

**Memorandum of Understanding
between
the Commonwealth Ombudsman
and
the Office of the Australian Information Commissioner**

Parties

1. The parties to this Memorandum of Understanding (MOU) are the office of the Commonwealth Ombudsman ('office of the Ombudsman') and the Office of the Australian Information Commissioner ('the OAIC').
2. The Commonwealth Ombudsman is an independent statutory office holder with a range of statutory functions, including the following:
 - under the Ombudsman Act 1976, the Ombudsman can investigate the administrative actions of Australian Government officials and agencies, either on receipt of a complaint or on the Ombudsman's own motion, the Ombudsman also investigates some non-Government agencies, for example the Postal Industry Ombudsman.
 - the Ombudsman performs other legislative functions, for example, an inspection role under the *Telecommunications (Interception and Access) Act 1979* and a reporting function under the *Migration Act 1958*.
 - under an arrangement with the ACT Government, the Commonwealth Ombudsman discharges the function of ACT Ombudsman under the Ombudsman Act 1989 (ACT).
3. The objective of the Ombudsman is to assist the Australian community by resolving complaints and fostering good public administration that is accountable, lawful, fair, transparent and responsive.
4. The Office of the Australian Information Commissioner consists of three statutory office holders, the Australian Information Commissioner, the Freedom of Information (FOI) Commissioner, the Privacy Commissioner and staff supporting these office holders. The Information Commissioner is head of the OAIC.
5. The OAIC has three primary functions:
 - The Privacy function – which are functions conferred on the Information Commissioner by the Privacy Act and related legislation,
 - the FOI function – which are functions directed to the oversight of the FOI Act, and
 - the Information Commissioner functions - which are to report to the Minister on policy and practice with respect to government information management.

6. The OAIC has responsibilities under several acts including:
- *Privacy Act 1988*,
 - *Freedom of Information Act 1982*,
 - *Crimes Act 1914* - regulating the handling of information about spent convictions,
 - *Data matching Program (Assistance and Tax) Act 1990* - regulating the conduct of some federal government data-matching programs,
 - *National Health Act 1953* - regulating the handling of Medicare and PBS claims information,
 - *Telecommunications Act 1997* - monitoring disclosures of personal information to law enforcement agencies and consulting on privacy codes,
 - *ACT Government Service (Consequential Provisions) Act 1994 (ACT)* - regulating ACT government agencies in accordance with the Information Privacy Principles contained within the *Privacy Act 1988*
 - *Healthcare Identifiers Act 2010* – which establishes the Healthcare Identifiers Service and prescribes how healthcare identifiers will be assigned, how they can be used and disclosed.

Duration

7. This MOU operates until either party terminates it or both parties agree to replace it.
8. The Ombudsman and the Information Commissioner will discuss the effectiveness of the MOU annually through a meeting or exchange of correspondence.

Purpose

9. This MOU is intended to:
- facilitate the exchange of relevant information to the extent permitted by relevant legislation, so that complainants to either office can have their concerns dealt with, effectively and efficiently, by the most appropriate agency;
 - facilitate the exchange of relevant information to the extent permitted by relevant legislation, where both the agencies are considering the same issues or facts;
 - ensure that complaint handling and administrative investigation activities of the office of the Ombudsman and the OAIC are not duplicated unnecessarily and are complementary;

- ensure that systemic issues concerning privacy or FOI administration identified by either party are brought to the other parties' attention; and
- ensure that complaints made to one party about the other party are handled in accordance with the principles stated in this MOU.

Contact officer

10. Both parties will nominate a designated contact officer for the purposes of this MOU. Out of hours contact details for relevant staff of the Ombudsman and the OAIC will be provided and updated as necessary.

Complaints

11. The guiding principles are:

- both the OAIC and the office of the Ombudsman have important responsibilities in protecting the interests of the Australian community,
- instances will arise in which a complaint issue falls within the jurisdiction of both bodies, and
- unnecessary duplication of investigation activity or overlap in inquiries should be avoided, especially where there is unlikely to be a different outcome for the complainant arising from dual investigations.

12. Consistent with section 6C of the *Ombudsman Act 1976*, section 50 of the *Privacy Act 1988* and section 74 of the *Freedom of Information Act 1982*, if either the office of the Ombudsman or the OAIC receives a complaint that could be more effectively or appropriately dealt with by the other party, the parties will consult with a view to transferring the complaint.

13. If it is known that a person has contacted both agencies, and that the person is considered at risk of self-harm or of harming others, there will be prompt sharing of information between the agencies to the extent that they are lawfully able to do so.

14. If either the office of the Ombudsman or the OAIC receives a complaint that covers issues under the responsibilities of both parties, the agency receiving the complaint will:

- identify the issues relevant to each agency and, if practicable, split the complaint to allow each agency to investigate the matters under their area of responsibility, and
- consult with the other agency and the complainant to provide advice to the complainant on which is the more appropriate agency to handle the complaint.

15. The OAIC acknowledges that it may be appropriate for the office of the Ombudsman to investigate a matter that falls within the jurisdiction of the OAIC, if the matter can more appropriately and effectively be handled by the

Ombudsman. Two examples are where the complaint issue to be investigated by the office of the Ombudsman is only one part of a wider complaint about an agency's actions; or where the complaint is about an Information Commissioner review. The office of the Ombudsman may consult as appropriate with the OAIC in handling the complaint, including advising the OAIC of the outcome of any investigation conducted by the office of the Ombudsman.

16. As appropriate, the office of the Ombudsman and the OAIC may consult each other in relation to matters where the other party has a specific expertise or qualification that is relevant to an investigation.
17. If one party becomes aware during an investigation that the other party is also considering a complaint about the same matter, then the first party will advise the designated contact officer with the consent of the complainant.
18. The OAIC and the office of the Ombudsman agree not to raise objection if an Australian Government agency, about which a complaint is being investigated by the OAIC or the office of the Ombudsman, informs the other party of the fact of the investigation. This is subject to the disclosure by the agency being in accordance with the laws governing that agency.
19. Joint investigations may be conducted by agreement between the Ombudsman and the Information Commissioner. The scope and procedures for a joint investigation, including the delegation of any legislative powers to staff of either agency, will as far as practicable be agreed at the start of the investigation.

Complaints about each other

20. Both agencies are committed to accountability and transparency in conducting their work, and acknowledge that each can be the subject of investigation by the other in accordance with the legislation administered by the other office. Equally, both agencies respect each other's specific roles, areas of expertise, and decisions concerning priorities and resource allocation.
21. Where one party receives a complaint about the other agency, and there is a discretion as to whether to investigate that complaint, the agency in exercising that discretion will take into account the following factors:
 - Whether the subject matter of the complaint is within the other agency's areas of statutory responsibility, or
 - Whether investigation relates to the expertise of the other agency
22. In most circumstances, the office of the Ombudsman will decide not to investigate complaints about:
 - the outcome of a complaint made to the OAIC, including a decision by the OAIC to finalise a complaint, or the manner by which the complaint is finalised; or
 - the result of an audit or own-motion investigation.

23. In most circumstances, the OAIC will decide not to investigate a complaint where the Ombudsman has already investigated the action complained about.
24. The MOU contact officer is the first contact point for investigating complaints about actions taken by the other agency.

Other investigations

25. If either party begins an investigation or inquiry into a matter that is not otherwise covered by this MOU, and the matter is within the expertise or interest of the other agency, then the investigating agency will advise the other agency's nominated contact officer of the investigation to the extent permitted by the relevant legislation governing both parties.

General

26. The office of the Ombudsman and the OAIC agree that their offices should work together to share information and experience in relation to their respective roles of overseeing the administrative actions of Australian Government agencies. Each party will keep the other informed of recent developments that may be of interest to the other, within the scope of this MOU, and to the extent permitted by the relevant legislation governing both parties.
27. Both parties will include reference to their respective roles, wherever appropriate, in commenting on Australian Government accountability arrangements.
28. Each party will consult the other during the drafting of sections of their annual reports, or other publications, which are of mutual interest.
29. The parties will assist each other, wherever possible, in the distribution of general material to target audiences and the community generally about how to make complaints.

Mr Allan Asher
Commonwealth Ombudsman

Signed 30 / 11 / 2010

Prof. John McMillan
Australian Information Commissioner

Signed 29 / 11 / 2010