

11 January 2016

Your ref Draft OHO Issues Paper AMAQ

Our ref H&D 14

Dr Chris Zappala
President
AMA Queensland
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By Post and by email: j.hodge@amaq.com.au

Dear President

Draft Office of the Health Ombudsman (OHO) Issues Paper - AMA Queensland

Thank you for inviting the Queensland Law Society to consider AMA Queensland's draft Office of the Health Ombudsman (OHO) Issues Paper version 2.2 produced 17 November 2015.

This letter has been written with the assistance of the Health and Disability Law Committee.

The Society is supportive of the principles underpinning the Issues Paper and in particular the recommendations:

- to establish a permanent health professional council within the office of the health ombudsman. The Society considers this should include both generalist and specialist health practitioners as well as a representative legal practitioner to provide advice prior to the investigation stage of a complaint;
- for future OHO appointees to have judicial experience;
- to ensure that all investigations are undertaken in accordance with the principles of natural justice and procedural fairness; and
- that more funding be provided to the OHO so that complaints may be resolved in an expeditious manner. To that end we note that in the OHO Annual Report 2014-2015 the Government provided additional regulatory funding in the amount of \$4.5million.¹ The Society is supportive of this and calls for a commitment that there be extra funding attributed to the office each year.

¹ p56 - <http://www.oho.qld.gov.au/wp-content/uploads/2015/10/OHO-Annual-Report-2014-15.pdf>

Independence of the OHO

The Issues Paper also raises concern about the independence of the OHO in that the OHO must report to the Health Minister and that the Health Minister may refer complaints to the OHO.

The OHO equivalent for the legal profession is the Legal Services Commission. The Legal Services Commissioner reports to the Attorney-General and must table its annual report in parliament.² The Legal Services Commissioner is appointed by the Governor in Council.³ However the Attorney-General must be satisfied that the future commissioner is familiar with the nature of the legal system and legal practice and possesses appropriate qualities of independence, fairness and integrity.⁴ The Attorney-General may recommend a person who is not a legal practitioner.⁵

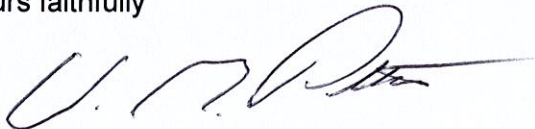
In contrast to the Health Minister, the *Legal Profession Act 2007* does not provide a mechanism for the Attorney-General to refer a matter to the Legal Services Commissioner. However, under the Act the Attorney can:

- “by written notice, ask the commissioner to provide a report at any time for a period stated in the Minister’s request about the system or about an aspect of the system stated in the notice;”⁶ and
- set the conditions the commissioner holds office.⁷

There may be a stronger argument for the powers and duties of the Health Minister (regarding the OHO) should instead mirror the powers and duties of the Attorney-General (with respect to the Legal Services Commission). We raise this issue for your kind consideration.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Policy Solicitor, Ms Louise Pennisi, on (07) 3842 5979 or l.pennisi@qls.com.au.

Yours faithfully



Bill Potts
President

² s490, *Legal Profession Act 2007* (QLD)

³ s584(1), *Legal Profession Act 2007* (QLD)

⁴ s584(2), *Legal Profession Act 2007* (QLD)

⁵ s584(3), *Legal Profession Act 2007* (QLD)

⁶ s590(3), *Legal Profession Act 2007* (QLD)

⁷ s586(2)(b), *Legal Profession Act 2007* (QLD)