Bold new regulation? The Queensland Health Ombudsman Act 2013

The Health Ombudsman Act (Qld) 2013 (the Act) became law on 20 August 2013, although the commencement date is yet to be proclaimed. The Act represents the Queensland Government’s response to recent investigations into the management of health complaints under the previous system that resulted in the referral of 6 doctors for investigation of possible criminal offences and an assessment that around 60% of the files examined had not been handled in a manner that was timely and/or appropriate and/or in compliance with legislative objectives.

According to the Health Minister, “the tighter timeframes for complaints assessment, investigation and completion under the Act will give Queenslanders a more rigorous, accountable health complaints system, which will be the single point of lodgement for health complaints in Queensland”.

The Act certainly represents a major change to the regulation of health professionals. The changes introduced by the Act are too wide-ranging to describe in this article, but in summary the Act creates a Health Ombudsman to replace the Health Quality and Complaints Commission, function as a single point of contact for all health service complaints in Queensland and deal with serious disciplinary matters (being those involving professional misconduct or other matters that might lead to a practitioner’s registration being suspended or cancelled).

The applicable guiding principle is that ‘the health and safety of the public are paramount’, and reflecting this the powers of the Health Ombudsman are wide ranging and the timeframes for action are short. In particular, if satisfied there is a serious risk to persons and it is necessary to protect public health or safety the Health Ombudsman may take immediate action by suspending or imposing
conditions on a practitioner’s registration. A show cause process allowing an affected practitioner to respond will generally be allowed, but even this may be omitted where necessary to ensure the health and safety of an individual or the public.

The Health Ombudsman may also:

(a) Facilitate local resolution of a complaint.
(b) Investigate a matter and prepare a report.
(c) Refer a matter to the director of proceedings (an employee in the Office of the Health Ombudsman responsible for determining whether a proceeding should be taken against the health practitioner before the QCAT and prosecuting that proceeding if it is).
(d) Refer (except for particular serious matters) the complaint to the National Agency to be dealt with under the National Law.
(e) Conciliate the complaint.
(f) Conduct an inquiry into the complaint or other matter and prepare a report.
(g) Refer a complaint or matter to another State or Commonwealth entity that has a function to deal with it.

The entire system is overseen by the Minister, who may direct the Health Ombudsman to investigate a particular matter and require the Health Ombudsman to give information and reports to him or her regarding a particular matter. The Health Ombudsman is otherwise required to act independently, impartially and in the public interest, and is not generally subject to direction.

Whether and how the Act achieves its goals will be the subject of considerable interest. The inquiries referred to above resulted in all 10 members of the Queensland Board of the Medical Board of Australia being asked to show cause as to why they should remain in their roles. 7 resigned and the remaining 3 were sacked.

There will accordingly be considerable pressure on the new body to resolve matters more quickly, but health practitioners will be concerned that this is not achieved at the expense of a proper inquiry and a fair outcome from their perspective. AMA Queensland concerns in relation to the legislation included the potential for breaches of procedural fairness and the lack of mandatory input from clinical experts. Only time and experience will show the extent to which those concerns are justified.
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