Queensland’s Health Ombudsman
What does it mean for you?

AMA Queensland advises members that on 20 August 2013, the Queensland Government passed laws creating a new Health Ombudsman. The Health Ombudsman is a statutory body and replaces the Health Quality and Complaints Commission (HQCC).

Although the laws have been passed, the process to appoint the Ombudsman has yet to begin. Once appointed, the Health Ombudsman will be responsible for leading the transitional arrangements to the new health complaints management. During this transitional period (expected to take a number of months), the HQCC will continue to operate normally.

This factsheet aims to answer some key questions doctors will be asking about the new laws:

What are the Health Ombudsman’s key functions?

- to receive health service complaints and take action to deal them under the Act, including disciplinary action against health practitioners
- to investigate and report on systemic health service issues, including matters related to the quality of health services
- to provide information to the public and health service providers about minimising and resolving complaints

What action can the Health Ombudsman take?

- Facilitate early resolution of a complaint between the complainant and the relevant health service provider.
- Take immediate action to suspend, or place conditions upon, a health practitioner’s registration if this is deemed necessary to protect the public.
- Take immediate action in relation to other health practitioners to prohibit or impose restrictions on the practitioner’s practice.
- Investigate a matter, using the investigation powers under the Act.
- Refer a matter to the Director of Proceedings, a lawyer in the Office of the Health Ombudsman who will decide whether proceedings should be taken against a health practitioner before the Queensland Civil and Administrative Tribunal (QCAT).
- Refer a complaint or other matter concerning a registered health practitioner to the Australian Health Practitioner Regulation Agency (AHPRA) to be dealt with under the National Law (except for professional misconduct and other serious matters).
- Conciliate a complaint, which may lead to the parties entering a confidential legally binding settlement.
- Refer a complaint or other matter to another state or Commonwealth entity.
- Make publically available, decisions about immediate action and QCAT decisions, as well as investigation reports about health complaints which identify the health practitioner.

The administration of the health complaints management system and the performance of the Health Ombudsman will be overseen by the Health Minister. As part of this role, the Minister may require information to be provided on matters related to the health complaints management system, including actions taken by the Health Ombudsman to deal with serious complaints.

How will the Health Ombudsman interact with the National Practitioner Boards?

The Act will clarify any role confusion between complaints entities by requiring all health service complaints to be made to the Health Ombudsman (currently these are split between the Health Quality and Complaints Commission (HQCC) and the national health practitioner registration boards). The Act also tasks the Health Minister with oversight of administering the health complaints management system and, as far it relates to Queensland, the performance of the national boards and the AHPRA in relation to the management of disciplinary matters.
When can the Minister request information from the Health Ombudsman?

As part of this role, the Minister may request information on matters related to the performance of the Health Ombudsman’s functions, including where a particular action is taken (e.g. to investigate a serious matter in relation to a Hospital and Health Service). The Minister, or a person authorised by the Minister to receive the information, must only use or disclose the information for the purpose overseeing the administration and performance of the Health Ombudsman, AHPRA and the National Boards.

The Minister may also direct the Health Ombudsman to publish regular performance reports on the health complaints management system, including on the performance of the national boards and the National Agency.

Under the Act, a Parliamentary Committee (currently the Health and Community Services Committee) has the role of monitoring the operation of the health complaints management system and the performance of the Health Ombudsman, the national boards and the National Agency. The Act provides the Parliamentary Committee with specific information-gathering powers for this purpose. The Parliamentary Committee also advises the Minister on the appointment of the Health Ombudsman.

What is AMA Queensland’s view?

AMA Queensland has strong doubts that the Health Ombudsman Act, as passed, will deliver on some of the Government’s expectations and has stridently opposed critical parts of this legislation from the onset. Our position was supported by the Opposition and some Independent Members of Parliament.

- **Clinical input:** the current provision, allowing the Health Ombudsman to establish committees and panels of clinicians to provide advice, is inadequate to ensure the level of expertise and clinical input necessary to give practitioners confidence that the system is fair.

- **Independence:** as the provider of public health and hospital services in Queensland, the Minister for Health (and his or her Department) has an inherent conflict of interest when considering health complaint matters. Within a tightening fiscal environment there will be considerable pressure placed on services to cut costs and increase activity. Service quality and system improvements may suffer as a consequence of these decisions. The public, patients and medical practitioners want an independent umpire. The Act as passed fails to provide the level of independence that is sought or required by our community.

- **Transparency:** there are particular provisions within the Act which provide powers to the Minister and his or her staff to require information. There is a lack of transparency around the purpose for which information is requested and how it will be used. AMA Queensland has particular concern that confidential information may end up in the public domain. In order for the public and health practitioner community to retain confidence in the health complaints system, there must be a transparent mechanism for requesting information and recording the purpose for which it is requested – for example, notation in the annual report and reporting to the parliamentary committee.

AMA Queensland will closely monitor the law’s implementation and will lobby the Government to ensure the new system delivers clinically sound, fair and transparent outcomes for both patients and health practitioners.

For further information please contact policy@amaq.com.au or call (07) 3872 2222 to speak to an AMA Queensland Policy Advisor.