Health Ombudsman Act 2013 (Qld)

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Background

- 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

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

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 possibly 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 notifying 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