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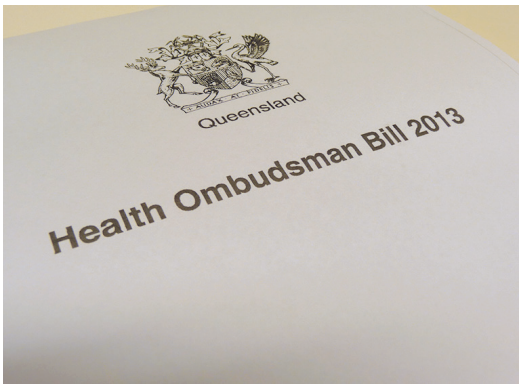

Health Ombudsman Bill 2013

Report No. 27
Health and Community Services Committee
August 2013

Parliamentary Committees

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Acknowledgements

The committee thanks those who briefed the committee, made submissions, gave evidence and participated in its inquiry. In particular the committee acknowledges the assistance provided by the Department of Health.

Contents

Abbreviations

AHPRA	the Australian Health Practitioner Regulation Agency
AMA	Australian Medical Association
the Bill	the Health Ombudsman Bill 2013
the Department	the Department of Health
the committee	the Health and Community Services Committee
the HQCC Act	the *Health Quality and Complaints Commission Act 2006*
HQCC	the Health Quality and Complaints Commission
the Minister	the Minister for Health
the National Boards	the 14 National Boards which are responsible for regulating health professions in Australia. The primary role of the National Boards is to protect the public; they set standards for registration that all registered health practitioners must meet
the National Law	the Health Practitioner Regulation National Law (Queensland)
the National Scheme	The National Registration and Accreditation Scheme for registered health practitioners established under the National Law
Non-registered health practitioners	Health practitioners who are not required to be registered under the National Scheme
QCAT	Queensland Civil and Administrative Tribunal

Chair's foreword

On behalf of the Health and Community Services Committee of the 54th Parliament of Queensland, I present this report on the Health Ombudsman Bill 2013.

The Health Ombudsman Bill 2013 was introduced into the Legislative Assembly by the Minister for Health on 4 June 2013. The committee was required to report to the Legislative Assembly by 12 August 2013.

The Bill repeals the *Health Quality and Complaints Commission Act 2006,* and reforms the system for managing complaints about health services in Queensland. Those reforms include creating the statutory position of Health Ombudsman as the single agency which receives health service complaints. The Health Ombudsman would investigate the most serious complaints, some of which are currently investigated by the National Boards for registered health professions.

The Bill would also expand the oversight role of this committee. Currently, the Health and Community Services Committee has responsibility under Standing Order 194A for oversight of the Health Quality and Complaints Commission. The Bill sets out functions for the committee, which include monitoring and review of the Health Ombudsman and, in relation to health, conduct and performance of registered health practitioners in Queensland, the fourteen national registration boards and the Australian Health Practitioner Regulation Agency. In addition, the committee has the function of advising the Minister about appointment of the Health Ombudsman.

In considering the Bill, the committee's task was to consider the policy to be given effect by the Bill, and whether the Bill has sufficient regard to the rights and liberties of individuals and to the institution of Parliament.

I acknowledge the contribution of former committee member, Mr Steve Davies MP, who ceased to be a member of the committee between adoption of this report and its tabling in the Legislative Assembly. On behalf of the committee, I thank those who made written submissions on this Bill and gave evidence at its public hearing. Thanks also to officials from the Department of Health, the committee's staff and the Technical Scrutiny secretariat.

I commend the report to the House.

Trevor Ruthenberg MP
Chair

August 2013

Recommendations and comments

1 Introduction

1.1 Role of the committee

The Health and Community Services Committee (the committee) was established by resolution of the Legislative Assembly on 18 May 2012, consisting of government and non-government members.

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Bill, and
- the application of the fundamental legislative principles to the Bill.

1.2 Committee process

The Health Ombudsman Bill 2013 (the Bill) was referred to the committee on 4 June 2013, and the committee was required to report to the Legislative Assembly by 12 August 2013.

The Department's officials briefed the committee about the Bill on 11 June 2013. The committee called for submissions by notice on its website, and wrote to 48 stakeholder organisations to invite submissions. Twenty-nine submissions were received (see list at Appendix A). The committee held a public hearing on 12 July 2013 at Parliament House, Brisbane and heard from eleven witnesses (see list at Appendix B).

The committee invited the New South Wales Health Care Complaints Commissioner (HCCC), Mr Kieran Pehm, to brief the committee and answer questions. A videoconference briefing was held on 30 July 2013.

Transcripts of the briefings provided by the Department on 11 June, the HCCC on 30 July and the public hearing on 12 July 2013 are published on the committee's webpage. Submissions received and accepted by the committee are also published on the webpage at www.parliament.qld.gov.au/hcsc.

2 Overview

2.1 Policy objectives of the Health Ombudsman Bill 2013

The Explanatory Notes to the Bill state that its primary policy objective is to strengthen the health complaints management system in Queensland. The Bill provides that the paramount guiding principle in administering the legislation is the health and safety of the public (clause 4 of the Bill).

2.1.1 Health complaints system

The outcomes of three inquiries (summarised in Section 3 below) highlighted deficiencies in the existing health complaints system. The Explanatory Notes to the Bill state that there are confused roles between the existing health complaints entities and inadequate transparency and accountability in the health complaints system.[1] In his introductory speech, the Minister for Health said that the Bill would remove the role confusion between complaints entities, and address the issues of lack of oversight of the Queensland Board of the Medical Board of Australia.[2] The existing health complaints entities are the Health Quality and Complaints Commission (HQCC), the Australian Health Practitioner Regulation Agency (AHPRA) and the National Boards for each of the 14 registered health professions. The roles of those entities are outlined in Section 3 of this report.

If passed, the Bill would repeal and replace the *Health Quality and Complaints Commission Act 2006,* (HQCC Act) and the *Health Practitioners (Disciplinary Proceedings) Act 1999* and modify the *Health Practitioner Regulation National Law Act 2009,* as it applies in Queensland (the National Law). The Bill would provide that Queensland is a co-regulatory jurisdiction under the National Law. The Bill would have no impact on the operation of the National Law in other States and Territories. The only other co-regulatory jurisdiction is New South Wales.

A new statutory position of Health Ombudsman would be established. The Health Ombudsman would have a wider complainant management role than the current HQCC – including the ability to take *immediate action* – if necessary to protect the public, management of the most serious complaints about registered health practitioners, which are currently managed by registration boards, and referral by the Director of Proceedings to the Queensland Civil and Administrative Tribunal (QCAT). The Health Ombudsman would also be able to take disciplinary action against health practitioners who are not required to be registered under the National Scheme (non-registered health practitioners). These aspects of the Bill, and the views of stakeholders, are discussed in later sections of this report.

2.1.2 Oversight of the health complaints system

The Bill is intended to strengthen oversight of the health complaints system, and provides for monitoring, oversight and review functions for the Health Ombudsman, the Minister and the parliamentary committee. Those functions are summarised below. More detailed discussion, including stakeholders' views, is in Section 14 of this report.

One of the functions of the Health Ombudsman is to monitor the performance of the national registration boards (the National Boards) and AHPRA's performance of their functions relating to the health, conduct and performance of registered health practitioners in Queensland.

1 Explanatory Notes, Health Ombudsman Bill 2013, p.1, available at https://www.legislation.qld.gov.au/Bills/54PDF/2013/HealthOmbudsmanB13E.pdf

2 Legislative Assembly of Queensland, *Hansard,* 4 June 2013, p.1899 (Hon. Lawrence Springborg MP, Minister for Health), available at http://www.parliament.qld.gov.au/documents/hansard/2013/2013_06_04_WEEKLY.pdf

The Bill provides that the Minister's function is to oversee the effective and efficient management of the health complaints system, the performance of the Health Ombudsman and the performance of the National Boards and AHPRA relating to health, conduct and performance of registered health practitioners in Queensland. The Minister's role is also to keep Parliament and the community informed on these matters. The Bill enables the Minister to request information or reports to perform those functions.

In addition, the Bill provides for the parliamentary committee to monitor and review the operation of the health complaints system, including the performance of the health complaints entities, and to advise the Minister about the appointment of the Health Ombudsman.

2.2 Should the Bill be passed?

Standing Order 132(1)[3] requires the committee to recommend whether the Bill should be passed. The committee considered the policy changes which the Bill would implement, as well as the application of fundamental legislative principles. The evidence considered by the committee is summarised in this report. After considering the Bill, a briefing by the Department, submissions, the Minister's response to questions about fundamental legislative principle issues, evidence provided at a public hearing and other material, the committee has decided to recommend that the Bill be passed.

Recommendation 1

The committee recommends that the Health Ombudsman Bill 2013 be passed.

3 Legislative Assembly of Queensland, *Standing Rules and Orders of the Legislative Assembly*, as amended 4 June 2013, available at http://www.parliament.qld.gov.au/work-of-assembly/procedures

3 Background to the Bill

3.1 *Health Quality and Complaints Commission Act 2006*

The Health Ombudsman Bill will repeal the HQCC Act, which came into effect in July 2006. In addition to the HQCC's health complaints role, the HQCC Act provides for the HQCC to make standards and monitor the quality of health services.

Those arrangements followed the report of the Queensland Public Hospitals Commission of Inquiry,[4] conducted by Hon Geoffrey Davies AM, and the Queensland Health Systems Review, (the Forster Review),[5] both published in late 2005.

The Forster Review proposed changes to roles and responsibilities for clinical governance in Queensland, which included a health commission to be established under new enabling legislation as part of an external governance framework for the health system. The proposed commission would assume the role of the then Health Rights Commission, "as well as oversee the development and implementation of quality, safety and clinical practice standards through the state's public and private health facilities".[6] In response, the HQCC Act brought together management of health complaints and the making of standards as mechanisms to improve the quality of health services.

National standards, made by the Australian Commission for Safety and Quality in Health Care (ACSQHC), have replaced all but three of the standards made under the HQCC Act. The HQCC has progressively 'retired' its monitoring against standards as the ACSQHC national standards role has been implemented. At the time of writing, the HQCC had three standards which apply to public and private hospitals.

The health complaints arrangements in the HQCC Act are broadly similar to the Health Rights Commission, which preceded the HQCC. Amendments to the HQCC Act since 2006 have modified complaint management, particularly to align complaints processes with the national registration and accreditation scheme.

While the Bill would make some significant changes to the health complaints system (discussed in more detail later in this report) some of the health complaint management arrangements in the Bill are similar to the current HQCC Act. For example, both the HQCC Act and the Bill provide for early resolution, assessment, conciliation and investigation of complaints. Significant differences between the HQCC Act and the Bill include the Health Ombudsman's role in decisions about complaints about registered and non-registered health professionals, shorter timeframes for completion of assessment, investigation and other complaint management processes, the Health Ombudsman's role in monitoring the performance of the National Boards and AHPRA in relation to Queensland and reporting to the Minister and the parliamentary committee about health complaints system, and the parliamentary committee's role.

3.2 National Scheme for registered health practitioners

In March 2008, the Council of Australian Governments (COAG) decided to create a national registration and accreditation scheme for health practitioners (the National Scheme). The National Scheme's key objective is to protect the public by ensuring that only suitably trained and qualified practitioners are registered to practice. The National Scheme also aims to facilitate workforce

4 Davies Hon G AO, *Queensland Public Hospitals Commission of Inquiry: Report,* November 2005, available at http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2005/5105T5305.pdf

5 The Consultancy Bureau, *Queensland Health Systems Review: Final Report*, September 2005, available at http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2005/5105T4447.pdf (*The Forster Review*)

6 ibid., p.xviii

mobility across Australia, the provision of high quality education and training to health practitioners and the rigorous assessment of overseas-trained practitioners.[7]

The Health Practitioner Regulation National Law, as in force in each State and Territory (the National Law) established the National Scheme on 1 July 2010 in most of Australia, including Queensland. Western Australia enacted its own legislation which came into force on 18 October 2010. New South Wales is described as a co-regulatory jurisdiction. This means that it is part of the National Scheme, but has its own arrangements for managing notifications (complaints) about health practitioners.

Prior to the National Law, the registration boards in each State and Territory were responsible for health practitioner registration, some complaints, disciplinary matters and management of impaired registrants. In Queensland, the registration boards included the Medical Board of Queensland (MBQ), the Queensland Nursing Council and registration boards for other health professions.

The National Law covers 14 health professions and provides that they are regulated by nationally consistent legislation. There is a National Board for each of the 14 health professions, which are the:

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

The National Scheme currently regulates around 580,000 health practitioners across Australia.[8] Regulation by the National Boards involves: developing registration standards, codes and guidelines; the registration of health practitioners who meet the registration standards; investigation and management of notifications (complaints) about the health, conduct or performance of registered health practitioners; and setting national registration fees. Most National Boards established State or Territory Boards and Committees to discharge their functions.

The National Law also established AHPRA to support the National Boards in discharging their functions. The chief executive of AHPRA, Mr Martin Fletcher, explained that AHPRA is not a complaints agency, but essentially a protective jurisdiction which focusses on addressing standards and concerns about health practitioners that concern patient and public safety. AHPRA's main functions relate to professional standards for registration, dealing with notifications about the health, performance or conduct of health practitioners. Mr Fletcher explained that the National

7 Australian Health Practitioner Regulation Agency, Annual Report 2011/12, p.11, available at http://www.ahpra.gov.au/documents/default.aspx?record=WD12%2f9240&dbid=AP&chksum=S6gwGtLfAovsukYbQ%2fn7hw%3d%3d

8 Mr Martin Fletcher, Chief Executive Officer, Australian Health Practitioner Regulation Agency, *Public Hearing Transcript*, 12 July 2013, p.18, available at http://www.parliament.qld.gov.au/documents/committees/HCSC/2013/HealthOmbudsmanBill/trns-ph-12Jul201.pdf

Boards, through their State Boards and Committees, make decisions about the registration of health practitioners. AHPRA, essentially, administers the National Scheme on behalf of the National Boards.[9]

The National Boards and AHPRA work with accreditation authorities to ensure that education and training of health practitioners is appropriate and enables graduates to meet the education component of registration standards.

3.3 Chesterman Report

In April 2012, the Parliamentary Crime and Misconduct Committee (PCMC) received a purported public interest disclosure which made allegations about the conduct, regulation, registration and discipline of medical practitioners in Queensland. The PCMC referred the disclosure to the Crime and Misconduct Commission, which engaged Mr Richard Chesterman AO RFD QC, a retired Supreme Court Judge, to undertake an independent assessment of the disclosure.[10]

Mr Chesterman found no evidence of systemic failure. He found that the allegation that the Queensland Board of the Medical Board of Australia (QBMBA) had completely failed to maintain adequate standards of medical practice was not justified. Mr Chesterman did, however, raise concerns about the manner in which QBMBA discharged its disciplinary functions. In particular, Mr Chesterman raised concerns about how matters which may have constituted criminal misconduct (including patient deaths) had been dealt with, the time taken to complete investigations, and whether complaints were adequately addressed.[11]

Mr Chesterman recommended:

- a legal practitioner, with criminal law experience, examine cases from the last five years, where a disciplinary sanction has been imposed on a medical practitioner where a patient had died or suffered serious bodily harm to determine whether criminal charges should have been laid
- a review of all cases of misconduct or alleged misconduct by medical practitioners, dealt with by QBMBA or in which AHPRA recommended disciplinary action (including cases whether the QBMBA or one of its committees rejected that recommendation). The review should determine whether the QBMBA made timely and appropriate responses to complaints in line with the objectives to protect the public, uphold standards of medical practice and maintain public confidence in the medical profession
- a reduction in the number of medical practitioners on the Board and an increase in the number of other members, including a legal practitioner with criminal practice experience, and
- the Solicitor-General consider whether the HQCC is empowered under the National Law to insist that the QBMBA take more serious action than the QBMBA proposes.[12]

3.4 Hunter Report

In response to Mr Chesterman's first recommendation, the Minister asked Mr Jeffrey Hunter SC to review matters considered by the former MBQ, QBMBA or AHPRA. Mr Hunter was asked to recommend whether any of the matters should be referred to the Queensland Police Service for investigation to assess whether criminal charges should be laid. Mr Hunter identified six medical practitioners who should be investigated to see whether criminal offences had been committed.[13]

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9 Mr Martin Fletcher, *Public Hearing Transcript*, 12 July 2013, p.18

10 Parliamentary Crime and Misconduct Committee, *A report of the Crime and Misconduct Commission's assessment of a public interest disclosure*, Report no. 87, July 2012, pp.1–3 (*The Chesterman Report*), available at http://www.parliament.qld.gov.au/documents/committees/PCMC/2012/rpt-87-230712.pdf

11 ibid., Appendix, pp.40–46

12 ibid., Appendix, pp.47–48

13 Hunter J R, Review of the files held by the Medical Board of Queensland, Queensland Board of the Medical Board of Australia and the Australian Health Practitioner Regulation Agency, 28 February 2013, p.1, available at http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2013/5413T2374.pdf (*The Hunter Report*)

3.5 Forrester Report

In response to Mr Chesterman's second recommendation, the Minister appointed a panel, led by Dr Kim Forrester, to review files of the former MBQ, QBMBA and AHPRA. The purpose of the review was to determine whether the MBQ and QBMBA were achieving their primary objective of protecting the public by ensuring that medical practitioners are competent to practice.

On 5 April 2013, the panel reported their findings to the Minister. The panel found:

- delays in the timeliness of notifications progressing from receipt through the various assessment and disciplinary processes to a final decision by the Board
- a lack of consistency and predictability of outcomes in the Board's decisions across notifications of a similar nature, and
- considerable delays and inconsistencies in a significant number of files due to cross-jurisdictional referral, consultation and information sharing obligations imposed under the current legislation.[14]

14 Forrester K, Davies E and Houston J, *Chesterman Report Recommendation 2 Review Panel (The Forrester Report)*, 5 April 2013, p.74, available at http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2013/5413T2375.pdf

4 Objects of the Bill and the paramount guiding principle

The Bill's main objects are to protect the health and safety of the public and promote professional, safe and competent practice by health practitioners, and high standards of service delivery by health service organisations, and maintain public confidence in the management of health complaints and other matters relating to the provision of health services (clause 3). The objects are to be achieved primarily by establishing a health complaints system, including:

- the creation of a health ombudsman with the functions in clause 25
- effective and efficient interaction of the Act (if passed) and the National Law, and
- effective monitoring of the system by the Minister and the parliamentary committee.

Clause 4 provides that the main principle for administering the Act would be that the health and safety of the public are paramount (the paramount guiding principle). The health and safety of the public is to be the Health Ombudsman's, the Director of Proceedings' (see Section s 5.4.3 and 11 of this report) and the Queensland Civil and Administrative Tribunal (QCAT)'s (see Section 11 of this report) main consideration when deciding with health service complaints and other health matters. Clause 326 modifies the National Law, as it applies in Queensland, to provide that the paramount guiding principle also applies to persons administering the National Law in Queensland.

4.1.1 Submissions

Eight submissions supported the Bill's objectives.[15] One submission from a member of the public stated that "because of the vast reach and impact a medical practitioner's actions have on well-being and public safety as a whole, it is even more imperative that medical practitioners be held accountable for their actions".[16]

The Australian Medical Association Queensland (AMAQ) considers that the Bill has significant flaws and may lead to increased costs and delays. The AMAQ has grave concerns about the Bill's impact on good clinical practice.[17] The Queensland Faculty of the Royal Australian College of General Practitioners (RACGP) considers that the Bill contains an inherent bias towards dealing with complaints against individual health practitioners, rather than large health entities such as Queensland Health.[18]

Submissions from medical and other health profession representative bodies expressed support for maintaining the current National Scheme, and considered that the Bill, while well intentioned, would have negative impacts on health care in Queensland.[19] The Queensland Faculty of the RACGP stated that the Bill would undermine the National Scheme, which was designed to standardise regulation and registration of medical practitioners across Australia.[20] The Chair of the Medical Board of Australia considered that there should be a national examination of the appropriate arrangements for health care complaints.[21]

Submissions raised concerns about specific elements of the Bill. Those concerns include: the Health Ombudsman's independence; the power to take *immediate action* without giving a health practitioner the opportunity to comment; publishing information about complaints; the disclosure of investigation reports; and the removal of the duty to improve the quality of health services.

15 Submissions nos. 1, 2, 4, 9, 11, 18, 22 and 29
16 Ms Maree Watson, Submission no. 9, p.1
17 Australian Medical Association (Qld) (AMAQ), Submission no. 3, p.1
18 Queensland Faculty of the Royal Australian College of General Practitioners (RACGP), Submission no. 24, p.1
19 Submissions nos. 3, 6, 14, 15, 19, 24, 27 and 28
20 RACGP, *op. cit.*, p.1
21 Dr Joanna Flynn, Chair of the Medical Board of Australia, *Public Hearing Transcript*, 12 July 2013, p.21

5 The Health Ombudsman

5.1 Establishment and appointment

The Health Ombudsman is to be appointed by the Governor in Council, on the recommendation of the Minister, for a four year term which may be renewed (clauses 245 to 247). The Minister must advertise for the position, consult the parliamentary committee, and be satisfied the recommended person has the necessary skills and knowledge (clause 246). The Health Ombudsman is to be appointed on such conditions and remuneration as decided by the Governor in Council (clause 248).

The Health Ombudsman may be removed from office by the Governor in Council (clause 250) or suspended by the Minister for periods of up to 60 days (clause 251). The Minister may appoint an Acting Health Ombudsman, if the Health Ombudsman has been removed from office or is suspended, is absent or unable to discharge his or her functions, or there is a vacancy in the office (clause 252).

5.1.1 Submissions

Avant Mutual Group Limited suggested that the Bill be amended to provide that the Health Ombudsman must be a suitably qualified and experienced medical practitioner.[22] The AMAQ, and other medical stakeholders, suggested that the parliamentary committee should be given the power to veto the appointment or removal of the Health Ombudsman, similar to the model in NSW.[23]

5.1.2 Committee's view

The committee notes that the Health Ombudsman will (if the Bill is passed) manage complaints about all 14 registered health professions, non-registered health professions and hospitals and other providers of health services. The committee considers that a medical practitioner may not necessarily have the requisite knowledge, skills and experience to discharge all of the Health Ombudsman's functions effectively.

The committee considers there may be merit in parliamentary committees having the power to veto the appointment and removal of ombudsmen and commissioners, as is the case in NSW with the Health Care Complaints Commissioner and in Queensland with the appointment of the Crime and Misconduct Commissioner. The committee looks forward to engaging in the appointment process for the first Health Ombudsman, and will discuss any issues arising from that process with the Minister.

5.2 Functions and powers

The Health Ombudsman's functions are to:

- receive health service complaints and take *relevant action* (see Section 6.5.1 of this report)
- identify and deal with health service issues by undertaking investigations, inquiries or other relevant action
- identify and report on systemic issues in the way health services are provided, including issues affecting quality
- monitor the National Boards and AHPRA's performance in relation the health, conduct and performance of Queensland health practitioners
- provide information about providing health services in a way that minimise complaints and resolving complaints
- report to the Minister and parliamentary committee about the administration of the health complaints system, the performance of the Health Ombudsman's functions, the National Boards and AHPRA's performance in relation to the health, conduct and performance of Queensland health practitioners, and

22 Avant Mutual Group Limited, Submission no. 11, p.6

23 Submissions nos. 3, 14, 15 and 24

- publish reports about the health complaints system (clause 25).

The Health Ombudsman has the power to do all things necessary or convenient for, or in connection with, the performance of his or her duties (clause 26). The Health Ombudsman may delegate any of his or her functions to an appropriately qualified member of staff, except for a decision to take *immediate action* against a practitioner or to carry out an inquiry (clause 285).

The Health Ombudsman must consult and co-operate with other public entities where appropriate; for example, with the State Coroner, Queensland Police Service, AHPRA, the National Boards and the Crime and Misconduct Commission (clause 30).

5.2.1 Submissions

The Queensland Nurses' Union (QNU) considers that the Bill should be amended to require the Health Ombudsman to act in a transparent, accountable, efficient, effective and fair way, and that restrictions on a practitioner's practice should only be imposed if it is necessary to ensure a health service is provided safely and of an appropriate quality.[24] The Queensland Aged and Disability Advocacy Inc. stated that the Health Ombudsman would have an important role in offering education, information and support to health consumers.[25]

Other submissions consider that the Health Ombudsman's functions and powers are too excessive and inconsistent with the traditional consultative and dispute resolution role of an ombudsman.[26]

5.2.2 Committee's view

The committee considers that the Bill provides that Health Ombudsman with a broad set of functions to deliver the objects of the Bill, particularly to protect the health and safety of the public. In relation to QNU's comments, the committee notes that clause 27 requires the Health Ombudsman to act independently, impartially and in the public interest.

5.3 Independence of Health Ombudsman

Clause 27 provides that the Health Ombudsman must act independently, impartially and in the public interest. Clause 28 clarifies that a Minister may direct the Health Ombudsman to undertake an investigation (clause 81) or conduct an inquiry (clause 152). Otherwise, the Health Ombudsman is not subject to direction by anyone.

5.3.1 Submissions and Department's comments

A number of submissions raised concerns about the independence of the Health Ombudsman.[27] The AMAQ stated that "the public, patients and medical practitioners want an independent umpire … the Bill fails to deliver the level of independence that is sought or required by our community".[28]

Dr Christian Rowan, President, AMAQ, summed up the concerns expressed by submitters. Dr Rowan stated that:

> *… sections in this Bill will give the minister power to direct the Health Ombudsman to undertake an investigation or inquiry, hire and fire the Ombudsman and the power of the minister to request information about ongoing investigations all contribute to a perception that the Health Ombudsman will not operate independently.*[29]

24 Queensland Nurses' Union (QNU), Submission no. 13, p.5
25 Queensland Aged and Disability Advocacy Inc. (QADA), Submission no. 20, p.4
26 Federation of Chinese Medicine & Acupuncture Societies of Australia Ltd. (FCMA), Submission no. 6, p.2; Australian Society of Orthopaedic Surgeons, Submission no. 7, p.2
27 Submissions nos. 3, 11, 12, 14, 15, 16, 19, 22 and 24
28 AMAQ, Submission no. 3, p.6
29 Dr Christian Rowan, President, Australian Medical Association (Qld), *Public Hearing Transcript*, 12 July 2013, p.2

Submissions from medical stakeholders stated that, as the provider of public health and health services in Queensland, the Minister has an inherent conflict of interest when dealing with health complaint matters.[30] The AMA South Australia suggested that the Bill places significant power in the hands of the Minister to substitute his or her determination of matters.[31]

Seven submissions stated that the Bill should be amended to provide for the Health Ombudsman to be accountable to Parliament, rather than the Minister, as is the case in NSW.[32]

The Department advised that:

> *It is essential that the Health Ombudsman act independently, impartially and in the public interest. The Bill requires it. The Bill states that the Health Ombudsman is not subject to the direction of any other person other than the Minister for Health and even then only in very specific circumstances and they relate principally to governance and organisational management.*[33]

The Department also advised the committee that the Minister's power to direct the Health Ombudsman to undertake an investigation or inquiry replicates provisions currently in the HQCC Act. The Department stated that "This power, of course, does not in any way suggest that the Minister can direct how the investigation is undertaken or the inquiry organised".[34]

The Department advised that the Minister's ability to require information "is fundamental to the accountability within the system falling to the Minister. Removing ministerial accountability and having the Health Ombudsman report directly to Parliament would substantially reduce the level of accountability of the health complaints management system".[35]

5.3.2 Committee's view

The committee notes that some of the concerns about the Bill are about issues that are in current legislation. For example, sections 163 and 164 of the HQCC Act provide that the Minister may direct the HQCC to conduct an inquiry or investigate a health complaint. The committee also notes that the provisions in the Bill for the appointment of the Health Ombudsman are consistent with legislation providing for the appointment of other statutory office holders.

While the committee acknowledges that the Minister effects the provision of public sector health services in Queensland, it is important to note that, since the establishment of Hospital and Health Services and Hospital and Health Boards in July 2012, the Minister is one step further removed from health service provision.

The committee recognises that to fulfil his or her functions, the Health Ombudsman will need to gain the trust and confidence of both the public and health service providers. The actual and perceived independence of the Health Ombudsman will be important to gaining the trust and confidence of health consumers, providers, government and parliament. The committee considers that the Bill makes the independence of the Health Ombudsman clear, while providing appropriate mechanisms to ensure the health complaints system is accountable.

30 Submissions nos. 3, 11, 14, 15, 22 and 24
31 AMA (SA), Submission no. 19, p.2
32 Submissions nos. 3, 11, 14, 15, 16, 22 and 24
33 Dr Michael Cleary, Deputy Director-General, Health Services and Clinical Innovation, Department of Health, *Public Briefing Transcript*, 11 June 2013, p.4, available at http://www.parliament.qld.gov.au/documents/committees/HCSC/2013/HealthOmbudsmanBill/trns-pb11Jun2013.pdf
34 ibid.
35 ibid., p.29

5.4 Staff

5.4.1 Deputy Health Ombudsman

The Explanatory Notes state that the Health Ombudsman may appoint a Deputy Health Ombudsman to deal with health (clinical) matters and a Deputy Health Ombudsman to deal with legal matters.[36] The Bill does not explicitly provide for appointment of a Deputy Health Ombudsman; however clause 26 provides that the Health Ombudsman has general powers to do all things that are necessary or convenient in connection with performance of the Health Ombudsman's functions.

5.4.2 Office of the Health Ombudsman

Clause 253 establishes the Office of the Health Ombudsman which consists of the Health Ombudsman, as the head of the office, and his or her staff. The function of the Office of the Health Ombudsman is to help the Health Ombudsman perform his or her functions (clause 254).

Clause 255 provides that staff of the Office of the Health Ombudsman are to be employed under the *Public Service Act 2008.* Clause 257 provides that the Office of the Health Ombudsman will be subject to the financial rules set out in the *Financial Accountability Act 2009* and *Statutory Bodies Financial Arrangements Act 1982*. Clauses 311 and 312 make provision about authorised persons and conciliators who immediately before the commencement of the Bill held an appointment as authorised persons and conciliators under the HQCC Act. The Bill is silent about other staff employed by the HQCC.

5.4.2.1 Submissions and Department's comments

The HQCC and the Together Union are concerned that the Bill makes no provision about HQCC staff.[37] Mrs Cheryl Herbert, Chief Executive Officer, HQCC advised the committee that the HQCC faced "considerable challenges in terms of maintaining a skilled and experienced complaint and investigation management workforce".[38] The HQCC considers that the potential loss of valuable expertise and experience could also impact on the Office of the Health Ombudsman's ability to discharge its functions.[39]

The Minister advised during the hearing of the estimates for the committee that:

> *… the overall shape of who is going to make up a part of the Ombudsman's office has not been decided, but there will be a transitional process when and if that legislation goes through the parliament which will look at the skill set that is available in HQCC and how that can be transitioned into the Ombudsman's office.*
>
> *… that is not to say that everyone will come across. The worst thing I can do is give you an absolute guarantee today, because I do not make these decisions. I will put the legislation through parliament. We will then establish the Ombudsman. The Ombudsman will then have a significant period of time in which to look at how they want to transition to that new arrangement.*[40]

5.4.2.2 Committee's view

The committee notes the uncertainty for HQCC staff and the difficulties that arise in these circumstances. The committee notes the risk of loss of experience, if staff elect to leave, and that the

36 Explanatory Notes, p.9
37 Together, Submission no. 8, p.1; Health Quality and Complaints Commission (HQCC), Submission no. 22, p.7
38 Mrs Cheryl Herbert, Chief Executive Officer, Health Quality and Complaints Commission, *Public Hearing Transcript*, 12 July 2013, p.25
39 HQCC, *op. cit.*, p.7
40 Legislative Assembly of Queensland, *Hansard*, 24 July 2013, p.27 (Hon. Lawrence Springborg MP, Minister for Health), available at http://www.parliament.qld.gov.au/documents/hansard/2013/2013_07_24_EstimatesHCC.pdf

staff profile required by the Health Ombudsman is unlikely to be identical to that of the HQCC. The committee considers that it is appropriate for the new Health Ombudsman, once appointed, to make decisions about staffing. The committee notes that the Health Ombudsman has the discretion to appoint staff, which could potentially include current HQCC staff.

5.4.3 Director of Proceedings

The Health Ombudsman must appoint a staff member as the Director of Proceedings who must be a lawyer and otherwise appropriately qualified (clause 258). The Director of Proceedings is to decide whether or not to refer a health service complaint or other matter to the QCAT, and prosecute those complaints and matters that are referred to QCAT (clause 259). Clause 260 provides that the Director of Proceedings is not subject to the direction of the Health Ombudsman or anyone else about a decision whether or not to refer a matter to QCAT.

5.5 Clinical and health consumer advice

Clause 29 provides that the Health Ombudsman may establish committees and panels to advise him or her about clinical matters or health consumer issues. The Bill cites as examples a panel of medical experts to advise the Health Ombudsman before taking *immediate action* against a health practitioner, or a committee to provide advice during an investigation of a systemic issue with the provision of a health service.

In his introductory speech, the Minister stated that "the health ombudsman will be supported by advisory committees and panels comprising appropriate qualified persons to advise the health ombudsman about clinical matters or health consumer issues when required".[41] The Department advised that "staff members of the Office of the Health Ombudsman will also be able to provide advice on clinical, health consumer and legal matters".[42]

5.5.1 Submissions and Department's comments

The Chair of the Medical Board of Australia, Dr Joanna Flynn, stated that "it is very important in contemporary medical regulation, as in other health practitioner regulation, that decisions are made with appropriate input from both clinicians and community members".[43] Dr Flynn suggested that there are opportunities for the Health Ombudsman to use the existing knowledge and clinical expertise of community and practitioner members of the National Boards.[44]

Mr Martin Fletcher, Chief Executive Officer of AHPRA, questioned whether the Health Ombudsman had any discretion to refer more serious matters to a National Board to make use of the knowledge and experience of clinical and community members of the National Boards.[45]

One submission from a member of the public stated that the Bill included sufficient provisions for the Health Ombudsman to seek clinical and consumer advice.[46]

A number of submissions raised concerns that the Bill does not require the Health Ombudsman to seek clinical and consumer advice for taking decisions.[47] The HQCC stated that "legislative mechanisms for consumer and clinical advice, input and engagement are essential for the government's aims and to ensure Health Ombudsman operates effectively".[48] The AMAQ noted that the Health Ombudsman had the discretion to establish clinical advisory committees, but raised concerns that budgetary pressures on the Health Ombudsman may erode their input as they become

41 *Hansard*, 4 June 2013, p.1900 (Hon. Lawrence Springborg MP, Minister for Health)
42 Dr Michael Cleary, *Public Briefing Transcript*, 11 June 2013, p.4
43 Dr Joanna Flynn, *Public Hearing Transcript*, 12 July 2013, p.19
44 ibid., p.20
45 Mr Martin Fletcher, *Public Hearing Transcript*, 12 July 2013, p.20
46 Ms Maree Watson, Submission no. 9, p.1
47 Submissions nos. 3, 5, 10, 12, 14, 15, 21, 22, 24, 27 and 28
48 Mrs Cheryl Herbert, *Public Hearing Transcript*, 12 July 2013, p.23

expensive to maintain.[49] Submissions referred to the NSW model where the Commissioner and the Director of Proceedings must consult professional councils (consisting of health practitioners) before taking decisions.[50]

Particular concerns were raised that the Health Ombudsman has discretion to seek clinical or consumer advice before taking *immediate action* (i.e. suspending or placing conditions on a practitioner's registration) (see Section 8 of this report).[51] The Optometrists Association Australia considers that the Bill concentrates decision making in the hands of one person "who is unlikely to have a robust understanding of all health disciplines".[52] The AMAQ was concerned about:

> *… the unilateral ability of the Health Ombudsman to exercise power to take immediate action without sufficient checks and balances to ensure that the system upholds the basic principles of natural justice.*[53]

The AMAQ stated that the Health Ombudsman should be required to seek clinical advice before taking decisions, particularly *immediate action*. The AMAQ and the Australian Natural Therapists Association suggested that *immediate action* decisions should be reviewed by a panel of experts before action is taken against a practitioner.[54]

The Department advised that "it is up to the Health Ombudsman to decide the best way to perform these functions under the Act and how best to seek this advice".[55] The Department stated that:

> *Having consulted with a number of groups, the minister formed the view that it would be better to have a facilitative piece of legislation where the power was there for the Health Ombudsman to establish committees or panels that would allow the Health Ombudsman to undertake their role without being specific.*[56]

The Department provided the following examples of how the Health Ombudsman may wish to use panels and committees:

> *I would envisage some of those will be 'standing committees' to allow the ombudsman to operationalise their more strategic work program. Some of them may be panels which are short-term panels which may be drawn together to assess a particular matter.*[57]

5.5.2 Committee's view

The committee recognises the importance of seeking clinical and consumer advice, and considers that the Health Ombudsman will seek advice where appropriate.

The committee notes that section 169 of the HQCC Act requires that the HQCC establish a consumer advisory committee and a clinical advisory committee, however it does not require the HQCC to seek advice from those committees or others before taking decisions about complaints, except through consultation with the National Boards. The committee understands that, while not required to do so, the HQCC has some in-house sources of clinical advice, and seeks other clinical advice from a panel of providers, for example, during the assessment of complaints and during conciliation.

In practice, the committee expects the Health Ombudsman will seek advice in appropriate circumstances. In some cases it may not be appropriate to seek clinical advice; for example, where a

49 Dr Christian Rowan, *Public Hearing Transcript*, 12 July 2013, p.2
50 Submissions nos. 3, 14, 15 and 24
51 Submissions nos. 3, 4, 11, 14, 15, 18 and 24
52 Optometrists Association Australia, Submission no. 4, p.2
53 AMAQ, Submission no. 3, p.7
54 ibid., Appendix 1, p.5; Australian Natural Therapists Association Ltd., Submission no. 18, p.2
55 Dr Michael Cleary, *Public Briefing Transcript*, 11 June 2013, p.4
56 ibid., p.8
57 ibid., p.9

practitioner's registration has been cancelled in another jurisdiction or where the complaint is about serious boundary transgressions, such as a sexual relationship with a patient. The committee notes that the AMAQ accepts that there may be circumstances – for example if criminal charges were laid against a health practitioner or incorrect information was used to obtain registration – where it would be appropriate for the Health Ombudsman to reach a decision without seeking clinical advice.[58]

The committee considers that the Health Ombudsman needs flexibility and the discretion to decide whether and, if so, what type of advice is most appropriate on a case-by-case basis.

The Bill provides that when determining disciplinary matters about health practitioners, QCAT is to be assisted by members of a public panel of assessors and a professional panel of assessors (consisting of practitioners from the same profession as the health service provider) (see Section 11 of this report). Accordingly, the views and expertise of clinicians and consumers will be available before QCAT determines a matter and, if appropriate, imposes any sanctions.

58 AMAQ, Submission no. 3, p.6

6 Health service complaints

6.1 Health Ombudsman's complaint functions

The Health Ombudsman's functions (clause 25) include:

- to receive health service complaints and take *relevant action* to deal with them under the Act
- to identify and deal with issues by undertaking investigations, inquiries and other relevant action, and
- to provide information to the public, health practitioners and health service organisations about providing services in ways that minimise complaints, and about resolving complaints.

The Health Ombudsman's functions also include monitoring and reporting on the health complaints system and the performance of the National Boards and AHPRA in relation to the health, conduct and performance of Queensland health practitioners. These functions are discussed in Section 14 of this report, along with the monitoring and review roles of the Minister and the parliamentary committee.

A *health service complaint* is defined in clause 31 as a complaint about a health service or other service provided by a health service provider.

6.2 Health Ombudsman is the single complaints entity

The Health Ombudsman will be the single entity to receive health service complaints in Queensland. Currently, a health service complaint may be made to either the HQCC or AHPRA (which refers the matter to a National Board). The Explanatory Notes state that requiring all health service complaints to be made to the Health Ombudsman "will remove the existing role confusion between complaints entities".[59]

The HQCC Act and the National Law provide for consultation between the HQCC and the National Boards and referral of complaints between the two bodies. The Bill repeals the HQCC Act (clause 321) and modifies the application of the National Law in Queensland,[60] so that National Boards do not receive notifications (complaints), but may assess and investigate matters referred to AHPRA and the National Boards by the Health Ombudsman under clause 91 (see Section 10).

6.2.1 Submissions

Avant Mutual Group Ltd considers that requiring all complaints to be made to the Health Ombudsman will ensure that processes are clear and will help avoid duplication in the health complaints system.[61] Mr Mark Tucker-Evans, Chair of Health Consumers Queensland, stated that "Managing complaints through a single entity would reduce confusion for consumers and we would expect that it would also expedite those complaints".[62]

6.2.2 Committee's view

The committee notes that the Forrester Report found that the compliance with processes prescribed by the legislation for the receipt, assessment and investigation of notifications (complaints) by AHPRA and the HQCC resulted in a blurring of their roles and was an important factor in both the delays in the time taken to address a complaint and the appropriateness of the outcomes.[63]

59 Explanatory Notes, p.2
60 clause 326, National Law proposed section 20 Amendment of s 35 (Functions of National Boards)
61 Avant Mutual Group Limited, Submission no. 11, p.2
62 Mr Mark Tucker-Evans, Chair, Health Consumers Queensland, *Public Hearing Transcript*, 12 July 2013, p.13
63 *The Forrester Report*, p.33

The committee considers that the creation of a single entity to receive health complaints should help to reduce confusion for complainants and, more importantly, has the potential to reduce delays caused by referral and consultation requirements about complaints in the current legislation.

6.3 What is a health service complaint and who can make one?

6.3.1 Complaints made directly to the Health Ombudsman

Any person may make a health service complaint, including: an individual who receives a health service; a parent, guardian or representative of an individual who has received a health service; or a health practitioner with concerns about another health practitioner (clause 32). Complaints are to be made to the Health Ombudsman either orally or in writing (clause 33). The Health Ombudsman may, on request, give reasonable assistance to a complainant, may request further information from the complainant and may ask the complainant to confirm the complaint in writing (clauses 33 and 34).

Complaints may be made about a *health service*, which is defined in clause 7. In summary, the services that the Health Ombudsman may receive complaints about include:

- a service that is (or purports to be) to maintain, improve, restore or manage people's health or wellbeing
- services in a hospital, residential care facility, community health facility or home
- a support service to a *health service*
- services for health promotion, prevention and control of disease
- alternative or complementary medicine, and
- a service that is prescribed under a regulation.

While the definition of *health service* in the Bill is drafted in a different style to the existing definition in the HQCC Act, it appears to include a similar range of health services.

A *health service provider*, and therefore the individuals and entities that complaints may be made about, is defined in clause 8. A *health service provider* is:

- an individual health practitioner who is registered under the National Law or another individual who provides a health service, or
- an entity; for example, a Hospital and Health Service, ambulance service, a medical or dental practice, or a private health facility, providing a health service.

6.3.2 Other matters to be dealt with as health service complaints

Notifications made under the National Law, including mandatory notifications made by health practitioners, are to be considered as health service complaints, and dealt with by the Health Ombudsman (clause 36).

Clause 37 provides that the Health Ombudsman may also deal with other matters arising from a referral from a National Board or information from a government entity as a complaint. The Bill gives the example of the coroner bringing a matter relating to the death of a patient to the Health Ombudsman's attention. In this situation, the Health Ombudsman would, with the permission of the family of the person who has died, be able to deal with the matter as a complaint.

6.3.3 Submission

The HQCC submitted that all complaints should be made in writing, unless the Health Ombudsman considers there was a good reason for a complaint to be made orally.[64] The committee notes that clause 34(1) provides that the Health Ombudsman with discretion to ask the complainant to confirm an oral complaint in writing.

64 HQCC, Submission no. 22, p.13

6.4 Non-registered health practitioners

Under the HQCC Act, the HQCC may consider matters about non-registered health practitioners (for example, audiologists and counsellors), but it does not have the power to take disciplinary action against them. The Bill aims to address this gap by providing that action may be taken action against non-registered health practitioners.

The Department advised that for the first time in Queensland, the health complaints body will be able to deal effectively with health practitioners who are not registered with the national boards.[65] The Bill provides that the Health Ombudsman may take *immediate action* to prohibit a non-registered health practitioner from practising, or place restrictions on their practice, where there is serious risk to the public (clause 67) (see Section 8 of this report). The Director of Proceedings may also refer serious matters about non-registered health practitioners to QCAT (clause 103). On hearing such matters, QCAT may decide to prohibit a non-registered health practitioner from practising or place restrictions on a practitioner's practice (clause 113).

6.4.1 Submissions

The QNU supports the move towards greater accountability and professional oversight of all health professionals. The QNU's focus was advocating for registration of Assistants in Nursing.[66] The QNU raised concerns that the Health Ombudsman may find it difficult to measure the standard of care provided by non-registered health practitioners if there is no universally accepted and regulated standard.

6.4.2 Committee's view

As outlined in its report on the *Oversight of the Health Quality and Complaints Commission*, the committee is aware that the Australian Health Ministers Advisory Council is considering regulatory or other means to protect the public from non-registered health providers who fail to observe minimum standards of professional conduct.[67] The committee welcomes the inclusion in the Bill of powers for action to be taken against non-registered health practitioners. Those powers will help to protect members of the public who receive health services from non-registered health practitioners. The committee notes that regulations made under clause 288 may prescribe a code of conduct, charter or standard for non-registered health practitioners, and that a similar code of conduct is currently in place in NSW.

6.5 How the Health Ombudsman may manage health service complaints

Within seven days of receiving a complaint, the Health Ombudsman must decide whether to accept it and take a *relevant action* or take no further action (clause 35). The Health Ombudsman must notify the complainant and health service provider of the decision under clause 278.

6.5.1 Relevant action

Clause 38 provides that if the Health Ombudsman decides to accept a health service complaint, he or she must take one or more of the following *relevant actions*:

- assess the complaint
- facilitate local resolution
- take *immediate action*
- investigate

65 Dr Michael Cleary, *Public Briefing Transcript*, 11 June 2013, p.2

66 QNU, Submission no. 13, p.4

67 Health and Community Services Committee, Report no. 21: *Oversight of the Health Quality and Complaints Commission*, 2013, Brisbane, Legislative Assembly of Queensland, p.16, available at http://www.parliament.qld.gov.au/documents/committees/HCSC/2012/HQCC/rpt-021-26Apr2013.pdf

- refer the complaint to AHPRA or another State or Commonwealth body
- refer the complaint to the Director of Proceedings for a decision about whether the complaint should be referred to QCAT
- refer the complaint for conciliation, or
- carry out an inquiry.

The Health Ombudsman may take *relevant action* to deal with a matter whether or not a health service complaint has been made (clause 39). When dealing with a matter about a health service that is not a health service complaint, the Health Ombudsman may take *immediate action,* investigate, refer the matter to AHPRA or another State or Commonwealth body, refer the matter to the Director of Proceedings, or carry out an inquiry (clause 38(3)).

6.5.2 No further action

The Health Ombudsman may decide to take no further action on a health service complaint or a matter at any stage, if he or she reasonably considers the complaint or matter:

- is frivolous, vexatious, trivial or not made in good faith
- is misconceived or lacking in substance
- is being adequately dealt with by another appropriate body
- has been resolved or finalised by the Health Ombudsman or another appropriate body, or
- despite reasonable efforts, the matter cannot be resolved (clause 44(1)(a)).

The Health Ombudsman may take no further action about a health service complainant, if the complainant fails, without reasonable excuse, to co-operate or comply with requests for further information; the complaint is withdrawn; or the subject matter of the complaint happened – and the complainant was aware of the matter – at least two years before the complaint was made (clause 44(1)(b)). The Health Ombudsman may also take no further action if a complainant, health service provider or other relevant person dies (clause 44(3)).

6.5.3 Submissions

The AMAQ and other medical stakeholders consider there is no evidence for the increase in the timeframe for making a complaint from one year (as provided in HQCC Act) to two years. The AMAQ also suggested that the Health Ombudsman should differentiate between how it manages mandatory notifications and general complaints.[68]

6.5.4 Committee's view

The committee notes that the Bill does not require the Health Ombudsman to accept all complaints made within two years of the matter arising, or the complainant becoming aware of the matter. Rather, the Health Ombudsman is given the discretion to deal with such matters, where appropriate. The Health Ombudsman will also have the discretion when deciding on the internal procedures to decide how mandatory notifications and other notifications should be managed.

6.6 Keeping the complainant and health service provider informed

The Bill includes a number of provisions aimed at ensuring complainants and health service providers are kept informed of decisions during the complaint management process. For example, clause 278 provides that the Health Ombudsman must notify the complainant and health service provider no later than seven days after deciding how to proceed with the complaint under clause 35. The requirement to notify the health service provider does not apply if the Health Ombudsman considers doing so may put at serious risk a person's health and safety; put the complainant or other person at risk of harassment or intimidation; or prejudice an investigation or inquiry (clause 284).

68 AMAQ, Submission no. 3, Appendix 1, p.3

If the Health Ombudsman investigates a health service complaint, he or she must provide the complainant and health service provider with three-monthly progress reports about the investigation (clause 84).

6.6.1 Submissions

Avant Mutual Group Limited and the QNU suggest that relevant information – for example, a copy of the complaint, medical records and expert opinions – should be provided to the health service provider to enable them to make a full response to a complaint made against them.[69] Avant Mutual Group Limited stated that the full disclosure of information will help speed up the resolution of complaints and ensure patient safety is promptly protected.[70]

6.6.2 Committee's view

The committee encourages the Health Ombudsman, once appointed, to consider how best to ensure that health service providers are provided with the relevant information in a timely manner, while ensuring that complainants and persons providing information are adequately protected.

6.7 Requirement to notify employers

If the Health Ombudsman investigates a 'serious matter' about a health practitioner (for example potential professional misconduct) or takes *immediate action* against a health practitioner, the Health Ombudsman must inform the health practitioner's employer or employers (clause 279). The Explanatory Notes state that the requirement to notify a practitioner's employers will strengthen public protection.[71]

6.7.1 Submissions

The AMAQ and other medical stakeholders consider that the requirement to notify a health practitioner's employers reverses the basic principle that someone is innocent until proven guilty. Submissions raised concerns that there is a real risk that an employer would take action against a practitioner on the belief that the complaint had been upheld, which may damage the reputation of a practitioner who was later found to have done nothing wrong.[72] The AMAQ suggested that the Bill should limited the circumstances were the Health Ombudsman is required to notify a practitioner's employers.[73]

6.7.2 Committee's views

The committee notes the concerns of submitters; however, it considers that the requirement to notify an employer in certain circumstances may help to protect the public. In reaching its view, the committee noted that the current National Law includes a similar requirement for a National Board to inform a health practitioner's employer if it decides to take action against a practitioner.[74] The committee also notes that the requirement to notify the practitioner's employers is limited to serious matters (for example, potential professional misconduct) and where the Health Ombudsman takes *immediate action* against a health practitioner to protect public health and safety.

69 QNU, Submission no. 13, p.10; Avant Mutual Group Limited, Submission no. 11, p.5
70 Avant Mutual Group Limited, *op. cit.*, p.5
71 Explanatory Notes, p.2
72 Submissions nos. 3, 11, 13, 14, 15, 24
73 AMAQ, Submission no. 3, Appendix 1, p.12
74 Section 206, *Health Practitioner Regulation National Law Act 2009*, available at https://www.legislation.qld.gov.au/LEGISLTN/ACTS/2009/09AC045.pdf

6.8 Statutory timeframes

The Bill provides timeframes for actions to be taken by the Health Ombudsman, and timeframes by which information or submissions must be provided.

6.8.1 Decision on how to proceed, assessment and local resolution

After receiving a complaint, the Health Ombudsman must decide how to proceed within 7 days (see Section 6.5); the assessment of the complaint (see Section 7.1) is to be completed in 30 days, which may be extended by a further period of up to 30 days (clause 49); and local resolution (see Section 7.2) must be completed in 30 days, which can be extended by a further period of up to 30 days (clause 55).

If the Health Ombudsman decides to assess a health service complaint or attempt local resolution, he or she may invite the complainant and health service provider to make submissions within a stated period. The period for making a submission must not be more than 14 days. The Health Ombudsman must consider each submission received within the stated period (clauses 47 and 53). The Health Ombudsman may also require the complainant, health service provider or any other person to provide information within a stated period. The period for providing information must not be more than 14 days (clauses 48 and 54).

6.8.2 Investigations

Investigations (see Section 9) are to be completed as quickly as is reasonable in the circumstances, and within one year. The Health Ombudsman may, however, extend the one-year period for completing an investigation by a maximum of three months at a time. Such extensions are to be recorded on a public register (clauses 15 and 85). If an investigation is not completed within two years, the Health Ombudsman must notify the Minister and the parliamentary committee. The parliamentary committee may then decide to review the Health Ombudsman's performance of its functions in relation to the investigation (clause 85).

6.8.3 Submissions

Submitters consider that health complaints should be managed in a timely manner.[75] Six submissions raised concerns, however, that the statutory timeframes in the Bill may have a negative impact.[76] Health Consumers Queensland and the Queensland Aged and Disability Advocacy Inc. consider that there is a tension between resolving complaints within statutory timeframes and ensuring appropriate resolution of complaints.[77] The QNU, while accepting prompt consideration of serious matters was important, considers that health practitioners must have an appropriate opportunity to obtain advice and respond.[78] The AMAQ consider that the Health Ombudsman will not be able to meet the statutory timeframes, unless it has adequate resourcing.[79]

Avant Mutual Group Limited stated that the seven-day period to decide how to proceed with a complaint was too short, and risked poor decision making. They suggested the Health Ombudsman should be given the discretion to extend this period by up to 14 days where appropriate.[80] The HQCC suggested that the 30-day timeframe for completing an assessment should be 60 days, with the option of extending for a further 30 days.[81]

75 Submissions nos. 3, 4, 6, 11, 13,
76 Submissions nos. 11, 13, 16, 20, 22 and 23
77 Health Consumers Queensland (HCQ), Submission no. 16, p.1; QADA, Submission no. 20, p.5
78 QNU, *op. cit.*, pp.5&6
79 AMAQ, Submission no. 3, p.8
80 Avant Mutual Group Limited, *op. cit.*, p.4
81 HQCC, Submission no. 22, p.14

The HQCC and QNU have concerns that the 14-day timeframe to provide a submission or information was very short for a practitioner to seek and obtain advice, obtain evidence and information and make a considered response. The QNU suggested that the Health Ombudsman should be given the discretion to extend the statutory timeframes where appropriate.[82]

6.8.4 Committee's view

The committee and its predecessor the Health and Disabilities Committee, have raised concerns about the timeliness of HQCC complaint management – in particular, the time taken to conduct investigations. The committee therefore welcomes the provisions in the Bill aimed at ensuring that complaints and other health service matters are dealt with in a timely manner.

The committee notes the concerns expressed by submitters that the various statutory timeframes are too short. The committee acknowledges that when setting statutory timeframes for decisions, an appropriate balance needs to be struck between ensuring timely decision making and achieving satisfactory resolution of matters for all concerned.

Committee comment

The committee does not recommend any changes to the statutory timeframes for complaint management in the Bill. The committee, in its proposed oversight role, anticipates it will monitor the appropriateness of complaint management timeframes, and anticipates that the Health Ombudsman and the Minister will do the same.

82 ibid., p.13 and QNU, Submission no. 13, pp.5&6

7 Assessment, local resolution and conciliation

The Bill provides that the Health Ombudsman may assess a health service complaint, facilitate the local resolution of a health service complaint, or conciliate a complaint. These provisions are similar to those in the current HQCC Act.

7.1 Assessment

The purpose of an assessment is to obtain and analyse information relevant to the complaint and decide the most appropriate way to further deal with it. An assessment may include: analysing information; considering submissions; communication with the complaint and health service provider and seeking technical expertise on a matter (clause 46).

Statutory timeframes apply to making submissions and providing information requested by the Health Ombudsman (see Section 6.8 of this report for further details about statutory timeframes). After completing an assessment, the Health Ombudsman must decide to take *relevant action* or to take no further action (clause 50). The Health Ombudsman must inform the complainant and health service provider of the decision under clause 278.

7.2 Local resolution

The purpose of local resolution is to facilitate the resolution of a complaint as quickly as possible and with minimal intervention by the Health Ombudsman. To facilitate the resolution of a complaint, the Health Ombudsman may: analyse information; consider submissions; facilitate meetings between the complainant and health service provider; and facilitate an agreement on a course of action between the complainant and the health service provider (clause 52).

Statutory timeframes apply to making submissions and providing information requested by the Health Ombudsman (see Section 6.8 of this report). If the complaint has not been resolved in the time permitted, the Health Ombudsman must decide to take *relevant action* or to take no further action. The Health Ombudsman must inform the complainant and health service provider of the decision under clause 278.

7.2.1 Submissions

Five submissions supported the local resolution of complaints.[83] The AMAQ commented that the involvement of the Heath Ombudsman in the resolution of all local complaints would have significant resource implications and remove the impetus for health service providers to improve the quality of their services to reduce complaints.

The AMAQ suggested that all complaints should be resolved locally by health service providers, where possible, and the Health Ombudsman charge the health service provider a fee where its local resolution services are used. If such a model was adopted, the AMAQ suggested that the health service provider be required to keep a register of complaints and provide the register to the Health Ombudsman. Regulations or guidance could set standards for local complaints processes. The AMAQ stated that a similar approach currently exists in NSW.[84]

7.2.2 Committee's view

The committee considers that health service complaints should be dealt with at the appropriate level, which may not always be by the Health Ombudsman. The committee understands that under the HQCC Act, a significant number of consumers' concerns are dealt with directly between the complainant and the health service provider. The committee sought advice from the NSW Health Care Complaints Commissioner (HCCC) on requirements for NSW health providers to keep a register

83 Submissions nos. 3, 14, 15, 20 and 24

84 AMAQ, Submission no. 3, Appendix 1, p.4

of complaints and give it to the HCCC. The Commissioner advised that the HCCC is "… not provided with lists of complaints" and that "… there is no legal obligation on the local health district to inform us of that and we generally do not have a problem with that".[85]

The committee considers that, given the Health Ombudsman's focus on serious matters, it is appropriate that a significant proportion of consumer concerns may be dealt with directly with the health service provider.

7.3 Conciliation

The Health Ombudsman may conciliate to facilitate settlement of a complaint between the parties in a reasonable way and, if appropriate, enter into a contract to give effect to the terms of the settlement (clause 135). The Health Ombudsman may assign one or more conciliators to conciliate the health service complaint (clause 138) and all parties must negotiate in good faith (clause 139). Clause 140 makes provision about the commencement of conciliation if other *relevant action* is being taken in relation to the complaint, for example, *immediate action* or an investigation.

Any information disclosed during conciliation is privileged and confidential (clauses 149 and 150), except for the conciliator's report to the Health Ombudsman of the results of the conciliation (clause 145) and the conciliator's obligation, in clause 141, to notify the Health Ombudsman of public interest issues arising during the conciliation.

The Health Ombudsman must end conciliation, if he or she considers the complaint cannot be resolved by conciliation or the Minister directs an investigation or inquiry. The Health Ombudsman may end conciliation, if he or she believes a party is not negotiating in good faith (clause 148).

If no agreement is reached or the conciliation is ended, the Health Ombudsman must either decide to take *relevant action* or to take no further action (clauses 147 and 148). The Health Ombudsman must give the complainant and health service provider notice of the decision under clause 278.

7.3.1 Submissions

The AMAQ suggested in its submission that the obligation on a conciliator to notify the Health Ombudsman of public interest matters (clause 141) may discourage practitioners from entering into conciliation; leading to increased costs and delays in the resolution of disputes.[86] The Medical Victims Advocate Services suggested that the Health Ombudsman required additional powers to require health practitioners to co-operate and appear for questioning.[87]

The HQCC stated that the Bill appeared to enable parties to negotiate monetary claims for damages, which is contrary to HQCC's current policy that compensation is limited to out-of-pocket expenses and corrective treatment. The HQCC consider that the courts are better placed to deal with negligence issues and monetary claims for damages.[88]

The HQCC also highlighted that the Bill does not prescribe timeframes for the completion of conciliation. In HQCC's experience, without a timeframe and a requirement to comply with directions, conciliation matters (particularly those involving monetary claims for damages) can remain open for a number of years.[89]

85 Mr Kieran Pehm, NSW Health Care Complaints Commissioner, *Public Briefing Transcript*, 30 July 2013, p.2, available at http://www.parliament.qld.gov.au/documents/committees/HCSC/2013/HealthOmbudsmanBill/trns-pb30Jul2013-HOB.pdf

86 AMAQ, Submission no. 3, Appendix 1, p.9

87 Medical Victims Advocate Services, Submission no. 1, p.5

88 HQCC, Submission no. 22, p.14

89 ibid., p.14

7.3.2 Committee's view

The committee notes that the HQCC Act contains similar public interest provisions to those in the Bill. The committee notes that the Bill is silent on the issue of whether parties may negotiate monetary claims for damages. The committee considers that there may be merit in an informal, low-cost mechanism to confidentially conciliate medical negligence claims. Ultimately, it will be for the Health Ombudsman to decide on operational issues, including how to make best use of the conciliation powers in the Bill.

On the issue of time to complete conciliation, the committee notes that statutory timeframes apply to the assessment, local resolution and investigation of matters, but not to conciliation. The committee expects that the Health Ombudsman would establish suitable performance indicators to ensure that conciliation is completed in a timely manner. The committee, in its proposed oversight role, will monitor the Health Ombudsman's performance in conciliation of complaints, including the time taken to complete conciliation.

Committee comment

The committee anticipates that, as part of its proposed oversight role, it will monitor the Health Ombudsman's performance in conciliation, including the time taken to finalise conciliations.

8 *Immediate action*

The Health Ombudsman may take *immediate action* to suspend or place conditions on a health practitioner's registration where there is a serious risk to the public (*immediate registration action*) (clause 58). The Health Ombudsman also has the power to prohibit a non-registered health practitioner from practising or to place restrictions on their practise, where there is a serious risk to the public (*an interim prohibition order*) (clause 68). The Explanatory Notes state these powers are "to be used in the most serious and urgent of circumstances".[90]

For the purpose of this section of the report the term *immediate action* refers to both *immediate registration action* and an interim prohibition order.

8.1 Grounds for taking *immediate action*

The Health Ombudsman may take *immediate registration action* against a registered health practitioner to suspend or impose conditions on a practitioner's registration, if:

- the Health Ombudsman reasonably believes that, because of the practitioner's health, conduct or performance, he or she poses a serious risk to persons and it is necessary to take the action to protect public health or safety
- the Health Ombudsman reasonably believes the practitioner's registration was improperly obtained due to false or misleading information, or
- the practitioner's registration has been cancelled or suspended in another jurisdiction, including outside Australia (clause 58).

These grounds are similar to those currently set out in the National Law.[91]

The Health Ombudsman may issue an interim prohibition order to a non-registered health practitioner if the Health Ombudsman is satisfied, on reasonable grounds that, because of the practitioner's health, conduct or performance, they pose a serious risk to persons and it is necessary to issue an order to protect public health or safety (clause 68). A serious risk may arise from the practitioner, for example, practising unsafely, incompetently or while intoxicated; engaging in sexual or improper relationships; or financially exploiting a person (clause 68(2)). The Health Ombudsman may have regard to a conduct document, prescribed by regulation under clause 288, when deciding whether to issue an interim prohibition order. The committee notes that a code of conduct for non-registered health practitioners has been made in NSW.

The Explanatory Notes state that prior to taking *immediate action*, the Health Ombudsman may seek advice on clinical, legal or health consumer issues (the issue of the Health Ombudsman receiving advice is discussed at Section 5.5).[92] The Health Ombudsman may take *immediate action* at any time, irrespective of whether a complaint has been made (clauses 58(2) and 68(4)).

8.2 Show cause process

Before taking *immediate action*, the Health Ombudsman must notify the practitioner and invite them to make a submission within a stated period of at least seven days (a *show cause process*). The practitioner may make an oral or a written submission. The Health Ombudsman must have regard to any submission before deciding to take *immediate action* (clauses 59 and 69).

The Health Ombudsman may, however, decide to take *immediate action* before a show cause process, if he or she is satisfied it is necessary to do so to ensure the health and safety of an individual or the public (clauses 59(4) and 69(4)). If the Health Ombudsman takes *immediate action*

90 Explanatory Notes, p.4
91 Section 156, the Health Practitioner Regulation National Law (Qld)
92 Explanatory Notes, p.14

before a show cause process, the Health Ombudsman must notify the practitioner of the decision and invite him or her to make a submission within a stated period of at least seven days. The Health Ombudsman must have regard to any submission and decide whether the *immediate action* was appropriate (clauses 61 and 72).

8.2.1 Submissions and Minister's comments

The Optometrists Association Australia stated that greater rigour was needed to protect practitioners from the consequences of action based on mistaken or partial information.[93] Avant Mutual Group Limited considered that only the National Boards should be able to take *immediate action*.[94]

Nine submissions raised concerns about taking *immediate action* before a show cause process.[95] The AMAQ has concerns that taking *immediate action* before a show cause process is contrary to natural justice and procedural fairness.[96] Mr Jamie Shepherd, Professional Officer, QNU, stated that:

> *While we acknowledge the need in appropriate cases for regulators to be able to take prompt action, we contend that the immediate action provision should afford the practitioner an opportunity to respond before action is taken … The QNU is concerned that the Bill … has the effect of abrogating natural justice and unfairly shortcutting procedural fairness for practitioners.*[97]

The QNU stated that under the National Law a National Board must undertake a show cause process before taking *immediate action*, but the response time is often very short and can be made in writing or orally. Given the potentially short timeframe for a show cause process under the National Law, perhaps a couple of hours, the QNU questioned why it was necessary for the Bill to provide for *immediate action* before a show cause process.[98]

On 9 July 2013, the Minister responded to a committee request for further information about the show cause process. The Minister stated a show cause process would normally be expected. However, in exceptional cases this process could be waived. For example, if the Health Ombudsman received advice from a registration authority that a practitioner's registration had been fraudulently obtained and it was necessary to take the action immediately to protect the public, the show cause process may be waived. The Minister stated that in those exceptional cases, no purpose would be served in having a show cause process, and any delays may result in harm to the public.

The Minister advised that the under the *Health Practitioners (Disciplinary Proceedings) Act* 1999, and the National Law as it applies in NSW,[99] a show cause process is not required before taking *immediate action*. The Minister stated that while some stakeholders have expressed concern about the Health Ombudsman taking *immediate action* without a show cause process, stakeholders may be equally concerned about how meaningful a show cause process would be if it was done orally and in a matter of hours, rather than in writing.[100]

93 Optometrists Association Australia, Submission no. 4, p.2
94 Avant Mutual Group Limited, Submission no. 11, p.9
95 Submissions nos. 3, 4, 6, 11, 13, 14, 15, 24 and 28
96 AMAQ, Submission no. 3, p.7
97 Mr Jamie Shepherd, Professional Officer, Queensland Nurses' Union, *Public Hearing Transcript*, 12 July 2013, p.8
98 QNU, Submission no. 13, p.7
99 Section 150, Health Practitioner Regulation National Law (NSW)
100 Springborg Hon. Lawrence MP, Minister for Health, *Correspondence*, 9 July 2013, available at http://www.parliament.qld.gov.au/documents/committees/HCSC/2013/HealthOmbudsmanBill/cor-09Jul2013.pdf

8.2.2 Committee's view

The Forrester Report found that the requirement to have a show cause process before taking *immediate action* hampered, rather than facilitated, *immediate action* being taken against a practitioner to protect the public.[101]

The committee notes the Minister's assurances that the power to take *immediate action* before a show cause process is intended only in exceptional circumstances, where it is necessary to protect the public. The committee also notes that a show cause process is not required before taking *immediate action* under the *Health Practitioners (Disciplinary Proceedings) Act 1999* or the National Law, as it applies in NSW.

The committee considers that it may be appropriate, in certain circumstances, for the Health Ombudsman to take *immediate action* before a show cause process to protect the public health and safety. In reaching this view, the committee noted the Minister's assurances, and that the Health Ombudsman's use of the power is limited by the Bill to those circumstances where it is necessary to do so to ensure the health and safety of an individual or the public. This issue is discussed in more detail in Section 17 of this report, which discusses potential fundamental legislative principles issues.

8.3 Steps to be taken after *immediate action*

If the Health Ombudsman decides to take *immediate action*, he or she must notify the practitioner and the complainant of the decision, and inform the practitioner that they may appeal to QCAT (clauses 60 and 70).

Immediately after taking *immediate action* the Health Ombudsman must investigate the matter, refer the matter to AHPRA (if the matter relates to a registered health practitioner), or another State or Commonwealth entity, or refer the matter to the Director of Proceedings (clauses 64 and 75). The Explanatory Notes state that these clauses ensure that appropriate further action is taken promptly after a decision to take *immediate action*.[102]

The Health Ombudsman may revoke the *immediate action* at any time, if he or she is satisfied that it is no longer necessary (clauses 65 and 76).

8.3.1 Submissions and Department's response

The AMAQ suggested that where *immediate action* is taken, the investigation and QCAT hearing process should be 'fast tracked' and it should take no longer than six months for QCAT to reach a decision.[103] Other submissions were concerned that delays in QCAT considering matters will affect a practitioner's ability to resume work and earn a living.[104]

The Department advised that QCAT is aware of concerns about the time taken to reach decisions on disciplinary matters. The Department advised that the delays had been caused by a backlog of cases in 2011, and that QCAT is taking action to address those delays.[105]

8.3.2 Committee's view

Given the potential impact on the public and a health practitioner when *immediate action* is taken, the committee considers that it will be important for investigations and disciplinary proceedings before QCAT to be completed as soon as practicable. It will be for the Health Ombudsman and QCAT to put in place measures to ensure this happens. The committee expects it will monitor the completion rate of matters as part of its proposed oversight role.

101 *The Forrester Report*, p.ix
102 Explanatory Notes, pp.14 and 16
103 AMAQ, Submission no. 3
104 For example, FCMA, Submission no. 6, p.3
105 Mr Paul Sheehy, Director, Special Legislative Projects, Department of Health, *Public Hearing Transcript*, 12 July 2013, p.31

8.4 Publishing information about *immediate action*

Clause 273 provides that the Health Ombudsman may publish information about *immediate action* taken against a registered health practitioner on a publicly accessible website. However, the Health Ombudsman must not publish information that he or she considers would be inappropriate, for instance, the details of a practitioner's impairment (clause 273(3)).

The Health Ombudsman must publish information about an interim prohibition order relating to a non-registered health practitioner on a publicly accessible website. The Health Ombudsman must also publish information about any corresponding interstate interim orders (clause 79). Corresponding interstate interim orders are to be prescribed by regulation under clause 77 and may, for example, include an interim prohibition order made by the NSW Health Care Complaints Commission.[106]

In his letter of 9 July 2013, the Minister explained that the decision to publish information about *immediate action* against a registered health practitioner was discretionary, as there is already a statutory obligation to maintain a public register, including details of any suspensions or conditions, under the National Law. However, as there is no equivalent register for actions taken against non-registered health practitioners, the Bill provides that the Health Ombudsman must publish information about non-registered health practitioners.[107]

The Health Ombudsman must also give notice of the *immediate action* to each person he or she believes is an employer of the practitioner (clause 279(2)). The Health Ombudsman must notify the practitioner's employer, if the Health Ombudsman decides to revoke the *immediate action*.

8.4.1 Submissions and Minister's comments

Nine submissions considered that the publication of a decision to take *immediate action* against a practitioner is unfair, particularly if the Health Ombudsman had taken *immediate action* before a show cause process.[108] The following comments by the President of AMAQ, Dr Christian Rowan, reflected the views of submissions on this issue:

> *AMA Queensland is also very concerned about the power to publish decisions to take immediate action potentially indefinitely. This is especially concerning as a decision to take immediate action may be made unilaterally on the basis of limited information with immediate effect, however, the effect of publishing the decision may be irreversible. Publishing decisions on this basis treats health practitioners unfairly and exposes them to loss of income and reputational, for which they have no recourse.*[109]

Submissions also stated that decisions about *immediate action* should be removed from the website after a reasonable period, perhaps three years.[110]

In his letter to the committee of 9 July 2013, the Minister stated:

> *The taking of immediate action in relation to a registered health practitioner is already published. There is a requirement under the Health Practitioner Regulation National Law to maintain a publicly available register of health practitioners, including conditions and suspensions. The community has a right to know if a registrant's registration has been affected in this way. In the interests of transparency and certainty, the Bill states that the Health Ombudsman may also publish information about QCAT decisions and immediate action. Placing relevant information on the Health Ombudsman's website for QCAT*

106 Explanatory Notes, p.16
107 Hon. Springborg, *Correspondence*, 9 July 2013
108 Submissions nos. 3, 4, 6, 7, 11, 13, 14, 15 and 24
109 Dr Christian Rowan, *Public Hearing Transcript*, 12 July 2013, p.3
110 Submissions nos. 3, 4, 6, 11, 14, 15, 24

> *decisions and immediate action will make this information more readily available to the Queensland community.*[111]

8.4.2 Committee's view

The committee notes submitters' concerns about the publication of information about *immediate action* taken against a health practitioner. The committee is aware that information about *immediate action*, for example the suspension of registration or placing conditions on a health practitioner's registration, is already available on AHPRA's website.

The committee considers that, when it is consistent with the paramount guiding principle to protect the public, it may be appropriate for information about *immediate action* taken against a health practitioner to be published on the Health Ombudsman's website. The committee anticipates that the Health Ombudsman will give careful consideration to all the relevant matters when deciding whether or not to publish information on the website. This issue is discussed in more detail in Section 17 of this report, which discusses potential fundamental legislative principles issues.

8.5 QCAT review

A health practitioner may apply to QCAT to review the Health Ombudsman's decision to take *immediate action* within 28 days of the decision to take *immediate action* (clauses 63 and 74). Any such appeal is to be considered under the provisions of the *Queensland Civil and Administrative Tribunal Act 2009*. Clause 100 provides that QCAT must not grant a stay of the Health Ombudsman's decision to take *immediate action*.

8.5.1 Submissions

The QNU, Avant Mutual Group Limited and the AMAQ raised concerns about clause 100 which provides that QCAT may not grant a stay of the Health Ombudsman's decision to take *immediate action*.[112] Dr Christian Rowan, President of the AMAQ stated:

> *While an immediate action decision may be appealed to QCAT, the rights of the health practitioner to seek a stay of decision has been removed and waiting times for appeals to QCAT may stretch for years, during which time the health practitioner may not be able to work. As many health professionals' registration requires that a practitioner demonstrate recency of practice, this action could effectively end the career of a practitioner even if registration is reinstated by QCAT.*[113]

8.5.2 Committee's view

The committee notes stakeholders' concerns; however, those concerns appear to be about arrangements which are similar to the current legislation. The *Health Practitioners (Disciplinary Proceedings) Act 1999* provides that QCAT may not grant a stay of a decision to take *immediate action*. The committee is not aware of any concerns arising from the current legislation.

111 Hon. Springborg, *Correspondence*, 9 July 2013
112 Submissions nos. 3, 11, 13,
113 Dr Christian Rowan, *Public Hearing Transcript*, 12 July 2013, p.3

9 Investigations

The Health Ombudsman's power to conduct an investigation is broad, and not limited to health service complaints. The Health Ombudsman may investigate a health service complaint; a systemic issue about the provision of a health service (including the quality of a health service); or another matter relevant to achieving the objects of the Bill (clause 80). The Minister may also direct the Health Ombudsman to undertake an investigation (clause 81).

The Bill provides statutory timeframes for completing investigations (see Section 6.8 of this report). After completing an investigation, the Health Ombudsman must decide to take *relevant action* to further deal with the matter, or take no further action. The Health Ombudsman must notify the complainant and health service provider of the decision (clause 90).

9.1 Investigation powers

The powers available to investigators (an 'authorised person') when conducting an investigation are set out in clauses 186 to 244. The Health Ombudsman is an authorised person under the Bill. An authorised person's powers are similar to those in the HQCC Act and National Law; they include the power to enter premises and seize items with a warrant and powers to require information. It is an offence to fail, without a reasonable excuse, to provide information to an authorised person.

9.1.1 Submissions

The Medical Victims Advocate Services suggested complainants should receive assistance from consumer advocates during the investigation process. They also recommend the use of face-to-face open disclosure between the health service provider and complainant to provide closure for the complainant, accountability of the health service provider, and speedy resolution.[114]

Avant Mutual Group Limited suggested the Health Ombudsman should outsource the assessment and investigation of matters to AHPRA staff. They suggested this would ensure national consistency and mean the Health Ombudsman would not need to engage, train and supervise their own staff.[115]

9.2 Investigation reports

The Health Ombudsman may prepare an investigation report containing information, comment or recommending action (clause 86(1)). Provision is made, in clauses 86 and 89, to ensure that the entity who is the subject of the report has the opportunity to comment before it is published. Clause 89 permits the Health Ombudsman to ask a health service provider to provide a report about the implementation of any recommendations in a report. The Health Ombudsman may, after having regard to a health service provider's report, prepare a supplementary report (clause 89).

The Health Ombudsman may make an investigation report publicly available and give a copy to interested parties, including the complainant, health service provider or relevant entity, unless the matter is to be referred to the Director of Proceedings for a decision about whether to refer to QCAT (clause 87). If the matter is referred to the Director of Proceedings, the investigation report may only be given to the Minister, parliamentary committee, AHPRA, a National Board or other government entity (clause 87(1)). The Health Ombudsman must provide an investigation report to the Minister, if the Minister directed the investigation and requests a copy of the report (clause 87(3)).

Clause 88 makes provision about the disclosure of confidential information in an investigation report. An investigation report may contain confidential information identifying a health service provider, but may not disclose information about a complainant, a patient or a person who provided information to the Health Ombudsman.

114 Medical Victims Advocate Services, Submission no. 1, p.6
115 Avant Mutual Group Limited, Submission no. 11, p.10

9.2.1 Submissions and Department's comments

Medical stakeholders considered that the publication of information about an investigation and providing it to the Minister or parliamentary committee, before the matter had been determined, breached the principles of natural justice. These submitters considered that confidentiality must be maintained until the matter is closed.[116]

The QNU is very concerned that the publication of investigation reports could identify individual health practitioners and include confidential and personal information.[117] Mr Jamie Shepherd, Professional Officer, QNU stated that "the current provisions under the national law for the publication of findings and actions taken against practitioners is adequate for the protection of the public". The QNU acknowledged that "… learnings can come from de-identified publication of a summary of an event and what action was taken …".[118]

The Department advised that it was not the case that a full investigation report about a health practitioner could be published. The Department clarified that "the Bill specifically says that if an investigation report is prepared to go to QCAT then it cannot be published".[119]

9.2.2 Committee's view

The committee acknowledges that, in certain circumstances, it may be appropriate for the Health Ombudsman to make investigation reports publicly available. For example, publication may be appropriate if systemic issues were identified in the way a health facility operated or the Health Ombudsman had concerns about how a provider delivered a particular treatment. The publication of investigation reports in such circumstances could help to ensure that health service providers have the opportunity to learn from such cases, potentially contributing to improvement in the quality of health services in Queensland.

The committee notes that the Bill includes a number of safeguards concerning the publication of investigation reports. The Health Ombudsman is prohibited from publishing investigation reports which are to be referred to the Director of Proceedings for a decision on whether to refer the matter to QCAT. In reaching a decision on whether to publish an investigation report, the Health Ombudsman must have regard to the paramount guiding principle and must act independently, impartially and the public interest. Clauses 88 and 272(8) also prevent the Health Ombudsman from disclosing confidential information identifying a *protected person* (i.e. a complainant or a person who has provided information). However, the Health Ombudsman is not prevented from disclosing confidential information that identifies a health service provider.

If investigation reports are provided to the parliamentary committee, the committee expects that it would generally not publish personal or confidential information. There may be extreme circumstances where the committee may decide to publish personal or confidential information; for example, if the committee considered that it was in the public interest and consistent with the provisions of the Act (if passed), including the paramount guiding principle, to do so.

The committee acknowledges the concerns raised in submissions about confidential and personal information about a health practitioner being published in investigation reports. The committee, in its proposed oversight role, expects to monitor the Health Ombudsman's use of the power to publish investigation reports, in particular the appropriateness of publishing personal and confidential information about health practitioners.

116 Submissions nos. 3, 14, 15 and 24
117 QNU, Submission no. 13, p.12
118 Mr Jamie Shepherd, Professional Officer, QNU, *Public Hearing Transcript*, 12 July 2013, p.9
119 Mr Paul Sheehy, *Public Hearing Transcript*, 12 July 2013, p.29

Committee comment

The committee anticipates that, as part of its proposed oversight role, it will monitor the Health Ombudsman's use of the power to publish investigation reports, in particular the circumstances in which personal and confidential information about health practitioners is published.

10 Referral of matters to AHPRA and National Boards

The Health Ombudsman may refer a health service complaint or other matter about a registered health practitioner to AHPRA (clause 91). However, in line with the policy objective that all serious matters are to be dealt with the Health Ombudsman, clause 91 provides that a serious matter cannot be referred to AHPRA.

A serious matter includes professional misconduct (defined at section 5 of the National Law) or another ground which may lead to the practitioner's registration being suspended or cancelled.

The Health Ombudsman must consult AHPRA before referring a matter. If the Health Ombudsman decides to refer a matter to AHPRA, he or she must give AHPRA all the relevant information about the matter (clause 91(3)).

10.1.1 How matters referred to AHPRA and the National Boards will be dealt with

Any matter that is referred to AHPRA will be dealt with under the provisions of the National Law, as modified in its application to Queensland by the Bill.

Section 148 of the National Law provides that AHPRA must immediately refer the matter to the relevant National Board. AHPRA provides support and assistance to the National Boards in discharging their functions.

On receipt of the matter, the National Board must, within 60 days, conduct a preliminary assessment (section 150). The National Board may decide to take no further action (section 151) or decide to take action under Part 8 of the National Law. Depending on the nature of the matter, the National Board may:

- take *immediate action* against a health practitioner by suspending, or imposing conditions on, a practitioner's registration (division 7, Part 8 of the National Law)
- investigate the matter (division 8, Part 8 of the National Law), or
- require the health practitioner to undergo a health assessment or a performance assessment (division 9, Part 8 of the National Law).

The National Board may caution the practitioner, accept an undertaking from the practitioner, impose a condition on the practitioner, or refer the matter to another entity section 178 of the National Law. Before taking any of these actions the National Board must, in most cases, give the practitioner an opportunity to comment.

The National Board may decide to establish a health panel (section 181) or a performance and professional standards panel (section 182) to assess whether a practitioner has an impairment or whether the way they practise is unsatisfactory. After a hearing a health or performance panel may, depending on the nature of the matter, decide to take no further action, refer the matter to QCAT or impose conditions. A health panel may also suspend a practitioner's registration, while a performance panel may caution or reprimand a practitioner (section 191).

10.1.2 The Health Ombudsman must be notified of serious matters

The National Board must notify the Health Ombudsman as soon as practicable, if it reasonably believes a matter it is considering is a serious matter (section 193). The Health Ombudsman must then decide whether the serious matter should be referred back to the Health Ombudsman or whether the National Board should continue to deal with the matter (section 193). If The National Board has notified the Health Ombudsman of the serious matter, the National Board must comply with a request from the Health Ombudsman for a serious matter to be referred back to the Health Ombudsman (section 193A).

10.1.3 Referral of a matter by National Board to QCAT

The National Board must refer a matter to QCAT, if a health and performance panel recommends such a referral. A National Board may refer a matter to QCAT, if the Health Ombudsman asks the National Board to continue to deal with a matter (section 193B).

10.1.4 Submissions and Department's comments

The AMA South Australia considers that the creation of divided and separate pathways for dealing with complaints will lead to fragmentation of the overall governance surrounding the regulation of health practitioners and cause confusion. AMA South Australia stated the subsequent creation of 'gaps' in the system is a potential problem, resulting in role confusion, something the Forrester Report highlighted as a problem.[120] The Queensland Faculty of the RACGP stated that rather than diminishing confusion for health consumers and practitioners the model in the Bill will add to the complexity of the health complaints process.[121]

The Department advised the committee that:

> *The organisational arrangements in the Bill will mean that there will no longer be role confusion, the diffusion of responsibility between the national boards, the state board and the national agency and the state complaints agency. The Bill proposes there will be one person accountable for dealing with serious complaints in Queensland, that is the Health Ombudsman.*
>
> *The splitting of complaints management … has led to confusion and delay in the management of complaints. This arrangement will end under the Bill.*[122]

10.1.5 Committee's view

In light of the Chesterman and Forrester Reports' findings about confusion and delay under the current system, the committee considers that it will be important to ensure that any confusion and duplication of effort concerning matters referred by the Health Ombudsman to AHPRA and National Boards are kept to a minimum.

Given the concerns raised in the Chesterman and Forrester Reports about co-operation of AHPRA, the National Boards and HQCC under the current system, the committee requests clarification from the Minister about the following issues.

The committee notes that if a National Board forms a reasonable belief that a matter it is considering is a serious matter, it must notify the Health Ombudsman; the Health Ombudsman may then require that the matter be referred back to the Health Ombudsman. It is unclear, however, whether the Health Ombudsman will be able to require a National Board to refer a matter back to the Health Ombudsman, if the National Board does not notify the Health Ombudsman that a matter is serious. For example, if the Health Ombudsman obtained information which led him or her to believe that a matter currently being considered by a National Board was now a serious matter, could the Health Ombudsman require the National Board to refer the matter back to the Health Ombudsman?

Further, it is unclear what mechanism is available to ensure that a health assessment may be undertaken on a practitioner when the Health Ombudsman is considering a serious matter. For example, if a complaint about a serious matter included allegations that a practitioner practised while intoxicated by drugs, what mechanism would be available to require the practitioner to undertake a drugs test?

120 Australian Medical Association (SA), Submission no. 19, p.2
121 RACGP, Submission no. 24, p.1
122 Dr Michael Cleary, *Public Briefing Transcript*, 11 June 2013, p.2

Recommendation 2

The committee recommends that the Minister inform the Legislative Assembly during the second reading debate of the steps that will be taken to avoid confusion about roles, duplication of effort and delays with matters referred to AHPRA and the National Boards. In particular, the committee requests further clarification about whether the Health Ombudsman may:

- require the National Board to refer a matter back to the Health Ombudsman, if the National Board does not notify the Health Ombudsman of a serious matter, and
- when considering a serious matter, require a health practitioner to undergo a health assessment, for example, a drugs test.

11 Director of Proceedings and Queensland Civil and Administrative Tribunal

11.1 Director of Proceedings

The Bill establishes the position of Director of Proceedings to decide whether to refer a matter to QCAT on behalf of the Health Ombudsman, or refer the matter back to the Health Ombudsman for other *relevant action* or to take no action (clause 259). If the Director of Proceedings decides to refer a matter back to the Health Ombudsman, he or she may recommend a particular *relevant action* be taken (clause 103(2)). For example, the Director of Proceedings may recommend that a matter be investigated further to obtain additional evidence before a decision is taken about referral to QCAT.

When deciding whether to refer a matter to QCAT, the Director of Proceedings must have regard to the 'paramount guiding principle' (the health and safety of the public are paramount); the seriousness of the matter; the likelihood of proving the case before QCAT; the orders available to QCAT; and anything else the Director of Proceedings considers appropriate (clause 103(3)). Before referring a matter about a registered health practitioner to QCAT, the Director of Proceedings may consult the relevant National Board (clause 103(4)).

If a matter is referred back to the Health Ombudsman, he or she must decide to take *relevant action* or to take no further action, and give notice of the decision to the complainant and health service provider (clause 105).

11.2 Matters to be heard by QCAT

The Bill and the National Law provides that QCAT may:

- review a decision by the Health Ombudsman to take *immediate action* (under clauses 58 and 68)
- hear a matter referred by the Director of Proceedings (under clause 103(1))
- hear an application to change or remove a condition imposed on a health practitioner's registration by QCAT
- review an appealable decision under the National Law, for example a decision by the National Board to refuse to register a health practitioner (section 199 of the National Law), or
- hear a matter referred to QCAT by a National Board (section 193B of the National Law)

Clause 97 provides that the above matters (defined as *disciplinary matters*) are to be heard by a judicial member of QCAT. Impairment matters, for example, relating to drug or alcohol abuse, are generally to be held in private (clause 98) and QCAT may exclude the complainant and witnesses from a hearing, until they have given evidence (clause 99).

11.3 Assessors panels

The Bill provides for the appointment of a public panel of assessors and professional panels of assessors (clause 117). When considering a disciplinary matter, QCAT must be assisted by one assessor from the public panel of assessors and two assessors from the professional panel of assessors. A disciplinary matter may be heard by QCAT without the assistance of assessors if QCAT is satisfied it is necessary due to the urgency of the matter (clause 126).

Panel members are to be appointed by the Governor in Council, for a five-year term, on the recommendation of the Minister (clauses 118 and 122). The Minister decides on the number of members on each panel (clause 118). Clause 120 makes provision about disqualification from being a panel member.

For public panel members, the Minister must invite nominations from consumer groups, advertise the position and be satisfied that the recommended person has sufficient experience, knowledge, skills and standing in the community (clauses 118 and 121(1)). For members of professional panels, the Minister must invite nominations from the relevant National Board, Queensland universities and training institutes, professional colleges and associations and advertise the positions (clause 122(2)).

The Minister may only recommend a person for appointment if the person is a registered health practitioner for that profession and the Minister is satisfied that person has sufficient experience, knowledge, skills and standing in the community (clause 118).

The Minister may make temporary appointments to panels, if the QCAT registrar believes it is necessary because a matter is likely to involve specialist or technical issues on which existing panel members are unable to advise (clause 119).

11.4 QCAT decisions

11.4.1 Registered health practitioners and students

After hearing a disciplinary matter about a registered health practitioner, QCAT may decide:

- that the practitioner has no case to answer and take no further action
- to caution or reprimand the practitioner
- to impose a condition on the practitioner's registration, for example, requiring the practitioner to undertake a specified period of supervised practice
- to require the practitioner to pay a fine of not more than $30,000 to the Health Ombudsman
- to suspend the practitioner's registration for a specified period, or
- to cancel the practitioner's registration (clause 107)

If QCAT decides to cancel a practitioner's registration or the practitioner does not hold registration, QCAT may also disqualify the practitioner from applying for registration indefinitely or for a specified period of time. A practitioner may also be prohibited from using a specified title or providing a specified health service (clause 107(4)).

After hearing a matter about a student, QCAT may decide that a student has an impairment or has no case to answer. If QCAT decides a student has an impairment, it may impose a condition on, or suspend, a student's registration (clause 108).

11.4.2 Non-registered health practitioners

If QCAT decides that a non-registered health practitioner poses a serious risk to persons, it may make a prohibition order to prohibit the practitioner from providing a health service or impose restrictions on the provision of health services by the practitioner (clause 113). It is an offence for a practitioner to contravene a prohibition order made by QCAT (clause 115).

11.5 Publication of QCAT decisions

The Health Ombudsman must publish on a publicly accessible website the name of a practitioner about whom the prohibition order was made, the day the order took effect and the details of the order. The Health Ombudsman may also publish details of current corresponding interstate orders about health practitioners (clause 116). The Health Ombudsman may publish QCAT decisions about registered health practitioners and students on a publicly accessible website (clause 273).

11.6 Submissions

The Optometrists Association Australia and the Federation of Chinese Medicine and Acupuncture Societies of Australia Limited suggested that similar timeframes in the Bill for decisions of the Health Ombudsman should apply to QCAT.[123]

123 Optometrists Association Australia, Submission no. 4, p.1; FCMA, Submission no. 6, p.3

12 Other relevant action

Similar to the provisions of the HQCC Act, the Health Ombudsman may decide to conduct an inquiry about a health service matter or refer a matter to another State or Commonwealth body. The committee understands that, to date, the power to conduct an inquiry has not been used.

12.1 Inquiries

The Health Ombudsman may conduct an inquiry into a health service complaint, a systemic issue about the provision of a health service, or another matter relevant to achieving an object of the Bill, if the Health Ombudsman considers it would be in the public interest to do so (clause 151). The Minister may also direct the Health Ombudsman to conduct an inquiry (clause 152). The Bill makes provision for conducting an inquiry, holding hearings, calling witnesses and requiring information (clauses 153 to 166).

After completing an inquiry, the Health Ombudsman must prepare a written report (clause 167), which must be given to the Minister and tabled in Parliament (clause 169).

12.1.1 Submissions

The QNU raised concerns about clauses 162(3) and 164(3) which provide that self-incrimination is not a reasonable excuse for failing to provide information requested by the Health Ombudsman or answer a question or produce a record during a hearing.[124] This issue is addressed in Section 17 of this report which deals with application of the fundamental legislative principles to the Bill.

12.2 Referral of matters to other State and Commonwealth bodies

The Health Ombudsman may refer a matter to another State or Commonwealth body, for example the Queensland Police Service or the coroner (clause 92). The Health Ombudsman may refer a matter to the Health Care Complaints Commission in NSW, if the matter occurred in NSW or relates to a practitioner whose principle place of practise is NSW. If the matter is referred to a State body, progress reports may be given to the Health Ombudsman (clause 93).

124 QNU, Submission no. 13, p.10

13 Health provider standards and quality monitoring

13.1.1 Submissions and Department's comments

A number of submissions raised concerns that the HQCC's work in actively monitoring and seeking to improve health care will be lost under the proposed health complaint system.[125]

Avant Mutual Group Limited stated that if the function of monitoring and improving the quality of health care services was subsumed into the Australian Commission for Safety and Quality in Health Care then a valuable and locally relevant body of work would be lost. They are concerned this could have an adverse impact on patient safety.[126] Mrs Cheryl Herbert, Chief Executive Officer, HQCC described the removal of the legislative duty on health service providers to improve the quality of services as a "major retrograde step in Queensland".[127]

The HQCC and consumer representative groups recommended that the main objects of the Bill be expanded to include oversight, review and improvement in the quality of health services, as currently provided for in the HQCC Act.[128] The HQCC advised the committee that approximately 10 per cent of adverse outcomes in health are related to practitioner failure and 90 per cent are related to systems failures.[129]

Ms Helena Lake, a consumer representative on HQCC's Consumer and Community Advisory Committee, and the HQCC were concerned that the Bill's focus on disciplinary action against health practitioners, without including robust quality improvement processes for health service providers, presents a significant risk to the community.[130] Consumer representative groups stated that consumers had used the HQCC's Community and Consumer Advisory Committee to feed into the work to improve the quality of health services in Queensland.[131]

The HQCC also recommend that the current duty on all health service providers to improve the quality of health services, in section 20 of the HQCC Act, should be retained. The HQCC considered that a similar requirement would empower the Health Ombudsman to proactively gather information and monitor patterns of health service provider practice, complaint trends and other performance data to identify safety and quality issues and prevent health system failure.[132]

The Department advised the committee that the Health Ombudsman will be able to deal with systemic issues with a health service regardless of whether a complaint is received. The Department advised that:

> *With one exception, all of the powers that the HQCC currently has are in the Bill. The only matter that is not included is the ability to set standards which has been substituted by the prescribed conduct documents. All the existing powers that the HQCC has in relation to undertaking investigations, including dealing with quality matters, are in the Bill.*[133]

125 Submissions nos. 11, 16, 20, 21 and 22
126 Avant Mutual Group Limited, Submission no. 11, p.11
127 Mrs Cheryl Herbert, *Public Hearing Transcript*, 12 July 2013, p.25
128 HCQ, Submission no. 16, p.2; QADA, Submission no. 20, p.6; Ms Helena Lake, Submission no. 21, p.1; HQCC, Submission no. 22, pp.6 and 7
129 Dr Russell Stitz, Commissioner, Health Quality and Complaints Commission, *Public Hearing Transcript*, 12 July 2013, p.23
130 Ms Helena Lake, *op. cit.*, p.1; and HQCC, *op. cit.*, p.6
131 HCQ, *op. cit.*, p.2 and QADA, *op. cit.*, p.4
132 HQCC, *op. cit.*, p.6
133 Mr Paul Sheehy, *Public Hearing Transcript*, 12 July 2013, p.31

> *All the powers that HQCC currently has to obtain information, produce reports, do follow-up reports are there. The duty [the duty on health service providers to improve their service] is not there. From a legislative perspective its value is not clear.*[134]

13.1.2 Committee's view

In light of the reassurances from the Department, the committee considers that appropriate provision is made in the Bill to ensure that the Health Ombudsman can fulfil the objective in clause 3 of the Bill, to promote high standards of service delivery by health service organisations.

134 ibid.

14 Oversight, monitoring of the health complaints system

In his introductory speech, the Minister explained that the "bill provides better oversight of the administration of the health complaints management system by the Minister for Health". The Minister stated that the parliamentary committee "has the role of monitoring the operation of the health complaints management system and the performance of the Health Ombudsman, the national agency and national boards".[135] The Department advised the committee that:

> *Under the Bill, the health minister is responsible for overseeing the effective and efficient administration of the health complaints management system. Similarly, from the parliament's perspective, the parliamentary committee is responsible for monitoring and reviewing the operation of the health complaints management system.*[136]
>
> *… the health minister and the parliamentary committee are given clear and strengthened roles within the legislation. The health minister and parliamentary committee will be able to obtain information from the Health Ombudsman and the national boards to allow them to monitor the health complaints management system and how it is performing.*[137]

The respective roles of the Health Ombudsman, the Minister and the parliamentary committee are summarised below.

14.1 Health Ombudsman's role

Clause 25(d) provides that the Health Ombudsman is to monitor the National Boards' and AHPRA's performance of their functions relating to the health, conduct and performance of registered health practitioners in Queensland.

The Health Ombudsman is required, by clause 25(f), to report to the Minister and the parliamentary committee about: the administration of the health complaints system; the performance of the Health Ombudsman's functions; and the National Boards' and AHPRA's performance of their functions relating to the health, conduct and performance of registered health practitioners in Queensland.

14.2 Minister's role

The Minister's role is to oversee the administration of the health complaints system. Clause 170 provides that the Minister's functions are to oversee:

- the effective and efficient administration of the health complaints system
- the performance of the Health Ombudsman, and
- the performance of AHPRA and the National Boards of their functions in relation to the health, performance and conduct of registered health practitioners in Queensland.

The Minister is to keep the Parliament and the community informed of matters concerning the health complaint system (clause 170(b)). In discharging this oversight function, the Minister may request information and reports from the Health Ombudsman, AHPRA and National Boards (see Section s 14.2.1 and 14.2.2 below).

135 *Hansard*, 4 June 2013, p.1900 (Hon. Lawrence Springborg, Minister for Health)
136 Dr Michael Cleary, *Public Briefing Transcript*, 11 June 2013, p.4
137 ibid., p.3–4

14.2.1 Request for information and reports from Health Ombudsman, AHPRA and National Boards

The Minister may request information from the Health Ombudsman on matters related to the Health Ombudsman's functions (clause 171). The Minister may also request information from AHPRA or the National Boards about matter relating to the health, conduct and performance of registered health practitioners who provides health services in Queensland, even if the matter arose outside of Queensland (clauses 172 and 175(3)).

The Minister may ask the Health Ombudsman to provide reports, including periodic reports, when the Health Ombudsman takes particular *relevant action* or receives a complaint or becomes aware of a particular type of matter or matter about a particular health service provider. The Bill gives examples of the type of information the Minister may request, including:

- whenever the Health Ombudsman takes *immediate action* against a health practitioner, or
- receives, or takes *relevant action*, and
- to deal with a complaint about a Hospital and Health Service (clause 171).

The information the Minister requests, including in a report, may identify a complainant, a person who has received a health service, a health service provider or another person. The Minister may not, however, request information or a report about anything said during, or prepared, for conciliation (clause 175).

The Minister may ask the Health Ombudsman, AHPRA or a National Board to disclose information to a person engaged by the Minister. The Bill gives the example of the Minister engaging a person to audit the handling of health service complaints. A person engaged by the Minister must not disclose confidential information (clause 174).

14.2.2 Reports on the administration and performance of health complaints system

The Minister may ask the Health Ombudsman to prepare and publish reports about:

- the administration of the health complaints system
- the Health Ombudsman's performance, and
- the performance of AHPRA and the National Boards of their functions relating to the health, performance and conduct of registered health practitioners in Queensland (clause 176).

The Minister may consult with the parliamentary committee, Health Ombudsman, AHPRA or any National Board before requesting a report (Clause 176(2). Clause 177 provides that the Health Ombudsman, AHPRA or National Board must comply with such a request (clause 177). The Department advised the committee that "the Minister will require the Health Ombudsman to regularly report on the performance of the health complaints management system".[138]

14.2.3 Submissions and Department's comments

Six submissions raised concerns about the Minister's power to request information. The AMA stated that the provisions "… go well beyond the realms of an independent health complaints handling system" and "… could have the effect of very personal health information being viewed by the Health Minister and his or her staff, and for no particular reason". The AMA suggested that the Minister's power be limited to requesting information required to oversee the appropriate administration of the health complaints system and performance of the Health Ombudsman, AHPRA and the National Boards.[139]

138 ibid., p.3
139 AMA, Submission no. 12, p.2

The AMAQ and other medical stakeholders suggested that to ensure transparency, requests for information from the Minister should be recorded in the Health Ombudsman's annual report and reported to Parliament.[140]

The Explanatory Notes states that:

> *"… it is not the intention of the provisions for the Minister to consider individual complaints. However, the information sought by the Minister about a system-wide issue may incidentally identify individuals. Clause 178 places a confidentiality obligation on this information."*[141]

The Department advised the committee that the Minister's power to request information will address:

> *… significant barriers that were identified last year when the health minister sought information on how health complaints agencies were responding to serious allegations against health practitioners.*[142]

The Department stated that "Timely, accurate and relevant information is fundamental to being able to assure transparency and accountability of the Health Ombudsman's office".[143]

14.2.4 Committee's view

The committee supports the steps to ensure the transparency and accountability of the health complaints system. The committee notes that the use of information or reports obtained under Part 13 (clause 170 to 178) is restricted. Clause 178 provides that, if the information is not publicly available, the Minister (or someone acting on the Minister's behalf) may only use or disclose the information he or she has obtained to perform the functions under clause 170 (i.e. to oversee the administration of the health complaints system).

14.3 Parliamentary committee's role

The parliamentary committee's role is to monitor, review and report on the health complaints system. Clause 179 provides that the parliamentary committee's functions are to:

- monitor and review the operation of the health complaints system
- identify and report on ways the health complaints system might be improved
- monitor and review the Health Ombudsman's performance
- monitor and review the performance of AHPRA and the National Board of their functions relating to the health, performance and conduct of registered health practitioners in Queensland
- examine reports of the Health Ombudsman, AHPRA and National Boards
- advise the Minister on the appointment of the Health Ombudsman, and
- report to Parliament on matters referred to the committee or on other matters identified by the committee.

The Explanatory Notes state that "the Parliamentary Committee's role is to focus on systemic issues".[144] Clause 179(2) emphasises this point by providing that the parliamentary committee is not to re-investigate complaints or reconsider decisions, findings or recommendations of the Health Ombudsman, AHPRA or a National Board.

140 Submissions nos. 3, 5, 14, 15 and 24
141 Explanatory Notes, p.27
142 Dr Michael Cleary, *Public Briefing Transcript*, 11 June 2013, p.4
143 ibid.
144 Explanatory Notes, p.28

In discharging its functions, the parliamentary committee may request information, including periodic reports, from the Health Ombudsman, AHPRA and the National Boards (clause 180 and 181). Clause 184 provides that the Health Ombudsman, AHPRA and National Boards must comply with such a request. Clause 183 provides that information the parliamentary committee requests, may identify a complainant, a person who has received a health service, a health service provider or another person. The parliamentary committee may not, however, request information or a report about anything said during, or prepared, for conciliation.

14.4 Submissions on the oversight and monitoring of the health complaints system

The HQCC considered that the parliamentary committee's powers to review the Health Ombudsman's performance may lead to confusion about the Health Ombudsman's independence.[145] Other submissions, however, suggested that the parliamentary committee should be given the power to direct the Health Ombudsman to carry out an investigation or conduct an inquiry, rather than the Minister as provided for in clauses 81 and 152.[146]

The AMA South Australia stated that the intended governance and relationships between the National Boards, AHPRA, State-based Boards, the Health Ombudsman, the parliamentary committee, the Minister and the Legislative Assembly are unclear.[147]

14.4.1 Committee's view

In light of the issues raised in submissions, the committee requests that the Minister provide further information about his vision for the oversight, monitoring and review of the health complaints management system. In particular, the committee suggests that further information about how the roles of the Health Ombudsman, the Minister and the parliamentary committee will complement each other to ensure that the health complaints management system is accountable, may address some of the concerns raised by stakeholders.

Recommendation 3

The committee recommends that the Minister inform the Legislative Assembly during the second reading debate of his vision for the system of oversight, monitoring and review of the health complaints management system.

145 HQCC, Submission no. 22, p.15
146 Submissions no. 3, 10, 11, 12, 14, 15, 24 and 29
147 AMA (SA), Submission no. 19, p.2

15 Mandatory notifications by health practitioners

The National Law requires health practitioners to report 'notifiable conduct' by a practitioner (for example, practising while intoxicated, sexual misconduct, placing the public at risk of substantial harm due to impairment) to AHPRA. The National Law provides for exemptions to this requirement; for example, if the health practitioner is employed by an insurer providing professional indemnity insurance or is providing legal advice to the other practitioner. Some submitters have raised concerns that the requirements may have resulted in some practitioners with an impairment (e.g. depression or a drug problem) avoiding treatment due to a fear that they will be reported to AHPRA.

Clause 326 modifies the National Law to create a further exemption from the mandatory notification provisions in Queensland. The Bill provides that a health practitioner is not required to make a mandatory notification if they reasonably believe that, as a result of treating a practitioner, the practitioner's 'notifiable conduct' relates to an impairment which will not place the public at risk of harm and does not constitute professional misconduct.

The Explanatory Notes state that "the purpose of this modification is to not discourage health practitioners from seeking treatment for an impairment (such as substance abuse or serious mental health issues) for fear of being reported to the regulatory authorities".[148]

15.1 Submissions and Department's comments

The National Boards and AHPRA agree that a health practitioner should not feel discouraged from seeking treatment for an impairment for fear of being reported. However, they do not agree that the additional exemption provided for in the Bill is necessary. They considered the exemption in the Bill will further fragment national consistency for mandatory notifications, increase confusion among health practitioners, and has the potential to raise barriers to compliance with this important public safety obligation.

Seven submissions consider that the exemption in the Bill from reporting 'notifiable conduct' does not go far enough. They recommend that a broad exemption to the mandatory notification requirement which applies in Western Australia (WA) be adopted.[149]

In WA, any health practitioner providing treatment to another health practitioner is exempt from the mandatory notification provisions. There is no requirement for the treating practitioner to make a judgement on whether the practitioner's impairment will place the public at risk of harm or constitutes professional misconduct.[150]

The Department stated that "In the government's view, the WA model would go too far". The Department explained that under the WA model if a practitioner is treating a health practitioner for any matter, whether it is an impairment, an injury or something else, the exception applies. Furthermore, if matters were raised about professional misconduct there would be no obligation to report, and that professional misconduct may or may not be related to the impairment.[151]

15.2 Committee's view

The committee considers that the Bill strikes an appropriate balance; encouraging practitioners to seek treatment for any impairment, while ensuring that that any serious conduct matter is reported to the Health Ombudsman for action to be taken to protect the public.

148 Explanatory Notes, p.42
149 Submissions nos. 3, 11, 12, 14, 15, 24 and 27
150 Health Practitioner Regulation National Law (WA) 2010, section 141(da)
151 Mr Paul Sheehy, *Public Hearing Transcript*, 12 July 2013, p.32

16 Implementation of new arrangements and funding

16.1 Implementation arrangements

The committee considers that it will be important for robust and effective implementation arrangements to be put in place to ensure a smooth transition to the new health complaints system in Queensland. The committee considers that the Department, HQCC, AHPRA and the National Boards will all have an important role to play in the transition and implementation arrangements.

The Department advised that there is a very good working relationship between the Department of Health, AHPRA, the National Boards and the HQCC.[152] The committee notes that the Department intends to appoint a project director shortly to start transition and implementation planning.[153] The Department stated that the transition plan needs to be well thought through and it will be developed in consultation with both AHPRA, the National Boards and the HQCC.[154]

Mr Martin Fletcher, the chief executive officer of AHPRA, advised that AHPRA "… are very keen to ensure that the transition to the new Health Ombudsman arrangements is as smooth as it possibly can be and … that there are no unintended consequences or risks".[155] Mr Fletcher advised that AHPRA is focussed on practical issues, such administrative arrangements and IT systems, to ensure a smooth interface between the Health Ombudsman and AHPRA.[156]

16.2 Funding

The Explanatory Notes state that the operation of the National Scheme is predominantly funded out of registrants' fees, which are accounted for through an Agency Fund established under the National Law. The Bill provides that the Minister is to direct the payment of monies out of the Agency Fund to the Health Ombudsman to reflect the cost of the Health Ombudsman that would otherwise have been performed by the National Boards and AHPRA.

The Explanatory Notes state that the additional function of taking proceedings to QCAT for non-registered health practitioners will only incur modest additional costs, and savings will be accrued from HQCC discontinuing the standard-setting function and some quality monitoring functions. The Explanatory Notes to the Bill state "On this basis, it is intended that the Bill will be cost neutral for government"'.[157]

16.2.1 Submissions

A number of submissions considered that the Health Ombudsman would need to be adequately funded in order to effectively perform its functions and meet the statutory timeframes in the Bill.[158] Submissions also raised concerns that the creation of the Health Ombudsman would cause an increase in practitioner registration fees.[159] In particular, the QNU is concerned that the number of non-registered health practitioners covered by the Bill would lead to an increase in registration fees.[160]

The AMA requested that the Government provide details of its costings for the Health Ombudsman and the predicted call on the Agency Fund. The AMA also stated it was not consulted and said the

152 Dr Michael Cleary, Deputy Director-General, Health Services and Clinical Innovation, Department of Health, *Public Hearing Transcript*, 12 July 2013, p.29
153 ibid., p.33
154 ibid.
155 Mr Martin Fletcher, *Public Hearing Transcript*, 12 July 2013, p.19
156 ibid., p.18
157 Explanatory Notes, p.4
158 Submissions nos. 3, 11, 12, 13, 14, 15, 19 and 24
159 Submissions nos. 12, 13 and 19
160 Mr Jamie Shepherd, *Public Hearing Transcript*, 12 July 2013, p.8

Government should be required to provide costs of investigations and inquiries directed by the Minister.[161]

Mr Martin Fletcher, Chief Executive Officer of AHPRA, advised the committee that the National Scheme is a self-funded scheme. AHPRA's only source of funds is the fees that health practitioners pay on annual basis to renew their registration. Mr Fletcher advised that there is no cross-subsidisation between the health professions in terms of the cost of operating the National Scheme.[162] Mr Fletcher stated that "if the Queensland model does cost more, that ultimately would be a cost that would have to be borne by registrants".[163]

16.2.2 Committee's view

The committee notes that it is anticipated that the Bill will be cost neutral to Government and notes the concerns raised in submissions about any increases in practitioner registration fees. The committee notes, however, that the proportion of fees to be paid out of the Agency Fund to cover the cost of the operation of the Health Ombudsman has yet to be negotiated and agreed. It would therefore be premature for the committee to comment.

161 AMA, Submission no. 12, p.3
162 Mr Martin Fletcher, *Public Hearing Transcript*, 12 July 2013, p.18
163 ibid., p.19

17 Fundamental legislative principles

17.1 Introduction

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The committee considered the application of fundamental legislative principles to the Bill. It noted that the Explanatory Notes state that the Bill is generally consistent with fundamental legislative principles. The committee has identified the following potential fundamental legislative principles issues with the Bill and makes the following comments.

17.2 Potential fundamental legislative principles issues

17.2.1 Immediate action before show cause process – rights and liberties of individuals

As outlined in Section 8 of this report, clauses 59(4) and 69(4) provide the Health Ombudsman may take *immediate action* a registered health practitioner (i.e. suspend or impose a condition on their registration) or make an interim prohibition order against a non-registered health practitioner before providing the practitioner with the opportunity to comment (a show cause process).

The committee considers that denying a health practitioner the opportunity to comment before taking action may have a significant impact on a practitioner's rights and liberties, including on their ability to practice and earn a living. In addition, the principles of natural justice include the right of a person to be made aware of an allegation made against them and the right to present their case to the decision-maker before action is taken against them.

The committee notes, however, that such rights and liberties are not absolute. For example, the former Scrutiny of Legislation Committee (SLC) raised no objections about powers of tribunals to suspend a person, without a show cause process, where issues of safety or public health were concerned.

The Explanatory Notes state that "This power is to be used in the most serious and urgent circumstances";[164] and that "the Forrester Report … expressed concern with the requirement for a show cause process under the National Law, which … hampered rather than facilitated the taking of *immediate action*".[165] The Explanatory Notes also state a show cause may not be required if:

> *… the evidence before the health ombudsman is clear (e.g. written advice from an overseas registration authority that a practitioner's registration had been cancelled for professional misconduct) and the continuing practice of the practitioner during any show cause period would place the public at risk.*[166]

The committee notes that the circumstances where the Health Ombudsman may take *immediate action*, before a show cause, are limited to where it is necessary to do so to ensure the health and safety of an individual or the public. In reaching a decision on this matter the Health Ombudsman must act independently, impartially and in the public interest (clause 27). The committee also notes that the power to take *immediate action* before a show cause process is consistent with the paramount guiding principle of the Bill, which is that the health and safety of the public are paramount (clause 4). In light of the limited circumstances in which the Health Ombudsman may use

164 Explanatory Notes, p.4
165 ibid., p.5
166 ibid., p.14

the power, and the paramount guiding principle to protect public health and safety, the committee considers that, on balance, clauses 59(4) and 69(4) have sufficient regard to the rights and liberties of health practitioners.

17.2.2 Publication of immediate action decisions – rights and liberties of individuals

Clause 273 provides that the Health Ombudsman may publish, on a publicly accessible website, information about *immediate action* taken against a health practitioner. Clause 79 provides that the Health Ombudsman must publish information about an interim prohibition order made against a non-registered health practitioner. An explanation of why the Health Ombudsman may publish information about *immediate action*, but must publish information about an interim prohibition order is in Section 8 of this report.

The committee considers that these powers have the potential to impact on the rights and liberties of health practitioners, and their right to privacy. For example, the publication of the name of a health practitioner and details of the *immediate action*, who is later exonerated, may cause damage to their reputation and adversely impact on their livelihood both immediately and in the future. Submissions pointed out that the potential risk of this occurring is increased, if the Health Ombudsman has taken *immediate action* before a show cause process.

As above, the committee notes that that such rights and liberties are not absolute. The committee notes that the National Law currently requires details of any suspension or conditions imposed on a health practitioner's registration to be recorded on the national register, available on AHPRA's website. This requirement will remain if the Bill is passed. In his letter to the committee of 9 July 2013, the Minister explained that placing information on the Health Ombudsman's website will make this information readily available to the Queensland community.[167]

The committee considers that any potential impact on the rights and liberties of health practitioners needs to be balanced against protecting the health and safety of the public (the paramount guiding principle of the Bill). The committee considers that there is a strong public interest argument for such information to be made publicly available to protect public health and safety. The committee notes that the Bill provides some protection to health practitioners by providing that the Health Ombudsman must not publish any information he or she considers inappropriate, for example, the details of any impairment.

The committee considers that, on balance, clauses 273 and 79 have sufficient regard to the rights and liberties of health practitioners.

17.2.3 Power to require information and attendance at hearings – rights and liberties of individuals

The Bill includes provisions to require information or attendance at hearings. The Health Ombudsman may require a person to provide information for the purpose of assessing complaints (clause 48), facilitating local resolution (clause 54), and conducting an inquiry (clauses 162 and 164). An authorised person may require a person to provide information during an investigation (clauses 226 and 228). Failure to provide information is, unless the person has a reasonable excuse, an offence punishable by a maximum penalty ranging from 50 ($5,500) to 100 penalty units ($11,000).

The Health Ombudsman may require the attendance of witnesses to give evidence or produce stated records or other things during an inquiry (clause 161). Failure to comply is an offence punishable by a maximum penalty of 100 penalty units ($11,000).

These coercive powers have the potential to adversely affect the rights and liberties of individuals, particularly the common law right to silence. However, given the Health Ombudsman's function of

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managing health service complaints, the committee considers that these investigatory powers are appropriate and, on balance, have sufficient regard to the rights and liberties of individuals.

17.2.4 Immunity from proceedings

The Bill provides protection from liability to individuals involved in the consideration of matters under the health complaints system. Clause 158 provides protection to inquiry members, lawyers, witnesses and persons producing documents at an inquiry hearing. Clause 275 provides that a person who, honestly and reasonably, gives information to the Health Ombudsman is not subject to liability for providing the information. Clause 276 provides that a defamatory statement published in the course of preparation of a report, or the report itself, does not expose a person to any liability of defamation, so long as they act in good faith. Clause 287 protects the Health Ombudsman, staff of the Office of the Health Ombudsman, an authorised person, a conciliator and a member of a clinical or consumer advisory panel from liability when performing functions under the Bill.

The committee notes that these provisions are designed to allow individuals involved in the consideration of matters to act without fear of personal liability (excluding dishonesty and negligence), while in the case of clause 287, providing an avenue for legal redress against the State for an aggrieved person. Given the nature of the matters considered under the Bill, the committee considers that the conferral of these immunities has sufficient regard to fundamental legislative principles.

17.2.5 Protection against self-incrimination

Clauses 162 and 164 provide that self-incrimination is not a reasonable excuse for failing to provide information, give an oath or affirmation, answer questions or produce documents during an inquiry.

The committee notes that clauses 162(4) and 164(4) provide that neither the answer or information given, nor any information obtained as a direct or indirect result of giving that answer or information, is admissible in any civil, criminal or administrative proceeding against the person, except for criminal proceedings about the falsity or misleading nature of the evidence. These provisions are similar to those in the HQCC Act.

In light of the protections provided in clause 162(4) and 164(4), the committee considers that, on balance, the provisions have sufficient regard to the fundamental legislative principles.

17.2.6 Delegation of legislative power

Clause 7 defines the term *health service* for the purpose of the Bill. Clauses 7(4)(c) and 7(5) provide that regulations may prescribe that other services are or are not a health service.

The Explanatory Notes state that "The purpose of this regulation-making power is to clarify 'grey areas' in the definition of a health service, for example, leisure activities that may or may not involve a health service".[168] The committee considers that, on balance, this is an appropriate delegation of legislative power.

Clause 288 provides that a regulation may prescribe a code of conduct, charter, standard or other document to provide guidance to persons performing functions under the Bill about the standard of services to be provided by health service providers. A code of conduct for non-registered health practitioners may also be prescribed by regulation.

The Explanatory Notes provide the following examples of standards which may be prescribed by regulation – the National Safety and Quality Health Service Standards and the Australian Charter of Healthcare Rights published by the Australian Commission on Safety and Quality in Healthcare. Clause 288 also provides that a regulation may prescribe a document prepared by the Minister.[169]

168 Explanatory Notes, p.5
169 ibid., p.37

The purpose of a code, charter or standard is to provide guidance to persons performing functions under the Bill.

Legislation that permits incorporation into the law documents made by entities outside the framework of government ('outside bodies') may adversely affected the institution of Parliament by delegating law-making power to 'outside bodies'. However, the committee recognises that in some cases there may be practical arguments for taking such an approach.

Typically, the former SLC did not take issue where the document was a fixed document readily accessible to readers of legislation. The SLC's concerns were also reduced if the document could only be incorporated under subordinate legislation (which may be disallowed) and was attached to the subordinate legislation, or required to be tabled with it.

The committee wrote to the Minister on 3 July 2013 to seek his comments on this matter. The Minister responded on 9 July and stated that he would table the relevant documents in the Parliament when the regulations are tabled.[170] In light of the Minister's assurance, the committee considers that this is an appropriate delegation of legislative power.

17.3 Explanatory Notes

The Explanatory Notes generally conform to the requirements of section 23 of the *Legislative Standards Act 1992.*

The committee considers that the Explanatory Notes would have benefitted from a more detailed explanation of the intended interaction of the Health Ombudsman and AHPRA, the National Boards and other entities involved in the new health complaints system. Further information about the respective roles of the Health Ombudsman, the Minister and the parliamentary committee in providing oversight and monitoring the performance of the health complaints management system would have also been of assistance.

In addition, the committee considers that the inclusion of information about the Health Ombudsman's role in promoting high standards of service delivery would have been helpful. As noted in Section 13 of this report, stakeholders were concerned about the difference between the HQCC and the Health Ombudsman's roles about service quality, and information in the Explanatory Notes may have assisted in understanding of the policy intent.

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Appendices

Appendix A – List of Submissions

Sub #	Submitter
001	Medical Victims Advocate Services
002	Patient Opinion Australia
003	Australian Medical Association (Qld)
004	Optometrists' Association Australia
005	Associate Professor Sophia Couzos
006	Federation of Chinese Medicine & Acupuncture Societies of Australia Ltd.
007	Australian Society of Orthopaedic Surgeons
008	Together
009	Maree Watson
010	Australian Medical Association (NSW)
011	Avant Mutual Group Limited
012	Australian Medical Association
013	Queensland Nurses' Union
014	Australian Association of Consultant Physicians
015	Australian Association of Nuclear Medicine Specialists
016	Health Consumers Queensland
017	AHPRA & National Boards
018	Australian Natural Therapists Association Ltd
019	Australian Medical Association (SA)
020	Queensland Aged and Disability Advocacy Inc.
021	Helena Lake
022	Health Quality and Complaints Commission
023	Australasian Paediatric Endocrine Group
024	Royal Australian College of General Practitioners (Queensland Faculty)
025	Australian Psychological Society
026	Dr. Patrick Gibney
027	The Royal Australian and New Zealand College of Psychiatrists
028	Medical Insurance Group Australia
029	Hon Jack Dempsey MP, Minister for Police and Community Safety

Appendix B – Witnesses at public briefings and hearings

Public briefing – 11 June 2013

Department of Health

- Dr Michael Cleary, Deputy Director-General, Health Services and Clinical Innovation
- Mr Paul Sheehy, Director, Special Legislative Projects

Public hearing – 12 July 2013

Dr Christian Rowan, President, Australian Medical Association (Queensland)

Queensland Nurses' Union

- Mr Jamie Shepherd, Professional Officer
- Ms Clare Gabriel, Solicitor

Mr Mark Tucker-Evans, Chair, Health Consumers Queensland

Australian Health Practitioner Regulation Agency

- Mr Martin Fletcher, Chief Executive Officer
- Mr Chris Robertson, Director National Board Services & Queensland
- Dr Joanna Flynn, Chair, Medical Board of Australia, Australian Health Practitioner Regulation Agency

Health Quality and Complaints Commission

- Dr Russell Stitz, Commissioner
- Mrs Cheryl Herbert, Chief Executive Officer

Department of Health

- Dr Michael Cleary, Deputy Director General, Health Services and Clinical Innovation
- Mr Paul Sheehy, Director, Special Legislative Projects

Public briefing – 30 July 2013

Mr Kieran Pehm, Commissioner, NSW Health Care Complaints Commission

Appendix C – List of publications referred to in this report

Australian Health Practitioner Regulation Agency, Annual Report 2011/12, available at http://www.ahpra.gov.au/documents/default.aspx?record=WD12%2f9240&dbid=AP&chksum=S6gwGtLfAovsukYbQ%2fn7hw%3d%3d

Chesterman Report, see Parliamentary Crime and Misconduct Committee

Davies Hon G AO, *Queensland Public Hospitals Commission of Inquiry: Report,* November 2005, available at http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2005/5105T5305.pdf

Explanatory Notes, Health Ombudsman Bill 2013, available at https://www.legislation.qld.gov.au/Bills/54PDF/2013/HealthOmbudsmanB13E.pdf

Financial Accountability Act 2009, available at https://www.legislation.qld.gov.au/LEGISLTN/ACTS/2009/09AC009.pdf

Forrester K, Davies E and Houston J, *Chesterman Report Recommendation 2 Review Panel* 5 April 2013, available at http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2013/5413T2375.pdf (*The Forrester Report)*

Forster Review, see The Consultancy Bureau

Health and Community Services Committee, *Public Briefing Transcript*, 11 June 2013, available at http://www.parliament.qld.gov.au/documents/committees/HCSC/2013/HealthOmbudsmanBill/trns-pb11Jun2013.pdf

——*Public Briefing Transcript*, 30 July 2013, available at http://www.parliament.qld.gov.au/documents/committees/HCSC/2013/HealthOmbudsmanBill/trns-pb30Jul2013-HOB.pdf

——*Public Hearing Transcript*, 12 July 2013, available at http://www.parliament.qld.gov.au/documents/committees/HCSC/2013/HealthOmbudsmanBill/trns-ph-12Jul201.pdf

——Report no. 21: *Oversight of the Health Quality and Complaints Commission*, 2013, Brisbane, Legislative Assembly of Queensland, available at http://www.parliament.qld.gov.au/documents/committees/HCSC/2012/HQCC/rpt-021-26Apr2013.pdf

——Website, available at www.parliament.qld.gov.au/hcsc

Health Practitioner Regulation National Law (NSW), available at http://www.austlii.edu.au/au/legis/nsw/consol_act/hprnl460/

Health Practitioner Regulation National Law (Qld), available at https://www.legislation.qld.gov.au/LEGISLTN/ACTS/2009/09AC045.pdf

Health Practitioner Regulation National Law (WA) Act 2010, available at http://www.austlii.edu.au/au/legis/wa/num_act/hprnla201035o2010496/

Health Practitioners (Disciplinary Proceedings) Act 1999, available at https://www.legislation.qld.gov.au/Acts_SLs/Superseded/SUPERS_H/HealthPracsDiscProcA99.htm

Health Quality and Complaints Commission Act 2006, available at https://www.legislation.qld.gov.au/LEGISLTN/ACTS/2006/06AC025.pdf

Hunter J R, Review of the files held by the Medical Board of Queensland, Queensland Board of the Medical Board of Australia and the Australian Health Practitioner Regulation Agency, 28 February 2013, available at http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2013/5413T2374.pdf (*The Hunter Report*)

Legislative Assembly of Queensland, *Hansard*, 24 July 2013, available at http://www.parliament.qld.gov.au/documents/hansard/2013/2013_07_24_EstimatesHCC.pdf

——*Hansard,* 4 June 2013, available at http://www.parliament.qld.gov.au/documents/hansard/2013/2013_06_04_WEEKLY.pdf

——*Standing Rules and Orders of the Legislative Assembly*, as amended 4 June 2013, available at http://www.parliament.qld.gov.au/work-of-assembly/procedures

Legislative Standards Act 1992, available at https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/L/LegisStandA92.pdf

Parliament of Queensland Act 2001, available at https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/ParliaQA01.pdf

Parliamentary Crime and Misconduct Committee, *A report of the Crime and Misconduct Commission's assessment of a public interest disclosure*, Report no. 87, July 2012, available at http://www.parliament.qld.gov.au/documents/committees/PCMC/2012/rpt-87-230712.pdf (*The Chesterman Report)*

Public Service Act 2008, available at https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/PublicServA08.pdf

Queensland Civil and Administrative Tribunal Act 2009, available at https://www.legislation.qld.gov.au/LEGISLTN/ACTS/2009/09AC023.pdf

Springborg Hon. Lawrence MP, Minister for Health, *Correspondence*, 9 July 2013, available at http://www.parliament.qld.gov.au/documents/committees/HCSC/2013/HealthOmbudsmanBill/cor-09Jul2013.pdf

Statutory Bodies Financial Arrangements Act 1982, available at
https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/S/StatutryBodA82.pdf
Submissions, see Health and Community Services Committee, website
The Consultancy Bureau, *Queensland Health Systems Review: Final Report*, September 2005, available at
http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2005/5105T4447.pdf (*The Forster Review*)

Statements of reservation

Mrs Jo-Ann Miller MP

JO-ANN MILLER MP
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Mr Trevor Ruthenberg MP
Member for Kallangur
Chairperson
Health and Community Services Committee
Parliament House
George Street BRISBANE QLD 4000

Statement of Reservation – *Health Ombudsman Bill 2013*

Dear Mr Ruthenberg

I submit a Statement of Reservation regarding the Health and Community Services Committee report on the *Health Ombudsman Bill 2012*.

The Queensland Opposition shares many of the concerns expressed by those organisations and individuals who have made submissions and provided evidence to the Health and Community Services Committee during its deliberations on this Bill.

The Queensland Opposition will detail our reservations during the second reading debate.

Yours sincerely

Jo-Ann Miller MP
Deputy Chairperson, Health and Community Services Committee
Shadow Minister for Health
Member for Bundamba

Dr Alex Douglas MP

DR ALEX DOUGLAS MP
STATE MEMBER FOR GAVEN

Mr Trevor Ruthenberg MP
Chair
Health and Community Services Committee
Parliament House
Brisbane 4000

Dear Mr Ruthenberg

Statement of Reservation – Health Ombudsman Bill 2013

I submit a statement of reservation regarding the Health Ombudsman Bill 2013.

In particular I share the concerns of the AMA and APHRA. I agree with the chair of the Medical Board of Australia Dr Joanna Flynn who says the Bill carries the risk of fragmentation of the National Registration and Accreditation Scheme and variation in standards for practitioners in different states.

I will detail my reservations during the second reading debate.

Yours sincerely

Alex Douglas

DR ALEX DOUGLAS MP
State Member for Gaven

August 9, 2013

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