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Federal AMA submission to the Queensland Parliament Health and Community Services Committee inquiry into the Health Ombudsman Bill 2013

The Federal AMA supports the submission made by AMA Queensland to the Committee and makes the following additional comments on the Health Ombudsman Bill 2013 (the Bill).

The AMA is committed to offering the highest standards of care to patients. However, the complexity of the delivery of care and the sheer volume of services provided every day means that dissatisfaction with some incidents of care is inevitable.

The process of managing the concerns and complaints of patients is critical to the functioning of the health system. The appropriate, expeditious and fair management of complaints gives patients confidence and reduces the sense of harm or dissatisfaction from patients who experience real or perceived adverse outcomes.

Health practitioner health issues

The medical profession has led the way in finding models to ensure the management of practice is addressed in a broader fashion than just the response to complaints. The development of health programs for doctors has helped retain valuable skills and workforce, and has helped to develop a culture of greater openness about impairment issues.

It is critical that every health practitioner can have the confidence to access medical care and treatment in a timely way so that health conditions are diagnosed and managed early. Patient confidentiality is fundamental to the doctor-patient relationship, even when the patient is a health practitioner. It is critical that if a health practitioner does seek treatment, that they can have an open discussion about their symptoms so they can be properly diagnosed and treated. This is the only way to avoid the impairment issues that may put patients at risk of harm.

The Federal AMA welcomes the acknowledgement of this issue by virtue of the amendments in clause 326(25) of the Bill to the mandatory reporting provisions in section 141 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 the effect will still to be 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

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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.

Independence of the Ombudsman

It is critical that any complaints handling system is seen to be independent of Government, both from the complainant's and the health practitioner's points of view. There are several provisions in the Bill that diminish the independence of the Ombudsman, the Australian Health Practitioner Regulation Agency (AHPRA) and the national health practitioner boards from Government. The Federal AMA believes this significantly compromises the office of the Ombudsman, but also the integrity of the health complaints system in Queensland.

Under subclause 18(2) and clause 81 the Minister can direct the Ombudsman to undertake investigations and hold inquiries. The AMA accepts that any Health Minister has the right to commission investigations and inquiries into areas of their portfolio. The Health Minister does not require legislation to exercise this power. However, it is entirely inappropriate for such a Ministerial power to be a feature of any health complaints handling process.

In addition, under clauses 171 and 172, the Minister can require the Ombudsman, AHPRA and any of the national health practitioner boards to provide any information about any matter. There is no explanation in the Bill about the purpose of these provisions and what the Minister might do with the health information he or she receives.

The explanatory notes (at page 27) intimate that the power goes to "performance of the Ombudsman's functions". The notes are even more vague about the Minister's use of information obtained from AHPRA and the national boards.

Under the current wording of clauses 171 and 172, the Minister will have access to any material about a health service that is the subject of a complaint. The Federal AMA considers these provisions as they are currently drafted go well beyond the realms of an independent health complaints handling system – it could have the effect of very personal health information being viewed by the Health Minister and his or her staff, and for no particular purpose.

The AMA notes that the Minister's functions is correctly described in clause 170 – that is to oversee the appropriate administration of the health complaints handling system and performance of the relevant agencies. The Minister's power to receive information should be limited to this purpose.

In addition, clause 29 it states the "Health Ombudsman may establish committees and panels of appropriately qualified persons to advise the Ombudsman about clinical matters". The AMA is of the view that clinical advice should not be an optional extra. The Bill should be amended in order to require the Ombudsman to establish clinical advisory committees with expertise in each professional area. This will ensure that the Ombudsman is given the most appropriate advice as well as reassure practitioners that the system is fair and unbiased.

Financing the Queensland health complaints system

The Federal AMA is not convinced the Health Ombudsman will be sufficiently resourced to fulfill all the functions and processes set out in the Bill and in the expected timely way, simply on a call on the Australian Health Practitioner Regulation Agency fund, and without supplementary funding by the Queensland Government.

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The Queensland Government should provide details of its costing for the Health Ombudsman and the predicted call on the agency fund. The AMA will not tolerate an increase in registration fees for medical practitioners in Queensland.

In addition, there will be additional costs for the Ombudman to undertake investigations and hold inquiries as directed by the Minister (subclause 18(2)). If this subclause remains in the Bill, then it should make specific provision for the costs of these investigations and inquiries to be met by the Queensland Government, and not from health practitioner registration fees.

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