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Your Ref:

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Dear Mr Ruthenberg

Health Ombudsman Bill 2013

Thank you for the opportunity to provide a submission on the Health Ombudsman Bill 2013.

Medical Insurance Group Australia is a national provider of Medical Indemnity Insurance to Medical Practitioners and other clients around Australia. It has a breadth of experience in assisting medical practitioners and other health providers with legal and ethical issues arising from practice. This includes assistance with investigations by AHPRA and the Medical Board of Australia (the Board) nationally.

MIGA has received correspondence from members expressing concerns about the Health Ombudsman Bill 2013.

In this submission we concentrate on two of the more significant concerns:

The National Law became operational relatively recently with the purpose of unifying the national regulation of health practitioners. The Bill creates a complaints resolution system which is outside of that set by the National Law and detracts from national consistency in complaints management.

More significantly we ask you to note our concern about the Health Ombudsman's power to take immediate action without undertaking a show cause process. All citizens are entitled to national justice and in this Bill in some areas on the face of it natural justice is denied.

Medical practitioners are acutely sensitive about being the subject of investigation and natural justice and procedural fairness should underpin the investigation process. As drafted we have no confidence these principles can be adhered to.

These concerns are compounded by the Health Ombudsman not having access to the expertise and clinical input necessary to make an informed view.

MIGA

Letter to Mr Trevor Ruthenberg MP

We understand the paramount guiding principle for administering the Act is the safety of the public. We also understand the objective to promote professional safe and competent practice, high standards of service delivery and public confidence in the management of complaints. These can be, and currently are being achieved while maintaining the principles of procedural fairness. MIGA is concerned with the unfettered and unilateral power of the Health Ombudsman to take immediate action without undertaking the show cause process.

The Bill in its current form allows:

- The Health Ombudsman (HO) to take immediate registration action to suspend or impose conditions on a health practitioners registration where the practitioner poses a serious risk to the public
- The immediate registration action to be taken without the HO undertaking a show cause process where the HO is satisfied to do so is necessary to ensure the health and safety of the public
- The HO to take this action at any time with or without a complaint being received.

The HO is able to exercise this power without the health practitioner being afforded the opportunity to respond to the concerns or complaint. In our submission this is a clear denial of procedural fairness to the practitioner. Of equal concern is that the legislation in its current form does not have sufficient checks and balances to ensure this power is properly used.

It is imperative there is sufficient provision in the legislation to ensure that practitioners are treated fairly through the complaints handling process.

This would be aided by removing the power to take immediate action without notice to the practitioner (which is the current proposal) and instead allow a show cause process (as currently exists), with time frames accommodating the perceived risk to the public.

We find it surprising there is no timeframe within which QCAT must review the immediate action decision of the HO. In our view this needs to be remedied.

Any action taken to suspend a health practitioner's registration will have serious ramifications on their professional and personal life and finances and there must be some balance with this and the duty to protect the public.

MIGA recommends that the sections relating to immediate registration action mirror the current section 156(2) of the *Health Practitioner Regulation National Law 2009 (Qld)* ('the National Law') which would require the HO to comply with the show cause process (section 157 of the National Law) without exception.

Finally we make a comment about the timeframes.

A key objective of the Bill is to establish a system that deals with complaints expeditiously. We endorse a system which improves the complaint handling process and mandates timely and efficient complaints handling. The integrity of the investigation, procedural fairness, transparency, comprehensive and thorough investigation must not be compromised however by the need to comply with stringent and unrealistic timeframes.

Those responsible for working within the new system must be appropriately resourced to ensure the timeframes can be met whilst ensuring transparency and procedural fairness is afforded to all parties in the process.

MIGA

Letter to Mr Trevor Ruthenberg MP

We trust you are in a position to take these submissions into account.

Yours sincerely



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