



## *Health Ombudsman Act 2013 (Qld)*

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12 September 2013

Sydney ▲ Melbourne ▲ Brisbane ▲ Canberra ▲ Newcastle ▲ Perth

### **Background**

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- ▲ Chesterman inquiry
  - ▲ Review of MBQ/AHPRA files to identify cases where criminal charges might be laid
  - ▲ Panel review of MBQ files to determine whether timely and appropriate responses to complaints
  - ▲ Change in composition of the Qld Board of MBA (less medical practitioners and more community members)

## Background cont



- ▲ Hunter report:
  - ▲ 89 cases reviewed
  - ▲ 6 medical practitioners identified for referral to QPS

## Background cont



- ▲ Forrester report
  - ▲ Examination of 596 files
  - ▲ 363 files were found not to have been handled in a timely and/or appropriate manner and/or in compliance with the legislative objectives
  - ▲ Additionally observed:
    - ▲ Considerable variability in outcomes depending on category of notification
    - ▲ Delays in processing notifications resulted in practitioners who posed a risk to patient safety continuing to practice

## Background cont



- ▲ Political response:
  - ▲ Show cause notice issued to each member of Qld Board of the MBA
  - ▲ All but 3 Board members resigned and the remaining 3 were sacked
  - ▲ Introduction of the Health Ombudsman Bill 2013 (Qld) into parliament on 4 June 2013

## Health Ombudsman Act 2013 (Qld)



- ▲ Passed 20 August 2013
- ▲ Commencement date still to be proclaimed
- ▲ Amends the *Health Practitioner Regulation National Law Act 2009* (Qld) ('**National Law**') to make Queensland a co-regulatory jurisdiction
- ▲ Repeal of *Health Quality and Complaints Commission Act 2006* (Qld) and *Health Practitioners (Disciplinary Proceedings) Act 1999* (Qld)

## Main objects

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### Section 3

- ▲ Protect the health and safety of the public
- ▲ Promote safe and competent practice by health practitioners
- ▲ Promote high standards of service delivery by health service organisations
- ▲ Maintain public confidence in management of complaints and other matters related to the provision of health services

## Paramount guiding principle

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### Section 4

- ▲ The health and safety of the public are paramount

## Key features



- ▲ New statutory position of Health Ombudsman ('HO')
- ▲ Office of Health Ombudsman replaces the Health Quality and Complaints Commission ('HQCC')
- ▲ All 'health service complaints' (notifications) in Queensland are to be made to HO (not AHPRA or HQCC)
- ▲ The Act extends to cover or allow action to be taken against non-registered health practitioners

## Management of health service complaints



- ▲ Within 7 days HO will decide whether to accept complaint, take 'relevant action' or take no further action (section 35)
- ▲ HO will assume responsibilities for all 'serious matters' (section 91(1))
  - ▲ 'Serious matter' includes professional misconduct (as defined in section 5 of the National Law) or another ground that may lead to the practitioner's registration being suspended or cancelled
- ▲ HO may otherwise refer a health service complaint to AHPRA

- ▲ Note also: establishment of a Director of Proceedings to determine which complaints are to be referred to QCAT and/or prosecuted

## Statutory time frames

- ▲ New (shortened) statutory time frames for:
  - ▲ Assessments and local resolution:
    - ▲ HO must notify practitioner within 7 days
    - ▲ Practitioner to be given <14 days to make submission
    - ▲ Power to require information be provided within <14 days
    - ▲ Must be completed within 30 days (+30 day extension)
  - ▲ Investigations:
    - ▲ Concluded as quickly as possible but < 1 year (+3 monthly extensions permitted for up to 1 year but extension must be recorded on a public register)
    - ▲ HO to give progress reports to complainant and health service provider at >3 monthly intervals

## Immediate action



- ▲ Immediate action (section 58) can be taken where HO reasonably believes that:
  - ▲ because of the practitioner's conduct or performance, the practitioner poses a serious risk to persons; and
  - ▲ it is necessary to take the action to protect the public
- ▲ Immediate action may also be taken where:
  - ▲ HO reasonably believes registration improperly obtained; or
  - ▲ where a practitioner's registration has been cancelled or suspended in another jurisdiction

## Immediate action cont



- ▲ Immediate action includes suspension or imposition of conditions (section 57)
- ▲ Show cause process - HO must state the proposed action and allow practitioner 7+ days to respond (section 59)
- ▲ Exception: immediate action may be taken without show cause where it is necessary to do so to ensure the health and safety of an individual or the public (section 59(4))

## Review of immediate action decisions



- ▲ Practitioner may apply to QCAT for review within 28 days (section 63)
- ▲ No stay of decision to take immediate action (section 100)

## Concerns?



- ▲ Publishing information about immediate action (section 273)
- ▲ HO must notify a practitioner's employers of immediate action and/or where HO investigates a 'serious matter' (section 279)



## Mandatory notifications



- ▲ Changes to how the mandatory reporting provisions of the National Law apply in Queensland
- ▲ 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

## Problems?



- ▲ Adequacy of resources and funding
- ▲ Independence of the HO?
- ▲ Is the balance right between protecting the public and ensuring fairness for practitioners?
- ▲ Focus on disciplinary action against individual practitioners rather than achieving quality improvement processes for all health service providers and preventing systems failures