



Aboriginal and Torres Strait  
Islander Health Practice  
Chinese Medicine  
Chiropractic  
Dental  
Medical  
Medical Radiation Practice  
Nursing and Midwifery  
Occupational Therapy  
Optometry  
Osteopathy  
Pharmacy  
Physiotherapy  
Podiatry  
Psychology

Australian Health Practitioner Regulation Agency

24 June 2013

Mr Trevor Ruthenberg MP  
Chair  
Health and Community Services Committee  
Queensland Parliament  
Parliament House  
George Street  
BRISBANE QLD 4001 E: [hcsc@parliament.qld.gov.au](mailto:hcsc@parliament.qld.gov.au)

Dear Mr Ruthenberg

### **AHPRA and National Boards joint response on Health Ombudsman Bill 2013 (Qld)**

Thank you for your email of 7 June 2013, inviting written submissions to the Health and Community Services Committee of Queensland Parliament (the Committee) on the recently introduced Health Ombudsman Bill 2013 (the Bill). You wrote individually to the AHPRA Chief Executive Officer and the Chairs of the 14 National Boards. We are pleased to provide the Committee with this joint AHPRA and National Boards response.

AHPRA and the National Boards acknowledge Minister Springborg's resolve to strengthen health complaints management in Queensland to restore community and practitioner confidence in the system, through new legislation that will work in concert with the Health Practitioner Regulation National Law, as applied with modifications in Queensland. This represents a reasonably significant change to the operating environment in Queensland.

Its success will require the cooperation of all parties involved to avoid any unintended increased costs, fragmentation or delays in how complaints are managed in Queensland and to support appropriate national consistency in dealing with issues about the health (impairment), conduct or performance of health practitioners.

We believed a more rigorous administrative approach within current arrangements would have addressed many of the Minister's concerns, and better maintained national consistency in complaints and notifications handling under the national scheme. The National Boards and AHPRA will however continue to seek to be responsive and work with the Queensland Government to help effect this more significant change.

AHPRA and the National Board Chairs welcomed the opportunity extended by Queensland Health to provide comments on a confidential consultation draft of the Bill during its targeted consultation with stakeholders. We are pleased that many of the issues we raised about the regulatory interface between the proposed health ombudsman legislation and the National Law, as applied in Queensland, are largely addressed in the Bill that Minister Springborg introduced into the Queensland Parliament on 4 June 2013. To provide some further flexibility in our working relationship with the new health ombudsman, we advocate for a discretionary ability to refer *on receipt* some serious matters to National Boards if it was in the public interest or there was a clinical need to do so. We acknowledge this is not a feature of the Bill as introduced.

In this joint response, we provide our views on the new arrangements that will be introduced through the Bill, and propose representatives from AHPRA and the National Boards that the Committee may wish to invite to attend public hearings on the Bill in July 2013.

### **Queensland as a co-regulatory jurisdiction for complaints/notifications**

Under the Bill, it is proposed that Queensland will become a co-regulatory jurisdiction for Part 8 (health, conduct and performance matters) of the National Law. This is consistent with the COAG Intergovernmental Agreement for the National Registration and Accreditation Scheme, signed in 2008.

The approach is to make modifications to the way in which this part of the National Law is applied in Queensland, while ensuring these Queensland specific modifications do not impact on the other states and territories that have applied the National Law as a law of their jurisdiction and participate in the national notifications management system. Queensland remains a participating jurisdiction for the National Registration and Accreditation Scheme.

We acknowledge this approach is consistent with (but not identical to) that taken by New South Wales when it became a co-regulatory jurisdiction prior to commencement of the National Scheme in July 2010. It will maintain the integrity of the National Law while supporting the Queensland Health Minister to implement a new complaints management system in his state.

### **Complementary functions, including immediate action powers**

Under the Bill, the new Health Ombudsman will receive all complaints about registered health practitioners in Queensland, will retain the most serious matters, and refer all others to AHPRA and the National Boards for action. The paramount guiding principle in the Bill, which will be mirrored in the National Law as applied in Queensland, makes it clear that the health and safety of the public are paramount and is the main consideration for the Health Ombudsman (and by extension, AHPRA and the National Boards) when dealing with complaints and notifications in Queensland.

We strongly support the National Boards and AHPRA retaining our current powers and responsibilities under the National Law (including immediate action powers) for dealing with health, performance and conduct matters; acknowledging that the most serious matters will now be dealt with by the Health Ombudsman. This is critical to ensuring there is a reasonably smooth interaction between complaints dealt with under the National Law and those dealt with by the Health Ombudsman under the proposed new legislation. We will work with the new Health Ombudsman (once appointed) to ensure that complementary immediate action powers are exercised with clarity and certainty and as appropriate to protect the public.

AHPRA and the National Boards are also committed to working with the Health Ombudsman to establish any necessary administrative systems to support the new arrangements, and to mitigate any risk of duplication, confusion, or delays in dealing appropriately with complaints relevant to Queensland. We have started to review our procedures, delegations, and processes following introduction of the Bill into the Queensland Parliament, but note administrative changes cannot be implemented until after the Bill is finalised through debate and passage by the Queensland Legislative Assembly.

### **Provision of expert clinical advice**

We note that the Bill introduced into Queensland Parliament enables the Health Ombudsman to seek clinical advice, including in the course of an investigation or before taking immediate action. To support this, the Bill provides for the establishment of advisory panels or committees, which may also be established to provide advice on health consumer issues. An example provided in the Bill is for a panel of medical experts to be established.

Enabling access, in a facilitative way, to appropriate advice to help the ombudsman exercise his/her functions efficiently and effectively is supported. We note this more flexible approach provides an opportunity for the ombudsman to seek advice from members of a National Board and/or their committees. This would be as members of an expert advisory panel or

committee established under the proposed ombudsman legislation, and with the protections and responsibilities afforded under that legislation – rather than in their capacity as National Board or committee members under the National Law.

The Queensland Board of the Psychology Board of Australia encourages the continuation of processes that support professional input into decision-making about notifications involving psychologists. The Queensland Board's experience is that recommendations to take health, conduct or performance action have benefited from the joint consideration of a 'board of peers and community members'. We encourage this type of approach continuing under the new complaints management system in Queensland.

### **New limited exemption from mandatory reporting for practitioners in Queensland treating other practitioners**

We note that the Bill introduced into Queensland Parliament includes a new limited exemption from mandatory notifications for practitioners in Queensland treating other health practitioners. The exemption (amended s.141 in the Bill) will apply if the matter relates to an impairment, does not relate to professional misconduct, and the treating practitioner forms the reasonable view that the other practitioner does not pose a serious threat to the public (eg because the practitioner has agreed to a rehabilitation program).

We acknowledge the exemption is not as broad in scope as the one provided under the National Law in Western Australia. However, currently, no other jurisdiction has this type of additional exemption. The threshold for mandatory notifications is set at a high level and is a key public safety mechanism introduced by the National Law for all professions regulated under the scheme.

The National Boards and AHPRA agree that health practitioners should not feel discouraged from seeking treatment for an impairment, such as substance abuse or serious mental health issues, for fear of being reported.

However, we do not agree that this type of additional exemption is needed. It will have the effect of further fragmenting national consistency for mandatory notifications, increasing confusion among all health practitioners registered under the National Law (not just treating practitioners in Queensland), and hence has the potential to raise barriers to compliance with this important public safety obligation.

That said, having a limited exemption as set out in the Bill is preferable to a blanket exemption that may be invoked in any circumstance by a treating practitioner, even though this will introduce a third approach to mandatory notifications within this national scheme.

Assuming that this limited exemption will remain in the Bill if passed after debate, the National Boards (with support from AHPRA) will review their approved *Guidelines for mandatory notifications* as published on each of the 14 National Board websites. Revising these guidelines may help allay confusion that registered health practitioners will have about their obligation to make a mandatory notification depending on where they are practising their profession and taking into account the scope of any additional exemption from mandatory notification for treating practitioners that may operate in that jurisdiction.

### **Strengthened reporting and oversight**

Under the Bill, there is increased reporting requirements and oversight of the management of health, conduct and performance matters by AHPRA and National Boards in Queensland.

The reporting and information sharing requirements will have implications for the current operation of AHPRA, including IT systems. As part of the establishment and transition, AHPRA will need to review its systems. There will be costs associated with the IT systems that need to be changed to manage the new requirements in Queensland that are being introduced after commencement of the national scheme. Joint arrangements will need to be

developed for tracking cases handled by the Health Ombudsman's office, enabling access by the Ombudsman's office to registration data on cases handled within their office, and ensuring outcomes are recorded against the registrant record and the public register.

In the longer term, system interfaces will be required at key points to ensure linkage between notifications and registration data.

Alignment between IT systems will be important to support combined reporting and provide transparency and comparability of data at a national level, including for mandatory notifications/complaints. There are substantial risks in this area, unless adequate time and resources are provided to scope requirements and make any necessary systems changes.

### **Funding (complaints component for Queensland)**

The National Registration and Accreditation Scheme is a self-funding scheme. All functions carried out by AHPRA and the National Boards (including as the scheme operates in Queensland) are funded from fees paid by health practitioners from the 14 health professions. There is no cross subsidisation between professions or National Boards. Prior to the start of the national scheme, the Australian Health Workforce Ministerial Council issued a formal policy direction that AHPRA is bound by, to clarify the financial arrangements to apply to registered health practitioners whose principal place of practice is in New South Wales as a result of the decision of New South Wales to become a co-regulatory jurisdiction for Part 8 of the National Law.

We note that under the Bill, provision is made for the transfer of a proportion of fees payable by health practitioners based in Queensland to the Health Ombudsman to reflect the reasonable cost of the ombudsman performing functions related to the health, performance and conduct of registered health practitioners that would otherwise have been performed under the National Law by the National Boards and AHPRA. That is, for dealing with the most serious complaints about registered health practitioners, while the National Boards deal with all others. A transitional provision is included for transfer of some fees for a part-year, if the Act commences during a financial year.

The Queensland Health Minister has authority under the Bill to decide for each profession, the proportionate amount of fees payable by health practitioners based in Queensland that should be transferred. The requirement that the Health Minister must consult with his Ministerial Council colleagues as well as AHPRA and the National Boards before taking the decision is necessary given the national operation of this scheme.

The approach would appear consistent with the policy direction already issued for similar fee transfer arrangements in NSW as a co-regulatory jurisdiction. However, AHPRA and the National Boards advise that this does not (and cannot) address the possibility that, in the future, costs associated with the Health Ombudsman managing the most serious complaints could be lower or higher than would have otherwise been the case had the National Boards and AHPRA continued to deal with all matters.

If the costs become higher as a result of the functions being undertaken by the Health Ombudsman in Queensland, AHPRA and the National Boards will need to consider whether there is a case to increase fees payable by health practitioners and potentially for those practitioners based in Queensland. It has previously been agreed with the Ministerial Council that any fee increase above national consumer price index (CPI) would require an opportunity for consideration by Ministers on the basis of a business case.

AHPRA and the National Boards do not support any component of national registrant fees being used to pay for the establishment and infrastructure of the new Health Ombudsman and office. We understand that neither the Queensland Health Minister, nor his department, is proposing this occur, and the Queensland Government will meet the cost of implementation and the majority of costs for the operation of the new complaints

management system in Queensland. We note that the explanatory notes for the Bill indicate that implementation is intended to be cost neutral for government.

### **Need for a timely but careful transition to the new complaints management system**

The Queensland Health Minister has moved quickly to introduce this Bill and we understand the desire for the new complaints management system to be implemented in a timely way.

A move to a co-regulatory model for complaints handling in Queensland requires careful planning and a reasonable period of time to ensure a set of workable arrangements that will deliver the results the Queensland Health Minister is seeking. Based on our recent experience in establishing the National Scheme, we highlight the importance of a planned transition to the new complaints management system in Queensland, the need to carefully manage the risks associated with implementing this change to complaint handling in Queensland, and for this transition not to be driven by a fixed commencement date.

Therefore AHPRA and the National Boards support the Bill commencing on proclamation *at least* 6 months after assent. This will provide a reasonable but critical period for AHPRA and the National Boards to work with Queensland Health and the new Health Ombudsman on arrangements to support a smooth transition. In the period between assent and proclamation (if passed by the Queensland Parliament), AHPRA and the National Boards will finalise our review of relevant policies and guidelines, operational procedures and our IT systems, to ensure that the Queensland changes are supported.

Commencement of parts of the Act on proclamation would also provide an opportunity for the appointment of the new Health Ombudsman and establishment of the office, in advance of the substantive provisions taking effect. Not only would this support the desire for a seamless transition, it would also provide necessary time to address or 'iron out' any remaining interface issues between the national notifications system and the new complaints management system in Queensland that the Health Ombudsman will be primarily responsible for.

Transitional arrangements are critical to ensuring there are suitable arrangements, trained staff, and systems in place to effectively and efficiently support the new arrangements. AHPRA and the National Boards note the transitional provisions in the Bill for notifications that have been received but not yet referred to a National Board, and the requirement for National Boards to advise the Health Ombudsman of all serious notifications with 28 days of the commencement. It will be important for the 28 days to apply from commencement of the substantive provisions of the new legislation and not from any early commencement of other provisions for the appointment of the ombudsman and establishment of office. This will ensure that up-to-date advice is given on these in-train serious matters, and that our systems have been revised to support the issue of this advice and transfer of matters to the health ombudsman, where required.

### **Public hearings on the Bill**

In closing, we welcome the opportunity to discuss any aspect of this joint response on the Bill if the Committee would find it helpful; including at the upcoming July public hearings.

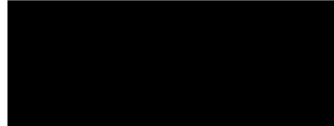
It may please the Committee for representatives from both AHPRA and the National Boards to attend the hearing or otherwise provide further information. We recommend you invite Mr Martin Fletcher, Chief Executive Officer, AHPRA; Mr Chris Robertson, Director National Board Services & Queensland, AHPRA; and Dr Joanna Flynn, Chair, Medical Board of Australia.

Thank you again for the opportunity to provide this joint response on the Bill, which we note may be published on the Committee's website.

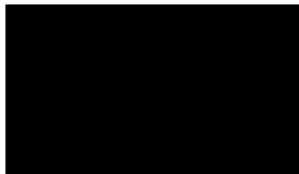
Yours sincerely



**Martin Fletcher**  
Chief Executive Office



**Peter Allen**  
Chair, Agency Management Committee



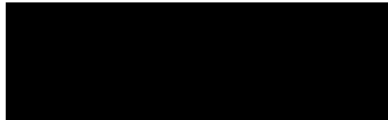
**Mr Stephen Marty**  
Chair, Pharmacy Board of Australia;  
Chair, Forum of National Board Chairs



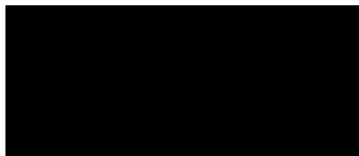
**Mr Peter Pangquee**  
Chair, Aboriginal and Torres Strait Islander  
Health Practice Board of Australia



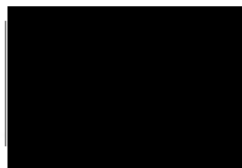
**Professor Charlie Xue**  
Chair, Chinese Medicine Board of Australia



**Dr Phillip Donato OAM**  
Chair, Chiropractic Board of Australia



**Dr John Lockwood AM**  
Chair, Dental Board of Australia



**Dr Stephen Bradshaw**  
Acting Chair, Medical Board of Australia



**Mr Neil Hicks**

Chair, Medical Radiation Practice Board of Australia



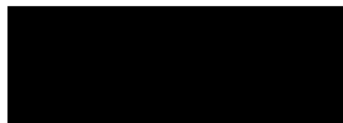
**Ms Anne Copeland**

Chair, Nursing and Midwifery Board of Australia



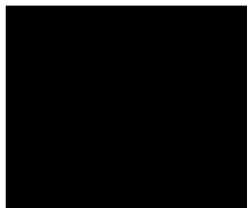
**Dr Mary Russell**

Chair, Occupational Therapy Board of Australia



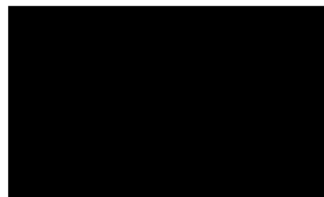
**Mr Colin Waldron**

Chair, Optometry Board of Australia



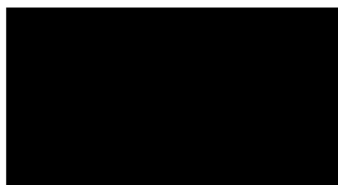
**Dr Robert Fendall**

Chair, Osteopathy Board of Australia



**Mr Paul Shinkfield**

Chair, Physiotherapy Board of Australia



**Ms Cathy Loughry**

Chair, Podiatry Board of Australia



**Professor Brin Grenyer**

Chair, Psychology Board of Australia