

COMPLAINT REFERRAL ARRANGEMENT

(s.42(1), *Ombudsman Act 1974*)

1. Preface

Part 6 of the *Ombudsman Act* permits two or more relevant agencies to enter into arrangements for the referral of complaints among themselves. Any such referrals have to be made in accordance with a Complaint Referral Arrangement entered into between the agencies.

2. Definitions

In this Arrangement the following definitions apply:

- **complaint** means a complaint (however described) that is made to a relevant agency.
- **receiving agency** means the relevant agency to which a complaint has or is to be referred.
- **referring agency** means the relevant agency that originally received a complaint and is referring part or all of the complaint to another relevant agency.
- **relevant agency** means an agency specified in Schedule 1A to the *Ombudsman Act* that is a signatory to this Arrangement.

3. Obligations on referring agency

3.1 *Circumstances in which a complaint may be referred*

A complaint may be referred by a referring agency to a receiving agency if it appears to the referring agency to be within, or partly within, the receiving agency's jurisdiction. A complaint is within a receiving agency's jurisdiction if it is a complaint a person is authorised by law to make to the agency or that the agency is authorised by law to deal with (s.42(2)(a)). A complaint that is within or partly within, more than one receiving agency's jurisdiction may be referred to one of them, some of them or all of them (s.42(2)(b)).

A relevant agency may refer a complaint, or part of a complaint, where it appears the complaint or part is within the jurisdiction of another relevant agency and:

- the complaint or relevant part is not within the jurisdiction of the referring agency; or
- the complaint or relevant part is still within the jurisdiction of the referring agency, but concurrent and coordinated investigations are warranted; or
- although a relevant part of the complaint may be within the jurisdiction of the referring agency, the majority of the complaint is within the jurisdiction of the receiving agency.

When deciding whether to refer a complaint, the referring agency should be aware of the nature and scope of the secrecy obligations on the agency to which it is contemplating making the referral, ie, the extent to which the information can or must be kept confidential or disclosed by that agency.

3.2 *Clarification of jurisdiction of receiving agency*

Where there is any doubt as to whether a complaint is within, or partly within, another relevant agency's jurisdiction, that agency is to be consulted. The views expressed by a relevant agency as to its jurisdiction are to be taken as determinative of this issue for the purposes of this Arrangement.

3.3 *Consent of receiving agency*

The prior consent (either oral or written) of the receiving agency must be obtained before a complaint is referred to that agency, other than where existing statutory powers enable referral of a complaint without such consent.

3.4 *Consent of complainant*

The express consent of the complainant is to be obtained before a complaint may be referred to another relevant agency (s.42(4)).

The express consent can be given orally (either over the telephone or face to face) or in writing (in correspondence, by facsimile, or by email). Where consent is given orally, a written record is to be made and retained on the relevant file.

3.5 *Information to be provided to receiving agency*

Subject to the Information Sharing Arrangement entered into pursuant to s.43(1) of the *Ombudsman Act*, the information to accompany a referred complaint is to include:

- copies of all documentation held by the referring agency that relates to the complaint, or part of the complaint, being referred;
- whether any parts of the complaint being referred are also being referred to any other relevant agency, or any other agency, for attention;
- whether the referring agency intends to continue to deal with the complaint, or any particular part of the complaint, that is within its jurisdiction;
- details of any adjustment, set-off, award, compensation or other form of settlement made by any party to the complaint as part of the complaint resolution process operated by the referring agency.

This does not require the provision of documents obtained from any party in the course of conciliation/mediation proceedings, without the consent of the party that provided the documents.

3.6 *Information to be provided to complainant*

At or about the time a complaint is or is to be referred, the referring agency is to send to the complainant the following information, in writing:

- confirmation of any oral consent to the referral;
- the name and contact details of the receiving agency or agencies;
- whether the referring agency intends to continue to deal with part or all of the complaint and if not, a notice of discontinuation, decline or dismissal.

4. Obligations on receiving agency

The receiving agency is to give the complainant the following information, in writing:

- confirmation of receipt of the referred complaint, or part of the complaint;
- relevant contact details;
- information as to the complaints process operated by the receiving agency.

5. Public availability of Arrangement

Copies of this Arrangement are to be:

- available for public inspection at the office of each relevant agency during their ordinary office hours (s.45); and
- accessible on the website of each relevant agency.

Amanda Adrian
Commissioner
Health Care Complaints Commission

Amanda Adrian
Signature

Date 6 May 2003

Bruce Barbour
Ombudsman

B. Barbour
Signature

Date 19 May 2003

Steve Mark
Legal Services Commissioner

[Signature]
Signature

Date 15.05.03

Laurie Glanfield
A/President, Anti-Discrimination
Board

[Signature]
Signature

Date 30 MAY 2003

Maureen Tangney
A/Privacy Commissioner
Privacy NSW

[Signature]
Signature

Date 3 June 2003