

Memorandum of Understanding between the NSW Ombudsman and the NSW Information Commissioner

Purpose

This Memorandum of Understanding (“MOU”) sets out the arrangements for the furnishing of information and consultation between the NSW Information Commissioner (“Information Commissioner”) and the NSW Ombudsman (“Ombudsman”) in accordance with the *Ombudsman Act 1974* (“Ombudsman Act”) and the *Government Information (Information Commissioner) Act 2009* (“GIIC Act”).

Arrangements for Ombudsman to furnish information and consult about complaints

1. Preface

Section 34(1) of the GIIC Act permits the Ombudsman to furnish information obtained under the Ombudsman Act to the Information Commissioner that in the Ombudsman’s opinion could be the subject of a complaint under the GIIC Act.

Section 40(1) of the GIIC Act requires the Ombudsman to consult with the Information Commissioner if a complaint is made to the Ombudsman under the Ombudsman Act that could be the subject of a complaint under the GIIC Act (“the complaint”).

Section 40(2) of the GIIC Act provides that if the Information Commissioner decides to deal with the complaint under the GIIC Act the Ombudsman is to transfer the complaint to the Information Commissioner and is not to investigate, and must discontinue any investigation already commenced into, the complaint.

2. Arrangements for furnishing information

Information may be furnished by the Ombudsman to the Information Commissioner if it appears to the Ombudsman that the information relates to conduct of an agency that could be the subject of a complaint under the GIIC Act (“the information”).

The Ombudsman will give to the Information Commissioner before the information is furnished, written notice outlining the nature of the information, including any proposal by the Ombudsman to deal with the information or refer the information to any other agency for attention.

The Information Commissioner will give written advice to the Ombudsman as to whether the information should be furnished.

If the Information Commissioner decides that the information should be furnished, the Ombudsman may furnish:

- Copies of all available documentation held by the Ombudsman in relation to the information.

3. Arrangements for consulting about complaints

If it appears to the Ombudsman that a complaint made to the Ombudsman under the Ombudsman Act could be the subject of a complaint under the GIIC Act, the Ombudsman will consult with the Information Commissioner by providing written notice of the complaint to the Information Commissioner (“the notice”).

The notice will include:

- Copies of all available documentation held by the Ombudsman in relation to the complaint.
- Advice as to whether the Ombudsman would propose to deal with the complaint, or any particular part of the complaint, including whether the complaint in whole or in part would be referred to any other agency for attention.

Upon receipt of the notice, the Information Commissioner will decide whether the Ombudsman is to transfer the complaint in whole or in part and will provide written advice to the Ombudsman accordingly.

Arrangements for Information Commissioner to furnish information

1. Preface

Section 31(1) of the GIIC Act permits the Information Commissioner to furnish information obtained under the GIIC Act to the Ombudsman that in the Information Commissioner’s opinion could be the subject of a complaint under the Ombudsman Act.

2. Arrangements for furnishing information

Information may be furnished by the Information Commissioner to the Ombudsman if it appears to the Information Commissioner that the information relates to conduct of an agency that could be the subject of a complaint under the Ombudsman Act (“the information”).

The Information Commissioner will give to the Ombudsman before the information is furnished, written notice outlining the nature of the information, including any proposal by the Information Commissioner to deal with the information or refer the information to any other agency for attention.

The Ombudsman will give written advice to the Information Commissioner as to whether the information should be furnished.

If the Ombudsman decides that the information should be furnished, the Information Commissioner may furnish:

- Copies of all available documentation held by the Information Commissioner in relation to the information.

Arrangements to resolve disputes

In the event that there is a disagreement on the part of either party about the effect of this memorandum, that matter is to be drawn to the attention of the Commissioner and the Ombudsman, who will undertake to resolve the matter and reach agreement.

Public availability of Memorandum of Understanding

This MOU is open access information under s 6 of the *Government Information (Public Access) Act 2009* and will be made publicly available free of charge on the websites of the Information Commissioner and the Ombudsman.



Bruce Barbour
NSW Ombudsman

Date: 11 August 2010



Deirdre O'Donnell
NSW Information Commissioner

Date: 11 August 2010