an investigator is appointed he or she will usually wish to speak to the complainant which can be done in most cases within one to two weeks. The investigator will need in most cases to obtain medical records which will also only take a week or two. Then there may be a need to speak to some other witnesses and after that to obtain an expert opinion. This should not take more than one to two months if the expert is properly briefed. In some more complex cases investigations may take longer than 6 months but it ought to be very rare for any to take longer than 12 months.

The Health Ombudsman should be incentivised to complete as many investigations as possible within 6 months. If matters are to go longer than 12 months, we believe that some independent oversight is required. This can be by a hearing before QCAT where directions can be given about completing the investigation. This would be an outline of the steps still required and how long those will take, and would avoid the unsatisfactory proposal in the Bill that the Health Ombudsman can simply extend a time period in 3 month increments.

Recommendation 7

Amend section 88 as follows:

(1) The Ombudsman must complete an investigation as quickly as is practicable in all the circumstances and, in any case, by the day (the due day) that is 6 months, or any extended time decided under subsection (2), after the decision to carry out the investigation is made;

(2) If an investigator directed to conduct an investigation is unable to complete an investigation within the time required by subsection (1) of this section, the investigator must inform the Ombudsman and the practitioner or student the subject of the investigation of this fact at least 14 days before the expiration of the time required by subsection (1),and provide a schedule identifying what steps remain to complete the investigation and a time table of not more than another 6 months from the expiration of the time required by subsection (1) for the completion of the investigation;

(3) If the practitioner or student the subject of the investigation is unwilling to accept the proposed time table for the completion of the investigation he or she may apply to the Tribunal for directions with respect to the investigation and its completion;

(4) Any investigation which has not been completed within 12 months from the decision to conduct an investigation must be referred to the Tribunal by the Ombudsman for directions on the completion of the investigation, such referral to be made within 28 days from the expiration of the 12 month period.

Then incorporate subparagraphs (4) to (9) of the current Bill.

3.8 Other matters

Use of experienced health care investigators

Avant notes that AHPRA already has experienced investigators and assessors who are well-placed to handle serious complaints, without the need for the Ombudsman to engage, train and supervise its own staff. Outsourcing complaint handling to experienced persons already set up to do the work would be efficient and practical and we would ask the Minister to consider this practical step to retaining as much national consistency as possible.

Recommendation 8

We request that the Minister consider outsourcing assessments and investigations to AHPRA. This would provide a greater level of national consistency in how investigations are performed.

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Quality monitoring and improvement

Avant is concerned that valuable work done by the HQCC in actively monitoring and seeking to improve health care generally in Queensland is not recognised or repeated in the Bill. There is an unquestionable need for this work to continue to ensure patient and practitioner awareness and ultimately patient safety in Queensland.

We are concerned that this work may be subsumed into the work done by the Australian Council for Safety and Quality in Health Care Resources and that a valuable and locally-relevant body of work will be lost to Queensland, with an undoubted adverse impact on the patient safety issues that the Bill is designed to address.

Recommendation 9

We seek confirmation from the Minister that the valuable health care safety and quality work currently done by the HQCC in Queensland will be continued to at least its current levels under the new regime.

Informing employers of allegations

It is a basic principle of a disciplinary process that a person is innocent until proven guilty. Aspects of the Bill seek to effectively reverse this principle on the basis of public safety. An example is the requirement for the Ombudsman to notify employers of a health practitioner of serious allegations relating to an employee.

Until allegations are proven they should not be further disseminated, as employers may suspend practitioners or impose other sanctions/conditions on the assumption that a complaint will be upheld. Again, such reputational issues among a practitioner's colleagues may be almost impossible for them to recover from.

Recommendation 10

Delete section 279 of the Bill.

Proposed "name and shame" provisions

Section 273 of the Bill empowers the Ombudsman to publish on a public website information about immediate action decisions. Avant objects to this on principle and would only support publication of serious sanctions or conditions imposed (rather than complaints made) and only then for a period of time which is proportionate to the sanction imposed. Immediate action is based on unproven allegations. Distribution of information about the allegations can cause irreparable damage even though the allegations are later disproven.

Once an appropriate period of time has passed, a person's past should not be held against him or her. A never-ending public list of wrongs will inhibit rehabilitation and may effectively prevent practitioners who have "served their time" from returning to practice.

For example, if a practitioner is found to require better communication skills the finding should be on the register until the practitioner has attended the communication course. There is no benefit to the public in being aware of a practitioner's disciplinary history if it is no longer relevant. In addition where a low level finding is made, public safety is not served by its publication, so a caution or reprimand should not be included on the register. Even a serious finding such as inappropriate prescribing of drugs or having a

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sexual relationship with a patient should not be on the register permanently it should be removed after an appropriate period of time, as happens with criminal convictions which are deemed to be "spent".

Recommendation 11

Unproven complaints should never be on a public register. Only significant sanctions or conditions should be published and then only to the extent needed to protect public safety. The length of time it should be on the register should be proportionate to the facts as found or sanction imposed.

Mandatory reporting

The mandatory reporting process is sometimes used inappropriately by practitioners to report fellow practitioners, ostensibly on clinical grounds, but effectively for commercial reasons. Those disputes can lead to scarce time and resources being committed to the wrong complaints. We note that the Bill proposes that mandatory reports be made to the Health Ombudsman rather than through AHPRA.

Recommendation 12

We would ask the Minister to consider how such vexatious and inappropriate complaints by fellow practitioners might be treated differently to avoid practitioners' reputations being damaged for commercial reasons, for example by introducing a requirement that there be some independent supporting evidence before such a complaint is acted upon.

We will be making a similar request to AHPRA in the forthcoming review of its performance.

The requirement for treating doctors to report their own patients can seriously inhibit a health practitioner with a health condition from seeking treatment. It would be worse in Avant's submission to have a practitioner not seeking treatment than to have a practitioner treated and the treating doctor not report the practitioner to AHPRA.

Section 4 of the WA *Health Practitioner Regulation National Law (WA) Act 2010* amends the National Law to include an exemption from mandatory reporting requirements for health practitioners treating other health practitioners or students. In our view the unrestricted WA model should be adopted in Queensland to provide health practitioners with confidence that they can be appropriately treated without fear of being reported by their treating practitioner.

Recommendation 13

That the Bill adopt the WA model where treating health practitioners are not required to report their patients who are health practitioners to AHPRA.

However, we note with approval a step in the right direction in the Health Ombudsman Bill in that section 326 of the Bill inserts a new section 141 into the National Law which states that mandatory reporting obligations do not apply to health practitioners who treat impaired practitioners where the impairment does not place the public at substantial risk of harm and is not professional misconduct. Avant still submits that this is similar to the position pertaining at the present time.

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If the WA position is not adopted, we submit that in order to allow health practitioners to seek treatment without fear, the Bill should be amended to allow treating doctors to not report a patient practitioner *unless* the patient practitioner does not follow treatment recommendations or advice and that failure to follow treatment advice is in the view of the treating doctor likely to place the public at substantial risk of harm.

Recommendation 14

Amend section 326 of the Bill so that section 141(5) of the Health Practitioner Regulation National Law reads as follows:

(5) Subsection (2) does not apply in relation to the second health practitioner's notifiable conduct if the first health practitioner forms the reasonable belief as a result of providing a health service to the second health practitioner; unless

(i) the second health practitioner fails to follow treatment advice and recommendations of the first health practitioner (including the second practitioner self reporting the condition to AHPRA) and that failure is in the opinion of the first health practitioner likely to place the public at substantial risk of harm.

We would welcome the opportunity to provide further assistance to the Committee at its public hearings. Should you have any queries about this submission, please contact:

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