

Addendum To

Mental Health Complaints Partnership Agreement

Between

Health And Disability Services Complaints Office

And

Department Of Health

And

Council of Official Visitors

And

Office of the Chief Psychiatrist

And

Mental Health Commission

Partners

“ Effectively managing
mental health complaints ”



Health and Disability Services
Complaints Office



Government of **Western Australia**
Department of **Health**



Government of **Western Australia**
Mental Health Commission

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Defined Terms

The following definitions are for guidance purposes only, and are not intended to be prescriptive in nature.

Adverse Event	An injury/harm caused by medical management or complication thereof, instead of the underlying disease. It results in an increase in the level of care and/or prolonged hospitalisation and/or disability at the time of discharge.
Carer	A person is a carer if s/he is an individual who provides ongoing care or assistance to a person who has a chronic illness, including a mental illness, as defined in the <i>Mental Health Act 1996</i> . It is recognised that very often, although not invariably, a person's carer is a family member. It is also recognised that, even though a family member is a person's carer, the person may not identify the family member as his or her carer; or the family member may not identify himself or herself as the person's carer (<i>Mental Health Act 2014</i>).
Complaint management	<p>The processes involved in responding to, and acting on a complaint received by an individual or organisation about a mental health service provider, which includes assessment, investigation, resolution and feedback.</p> <p>The level of response to a complaint will be determined by a number of factors including (but not limited to) the level of participation of the complainant and service provider in the process; the parties' capacity to resolve the complaint; the complexity of the complaint; and the outcome sought.</p>
Mental health complaint	An expression of dissatisfaction by one or more people about a mental health service provider where the provider acted, or failed to act, in a manner as described in s320 of the <i>Mental Health Act 2014</i> in respect of a person who may or may not have a mental illness, or a carer of a person who may or may not have a mental illness.
Mental health service	<p>A mental health service is:</p> <ul style="list-style-type: none"> (i) a service provided specifically for people who have or may have a mental illness; or (ii) a service provided specifically for carers of people who have or may have a mental illness; or (iii) the carrying out of medical or epidemiological research relating to mental illness.
Misconduct	Refers to 'unprofessional conduct,' as described by the Australian Health Practitioner Regulation Agency and in compliance with s5 of the <i>Health Practitioner Regulation National Law (WA) Act 2010</i> , that is of a lesser standard than that which might reasonably be expected of the health practitioner by the public or the practitioner's professional peers, and as set out by the standards and guidelines of the profession.
Near misses	Incidents that may have, but did not cause harm, either by chance or through timely intervention.

Notifiable incident	<p>In the context of mental health, means any of the following events:</p> <ul style="list-style-type: none"> (a) the death of the person, wherever it occurs; (b) an error in any medication prescribed for, or administered or supplied to, the person that has had, or is likely to have, an adverse effect on the person; (c) any other incident in connection with the provision of treatment or care to the person that has had, or is likely to have, an adverse effect on the person; (d) a reportable incident (as defined in section 254(1)) in relation to the person; (e) any other event that the Chief Psychiatrist declares, by notice published in the Gazette, to be a notifiable incident for the purposes of this definition
Sentinel Event	Refers to unexpected occurrences involving death or serious physical or psychological injury/harm or risk thereof.
Stakeholders	Includes, but is not limited to government, non-government, community and private sector entities and/or groups, as well as patients, consumers, consumer groups, carers, personal supports, guardians, advocates and service providers.

Section 1: Purpose of the Addendum

This Addendum is a complementary document to the *Partnership Agreement: Effectively Managing Mental Health Complaints*.

The Partnership Agreement is a 'principles-based' document that is expected to remain current, thereby minimising the need for short-term change. This Addendum, on the other hand, intends to:

- document content areas that are more likely to change (the Addendum will be updated more frequently than the Agreement). This will ensure that the Partnership Agreement and the Addendum will maintain currency and relevance; and
- ensure that the principles of the Partnership Agreement transfer into relevant and meaningful operational initiatives for consumers, carers and service providers (as summarised in Section 6 of this Addendum).

Section 2: Background

In November 2013, the Health and Disability Services Complaints Office (HaDSCO) convened a forum for consumers, their families and carers to share their experiences relating to making a complaint about mental health services.

In March 2014, HaDSCO released a report on the findings and recommendations from the November 2013 forum. A key finding included the need for increased clarity on the roles and responsibilities of government agencies that manage mental health complaints.

In April 2014, HaDSCO in conjunction with the Mental Health Commission convened a forum of government agencies with a statutory role in mental health. All parties to this Addendum (as well as other agencies) attended the forum. A key finding from the forum reaffirmed that making a complaint within the mental health system was, at times, difficult for patients, consumers, carers, advocates and providers to navigate.

An outcome of the April 2014 forum was for a 'core group' of State government agencies to work together to address this and related issues.

The Partnership Agreement (which includes this Addendum) is an agreed action from the April 2014 forum and is underpinned by the *Mental Health Act 2014*.

Section 3: Legislated Roles and Responsibilities

In the first instance, all mental health services have a responsibility to manage complaints made to them. Where complaints are not reasonably addressed, alternative options must be made available.

The roles and responsibilities of agencies covered by the Partnership Agreement, as they relate to complaint management, are outlined below.

Health and Disability Services Complaints Office (HaDSCO)

HaDSCO is an independent statutory authority offering an impartial resolution service for complaints in Western Australia (WA) and the Indian Ocean Territories. This service is free and available to all users and providers of health, mental health and disability services. Acting impartially and in confidence, HaDSCO reviews and reports on the causes of complaints, undertakes investigations, suggests service improvements and advises service providers about effective complaint resolution.

The functions of the Director as set out in the *Health and Disability Services (Complaints) Act 1995* are:

- to deal with complaints
- in collaboration with groups of providers or groups of users or both, to review and identify the causes of complaints and to suggest ways of removing and minimising those causes and bringing them to the notice of the public
- to take steps to bring to the notice of users and providers details of complaints procedures
- to assist providers in developing and improving complaints procedures and training of staff in handling complaints
- with the approval of the Minister, to inquire into broader issues of health care arising from complaints received
- to publish work of the Office from time to time
- to provide advice generally on any matter relating to complaints
- to provide advice to users on the making of complaints to registration boards and other avenues available for dealing with complaints
- any other function conferred on the Director by the Act or another written law.

Under this legislation, the Director may do all things that are necessary, or convenient to be done, in order to perform the Director's functions.

HaDSCO operates within two key service areas:

- Service one: Assessment, conciliation and investigation of complaints.
- Service two: Education and training in the prevention and resolution of complaints.

These services enable HaDSCO to identify needs for service improvement, make recommendations, and encourage the continual enhancement of health, mental health and disability services provided in WA.

Council of Official Visitors

The Council of Official Visitors (The Council) is an independent agency established by the Parliament of Western Australia. The Minister for Mental Health appoints members of the Council, known as Official Visitors. Official Visitors are members of the general community who have an understanding of mental illness and the problems faced by those who are affected by it. The Council is primarily there to ensure that:

- individuals are aware of their rights;
- the rights are observed; and
- to investigate and seek to resolve complaints.

The Council is also responsible for inspecting authorised hospitals and licensed private psychiatric hostels to ensure that they are in a safe and suitable condition.

The Council was established to assist 'affected persons' under the Mental Health Act 1996 which includes:

- individuals receiving treatment involuntarily or mentally impaired accused in an authorised hospital;
- individuals on Community Treatment Orders; and
- individuals with a psychiatric disability who live in a licensed private psychiatric hostel or group home.

The Council is not able to assist voluntary patients/consumers in hospital, unless they are residing in a hostel residence.

Council will be replaced by a mental health advocacy service led by a Chief Mental Health Advocate when the *Mental Health Act 2014* commences. The jurisdiction and powers under the 2014 Act are similar but with the following changes and broadening of functions:

1. the category of persons who can be assisted (defined as identified persons) has been expanded to include:
 - a. people who are detained under the 2014 Act awaiting assessment by a psychiatrist (for example in emergency departments);
 - b. people on hospital orders; and
 - c. some classes of voluntary patient, but only if the Minister has issued a direction to that effect (so voluntary patients will not be included as a matter of course).
2. in relation to complaints, the mental health advocates will be required to:
 - a. "inquire into and seek to resolve" complaints about the detention of people at, or the treatment or care provided by, mental health services to identified persons; and
 - b. assist an identified person to make a complaint under Part 19 of the Act to the person in charge of a mental health service, or to HaDSCO, and to be the person's representative where a complaint is made to HaDSCO;
3. in relation to the function of protecting rights, the mental health advocates will be required to:
 - a. "inquire into and investigate" the extent to which identified persons have been informed of their rights and rights have been observed; and
 - b. assist identified persons to protect and enforce their rights under the Act (noting that the rights have considerably broadened under the 2014 Act);
4. instead of being required to ensure wards and places of care are "safe and suitable", the mental health advocates' functions will include "inquiring into or investigating any matter relating to the conditions of mental health services" (which includes psychiatric hostels) "that is adversely affecting, or likely to adversely affect, the health, safety or wellbeing of identified persons";
5. every person who is made involuntary must be visited or contacted by a mental health advocate within 7 days (and 24 hours for children) and the Chief Mental Health Advocate must be notified by services of all people made involuntary; and
6. as an additional function the mental health advocates will be required to advocate for and facilitate access by identified persons to other services and assist them to access legal services.

Department of Health (Office of Mental Health)

The Office of Mental Health does not have legislated responsibilities to manage mental health complaints. A core responsibility of the Office is to ensure that Department of Health Mental Health Services are ready to comply with the *Mental Health Act 2014* when it commences. As such, the role of the Office of Mental Health is to assess whether Mental Health Services have complaints management processes which meet the legislated requirements of the 2014 Act and National Mental Health Standards. The Office of Mental Health can make recommendations for Mental Health Service change where existing processes are not currently clear, visible, accessible and responsive to patients, consumers and carers. It remains the ultimate responsibility of Mental Health Services to ensure that their complaints management complies with legislated requirements.

In summary, the functions of the Office of Mental Health are to:

- develop a system-wide approach to mental health service delivery in collaboration with key stakeholders;
- develop and facilitate the implementation of state-wide policies, including those related to best practice;
- oversee compliance and policies by service providers and report on those services that do not comply;
- work closely with the Office of the Chief Psychiatrist to ensure compliance with regulations from that Office;
- develop the mental health workforce and mandate systems of supervision, continuing professional development, and credentialing of a service and its personnel to provide the required mental health care for patients;
- work with stakeholders to develop and implement service improvement projects;
- cultivate resources and build knowledge that improves evidence-based care, strengthening practice and fostering innovations;
- participate in budget-setting processes with the Mental Health Commission and other key stakeholders;
- ensure development and maintenance of robust patient information systems; and
- provide advice to the Ministers for Health and Mental Health, Director General, Commonwealth and other state agencies as required.

Department of Health (Corporate Governance)

The Director General has overall responsibility for governance in the Department of Health and the Health Services (collectively referred to as WA Health) and has specific governance-related responsibilities under certain legislation, including the *Financial Management Act 2006* (FMA) and the *Corruption and Crime Commission Act 2003* (CCC Act).

The Department's Corporate Governance area was established to assist the Director General, the Department of Health and the Health Services manage their governance responsibilities and maintain sound managerial control over all aspects of operations.

Authority for some of the Director General's corporate governance responsibilities has been delegated or assigned to the Ethical Standards – Integrity Services Directorate.

Corporate Governance is concerned with decision-making processes and the frameworks through which organisations are managed and controlled. Effective governance reflects an agency's values and provides mechanisms which promote leadership, integrity, transparency and accountability. It helps determine an organisation's objectives, the means through which those objectives are achieved and how performance is evaluated; doing so by emphasising the importance of control systems, the management of potential conflicts of interest and the implementation of regular and planned checks on decision-making and the exercise of authority.

Corporate Governance, which lies within the System and Corporate Governance Division of the Department of Health:

- provides advice regarding corporate governance to the Director General, the Department and the Health Services;
- conducts independent monitoring and inquiries related to governance practices and actions;
- promotes the principles of good corporate governance: honesty, openness, procedural fairness, care and diligence; and
- assists management and staff comply with the WA Public Sector Code of Ethics and the WA Health Code of Conduct.

Department of Health

(Office of Patient Safety and Clinical Quality- Patient Safety Surveillance Unit)

The Patient Safety Surveillance Unit is responsible for the WA Complaints Management Policy which is implemented via Operational Directive 0589/15. This policy provides guidelines for the management of complaints made by health care consumers (including patients, carers, family). It outlines complaint reporting requirements for all health services in WA Health. The Patient Safety Surveillance Unit manages the database for complaint reporting for WA Health complaints information requirements of s75 of the Health and Disability Services (Complaints) Act 1995, and as prescribed in the Health and Disability Services (Complaints) Regulations 2010.

Department of Health (Licensing and Accreditation Regulatory Unit)

The Licensing and Accreditation Regulatory Unit (LARU) administers the *Hospitals and Health Services Act 1927* (HHS Act) Part IIIA & B for the private health industry and is the regulator for the accreditation of both public and private hospitals. HHS Act Part IIIB pertains to private psychiatric hostels.

The aim of LARU is to protect the public, protect from harm, improve the quality of health service provision and represent the public interest through a responsive regulatory approach. Thus ensuring health facilities are safe and provide appropriate environment of care consistent with licensing Standards/Guidelines.

To administer the HHS Act Part III A & B, the role of LARU is divided into 7 core functions, which include: Legislative Compliance, Licensing Regulation, Building Regulation, Arrangements Regulation, Accreditation Regulation, Supervisor Regulation and Corporate Governance.

Department of Health (Office of the Chief Psychiatrist)

The Chief Psychiatrist of Western Australia has independent responsibilities, powers and duties prescribed by the Mental Health Act 1996, and central to those duties is the responsibility for the medical care and welfare of all involuntary patients, and the monitoring of standards of psychiatric care throughout the State.

The Chief Psychiatrist also has a number of specific legislative responsibilities in the *Mental Health Act 1996* and the *Mental Health Regulations 1997*.

These include:

- power of inspection of psychiatric health services;
- power of delegation;
- authority to report matters to the Director General of Health or the Mental Health Review Board;
- authority to maintain a register in relation to authorised hospitals and authorised mental health practitioners;

- specific responsibilities in regards to directions as to treatment where the Chief Psychiatrist may review any decision of a psychiatrist as to treatment and vary or rescind or substitute the decision of the psychiatrist;
- responsibilities in the maintenance of satisfactory standards and provision of information in relation to medications used in psychiatry;
- authority to order that a detained patient be allowed to be visited;
- by order published in the Gazette designate any medical practitioner as an authorised medical practitioner and revoke that designation;
- responsibilities in relation to the transfer of a patient to another jurisdiction;
- medical treatment of an involuntary patient or a mentally impaired accused person may be approved by the Chief Psychiatrist;
- arranging for the opinion of a psychiatrist as to whether treatment should be given and where a patient is dissatisfied by treatment received under section 109;
- responsibilities with regard to further remedies where a person remains dissatisfied, an opinion having been obtained under section 111;
- responsibilities in relation to the capacity to vote;
- responsibilities with regard to accessing certain information about a patient;
- regulations with regard to authorised Mental Health Practitioners;
- duties where a public hospital ceases to be an authorised hospital; and
- access to a register of seclusions and restraints.

Mental Health Commission

The functions of the Mental Health Commission include:

- developing and providing mental health policy and advice to government;
- leading the implementation of mental health strategic policy;
- articulating key outcomes and determining the range of mental health services required for defined areas and populations across the state;
- specifying activity levels, standards of care and determining resourcing required;
- identifying appropriate service providers and benchmarks and establishing associated contracting arrangements with both government and non-government sectors;
- providing grants, transfers and service contract arrangements;
- performance monitoring and evaluation of key mental health programs in Western Australia;
- ensuring effective accountability and governance systems are in place;
- and

- promoting social inclusion, public awareness and understanding of matters relating to the wellbeing of people with mental illness to address stigma and discrimination.

The Mental Health Commission does not have legislated responsibility to manage complaints directly from mental health consumers, their families and carers. However the Commission may become involved should the outcome of the complaint made to those agencies legislated to manage complaints from consumers their families and carers result in recommendations to review the policies, procedures and/or standards of Commission purchased services.

Section 4: Other Stakeholders

Although not party to this Agreement, there are many other stakeholders that play an important role in complaint resolution for people with a mental health issue, including:

- **Australian Health Practitioner Regulation Agency (AHPRA):** AHPRA supports the 14 National Boards that are responsible for regulating health professions. The primary role of the National Boards is to protect the public and set standards and policies that all registered health practitioners must meet. Complaints regarding a practitioner's health, performance and/or conduct can be made to AHPRA. This includes, but is not limited to, behaviour, boundary violation, clinical care, communication, confidentiality, conflict of interest, discrimination, documentation, health impairment, infection/hygiene, informed consent, pharmacy/medication or response to adverse events.
- **Mental Health Review Board:** The Board's primary statutory role is to review the orders made by psychiatrists under which patients are treated involuntarily, and to decide whether or not the patient should remain subject to the order. Involuntary patients are those people who have been placed by a psychiatrist on an involuntary order under the Act. There are two types of involuntary orders that a psychiatrist may make. One is for a person to be detained in an authorised hospital as an involuntary patient: section 43. The other is for the person to be placed on a Community Treatment Order, which is an involuntary order that requires the patient to comply with the treatment plan specified in the order but otherwise enables the patient to live in the community: section 66.

Section 146 requires that the Board enquires into any complaint made to it concerning (a) any failure to recognise the rights given by the Mental Health Act 1996 to an involuntary patient or (b) any other matter to do with the administration of the Act. The rights concerned include the right of access to personal records (section 160), an interview with a psychiatrist (section 164), possession and use of personal articles (section 164), the right to write and receive letters (section 166), the right to make and receive telephone calls (section 167), and the right to receive visitors in reasonable privacy (section 168). A psychiatrist may order that the rights to correspond, make telephone calls and to receive visitors may be restricted (section 169). Section 170 creates the right to apply to the Board for a review of the restriction. If a psychiatrist determines that a person does not have the capacity to vote, an application can be made to the Board for a review of the determination (refer section 201).

- **State Administrative Tribunal:** The Tribunal hears appeals from Mental Health Review Board decisions made under the Mental Health Act 1996.
- **Ombudsman:** The Ombudsman serves Parliament and Western Australians by:
 - Investigating and resolving complaints about the decision making and practices of State Government agencies, local government and universities, including investigating and resolving mental health complaints and complaints about how the Health and Disability Services Complaints Office, Mental Health Commission, Department of Health and Council of Official Visitors manage mental health complaints;

- Reviewing certain child deaths and family and domestic violence fatalities;
 - Improving public administration for the benefit of all Western Australians through our motion investigations and education and liaison programs with public authorities; and
 - Undertaking a range of additional functions, as set out in legislation, that fit within the broad category of integrity oversight.
- **Office of the Information Commissioner:** The main function of the Commissioner is to deal with complaints about decisions made by State public sector agencies in respect of access applications and requests to amend personal information under the Freedom of Information Act (the FOI Act). Other responsibilities include:
- ensuring that agencies are aware of their responsibilities under the FOI Act;
 - ensuring that members of the public are aware of the FOI Act and their rights;
 - providing assistance to members of the public and agencies on matters relevant to the FOI Act; and
 - recommending to Parliament legislative or administrative changes that could be made to help the objects of the FOI Act to be achieved.
- **Western Australia Police:** The Police provide emergency assistance or attendance for serious crimes that are in progress, being witnessed or just committed, including:
- any situation where life or serious injury is threatened; and
 - any incident which poses an immediate threat of danger to people or property.
- The Police also provide assistance or attendance when it is not an emergency, including:
- reporting a disturbance or breach of the peace (antisocial behaviour);
 - reporting something which has happened in the past;
 - reporting a property-related incident for insurance purposes; or
 - making a complaint against police or another individual.
- **Public Sector Commission:** The aim of the Public Sector Commission is to bring leadership and expertise to the public sector to enhance integrity, effectiveness and efficiency. The Commission has an oversight role in relation to the *Public Interest Disclosure Act 2003* (PID Act). This Act encourages people to come forward with information about wrongdoing covered by the Act, without the fear of reprisal. Public authorities are required to have a public interest disclosure officer to whom a disclosure can be made. Public authorities include state government agencies, local government, public universities and some boards and committees.

Section 5: Scope

Section 5 outlines the broad scope of agencies within the Partnership Agreement when accepting or managing an individual mental health complaint. The roles, nature of complaints managed, and potential actions administered, are also outlined, as follows:

- Attachment 1: Roles and responsibilities in managing mental health complaints.
- Attachment 2: Nature of complaint allegations that can be accepted or managed.
- Attachment 3: Complaint processes that can be utilised.

Section 6: Action plan to ‘operationalise’ the Partnership Agreement

To ensure that the principles of the Partnership Agreement are transferable and have direct relevance to patients, consumers, their families, carers and service providers, an Action Plan has been developed. The Action Plan will be reviewed annually, and updated as agreed by the parties to this Agreement.

During the first year of the Partnership Agreement, the following initiatives will be jointly progressed by the Agencies within this Partnership Agreement in partnership with consumer and carer representatives, government and non-government agencies, advocacy agencies, and other relevant stakeholders:

1. Develop and implement a process to collect and report de-identified mental health complaint data from key mental health service providers, as per s309 in the *Mental Health Act 2014*, to identify systemic issues and underlying causes of complaints and preventative measures.
2. Progress further discussions amongst consumers, their families, carers, service providers and other stakeholders to develop a streamlined and effective complaints process that is flexible and responsive to mental health users, carers, service providers and relevant stakeholders. Consider the cost/benefits of options including a ‘one-stop-shop’; a 24/7 phone line; a web-based portal; a referral process. In the interim, initiate functional changes that aim to simplify and improve the complaint pathway, including the potential transfer of the complaints function from the Office of the Chief Psychiatrist to the Health and Disability Services Complaints Office.
3. Develop a mechanism to manage multi-agency mental health complaints for future incorporation into this Agreement, including an exchange of a “letter of agreement” for CEOs of this Partnership Agreement to share information to effectively coordinate serious complaints (subject to complainant’s authorisation and confidentiality requirements).
4. Develop State-wide Mental Health Complaint Standards for all complaints to be assessed against.
5. Expand initiatives for patients, consumers, their families, carers and service providers to be aware of all complaint options. This will include:
 - all parties to this agreement referencing HaDSCO on the front page of their website;
 - developing a ‘Complaints Checklist’ for each mental health service outlet;

- developing co-badged brochures and posters for each mental health service outlet which consider the special needs of people, including (but not limited to) culturally and linguistically diverse people, Aboriginal people, Torres Strait Islanders, people in rural/remote communities, people with specific belief and faith systems, youth and adolescents, and prisoners;
 - making available information to support complainants who require assistance to articulate their complaint;
 - developing clearly articulated policy, guidelines and assessment tools to assist patients, consumers, carers and mental health service providers.
6. Develop an across-sector education and prevention program to deliver Effective Mental Health Complaints Management competency-based workshops (on-line and/or face-to-face) for clinical, front-line and administrative staff.

Section 7: Term of the Addendum

The term of the Addendum is for one year from date of signing, unless mutually agreed otherwise.

Section 8: Authorisation

Name / Signature	Agency	Date
_____ Name:	Director, Health and Disability Services Complaints Office	
_____ Name:	Director General, Department of Health	
_____ Name:	Commissioner, Mental Health Commission	
_____ Name:	Head, Council of Official Visitors	
_____ Name:	Chief Psychiatrist	

Section 9: Attachments

ATTACHMENT 1: ROLES AND RESPONSIBILITIES IN MANAGING MENTAL HEALTH COMPLAINTS

Mental health services have a responsibility to manage complaints regarding all facets of their service where possible, and to refer complaints to other agencies where necessary. Where a person is not comfortable in doing this, or s/he has raised the issue and remains dissatisfied, then the following options are available:

If advocacy support is required, then the Council of Official Visitors and many other advocacy services may be able to assist in this regard. Where a complainant is not comfortable in doing this, or s/he has raised the issue and remains dissatisfied, then the options in the matrix below are available. These options will largely depend on the issues raised by the complainant, and their desired outcomes.

Organisation	Roles and Responsibilities
Health and Disability Services Complaints Office (HaDSCO)	<p>HaDSCO accepts complaints from all people, regardless of whether the person is a voluntary or involuntary user of mental health services, or the carer or relative of someone who may or may not have a mental illness. Once proclaimed, under s325 of the Mental Health Act 2014, the complaint may be rejected by HaDSCO if it cannot be demonstrated that a person has taken reasonable steps to resolve the matter before contacting HaDSCO.</p> <p>HaDSCO accepts complaints from (a) inpatients and outpatients including their carers or relative, (b) residents of government, private, non-government accommodation units, (c) people on all custody/treatment/conditional release/hospital orders, and (d) people in emergency departments and mental health observation areas.</p>
Council of Official Visitors	<p>Official Visitors are required by s188 of the Mental Health Act 1996 (the 1996 Act) to:</p> <ul style="list-style-type: none"> • be accessible to hear, and to enquire into and seek to resolve, complaints concerning “affected persons” (defined to include involuntary inpatients, people on a Community Treatment Order, psychiatric hostel residents and mentally impaired accused in an authorized hospital). The complaints may be made by the person, their guardian or relatives; • ensure affected persons know their rights and their rights are observed; • assist affected persons with Mental Health Review Board and State Administrative Tribunal hearings; and • assist an identified person to make a complaint to the Australian Health Practitioner Regulation Agency, including being their representative. <p>Once proclaimed, under s352 of the Mental Health Act 2014, mental health advocates will have expanded responsibilities in relation to a slightly wider group of people called “identified persons”, defined to include: people referred for psychiatric assessment, involuntary inpatients, voluntary inpatients under an order for assessment, people on a Community Treatment Order, psychiatric hostel residents, mentally impaired accused and people on a hospital order with potential for some classes of voluntary patients if directed by the Minister.</p> <p>The role of the Official Visitors will be taken over in the Mental Health Act 2014 by the Mental Health Advocacy Service. The relevant functions under the 2014 Act are to:</p> <ul style="list-style-type: none"> • inquire into or investigate the extent to which identified persons are informed of their rights and the rights observed; • inquire into and seek to resolve complaints about the detention of identified persons at, or the treatment or care that is being provided to them by, mental health services; • assist identified persons to protect and enforce their rights under the Act (including referring them to other parties and accessing legal services); • inquire into or investigate any matter relating to the conditions of mental health services that is adversely affecting, or is likely to adversely affect, the health, safety or wellbeing of identified persons; • assist an identified person to make a complaint to the person in charge of a mental health service or HADSCO including being their representative; and • assist identified persons in relation to Mental Health Tribunal and State Administrative Tribunal applications.

Office of the Chief Psychiatrist	<p>The Office of the Chief Psychiatrist does not have legislated responsibilities to manage complaints directly from mental health consumers, their families, and carers. If contacted, however, the Office of the Chief Psychiatrist can direct consumers, their families and carers to the correct agency.</p> <p>The Office of the Chief Psychiatrist does, however, have a statutory responsibility for addressing sentinel events and notifiable incidents reported to the Chief Psychiatrist.</p>
Department of Health (Office of Mental Health)	<p>The Office of Mental Health does not have legislated responsibilities to manage complaints related to Mental Health Service delivery directly from mental health consumers, their families and carers. If contacted, however, the Office of Mental Health can direct consumers, their families and carers to the correct agency.</p> <ul style="list-style-type: none"> • The Office of Mental Health's role in managing complaints is limited to: • assessing whether government-provided Mental Health Services have mental health complaints management processes which meet the responsibilities of legislation and standards; • making recommendations for change, when required; and • taking complaints from community members (not only consumers, their families and carers) regarding state-wide policy set by the Office of Mental Health, and initiating and/or conducting reviews relating to this area.
Department of Health Licensing and Accreditation Regulatory Unit (LARU)	<p>The Department of Health LARU regulates the accreditation of public and private hospitals, including private psychiatric hostels.</p> <p>The LARU's role in managing complaints is limited to assessing complaints, within the scope of licensing, once the facility (where the complaint relates) has reviewed the issues raised.</p>
Department of Health (Corporate Governance)	<p>The Department of Health Corporate Governance Directorate does not have legislated responsibilities to manage complaints directly from mental health consumers, their families and carers. If contacted, however, it can direct consumers, their families and carers to the correct agency.</p> <p>If these complaints involve allegations of public sector misconduct (as defined by the Corruption and Crime Commission Act 2003) there is a legislated responsibility placed on the Director General, DOH, to report those allegations to the Corruption and Crime Commission (CCC).</p>
Department of Health (Office of Patient Safety and Clinical Quality – Patient Safety Surveillance Unit)	<p>The Patient Safety Surveillance Unit is responsible for the WA Complaints Management Policy which is implemented via Operational Directive 0589/15. This policy provides guidelines for the management of complaints made by health care consumers (including patients, carers, family). It outlines complaint reporting requirements for all health services in WA Health. The Patient Safety Surveillance Unit manages the database for complaint reporting for WA Health complaints information requirements of s75 of the Health and Disability Services (Complaints) Act 1995, and as prescribed in the Health and Disability Services (Complaints) Regulations 2010.</p>
Mental Health Commission	<p>The Mental Health Commission does not have legislated responsibilities to manage complaints directly from mental health consumers, their families and carers. If contacted the Commission can direct consumers, their families and carers to the appropriate agency. However the Commission may become involved should the outcome of the complaint made result in recommendations to review the policies, procedures and/or standards of a Commission purchased service.</p> <p>The Mental Health Commission also has responsibilities in relation to Notifiable Incidents that are required to be reported by Community Managed Organisations (CMOs) in receipt of Commission funding. Notifiable Incidents include all deaths, serious incidents and serious complaints involving individuals with a mental illness who are provided services and supports by CMOs (including all private Licensed Psychiatric Hostels). Independent investigation of Notifiable Incidents will be carried out where deemed necessary/appropriate.</p>

ATTACHMENT 2: NATURE OF COMPLAINT ALLEGATIONS THAT CAN BE ACCEPTED OR MANAGED

Mental health services have a responsibility to manage complaints regarding all facets of their service where possible, and to refer complaints to other agencies where necessary. Where a person is not comfortable in doing this, or s/he has raised the issue and remains dissatisfied, then the following options are available:

If advocacy support is required, then the Council of Official Visitors and many other advocacy services may be able to assist in this regard. Where a complainant is not comfortable in doing this, or s/he has raised the issue and remains dissatisfied, then the options in the matrix below are available. These options will largely depend on the issues raised by the complainant, and their desired outcomes.

Nature of complaint	Roles and Responsibilities
<p>Allegations of a breach in Mental Health Policy, Standards of Care, Hospital Accreditation Standards, Contractual Standards including unreasonable or ineffective conduct relating to:</p> <ul style="list-style-type: none"> - Visiting rights - Clinical Treatment - Use of seclusions and restraints - Breach of rights (e.g. visiting rights, safety, phone restrictions, access to gardens/ grounds) - Ward or hostel conditions - Rights, dignity and treatment of carers and nominated persons - Fees - Privacy / confidentiality - Neglect - Abuse and maltreatment 	<p>“Policy” and “Standards of Care” are broad terms that include, but are not limited to relevant Legislation, Regulations, National Mental Health Standards, psychiatric hostel standards, mental health guidelines and policy.</p> <p>HaDSCO and Council of Official Visitors have primary responsibility to manage complaints which may give rise to a change in the above. Once evident that a change may be required, HaDSCO and/or Council of Official Visitors then liaise with other agencies including the Department of Health, the Mental Health Commission and/or the Office of the Chief Psychiatrist.</p> <p>In the first instance, where possible, a complainant should raise their complaint directly with the agency that provided the service. Where a complainant is not comfortable in doing this, or has raised the issue and remains dissatisfied, then the following options may be available:</p> <ul style="list-style-type: none"> - Council of Official Visitors, where advocacy support is required. - HaDSCO, where an independent and impartial assessment of a complaint is required. - Office of the Chief Psychiatrist for addressing sentinel events and notifiable incidents. - Mental Health Review Board where there is a complaint made to it regarding failure to recognise rights under the Act and any other matter to do with the administration of the Act. - Office of Mental Health may directly manage complaints from community members regarding state-wide Mental Health Policy set by the Office. - Department of Health, Licensing and Accreditation Regulatory Unit (LARU): In relation to psychiatric hostels, only LARU can deal with complaints against approved supervisors (other than the police). LARU is also able to prosecute where there is a breach of the Regulations and/or to place conditions on licences where a hostel is not adhering to LARU standards and/or to Regulations. - The Mental Health Commission where (1) the outcome of the complaint results in recommendations to review the policies, procedures and/or standards of a Commission purchased service; (2) where there is a non-government organization serious complaint and notifiable incident - The Mental Health Review Board: Section 146 requires that the Board enquires into any complaint made to it concerning (a) any failure to recognise the rights given by the Mental Health Act 1996 to an involuntary patient or (b) any other matter to do with the administration of the Act. The rights concerned include the right of access to personal records (section 160), an interview with a psychiatrist (section 164), possession and use of personal articles (section 164), the right to write and receive letters (section 166), the right to make and receive telephone calls (section 167), and the right to receive visitors in reasonable privacy (section 168). A psychiatrist may order that the rights to correspond, make telephone calls and to receive visitors may be restricted (section 169). Section 170 creates the right to apply to the Board for a review of the restriction. If a psychiatrist determines that a person does not have the capacity to vote, an application can be made to the Board for a review of the determination (refer section 201).

Complaint relating to inadequate service funding/ resourcing / access to care and services	<p>Complaints relating to a mental health service's funding or staffing levels that are deemed inadequate can be raised with the Council of Official Visitors, and/or can be raised directly with the public, private or non-government agency and/or their funding bodies.</p>
Allegations of Practitioner misconduct, performance and/ or ineffective communication	<p>In the first instance, where possible, a complainant should raise their complaint directly with the agency that provided the service. Where a complainant is not comfortable in doing this, or has raised the issue and remains dissatisfied, then the following options may be available:</p> <ul style="list-style-type: none"> - Council of Official Visitors, where advocacy support is required. - HaDSCO, where the matter relates to ineffective communication (including cultural awareness). - Australian Health Practitioner Regulation Agency where the complaint is about a registered health practitioner's health, performance or conduct. - Department of Health (LARU) where the matter relates to an Approved Supervisor. - If these complaints involve allegations of public sector misconduct (as defined by the <i>Corruption and Crime Commission Act 2003</i>) there is a legislated responsibility placed on the Director General, DOH, to report those allegations to the Corruption and Crime Commission (CCC). - Police – see Criminal Matters below. - Mental Health Commission in relation to non-regulated provider misconduct.
Complaint relating to a lack of access to, or release of, consumer records	<p>In the first instance, where possible, a complainant should raise their complaint directly with the agency that provided the service. Where a complainant is not comfortable in doing this, or has raised the issue and remains dissatisfied, then the following options may be available:</p> <ul style="list-style-type: none"> - Council of Official Visitors, where advocacy support is required. - HaDSCO, where an independent and impartial assessment of the complaint is required. - Information Commissioner, whose main function is to deal with complaints about decisions made by State public sector agencies in respect of 'access' applications, and requests to amend personal information.
Criminal matters <ul style="list-style-type: none"> - Theft - Abuse - Assault - Criminal Neglect - Other 	<p>In the first instance, where possible, a complainant should raise their complaint directly with the agency that employs the alleged perpetrator, or the agency in which the incident occurred. Criminal allegations should be referred to the Western Australian Police. Where a complainant is not comfortable in doing this, or has raised the issue and remains dissatisfied, then the following options may be available:</p> <ul style="list-style-type: none"> - Council of Official Visitors, where advocacy support is required. - HaDSCO, where an independent and impartial assessment of the complaint is required. - Other advocacy services, including Ethnic Disability Advocacy Centre, People With Disability Australia and the Health Consumers' Council may also assist. - Mental Health Commission with respect to non-government organization serious complaints and notifiable incidents - Office of the Chief Psychiatrist for addressing sentinel events and notifiable incidents that relate to criminal matters - Australian Health Practitioner Regulation Agency (AHPRA): When criminal allegations are made about a health practitioner, AHPRA should also be contacted.

ATTACHMENT 3: COMPLAINT PROCESSES THAT CAN BE UTILISED

The following are the most typical processes that can be utilized to address complaints:

The complainant requests:	The agencies that are most likely to assist are:
<p>1. assistance to resolve an issue with another person(s), for example, conciliation or mediation</p> <p><i>Note: Includes (but is not limited to) less complex complaints relating to fees, access to information, breach of rights, ineffective communication, ineffective complaints processes.</i></p>	<ul style="list-style-type: none"> The Health and Disability Services Complaints Office The Council of Official Visitors aims to resolve complaints via negotiation with doctors and treating teams, preferring the most informal processes possible.
<p>2. an investigation of a more complex incident that forms the basis of a complaint.</p> <p>Note:</p> <p>(1) <i>The depth of investigation will vary depending on a range of factors, including the nature and complexity of the complaint, public interest, potential risk, available resources.</i></p> <p>(2) <i>Investigations will typically be based on allegations of a breach in Mental Health Policy and/or Standards of Care (including Private Psychiatric Hostel Licensing Standards).</i></p>	<ul style="list-style-type: none"> The Health and Disability Services Complaints Office The Department of Health (LARU) where the complaint falls within the scope of Licensing.
<p>3. an inspection and/or evaluation of the quality of an entire service</p>	<ul style="list-style-type: none"> The Department of Health (LARU), where the complaint falls within the scope of licensing. The Mental Health Commission where the outcome of the complaint results in recommendations to review the policies, procedures and/or standards of a Commission purchased service.
<p>4. a review of a sector's, agency's and/or service's policy, procedure and/or standard.</p>	<ul style="list-style-type: none"> The Department of Health (LARU), where the complaint falls within the scope of licensing. The Mental Health Commission where the outcome of the complaint results in recommendations to review the policies, procedures and/or standards of a Commission purchased service. The Office of Mental Health (Department of Health) where the complaint relates to public Mental Health Service state-wide policy set by the Office.

5. a review of a person's medication or clinical treatment	<ul style="list-style-type: none"> • 'Other Opinion' rights under the 1996 and 2014 Acts must be organised by the psychiatrist or service • The Council of Official Visitors and mental health advocates may get involved to ensure that rights are observed. • The Office of the Chief Psychiatrist is required to obtain further psychiatric opinion for an involuntary person, when requested. This will continue under s182 of the 2014 Act
6. disciplinary action of a health practitioner or an Approved Supervisor	<ul style="list-style-type: none"> • Australian Health Practitioner Regulation Agency where the complaint is about a registered health • practitioner's health, performance or conduct. • The Department of Health (LARU) where the complaint relates to an Approved Supervisor.
7. prosecution	<ul style="list-style-type: none"> • WA Police • Where there is willful neglect or ill-treatment for a patient under the care of the Chief Psychiatrist, s20 of the Criminal Procedure Act 2004 provides that a prosecution in a court of summary jurisdiction may be commenced by a range of persons including police officers, the Attorney General, the Director of Public Prosecutions, and "authorised persons" (which may include Ministers, statutory officers who have relevant legislated authority, employees of State Government Departments and statutory entities who are acting in the course of duty). • Where there is willful neglect or ill-treatment for a patient under the care of the Chief Psychiatrist and a prosecution in a court of a summary jurisdiction is commenced, then please also contact the Australian Health Practitioner Regulation Agency.