



Australian Capital Territory

# **Commissioner for the Environment Act 1993 No 37**

**Republication No 5**

**Effective: 18 January 2003**

Republication date: 18 January 2003

Last amendment made by Act 2002 No 49  
(republiation for commenced expiry)

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Commissioner for the Environment Act 1993* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 18 January 2003. It also includes any amendment, repeal or expiry affecting the republished law to 18 January 2003.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Commissioner for the Environment Act 1993

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Australian Capital Territory

# **Commissioner for the Environment Act 1993**

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An Act to establish the office of Commissioner for the Environment, and  
for related matters

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## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Commissioner for the Environment Act 1993*.

### 3 Interpretation for Act

(1) In this Act:

*Note* A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

**agency** means an administrative unit or a prescribed authority.

**authorised person** means a person appointed by the commissioner to be an authorised person for this Act.

**commissioner** means the Commissioner for the Environment appointed in accordance with section 4.

**law of the Territory** includes part of such a law.

**officer** means—

- (a) in relation to an administrative unit—
  - (i) a public servant (including the principal officer of that administrative unit) who is a member of that administrative unit; or
  - (ii) any other person (not being a Minister) authorised to exercise powers or perform functions on behalf of that administrative unit by the principal officer of that administrative unit; and
- (b) in relation to a prescribed authority—
  - (i) the person who constitutes, or is acting as the person who constitutes, the authority; or

- (ii) a person who is, or is acting as, a member of the authority or is a deputy of such a member; or
- (iii) a person who is employed in the service of, or is a member of the staff of, the authority, whether or not the person is employed by the authority; or
- (iv) a person authorised by the authority to exercise any powers or perform any functions of the authority on behalf of the authority.

***pre-election year*** means the calendar year preceding a calendar year in which a general election of members of the Legislative Assembly would be required in accordance with the *Electoral Act 1992*, section 100 (1).

***prescribed authority*** means—

- (a) a body corporate, or an unincorporated body, established for a public purpose by, or in accordance with the provisions of, a law of the Territory, other than—
  - (i) an incorporated company or association; or
  - (ii) a body that, under subsection (2) or the regulations, is not a prescribed authority for this Act; or
- (b) any other body, whether incorporated or unincorporated, that is declared by the regulations to be a prescribed authority for this Act, being—
  - (i) a body established by the Executive or by a Minister; or
  - (ii) an incorporated company or association over which the Territory is in a position to exercise control; or
- (c) subject to subsection (3), the person holding or performing the duties of an office, other than the office of ombudsman, established by a law of the Territory; or

- (d) a person holding, or performing the duties of, an office declared by the regulations to be an office the holder of which is a prescribed authority for this Act, being an office created by the Executive or by a Minister otherwise than under a law of the Territory.

*principal officer* means—

- (a) in relation to an administrative unit—the Commissioner for Public Administration or the chief executive of that unit; or
- (b) in relation to a prescribed authority—
- (i) if the regulations declare an office to be the principal office in respect of the authority—the person holding, or performing the duties of, that office; or
  - (ii) in any other case—the person who constitutes that authority or a person acting in his or her office or, if the authority is constituted by 2 or more persons, the person who is entitled to preside at any meeting of the authority at which the person is present or a person acting in his or her office.

*responsible Minister*, in relation to an agency, means—

- (a) subject to paragraphs (b) and (c), the Minister who is responsible for that agency; or
- (b) in relation to a prescribed authority referred to in the definition of *prescribed authority*, paragraph (c)—the Minister administering the law of the Territory concerned; or
- (c) in relation to a prescribed authority referred to in the definition of *prescribed authority*, paragraph (b) or (d)—the Minister declared by the regulations to be the responsible Minister in respect of that authority;

or another Minister acting for and on behalf of that Minister.



- (2) An unincorporated body, being a board, council, committee, subcommittee or other body established by or under a law of the Territory for the purpose of assisting, or performing functions connected with, a prescribed authority shall not be taken to be a prescribed authority, but action taken by the body, or by a person on its behalf, shall be taken to have been taken by that prescribed authority.
- (3) A person shall not be taken to be a prescribed authority only because the person holds or performs the duties of—
- (a) a prescribed office; or
  - (b) an office the duties of which the person performs as duties of his or her employment as an officer of an agency;
  - (c) an office of member of a body; or
  - (d) an office established by a law of the Territory for a prescribed authority;

but any action taken by or on behalf of a person holding or performing the duties of such an office shall be deemed to have been taken by the agency or body concerned.

## **Part 2 Office of Commissioner**

### **4 Commissioner for the Environment**

- (1) There shall be a Commissioner for the Environment appointed by instrument by the Minister.
- (2) The commissioner holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by instrument by the Minister.

### **5 Term of office**

Subject to this Act, the commissioner holds office for the period (not exceeding 5 years) specified in the instrument of appointment but is eligible for reappointment.

### **7 Leave of absence**

The Minister may grant leave of absence to the commissioner upon such terms and conditions as to remuneration or otherwise as the Minister by instrument determines.

### **8 Resignation**

The commissioner may resign from office by signed notice given to the Minister.

### **9 Suspension and removal of commissioner**

- (1) The Executive may remove the commissioner from office on an address praying for his or her removal on the ground of misbehaviour or physical or mental incapacity being presented to the Executive by the Legislative Assembly.
- (2) The Executive may suspend the commissioner from office on the ground of misbehaviour or physical or mental incapacity.

- (3) Where the Executive suspends the commissioner from office, the Minister shall cause a statement of the grounds of the suspension to be laid before the Legislative Assembly within 7 sitting days of the Legislative Assembly after the suspension.
- (4) Where such a statement has been laid before the Legislative Assembly, the Legislative Assembly may, within 15 sitting days of the Legislative Assembly after the day on which the statement has been laid before it, by resolution, declare that the commissioner should be removed from office and, if the Legislative Assembly so passes such a resolution, the Executive shall remove the commissioner from office.
- (5) If, at the end of 15 sitting days of the Legislative Assembly after the day on which the statement has been laid before it, the Legislative Assembly has not passed such a resolution, the suspension terminates.
- (6) If the commissioner becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, the Executive shall remove the commissioner from office.
- (7) The commissioner shall not be removed or suspended from office except as provided by this section.
- (8) The suspension of the commissioner from office does not affect any entitlement of the commissioner to be paid remuneration and allowances.

## **10 Retirement**

The Minister may, by instrument and with the consent of the commissioner, retire the commissioner on the grounds of physical or mental incapacity from such date and upon such terms and conditions as the Minister determines.

## **11 Delegation**

The commissioner may, by signed instrument, delegate to a public servant all or any of his or her powers under this Act.

## Part 3                      Functions and powers of    commissioner

### 12      Functions

- (1) The commissioner has the following functions:
  - (a) investigating complaints regarding the management of the environment by the Territory or a Territory authority;
  - (b) conducting such investigations as may be directed by the Minister;
  - (c) conducting, of his or her own motion, investigations into actions of an agency where those actions would have a substantial impact on the environment of the ACT.
- (2) The commissioner is not authorised to investigate action taken by—
  - (a) a judge or the master of the Supreme Court; or
  - (b) a magistrate or coroner for the Territory; or
  - (c) a royal commission under the *Royal Commissions Act 1991*; or
  - (d) a board of inquiry under the *Inquiries Act 1991*; or
  - (e) a panel conducting an inquiry under the *Land (Planning and Environment) Act 1991*; or
  - (f) the ombudsman.
- (3) In addition to the specific powers provided by this Act, the commissioner has such powers as are necessary and convenient for the performance of his or her functions.

**13 Complaints**

- (1) A person may make a complaint to the commissioner about the management of the environment of the ACT by the Territory or a Territory authority.

*Note* If a form is approved under s 28 (Approved forms) for a complaint, the form must be used.

- (2) A complaint must be made in a way approved by the commissioner.

**14 Discretion not to investigate certain complaints**

- (1) Where a complaint has been made to the commissioner with respect to action taken by an agency, the commissioner may, in his or her discretion, decide not to investigate the action or, if investigation has commenced, decide not to investigate the action further—

- (a) if the commissioner is satisfied that the complainant became aware of the action more than 12 months before the complaint was made to the commissioner; or
- (b) if, in the opinion of the commissioner—
- (i) the complaint is frivolous or vexatious or was not made in good faith; or
  - (ii) an investigation, or further investigation, of the action is not warranted having regard to all the circumstances.

- (2) Where a person who makes a complaint to the commissioner with respect to action taken by an agency has not complained to the agency with respect to that action, the commissioner may, in his or her discretion, decide not to investigate the action.

- (3) Where—

- (a) a person who—
- (i) has made a complaint to the commissioner with respect to action taken by an agency; and

- (ii) has complained to the agency with respect to that action; and
  - (iii) informs the commissioner that the agency has not responded or has not responded adequately; and
- (b) the commissioner is of the opinion—
- (i) if the agency has not responded—that, since the complainant complained to the agency, a reasonable period has elapsed in which the agency could have responded; or
  - (ii) if the agency has responded—that the response was not adequate;

the commissioner shall, subject to this section, investigate the action.

- (4) Where a complainant has caused or causes action to which his or her complaint relates to be reviewed by a court, or by a tribunal constituted by or under a law of the Territory, the commissioner shall not investigate, or continue to investigate, the action unless the commissioner is of the opinion that there are special reasons justifying the investigation or the continued investigation.
- (5) Where the commissioner is of the opinion that a complainant has or had a right to cause the action to which the complaint relates to be reviewed by a court, or by a tribunal constituted by or under a law of the Territory, but has not exercised that right, the commissioner may decide not to investigate the action or not to investigate the action further, if he or she is of the opinion that, in all the circumstances, it would be reasonable for the complainant to exercise, or would have been reasonable for the complainant to have exercised, that right.
- (6) Where, before the commissioner commences, or after the commissioner has commenced, to investigate action taken by an agency, being action that is the subject matter of a complaint, the commissioner forms the opinion that adequate provision is made

under an administrative practice for the review of action of that kind, the commissioner may decide not to investigate the action or not to investigate the action further—

- (a) if the action has been, is being or is to be reviewed under that practice at the request of the complainant; or
  - (b) if the commissioner is satisfied that the complainant is entitled to cause the action to be reviewed under that practice and it would be reasonable for the complainant to cause it to be so reviewed.
- (7) Where a complaint is made to the commissioner by a complainant at the request of another person or of a body of persons, this section applies as if references to the complainant were references to the person or the body of persons at whose request the complaint is made.
- (8) A report presented by the commissioner, or information provided by the commissioner, under the *Annual Reports (Government Agencies) Act 1995*, section 8 shall include, where the commissioner decided not to investigate a complaint during the period to which the report or information relates, particulars of the decision including the reasons for it.

## 15 Investigations

- (1) The commissioner shall, before commencing an investigation under this Act of action taken by an agency, inform the principal officer of the agency that the action is to be investigated.
- (2) The commissioner may from time to time make an arrangement with the principal officer of an agency with respect to the manner in which, and the period within which, the commissioner is to inform the principal officer that he or she proposes to investigate action taken by the agency, being action to which the arrangement relates.
- (3) Subject to this part, an investigation shall be conducted in private and in such manner as the commissioner thinks fit.



- (4) Where the Minister directs the commissioner to investigate a matter and specifies in the direction that it would be in the public interest to conduct a public process for the purposes of the investigation, the commissioner shall arrange for—
- (a) such public consultation or public hearings; and
  - (b) the taking of such other measures;
- as the commissioner considers necessary for the proper conduct of the investigation.
- (5) Subject to this Act, the commissioner may, for this Act, obtain information from such persons, and make such inquiries, as he or she thinks fit.
- (6) Subject to subsection (7), it is not necessary for the complainant or any other person to be afforded an opportunity to appear before the commissioner or any other person in connection with an investigation by the commissioner under this Act.
- (7) The commissioner shall not make a report in respect of an investigation under this Act in which he or she sets out opinions that are, either expressly or impliedly, critical of an agency or person unless, before completing the investigation, the commissioner has—
- (a) if the opinions relate to an agency—given the principal officer of the agency and the officer principally concerned in the action to which the investigation relates opportunities to appear before the commissioner or before an authorised person, and to make such submissions, either orally or in writing, in relation to that action as they think fit; and
  - (b) if the opinions relate to a person—given that person an opportunity to appear before the commissioner or before an authorised person, and to make such submissions, either orally or in writing, in relation to the action to which the investigation relates as the person thinks fit.

- (8) Where the commissioner gives the principal officer of an agency an opportunity to appear before the commissioner or before an authorised person under subsection (7), the principal officer may appear in person or a person authorised by the principal officer may appear on behalf of the principal officer.
- (9) Where the commissioner gives a person other than the principal officer of an agency an opportunity to appear before the commissioner or before an authorised person under subsection (7), the person may, with the approval of the commissioner or of the authorised person, as the case may be, be represented by another person.
- (10) Where, in relation to an investigation under this Act, the commissioner proposes to give a person an opportunity to appear before the commissioner or before an authorised person and to make submissions under subsection (7), or proposes to make a requirement of a person under section 17—
- (a) if a complaint was made orally with respect to the action and the complaint has not been put in writing—the complaint shall be put in writing; and
  - (b) the commissioner shall, if he or she has not previously informed the responsible Minister that the action is being investigated, inform that Minister accordingly.
- (11) The commissioner may, either before or after the completion of an investigation under this Act, discuss any matter that is relevant to the investigation with a Minister concerned with the matter.
- (12) Where the commissioner becomes of the opinion, either before or after completing an investigation under this Act, that there is evidence that a person, being an officer of an agency, has been guilty of a breach of duty or of misconduct and that the evidence is, in all the circumstances, of sufficient force to justify doing so, the commissioner shall bring the evidence to the notice of—
- (a) in the case of an administrative unit—

- (i) if the person is the principal officer of the administrative unit—the Minister responsible for the administrative unit; or
  - (ii) if the person is a member of the administrative unit but is not the principal officer—the principal officer of the administrative unit; or
- (b) in the case of a prescribed authority—
- (i) if the person is the principal officer of the authority—the responsible Minister of the authority; or
  - (ii) if the person is not the principal officer of the authority—the principal officer of the authority.

## **16 Power to enter premises**

- (1) For the purposes of an investigation under this Act the commissioner or an authorised person may, at any reasonable time of the day, enter any place occupied by an agency and may carry on the investigation at that place.
- (2) For the purposes of an investigation under this Act, an authorised person is entitled to inspect any documents relevant to the investigation that are kept at premises entered under this section, other than documents to which a certificate under section 17 (6) applies, at a reasonable time of the day arranged with the principal officer of the agency concerned.

## **17 Power to obtain information and documents**

- (1) Where the commissioner has reason to believe that an agency is capable of providing information or producing documents or other records relevant to an investigation under this Act, the commissioner may, by notice in writing served on the head of the agency, require the agency, at such place, and within such period or on such day and at such time, as are specified in the notice—

- (a) to provide to the commissioner any such information, in writing; or
  - (b) to produce to the commissioner such documents or other records as are specified in the notice; or
  - (c) to provide to the commissioner any such information and to produce to the commissioner such documents or other records as are specified in the notice.
- (2) Where the commissioner has reason to believe that an officer of an agency is capable of providing information or producing documents or other records relevant to an investigation under this Act, or both providing information and producing documents or other records of that kind, but the commissioner does not know the identity of the officer, the commissioner may, by notice in writing served on the principal officer of the agency, require the principal officer or a person nominated by the principal officer, at such place, and within such period or on such day and at such time, as are specified in the notice—
- (a) to attend before a person specified in the notice to answer questions relevant to the investigation; or
  - (b) to produce to a person specified in the notice such documents or other records as are so specified; or
  - (c) to attend before a person so specified to answer questions of that kind and to produce to a person so specified such documents or other records as are so specified.
- (3) Where documents or other records are produced to the commissioner in accordance with a requirement under subsection (1) or (2) or an order under section 26 (2), the commissioner—
- (a) may take possession of, and may make copies of, or take extracts from, the documents or other records; and

- (b) may retain possession of the documents or other records for such period as is necessary for the investigation to which the documents or other records relate.
- (4) Where a document is retained by the commissioner under subsection (3) a person who would be entitled to inspect the document, if it were not in the possession of the commissioner, may at any reasonable time inspect the document.
- (5) Where the commissioner has reason to believe that a person is able to give information relevant to an investigation under this Act, the commissioner may, by notice in writing served on the person, require the person to attend before a person specified in the notice, on such day and at such time and place as are specified in the notice, to answer questions relevant to the investigation.
- (6) Where the Minister certifies in writing that the disclosure to the commissioner of information concerning a specified matter (including the providing of information in answer to a question) or the disclosure to the commissioner of the contents of any documents or records would be contrary to the public interest—
- (a) because it would involve the disclosure of communications between a Minister and a Commonwealth Minister or a Minister of a State or of a Territory, being a disclosure that would prejudice relations between the Territory and the Commonwealth, between the Territory and a State or between the Territory and another Territory, as the case may be; or
- (b) because it would involve the disclosure of deliberations or decisions of the Executive or of a committee of the Executive;
- the commissioner is not entitled to require a person to provide any information concerning the matter, to answer questions concerning the matter or to produce those documents or records to the commissioner.
- (7) Notwithstanding the provisions of any law of the Territory, a person is not excused from providing any information, producing a

document or other record or answering a question when required to do so under this Act on the ground that the providing of the information, the production of the document or record or the answer to the question—

- (a) would contravene the provisions of any other law of the Territory, would be contrary to the public interest or might tend to incriminate the person or make the person liable to a penalty; or
- (b) would disclose legal advice provided to a Minister or an agency;

but the information, the document or record produced or the answer to the question is not admissible in evidence against the person in proceedings other than—

- (c) an application under section 26 (2); or
  - (d) proceedings for an offence against section 27.
- (8) A person is not liable to any penalty under the provisions of any other law of the Territory because of the person having furnished information, produced a document or other record or answered a question when required to do so under this Act.

## **18 Assistance to commissioner**

Where—

- (a) the commissioner requests in writing that the principal officer of an agency provide information for use in preparing a state of the environment report; and
- (b) the agency does not provide that information within a reasonable time;

that principal officer shall, at the written request of the commissioner, make staff available for a period not exceeding 3 months to assist the commissioner in the preparation of that report.

## Part 4 Reports

### 19 State of the environment report

- (1) The commissioner must, no later than the reporting day, give a state of the environment report to the Minister for each reporting period.
- (2) A state of the environment report shall include—
  - (a) an assessment of the condition of the environment, including an assessment of such of the following matters as the commissioner considers necessary:
    - (i) the components of the earth, including soil, the atmosphere and water;
    - (ii) any organic or inorganic matter and any living organism;
    - (iii) human made or modified structures and areas;
    - (iv) ecosystems and their constituent parts, including people and communities;
    - (v) the qualities and characteristics of places and areas that contribute to their biological diversity and ecological integrity, scientific value and amenity;
    - (vi) the interactions and interdependencies within and between the things mentioned in subparagraphs (i) to (v);
    - (vii) the social, aesthetic, cultural and economic conditions that affect, or are affected by, the things mentioned in subparagraphs (i) to (v);
  - (b) an evaluation of the adequacy and effectiveness of environmental management, including an assessment about the degree of compliance with national environment protection measures made by the National Environment Protection Council; and

- (c) such other matters, whether or not occurring within the triennium to which the report relates, as—
  - (i) the Minister specifies by notice in writing given to the commissioner; or
  - (ii) the commissioner considers relevant.
- (3) The Minister must, within 6 months after receiving a state of the environment report, present to the Legislative Assembly—
  - (a) a statement that sets out the response of the government to the report; or
  - (b) a statement that sets out the reasons for not presenting a statement under paragraph (a) to the Assembly.
- (4) The commissioner must, within 12 months after the Minister presents a state of the environment report to the Legislative Assembly under section 22, give the Minister a recommendation as to—
  - (a) the day on which the period to be covered by the next state of the environment report should end; and
  - (b) the reporting day, for that period, by which the next state of the environment report should be given to the Minister.
- (5) The Minister must, after considering the commissioner's recommendation, determine—
  - (a) a reporting period that must—
    - (i) begin on the day after the end of the period covered by the previous state of the environment report; and
    - (ii) not exceed 4 years; and
  - (b) a reporting day for that period that must be no less than 3 and no more than 6 months after the end of the reporting period.



- (6) A determination under subsection (5) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (7) In this section:

**reporting day**, for a reporting period, means—

- (a) for the reporting period ending on 30 June 2000—30 November 2000; or
- (b) for any other reporting period—the day determined by the Minister under subsection (5) for that period.

**reporting period** means the period beginning on 1 July 1997 and ending on 30 June 2000 or any other period determined by the Minister under subsection (5).

## **20 Information to be included in commissioner's annual report**

A report presented, or information provided, by the commissioner under the *Annual Reports (Government Agencies) Act 1995*, section 8 in respect of a period shall include particulars of—

- (a) any special factor which the commissioner believes had a significant impact on the environment during the period; and
- (b) measures taken during the period by or on behalf of the Territory in relation to the implementation of any recommendation in a state of the environment report under section 19 or a special report under section 21; and
- (c) any recommendation in such a report which the commissioner believes is still to be implemented or fully implemented.

## **21 Special reports**

Where—

- (a) the Minister has directed the commissioner to conduct an investigation; or
- (b) the commissioner has of his or her own motion, conducted an investigation into an issue of environmental significance to the Territory;

the commissioner shall—

- (c) prepare a special report on that investigation; and
- (d) within 28 days of the completion of the report, submit that report to the Minister.

## **22 Minister to table reports and recommendations**

The Minister must, within 15 sitting days of receiving a report under section 19 or 21 or a recommendation under section 19 (4), present the report or recommendation to the Legislative Assembly.

## Part 5                      Miscellaneous

### 23      **Information to be included in annual reports of agencies**

A report presented by the principal officer of an agency under the *Annual Reports (Government Agencies) Act 1995*, section 7 or 8, or information provided by the principal officer of an agency under section 8 of that Act, shall include—

- (a) details of any request under section 18 received by the agency; and
- (b) details of any assistance provided by the agency in response to any such request; and
- (c) details of any investigation carried out by the commissioner in respect of any activity of the agency; and
- (d) details of any recommendation made by the commissioner following an investigation of the activities of the agency; and
- (e) details of any action the agency has taken in respect of any such recommendation;

during the period to which the report or information relates.

### 24      **Commissioner not to be sued**

Neither the commissioner, a person to whom the commissioner has delegated any or all of his or her powers, nor a person acting under the commissioner's direction or authority is liable to an action, suit or proceeding in relation to any act done or omitted to be done in good faith in the exercise or purported exercise of any power or authority conferred by this Act.

**25 Referral to ombudsman**

Where the commissioner forms the opinion that a complaint falls within the jurisdiction of the ombudsman, the commissioner shall, whether or not he or she has commenced an investigation, refer the complaint, together with relevant documents and information, to the ombudsman.

**26 Powers of Supreme Court**

- (1) Where a question with respect to the exercise of a power, or the performance of a function, of the commissioner by or under this Act or any other enactment arises between the commissioner and the principal officer of any agency that is affected by that exercise or performance, the commissioner or the principal officer of the agency may, subject to subsections (3) and (4), make an application to the Supreme Court for a determination of the question.
- (2) Where a person fails to comply with a requirement made by the commissioner by notice under section 17 to provide information, to produce documents or other records or to attend before the commissioner to answer questions, the commissioner may make an application to the Supreme Court for an order directing that person to provide the information, to produce the documents or other records, or to attend before the commissioner to answer questions, at such place, and within such period or on such day and at such time, as are specified in the order.
- (3) The commissioner shall not make an application to the Supreme Court under this section unless he or she has informed the responsible Minister of the agency concerned in writing of the reasons for the proposed application.
- (4) The principal officer of an agency shall not make an application to the Supreme Court under subsection (1) unless he or she has informed the responsible Minister of the agency in writing of the reasons for the proposed application.

- (5) The Supreme Court has jurisdiction with respect to matters arising under this section in respect of which applications are made to the Supreme Court.

## **27 Offences**

A person shall not—

- (a) wilfully obstruct, hinder or resist the commissioner or any other person in the exercise of functions under this Act without reasonable excuse; or
- (b) provide information or make a statement to the commissioner or to an authorised person knowing that it is false or misleading in a material particular.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

## **28 Approved forms**

- (1) The commissioner may, in writing, approve forms for this Act (other than for section 26).
- (2) If the commissioner approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

## **29 Regulation-making power**

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	RI = reissue
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
num = numbered	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

### 3 Legislation history

**Commissioner for the Environment Act 1993 No 37**

notified 29 June 1993 (Gaz 1993 No S111)  
s 1, s 2 commenced 29 June 1993 (s 2 (1))  
ss 3-18 and ss 20-28 commenced 1 July 1993 (s 2 (2) and Gaz 1993 No S129)  
remainder (s 19) commenced 29 December 1993 (s 2 (3))

as amended by

**Public Sector Management (Consequential and Transitional Provisions) Act 1994 No 38 sch 1 pt 17**

notified 30 June 1994 (Gaz 1994 No S121)  
s 1, s 2 commenced 30 June 1994 (s 2 (1))  
sch 1 pt 17 commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S142)

**Annual Reports (Government Agencies) (Consequential Provisions) Act 1995 No 25 sch**

notified 5 September 1995 (Gaz 1995 No S212)  
sch commenced 5 September 1995 (s 2)

**Ombudsman (Amendment) Act 1996 No 17 s 11**

notified 1 May 1996 (Gaz 1996 No S71)  
commenced 1 May 1996 (s 2)

**Commissioner for the Environment (Amendment) Act 1997 No 29**

notified 16 July 1997 (Gaz 1997 No S185)  
commenced 16 July 1997 (s 2)

**Remuneration Tribunal (Consequential Amendments) Act 1997 No 41 sch 1**

notified 19 September 1997 (Gaz 1997 No S264)  
s 1, s 2 commenced 19 September 1997 (s 2 (1))  
sch 1 commenced 23 September 1997 (s 2 (2) and Gaz 1997 No S280)

**Statute Law Revision (Penalties) Act 1998 No 54 sch**

notified 27 November 1998 (Gaz 1998 No S207)  
s 1, s 2 commenced 27 November 1998 (s 2 (1))  
sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

## Endnotes

4 Amendment history

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### **Commissioner for the Environment Amendment Act 2000 No 73**

notified 21 December 2000 (Gaz 2000 No S69)  
commenced 21 December 2000 (s 2)

### **Legislation (Consequential Amendments) Act 2001 No 44 pt 67**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 67 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

### **Statute Law Amendment Act 2002 (No 2) No 49 pt 1.1**

notified LR 20 December 2002  
s 1, s 2 taken to have commenced 7 October 1994 (LA s 75 (2))  
pt 1.1 commenced 17 January 2003 (s 2 (1))

## 4 Amendment history

### **Commencement**

s 2 om 2001 No 44 amdt 1.765

### **Interpretation for Act**

s 3 def **agency** am 1994 No 38 sch 1 pt 17  
def **Department** om 1994 No 38 sch 1 pt 17  
def **officer** am 1994 No 38 sch 1 pt 17  
def **Ombudsman** om 1996 No 17 s 11  
def **pre-election year** ins 1997 No 29 s 4  
def **principal officer** am 1996 No 17 s 11

### **Remuneration and allowances**

s 6 om 1997 No 41 sch 1

### **Complaints**

s 13 sub 2001 No 44 amdt 1.766

### **Discretion not to investigate certain complaints**

s 14 am 1995 No 25 sch

### **Investigations**

s 15 am 1994 No 38 sch 1 pt 17; 1997 No 29; ss renum R3 LA

### **Assistance to commissioner**

s 18 am 1994 No 38 sch 1 pt 17

### **State of the environment report**

s 19 sub 1997 No 29  
am 2000 No 73 s 4; 2001 No 44 amdt 1.767



**Information to be included in commissioner's annual report**

s 20 om 1995 No 25 sch  
ins 1997 No 29

**Special reports**

s 21 am 1997 No 29

**Minister to table reports and recommendations**

s 22 am 1995 No 25 sch  
sub 2000 No 73 s 5

**Information to be included in annual reports of agencies**

s 23 sub 1995 No 25 sch

**Referral to ombudsman**

s 25 am 1997 No 29

**Offences**

s 27 am 1998 No 54 sch

**Approved forms**

s 28 sub 2001 No 44 amdt 1.768

**Regulation-making power**

s 29 ins 2001 No 44 amdt 1.768

**Validation**

pt 6 hdg ins 2002 No 49 amdt 1.1  
exp 17 January 2003 (s 32)

**Validation of appointment**

s 30 ins 2002 No 49 amdt 1.1  
exp 17 January 2003 (s 32)

**Validation of acts, rights and obligations**

s 31 ins 2002 No 49 amdt 1.1  
exp 17 January 2003 (s 32)

**Expiry of pt 6**

s 32 ins 2002 No 49 amdt 1.1  
exp 17 January 2003 (s 32)

## Endnotes

5 Earlier republications

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### 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1994 No 38	31 January 1995
2	Act 1997 No 41	31 December 1997
3	Act 2001 No 44	15 January 2002
4	Act 2002 No 49	17 January 2003

Authorised when accessed at [www.legislation.act.gov.au](http://www.legislation.act.gov.au) or in authorised printed form

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