

**Memorandum of Understanding between
the Commonwealth Ombudsman
and
the ACT Disability & Community Services Commissioner**

Parties

1. The parties to this Memorandum of Understanding are the Commonwealth Ombudsman ('office of the Ombudsman') and the ACT Disability & Community Services Commissioner ('the ACTDCSC').
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 (including contracted providers), either on receipt of a complaint or on the Ombudsman's own motion
 - other legislative functions, for example, an inspection role under the *Telecommunications (Interception and Access) Act 1979*, an oversight function under the *Public Interest Disclosure Act 2013* and a reporting function under the *Migration Act 1958*
 - under section 28 of the *A.C.T. Self-Government (Consequential Provisions) Act 1988* the functions of ACT Ombudsman under the *Ombudsman Act 1989* (ACT) are performed by the Commonwealth Ombudsman.
3. The mission 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 ACTDCSC is one of three Commissioners within the ACT Human Rights Commission. The role of the ACTDCSC is to:
 - consider complaints about the provision of services for people with disability and/or for their carers
 - promote:
 - improvements in the provision of services for people with disability and their carers
 - the rights of users of services for people with disability and their carers
 - an awareness of the rights and responsibilities of users and providers of disability services.

Duration

5. This MOU operates until either party terminates it or both parties agree to replace it.
6. The office of the Ombudsman and the ACTDCSC will discuss the effectiveness of the MOU annually through a meeting or exchange of correspondence.

Purpose

7. 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 the complaint handling and administrative investigation activities of the office of the Ombudsman and the ACTDCSC are not duplicated unnecessarily and are complementary;
 - establish arrangements for the handling of complaints received by the office of the Ombudsman about the delivery of disability services in the ACT by the National Disability Insurance Agency (NDIA), its contracted service providers and other disability service providers under the National Disability Insurance Scheme (NDIS); and
 - ensure that systemic issues concerning the delivery of disability services in the ACT by the NDIA, its contracted service providers and other disability service providers under the NDIS identified by either party are brought to the other party's attention.

Contact officer

8. 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 ACTDCSC will be provided to the other party and updated as necessary.

Complaints

9. The guiding principles are:
 - both the office of the Ombudsman and the ACTDCSC have important responsibilities in protecting the interests of the ACT 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.
10. The Ombudsman's jurisdiction in relation to complaints regarding disability services under the NDIS is focused on the actions of the NDIA and its contracted service providers. The office of the Ombudsman acknowledges the ACTDCSC's jurisdiction over actions related to the delivery of disability services by the NDIA, its contracted service providers and other disability service providers under the NDIS in the ACT may extend to matters beyond the jurisdiction of the Ombudsman. Decisions about whether to investigate complaints made to the office of the Ombudsman about the NDIA, its contracted service providers or other

disability service providers under the NDIS in delivering disability services in the ACT will be made taking into account the complainant's circumstances and the jurisdiction of the ACTDCSC in relation to the complaint. Subject to clause 11, and to the extent permitted by legislation, the office of the Ombudsman will refer individuals with complaints of this nature to the ACTDCSC.

11. The ACTDCSC acknowledges that it may be appropriate for the office of the Ombudsman to investigate a matter that falls within the jurisdiction of both the Ombudsman and the ACTDCSC, if that matter can be more appropriately and effectively handled by the Ombudsman. An example may be where the complaint issue to be investigated by the office of the Ombudsman is only one part of a wider complaint about the agency's actions. The office of the Ombudsman may consult as permitted by legislation with the ACTDCSC in handling the complaint, including advising the ACTDCSC of the outcome of any investigation conducted by the office of the Ombudsman.
12. Consistent with section 52A of the *Human Rights Commission Act 2005* (ACT), if the ACTDCSC receives a complaint that it decides could be more effectively or appropriately dealt with by the office of the Ombudsman, the ACTDCSC will consult with the office of the Ombudsman with a view to transferring the complaint.
13. 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, or in accordance with any other authority permitted by legislation.
14. The office of the Ombudsman and the ACTDCSC agree not to raise objection if the NDIA, its contracted service provider or other disability service providers under the NDIS, about which a complaint is being investigated by the office of the Ombudsman or the ACTDCSC, informs the other party of the fact of the investigation, insofar as such a disclosure may be permitted by the laws governing that body.

Other investigations

15. 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

16. The office of the Ombudsman and the ACTDCSC agree that their offices should work together to share information and experience in relation to their respective oversight roles. 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.
17. Subject to any governing legislation, each party will consult the other during the drafting of sections of their annual reports, or other publications, which are of mutual interest.



Mr Colin Neave
Commonwealth Ombudsman

Signed 5 / 11 /2014



Ms Mary Durkin
ACT Disability & Community Services Commissioner

Signed 31 / 10 /2014