

MEMORANDUM OF UNDERSTANDING BETWEEN THE

NSW OMBUDSMAN

AND

AUDIT OFFICE OF NSW

1.0 Purpose

- 1.1 This Memorandum of Understanding (MOU) sets out the arrangements for liaison between the NSW Ombudsman ("the Ombudsman") and the Audit Office of NSW ("the Audit Office") concerning the sharing of information, referral of complaints and other operational matters.
- 1.2 The MOU acknowledges the preparedness of the Ombudsman and the Audit Office, in the public interest, to share with each other as far as is legal and practicable, information in each agency's possession relevant matters within the jurisdiction of the other.
- 1.3 The MOU does not limit any other statutory powers or discretion of the parties to exchange information.

2.0 Complaint Referral Arrangement

- 2.1 Part 6 of the *Ombudsman Act 1974* permits two or more relevant agencies, including the Audit Office and the Ombudsman, 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 (CRA) entered into between the agencies. This part of the MOU constitutes a CRA for the purpose of s.42(1) of the *Ombudsman Act*.

Notification of complaints

- 2.2 The Ombudsman and Audit Office will notify each other of matters which come to the attention of each other relating to specific areas of complaint or interest, as identified and agreed to between them. (See 2.3-2.8 below) All such matters will be notified orally and/or in writing during periodic liaison meetings and otherwise on an ad hoc basis, as required.

Circumstances in which a complaint may be referred

- 2.3 A complaint may be referred by one agency to the other if it appears to the referring agency that the complaint:
 - is within, or partly within, the receiving agency's jurisdiction

- requires action, the nature of which the receiving agency has a special interest in.

2.4 A complaint may be referred by one agency to the other due to special circumstances, such as a potential conflict of interests or a perception of bias particularly in cases where there is a requirement to exercise a degree of discretion in assessing and managing the complaint.

Consent of receiving agency and complainant

2.5 The prior consent (either oral or written) of the receiving agency must be obtained before a complaint is referred to that agency.

2.6 The express consent of the complainant is to be obtained by an agency before a complaint may be referred to the other agency (s.42(4)). The express consent can be given orally or in writing. Where consent is given orally, a written record is to be made and retained on the relevant file.

Information to accompany a referred complaint

2.7 Subject to the Information Sharing Arrangement set out in Part 3 below, 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
- advice on whether any part of the complaint being referred is also being referred to any other agency for attention
- advice on whether the referring agency intends to continue to deal with the complaint, or part thereof.

2.8 Documents obtained from any party in the course of a formal conciliation/mediation proceeding will not be disclosed without the consent of the party that provided the documents.

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

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

2.10 On receipt of a referred complaint, the receiving agency is to give the complainant in writing, the following information:

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

3.0 Information Sharing Arrangement

3.1 Part 6 of the *Ombudsman Act 1974* permits two or more relevant agencies, including the Ombudsman and the Audit Office, to enter into arrangements for the sharing of information held by them. Any such sharing has to be made in accordance with an Information Sharing Agreement (ISA) entered into between the parties. This part of the MOU constitutes an ISA for the purposes of s.43(1) of the *Ombudsman Act*.

Circumstances in which information can be shared

3.2 Each agency is authorised to disclose information to the other agency in the following circumstances:

- Where one agency requests the disclosure of information reasonably necessary to assist that agency to carry out its functions relating to a matter within its jurisdiction
- Where one agency is referring a complaint to the other agency pursuant to this MOU
- Where one agency becomes aware that the other agency has received a complaint and the information held by the disclosing agency would assist the other agency to carry out its functions
- Where it is reasonably necessary to share information, regularly or in appropriate circumstances, in order for one or both of the agencies to carry out its functions in an efficient manner.

3.3 Where a disclosing agency has (or should have) reason to suspect that certain information is or includes "sensitive personal information" (as defined in s.42(1)) about a complainant, the agency must not disclose the information pursuant to this ISA without the complainant's express consent (which can either be oral or in writing) (s.43(6)).

Confidentiality of information provided

3.4 It is acknowledged that confidentiality is to be maintained within the statutory framework that exists for each agency.

4.0 Liaison

4.1 There will be ongoing liaison between the agencies at a number of levels and for a variety of purposes. Such liaison may include provision of information about:

- the handling of public interest disclosures made to the Audit Office and actions taken on such disclosures
- information obtained by the Audit Office in its role as an investigative authority under the *Public Interest Disclosures Act 1994*
- information obtained by the Audit Office during performance audits of any public authority where such information is reasonably necessary for the Ombudsman to carry out its functions.

4.2 A liaison committee of senior staff of the Ombudsman and the Audit Office will meet regularly each year, or as required, to consider:

- any issues in relation to current complaint files or investigations
- current projects of mutual interest to the agencies
- other matters or activities which could involve an overlap in jurisdiction or give rise to duplication of effort by the agencies.

4.3 Case officers of both agencies will liaise as necessary and appropriate in relation to particular files, areas of activity, or persons or organisation the subject of interest.

4.4 The Ombudsman and the Auditor-General will keep each other briefed in areas of joint interest.

5.0 Review

5.1 The MOU may be reviewed at the request of either agency but in any event shall be reviewed no later than 24 months from the date of the MOU.

6.0 Public Availability

6.1 Copies of this MOU are to be available for public inspection at the offices of the Ombudsman and Audit Office during their ordinary business hours. A copy will also be available on the website of both agencies.



Bruce Barbour
NSW Ombudsman

Date: 8/2/12



Peter Achterstraat
Auditor-General

Date: 10/2/12