

**Memorandum of Understanding**

**Between**

**NSW Ombudsman**

**and**

**Department of Community Services**

***June 2003***

## Table of Contents

### Page No

1.	General approach	3
2.	Provision of information by DoCS	4
3.	Interviews with DoCS' staff and others	6
4.	Provision of information by Ombudsman	7
5.	Complaint handling by Ombudsman	7
6.	Complaint handling by DoCS	9
7.	Child protection	10
8.	Reviews of systems for handling complaints and allegations and for preventing child abuse	13
9.	Reviews of people in care	13
10.	Reviewable deaths	15
11.	Monitoring of implementation of recommendations	17
12.	Contact points within DoCS	18
13.	Liaison meetings	18
14.	Alteration of the Memorandum of Understanding	18

## 1. General approach

### *Working cooperatively*

- 1.1 The Ombudsman and the Director General (the D-G) of DoCS are committed to working together cooperatively to achieve service improvement and to assist children and young people. The Ombudsman and the D-G undertake that they will work together to identify problems and mistakes and to ensure that they are appropriately and expeditiously resolved or rectified.

### *Informality and emphasis on local resolution*

- 1.2 The Ombudsman and the D-G agree that, wherever possible and appropriate, community services complaints should be dealt with informally, emphasising local resolution.

### *Communications*

- 1.3 Informal inquiries may be made to DoCS' staff at all levels for general information or existing policy and procedure documents, and program review, evaluation and statistical information in documentary form.
- 1.4 All requests for detailed, extensive or sensitive information, or information that needs to be documented, or requires a considered response, are to be made in writing.
- 1.5 All correspondence to DoCS is to be through Information Exchange (IE) unless responding to correspondence from a particular employee or unit of DoCS. Email correspondence should be sent to the Information Exchange mailbox – [info.exchange@community.nsw.gov.au](mailto:info.exchange@community.nsw.gov.au) and fax correspondence to Information Exchange on 9716-2126.
- 1.6 All face to face interviews to be conducted as part of preliminary inquiries into complaints are to be arranged through IE.
- 1.7 As a general rule IE is to be given prior notice of proposed audits and reviews.

### *Response times*

- 1.8 The general period for DoCS to respond to requests for information, documentation or comment is to be **20** working days from receipt of the request.

### *Implementation of recommendations*

- 1.9 DoCS will advise the Ombudsman within **20** working days of receiving an investigation, audit or review report whether it has adopted any recommendations in the report, any action taken or proposed on the recommendations, and the DoCS' employees responsible for their implementation. Ombudsman staff may monitor implementation of recommendations adopted by DoCS through inquiries directed to the DoCS' employee(s) nominated as responsible for their implementation.

### *Dispute resolution*

- 1.10 Where significant issues arise of a legal or policy nature, these will be referred to the Working Party on Legal & Policy Issues for discussion and resolution. Where resolution is not possible, the role of the Working Party will be to ensure that the issues in contention are clearly identified. Where an issue or dispute arises that cannot be resolved by the Working Party, they will be referred to the Ombudsman and D-G who will discuss and attempt to resolve the issues or dispute.

## **2. Provision of information by DoCS**

### *Informal requests for information*

- 2.1 DoCS will facilitate the timely access to all relevant information required by the Ombudsman to properly perform his statutory functions under the *Ombudsman Act*, *CS-CRAMA* and *Freedom of Information Act*.
- 2.2 Informal information requests will generally be in broad terms; e.g. to assist the Ombudsman to decide whether a complaint should be referred to DoCS for local resolution, conciliation, referral to DoCS for investigation or for the purpose of preliminary/informal investigation; to obtain verbal briefings about case management and/or care plans. The information requested will generally be:
- discussion/clarification of complaint resolution options; e.g. referral for local resolution, conciliation, or investigation;
  - clarification of issues or allegations raised by the complaint;
  - information about case management and/or planning relevant to the case;
  - documents setting out DoCS' policies and procedures, program review and evaluation data, training activities, statistical information, demographic data, etc.
- 2.3 Where the relevant DoCS unit is known, Ombudsman staff will:
- telephone the Casework Manager in the first instance, or, thereafter as identified by the Casework Manager, other relevant field staff, at the Community Services Centre (CSC), to request the information;
  - forward by email or fax to the CSC (with a copy to IE for its information) any request for information to be provided in writing.
- 2.4 Where the relevant DoCS unit is not known, Ombudsman staff will:
- telephone IE to request the information;
  - forward by email or fax a s.13AA request.

### *Written requests for information*

- 2.5 Requests for information will be made in writing, through IE, when:
- the Ombudsman is concerned about a serious matter;
  - the request is for a substantial amount of information/documentation;
  - the request is for sensitive information;
  - the request requires a considered response; or
  - the requested information may need to be prepared or is not readily available from a file or verbally at local level.

- 2.6 Upon written request from the Ombudsman, Ombudsman staff are to be provided full and unrestricted access to all DoCS' personnel, original records, or copies of the requested information from original records, that the Ombudsman reasonably requires for the purpose of exercising the Ombudsman's functions under relevant legislation. This does not compel DoCS to provide information such as legal advice which is subject to legal professional privilege. Some factors which may influence how information is provided to the Ombudsman include the volume of information requested by the Ombudsman and whether other statutory investigation agencies concurrently require access to the same information. Where some of these factors are thought to apply, DoCS and the Ombudsman will negotiate on a case by case basis regarding how the Ombudsman accesses the information.
- 2.7 The right of access to records includes the right to inspect original records and, upon written request, to be provided with a copy of a record, or an original record for the Ombudsman to copy and return.
- 2.8 Copies of information requested by the Ombudsman will be provided to the Ombudsman with **20** working days of the receipt of the request.
- 2.9 Where DoCS' records are held by other agencies, such as the Coroner, DoCS will negotiate directly with the agency that has possession of the records at the time for the return of these to DoCS. Where the Ombudsman requires the records more quickly, DoCS will advise the Ombudsman of the location of the records and a contact name. The Ombudsman will then approach that agency directly for access to DoCS' records.

*Information about funded, licensed or authorised services*

- 2.10 The Ombudsman will, on occasion, request the provision of information by DoCS about the performance of agencies in respect of which the Ombudsman is exercising functions under s.11, CS-CRAMA, or under the *Ombudsman Act*. These agencies are those that the Minister for Community Services, through DoCS, funds, licenses or authorises for the purpose of various community services and functions.
- 2.11 Ombudsman staff may:
- telephone the relevant Casework Manager, the Director Partnerships and Planning, or a relevant field staff member to request the information;
  - forward by email or fax an advice of the communication.
- 2.12 Information may be requested in writing where serious matters of an individual or systemic nature are raised, or where the nature of the matter requires the provision of files/documents and/or a considered response. Such requests will be in writing to IE.

*Time periods for provision of information*

- 2.13 As a general rule, information requested by the Ombudsman will be provided by DoCS within **20** working days of the request being received by DoCS. In a limited number of cases, given the sensitivity of the issues that may arise from time to time, a shorter time period for compliance may be necessary. Any such shorter period will be specified in writing.

### *Supply of information provided by DoCS to complainants*

- 2.14 It is the normal practice of the Ombudsman to supply complainants with a copy of an agency's response to preliminary inquiries. Where DoCS believes that all or part of a response should not be given to the complainant, reasons for that belief are to be provided in an attachment to the response. While the Ombudsman has the right to disclose information for the purpose of furthering the Ombudsman's legislated functions (see ss.15 & 29, *Ombudsman Act* and ss.24(2) & 25, *Privacy and Personal Information Protection Act*), proper consideration will be given to any reasonable claim for confidentiality.
- 2.15 Ombudsman staff will endeavour to assess on a case by case basis whether the release of information supplied by DoCS to a complainant could cause serious distress, based on the sensitivity of the information and the complainant's current level of knowledge of the facts in question. Where there could potentially be a problem, Ombudsman staff will consider liaising with IE to enable DoCS to offer any support or assistance to the complainant that may be required.
- 2.16 Generally, the Ombudsman will not refer or pass on sensitive client information to a third party, without first advising IE of the nature of the information, to whom, for what purpose and the statutory basis on which the Ombudsman intends to refer it. IE may then contact the third party, if required, to ensure that any confidential or sensitive information is treated appropriately by the third party.

### *Security of sensitive information*

- 2.17 Sensitive information will be conveyed between DoCS and the Ombudsman by courier or hand delivery.

## **3. Interviews with DoCS' staff and others**

- 3.1 Where the Ombudsman or his staff wish to conduct a face to face interview with DoCS' employees during the course of a preliminary inquiry, requests will be made by telephone through IE. Such interviews will be facilitated by IE and will generally be conducted at the CSC or other DoCS' service.
- 3.2 The Ombudsman may require DoCS' employees to provide some information by way of written answers to questions in relation to the information requested. The Ombudsman may also decide to access information at DoCS Head Office, Ashfield.
- 3.3 Where the Ombudsman or his staff wish to interview DoCS' employees for a formal investigation under the *Ombudsman Act*, the relevant employees will be approached directly. Where it is not likely to detrimentally impact on the conduct of an investigation, the Ombudsman will endeavour to advise IE of the identity of the staff who are likely to be interviewed.
- 3.4 Where, during the course of an audit or review of a CSC or other DoCS' service, the Ombudsman wishes to interview service users or parents of children in DoCS' care, IE or the CSC (as appropriate) will facilitate these interviews.

#### **4. Provision of information by Ombudsman**

4.1 The Ombudsman will provide written advice to the D-G about the outcome of all complaints, except in those circumstances in which:

- the Ombudsman decided at the outset to decline to take any action about a complaint; or
- the Ombudsman is not required to give notice of a complaint or an investigation (s.24(3), CS-CRAMA); or
- a complainant, because of a fear of retribution or other reason, requests the Ombudsman not to inform DoCS of a complaint and the Ombudsman has declined to formally investigate the complaint.

4.2 Where a written request for information is made in relation to a complaint, the Ombudsman will provide written advice to IE about the outcome of the complaint at the same time as the outcome is advised to the complainant.

4.3 The Ombudsman may provide written advice to the D-G about:

- serious or systemic issues affecting individual CSC's, DoCS generally or program specific areas, where such are identified; and
- where there are current and/or serious issues about delivery of service to an individual, and/or about DoCS' systems.

4.4 The Ombudsman may provide relevant information to IE, subsequent to action taken in relation to a service provider about which the Ombudsman has sought information from DoCS, where there are current and / or serious issues about service to an individual, and/or about the service's systems. The service provider will be informed of the provision of the information to DoCS.

#### **5. Complaint handling by Ombudsman**

##### *Community services complaints*

5.1 In relation to community services' complaints, the general focus of the work of the Ombudsman is to determine whether the complaints identify problems or mistakes on the part of DoCS with the aim of ensuring that they are resolved or rectified. In general the Ombudsman emphasises the resolution of complaints rather than formal investigation and reporting.

5.2 Options available to the Ombudsman for handling community services' complaints are:

- conciliation; or
- referral to DoCS for:
  - local resolution by DoCS and report back to the Ombudsman; or
  - internal investigation by DoCS of the complaint and report back to the Ombudsman; or
  - investigation by DoCS of another agency, eg, a funded service, and report back to the Ombudsman; or
- preliminary inquiries by the Ombudsman; or
- formal investigation by the Ombudsman; or

- decision to take no further action about a complaint, with or without observations and/or suggestions about service improvement.
- 5.3 The Ombudsman, in determining whether or not to refer a complaint for local resolution, to conciliate a complaint, or refer a complaint to DoCS for internal investigation or to investigate another body, will consider DoCS' advice about its preparedness and/or ability to participate or undertake the relevant action.
- 5.4 Where the issues of complaint appear straightforward and it is assessed as a matter suitable for local resolution, the Ombudsman will refer the complaint directly to the relevant CSC. In specific instances where the Ombudsman may require advice about the outcome of the complaint, Ombudsman staff will contact the relevant Casework Manager and shall be informed verbally of the outcome of the complaint by the local CSC.
- 5.5 Where a complaint raises more complex and/or serious matters, the Ombudsman will advise IE in writing and seek information (s.13AA *Ombudsman Act*). DoCS shall respond to the Ombudsman in writing. Note that where the Ombudsman refers a matter to DoCS under s.13AA that does not relate to a complaint but where the request for information may be more general, DoCS shall respond to the Ombudsman in writing.
- 5.6 The Ombudsman's general practice is to conduct formal investigations and make reports only when:
- there has been a failure to properly address a serious problem;
  - there has been a serious abuse of power;
  - there is an important public interest consideration involved;
  - there is a significant question as to the appropriate care or treatment of a person or group of persons; or
  - attempts to resolve or clarify a matter by other means have been unsuccessful.
- 5.7 Where a decision is made to conduct a formal investigation, the Ombudsman will notify the D-G in writing and will communicate and request information on a formal basis. Formal investigations will be conducted in accordance with the relevant provisions of the *Ombudsman Act* and CS-CRAMA. Monitoring of implementation of recommendations made in an investigation report will be in accordance with **11** below.
- 5.8 Where the Ombudsman decides to undertake a formal investigation, at an appropriate time a request may be made through IE for a case conference. DoCS will participate in such case conferences. The purpose of case conferences will be to ensure that all parties understand the nature of the inquiry, the investigation process and the scope of the information likely to be required.
- 5.9 Where the Ombudsman conducts a formal investigation, unless there are operational reasons for not doing so, on request it will keep IE informed of the progress of the investigation.
- 5.10 Formal investigations will be conducted in accordance with the relevant provisions of the *Ombudsman Act*. Monitoring of implementation of recommendations made in any investigation report will be in accordance with **11** below.

### *FOI complaints*

- 5.11 In relation to Freedom of Information (FOI) complaints, the focus of the Ombudsman is to promote compliance by agencies with both the terms and spirit of the FOI Act.
- 5.12 Where a complaint concerns the exercise of a right of access given under DoCS policy, verbal inquiries will be made to the relevant CSC or IE with a view to resolving the complaint.
- 5.13 Where it appears to the Ombudsman that a FOI complaint may be able to be resolved informally, verbal inquiries will be made to the Coordinator, FOI Unit within DoCS. This includes circumstances where advice is sought as to the status of an application.
- 5.14 Formal communications with DoCS concerning FOI complaints will be made through IE.

## **6. Complaint handling by DoCS**

### *Referral of complaint for local resolution by DoCS (s.25(3), CS-CRAMA)*

- 6.1 Where a complaint can be resolved at the local CSC, the Ombudsman may refer the complaint directly to the local CSC. In those specific instances where the Ombudsman may require advice about the outcome of the complaint, Ombudsman staff will contact the relevant Casework Manager and shall be informed verbally of the outcome of the resolution by the CSC.
- 6.2 Where a complaint raises more complex and/or serious matters, the Ombudsman will advise IE in writing of the decision to refer the complaint for local resolution. DoCS shall inform the Ombudsman, in writing, of the outcome of the local resolution (s.25(4), CS-CRAMA).
- 6.3 The Ombudsman may verbally request information about the progress and status of the local resolution with the DoCS' employee responsible for the local resolution. Ombudsman staff will confirm any such verbal request by email or fax to the local CSC, and with a copy to IE.

### *Decision to conciliate a complaint (s.13A, Ombudsman Act)*

- 6.4 The Ombudsman will advise IE in writing of an intention to deal with a complaint by conciliation. DoCS will inform the Ombudsman in writing of its decision whether to participate in a conciliation process. Where DoCS assesses it will participate, it will inform the Ombudsman in writing of the DoCS' employee(s) who will participate in the conciliation.
- 6.5 The Ombudsman may make verbal contact with the DoCS staff participating in the conciliation to clarify and confirm the arrangements for the conciliation. Ombudsman staff will confirm any such verbal contact by email or fax to the relevant DoCS' employee with a copy to IE.

6.6 The Ombudsman will provide written advice to IE of the arrangements for the conciliation and of the conciliation agreement. IE undertakes to provide a copy to any staff identified by the Ombudsman as requiring a copy.

*Referral of complaint for investigation by DoCS (s.25, CS-CRAMA)*

6.7 The Ombudsman will refer complaints through IE for:

- DoCS' internal investigation; or
- DoCS' investigation of a funded licensed or authorised service.

6.8 IE will inform the Ombudsman in writing of the DoCS' employee(s) who will have responsibility for investigating the complaint.

6.9 The Ombudsman may monitor the progress of a DoCS' investigation (s.25(5), CS-CRAMA) by:

- making verbal contact with the DoCS' employee(s) nominated as responsible for investigating the complaint for information about the progress and status of the investigation (Ombudsman staff will confirm any such verbal contact by email or fax to the DoCS' employee); and/or
- making a written request for information to IE.

6.10 IE will advise the Ombudsman as to the outcome of any such investigation, and whether it has accepted the recommendations made by the investigator(s). The time frame for the provision of a report will be case dependent and determined by the Ombudsman in consultation with DoCS on a case by case basis (s25(4), CS-CRAMA). IE will provide information about the DoCS' employee(s) responsible for co-ordinating the implementation of any recommendations resulting from the investigation.

6.11 Monitoring of implementation of recommendations contained in DoCS' investigation reports will be in accordance with **11** below.

## **7. Child protection**

*Arrangements between the D-G and Ombudsman*

7.1 This Part of the MOU constitutes the arrangements made between the D-G and the Ombudsman for the purposes of s.33 of the *Children and Young Persons (Care and Protection) Act*.

*Notifications by DoCS of child abuse allegations and convictions*

7.2 In relation to child protection, the focus of the work of the Ombudsman is to:

- ensure that allegations of child abuse and child abuse convictions against or concerning the staff of an agency are properly dealt with by that agency;
- ensure systems are in place to prevent child abuse and to respond to child abuse allegations against employees.

- 7.3 Internal processes will be established by DoCS to ensure that allegations of child abuse or convictions of child abuse involving DoCS employees, as defined by the Act, are forwarded to the head of agency or his delegate in sufficient time to enable them to notify the Ombudsman as required under s.25C (1) – (3), *Ombudsman Act*.
- 7.4 DoCS staff will be directed to notify the D-G of any allegation or conviction of child abuse or neglect against any DoCS employee immediately they become aware of any such circumstance, allegation or conviction. The D-G or his delegate will, in turn, notify the Ombudsman of this information in accordance with s.25C and s.25F of the *Ombudsman Act*, using the notification form agreed to by the Ombudsman.
- 7.5 [Mandatory notifiers – clause to be inserted when legal issue resolved.]
- 7.6 The D-G's responsibility to notify the Ombudsman is limited to employees of DoCS, including those persons engaged to provide services to children as required by the *Ombudsman Act*.
- 7.7 Where DoCS receives a report of child abuse concerning an employee of an agency that is a designated agency for the purposes of s.25C of the *Ombudsman Act* (other than DoCS), while under no obligation to do so, where practical and appropriate DoCS will either advise the agency to report the matter to the Ombudsman, or if aware this has not occurred, advise the Ombudsman directly.
- 7.8 A notification of an allegation or conviction of an employee of DoCS to the Ombudsman may be accompanied by a request from DoCS for the Ombudsman to conduct an investigation into the case. In such cases a decision on this request will be made by the Ombudsman after consulting with IE.

*Notification by Ombudsman of child protection matters*

- 7.9 Where it becomes evident to the Ombudsman that a matter which meets the criteria for a child protection report has not been reported to DoCS by an agency within jurisdiction, the Ombudsman will either immediately report to DoCS directly or will liaise with the agency to ensure such a report is made.
- 7.10 An agency that has failed to report to DoCS may be in breach of the mandatory reporting provisions. The Ombudsman will, when it immediately takes action to ensure a child protection report is made, also make IE aware of these possible breaches. DoCS can decide any further courses of action being mindful that DoCS only has six months in which to commence a prosecution for breach of mandatory reporting.
- 7.11 If the Ombudsman receives information indicating an urgent child protection report to DoCS may be required, but has not been made, the Ombudsman will make a report to the Helpline as a matter of priority as permitted by legislation or required by public policy.

### *Liaison between Ombudsman and DoCS*

- 7.12 IE is the preferred entry and exit point for DoCS to notify the Ombudsman of child abuse allegations and convictions involving a DoCS' employee and will generally have the function of coordinating DoCS responses for the Ombudsman under Part 3A of the *Ombudsman Act*.
- 7.13 Where, following the Ombudsman's assessment of a notification from DoCS the Ombudsman requires additional information relating to points of clarification, such requests will be made verbally to the Casework Manager at the appropriate CSC or to IE. Requests to DoCS will be made in writing where the circumstances listed at 2.5 apply.
- 7.14 When verbal requests for information are made directly to a CSC, the Ombudsman will make it clear that the information required relates to a notification of a child abuse allegation or conviction against a DoCS employee.
- 7.15 If an Ombudsman Investigation Officer is not known to DoCS in the first instance, the Team Manager or the Principal Investigator are the appropriate contacts. Once an Ombudsman Investigation Officer has been nominated, DoCS should make contact directly with the nominated officer.

### *Investigation processes*

- 7.16 Where, during the course of its own or a DoCS' investigation, the Ombudsman wishes to contact relevant parties, DoCS will provide the Ombudsman with the relevant contact details as required.
- 7.17 Where the Ombudsman wishes to become involved in an investigation that DoCS is conducting, or decides to conduct his own investigation, the Ombudsman will provide IE with an appropriate notice in writing. This notice will include the manner in which the Ombudsman is to become involved, as well as the name and/or position of the Ombudsman contact officer.
- 7.18 Where the Ombudsman decides to become involved in an investigation that DoCS is conducting, or wishes to conduct his own investigation, IE will advise the employees who are conducting the investigation or who are the subject of the investigation. DoCS will not pass on such advice if so requested by the Ombudsman (which will primarily be in the case of disclosures made under the *Protected Disclosures Act* and other particular circumstances).

### *Notifications from services funded or licensed by DoCS*

- 7.19 Services licensed or funded by DoCS will be responsible for notifying the Ombudsman of child abuse allegations and convictions concerning their staff.
- 7.20 While there are no requirements on DoCS to advise its funded services of their obligations under Part 3A of the *Ombudsman Act*, in the spirit of interagency cooperation, where practical and appropriate DOCS will advise services of their obligations under the Act using existing avenues of information distribution, eg the Helpline (where the Helpline operator becomes aware that the alleged offender is an employee of an agency which falls within the jurisdiction of the Ombudsman), information circulars etc.

7.21 In renewing its funding agreements, DoCS undertakes to refer to the obligation on funded services arising from Part 3A of the *Ombudsman Act*.

## **8. Reviews of systems for handling complaints and allegations and for preventing child abuse**

8.1 Where the Ombudsman decides to audit or review systems for handling of complaints and/or allegations or for preventing child abuse (pursuant to s.14, CS-CRAMA and/or s.25B, *Ombudsman Act*), the Ombudsman will advise IE of the proposed audit/review and provide details of the audit/review methodology.

8.2 When the Ombudsman informs IE of a decision to conduct an audit/review, IE will advise relevant staff. The Ombudsman will then contact the staff nominated by IE of any relevant CSC or other DoCS' service to make the necessary arrangements for the audit/review.

8.3 At the completion of the audit/review, the Ombudsman will provide:

- a written preliminary report with recommendations to the manager of any relevant CSC or other DoCS' service about any service improvements, giving the manager an opportunity to respond (generally within **20** working days of receipt of the preliminary report);
- a written preliminary report to the D-G (via IE) about any service improvements or systemic issues that are identified during the audit/review, giving the D-G an opportunity to respond (generally within **20** working days of receipt of the preliminary report).

**Note:** The letter to the CSC will indicate that a letter has also been sent to the D-G, and vice versa.

8.4 Final audit/review reports will be provided to:

- the D-G (attention IE); and
- the Manager of any relevant CSC or other DoCS service.

8.5 Monitoring of the implementation of recommendations contained in such audit/review reports will be in accordance with **11** below.

## **9. Reviews of people in care**

### *Reviews of persons in care*

9.1 In relation to reviews of persons and groups of people, the focus of the Ombudsman is to identify significant issues relating to the care and welfare of those individuals and to identify service improvement measures where appropriate.

9.2 The Ombudsman will advise IE in writing of a decision to review the situation of a child or young person in care. The advice will stipulate:

- the name of the child or young person, their date of birth and the supervising CSC (if known); and
- whether the review is being undertaken on application or on the Ombudsman's own motion.

- 9.3 Where such a review is to be carried out, a request will be sent to IE, by facsimile, requesting IE to:
- forward to the Ombudsman the child or young person's original departmental file/s, or a copy of the original file, within **20** working days of the receipt of the written advice (the Ombudsman will return original files to the IE as soon as practicable after their receipt);
  - advise the Ombudsman of the names of DoCS' staff who could provide relevant information;
  - advise the relevant Casework Manager and CSC of the review.
- 9.4 Following receipt of the file, Ombudsman staff will liaise directly with the relevant Casework Manager or nominated staff supervising the child or young person to:
- organise mutually acceptable times to discuss the child or young person's current care and circumstances; and
  - establish who should be given an opportunity to make submissions in relation to the review (s.13(3), CS-CRAMA).
- 9.5 Prior to completion of any such review, the Ombudsman will provide a provisional report to DoCS for comment. Any such comments must be received by the Ombudsman within **20** working days of receipt of the provisional report. The Ombudsman will consider reflecting information from any DoCS response in the final 'review report'.
- 9.6 The focus of a review of a person or group of people in care will generally be on the delivery of the community service, including relevant policies, procedures and practices, not misconduct issues concerning an employee. However, should the Ombudsman consider it necessary to make adverse comment in relation to any DoCS' employee, the person concerned will be advised as to the substance of the proposed adverse comment and afforded the opportunity to respond (s.24 (2)(b), *Ombudsman Act*) within **20** working days of receipt of the advice.
- 9.7 On completion of a review the Ombudsman will:
- finalise a report on the results of the review (the 'review report') and any changes recommended to promote the child or young person's welfare and interests (s.13 (4) (a) & (b), CS-CRAMA);
  - provide a copy of the review report to:
    - the Minister for Community Services;
    - the D-G (via IE) (s.13 (5)(a), CS-CRAMA).
- 9.8 IE will ensure a copy of a review report is provided to the supervising CSC in a timely manner, with directions that the report is to be attached to the relevant child or young person's current departmental file.
- 9.9 Monitoring of implementation of recommendations contained in review reports will be in accordance with **11** below.

### *Reviews of groups of people in care*

- 9.10 In most instances a review of a group of people in care will arise out of or be based on a series of individual review reports. The protocols set out at **9.5 – 9.9** will apply in respect of group review reports.

## **10. Reviewable deaths**

### *Role of Ombudsman*

- 10.1 In relation to reviewable deaths, the role of the Ombudsman is to review such deaths to identify patterns and trends relating to those deaths and to formulate recommendations as to policies and practices for the prevention or reduction of deaths of children in care, children at risk and certain other children and persons.
- 10.2 The Ombudsman is required to review and analyse the deaths of all children and young people in certain categories (s.35(1), CS-CRAMA). These include:
- children in care, under the age of 18 years (as defined in the *Community Services (Complaints, Reviews & Monitoring) Act 1993*);
  - children subject to a report of risk of harm to DoCS within three years of their death;
  - children who are siblings of a child subject to a report of risk of harm to DoCS within three years of their death;
  - children who may have died from abuse, neglect or in suspicious circumstances; and
  - children who were in detention at the time of their death.

### *Provision of information by DoCS*

- 10.3 In conducting such reviews the Ombudsman requires information to:
- identify whether the death of any child or young person and young people is deemed 'reviewable' under s.35(12), CS-CRAMA;
  - monitor and review the cases of reviewable deaths;
  - formulate recommendations as to policies and practices to be implemented by government and service providers;
  - manage a comprehensive register/database of such deaths;
  - allow screening of information and documentation regarding a child's death, with a view to determining the need for review in certain cases; and
  - analyse the causes, patterns and trends of reviewable deaths.

10.4 DoCS undertakes to cooperate with and assist the Ombudsman to access in a timely manner all relevant information held by DoCS (s.38(1)(a), CS-CRAMA). This includes information about DoCS funded service providers.

*Access to DoCS' records*

- 10.5 Ombudsman staff performing the death review function will usually access records at DoCS Central Office or at the relevant DoCS service as negotiated with the IE. The Ombudsman staff will be provided photocopy facilities at the DoCS office where such records are accessed.
- 10.6 The IE will advise the Ombudsman once the records are available for access. A mutually convenient time will then be arranged for Ombudsman staff to inspect the records at DoCS Central Office or relevant DoCS' service.
- 10.7 The Ombudsman will be provided read-only access to the DoCS' Client Information System (CIS/KiDS), with a dedicated generic user identification.
- 10.8 Access to the CIS/KiDS system will be through the DoCS' network via modem, on a stand alone PC based at the offices of the Ombudsman. If necessary, access to CIS/KiDS at DoCS Central Office will also be required at times if and when remote access is unavailable. If the Ombudsman requires CIS/KiDS access at DoCS' Central Office, a dedicated computer and dedicated working space will be provided.
- 10.9 The Ombudsman will identify files and/or other information it may require from the CIS/KiDS to undertake review of the death. The Ombudsman will make the request in writing on a memorandum template provided to IE specifying the name of the client (and any aliases), date of birth, CIS number and supervising CSC.
- 10.10 The IE will arrange for the Ombudsman's access to any files that are secured on the CIS/KiDS following advice from the Ombudsman that the information is secured.
- 10.11 In general terms, the type of information that Ombudsman staff will access on the CIS/KiDS about a client, and where relevant, the client's family members, will relate to:
- child protection notifications/reports;
  - information concerning child protection investigations and outcomes;
  - out-of-home care reports and file information;
  - history of human service agency involvement (to the extent known to DoCS); and
  - disability and health data (to the extent known to DoCS).
- 10.12 Access by Ombudsman staff to CIS/KiDS will be limited to fulfilling the statutory function set out in s.38(1), CS-CRAMA. CIS/KiDS will not be accessed by any Ombudsman staff who are not engaged in carrying out the reviewable death function.
- 10.13 Copies of the current Ombudsman's *Disclosure of Information Policy* and *Use of Communications Devices Policy* have been provided to DoCS for its information. The same conditions set out in those policies will apply when Ombudsman staff access the CIS/KiDS.

- 10.14 The Ombudsman will not forward identifying client documentation provided by DoCS to any third party, apart from those identified under s.39 and s.43, CS-CRAMA. At any time the Ombudsman does forward identifying client information to a third party, other than the Coroner, Child Death Review Team, NSW Police or the Department of Health, the Ombudsman will advise IE of the nature of the information, to whom, for what purpose and the statutory basis on which the Ombudsman referred it. The Manager IE may then contact the third party, if required, to ensure that any confidential or sensitive information is treated appropriately by the third party.
- 10.15 On referral of information to any other party whatsoever, the Ombudsman will make every endeavour not to disclose the identity of child protection reporters in accordance with s.29 of the *Children and Young Persons (Care and Protection Act) 1988* and will advise as part of the referral that such information has been removed.
- 10.16 DoCS may conduct random audits of the use of the CIS/KiDS by the Ombudsman to ensure that the information accessed by Ombudsman staff is consistent with the protocol and confidentiality agreements.

*Further information*

- 10.17 DoCS will advise the Ombudsman at the earliest opportunity of any investigations or reviews conducted or to be conducted by DoCS, or another person or body of DoCS behalf into a death, or the conduct of a deceased's service provider, or its staff, which may be relevant to a death of which the Ombudsman has or will be informed, including the provision of any report and findings resulting from such investigations or reviews.

*Ombudsman processes*

- 10.18 Files and documents provided by DoCS in relation to the reviewable death function will be treated as confidential records and be subject to the Ombudsman's *Disclosure of Information Policy* and s.39 of the CS-CRAMA.

**11. Monitoring of implementation of recommendations**

- 11.1 Where the Ombudsman provides a draft investigation or other report to the Minister, a copy will be forwarded to the D-G (attention IE) for information.
- 11.2 At the time of provision of an investigation or audit/review report to the D-G, the Ombudsman will request advice, within **20** working days of the receipt of the report, about:
- whether DoCS has adopted any recommendations made in the report;
  - the action taken or proposed in relation to any such recommendations; and
  - the DoCS' employee(s) responsible for implementing any such recommendations.
- 11.3 The Ombudsman will monitor implementation of any recommendations contained in an investigation or audit/review report:

- 1) the Ombudsman will provide a written request to IE for advice about implementation of the recommendations three months after the recommendations are made (if a time period for DoCS to response is not specified in the report);
- 2) Ombudsman staff may make verbal contact with the DoCS' employee(s) nominated as responsible for implementing the adopted recommendations to discuss the progress/status/outcome of the implementation of the recommendations (Ombudsman staff will confirm any such verbal contact by email or fax to IE).

## **12. Contact points within DoCS**

- 12.1 Other than formal notices under ss.16, 24 and 26 of the *Ombudsman Act*, which must be sent directly to the D-G, formal contact with DoCS will be through Information Exchange (IE) in relation to all matters covered in this MOU.
- 12.2 The Manager IE will be the primary contact person for any other issues not covered in this MOU.

## **13. Liaison meetings**

- 13.1 To facilitate resolution of community services complaints, regular liaison meetings will be held between the Manager IE and Manager, Complaints and Issues Resolution.
- 13.2 To ensure the smooth introduction of the legislation, regular liaison meetings between senior DoCS and the Ombudsman staff will take place as agreed.
- 13.3 Agenda items will be exchanged at least three working days prior to each liaison meeting.

## **14. Alteration of the Memorandum of Understanding**

- 14.1 Alterations to this Memorandum of Understanding may be negotiated between the Ombudsman and DoCS through representatives of the two agencies at the initiative of either party. Any changes will be subject to the approval of the D-G and the Ombudsman.
- 14.2 The Memorandum of Understanding should be formally reviewed as soon as practicable after 12 months from the date of its adoption.

---

Bruce Barbour  
**NSW Ombudsman**

---

Neil Shepherd  
**Director-General**  
**Department of Community Services**

---

Date

---

Date