



Crime and Corruption Commission  

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QUEENSLAND

Assessment report

September 2014

# Conduct of Senior Medical Officers in treating and billing private patients in public hospitals

A close-up photograph of a silver stethoscope resting on a blue surface, likely a medical professional's coat or a hospital bed. The stethoscope is positioned diagonally, with the chest piece in the foreground and the earpieces extending towards the top right.

Report of assessment of allegations referred  
to the Crime and Corruption Commission

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# Summary

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In 2013 the Queensland Audit Office (QAO) conducted a performance audit of the right of private practice arrangements for doctors at Queensland's Hospital and Health Services (HSSs). In January 2014, at the conclusion of that audit, the QAO referred a copy of its second report to the Crime and Corruption Commission (CCC)<sup>1</sup> to consider whether any of the information revealed during the audit raised a suspicion of official misconduct by Senior Medical Officers (SMOs). The two main areas of concern identified were workplace attendance and treatment and billing practices. Regarding workplace attendance, the CCC wrote to each of the HSSs, adopting the recommendation made by the QAO that the HSSs investigate the extent of unrecorded leave and undertake appropriate remedial action.

Regarding treatment and billing practices, the QAO report identified conduct of 12 SMOs who were allegedly inappropriately treating and billing private patients in Queensland public hospitals. The allegations were of two types:

1. That senior medical officers without a right of private practice (RoPP) contract were treating and billing their private patients in public hospitals; that is, they were being paid by the hospital and earning private sector income at the same time — effectively double-dipping and potentially in breach of the *Health Insurance Act 1971* (Cth).
2. That senior medical officers with RoPP contracts were treating their private patients in public hospitals in their own time and retaining the revenue in breach of their contracts.

The CCC engaged the Hon. Stanley Jones AO QC — a retired Supreme Court Justice — to independently review a wide range of information provided by the QAO, assess the allegations, and advise whether investigation by the CCC was warranted.

The Hon. S. Jones provided his advice to the CCC at the end of June 2014. He concluded:

1. While the material in some instances did expose conduct which justified the concerns raised by QAO, there was insufficient evidence of official misconduct such as to warrant investigation by the CCC, particularly given the absence of any other adverse conduct.
2. Consequently, regarding the first type of allegations (concerning SMOs without RoPP contracts), there was no clear evidence that the practices of the specialists were dishonest or done so as to deliberately deceive the hospital administrators. The practices of the specialists were done with the knowledge of and apparent agreement of the hospital administrators.
3. Regarding the second type of allegations (concerning SMOs with RoPP contracts), the question of whether specialists were entitled to retain the professional fees gained from treating their private patients outside rostered paid Queensland Health time depended upon the interpretation of contractual terms; noting that different approaches had been adopted by different hospitals in the metropolitan regions, and that the individuals concerned held a genuine belief that they were entitled to retain such fees. There was no conduct identified which was suggestive of official misconduct.
4. The referrals from QAO identified serious issues of lack of accountability within the public health systems, mostly due to systemic deficiencies and lack of oversight by administration.

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<sup>1</sup> The Crime and Corruption Commission, formerly the Crime and Misconduct Commission, began operation on 1 July 2014. For further detail relating to the jurisdiction of the CCC and that of the former CMC, see page 3.

The CCC agreed with the Hon. S. Jones's assessment. Based on his advice, it did not proceed to investigate this matter. In accordance with its legislation, it referred information in relation to two practitioners to the relevant Hospital and Health Services, and took no further action with respect to the remaining practitioners.

In conclusion, the CCC noted that:

- Queensland Health resolved the question of uncertainty of contractual entitlement in May 2013 by amending the contractual terms for contracts for the period 1 July 2013 to 30 June 2014.
- Queensland Health has accepted recommendations made by the QAO and provided an implementation timeframe for each of the recommendations made in the QAO's second report. Queensland Health also confirmed with the QAO that it will commission a system-wide investigation into the allegations of potential mismanagement, professional negligence and official misconduct alluded to in the QAO report.

### **Acknowledgement**

The CCC acknowledges the contribution of the Queensland Audit Office to this assessment report.

# Assessment

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## Introduction

This is a report of an assessment of allegations of suspected official misconduct received by the Crime and Misconduct Commission (CMC) in January 2014. On 1 July 2014, the CMC became the Crime and Corruption Commission, with amended legislation, jurisdiction and threshold for referral of allegations.<sup>2</sup> For the purposes of this report, the organisation will be referred to as the Crime and Corruption Commission (CCC) throughout; however, the jurisdiction and legislation referred to will be those that were in effect until 1 July 2014.

## Jurisdiction of the CCC

Under the *Crime and Misconduct Act 2001* (the CM Act), the CCC had primary responsibility for continuously improving the integrity of and reducing the incidence of misconduct in the public sector.<sup>3</sup> If a complaint or referral raised a suspicion of official misconduct, the CCC assessed the allegations and would undertake an investigation where the nature and seriousness of the alleged misconduct warranted one and where it was in the public interest to do so. (See Appendix for an overview of the CCC's assessment procedure.)

### Definition of official misconduct

Under section 14 of the CM Act, official misconduct was defined as conduct relating to the performance of a public sector official's duties that:

- is dishonest or lacks impartiality, or
- involves a breach of the trust placed in an officer by virtue of their position, or
- is a misuse of officially obtained information.

For public servants, the conduct in question must be either a criminal offence or a disciplinary breach serious enough to justify dismissal.

### Decision to issue a public report

The CCC does not publish reports on every matter it assesses or investigates. While certain elements of this matter extended beyond the CCC's misconduct jurisdiction, the Commission decided to issue a public report on this matter for the following reasons:

- to affirm that action has been taken by the CCC to promote public confidence in the management and oversight of this issue
- to endorse QAO's recommendations and Queensland Health's proposed remedial action
- to respond to the high level of public discussion on the matter.

This report is published under section 64 of the *Crime and Corruption Act 2001*.

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<sup>2</sup> For further information, refer to the *Crime and Corruption Act 2001*.

<sup>3</sup> Section 4, *Crime and Misconduct Act 2001*.

## Background: development of right to private practice arrangements

The scheme to allow employed Senior Medical Officers (SMOs) the right of private practice within public health facilities commenced in 1986.<sup>4</sup> Collectively referred to as right of private practice (RoPP) schemes, these arrangements enable senior medical officers, or medical specialists, who are employed in the public health system to also treat patients who come into the public system and elect to be treated as private patients. The purpose of this was to increase the level of access by patients using the public health system to highly qualified specialists.

As well as providing greater choice for patients, these arrangements were intended to achieve two primary benefits for the public health system:

- first, to capture private patient revenue in a cost-neutral manner, and
- second, to improve the rate of recruitment and retention of SMOs.<sup>5</sup>

### RoPP contract models

Queensland's RoPP has evolved over time, beginning for specialists in 1986 as a combined retention and revenue sharing model. This original scheme is now referred to as Option B. Since 1992 there have been two major variants in the RoPP contractual arrangements.

Under the most common model ("assignment" or Option A), specialists receive a base salary and a private practice allowance in return for assigning all the private practice revenue they generate to the Hospital and Health Service (HHS) in which they are employed; in turn, the HHS fully absorbs the direct and indirect costs of providing these services (facility, administrative and other overheads).

The other model ("retention and revenue sharing" or Option B) allows specialists to retain a proportion of the private fees they earn, with the balance being paid into a HHS trust account for research and education at the facility. The HHS recovers a facility charge and administration fee from each participating specialist to defray the overhead costs of service provision.<sup>6</sup>

## Complaints of possible abuse of private practice arrangements by specialists

Prior to June 2012, the CCC had received sporadic complaints about individual doctors who allegedly were not working full hours or were "moonlighting" while on shift at a public hospital. These cases were assessed by the CCC in accordance with its assessment criteria and devolved to Queensland Health to deal with, in accordance with the CM Act. From June 2012, the CCC received a number of other allegations from the Department of Premier and Cabinet and two Queensland Health and Hospital Services (HHSs) about possible misconduct by medical specialists. The potential misconduct involved a range of behaviours involving time-recording practices and included conducting private practice work or recreational activities while on duty and being paid by Queensland Health. It also included non-attendance at their employing HHS during rostered hours.

The CCC undertook initial inquiries to obtain further information about the nature and scope of the allegations, subsequently briefing the Director-General, Department of the Premier and Cabinet in October 2012.

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4 Background material has been drawn from the QAO's reports on this issue.

5 *Report 1: Right of private practice in Queensland public hospitals*, <[www.qao.qld.gov.au/report-1:2013-14](http://www.qao.qld.gov.au/report-1:2013-14)> pp. 22, 26.

6 Information summarised from QAO Report 1, July 2013, pp. 1-2.

## Audit by QAO

On 12 November 2012, the Minister for Health wrote to the Auditor-General expressing concerns about questionable practices by some SMOs employed by Queensland Health. These matters related to RoPP billing arrangements and challenges in ensuring oversight, visibility and transparency of the activities of SMOs.

The Auditor-General initiated a performance audit and tabled two reports in Parliament in July 2013 and February 2014 respectively.

The first report<sup>7</sup> focused broadly on whether the intended health and financial benefits of the RoPP scheme were being realised and whether the scheme was being administered efficiently. It found that while the RoPP scheme appeared to have succeeded in improving the rate of recruitment and retention of medical specialists, it had been singularly unsuccessful in its other primary aim of capturing private patient revenue in a cost-neutral manner.

The report also noted significant confusion and misunderstanding by both doctors and administrators about the scheme and its objectives; lack of clarity and accountability in the terms of RoPP contracts; and hospital systems and practices which worked against the ability of administrators to effectively monitor and oversight the scheme and its operation.

QAO's second report<sup>8</sup> focused on the probity and propriety of senior specialists participating in private practice arrangements in Queensland hospitals, paying particular attention to workplace attendance and treatment and billing practices.

Regarding workplace attendance, the report recommended that HHSs investigate the extent of unrecorded leave and undertake appropriate remedial action. As noted earlier, the CCC endorsed this recommendation and wrote to each of the HSSs accordingly.

## Referral of 12 individual specialists to the CCC

Regarding treatment and billing practices, the QAO reported that some allegations of improper billing were able to be substantiated.<sup>9</sup> These allegations were of two types:

1. That senior medical officers without a RoPP contract were treating and billing their own private patients in public hospitals; that is, they were being paid by the hospital and earning private sector income at the same time — effectively double-dipping and potentially in breach of the *Health Insurance Act 1971* (Cth).
2. That senior medical officers with RoPP contracts were treating their private patients in public hospitals in their own time and retaining the revenue in breach of their contract.

The allegations against these specialists were referred to the CCC in January 2014 to determine whether their conduct might constitute official misconduct. The QAO referred further allegations regarding a specialist to the CCC on 14 March 2014.

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7 *Report 1: Right of private practice in Queensland public hospitals*, <[www.qao.qld.gov.au/report-1:2013-14](http://www.qao.qld.gov.au/report-1:2013-14)>.

8 *Report 2: Right of private practice: senior medical officers conduct*, February 2014, <[www.qao.qld.gov.au/report-13-14:2013-14](http://www.qao.qld.gov.au/report-13-14:2013-14)>.

9 QAO Report 2, p.3.

## CCC assessment process

### Independent advice obtained

The CCC engaged the Hon. S. Jones AO QC — a retired Supreme Court Justice — to assess the allegations relating to treatment and billing, and advise whether or not the material might involve suspected official misconduct within the jurisdiction of the CCC.

The Hon. S. Jones's assessment was undertaken through an examination of a wide range of materials provided by QAO, which included:

- the two reports submitted to Parliament by QAO
- data from two HSSs relating to time sheets, rosters, surgery lists, and analysis of these by QAO
- materials supplied by the HSSs to QAO in relation to private practice agreements with doctors that had been formally recorded
- summaries of interviews conducted by QAO officers with hospital administrators and some doctors
- records of agreements between some specialists and senior hospital administrators regarding their ability to see private patients
- examples of Option A contracts
- Queensland Health and HSS policy documents about the right to private practice.

The Hon. S. Jones also met on two occasions with the QAO officers who were responsible for the audit. Because the task undertaken by the Hon. S. Jones was to assist in the CCC's assessment process and was not an investigation, it did not involve interviewing any of the persons who were the subject of the referrals.

### Advice provided to the CCC

The Hon. S. Jones provided his advice to the CCC at the end of June 2014.

### Insufficient evidence to the requisite standard

Regarding the first type of allegations (concerning SMOs without RoPP contracts), the Hon. S. Jones found that there was insufficient cogent evidence to form a reasonable suspicion of official misconduct and that any further evidence that might be obtained would be unreliable. Since the specialists' conduct was founded on informal contractual arrangements under supervision of hospital administrators, there was no evidence that the practices of the specialists were dishonest or done so as to deliberately deceive the hospital administrators.

The Hon. S. Jones could find no grounds to justify any further investigation by the CCC.

### Variation in interpretations of RoPP contracts

Regarding the second type of allegations (concerning SMOs with RoPP contracts), each of these specialists had signed the "assignment" or Option A contract noted earlier, the terms of which provided them with a private practice allowance in return for their assigning their private practice revenue to the HHS. These specialists were referred to the CCC because they were treating private sector patients in a public hospital and retaining all the income. This was alleged to have been in breach of their contracts, even when treating their private patients outside rostered paid Queensland Health time.

Although the QAO considered these allegations to have been substantiated, the Hon. S. Jones took the view that deciding whether the specialists' conduct was potentially unlawful depended upon interpretation of their contractual terms. Different approaches had been adopted by different hospitals in the metropolitan regions. At issue was whether the specialist was obliged to pay to Queensland Health all fees earned from treating private patients in public hospitals even if those fees were earned outside the specialist's rostered hours.

The Hon. S. Jones found that it was not necessary for the purpose of the assessment to determine which of the competing contractual constructions was likely to prevail should the issue require judicial determination. He noted that the need for any such determination was greatly diminished by the fact that the latest iteration of Option A had removed the doubt. For the period 1 July 2013 to 30 June 2014, the Option A RoPP contracts as amended made it clear that an SMO was allowed to retain the revenue from treating private patients in the public hospital outside of rostered hours.<sup>10</sup>

Difficulties in assessing individual conduct also arose in identifying whether a specialist treating a private patient in a public facility was doing so within paid public hours (according to the Queensland Health rostering system for payroll) or in a private capacity outside such rostered or paid hours. This was largely a consequence of being unable to track the practitioner's actual time worked — the result of both inadequate recording systems and inconsistent time recording by some specialists — as well as the existence of some informal "give and take" agreement that absences during rostered hours would be made up by working at other times.

Another relevant factor was the absence of effective supervision of the contracts by the various Directors of Medical Services (DMS). As the QAO had noted in its first report:

... the ability to obtain timely and meaningful management information about the overall performance of the scheme and of individual SMOs is compromised because of the disparate systems and limited ability to integrate information across the variety of computer platforms used. This impedes the ability of clinical directors, DMS and Queensland Health to manage and monitor the scheme.<sup>11</sup>

The Hon. S. Jones concluded that the referrals from QAO identified serious issues of lack of accountability within the public health systems, and that most of the shortfall was due to systemic deficiencies and lack of oversight by administration. In his view the specific issues raised in the referral of the conduct of these 12 medical specialists ought to have been identified at a much earlier time. In each of the cases of the four specialists who did not have formal contracts, those problems could have been dealt with by personal consultation and the insistence on proper contractual terms. In the case of the other eight specialists, the question of uncertainty of contractual entitlement could have been resolved by the amendment of the contractual terms, as was ultimately done in May 2013 for contracts for the period 1 July 2013 to 30 June 2014 (noted above).

### **Deficiencies in evidence**

The information available to the Hon. S. Jones was largely gleaned from the audit results which were geared to detect systemic failure rather than aberrant personal conduct. Despite this, QAO had in some instances independently reviewed patient files to determine the true status of the patient. The Hon. S. Jones concluded that generally, the labour-intensive task of tracing and then examining actual records was not warranted for the small number of instances of alleged non-compliance with contractual terms identified in the referral.

In summary, in relation to both types of allegations, the Hon. S. Jones concluded that while the material in some instances did expose conduct which justified the concerns raised by QAO, there was insufficient cogent evidence to warrant investigation by the CCC, particularly given the absence of any other adverse conduct.

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<sup>10</sup> QAO Report 2, page 25.

<sup>11</sup> QAO Report 1, page 4.

## CCC actions subsequent to receipt of external advice

Having been informed by the Hon. S. Jones's consideration of this matter, the CCC agreed with his conclusions and finalised its assessment of the allegations. In accordance with its legislation, it decided to refer information in relation to two specialists to the relevant Hospital and Health Services, and take no further action with respect to the remaining specialists.

The information about two specialists was referred because one of them with a RoPP appears to have treated a large number of private patients during rostered Queensland Health time and billed in his own right. Information from the QAO about the other specialist suggested that, following a financial settlement which was reached before the audit commenced, the QAO identified instances which suggested that the inappropriate arrangements may have continued. Given the complexity of the administrative arrangements and delays associated with generating accurate records, the conduct in each of these cases could be most appropriately dealt with by the HHSs. Although the material suggested lines of inquiry that could be pursued, it was concluded that under the CM Act it would be an unjustifiable use of resources for the CCC to investigate. The two matters were therefore referred to the relevant HSSs to deal with (see Appendix).

## Actions by other agencies

It is noted that Queensland Health responded to the Auditor-General on 6 January 2014,<sup>12</sup> indicating that following the tabling of the first report in July 2013, Queensland Health in partnership with Hospital and Health Services has undertaken to reform private practice with a greater focus on transparency, patient outcomes, financial management governance and accountability. A new private practice scheme along with performance-based employment contracts for senior medical staff was to be implemented from July 2014.

With regard to the QAO's second report, Queensland Health accepted all recommendations made by the QAO, and provided an implementation timeframe for each recommendation. Queensland Health advised that it will commission a system-wide investigation into the allegations of potential mismanagement, professional negligence and official misconduct alluded to in the report.

### Abbreviations

CCC	Crime and Corruption Commission
CMC	Crime and Misconduct Commission
DMS	Director of Medical Services
HSS	Hospital and Health Service
QAO	Queensland Audit Office
RoPP	right of private practice
SMOs	Senior Medical Officers

<sup>12</sup> Letter attached to the QAO's second report.

## Appendix:

# Procedure for assessing and investigating a complaint under the CC Act

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When the CCC receives a complaint alleging corrupt conduct in the public sector, it assesses how it should be handled. In accordance with the principles set out in the CC Act, the CCC will retain and investigate only the most serious allegations of corrupt conduct, including those with a strong public interest element or if the relevant agency is not equipped to handle the investigation. Complaints about corrupt conduct (or information provided) that are not considered to be serious or systemic are referred to the appropriate agency to deal with.

### **Assessment**

The CCC assesses each complaint, information, notification or matter based on a number of factors including whether it:

- is within CCC jurisdiction
- alleges corruption of a serious or systemic nature
- will have a serious impact on the Queensland community
- is important to the public sector or has a bearing on public confidence or order
- appears to be genuine, and made in good faith
- should be dealt with by the CCC, as opposed to another agency, having regard to the CCC's resources and/or special powers.

If necessary, further information is gathered as quickly as possible to enable the CCC to decide on the best course of action. It may come from either internal or external sources, such as the complainant or the agency concerned.

### **Possible courses of action**

Based on the assessment, the CCC will decide whether or not investigation is warranted, and which agency is best placed to undertake the investigation.

The CCC may decide to take no further action where the complaint is outside its jurisdiction, or has been dealt with by another entity, or where dealing with it would be an unjustifiable use of resources, or not in the public interest.

More detailed information about the CCC's procedures for dealing with complaints about corruption is available at <[www.ccc.qld.gov.au/dealing-with-complaints](http://www.ccc.qld.gov.au/dealing-with-complaints)>.



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