

## Referral Arrangements under the Human Rights Act

Between:

the Health Ombudsman (to include the Office of the Health Ombudsman) (the Agency)

and

Queensland Human Rights Commission (the QHRC)

### RECITALS

- A. The functions of the Agency include managing complaints, notifications and other matters about health services and health service providers pursuant to the *Health Ombudsman Act 2013* (Qld) (the Referral Act).
- B. The functions of the QHRC include dealing with human rights complaints under the *Human Rights Act 2019* (the HR Act) about actions or decisions of public entities, and where possible to effect conciliation.
- C. The parties acknowledge and agree that there may be some overlap between their respective functions.
- D. Section 74 of the HR Act provides that the QHRC and the Agency may enter into arrangements about referral of complaints, how to deal with complaints or other matters that could also form the basis of a human rights complaint, and cooperating in the performance of the functions of the agency and the Commissioner to ensure the effective operation of the HR Act and the Referral Act.
- E. This arrangement is entered into pursuant to section 74 of the HR Act with a view to:
  - i. avoiding duplication in dealing with human rights complaints;
  - ii. ensuring that the more appropriate entity deals with a human rights complaint;
  - iii. ensuring that the HR Act and the Referral Act operate effectively; and
  - iv. providing the most streamlined and efficient process for complaints.

### 1. Definitions

**Agency** means the Health Ombudsman (to include the Office of the Health Ombudsman) established under the *Health Ombudsman Act 2013* (Qld)

**Commencement Date** means the date on which this Arrangement is executed by the parties, or if not executed by the parties on the same date, means the later of the dates of execution.

**Commissioner** means the Queensland Human Rights Commissioner.

**complainant** means the person who made a complaint.

**HR Act** means the *Human Rights Act 2019*.

**human rights** means the rights stated in part 2, divisions 2 and 3 of the *Human Rights Act 2019*.

**human rights complaint** means a complaint about an alleged contravention of section 58(1) of the *Human Rights Act 2019* by a public entity in relation to an act or decision of the public entity.

**powers of preliminary inquiry** means the powers of preliminary inquiry under section 68 of the *Human Rights Act 2019*.

**public entity** has the meaning given by section 9 of the *Human Rights Act 2019*.

**QHRC** means the Queensland Human Rights Commission.

**Referral Act** means the *Health Ombudsman Act 2013* (Qld)

## **2. Consideration of human rights**

When dealing with complaints about the actions or decisions of public entities, the HR Act will require the Agency to consider whether actions or decisions of public entities, which are the subject of complaints, are not compatible with human rights, or whether, in making a decision, a public entity failed to give proper consideration to a human right relevant to the decision.

## **3. Agency may deal with or refer human rights complaints**

In the event the Agency receives a complaint under the Referral Act and the Agency considers the complaint may also be a human rights complaint, the agency may:

- a. deal with the human rights part of the complaint under the Referral Act; or
- b. with the consent of the complainant refer the complaint to the QHRC.

That a complaint has been received by the Agency verbally from a complainant, and then recorded it in writing, will not prevent referral of a complaint to the QHRC.

## **4. QHRC may refer human rights complaints to the Agency**

In the event the QHRC receives a human rights complaint that could be the subject of a complaint under the Referral Act, the QHRC may, if the Commissioner considers the complaint would be more appropriately dealt with by the Agency, subject to paragraph 5, refer the human rights complaint to the Agency, with the consent of the complainant.

## **5. Preliminary inquiry before referral by the QHRC to the Agency**

Before seeking consent from the complainant to refer a complaint to the Agency, the QHRC agrees to use its powers of preliminary inquiry under section 68 of the HR Act to consult with the Agency about the most appropriate entity to deal with a human rights complaint.

The preliminary inquiries may include, but are not limited to the following:

- a. whether the agency has jurisdiction to deal with the subject of the complaint;
- b. whether, based on the information provided to the Agency, the Agency considers the substance of the complaint:
  - i. is frivolous, vexatious, trivial or not made in good faith;
  - ii. is misconceived or lacking in substance;
  - iii. is being adequately dealt with by another appropriate entity;
  - iv. has been resolved or otherwise appropriately finalised by the health ombudsman or another appropriate entity;
- c. whether despite previous reasonable efforts by the health ombudsman or another appropriate entity, the complaint cannot be resolved;
- d. whether the matter of the complaint arose, and the complainant was aware of the matter, at least 2 years before the complaint was made and the reason for the delay;

- e. whether the complaint would be more appropriately dealt with by an entity other than the Agency;
- f. whether the complainant has sought a resolution of the complaint with the relevant health service provider and it is reasonable in the circumstances for the complainant to first seek the resolution; and
- g. the likely processes and timeframes for dealing with the complaint if the complaint is referred to the Agency.

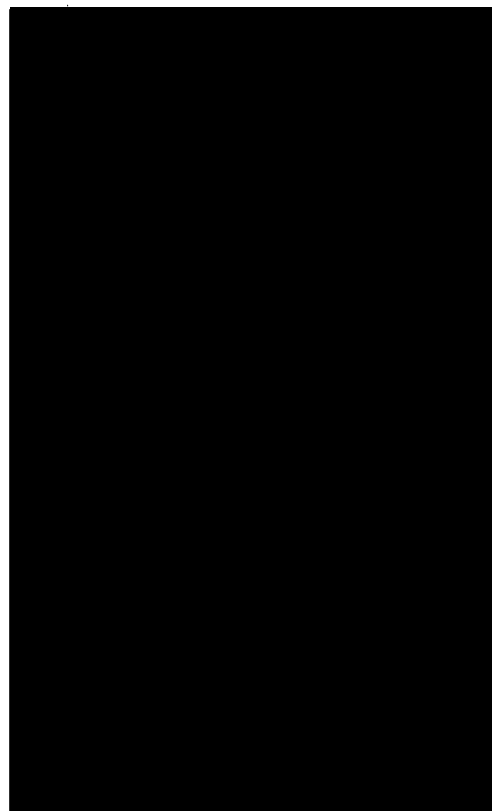
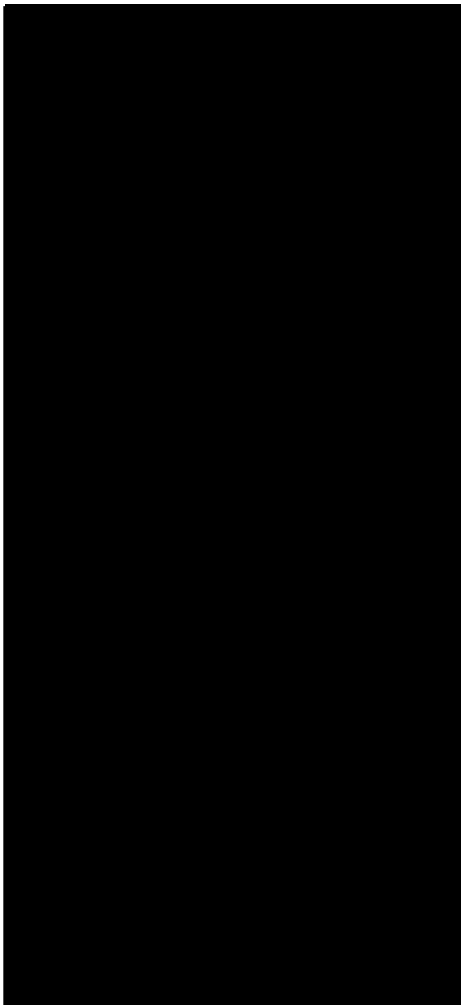
**6. Consultation with QHRC before referral by the Agency to the QHRC**

In the event the Agency considers referring a complaint to QHRC, the Agency will consult with the QHRC and the complainant, and seek the complainant's consent before referring the complaint. The consultation may include, but is not limited to the following:

- a. whether the QHRC has jurisdiction to deal with the complaint;
- b. whether a complaint has already been lodged with the Agency about the subject of the complaint; and
- c. the likely processes and timeframes for dealing with the complaint if it is referred to the QHRC.

**7. Nominated officers**

The QHRC and the Agency nominate the following officers for the purpose of consultation under this arrangement:



**8. Information to be given to the Agency upon referral**

Should the QHRC decide to refer a complaint to the Agency, the QHRC will:

- a. obtain written consent to the referral from the complainant, or make a transcript or summary of the oral consent to refer;
- b. seek consent from the complainant to give the Agency information about the complaint including the complaint;
- c. send the complaint, consent and information agreed by the complainant to the Agency; and
- d. give the complainant a notice confirming that the complaint has been referred to the Agency.

**9. Information to be given to the QHRC upon referral**

Should the Agency decide to refer a complaint to the QHRC, the Agency will:

- a. provide to the QHRC details of the complaint, the complainant and the relevant health service provider;
- b. a copy of the complaint or the transcript or summary of an oral complaint, the complainant's consent to refer and any other information relevant to the complaint;
- c. give the complainant a notice confirming that the complaint has been referred to the Agency.

**10. Mail or email for giving information upon referral**

The giving of information and documents on referral of a complaint under this arrangement, may be given by ordinary post or email, at addresses agreed between the QHRC and the Agency. However the Agency's preferred means of information provision or receipt is by email.

**11. Prompt progress after referral**

If referral of a complaint occurs pursuant to this arrangement, the party receiving the referred complaint will act promptly to deal with the complaint according to their usual processes and legislative requirements.

**12. Communication regarding outcome of referred complaint**

If a complaint is referred between the agencies, they each agree to inform the other, as far as their legislative provisions allow, about the outcome of the referred complaint.

**13. Regular meetings**

- a. The parties agree to meet as required to discuss any issues arising under the arrangement.
- b. The agenda for the meeting and the attendees for the meeting will be agreed between the parties at least 48 hours before the meeting.

**14. Review of arrangements**

The parties agree to review this arrangement from time to time as required. Either party may request that the arrangement be reviewed.

**15. Termination**

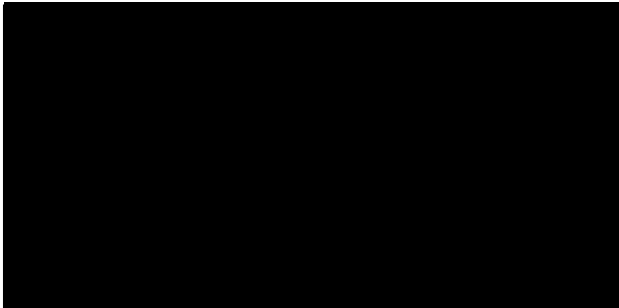
This arrangement may be terminated by either party giving 30 days written notice to the other party.

**16. Amendment**

This arrangement may only be amended, supplemented or replaced by further written arrangement signed by both parties.

**17. Operation of this arrangement**

This arrangement contains the entire arrangement between the parties about its subject matter. Any previous arrangement, understanding or agreement relating to that subject matter is replaced by this arrangement and has no further effect from the Commencement Date.



Andrew Brown  
Health Ombudsman  
Dated: 10/12/2019



Scott McDougall  
Human Rights Commissioner  
Queensland Human Rights Commission  
Dated: 12 December 2019