



30 April 2021

Ms Apolline Kohen
Acting Secretary
Standing Committee on Community Affairs
References Committee

Via email to: community.affairs.sen@aph.gov.au

Dear Ms Kohen

Thank you for the invitation to make a submission to the Community Affairs References Committee (the Committee) in relation to the *Inquiry into Administration of registration and notifications by the Australian Health Practitioner Regulation Agency and related entities under the Health Practitioner Regulation National Law*.

The submission from the Office of the Health Ombudsman (OHO) aims to provide some context to the health complaints and regulation jurisdiction in Queensland, as relevant to item (b) of the terms of reference:

The role of AHPRA, the National Boards, and other relevant organisations, in addressing concerns about the practice and conduct of registered health practitioners.

Unlike most other states and territories in Australia, responsibility for addressing concerns about the practice and conduct of registered practitioners is shared between the Australian Health Practitioner Regulation Agency¹ (Ahpra) and the Office of the Health Ombudsman (the OHO), which operate as co-regulatory partners.

The OHO is a Queensland independent statutory body that reports to the Minister for Health and is governed by the *Health Ombudsman Act 2013* (Qld) (the HO Act) as well as operating under the *Health Practitioner Regulation and National Law (Queensland)* (the National Law).

In Queensland, the OHO is the single point of contact for complaints and notifications relating to the provision of health services in Queensland and receives complaints about both registered and unregistered practitioners as well as about health service organisations such as hospitals and health services (both public and private). Relevantly, notifications made under the National Law are treated as health service complaints under the HO Act.

Although it has a number of other functions, in relation to complaints and notifications about the health, conduct and/or performance of registered practitioners the key responsibilities of the OHO are to:

- undertake a preliminary review of the complaint/notification within seven days of receipt to determine what, if any, relevant action should be taken
- refer any notification concerning a possible health impairment to Ahpra to action
- where necessary, undertake an assessment of the complaint/notification within 30 to 60 days to determine what further, if any, relevant action should be taken

¹ Including the 15 National Boards.

- as part of the preliminary review or assessment, decide whether the complaint/notification should be retained by the OHO or referred to Ahpra or any other government entity for action
- when retained by the OHO, investigate, and where it is considered the allegations can be substantiated, prosecute the practitioner in relation to the disciplinary matter before the Queensland Civil and Administrative Tribunal (QCAT).

In addition to the above, the OHO also has a complaints resolution and conciliation function and may seek to resolve complaints between consumers and practitioners (including registered practitioners).

By virtue of the operation of both the HO Act and the National Law, the OHO retains for investigation and prosecution through QCAT, the most serious complaints and notifications about registered practitioners.

Prior to 1 March 2020, the OHO had to retain all matters where either:

- the practitioner may have behaved in a way that constitutes professional misconduct² or
- another ground may exist for the suspension or cancellation of the practitioner's registration.

Under this legislative regime, complaints and notifications that fell below the professional misconduct threshold (namely matters about a practitioner's health impairment, unprofessional conduct or unsatisfactory professional performance) were referred to Ahpra to be determined by the National Boards.

Amendments to the HO Act, which commenced on 1 March 2020, amended the test for what matters the OHO must retain, in effect providing greater discretion to the Health Ombudsman to refer some professional misconduct matters to Ahpra/National Boards. Following the amendments, the OHO now must in effect retain a matter of professional misconduct where³:

- the registered health practitioner's behaviour is of such a serious nature that it may only be appropriately dealt with by the Health Ombudsman; and
- the matter involves a significant issue for the health and safety of the public.

In practice, the vast majority of complaints and notifications about registered practitioners are referred by the OHO to Ahpra to manage, with the majority being referred within seven days of receipt by the OHO. During the 2019–20 financial year, the OHO referred 2707 registered practitioner matters to Ahpra and the National Boards to deal with. In relation to matters the OHO retained, 198⁴ practitioner investigations were commenced.

I trust this information is of assistance to the Committee.

Yours sincerely

Andrew Brown
Health Ombudsman

² See section 5 of the National Law for the definition of professional misconduct

³ Section 91C of the HO Act.

⁴ A small number of these investigations concerning unregistered practitioners.