

Health Ombudsman Regulation 2014

Explanatory notes for SL 2014 No. 124

made under the

Health Ombudsman Act 2013

General Outline

Short title

Health Ombudsman Regulation 2014

Authorising law

Section 292 of the *Health Ombudsman Act 2013*.

Section 242 of the *Queensland Civil and Administrative Tribunal Act 2009*.

Policy objectives and the reasons for them

The objectives of the regulation are to:

- recognise interim prohibition orders and prohibition orders made under corresponding interstate legislation, to enable those orders to be mutually recognised in Queensland;
- prescribe nationally accepted conduct documents that the Health Ombudsman and the Queensland Civil and Administrative Tribunal (QCAT) may consider when managing a complaint about a health practitioner; and
- make consequential amendments to the *Queensland Civil and Administrative Tribunal Regulation 2009* to enable QCAT to continue to charge fees to hear matters relating to complaints about health practitioners.

The objective of the *Health Ombudsman Act 2013* is to strengthen the health complaints management system in Queensland by establishing a transparent, accountable and fair system to effectively and expeditiously deal with complaints and other matters about the provision of health services. On 1 July 2014, the *Health Ombudsman Act 2013* repeals the *Health Quality and Complaints Commission Act 2006* and the *Health Practitioners (Disciplinary Proceedings) Act 1999*, and amends the *Health Practitioner Regulation National Law Act 2009* to ensure a seamless interaction with that law and the *Health Ombudsman Act 2013*.

Corresponding interstate interim orders

The *Health Ombudsman Act 2013* enables the Health Ombudsman to issue an interim prohibition order to a health practitioner. The purpose of an interim prohibition order is to immediately take action to protect public health or safety if the Health Ombudsman receives information that a health practitioner poses a serious risk to persons or because of the practitioner's health, conduct or performance.

A person commits an offence by contravening an interim prohibition order or a *corresponding interstate interim order*. The *Health Ombudsman Act 2013* provides that a regulation may prescribe an order to be a corresponding interstate interim order if the order is issued under a law of another State and corresponds, or substantially corresponds, to an interim prohibition order under the *Health Ombudsman Act 2013*. Because health practitioners may work across jurisdictions, the intent is to recognise and apply an interim prohibition order issued for a health practitioner in another jurisdiction, to prevent or restrict that person from providing health services in Queensland.

Presently, New South Wales and South Australia are the only Australian jurisdictions that have a regulatory scheme that provides for an order to be made against a person in a corresponding (or substantially corresponding) way to an interim prohibition order issued under the Queensland Act, as follows:

- Section 41AA of the *Health Care Complaints Act 1993* (NSW) enables the Health Care Complaints Commission to make an interim prohibition order if a health practitioner poses a serious risk to the health or safety of the public and the making of the order is necessary to protect the health or safety of the public.
- Section 56B of the *Health and Community Services Complaints Act 2004* (SA) enables the Health and Community Services Complaints Commissioner to take interim action, by way of an order, if the Commissioner believes a health service provider has breached a prescribed code of conduct or committed a prescribed offence and action is necessary to protect the health or safety of the public.

It is proposed to prescribe the interstate orders in New South Wales and South Australia as corresponding interstate interim orders under section 77 of the *Health Ombudsman Act 2013*.

Corresponding interstate orders

The *Health Ombudsman Act 2013* provides for QCAT to make a prohibition order against a health practitioner (other than a registered health practitioner), in regards to a matter that has been referred to QCAT by the Director of Proceedings under section 103 of the *Health Ombudsman Act 2013*. The purpose of a prohibition order is to prohibit, or restrict, a health practitioner from providing a health service in order to mitigate the serious risk the practitioner poses to persons.

A person commits an offence by contravening a prohibition order or a *corresponding interstate order*. The *Health Ombudsman Act 2013* provides that a regulation may prescribe an order to be a corresponding interstate order if the order is issued under a law of another State and corresponds, or substantially corresponds, to a prohibition order under the *Health Ombudsman Act 2013*. Again, because health practitioners may work across jurisdictions, the intent is to recognise and apply a prohibition order issued for a health practitioner in another jurisdiction, to prevent or restrict that person from providing health services in Queensland.

Presently, New South Wales and South Australia are the only Australian jurisdictions that have a regulatory scheme that provides for an order to be made against a person in a corresponding (or substantially corresponding) way to an interim prohibition order issued under the Queensland Act, as follows:

- Section 41A of the *Health Care Complaints Act 1993* (NSW) enables the Health Care Complaints Commission to make a prohibition order if a health practitioner has breached a code of conduct for unregistered health practitioners or has been convicted of a relevant offence, and the practitioner poses a risk to the health or safety of the public.
- Section 56C of the *Health and Community Services Complaints Act 2004* (SA) enables the Health and Community Services Complaints Commissioner to make an order prohibiting the prescribed health service provider from providing health services, or specified health services, for a period specified in the order, or indefinitely. The order may be made if the Commissioner believes a health service provider has breached a prescribed code of conduct or been convicted of a prescribed offence and action is necessary to protect the health or safety of the public.

It is proposed to prescribe these interstate orders in New South Wales and South Australia as corresponding interstate orders under section 114 of the *Health Ombudsman Act 2013*.

Prescribed conduct documents

The *Health Ombudsman Act 2013* provides that a regulation may prescribe conduct documents such as a code of conduct, charter, standard or other document (a *prescribed conduct document*) to provide guidance to health service providers, persons receiving health services and entities performing functions under this Act, about the standard of services that should be provided by health service providers or a related matter.

The Health Ombudsman and QCAT may take into account a prescribed conduct document when taking action against a health practitioner, including when issuing an interim prohibition orders and prohibition orders.

At the time of drafting the *Health Ombudsman Act 2013*, it was envisaged that relevant conduct documents would be identified for prescribing in a regulation. These documents would include codes of conduct or standard documents for registered and unregistered health practitioners.

The Australian Commission on Safety and Quality in Health Care (the Commission) was created by Health Ministers in 2006, and funded by all governments on a cost sharing basis, to lead and coordinate health care safety and quality improvements in Australia. The two main conduct documents published by the Commission, which are proposed for inclusion in the regulation, are:

- The Australian Charter of Healthcare Rights.
- The National Safety and Quality Health Service Standards.

The Australian Charter of Healthcare Rights was developed by the Commission during 2007 and 2008. The charter was developed with extensive and widespread consultation and specifies the key rights of patients and consumers when seeking or receiving healthcare services. In July 2008, Australian Health Ministers endorsed the charter as the Australian Charter of Healthcare Rights for use across the country.

The Charter applies to all health settings anywhere in Australia, including public hospitals, private hospitals, general practice and other community environments. It allows patients, consumers, families, carers and service providers to have a common understanding of the rights of people receiving health care.

The National Safety and Quality Health Service Standards were developed by the Commission to drive the implementation of safety and quality systems and improve the quality of health care in Australia. The Standards provide a nationally consistent statement about the level of care consumers can expect from health service organisations. The Standards and a national accreditation scheme were endorsed by Health Ministers in September 2011. This has created a national safety and quality accreditation scheme for health service organisations, against which all hospitals and day procedure services and the majority of public dental services across Australia need to be accredited. The 10 standards focus on areas that are essential to drive the implementation and use of safety and quality systems:

1. Governance for Safety and Quality in Health Service Organisations
2. Partnering with Consumers
3. Preventing and Controlling Healthcare Associated Infections
4. Medication Safety
5. Patient Identification and Procedure Matching
6. Clinical Handover
7. Blood and Blood Products
8. Preventing and Managing Pressure Injuries
9. Recognising and Responding to Clinical Deterioration in Acute Health Care
10. Preventing Falls and Harm from Falls

The prescribing of these documents is policy neutral, as it is consistent with the current use of these documents by the National Health Practitioner Registration Boards (established under the Health Practitioner Regulation National Law) and the Health Quality and Complaints Commission (HQCC). Specifically, an approved registration standard for a health profession, or a code or guideline approved by a National Board, may be admissible in proceedings against a health practitioner registered by the Board, as evidence of what constitutes appropriate professional conduct or practice for the health profession.

Further, the HQCC may make standards relating to the quality of health services. On 31 December 2012, the HQCC retired six of its nine standards made under that Act because of considerable overlap with the National Safety and Quality Health Service Standards. The HQCC also applies the Australian Charter of Healthcare Rights, following its endorsement by all Australian Health Ministers in July 2008.

Amendment of Queensland Civil and Administrative Tribunal Regulation 2009

The *Health Ombudsman Act 2013* will repeal the *Health Practitioner Regulation (Disciplinary Proceedings) Act 1999* on 1 July 2014. The *Health Ombudsman Act 2013* provides transitional arrangements to enable proceedings and reviews before QCAT under the *Health Practitioner Regulation (Disciplinary Proceedings) Act 1999* to continue after 1 July 2014 as if that Act had not been repealed. All subsequent proceedings will be covered by the *Health Ombudsman Act 2013*.

The *Queensland Civil and Administrative Tribunal Act 2009* provides that an applicant for an application or referral to QCAT must pay a prescribed fee, if any. These fees are prescribed in the *Queensland Civil and Administrative Tribunal Regulation 2009*.

The *Health Practitioner Regulation (Disciplinary Proceedings) Act 1999* enables a registered health practitioner to apply to QCAT for a review of a decision. As such, the *Health Practitioner Regulation (Disciplinary Proceedings) Act 1999* is prescribed in Schedule 1, Part 1 of the *Queensland Civil and Administrative Tribunal Regulation 2009*.

From 1 July 2014, health practitioners will be allowed to apply to QCAT for a review of a decision under the *Health Ombudsman Act 2013*. Therefore, it is necessary to prescribe the *Health Ombudsman Act 2013* in the *Queensland Civil and Administrative Tribunal Regulation 2009* to enable QCAT to charge an applicable fee.

Achievement of policy objectives

To achieve the policy objectives, the regulation:

- prescribes, for the purpose of section 77 of the *Health Ombudsman Act 2013*, section 41AA of the *Health Care Complaints Act 1993* (NSW) and section 56B of the *Health and Community Services Complaints Act 2004* (SA);
- prescribes, for the purpose of section 114 of the *Health Ombudsman Act 2013*, section 41A of the *Health Care Complaints Act 1993* (NSW) and section 56C of the *Health and Community Services Complaints Act 2004* (SA);
- prescribes, under section 288 of the *Health Ombudsman Act 2013*, the following documents:
 - The National Safety and Quality Health Service Standards, dated September 2012, published by the Australian Commission on Safety and Quality in Health Care; and
 - The Australian Charter of Healthcare Rights published by the Australian Commission on Safety and Quality in Health Care; and
- amends the *Queensland Civil and Administrative Tribunal Regulation 2009* to prescribe sections 94(1)(a), 94(1)(c) and 94(2)(b) of the *Health Ombudsman Act 2013* in Schedule 1, Part 1 of that Regulation.

Consistency with policy objectives of authorising law

The regulation is consistent with the intent of the *Health Ombudsman Act 2013*.

Inconsistency with policy objectives of other legislation

No inconsistencies with the policy objectives of other legislation have been identified. The consequential amendments to the *Queensland Civil and Administrative Tribunal Regulation 2009* are consistent with the intent of the *Queensland Civil and Administrative Tribunal Act 2009*.

Alternative ways of achieving policy objectives

The regulation is the only effective means of achieving the policy objectives. The regulation will support the *Health Ombudsman Act 2013* and be introduced to align with the commencement of parts of that Act on 1 July 2014.

Benefits and costs of implementation

The regulation supports the implementation of the *Health Ombudsman Act 2013*, the benefits of which include:

- protecting the health and safety of the public;
- promoting professional, safe and competent practice by health practitioners;
- promoting high standards of service delivery by health service organisations; and
- maintaining public confidence in the management of complaints and other matters relating to the provision of health services.

In relation to the consequential amendments to the *Queensland Civil and Administrative Tribunal Regulation 2009*, the regulation maintains the status quo of enabling QCAT to recover fees for applications made to QCAT by health practitioners under health service complaints legislation.

There are no costs arising from the regulation.

Consistency with fundamental legislative principles

The regulation is consistent with fundamental legislative principles, as set out in section 4 of the *Legislative Standards Act 1992*.

Consultation

The Health Ombudsman was consulted and supports the regulation. The Department of Justice and Attorney General and QCAT were also consulted and support the amendments to the *Queensland Civil and Administrative Tribunal Regulation 2009*.

The Office of Best Practice Regulation (OBPR) was consulted on the regulation, in satisfaction of the requirements of the Regulatory Impact Statement (RIS) System. The OBPR advised that a RIS is not required.

Notes on provisions

Part 1 Preliminary

Short Title

Clause 1 provides the short title of the regulation.

Commencement

Clause 2 provides for the commencement of the regulation on 1 July 2014.

Part 2 Corresponding orders and prescribed conduct documents

Corresponding interstate interim orders—Act, s77

Clause 3 prescribes orders in New South Wales and South Australia as “corresponding interstate interim orders”. Section 77 of the Act recognises an interim prohibition order issued for a health practitioner in another jurisdiction to be mutually recognised, to prevent or restrict that person from providing health services in Queensland. It is an offence under section 78 of the Act for a person to contravene an interim prohibition order, or an order from another State that corresponds to an interim order.

Corresponding interstate orders—Act, s114

Clause 4 prescribes orders in New South Wales and South Australia as “corresponding interstate interim orders”. Section 114 of the Act recognises prohibition orders issued for a health practitioner in another jurisdiction to be mutually recognised, to prevent or restrict that person from providing health services in Queensland. It is an offence under section 115 of the Act for a person to contravene a prohibition order, or an order from another State that corresponds to a prohibition order.

Prescribed conduct documents—Act, s 288

Clause 5 provides for the “prescribed conduct documents” that can be used to provide guidance to health service providers, and recipients of health services, about the standard of service that should be provided by health service providers. The Health Ombudsman and QCAT may take prescribed conduct documents into account when taking action against a health practitioner, including when issuing interim prohibition orders and prohibition orders.

Part 3 Amendment of Queensland Civil and Administrative Tribunal Regulation 2009

Regulation amended

Clause 6 provides that this part amends the *Queensland Civil and Administrative Tribunal Regulation 2009*.

Amendment of sch 1 (Enabling Acts and provisions)

Clause 7 amends Schedule 1, Part 1 of the *Queensland Civil and Administrative Tribunal Regulation 2009* to prescribe sections 94(1)(a), 94(1)(c) and 94(2)(b) of the *Health Ombudsman Act 2013*. This will enable QCAT to charge fees for applications made under those provisions.

This clause also amends the entry for the *Health Practitioners (Disciplinary Proceedings) Act 1999* in Schedule 1, Part 1 of the *Queensland Civil and Administrative Tribunal Regulation 2009* to enable this entry to continue to have effect after the repeal of the *Health Practitioners (Disciplinary Proceedings) Act 1999*, via the transitional provisions in the *Health Ombudsman Act 2013*.

Part 4 Amendment of this Regulation

Regulation amended

Clause 8 provides that this part amends the *Health Ombudsman Regulation 2014*.

Omission of pts 1 and 2, hdgs

Clause 9 omits the headings for Parts 1 and 2 of the regulation. This clause reflects changes that will occur once section 40 of the *Reprints Act 1992* takes effect: upon the first reprint after 1 July 2014, Parts 3 and 4 (consequential amendments) will be omitted. Therefore, the headings for Parts 1 and 2 will become superfluous, given the size of the regulation, so the headings for these parts will be removed.