

# Annex 3 – Memorandum of Understanding with Commonwealth Ombudsman

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## MEMORANDUM OF UNDERSTANDING

between

**The Commonwealth Ombudsman**

and

**The Inspector-General of Intelligence and Security**

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## **Parties**

1. The parties to this Memorandum of Understanding (MOU) are the Commonwealth Ombudsman and the Inspector-General of Intelligence and Security.

## **Purpose**

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 is designated by the Ombudsman Act as the Defence Force Ombudsman, with jurisdiction to investigate grievances lodged by serving and former members of the Australian Defence Force
  - under the *Complaints (Australian Federal Police) Act 1981*, the Ombudsman shares joint responsibility with the Australian Federal Police for managing complaints about AFP members
  - the Ombudsman inspects the records of the AFP and the Australian Crime Commission, to ensure compliance with legislative requirements for telephone interception, controlled operations and use of surveillance devices, imposed by the *Telecommunications (Interception) Act 1979*, *Crimes Act 1914* and the *Surveillance Devices Act 2004*, and
  - under a Memorandum of Understanding with the ACT Government, the Commonwealth Ombudsman discharges the function of ACT Ombudsman under the *Ombudsman Act 1989* (ACT).
3. The objective of the Commonwealth 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 Inspector-General of Intelligence and Security is also an independent statutory office holder. Under the *Inspector-General of Intelligence and Security Act 1986* the Inspector-General is empowered to oversight and review the six agencies referred to collectively as the Australian Intelligence Community (AIC), namely:
  - Australian Security Intelligence Organisation (ASIO)

- Australian Secret Intelligence Service
  - Defence Signals Directorate
  - Defence Imagery and Geospatial Organisation
  - Defence Intelligence Organisation, and
  - Office of National Assessments.
5. The objective of the Inspector-General is to oversight and review the AIC agencies in regard to their compliance with Australian law, compliance with ministerial directions and guidelines, the propriety of their activities and respect for human rights.
6. The Commonwealth Ombudsman and the Inspector-General are both committed to the effective investigation and review of Australian government agencies so that those agencies are held accountable for their decisions and activities, administration is enhanced and public confidence in those agencies maintained.
7. This MOU is intended to:
- facilitate the exchange of relevant information so that complainants can have their concerns dealt with, effectively and efficiently, by the most appropriate agency
  - facilitate the exchange of relevant information where both the Commonwealth Ombudsman's Office and the Office of the Inspector-General of Intelligence and Security (OIGIS) need to investigate complaints or matters of concern
  - ensure that the activities of the two offices are not duplicated unnecessarily and are complementary, and
  - facilitate publicising whenever appropriate, the accountability arrangements for Australian government agencies.

### **Duration**

8. This MOU operates until one or both parties agree to replace or terminate it.
9. The Ombudsman and the Inspector-General will meet annually to discuss the effectiveness of the MOU.

### **Complaints - general**

10. If either the Ombudsman or the Inspector-General receives a complaint that is not within their jurisdiction but is within the jurisdiction of the other agency, the complainant will be advised to take the matter up with the other agency.
11. Similarly, there will be timely sharing of relevant information about individuals who contact the offices who are considered at risk of self-harm or of harming others.
12. If either the Ombudsman or the Inspector-General receives a complaint that is within the jurisdiction of both agencies, the agency receiving the complaint will give consideration to consulting with the other agency and the complainant, to provide advice to the complainant on which is the more suitable agency to handle the complaint.
13. As appropriate, the Ombudsman and the Inspector-General may consult each other in relation to matters on which the other agency has a specific expertise or qualification that is relevant to an investigation.

### **Immigration**

14. Where an individual raises a complaint about the processing of an immigration application for short term or permanent residency in Australia and it is unclear whether the Department of Immigration and Multicultural and Indigenous Affairs or ASIO has current carriage of the application, the Ombudsman's office or OIGIS should liaise to determine which agency is best placed to conduct any necessary review action.
15. Where review by both the Ombudsman's office and the OIGIS is deemed appropriate, the two offices will cooperate as required.
16. Where appropriate, the Ombudsman and the Inspector-General will advise each other of the results of a review of an immigration matter, to the extent that privacy and security requirements allow.

### **Entry and search warrants**

17. Where Australian Federal Police (AFP) officers assist ASIO in the execution of entry and search warrants issued under the *Australian Security Intelligence Organisation Act 1979* (ASIO Act), complaints about the behaviour of the AFP officers involved will generally be dealt with by the Ombudsman.

18. Where a complainant is uncertain whether specific behaviour of concern to them was that of an ASIO or an AFP officer, the Ombudsman and the Inspector-General will liaise to determine how the matter will be handled.
19. If both the Ombudsman and the Inspector-General agree, there can be a joint review of the execution of a particular warrant or warrants which involve ASIO and AFP officers.

#### **Questioning and detention warrants**

20. The Inspector-General will notify the Ombudsman of any instance where concerns have arisen (eg from observations of questioning sessions or perusing the transcripts of such sessions) about the actions of AFP officers who assist with the execution of questioning warrants issued under the ASIO Act.
21. Where a questioning and detention warrant is issued under the ASIO Act, the Ombudsman and the Inspector-General will ensure that each is aware that such a warrant has been issued.
22. Similarly, liaison will occur where detention is directed by the Prescribed Authority during the course of a questioning warrant.

#### **Preventative Detention Orders and Control Orders**

23. The Ombudsman and the Inspector-General will liaise as necessary when conducting reviews or investigating complaints into situations where:
  - (a) ASIO information has been important in the issuing of a preventative detention order, prohibited contact order, or a control order under the *Criminal Code Act 1995* (Criminal Code).
  - (b) Both a preventative detention order under the Criminal Code and a questioning (or a questioning and detention) warrant under the ASIO Act have been issued in respect of a person.

#### **Inspection of records**

24. The Ombudsman and the Inspector-General agree that their offices should work together to share information and experience in relation to their respective roles of inspecting the records of agencies that come within their jurisdiction. Each agency will keep the other informed of recent developments that may be of interest to the other, for example, possible changes to Commonwealth or State legislation relating to inspection of records, or any workshop of agencies performing a similar inspections function.

**General**

- 25. Out of hours contact details for relevant officers in the Ombudsman’s office and in the OIGIS will be provided and updated as necessary.
- 26. Both parties will include reference to their respective roles, wherever appropriate, in commenting on Australian government accountability arrangements.
- 27. Each party will consult the other during the drafting of sections of their annual reports, or other publications, which are of mutual interest.
- 28. 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.
- 29. Where the Ombudsman requests it, the OIGIS will store classified material for the Ombudsman. This can include, but is not limited to, preventative detention orders and prohibited contact orders provided by the AFP to the Ombudsman pursuant to the Criminal Code.



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14 December 2005



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14 December 2005.