APS Australian Psychological Society

Submission by the Australian Psychological Society to the Queensland Parliament Health & Community Services Committee

Health Ombudsman Bill 2013

Contacts:

Dr Louise Roufeil, Executive Manager, Professional Practice (Policy)
[redacted]

Mr Bo Li, Senior Policy Advisor, Professional Practice
[redacted]

Ms Fiona Cameron, Policy Officer, Professional Practice
[redacted]

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Level 11, 257 Collins Street
Melbourne VIC 3000
PO Box 38
Flinders Lane VIC 8009
T: (03) 8662 3300
F: (03) 9663 6177
www.psychology.org.au

1 Introduction

The Australian Psychological Society (APS) is the largest professional organisation for psychologists representing over 21,000 members. The APS has been active in representing the profession in, and providing feedback and submissions to, the development of the Australian Health Practitioner Regulation Agency (AHPRA) and also its interaction with associated state and territory health complaints bodies.

The APS thanks the Health and Community Services Committee for the opportunity to make a submission to Health Ombudsman Bill 2013 (the Bill). The APS has provided feedback previously on the consultation process prior to the writing up of the Bill.

In its submission to the consultation, the APS expressed its support of the Queensland Government's initiative to enhance the protection for consumers, but was not persuaded that establishing a co regulatory mechanism in Queensland was the best way forward. The APS had the following comments:

- The lack of rationale for the switch to a co regulatory system which fails to provide evidence that AHPRA has been ineffective in dealing with complaints against registered health practitioners in Queensland
- That existing complaint handling mechanisms in Queensland be strengthened in response to the issues, instead of the introduction of a co regulatory system, which may include:
    - Increased communication between AHPRA and the Queensland Health Quality and Complaints Commission
    - Improved referral processes between AHPRA and the Commission to enhance consumer protection.
- The co-regulatory approach can potentially negate the benefits associated with national registration, such as having a national database of de registered health practitioners and those with limitations or conditions on their practice
- A co regulatory mechanism potentially has the effect of transferring at risk health practitioners from Queensland to other jurisdictions, and therefore exposing other consumers to risk.

2 General Comments on the Bill

Given that it appears a co-regulatory system will be implemented in Queensland, the APS would like to ensure that the proposed legislation strikes the right balance between the protection of consumers and a fair complaints process for practitioners. Complaint processes must be accessible, efficient and timely from a consumer perspective while the practitioners under investigation must have procedural fairness and natural justice throughout the investigations process.

In order for the co regulatory system to be effective there must be sufficient education at the complaint level to reduce confusion for the public and practitioners, in addition to meaningful communication between the Ombudsman and AHPRA to ensure an efficient complaints handling process. One of the policy objectives of the establishment of the Ombudsman is to "remove the existing role confusion between complaints entities" *(Explanatory Notes p.2)*, however, it is unclear whether the creation of the Ombudsman will in fact remedy the issue of role confusion. For example, a notification may be given to AHPRA, then is referred to the Ombudsman in accordance with the new system, but then is considered to be within the jurisdiction of AHPRA and may be referred back. This weakens the Health Practitioner Regulation National Law Act 2009 (National Law) and decreases protection for consumers.

It is essential with the introduction of a co-regulatory system that Queensland consumers and practitioners are fully aware of the changes to the health complaints system. A communications strategy must be developed in order for consumers and practitioners to understand the differences between their rights and requirements with the current National Law Act and the new Health Ombudsman legislation.

If role confusion is not dealt with, cross border issues will become apparent. There needs to be education and clarification for consumers and practitioners that work and live or receive services near borders/between Queensland and another state. For example, if a practitioner works for a health service in Mt Isa and provides health services to some of the rural areas across the border in the Northern Territory, it must be clear to the public whether the notifiable offence is under the National Law in NT or the Ombudsman in Queensland.

In addition, to ensure a streamlined process the Ombudsman must develop jointly enforceable conditions and remain in constant communication with AHPRA. In line with protecting the public and minimising risk, communication must also include a way of maintaining Queensland as part of the national database of de registered health practitioners and those with limitations or conditions on their practice in order to protect the public.

3 Specific Comments on the Bill

3.1 Definition of 'health service'

The APS is concerned about the ambiguity of the definition of 'health service' and how this relates to health practitioners' conduct. As stated in section 25(a), the Ombudsman's functions include "to receive health service complaints and take relevant action". As the Bill is intended to include both health practitioners under National Law and other individuals who provide health services (s. 8 (a)), it is implicit that the intent of the law is to cover health services, including both health service providers *and* their conduct (as no other Queensland legislation covers un regulated and self-regulating health professions). However, health practitioner conduct is not included explicitly in the Bill. This has implications for how the entire Bill may be interpreted and applied.

Recommendation: The health services defined in the legislation to explicitly include health practitioner conduct.

3.2 Mandatory notification

The APS commends the Bill (s.326 (25)(3)) for the insertion of conditions applying to mandatory notification by another health practitioner where the second practitioner is providing a health service to the first. The condition ensures protection to the public by allowing the professional to seek help voluntarily from their professional peers and other health practitioners without the fear of being reported.

Assuming the Bill covers practitioner conduct (as stated in comment 3.1), the APS recommends that the Bill be extended to provide for other exceptional circumstances where notification increases rather than decreases risk to the public. For example:

i. Potential breach of professional trust between a practitioner and a patient, such as when a patient confides to Practitioner A the incidence of sexual assault by Practitioner B, but declines to lodge a formal complaint with the Ombudsman or the police and even threatens suicide if Practitioner A reports Practitioner B on the patient's behalf as required under the National Law. This situation also has the potential to re traumatise the patient or exacerbate symptoms, prolonging, if not destroying, the established therapeutic process with the patient.
ii. Achieving compulsion to act on hearsay information, such as when a spouse reports Practitioner A's alleged drug addiction to Practitioner B
iii. Undermining legitimate quality supervision and mentoring by employers of underperforming professional staff due to the practitioner's reluctance to seek such support for fear of being reported.

Recommendation: A provision in the legislation should be included to limit the mandatory notification requirement in specific circumstances where undesirable consequences are involved.

3.3 Power to require information

Confidentiality of records

The APS is concerned about Part 5 of the legislation s. 48(1), which enables the Ombudsman to "give notice to the practitioner's employer requiring the employer to give particular files to the health ombudsman." The APS sees it as important to ensure the protection of client and practitioner confidentiality in how notifications are monitored and investigated. There should be further detail in the Bill which limits intrusions into professional practice that threaten patient confidentiality and protection of personal information though the requisition of patient information by the Ombudsman. For example, in the case of psychologists, we recommend that files pertaining to clients of a psychologist should be read by a psychologist or in the case that this is not feasible, by another registered health practitioner.

Recommendation: A provision in the legislation should include that "patient files supplied to the Ombudsman should, where possible, be read only by an investigator of that professional background, or in the second instance, by another registered health practitioner."

Stated period

With regard to section 48(2), the APS is very concerned about the 14 day turnaround for practitioners to respond to information requests by the Ombudsman. Whilst the rationale is to ensure the prompt initial processing of complaints, principles of natural justice assert that practitioners should be given sufficient time to understand the allegation, contact insurers, engage and brief lawyers, arrange necessary meeting times, and to prepare the information requested. For a matter that potentially impacts on a professional's livelihood, the time to respond should be extended beyond the 14 day limit, which would provide practitioners with a reasonable period of time to understand and prepare information relating to the allegations that have been made against them. It should also be noted that this time limit be applied from when the practitioner receives notice of this request and not when from when the request was sent.

Recommendation: The legislation should be amended to extend the stated period for practitioners to respond to requests for information to 28 days from receiving notice of the request.