



AUSTRALIAN MEDICAL ASSOCIATION
(SOUTH AUSTRALIA) INC.
ABN 91 028 693 268

AMA(SA) SUBMISSION TO THE QUEENSLAND PARLIAMENT AND COMMUNITY SERVICES COMMITTEE INQUIRY INTO THE HEALTH OMBUDSMAN BILL 2013

AMA(SA)

The Australian Medical Association (South Australia) Inc (AMA(SA)) is a medico-political membership organisation representing the range of doctors across specialist practice, including general practice; doctors in training; academia; public and private practice within South Australia. We are affiliated under our constitution with the federal Australian Medical Association.

We note the invitation to provide comment on the proposed Health Ombudsman Bill 2013 (Qld) ('the Bill') and welcome the opportunity to make our submission on this important matter as it will impact on any of our members who may be currently located in Queensland, or practice in Queensland as well as in South Australia, or those contemplating moving interstate.

We note and support the valuable and detailed submission made by our colleagues, AMA Queensland, and therefore provide further supplementary comments for your consideration.

Background Comment

Firstly, we note that the Queensland government has made several changes to its health complaints and regulatory mechanisms over the past 7 years. This latest development is being considered within 2 years of the commencement of the national regulatory scheme. The rate of change over this relatively short period has potential to cause ongoing confusion as well as loss of developed expertise within the regulatory framework.

Whilst there were significant problems identified by the Chesterman, Forrester and Hunter reviews, we understand many of the complaint matters pre-dated the commencement of the national regulatory scheme and in fact the Medical Board in Queensland had considerably improved its processes in the months leading up to the board's resignations.

The above context is important as the considerable shift being proposed to a co-regulatory model and the risks inherent in the proposed Bill must be weighed in the context of an objective and proper analysis of the problems and possible remedial actions.

For this reason we recommend that the Minister and the Queensland parliament pause and reflect on the objectives of the review and whether, with appropriate measures, the existing medical board roles and functions can be maintained with appropriate amendments, to preserve national consistency if possible, (recognising the different approach in New South Wales to complaints management).

If this is not considered reasonable due to the amount of community and political pressure for change, we would urge consideration of the following comments which we respectfully submit.

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Public and Professional Trust

The Bill provides that the Minister may direct the Health Ombudsman to undertake an investigation or formal inquiry (s18 (2)). There appears to be no fettering of the Minister's powers in this regard. The Health Ombudsman also has no discretion to make an independent judgement. This is inconsistent with other co-regulatory models (for example the NSW *Health Care Complaints Act* (1993), the Health Care Complaints Commission (HCCC)). The relationship in NSW between the regulatory body and the HCCC has proven successful in that state whilst preserving public confidence by the absence of any powers to allow Ministerial directions or control over the process.

It is a fundamental principle for any professional group that there is a self-regulation model. The architecture of this may vary but in essence the professions must be regulated and assessed by their peers. Regulation decisions based on the expertise, advice and experience of members of the same professional group is a critical factor. Such decisions include the threshold decisions taken to register, impose conditions or limitations or seek removal of registration. The Bill in its present form places significant power in the Minister to substitute his or her determination with no reference to how such determinations may be made.

The capacity of the Minister to direct an independent officer such as an Ombudsman is inconsistent with the usual understanding of the powers of an Ombudsman's Office and with respect we seek removal of S28(1) from the Bill.

Investigating Bodies

Further to the above, whilst we note under s14(6) matters *may* be referred to AHPRA for investigation, this is not compulsory and indeed the regulator body, which maintains responsibility for the ongoing registration requirements, may not be included in any proceedings.

Further, it is also unclear as to whether matters discussed and agreed between parties under conciliation may also be revealed to the professional regulatory body or agency at any time.

The creation of divided and separate pathways to reach outcomes will lead to fragmentation of the overall governance surrounding the regulation of any health professional and should be highlighted as a potential for confusion. The subsequent creation of 'gaps' in the system is a potential future problem and will in all probability result in some role confusion, something the Forrester report highlighted as problematic.

Reporting

We note S25d and s25f(3) refer to the monitoring and reporting on the performance of the Medical Board and AHPRA. In the absence of any indicators it is unclear what indices the Health Ombudsman will report, but it is assumed the remaining functions of registration determinations and other functions outside of the Health Ombudsman's powers will be examined. The intended governance and relationship that between the Medical Board of Australia, AHPRA, the state-based Medical Board office, the Office of the Health Ombudsman, the Parliamentary Committee, the Queensland Minister and the Queensland Parliament are unclear.

Medical Expertise

S 29 of the Bill proposes that the Health Ombudsman 'may' establish committees and panels to advise about clinical matters. We would support some referral to the Medical Board for either the forming of the panel or to use any existing resources within the Board or Agency with perhaps additional expertise sought in conjunction with the health Ombudsman's Office.

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Privacy and Interstate matters

We note with concern s 87 providing powers for the Minister to seek and be provided with documents created for the purpose of investigations. The provision of matters arising in an investigation to a Minister who also has the power to initiate such investigations creates a perception of political influence over the 'independent' regulator. It also creates a significant perception of conflicts of interest where a medical practitioner is also employed by the state or has other dealings with the state. Preservation of natural justice considerations and confidentiality as well as respect for legal professional privilege should not be so broadly threatened in a manner such as appears possible under this bill.

In addition, s172 allows for a further reach by the Minister, via the National Board and Agency, to inquire on any medical practitioner who *may* practice in Queensland from time to time. The Minister may seek details from interstate bodies on issues personal to that individual's regulation status.

We have concerns that such a power has potential to cause an invasion of privacy of those health professionals interstate. This may well deter practitioners from seeking to practice within Queensland, not on the basis of any professional issue, but on the basis of personal privacy considerations. S175(3) provides for details to be sought by the Minister of events occurring outside of Queensland. These matters have no bearing on the Queensland community nor may they present a risk. Such matters may go to the health of the practitioner or relatively minor issues considered and managed by other state regulatory authorities. This potentially exposes the doctor to a 'double jeopardy' process by the Minister and any state advisory body. We respectfully seek further consideration and removal of this section.

Funding

The Bill introduces a new statutory office with the power to investigate the health, conduct and performance of registered health practitioners and others, including services from (non-regulated) persons. The office will no doubt require significant establishment and ongoing funding. There is a proposal that such funding will be 'cost neutral' to government. The nearest similar system is in New South Wales where we understand there is significant state government funding into the office. The establishment of a new statutory officer with new advisory structures and processes will require significant costs and we are doubtful such duplication can be wholly funded from the existing fee structure. An alternate funding source is most likely but any extra impost through registration fees upon the health professions for the operation of this new office should not be considered.

In conclusion, we understand the need to have such a review and the importance of ensuring public and professional confidence in the governance of the medical profession and all health professional groups. We are supportive of the self-regulatory model with additional mechanisms to meet this objective rather than a co-regulatory model. We are particularly concerned in relation to preserving medical expertise in any steps of the decision process and strongly oppose the powers of influence provided to the Minister within the current Bill.

Thank you for the opportunity to provide the above comments which are submitted in the interest of informing the review process. We wish the government and those associated and affected by any changes every success in achieving the intended outcomes.

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