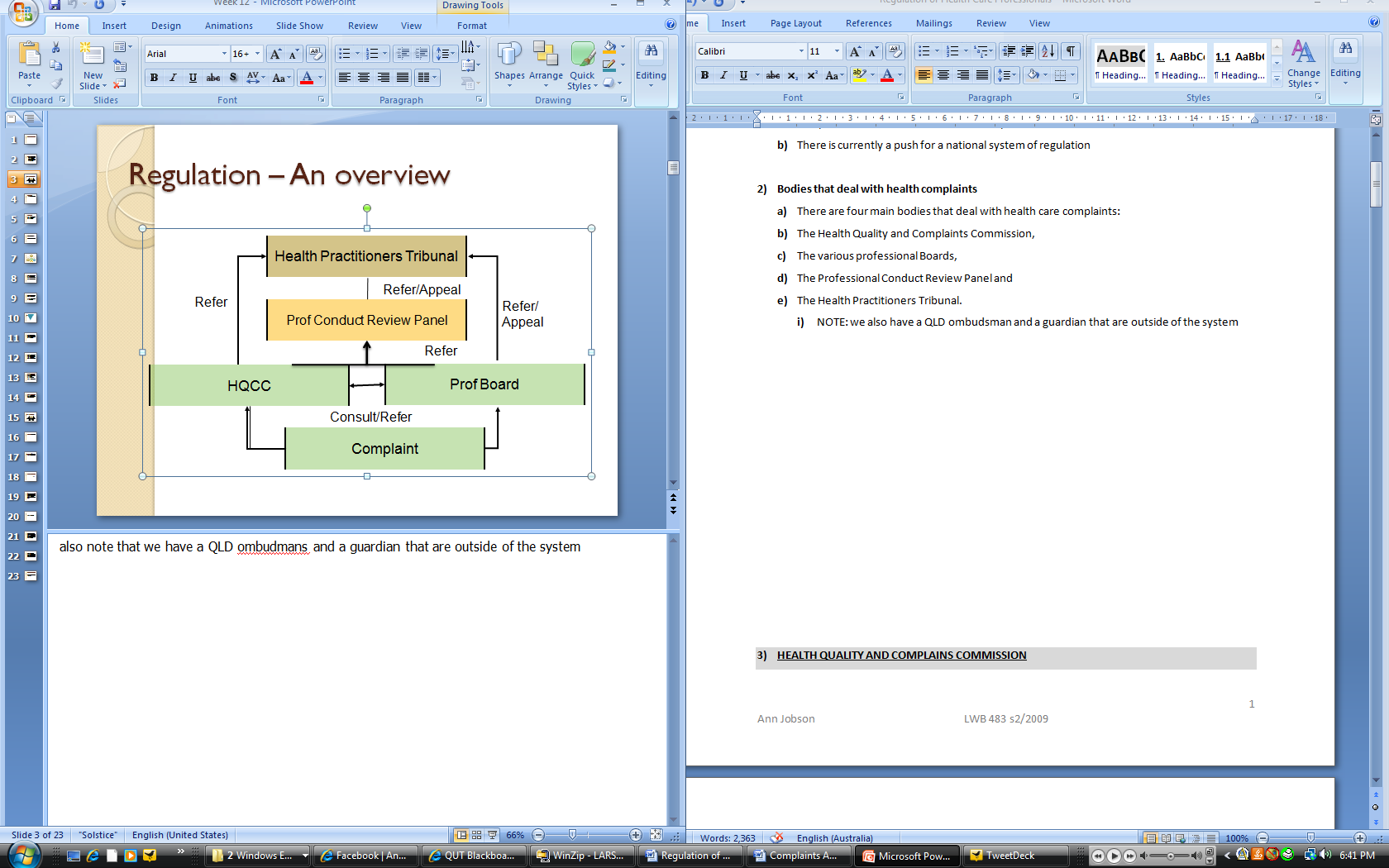
Regulation of Health Care Professionals

These avenues of redress may be followed *in addition* to other civil and criminal actions already available (i.e. negligence/assault)

1. INTRODUCTION
   1. The Health Rights Commission was established in response to the *Queensland Health Systems Review, 2005* and the *Queensland Public Hospital Commission of Inquiry* to remedy complaints made about individual health practitioners and health services.
   2. There is currently a push for a national system of regulation
2. **BODIES THAT DEAL WITH HEALTH COMPLAINTS** 
   1. There are four main bodies that deal with health care complaints:
   2. The Health Quality and Complaints Commission,
   3. The various professional Boards,
   4. The Professional Conduct Review Panel and
   5. The Health Practitioners Tribunal.
      1. NOTE: we also have a QLD ombudsman and a guardian that are outside of the system



1. HEALTH QUALITY AND COMPLAINS COMMISSION

The HQCC is **an independent and impartial body** replacing the Health Rights Commission, established under the HQCCA 2006 s12 and deals with complaints from a wide variety of health care professionals and services.

**NOTE:** Not a one stop shop – the HQCC has no power to discipline but rather, is an alternative to directly approaching boards **s48HPPSA**

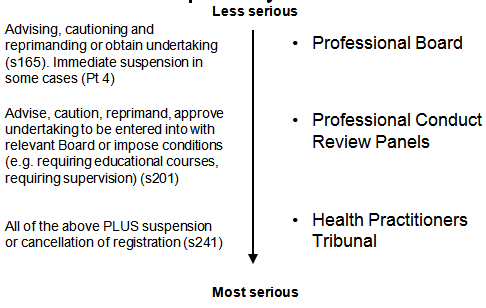
1. Functions
   1. Sections 13-16 prescribe the functions of the HQCC:
      1. Complaints (s13)
         1. Receiving, assessing and managing complaints
         2. Conciliating or investigating complaints
      2. Maintaining standards (s14)
         1. Ensuring and furthering the quality of health services provided
         2. Establishing and maintaining reasonable processes to improve quality of health services
      3. Education (s15)
         1. Educating the public and HCP’s re health rights and responsibilities
      4. Other functions (s16)
         1. Advertising
         2. Researching
   2. The HQCC is also under a duty to establish a Charter of Health Rights and Responsibilities (s31 HQCCA).
   3. In developing the Code the HQCC is to have regard to the principles under section 34 HQCCA:
      1. an individual is entitled to take part effectively in decisions about the individual’s health;
      2. an individual is entitled to take an active role in the individual’s health care;
      3. an individual is entitled to be provided with health services in a considerate way that takes into account the individual’s background, needs and wishes
      4. an individual who provides
         1. a health service; or
         2. care for another individual receiving a health service
         3. is entitled to consideration and recognition for the contribution the individual makes to health care;
      5. the confidentiality of information about an individual’s health should be preserved;
      6. an individual is entitled to reasonable access to records about the individual’s health
      7. an individual is entitled to reasonable access to procedures for the redress of grievances relating to the provision of health services
2. Complaints
   1. What type of complaint does the person wish to make?
      1. There are two types of complaints that a person can make to the HQCC (s35):
      2. **Health quality complaint (s 36)** 
         1. complaint dealing with quality of health service, e.g. failure to comply with standards
      3. **Health service complaint (s 37)** 
         1. that a provider acted unreasonably by not providing a health service for a user; or
         2. that a provider acted unreasonably in the way of providing a health service for a user; or
         3. that a provider acted unreasonably in providing a health service for a user; or
         4. that a provider acted unreasonably by denying or restricting a user’s access to records relating to the user in the provider’s possession; or
         5. that a provider acted unreasonably in disclosing information relating to a user; or
         6. that a registered provider acted in a way that would provide a ground for disciplinary action against the provider under the *Health Practitioners (Professional Standards) Act 1999* or the *Nursing Act 1992*; or
         7. that a public or private entity that provides a health service acted unreasonably by—
            1. not properly investigating; or
            2. not taking proper action in relation to;

a complaint made to the entity by a user about a provider’s action of a kind mentioned in paragraphs (a) to (f).

* 1. Who can make a complaint?
     1. Health Quality Complaint
        1. s38: Anyone may make a health quality complaint to the commission
     2. Health Service Complaint
        1. s40: Only the
           1. user
           2. person on behalf of the user
           3. Minister
           4. If the Commission considers it in the public interest that another person brings the complaint
  2. How to make a complaint
     1. A person may make a complaint to HQCC either orally or in writing (s45 HQCCA) however an oral complaint must be confirmed in writing (s46). The identity of the complainant must also be revealed unless it is in the public interest not to (s47).
  3. Dealing with a Health QUALITY Complaint
     1. After receiving a Health Quality Complaint the HQCC may:
        1. Seek information from a provider, user, the complainant or anyone else: s50(2)(a)
        2. Refer to the registration board: s50(2)(b)
        3. Refer to another Entity the commission considers is able to investigate or take other appropriate action about the complaint: s50(2)(c)
        4. Investigate the complaint: s50(2)(d)
        5. Inquire into the complaint under Chapter 8: s50(2)(e)
        6. Take no action: s50(3)
        7. Conciliate: s61(2)(a)
  4. Dealing with a Health SERVICE Complaint
     1. After receiving a Health Service Complaint the HQCC must immediately asses the complaint where satisfied under s53(2):
        1. the complainant is eligible to make the health service complaint
        2. the complaint is confirmed in writing
        3. the complainant’s identity is revealed
     2. Notice must be provided to the complainant, provider and registration board within 14 working days that the complaint is being assessed (s54) and the complaint must be assessed within 60 days of starting and may not be extended for more than 30 days (s58).
     3. Where the HQCC decides to take action the HQCC may:
        1. Conciliate under Chapter 6: s61(2)(a)
        2. Investigate under Chapter 7: s61(2)(b)
        3. Where the provider is registered, refer the complaint to the registration board: s61(2)(c)
        4. Refer to any other entity the commission considers is able to investigate or take other appropriate action about the complaint: s61(2)(d)
     4. When the complaint has been assessed the HQCC must take no action (s59) where the complaint is:
        1. frivolous, vexatious or trivial; misconceived or lacking in substance; or has been adequately dealt with by the commission or another public authority: s63(1)
        2. the matter of complaint arose more than 1 year before the complaint was made to the commission (s63(3)) unless the providers registration is likely to be suspended cancelled (s63(4)).
  5. Has there been an act of reprisal (*revenge*)?
     1. Section 193 provides it is unlawful for a person to cause or attempt to cause detriment to another by claiming they have or will make a complaint or assist in a complaint. Section 194 states that a person who takes a reprisal is guilty of an offence punishable by 2 years imprisonment or 167 penalty units (@ $75 each PSA s5). A reprisal is also a tort and an offender is also liable in damages or any other appropriate remedy (s195).

1. DISCIPLINARY ACTION – IF YOU WANT THE PROFESSIONAL TO BE DISCIPLINED
   1. Dealt with under the Health Practitioner (Professional Standards) Act 1999
      1. Purpose is to (s 123 HPPSA)
         1. Protect the public
         2. Uphold standards of practice within the health professions
         3. Maintain public confidence in the health professions
      2. Protective purpose (but deterrent aspect as well)
         1. Re A; Craig

**Disciplinary bodies include:**



1. THE PROFESSIONAL BOARDS

*Board = a board established under a health practitioner registration Act – different boards exists for different HCP’s*

* 1. A person may approach the individual board under which the practitioner is registered (Medical Board, Dental Board, etc) to make a complaint against a practitioner.
     1. The disciplinary powers exercisable by these boards under the HPPSA are to:
     2. Immediate suspension/imposition of conditions where serious potential risk and necessary to protect vulnerable persons (s 59)
     3. Otherwise, can advise, caution, reprimand/ enter into undertaking with registrant (s165)
  2. Once a complaint is received the Board must investigate and start disciplinary proceedings or refer the matter to a PCPR or the Tribunal (s53)
     1. If a hearing is held they are normally closed to the public
  3. **Who complains to these guys**
     1. Can receive complaints directly from other people in the profession
        1. Often criticised as a form of self regulation that is not transparent enough
  4. **No power to suspend**
     1. If the board reasonably believes the matter may provide a ground for suspension or cancellation of registrants registration – must refer to the tribunal (ss 126; 134)
     2. An adverse decision must be recorded on the register (s 170)
        1. If there is an undertaking between the board and the registrant then it must remain in the register for the period decided by the board/disciplinary committee s170
     3. NOTE: they can immediately suspend in SOME limited circumstances

1. **WHAT DECISIONS CAN BE APPEALED**
2. **a decision under s 59(2) to suspend, or impose conditions on, a registrant’s registration**;
3. a decision to under s 298(1) that a registrant is impaired;
4. a decision:
   * 1. under s 299(2) to impose conditions on a registrant’s registration or order a registrant to attend for further health assessments; or
     2. under s 299(4) to record details of conditions or an undertaking in the board’s register; or
     3. under s 299(6) about the period after which a registrant may ask for another health assessment;
5. a decision under s 311 to suspend or cancel, or impose conditions on, a registrant’s registration.

The following may appeal to the Health Practitioners Tribunal against an appealable

decision – **s 326**

1. the practitioner to whom the appealable decision relates:
2. the practitioner’s board, if the appealable decision was made by a panel

A notice of appeal filed with the registrar starts an appeal **(s.327).**

The notice of appeal must be filed within 28 days after the day the appellant receives notice of the appealable decision.

An appeal is by way of re-hearing on the original evidence. However, the tribunal may give leave to adduce fresh, additional or substituted evidence if the tribunal is satisfied that

* the party asking to adduce the new evidence did not know, or could not reasonably be expected to have known, of its existence at the time appealable decision was made
* in the special circumstances of the case it would be unfair not to allow the party to adduce the new evidence **(s.331)**

1. Professional Conduct Review Panels
   1. A professional board may refer a disciplinary matter for hearing by a Professional Conduct Review Panels (s126) which are established under section 15 HPPSA.
   2. Panels have the same disciplinary powers as the professional boards however they may also impose conditions and restrictions on a registrant’s registration however they may not suspend or cancel that registration.
   3. A panel is comprised of a minimum of three and a maximum of four members (s17).
      1. At least two of the members must be medical practitioners, and one must be a public member.
      2. A panel may also include one member of the Medical Board
   4. The hearing can be attended by
      1. The registrant
      2. The registrants board
      3. The commission (only if the commission intervenes under s173)
      4. Can gie any person notice s195
         1. A failure to attend when given notice results in a maximum penalty of 60 PU’s
   5. **Disciplinary powers s201** 
      1. Under s201 HPPSA the panel may advise, caution, reprimand, approve undertaking to be entered into with relevant Board or impose conditions (e.g. requiring educational courses, requiring supervision)
         1. Can also hold hearings but not open to the public
      2. Under s190 the panel can issue an interim order if they need to adjourn the proceedings and it is considered that such and order would protect the public
      3. Can refer matters to the tribunal (ss 126; 178)
2. **WHAT DECISIONS CAN BE APPEALED**

The following decisions of a panel are appealable decisions **(s.325(2))** –

1. a decision about whether a ground for disciplinary action against a practitioner is established (under **s.200(1)**)
2. a decision to take disciplinary action against a practitioner (under **s.201(2)** or **s.203(2)(b)**)
3. a decision about the period within which a practitioner may not apply for a review of a decision (under **s.201(3)** or **s.324(3)**)
4. a decision to record that a practitioner has been given advice, a caution or reprimand and the period for which it is to be recorded or to record details of conditions or an undertaking (under **s.202(1)**)
5. a decision under **s.324** to confirm, remove or change conditions or remove conditions and replace the conditions with another action a panel may take under **s.201(2)**

The following may appeal to the Health Practitioners Tribunal against an appealable

decision – **s 326**

1. the practitioner to whom the appealable decision relates:
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* the party asking to adduce the new evidence did not know, or could not reasonably be expected to have known, of its existence at the time appealable decision was made
* in the special circumstances of the case it would be unfair not to allow the party to adduce the new evidence **(s.331)**

1. Health Practitioners Tribunal

\*\* have the widest disciplinary powers – s241 (can suspend and cancel registration)

* 1. The Health Practitioners Tribunal is established under section 26 HPPSA and deals with the most serious matters of professional misconduct which are referred from the Board or Panel or is elected to hear the matter by the professional.
     1. Has the widest powers
  2. The tribunal consists of a District Court Judge as chairperson (s27), three assessors two of whom are from the profession of which the practitioner has been charged and one who is appointed from a public panel (s34).

1. **GROUNDS FOR DISCIPLINARY ACTION** 
   1. Under the s124 HPPSA, disciplinary action can be taken where there has been a finding of:
   2. Unsatisfactory professional conduct. This is defined in the Schedule to the Act to include:
      * 1. Conduct of a lesser standard than might reasonably be expected;

refers to professional conduct of a *lesser* standard than that which might be expected of a registrant, rather than conduct which is *substantially* below the standards considered acceptable to the profession

* + - 1. Incompetence or lack of knowledge;
      2. Infamous professional misconduct

***Allinson v The General Council of Medical Education;***

*Doctor put ads in the paper that contained reflections on doctors and their treatments and that patients should come to him instead*

*If it can be shown a doctor has done something which can be “reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency” there may be infamous professional misconduct*

***Hoile v MBSA***

*H was superintendent of hospital*

*Had improper relations with a nurse*

*Involved intercourse with nurse while she was on duty*

*Infamous is best represented by shameful, now the “conduct of a medical practitioner in relation to his profession that it must be considered shameful or disgraceful”*

* + - 1. Misconduct in a professional respect

***Qidwai v Brown [1984] 1 NSWLR 100;***

*Doctor was guilty re performing surgery in inadequate facilities*

*Dr was conducting an appendectomy on a day to day basis and this was not normal but he was doing it.*

*The evidence in that case showed that it wasn’t accepted by the profession and that it was therefore a breach of the standards but it was allowed*

*Relevant test was “whether there have been departures from accepted procedures and whether these departures have become the subject of professional reprobation”*

***Craig v MBSA (2001) 79 SASR 545;***

*C treating anorexic 20 year old, had to be hospitalised*

*Began relationship, close personal friendship, kisses, hugs, gifts etc*

*Argued that the age hap may have been a mismatch in power*

*Was a suspension of 12 months*

*Recognition the doctor failed to recognise professional boundaries, he exploited her weaknesses*

*He didn’t even know that he was doing something wrong so he had failed to keep himself up to date on this kind of stuff*

***MBQ v Bayliss [2000] 1 Qd R 598;***

*B provided services to patient, but failed to provide supplemental oxygen and failed to monitor the condition of patient by means of a pulse oximeter while she was his patient in the immediate recovery area of his clinic*

*As a result she was reduced to a vegetative state*

*HELD: in determining whether there had been misconduct in a professional respect by a medical practitioner it was necessary to find something more than mere negligence by the civil standard.*

*Here the negligence of Bayliss was so serious it portrayed indifference and an abuse of the privileges accompanying registration as such a practitioner*

***Martin***

*M had a patient who he had sexual relations with for 13 years, they moved in together for a while, torrid and tempestuous relationship*

*Sometimes gave her medical advise/treatment throughout that time*

*He transferred half his share of house to her and gave her 20 grand for overseas trip, there was evidence woman was threatening disciplinary action*

*Delay in bringing complaint forward was perhaps a mitigating factor c/f Re A*

*Martin suspended for 12 months*

***Re A***

*Doctor charged with professional misconduct*

*There was doctor/patient relationship, they became more friendly, started bushwalking*

*They were romantically attracted to each other*

*Doctor invited patient away for a weekend to Byron bay and intercourse did occur*

*Doctor was married at the time*

*He sought to terminate relationship after that*

*There was a risk of emotional attachment, doctor should be aware of these risks and not try to aggravate the position nor take advantage*

*Doctor should sever the doctor/patient relationship where romantic feelings involved, objectivity is lost. But where only coming from patient not necessary to sever the doctor/patient relationship*

*It is professional misconduct to explore a discontinued professional relationship, but not in all circumstance*

*Individual cases differ on facts*

*Look at the 18 points judge made out*

*Doctor suspended for 6 months*

* + - 1. Conduct discreditable to the profession;
      2. Providing a person with unnecessary health services;
      3. Influencing another in a way that might compromise patient care;
      4. Fraud or dishonesty in practice; and
      5. Other improper or unethical conduct.

1. Failure to comply with a condition of practice or provision or demand made under the Act;
2. Conviction of an offence relating to professional practice;
3. Failure to meet requirements for registration; and
4. Impairment
   1. physical or mental impairment that detrimentally affects a medical practitioner's capacity to practice
   2. substance abuse or dependence
5. Relevance of ethical standards
   1. In addition to the legal duties imposed on doctors, they are also under ethical duties to patients, colleagues and community. Although these ethical duties are not legally binding, any breach may result in an action in negligence or contract, and in the context of disciplinary actions, may count towards establishing unsatisfactory professional conduct (*PB v Robinson*).

***Psychologists Board v Robinson [2004] QCA 405***

* 1. *Allegations bough on grounds a, c, e and i*
  2. *Female psychologists*
  3. *Had relationship with previous client, was a criminal*
  4. *She saw him randomly on a street when he got out*
  5. *He ended up staying at her house and they had sexual relations*
  6. *She was aware of ethical standards, approached her superior and was advised to stay away*
  7. *Was a breach of professional misconduct*
  8. *Psychs generally consider ethical codes binding on themselves even though no legislative force*