

Health and Other Legislation Amendment Bill (No. 2) 2023

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Mr Aaron Harper MP
Chair
Health and Environment Committee
Parliament House
George Street
Brisbane QLD 4000

Email sent to: hec@parliament.qld.gov.au

Dear Mr Harper

Submission on proposed amendments to the *Hospital and Health Boards Act 2011 (Qld)*

I refer to the email from the Health and Environment Committee dated 4 December 2023 inviting submissions to the Committee regarding the *Health and Other Legislation Amendment Bill (No. 2) 2023 (HOLAB No.2)*.

I note that HOLAB No.2 includes the following amendments to the *Hospital and Health Boards Act 2011 (HHB Act)* to:

- Require a Quality Assurance Committee (QAC) to disclose information about a health professional to their chief executive where the QAC reasonably believes that the health professional's health, conduct or performance poses a serious risk of harm to a person;
- Clarify that the chief executive of Queensland Health may, after considering a report from a clinical review or health service investigation conducted in a Hospital and Health Service, take the action the chief executive considers appropriate in relation to the matters identified in the report.
- Ensure that key findings, recommendations and lessons learned from root cause analyses of serious clinical incidents can be shared with relevant staff across Queensland Health.

My previous submission about proposed amendments to the *Hospital and Health Boards Act*

I confirm that I made a detailed submission dated 26 September 2023 to the legislative policy unit at Queensland Health about the proposal to require a QAC member to notify their executive lead if he or she formed a reasonable belief that a health professional poses a serious risk of harm to a person because of the health professional's health, conduct or performance. I proposed that the QAC should also be required to notify the Health Ombudsman, if they formed such a reasonable belief. I remain of the view, that the amendment proposed is not sufficient on its own, in matters where serious risk arises. This is because the proposed amendment relies on the practitioner's chief executive taking immediate steps to prevent the practitioner from continuing to provide health services and informing the OHO of the conduct as a matter of urgency.

It is not unusual for health professionals to work at other locations, including private practice. Therefore, amending the HHB Act to allow for notification to the practitioner's chief executive, will not always be sufficient. If QAC members are permitted to immediately notify my office, I can take then immediate action¹ where necessary, to protect public health and safety, which is a key function under the *Health Ombudsman Act 2013*.

Notifications to the chief executive by QAC members

In September 2023 it was proposed that the amendments to the HHB Act would require a QAC member to notify their chief executive if they formed a reasonable belief that an **unregistered health practitioner** posed a serious risk of harm. I note however that the Bill now provides that if a chief executive is advised by a QAC member that they reasonably believe that a health practitioner poses a serious risk of harm as above, they are **prohibited from notifying anyone under section 85A(4) except:**

(i) to the extent necessary to allow the chief executive to perform the chief executive's functions under this Act or the Public Sector Act 2022; or

(ii) for the purposes of making a notification about the health professional under the Health Practitioner Regulation National Law (Queensland), part 8, division 2; or

(b) if the chief executive is the chief executive of a private health facility—

(i) to the extent necessary to allow the chief executive to perform the chief executive's functions relating to the management of the facility; or

(ii) for the purposes of making a notification about the health professional under the Health Practitioner Regulation National Law (Queensland), part 8, division 2.

Therefore section 85A allows for the chief executive (after receiving a notification from a QAC member) to make a notification to the Health Ombudsman about a **registered** health professional.

However, the effect of section 85A is that the chief executive of a health service facility is **prohibited from notifying the OHO** if the health professional (who may pose a serious risk of harm) is **unregistered**.

The OHO is the central point for all health service complaints in Queensland. It is also the only government agency in Queensland which regulates unregistered health practitioners. If a chief executive of a health service facility is prohibited from notifying the Health Ombudsman about an unregistered health practitioner who may pose a serious risk of harm, the OHO will be prevented from achieving the main objects of the Act and I will be unable to fulfil my functions as Health Ombudsman.

The proposed amendment is therefore inconsistent with the main objects of the *Health Ombudsman Act 2013*, which include protecting the health and safety of the public and promoting professional, safe and competent practice by health practitioners. It is completely inappropriate for the chief executive of a health service facility to be prohibited from advising the OHO in these circumstances. For example, the chief executive may determine the action to be taken within the health facility and in respect of the employment contract of the unregistered health practitioner however, they are unable to prohibit the individual from providing unrestricted health services in Queensland.

¹ Part 7 *Health Ombudsman Act 2013*

Proposed amendment to HOLAB no.2


Accordingly, it is imperative that section 85A of HOLAB no.2 be amended:

- To allow QAC be able to disclose to the Health Ombudsman at the same time as disclosing to the Chief Executive when they form a reasonable belief that a health professional, in the practice of the health professional's profession, poses a serious risk of harm to a person because of the health professional's health, conduct or performance; and
- allow for the chief executive of a health service facility to notify the Health Ombudsman that a QAC member has concluded that an unregistered health practitioner poses a serious risk of harm to a person or, if proposal above is considered appropriate, allow QAC to report to the Health Ombudsman at the same time as reporting to the Chief Executive.

I am happy to provide the Committee with any further information or points of clarification if this would be of assistance.

Thank you for the opportunity to make a submission.

Yours sincerely



Dr Lynne Coulson Barr OAM
Health Ombudsman