

The Crown in Right of the State of New South Wales  
acting through the  
The Department of Communities and Justice

and

The NSW Independent Commission Against Corruption

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**Memorandum of Understanding**

**Information Sharing Arrangement**

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# Memorandum of Understanding

## Parties

The Memorandum of Understanding is made between:

**The Crown in Right of the State of New South Wales acting through the Department of Communities and Justice** ABN 36 433 875 185 of 20 Lee Street, Sydney 2000 (DCJ);

and

**The NSW Independent Commission Against Corruption** ABN 17 934 402 440 of Level 7, 255 Elizabeth Street Sydney, NSW (ICAC or the Commission)

(each a Party and together the Parties).

## Background

1. Under the *Independent Commission against Corruption Act 1988 (ICAC Act)*, a Commissioner may summon a person (**witness**) to appear before the Commission at a compulsory examination or public inquiry at a time and place named in the summons to give evidence, or to produce such documents or other things (if any) as are referred to in the summons, or both.
2. A witness who is appearing or about to appear before the Commission may apply to the Attorney General for legal or financial assistance.
3. The application for legal or financial assistance may be approved by the Attorney General only if the Attorney General is of the opinion that this is appropriate, having regard to any one or more of the following:
  - 3.1 the prospect of hardship to the witness if assistance is declined;
  - 3.2 the significance of the evidence that the witness is giving or appears likely to give (the Significance Consideration); and
  - 3.3 any other matter relating to the public interest (the Public Interest Consideration).
4. In order to have full regard to the Significance Consideration and the Public Interest Consideration, the Attorney General may, from time to time, request information from the ICAC regarding the proceedings in respect of which the witness has been summoned to appear before the Commission.
5. The Parties have agreed to enter this MOU to regulate the nature of, and manner by which, any information that the ICAC discloses to the Director IIR (as hereafter defined) in his capacity as legal adviser to the Attorney General in order to facilitate consideration by the Attorney General of an application for legal or financial assistance received from a witness.

## 1. Interpretation

### Definitions

In this MOU, except where a contrary intention appears, all terms defined in the ICAC Act shall have the same meanings when used herein and the following terms will have the following meanings:

**Attorney General** means the Attorney General or his or her authorised delegate

**Commission Authorised Representative** means the authorised representative of the Commission as set out in **Item 1** of the Schedule.

**Commencement Date** means the date of commencement of this MOU specified in **Item 3** of the Schedule.

**DCJ Authorised Representative** means the authorised representative of DCJ as set out in **Item 2** of the Schedule.

**Issue** means any issue relating to this MOU or the performance of a Party's obligations under this MOU.

**Privacy Legislation** means the *Privacy Act 1988* (Cth), *Privacy and Personal Information Protection Act 1998* (NSW), and *Health Records and Information Privacy Act 2002* (NSW) and all regulations, directions, guidelines and other statutory instruments made under those Acts.

**Relevant Information** means any information that is in the possession and control of the Commission that would be pertinent to consideration by the Attorney General of the Significance Consideration and the Public Interest Consideration for the Specified Purpose and which the Commission would be willing to release at its discretion.

**Specified Purpose** means the purpose of assisting or enabling the Attorney General when considering an application by a witness, who is appearing or about to appear before the Commission, for legal or financial assistance.

## 2. Term

- 2.1 This MOU commences on the Commencement Date and, subject to the terms of this MOU, will continue until either Party gives not less than 21 days' notice in writing to the other of its intention to terminate this MOU.

## 3. Purpose

- 3.1 The purpose of this MOU is to formalise an arrangement for the provision by the Commission to DCJ of Relevant Information for the Specified Purpose, following a request for such information made by DCJ.
- 3.2 This MOU sets out the agreed understanding of the Parties as to the terms and conditions on which this arrangement is entered into.
- 3.3 The Parties acknowledge that the confidentiality and privacy of any Relevant Information provided to DCJ are of the highest importance to the Parties and will guide the operation and interpretation of this MOU.

#### **4. Authorised Representative**

- 4.1 The Parties to this MOU confirm that their respective Authorised Representatives have authority to comply with the terms of this MOU and each Party will ensure that its Authorised Representative does comply with the terms of this MOU.

#### **5. Request for Relevant Information**

- 5.1 Any request for Relevant Information made by DCJ (**Information Request**) shall be made by the DCJ Authorised Representative in writing, in the form of an email, addressed to the Commission's Authorised Representative.
- 5.2 The Information Request must contain the details set out in **Item 4** of the Schedule and such other information (if any) that DCJ considers may be relevant to the Commission's consideration of, and response to, the Information Request.

#### **6. Acknowledgement of Information Request and Response**

- 6.1 The Commission's Authorised Representative agrees to promptly acknowledge receipt of the Information Request, to consider and, subject to clause 7, to respond substantively to the Information Request as soon as practicable, and in any event within two working days after receiving the Information Request.
- 6.2 If the Commission's Authorised Representative raises any queries or requires additional information regarding an Information Request, the Commission's Authorised Representative will address the queries or the request for further information to the DCJ Authorised Representative, who must respond in writing as soon as practicable.

#### **7. Response to Information Request**

- 7.1 The disclosure of any information by the Commission to DCJ under the MOU is at the discretion of the Commission and is subject to the restrictions on Commission officers divulging or communicating information imposed by s111 of the *Independent Commission Against Corruption Act 1988*.
- 7.2 If the Commission declines to provide the Relevant Information to DCJ, the Commission agrees to provide DCJ with the reasons for its decision.

#### **8. Method of Disclosure**

- 8.1 The method by which Relevant Information will be disclosed to the DCJ Authorised Representative will be by email.

#### **9. Use of Specified Information**

- 9.1 DCJ confirms that it will use the Relevant Information only for the Specified Purpose.

## **10. Security and Confidentiality**

### **10.1 Compliance with law and policy**

DCJ will ensure that none of the Relevant Information is disclosed to the witness or to any third party unless the disclosure is required by applicable law or by a court order or the direction of a regulatory authority having jurisdiction over DCJ.

### **10.2 Restricted Access**

DCJ agrees to ensure that the Relevant Information is accessed only by officers of DCJ (including the DCJ Authorised Representative, the Attorney General) on a need to know basis during the usual course in relation to the determination of a witness' application to the Attorney General for legal or financial assistance.

### **10.3 Confidentiality**

Except where expressly permitted or required by any law to which DCJ is subject, DCJ must ensure that any of its relevant officers (including the DCJ Authorised Representative) who have access to the Relevant Information:

- (a) keep the Relevant Information confidential; and
- (b) are aware of the terms of this MOU and the requirements on them.

### **10.4 Security**

DCJ agrees to ensure that the Relevant Information is securely protected at all times from unauthorised access, loss or misuse.

### **10.5 Notification of breach**

DCJ must immediately report any breach or suspected breach of this clause 10 to the Commission, and co-operate with the Commission in taking all necessary steps to protect the confidentiality and privacy of the Relevant Information.

## **11. Escalation process for Issues**

### **11.1 Obligation to act in good faith**

Both Parties agree to act in good faith in carrying out their obligations under this MOU and to attempt to resolve any Issues that may arise in good faith.

### **11.2 Reporting Issues**

The Parties agree that any Issue arising under this MOU should be resolved by the Parties' Authorised Representatives. If an Issue cannot be resolved at this level within 14 days, it will be referred to the Chief Commissioner at the Commission and/or the Secretary of DCJ for resolution.

### **11.3 Continuing performance**

Despite the existence of an Issue, the Parties must continue to perform their respective obligations under this MOU.

## **12. Nature of MOU**

- 12.1 The Parties do not intend for this MOU to be legally binding but the Parties, by their execution of this MOU, confirm their intention to abide by its terms and conditions,

and acknowledge, subject where exceptions apply, the binding legal obligations created by the ICAC Act, and Privacy Legislation in relation to the disclosure, handling and use of an Information Request and the Relevant Information.

- 12.2 The Parties acknowledge that the confidentiality, privacy and lawful use of the Relevant Information are of the highest importance to the Parties

### **13. Miscellaneous**

#### **13.1 Costs**

Subject to any express provision in this MOU to the contrary, each Party must bear its own legal and other costs and expenses relating directly or indirectly to the preparation of, and performance of its obligations under this MOU.

#### **13.2 Relationship**

Neither Party is an employee, agent or partner of the other for any purpose.

#### **13.3 Amendment**

All amendments to this MOU and all consents, approvals, waivers and agreements made under this MOU must be evidenced in writing.

#### **13.4 Counterparts**

The Parties may execute this MOU by counterparts, which together will constitute one agreement.

#### **13.5 Jurisdiction and Governing Law**

The MOU is governed by the laws of New South Wales and the Parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

## Schedule to MOU

### Item 1. Commission Authorised Representative details

**Authorised representative** Roy Waldon, Solicitor to the Commission  
**Address** Level 7, 255 Elizabeth Street Sydney, NSW  
**Telephone** [REDACTED]  
**Email address** [REDACTED]

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### Item 2. DCJ Authorised Representative details

**Authorised representative** Lyncoln Chee, Director - Inquests, Inquiries and Representation, DCJ Legal  
**Address** Level 4, 93 George Street, Parramatta NSW  
**Telephone** [REDACTED]  
**Email address** [REDACTED]

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### Item 3. Commencement Date

1 March 2022

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### Item 4. Details to be provided in an Information Request

Name of witness and copy of the witness' summons

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This MOU is executed on \_\_\_\_\_.

**Execution by DCJ**

**Signed**, for and on behalf of the Crown in Right of the State of New South Wales, acting through the Department of Communities and Justice but not so as to incur personal liability



Signature

The Secretary DCJ

In the presence of:



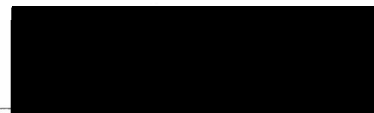
Name of witness

Signature of witness

11 May 2022

**Execution by the Independent Commission Against Corruption**

**Signed**, for and on behalf of Independent Commission Against Corruption



Signature

Chief Commissioner

In the presence of:



Name of witness

Signature of witness

18/2/22