

Referral Arrangements under the Human Rights Act

Between:

Office of the Information Commissioner (the Agency)

and

Queensland Human Rights Commission (the QHRC)

RECITALS

- A. The functions of the Agency includes handling complaints, conducting external reviews, auditing, training, promoting and raising awareness of rights and responsibilities, promoting and providing training on information management practices pursuant to the (Information Privacy Act 2009) (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 and have entered into these arrangements with the objectives of best supporting the recognition and promotion of Human rights in Queensland, ensuring a no wrong door customer experience and optimizing the limited resources of the QHRC and referral agencies.
- 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 (may refer to a section of relevant Act that defines the agency)

Commencement Date means the date on which this Arrangement is executed by the parties, or in 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 Information Privacy Act 2009.

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, 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 if it is within the agency's jurisdiction; or
- b. with the consent of the complainant, refer the 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 an information privacy complaint that falls within the referral agency's jurisdiction, the QHRC may, if the Commissioner considers the complaint would be more appropriately dealt with by the Agency, 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 an information privacy 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 a complaint has already been lodged with the Agency about the subject of the complaint;
- b. whether the agency has jurisdiction to deal with the subject of the complaint; and
- c. the likely processes and timeframes for dealing with the complaint if the complaint is referred to the Agency.

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. obtain written consent to the referral from the complainant, or make a transcript or summary of the complainant's oral consent to refer;
- b. seek consent from the complainant to give the QHRC a copy of the complaint or the transcript or summary of an oral complaint, and any other information relevant to the complaint;
- c. send the complaint, consent and the complainant's name and address to the QHRC; and
- d. 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.

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 seek the complainant's agreement or consent (at the referral stage or subsequently) to inform the other, subject to any relevant confidentiality provisions in legislation, about the outcome of the referred complaint.

13. Regular meetings

- a. The parties agree to meet at agreed intervals 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

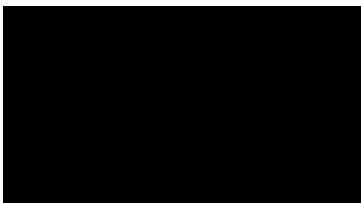
This arrangement may be terminated by either party giving 30 days written notice to the other party.

16. Amendment

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

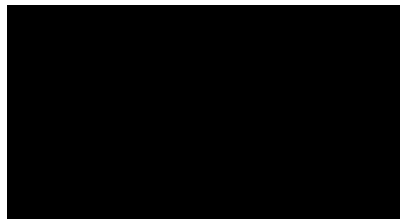
17. Operation of this arrangement

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.



Rachael Rangihaeata
Information Commissioner
Office of the Information Commissioner

Date: 24 December 2019



Scott McDougall
Human Rights Commissioner
Queensland Human Rights Commission

Date: 24 December 2019