

MEMORANDUM OF UNDERSTANDING
between
THE COMMONWEALTH OMBUDSMAN
and
OMBUDSMAN FOR THE NORTHERN TERRITORY
November 2009

PARTIES

1. The Parties to this Memorandum of Understanding (MOU) are the Commonwealth Ombudsman and the Ombudsman for the Northern Territory (NT Ombudsman).
2. To the extent possible and relevant, this MOU is an arrangement for the purposes of s 8A of the *Ombudsman Act 1976* (Com) and ss 19 and 148(1)(b) of the *Ombudsman Act 2009* (NT).
3. The Commonwealth Ombudsman is an independent statutory office holder established pursuant to the *Ombudsman Act 1976* (Com). The Commonwealth Ombudsman's mission includes fostering good public administration that is accountable, lawful, fair, transparent and responsive. The Commonwealth Ombudsman is charged with a range of functions including investigating the administrative actions of Australian Government officials and agencies either on receipt of a complaint or on the Ombudsman's own motion.
4. The Commonwealth Ombudsman is a complaint entity as defined in s 24 of the *Ombudsman Act 2009* (NT).
5. The NT Ombudsman is an independent statutory office holder established pursuant to the *Ombudsman Act 2009* (NT) charged with a range of functions, including:
 - i. investigating and dealing with complaints about administrative actions of public authorities effectively, efficiently, independently, impartially, fairly and in a timely way
 - ii. improving the quality of decision-making and administrative practices of public authorities.

DEFINITION

6. In this Memorandum of Understanding

"administrative action" for the purposes of the NT Ombudsman, has the meaning provided for in s 6 of the *Ombudsman Act 2009* (NT). For the purposes of the Commonwealth Ombudsman, it has a similar meaning to that of "action related to a matter of administration" in s 5(1) of the *Ombudsman Act 1976* (Com), as expanded by s 3(7) of that Act and qualified by s 5(2).

"agency" includes public authority as defined in the *Ombudsman Act 2009* (NT) as well as department and prescribed authority as defined in the *Ombudsman Act 1976* (Com).

"delegation" means the delegation of the powers and functions of the NT Ombudsman under ss 147 and 148 of the *Ombudsman Act 2009* (NT) and the delegation of the powers of the Commonwealth Ombudsman under s 34 of the *Ombudsman Act 1976* (Com).

“investigation” includes an investigation commenced on the basis of a complaint, the referral of a complaint or on the own motion of the Parties, within the meaning of the *Ombudsman Act 1976* (Com) and the *Ombudsman Act 2009* (NT), and includes preliminary enquiries under s 7A of the *Ombudsman Act 1976* (Com) and under Part 6, division 1 of the *Ombudsman Act 2009* (NT).

“systemic issue” means a recurring or persistent issue, policy or practice that may affect more than one individual.

PURPOSES

7. This MOU sets out the framework for cooperation between the Parties in areas of common interest where cooperation is required for the effective performance of their statutory roles in relation to the administrative actions of agencies that deliver programs in the Northern Territory. This MOU is not intended to be overly prescriptive, to legally bind or to override the Parties’ existing statutory rights, duties or responsibilities.
8. The Parties are jointly committed to the effective investigation and review of the administrative actions of agencies that deliver programs in the Northern Territory. The Parties share the objectives of ensuring that agencies are accountable for their decisions and actions, administration is enhanced and public confidence in agencies is maintained.
9. The Parties will work together to:
 - i. communicate the role of each Party to agencies and the public, including joint outreach and promotion
 - ii. refer complaints to one another
 - iii. resolve complaints expeditiously, effectively and in good faith
 - iv. investigate and resolve systemic issues affecting the administrative actions of agencies that deliver programs in the Northern Territory
 - v. liaise with each other to avoid duplication of investigative or review activity.

STATEMENT OF COOPERATION BETWEEN THE PARTIES

10. Recognising the complex framework within which government programs are delivered in the Northern Territory, which often involves all three tiers of government, the Parties acknowledge the importance of cooperation and, where appropriate, collaboration, in order to ensure effective investigation and avoid unnecessary duplication.

Sharing information

11. To the extent that privacy, confidentiality and legislative requirements allow, the Parties agree that their officers will work together to share information and knowledge gained in the performance of their respective roles. Where appropriate, the Parties will invite each other to attend briefings.
12. To the extent relevant and necessary, the Parties will obtain authorisations from complainants to discuss matters of mutual interest.

13. The Parties agree to consult with each other as soon as an investigation reveals information that may lead to the criticism of an agency that is within the sole jurisdiction of the other Party.
14. As appropriate, the Parties may consult each other in relation to matters on which the other Party has specific expertise or qualifications that are likely to be relevant to an investigation.
15. The Parties agree to discuss relevant issues, including working arrangements, and to meet at least once each quarter.

Outreach

16. The Parties may undertake joint outreach activities to communities affected by the administrative actions of agencies that deliver programs in the Northern Territory. To that end, the Parties will regularly discuss opportunities for joint outreach activities.
17. The Parties will assist each other, wherever feasible, in the distribution of general material to target audiences and the community generally about how to make complaints and raise issues. They will, for example, include prominent links between their websites.

Referral of complaints

18. Where one of the Parties (the receiving Party) receives a complaint about an agency that is solely within the jurisdiction of the other Party, the receiving Party will liaise with the other Party and the complainant to determine the most appropriate way to manage the complaint, consistent with the legislative requirements applying to each Party, including, but not limited to:
 - i. providing the details of the complaint to the other Party
 - ii. referring the complaint
 - iii. directing the complaint to the other party and facilitating that process for the complainant. For example, where appropriate, the receiving Party will provide a copy of the complaint to the other Party.
19. When a Party accepts a referred complaint it will manage the complaint independently and shall notify the complainant accordingly. In those circumstances, regard shall be had to ss 18 and 19 of the *Ombudsman Act 2009* (NT).
20. As appropriate, where a matter of administration comes within the jurisdiction of both Parties, the Parties will liaise to determine whether the issue requires:
 - i. joint investigation with or without delegation
 - ii. management by the Commonwealth Ombudsman (requiring delegation from the NT Ombudsman)
 - iii. management by the NT Ombudsman (requiring delegation from the Commonwealth Ombudsman)
 - iv. separation of the complaint so that the Commonwealth Ombudsman and the NT Ombudsman manage those parts within their own jurisdiction.
 - v. management using any, some or all of the above options.

Joint investigation

21. Subject to s 8A of the *Ombudsman Act 1976* (Com) and ss 19 and 148(1)(b) of the *Ombudsman Act 2009* (NT) and to the extent possible, where a joint investigation by both the Commonwealth Ombudsman and the NT Ombudsman is determined to be appropriate, the Parties shall cooperate as required to effectively and efficiently resolve or investigate the matter.
22. When a complaint is investigated jointly the Party which accepted the complaint initially will acknowledge the complaint and notify the complainant of the joint investigation.
23. In order to effectively conduct a joint investigation, a copy of the complaint or a summary of the systemic issue, as the case may be, will be provided to each Party. The Parties may make arrangements to brief each other and to attend joint briefings from third parties.
24. A joint investigation may either be conducted by:
 - i. each Party investigating matters within its jurisdiction and sharing the results of the investigation with the other party, or
 - ii. delegations from the NT Ombudsman to nominated officers of the Commonwealth Ombudsman and delegations from the Commonwealth Ombudsman to nominated officers of the NT Ombudsman.
25. A joint investigation may culminate in a joint report.

Delegation

26. Where the Parties agree, the NT Ombudsman may make the required delegations to officers of the Commonwealth Ombudsman by an instrument of delegation. The delegated officers of the Commonwealth Ombudsman are required to sign Attachment A to this MOU.
27. Where the Parties agree, the Commonwealth Ombudsman may make the required delegations to officers of the NT Ombudsman by an instrument of delegation. The delegated officers of the NT Ombudsman are required to sign the Attachment B to this MOU.
28. The Parties will liaise in relation to any training, briefings or management issues that arise concerning delegates.
29. Where an investigation has been conducted by staff of one Party, but under or partly under, delegation issued by the other Party, the matter should not be finalised until:
 - i. The delegator has agreed to the final report and/or action
 - ii. The delegator has signed the final documentation/correspondence
 - iii. The Commonwealth Ombudsman and the NT Ombudsman have agreed to the final report and/or action and signed the final documentation/correspondence in those instances where delegations have been made by both Parties in order to conduct a joint investigation.

Joint funding

30. Where it is in the interests of both Parties, joint applications may be made for funding concerning the investigation and oversight of agencies that deliver programs relating to the Northern Territory.
31. The Parties will cooperate in order to meet any applicable financial accounting and reporting requirements.

DURATION

32. This MOU operates until the Parties agree otherwise, or either Party informs the other that it wishes to replace, vary or terminate it.
33. The Parties shall meet annually to discuss the effectiveness of the MOU.

OATHS ACT

STATUTORY DECLARATION

Section 23C(1)

I, (1).....of do solemnly and sincerely declare (2) I have read section 120 of the *Ombudsman Act 2009* (NT).

I am fully aware of the secrecy provisions of the Act as described in that section, and am fully aware of the penalties for contravention of those provisions.

And I make this solemn declaration by virtue of the *Oaths Act* and conscientiously believing the statements contained in this declaration to be true in every particular.

Declared at

the.....day of20

(3)

Before me

(4)

(5)of.....

NOTE: A person wilfully making a false statement in a statutory declaration is liable to a penalty of \$2,000 or imprisonment for 12 months, or both.

(1) Name and address of person making the declaration

(2) Here insert the matter declared to either directly following the word "declare" or, if the matter is lengthy, insert the words "as follows" and thereafter set out the matter in numbered paragraphs

(3) Signature of the person making the declaration

(4) Signature of the person before whom the declaration is made

(5) Name and contact address or telephone number of person before whom the declaration is made legibly written, typed or stamped.

(6) This declaration may be made before any person who has attained the age of 18 years.

Commonwealth of Australia
STATUTORY DECLARATION
Statutory Declarations Act 1959

1 Insert the name, address and occupation of person making the declaration

I, ¹of.....

make the following declaration under the *Statutory Declarations Act 1959*:

2 Set out matter declared to in numbered paragraphs

- ²
1. I have read section 35 of the *Ombudsman Act 1976* (Cth).
 2. I am fully aware of the secrecy provisions of the Act as described in that section, and am fully aware of the penalties for contravention of those provisions.

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959*, and I believe that the statements in this declaration are true in every particular.

3 Signature of person making the declaration

³

4 Place
5 Day
6 Month and year

Declared at ⁴ on ⁵of ⁶20

Before me,

7 Signature of person before whom the declaration is made (see over)

⁷

.....

8 Full name, qualification and address of person before whom the declaration is made (in printed letters)

⁸

.....
.....
.....

Note 1 A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years — see section 11 of the *Statutory Declarations Act 1959*.

Note 2 Chapter 2 of the *Criminal Code* applies to all offences against the *Statutory Declarations Act 1959* — see section 5A of the *Statutory Declarations Act 1959*.