1. Under section 111(1) of the Information Act (the Act) mediation is a precondition to hearing.

2. Mediation is an opportunity for both parties to explore the possibilities to resolve the matter complained of without going to Hearing.

3. It is a statutory condition under section 111(5) of the Act that:

   (5) Anything said, recorded or done in the course of mediation under this section (including a certificate under subsection (4)) is not admissible in any proceedings whatsoever.

4. At the conclusion of mediation the mediator must issue a certificate in accordance with section 111(4) which provides:

   (4) At the conclusion of mediation, the mediator must issue to the complainant and to the respondent a certificate in a form approved by the Commissioner –

   (a) stating that mediation has taken place;

   (b) setting out the records (if any) provided to the mediator by the parties;

   (c) setting out the recommendations (if any) of the mediator; and

   (d) setting out the outcome of the mediation.

5. If the matter is resolved at mediation in a manner that the Information Commissioner could have made under Section 114 Determination of complaint about accessing or correcting information or Section 115 Determination of complaint about interference with privacy, in respect of the complaint then both parties may apply jointly for the Commissioner to issue orders to give sufficient effect to the resolution.

Under section 114 the Commissioner’s powers are limited to either:

114. Determination of complaint about accessing or correcting information

   (1) After conducting a hearing in relation to a complaint under section 103, the Commissioner must –

   (a) confirm or vary the decision complained of in whole or in part; or
(b) revoke the decision in whole or in part and substitute another decision that would have been available to the respondent under Part 3, Division 2 (Accessing government information) or Part 3, Division 3 (Correcting personal information).

(2) The Commissioner may make the orders that the Commissioner considers necessary or incidental to give effect to a decision under subsection (1).

Under section 115 the Commissioner’s powers are limited to:

115. Determination of complaint about interference with privacy

(1) After conducting a hearing in relation to a complaint under section 104, the Commissioner must make a finding as to whether the matter complained of has been proved in whole or in part or not.

(2) In respect of so much of the matter complained of as has been proved, the Commissioner may –

(a) make the orders referred to in subsection (4) that the Commissioner considers appropriate; or

(b) decline to make any orders.

(3) In respect of so much of the matter complained of as has not been proved, the Commissioner must dismiss the complaint.

(4) For the purpose of subsection (2)(a), the Commissioner may make one or more of the following orders:

(a) that the respondent refrain from repeating or continuing to do an act specified in the order;

(b) that the respondent redress the loss or damage suffered by the complainant (including injury to feelings and humiliation suffered) in the manner specified in the order, which may include the payment of compensation not exceeding $60,000 or the making of an apology;

(c) that the respondent correct the complainant’s personal information;

(d) that the respondent attach a statement provided by the Commissioner to the complainant’s personal information.

(5) The Commissioner may make the orders that the Commissioner considers necessary or incidental to give effect to a decision or order under this section.