



Australian Capital Territory

# **Ombudsman Act 1989**

**A1989-45**

**Republication No 6**

**Effective: 9 April 2004 – 12 April 2004**

Republication date: 9 April 2004

Last amendment made by A2004-15

Not all amendments are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Ombudsman Act 1989* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 9 April 2004. It also includes any amendment, repeal or expiry affecting the republished law to 9 April 2004.

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

# Ombudsman Act 1989

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Australian Capital Territory

## Ombudsman Act 1989

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An Act to provide for the appointment of an ombudsman and to define the functions and powers of that office

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## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Ombudsman Act 1989*.

### 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 ombudsman to be an authorised person for the purposes of this Act.

***enactment*** means an Act or a subordinate law (including part of an Act or of such a law), but does not include the National Electricity (ACT) Law the provisions of which are applied by the *Electricity (National Scheme) Act 1997*, section 5 or the National Electricity Code approved under section 6 of that 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.

*prescribed authority* means—

- (a) a body corporate, or an unincorporated body, established for a public purpose by, or in accordance with the provisions of, an enactment, 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 the purposes of this Act; or
- (b) any other body, whether incorporated or unincorporated, that is declared by the regulations to be a prescribed authority for the purposes of 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 commissioner for the environment or commissioner for health complaints, established by an enactment; 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 the purposes of this Act, being an office created by the Executive or by a Minister otherwise than under an enactment; or

- (e) a Territory owned corporation or a subsidiary within the meaning of the *Territory Owned Corporations Act 1990*.

***principal officer*** means—

- (a) in relation to an administrative unit—the chief executive of the administrative 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
  - (ia) in the case of a Territory owned corporation or a subsidiary within the meaning of the *Territory Owned Corporations Act 1990*—the chief executive officer of the corporation or subsidiary; 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 enactment 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 an enactment 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; or
  - (c) an office of member of a body; or
  - (d) an office established by an enactment for the purposes of 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.

- (4) Where—
- (a) a person who is not an officer of an agency for this Act takes action in the exercise of a power or the performance of a function that the person is authorised to exercise or to perform because the person holds an appointment made by, or because of authority given by, the Executive, a Minister or a chief executive of an administrative unit; and
  - (b) the person does not exercise the power or perform the function because the person holds, or performs the duties of, an office established by or under an enactment or because of being a

judge of a court created by the Commonwealth Parliament or of a court of a State or Territory or a magistrate of the Commonwealth or of a State or Territory;

the action shall be deemed to be taken, for this Act, by the administrative unit responsible for dealing with the matter in connection with which the action is taken.

- (5) Notwithstanding subsection (4), where a person is authorised to exercise a power or perform a function because the person holds an appointment made by, or because of authority given by, the Executive, a Minister or a chief executive of an administrative unit otherwise than under an enactment, the regulations may provide that action taken by the person in the exercise of that power or the performance of that function shall not be deemed to be taken, for this Act, by the administrative unit responsible for dealing with the matter in connection with which the action is taken.
- (6) For this Act, action that is taken by an officer of an administrative unit shall be deemed to be taken by the administrative unit—
  - (a) if the officer takes, or purports to take, the action because of being such an officer, whether or not—
    - (i) the action is taken in connection with, or as incidental to, the performance of the functions of the administrative unit; or
    - (ii) the taking of the action is within the duties of the officer; or
  - (b) if the officer takes, or purports to take, the action in the exercise of powers or the performance of functions conferred on the officer by an enactment.
- (7) Notwithstanding subsection (6), where the regulations provide that the person holding, or performing the duties of, an office established by an enactment is not a prescribed authority for this Act, the regulations may also provide that action taken by an officer of an

administrative unit being action in the furtherance of the duties of that office, shall, for this Act, be deemed not to be action taken by that administrative unit.

- (8) For this Act, action that is taken by an officer of a prescribed authority shall be deemed to be taken by the authority—
- (a) if the officer takes, or purports to take, the action because of being an officer of the authority, whether or not—
    - (i) the action is taken for or in connection with, or as incidental to, the performance of the functions of the prescribed authority; or
    - (ii) the taking of the action is within the duties of the officer; or
  - (b) if the officer takes, or purports to take, the action in the exercise of powers or the performance of functions conferred on the officer by an enactment.
- (9) In this Act, unless the contrary intention appears, a reference to the ***taking of action*** includes a reference to—
- (a) the making of a decision or recommendation; and
  - (b) the formulation of a proposal; and
  - (c) failure or refusal to take action, to make a decision or recommendation or to formulate a proposal.
- (10) In this Act, unless the contrary intention appears, a reference to the ombudsman of a State includes a reference to a person performing, under a law of a State, functions similar to the functions performed by the ombudsman under part 2.
- (11) A reference in this Act to the ombudsman of a State includes a reference to the ombudsman of a Territory (other than the Australian Capital Territory).

**3A Application**

- (1) This Act does not apply to an agency with respect to functions performed by it as an agent for NECA or NEMMCO under the National Electricity Code.

- (2) In this section:

*National Electricity Code* means the National Electricity Code approved under the National Electricity (ACT) Law, section 6.

*National Electricity (ACT) Law* means the provisions applied by the *Electricity (National Scheme) Act 1997*, section 5.

*NECA*—see the National Electricity (ACT) Law.

*NEMMCO*—see the National Electricity (ACT) Law.

## **Part 2**                      **Establishment, functions, powers and duties of ombudsman**

### **Division 2.1**              **Establishment and functions**

#### **4**                      **Establishment of office of ombudsman**

- (1) There shall be established the office of the Ombudsman.
- (2) The functions of the ombudsman are to investigate complaints made under this Act and to perform such other functions as are conferred by this Act or the *Public Interest Disclosure Act 1994*.

#### **5**                      **Functions**

- (1) Subject to this Act, the ombudsman—
  - (a) shall investigate action that relates to a matter of administration, being action—
    - (i) taken after the commencement of this Act by an agency and in respect of which a complaint has been made to the ombudsman; or
    - (ii) in respect of which a complaint is transferred to the ombudsman under the *A.C.T. Self-Government (Consequential Provisions) Act 1988* (Cwlth), section 28; or
    - (iii) taken before the commencement of this Act and in respect of which a complaint is made to the ombudsman after that commencement in a case where, if that complaint had been made to the Commonwealth ombudsman before that commencement, that complaint would have been transferred to the ombudsman under the *A.C.T. Self-Government (Consequential Provisions) Act 1988* (Cwlth), section 28; and

- (b) may, of his or her own motion, investigate action of that kind.
- (2) The ombudsman is not authorised to investigate—
- (a) action taken by a Minister; or
  - (b) action taken by—
    - (i) a judge or the master of the Supreme Court; or
    - (ii) the registrar or a deputy registrar of the Supreme Court or of the Magistrates Court when performing a function of a judicial nature; or
  - (c) action taken by a magistrate or coroner for the Territory; or
  - (d) action taken by a royal commission under the *Royal Commissions Act 1991*; or
  - (e) action taken by a board of inquiry under the *Inquiries Act 1991*; or
  - (f) action taken by the commissioner for the environment; or
  - (g) action taken by the Territory or a Territory authority for the management of the environment; or
  - (h) action taken by—
    - (i) the commissioner for health complaints; or
    - (ii) a delegate of the commissioner for health complaints; or
    - (iii) a member of the community and health services complaints unit, being the office established by the *Community and Health Services Complaints Act 1993*, section 6; or
    - (iv) a conciliator appointed under section 32 of that Act; or
    - (v) a mentor appointed under section 38 of that Act; or
  - (i) action taken by a judicial commission under the *Judicial Commissions Act 1994*; or



- (j) action taken by any body or person with respect to persons employed in the public service or the service of a prescribed authority, being action taken in relation to the employment of those persons, including action taken with respect to the promotion, termination of appointment or discipline of, or the payment of remuneration to, those persons; or
  - (k) action taken by an agency with respect to the appointment of a person to an office established by or under an enactment, not being an office in the public service or an office in the service of a prescribed authority; or
  - (l) action taken, or not taken, under the *Legislation Act 2001*, part 5.2 (Requirements for regulatory impact statements); or
  - (m) action taken by an agency—
    - (i) for the purpose or in the course of providing, or purporting to provide, a community service or health service; or
    - (ii) in refusing to provide a community service or health service; or
  - (n) action taken by the essential services consumer council.
- (3) The reference in subsection (2) (a) to action taken by a Minister does not include a reference to action taken by a delegate of a Minister.
- (4) For subsection (3), action shall be deemed to have been taken by a delegate of a Minister notwithstanding that the action is taken under a power that is deemed by a provision of an enactment, when exercised by the delegate, to have been exercised by the Minister.
- (5) For the application of this Act in relation to the ombudsman, action taken by an agency shall not be regarded as having been taken by a Minister only because the action was taken by the agency in relation to action taken or to be taken by a Minister personally.

(6) In this section:

*community service*—see the *Community and Health Services Complaints Act 1993*.

*health service*—see the *Community and Health Services Complaints Act 1993*.

## 6 Discretion not to investigate certain complaints

- (1) Where a complaint has been made to the ombudsman with respect to action taken by an agency, the ombudsman 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 ombudsman is satisfied that the complainant became aware of the action more than 12 months before the complaint was made to the ombudsman; or
  - (b) if, in the opinion of the ombudsman—
    - (i) the complaint is frivolous or vexatious or was not made in good faith; or
    - (ii) the complainant does not have a sufficient interest in the subject matter of the complaint; or
    - (iii) 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 ombudsman with respect to action taken by an agency has not complained to the agency with respect to that action, the ombudsman may, in his or her discretion, decide not to investigate the action until the complainant so complains to the agency.
- (3) Where a person who makes a complaint to the ombudsman with respect to action taken by an agency has complained to the agency with respect to that action, the ombudsman may, in his or her discretion, decide not to investigate the action unless the

complainant informs the ombudsman that no redress has been granted or that redress has been granted but the redress is not, in the opinion of the complainant, adequate.

- (4) Where—
- (a) a person who has made a complaint to the ombudsman with respect to action taken by an agency and who has complained to the agency with respect to that action informs the ombudsman as provided by subsection (3) that no redress, or no adequate redress, has been granted by the agency; and
  - (b) the ombudsman is of the opinion—
    - (i) if no redress has been granted—that, since the complainant complained to the agency, a reasonable period has elapsed in which redress could have been granted; or
    - (ii) if redress has been granted—that the redress was not reasonably adequate;

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

- (5) 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 an enactment, the ombudsman shall not investigate, or continue to investigate, the action unless the ombudsman is of the opinion that there are special reasons justifying the investigation or the continued investigation.
- (6) Where the ombudsman 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 an enactment, but has not exercised that right, the ombudsman 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.

- (7) Where, before the ombudsman commences, or after the ombudsman has commenced, to investigate action taken by an agency, being action that is the subject matter of a complaint, the ombudsman forms the opinion that adequate provision is made under an administrative practice for the review of action of that kind, the ombudsman 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 ombudsman 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.
- (8) Where a complaint is made to the ombudsman 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.

**6A Discretion to refer complaint to another statutory office-holder**

- (1) If the ombudsman forms the opinion that the action to which a complaint under this Act relates is such that—
- (a) a complaint in respect of the action, or an application or request for the action to be investigated or reviewed, could have been made to a statutory office-holder other than the ombudsman; and
  - (b) the matter could be more conveniently or effectively dealt with by that statutory office-holder; and
  - (c) it would otherwise be appropriate in all the circumstances for the complaint to be referred to that statutory office-holder; and

- (d) that statutory office-holder consents to having the complaint referred to him or her;

the ombudsman may decide not to investigate, or not to investigate further, the action, and if the ombudsman so decides he or she shall refer the complaint, together with any relevant documents or information that are within his or her possession or control, to that statutory office-holder.

- (2) In this section:

*statutory office-holder* means the holder of an office established by a law of the Territory, the Commonwealth, a State or another Territory.

## **6B Mandatory referral**

- (1) If the ombudsman decides that it would be more appropriate for a complaint to be investigated by any of the following entities, the ombudsman must refer the complaint to the entity:
- (a) the commissioner for the environment;
  - (b) the commissioner for health complaints;
  - (c) the essential services consumer council.
- (2) If a complaint is referred to an entity, the ombudsman must give the entity the relevant documents and information about the complaint.

## **7 Complaints**

- (1) Subject to subsection (2), a complaint under this Act may be made to the ombudsman orally or in writing.
- (2) Where a complaint is made orally to the ombudsman, the ombudsman may put the complaint in writing or at any time require the complainant to put the complaint in writing and, where the ombudsman makes such a requirement of a complainant, the ombudsman may decline to investigate the complaint, or to

investigate the complaint further, until the complainant complies with the requirement.

- (3) A person who is detained in custody is entitled—
- (a) upon making a request to the person in whose custody he or she is detained or to any other person performing duties in connection with the detention (the *custodian*)—
    - (i) to be provided with facilities for preparing a complaint in writing under this Act, for giving in writing to the ombudsman, after the complaint has been made, any other relevant information and for enclosing the complaint or the other information (if any) in a sealed envelope; and
    - (ii) to have sent to the ombudsman, without undue delay, a sealed envelope addressed to the ombudsman and delivered by the person in custody to the custodian; and
  - (b) to have delivered to him or her, without undue delay, any sealed envelope addressed to him or her and sent by the ombudsman, that comes into the possession or under the control of the custodian.
- (4) Where—
- (a) a sealed envelope addressed to the ombudsman is delivered by a person detained in custody to the custodian for sending to the ombudsman; or
  - (b) a sealed envelope addressed to a person so detained and sent by the ombudsman comes into the possession or under the control of the custodian;
- the custodian is not entitled to open the envelope or to inspect any document enclosed in the envelope.
- (5) For subsections (3) and (4), the ombudsman may make arrangements with the appropriate authority of the Commonwealth or of a State or a Territory for the identification and delivery of

sealed envelopes sent by the ombudsman to persons detained in custody.

## **8 Preliminary inquiries**

- (1) Where a complaint has been made to the ombudsman with respect to action taken by an agency, or it appears to the ombudsman that the ombudsman may under section 5 (1) (b) investigate action so taken, the ombudsman may, for the purpose of—
  - (a) determining whether or not the ombudsman is authorised to investigate the action; or
  - (b) if the ombudsman is authorised to investigate the action—determining whether or not the ombudsman may, in his or her discretion, decide not to investigate the action;

make inquiries of the principal officer of the agency or, if an arrangement with the principal officer of the agency is in force under subsection (2), of such officers as are referred to in the arrangement.

- (2) The ombudsman may from time to time make an arrangement with the principal officer of an agency with respect to the officers of whom all inquiries, or particular inquiries, are to be made by the ombudsman under subsection (1) with respect to action taken by the agency.

## **9 Investigations**

- (1) The ombudsman 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 ombudsman 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 ombudsman 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) An investigation under this Act shall be conducted in private and, subject to this Act, in such manner as the ombudsman thinks fit.
- (4) Subject to this Act, the ombudsman may, for the purposes of this Act, obtain information from such persons, and make such inquiries, as he or she thinks fit.
- (5) Subject to subsection (6), it is not necessary for the complainant or any other person to be afforded an opportunity to appear before the ombudsman or any other person in connection with an investigation by the ombudsman under this Act.
- (6) The ombudsman 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 ombudsman 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 ombudsman 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 ombudsman 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.
- (7) Where the ombudsman gives the principal officer of an agency an opportunity to appear before the ombudsman or before an authorised person under subsection (6), the principal officer may appear in person or a person authorised by the principal officer may appear on behalf of the principal officer.
- (8) Where the ombudsman gives a person other than the principal officer of an agency an opportunity to appear before the ombudsman or before an authorised person under subsection (6), the person may,



with the approval of the ombudsman or of the authorised person, as the case may be, be represented by another person.

- (9) Where, in relation to an investigation under this Act, the ombudsman proposes to give a person an opportunity to appear before the ombudsman or before an authorised person and to make submissions under subsection (6), or proposes to make a requirement of a person under section 11—
- (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 ombudsman shall, if he or she has not previously informed the responsible Minister that the action is being investigated, inform that Minister accordingly.
- (10) The ombudsman 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.
- (11) On the request of the responsible Minister, the ombudsman shall consult that Minister before forming a final opinion on any of the matters referred to in section 18 (1) or (2) that are relevant to the action under investigation.
- (12) Where the ombudsman 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 ombudsman shall bring the evidence to the notice of—
- (a) in the case of an administrative unit—
    - (i) if the person is the chief executive of the administrative unit—the responsible Minister of the administrative unit; or

- (ii) if the person is a member of the administrative unit other than the chief executive—the chief executive 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.

## **10 Arrangements with another ombudsman**

- (1) The ombudsman may make an arrangement in writing with the Commonwealth ombudsman, the ombudsman of a State, or 2 or more of them, in relation to the investigation by any 1 or more of them of action that relates to a matter of administration referred to in any of the following paragraphs:
  - (a) action taken by an agency and action taken by a Commonwealth or State department or authority;
  - (b) action taken by an authority or other agency established or administered jointly by the Territory and the Commonwealth, the Territory and 1 or more States or the Territory, the Commonwealth and 1 or more States;
  - (c) action taken by an authority or other agency referred to in paragraph (b) and action taken by—
    - (i) an agency; or
    - (ii) a Commonwealth or State department or authority.
- (2) A reference in subsection (1) to action taken by an agency or other authority includes a reference to action taken by such an agency or authority on behalf of another body.

- (3) The ombudsman may arrange in writing with another ombudsman with whom such an arrangement is in force for the variation or revocation of the arrangement.
- (4) The regulations may make provision in relation to the participation by the ombudsman in the carrying out of an investigation under an arrangement under this section.
- (5) Nothing in this section affects the powers and duties of the ombudsman under any other provision of this Act.
- (6) Subsection (1) does not empower the ombudsman—
  - (a) to exercise any of the powers of the Commonwealth ombudsman or the ombudsman of a State except in accordance with section 32 (3); or
  - (b) to make an arrangement for the exercise by the Commonwealth ombudsman or the ombudsman of a State of a power of the ombudsman except in accordance with an instrument of delegation referred to in section 32 (1).

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

- (1) Where the ombudsman has reason to believe that a person is capable of providing information or producing documents or other records relevant to an investigation under this Act, the ombudsman may, by notice in writing served on the person, require the person, 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 ombudsman, by writing signed by that person or, in the case of a body corporate, by an officer of the body corporate, any such information; or
  - (b) to produce to the ombudsman such documents or other records as are specified in the notice; or

- (c) to provide to the ombudsman any such information and to produce to the ombudsman such documents or other records as are specified in the notice.
- (2) Where the ombudsman 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 ombudsman does not know the identity of the officer, the ombudsman 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 ombudsman in accordance with a requirement under subsection (1) or (2) or an order under section 14 (2), the ombudsman—
- (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 purposes of the investigation to which the documents or other records relate; and
  - (c) during that period shall permit a person who would be entitled to inspect any 1 or more of the documents or other records if they were not in the possession of the ombudsman to inspect at

all reasonable times such of the documents or other records as that person would be so entitled to inspect.

- (4) Where the ombudsman has reason to believe that a person is able to give information relevant to an investigation under this Act, the ombudsman 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.
- (5) Where the Minister certifies in writing that the disclosure to the ombudsman of information concerning a specified matter (including the providing of information in answer to a question) or the disclosure to the ombudsman 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 ombudsman 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 ombudsman.
- (6) Where the Commonwealth Attorney-General certifies in writing that the disclosure to the ombudsman of information concerning a specified matter (including the providing of information in answer to a question) or the disclosure to the ombudsman of the contents of any documents or records would be contrary to the public interest—
- (a) because it would prejudice the security, defence or international relations of the Commonwealth; or

- (b) because it would involve the disclosure of communications between a Commonwealth Minister and a Minister of a State or of a Territory, being a disclosure that would prejudice relations between the Commonwealth Government and the Government of a State or of a Territory, as the case may be; or
- (c) because it would involve the disclosure of deliberations or decisions of the Commonwealth Cabinet or of a committee of the Cabinet;

the ombudsman 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 ombudsman.

- (7) Notwithstanding the provisions of any enactment, 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 enactment, 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 production of the document or record or the answer to the question is not admissible in evidence against the person in proceedings other than—

- (c) an application under section 14 (2); or
- (d) proceedings for an offence against the Criminal Code, part 3.4 (False or misleading statements, information and documents).

- (8) A person is not liable to any penalty under the provisions of any other enactment 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.
- (9) The reference in subsection (1) to an *officer*, in relation to a body corporate, being a body corporate that is not a prescribed authority, includes a reference to a director, secretary, executive officer or employee of the body corporate.

## **12 Unreasonable delay in exercising power**

- (1) Where—
  - (a) under an enactment, a person has a power to do an act or thing in the exercise of a discretion or otherwise;
  - (b) no enactment prescribes a period within which the person is required to do or refuse to do the act or thing;
  - (c) under an enactment, an application may be made to a prescribed tribunal for the review of decisions made in the exercise of that power; and
  - (d) a complaint has been made to the ombudsman concerning a failure to do the act or thing in the exercise of that power;

the ombudsman may, after investigating the complaint, if he or she is of the opinion that there has been unreasonable delay in deciding whether to do the act or thing, give to the complainant a certificate certifying that, in the opinion of the ombudsman, there has been unreasonable delay in deciding whether to do the act or thing.

- (2) Where the ombudsman gives a certificate under subsection (1), the person required or permitted to exercise the power shall, for the purpose of enabling an application to be made under the enactment referred to in subsection (1) (c) to the prescribed tribunal concerned, be taken to have made, on the day on which the certificate is given, a decision in the exercise of that power not to do the act or thing.

- (3) Where—
- (a) under an enactment, a person has a power to do an act or thing in the exercise of a discretion or otherwise; and
  - (b) no enactment prescribes a period within which the person is required to do or refuse to do the act or thing; and
  - (c) under an enactment, an application may be made to a person other than a prescribed tribunal for the review of decisions made in the exercise of that power and an enactment also provides that an application may be made to a prescribed tribunal for the review of decisions made by the lastmentioned person upon an application first referred to in this paragraph; and
  - (d) a complaint has been made to the ombudsman concerning a failure to do the act or thing in the exercise of that power;

the ombudsman may, after investigating the complaint, if he or she is of the opinion that there has been unreasonable delay in deciding whether to do the act or thing, give to the complainant a certificate certifying that, in the opinion of the ombudsman, there has been unreasonable delay in deciding whether to do the act or thing.

- (4) Where the ombudsman gives a certificate under subsection (3), the person required or permitted to exercise the power shall, for the purpose of enabling an application to be made to the person referred to in subsection (3) (c), be taken to have made, on the day on which the certificate is given, a decision in the exercise of that power not to do the act or thing.
- (5) Where a board, committee or other unincorporated body constituted by 2 or more persons is empowered by an enactment to make decisions, subsections (1), (2), (3) and (4) apply as if the board, committee or other body were a person empowered to make those decisions.
- (6) In this section:



*prescribed tribunal* means—

- (a) the administrative appeals tribunal; or
- (b) any other tribunal that is declared by the regulations to be a prescribed tribunal for this section.

**13 Reference of question to the administrative appeals tribunal**

- (1) Where the ombudsman investigates the taking of action under a power conferred by an enactment, the ombudsman may recommend to the principal officer concerned that a specified question relating to the taking of that action or to the exercise of that power be referred to the administrative appeals tribunal for an advisory opinion.
- (2) The ombudsman may make a recommendation under subsection (1)—
  - (a) by giving the recommendation to the principal officer concerned at any time before the completion of the investigation by the ombudsman; or
  - (b) by including the recommendation in a report made by the ombudsman to the agency concerned under section 18 after the completion of the investigation.
- (3) Where the ombudsman makes a recommendation to a principal officer under subsection (1), the principal officer shall refer the question specified in the recommendation to the administrative appeals tribunal and that tribunal may then give an advisory opinion on the question.

**14 Powers of Supreme Court**

- (1) Where a question with respect to the exercise of a power, or the performance of a function, of the ombudsman by or under this Act or any other enactment arises between the ombudsman and the

principal officer of any agency that is affected by that exercise or performance, the ombudsman 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 ombudsman by notice under section 11 to provide information, to produce documents or other records or to attend before the ombudsman to answer questions, the ombudsman 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 ombudsman 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 ombudsman 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.

## **15 Complainant and agency to be informed**

- (1) Where the ombudsman does not, for any reason, investigate, or continue to investigate, action taken by an agency in respect of which a complaint has been made to him or her, the ombudsman shall, as soon as practicable and in such manner as the ombudsman thinks fit, inform—
  - (a) the complainant; and

- (b) except where an arrangement with the agency is in force under subsection (2) relating to actions of that kind, the agency;  
of the decision and of the reasons for the decision.
- (2) The ombudsman may from time to time make with an agency an arrangement in relation to actions in respect of which complaints have been or are made to the ombudsman, being actions taken by the agency that are specified in the arrangement—
- (a) providing for the manner in which, and the period within which, the ombudsman is to inform the agency of a decision not to investigate, or to continue to investigate, such actions and of the reasons for the decision; or
- (b) providing that the ombudsman is not required to inform the agency of a decision not to investigate, or to continue to investigate, such actions and of the reasons for the decision.
- (3) Where the ombudsman completes an investigation of action taken by an agency in respect of which a complaint has been made to him or her, the ombudsman shall, in such manner and at such times as he or she thinks fit, give to the complainant and to the agency particulars of the investigation.
- (4) The ombudsman may, if he or she thinks fit, provide comments or suggestions with respect to any matter relating to or arising out of an investigation by the ombudsman to any agency, body or person other than an agency, body or person to which or to whom he or she has given a report under section 18 relating to that matter or to matters that include that matter.
- (5) Where the ombudsman gives a report to an agency under section 18 containing recommendations with respect to action in respect of which a complaint has been made—
- (a) the ombudsman shall, if action that is, in the opinion of the ombudsman, adequate and appropriate in the circumstances is not taken with respect to the recommendations within a

reasonable time after the recommendations are given to the agency—give to the complainant a copy of the recommendations, together with such comments (if any) as the ombudsman thinks fit; or

- (b) in any other case—the ombudsman may give to the complainant a copy of the recommendations, together with such comments (if any) as he or she thinks fit.

## **16 Power to examine witnesses**

The ombudsman may administer an oath or affirmation to a person required to attend before him or her under section 11 and may examine the person on oath or affirmation.

## **17 Power to enter premises**

- (1) For the purposes of an investigation under this Act, the ombudsman 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 the 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 11 (5) or (6) applies, at a reasonable time of the day arranged with the principal officer of the agency concerned.
- (3) Subsection (2) shall not be taken to restrict the operation of section 11.

## **Division 2.2 Reports**

### **18 Reports by ombudsman**

- (1) Where, after an investigation under this Act into action taken by an agency has been completed, the ombudsman is of the opinion—

- (a) that the action—
  - (i) appears to have been contrary to law; or
  - (ii) was unreasonable, unjust, oppressive or improperly discriminatory; or
  - (iii) was in accordance with a rule of law, a provision of an enactment or a practice but the rule, provision or practice is or may be unreasonable, unjust, oppressive or improperly discriminatory; or
  - (iv) was based either wholly or partly on a mistake of law or of fact; or
  - (v) was otherwise, in all the circumstances, wrong; or
- (b) that, in the course of the taking of the action, a discretionary power had been exercised for an improper purpose or on irrelevant grounds; or
- (c) if the action comprised or included a decision to exercise a discretionary power in a particular manner or to refuse to exercise such a power—
  - (i) that irrelevant considerations were taken into account, or that there was a failure to take relevant considerations into account, in the course of reaching the decision to exercise the power in that manner or to refuse to exercise the power, as the case may be; or
  - (ii) that the complainant in respect of the investigation or some other person should have been given, but was not given, particulars of the reasons for deciding to exercise the power in that manner or to refuse to exercise the power, as the case may be;

this section applies to the decision, recommendation, act or omission constituting that action.

- (2) Where the ombudsman is of the opinion—
-

- (a) that a decision, recommendation, act or omission to which this section applies should be referred to the appropriate authority for further consideration; or
- (b) that some particular action could and should be taken to rectify, mitigate or alter the effects of, a decision, recommendation, act or omission to which this section applies; or
- (c) that a decision to which this section applies should be cancelled or varied; or
- (d) that a rule of law, provision of an enactment or practice on which a decision, recommendation, act or omission to which this section applies was based should be altered; or
- (e) that reasons should have been, but were not, given for a decision to which this section applies; or
- (f) that any other thing should be done in relation to a decision, recommendation, act or omission to which this section applies;

the ombudsman shall report accordingly to the agency concerned.

- (3) The ombudsman—
  - (a) shall include in a report under subsection (2) the reasons for the opinions specified in the report; and
  - (b) may also include in such a report any recommendations he or she thinks fit to make.
- (4) The ombudsman may request the agency to which the report is given to give to him or her, within a specified time, particulars of any action that it proposes to take with respect to the matters and recommendations included in the report.
- (5) Where the ombudsman reports under subsection (2) to an agency, the agency may give to the ombudsman such comments concerning the report as it wishes to make.

- (6) The ombudsman shall give a copy of a report made under subsection (2) to the responsible Minister of the agency concerned.

## **19 Reports to Chief Minister**

- (1) Where action that is, in the opinion of the ombudsman, adequate and appropriate in the circumstances is not taken with respect to the matters and recommendations included in a report to an agency under section 18 within a reasonable time after the ombudsman gave the report to the agency, the ombudsman may inform the Chief Minister accordingly in writing.
- (2) Where the ombudsman informs the Chief Minister under subsection (1) in relation to a report, the ombudsman shall give to the Chief Minister—
- (a) if a copy of the report has not previously been given to the Chief Minister under section 18 (6)—a copy of the report; and
  - (b) if the agency to which the report was made has given comments concerning the report to the ombudsman—a copy of those comments.
- (3) In considering whether to give information in relation to a report to the Chief Minister under subsection (1), the ombudsman shall have regard to any comments given to him or her by the agency to which the report was made.

## **20 Special reports to Legislative Assembly**

Where the ombudsman has, in accordance with section 19 (1), given information to the Chief Minister in relation to a report concerning an investigation made by the ombudsman, the ombudsman may also give to the Speaker, for presentation to the Legislative Assembly, copies of a report prepared by the ombudsman concerning the investigation, being a report that sets out a copy of any comments given to the ombudsman under section 18 (5) by the agency concerned.

**21 Reports to the Legislative Assembly**

- (3) The ombudsman may, from time to time, submit to the Minister for presentation to the Legislative Assembly—
- (a) a report of the operations of the ombudsman during a part of a year; or
  - (b) a report in respect of any matter relating to, or arising in connection with, the exercise of the powers, or the performance of the functions, of the ombudsman under this Act;

but nothing in this section affects the powers and duties of the ombudsman under sections 18, 19 and 20.

- (4) Where the ombudsman submits a report to the Minister under subsection (3), the Minister shall cause the report to be laid before the Legislative Assembly within 15 sitting days of the Legislative Assembly after its receipt by the Minister.



## **Part 3**                      **Conditions of service, and staff, of ombudsman**

### **Division 3.1**              **Ombudsman**

#### **22**              **Appointment of ombudsman**

- (1) The ombudsman shall be appointed by the Executive.
- (2) The ombudsman holds office on such terms and conditions (if any) in respect to matters not provided for in this Act as are prescribed.

#### **23**              **Tenure of office**

- (1) Subject to this Act, a person appointed under section 22 holds office for such period, not exceeding 7 years, as is specified in the instrument of appointment, but is eligible for reappointment.
- (2) A person who has attained the age of 65 years shall not be appointed as ombudsman, and a person shall not be appointed as ombudsman for a period that extends beyond the day on which the person will attain the age of 65 years.

#### **24**              **Salary and allowances**

- (1) The ombudsman is entitled to such remuneration, allowances and other entitlements—
  - (a) as are determined by the remuneration tribunal in respect of the ombudsman; or
  - (b) if there is no such determination—as are determined by the Chief Minister in respect of the ombudsman by an interim determination under the *Remuneration Tribunal Act 1995*.
- (4) This section does not apply to a person holding the office of ombudsman under—

- (a) the *A.C.T. Self-Government (Consequential Provisions) Act 1988*, section 28 (Cwlth); or
- (b) an arrangement between the Territory and the Commonwealth.

## **25 Leave of absence**

- (1) The Minister may grant leave of absence to the ombudsman upon such terms and conditions as to remuneration or otherwise as the Minister determines.
- (2) Where—
  - (a) the Commonwealth ombudsman holds the office of ombudsman; and
  - (b) the Commonwealth ombudsman is granted leave of absence under the *Ombudsman Act 1976* (Cwlth);

the ombudsman shall be taken to have been granted leave of absence for the same period under subsection (1).

## **26 Resignation**

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

## **27 Retirement**

The Executive may, with the consent of the ombudsman, retire the ombudsman on the ground of physical or mental incapacity.

## **28 Suspension and removal of ombudsman**

- (1) The Executive may remove the ombudsman 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 ombudsman from office on the ground of misbehaviour or physical or mental incapacity.

- (3) Where the Executive suspends the ombudsman 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 ombudsman should be removed from office and, if the Legislative Assembly so passes such a resolution, the Executive shall remove the ombudsman 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 ombudsman 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 ombudsman from office.
- (7) If the ombudsman is absent from duty, except on leave granted by the Minister, for 14 consecutive days or for 28 days in any 12 months, the Executive may remove the ombudsman from office.
- (8) The ombudsman shall not be removed or suspended from office except as provided by this section.
- (9) The suspension of the ombudsman from office does not affect any entitlement of the ombudsman to be paid remuneration and allowances.
- (10) This section does not apply if the Commonwealth ombudsman holds the office of ombudsman.

## 29 Acting appointments

- (1) The Executive may appoint a person to act as ombudsman—
- (a) during a vacancy in the office of ombudsman, whether or not an appointment has previously been made to that office; or
  - (b) during any period, or during all periods, when the ombudsman is or is expected to be absent from duty or from Australia or is, for any reason, unable to perform the duties of the office;
- but a person appointed to act during a vacancy shall not continue to act for more than 12 months.
- (2) Subsection (1) does not apply if—
- (a) the Commonwealth ombudsman holds the office of ombudsman; and
  - (b) a person is appointed under the *Ombudsman Act 1976* (Cwlth) to act in the office of Commonwealth ombudsman during an absence or unavailability of the Commonwealth ombudsman;
- but a person so appointed may act in the office of ombudsman under this Act during the absence or unavailability.
- (3) Anything done by or in relation to a person purporting to act in the office of ombudsman is not invalid merely because—
- (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.

## **Division 3.2            Staff**

### **30            Staff**

The staff required for the purposes of this Act shall be—

- (a) public servants; or
- (b) if the Commonwealth ombudsman holds the office of ombudsman—persons referred to in paragraph (a) and persons appointed or employed under the *Public Service Act 1999* (Cwlth).

## **Part 4                            Miscellaneous**

### **31            Ombudsman not to be sued**

- (1) Subject to section 33, neither the ombudsman nor a person acting under his or her direction or authority is liable to an action, suit or proceeding in relation to an act done or omitted to be done in good faith in exercise or purported exercise of any power or authority conferred by this Act.
- (2) A reference in subsection (1) to the ombudsman includes a reference to a delegate of the ombudsman.

### **32            Delegation**

- (1) The ombudsman may, by signed instrument, delegate to a person—
  - (a) all or any of his or her powers under this Act, other than powers under sections 18, 19, 20 and 21; and
  - (b) any power exercisable by him or her under an instrument of delegation referred to in subsection (3) the subdelegation of which is permitted by the relevant law of the Commonwealth or the State or by the instrument of delegation.

- (2) A delegate shall, upon request by a person affected by the exercise of any powers delegated to him or her, produce the instrument of delegation or a copy of the instrument for inspection by the person.
- (3) Where—
  - (a) in accordance with a law of the Commonwealth or a State, the Commonwealth ombudsman or the ombudsman of the State delegates to the ombudsman, either generally or as otherwise provided by the instrument of delegation, any of his or her powers under such a law; and
  - (b) the Minister consents in writing to the exercise by the ombudsman in accordance with the instrument of delegation of a power so delegated;

the ombudsman is authorised to exercise that power accordingly.

**U 33 Officers to observe confidentiality**

- (1) In this section:  
*officer* means—
  - (a) the ombudsman; or
  - (b) a person who is a member of the staff referred to in section 30; or
  - (c) a person, not being a person referred to in paragraph (b), to whom the ombudsman has delegated any of his or her powers under section 32 or who is an authorised person.
- (2) Subject to this section, an officer shall not, either directly or indirectly, and either while the person is, or after ceasing to be, an officer, make a record of, or divulge or communicate to any person, any information acquired because of the person being an officer, being information that was disclosed or obtained under the provisions of this Act, including information provided by the Commonwealth ombudsman or the ombudsman of a State or

information disclosed to or obtained by the ombudsman in the exercise of a power of the Commonwealth ombudsman or of the ombudsman of a State delegated to the ombudsman as provided by section 32 (3).

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

- (3) Subsection (2) does not prevent an officer—
- (a) from making a record of, or divulging or communicating to any person, information acquired in the performance of the officer's duties as an officer for purposes connected with the exercise of the powers and the performance of the functions of the ombudsman under this Act; or
  - (b) from divulging or communicating information to a person—
    - (i) if the information was provided by an officer of an agency in the performance of the person's duties as such an officer—with the consent of the principal officer of the agency or of the responsible Minister of the agency; or
    - (ii) if the information was provided by a person otherwise than as set out in subparagraph (i)—with the consent of the person who provided the information.
- (4) Subject to subsection (5), subsection (2) does not prevent the ombudsman from disclosing, in a report or information presented or provided under the *Annual Reports (Government Agencies) Act 1995*, section 8, such matters as, in his or her opinion, ought to be disclosed in the course of setting out the grounds for the conclusions and recommendations contained in the report or information.
- (5) Where the Minister or the Commonwealth Attorney-General gives to the ombudsman a certificate in writing certifying that—
- (a) the disclosure of information or documents concerning a matter; or

(b) the disclosure of a document;

would, for a reason specified in the certificate, being a reason referred to in section 11 (5) or (6), as the case may be, be contrary to the public interest, an officer shall not, either directly or indirectly and either while the person is, or after ceasing to be, an officer, except as provided in subsection (6)—

(c) divulge or communicate to any person any information acquired under the provisions of this Act concerning such a matter or such a document; or

(d) divulge or communicate any of the contents of such a document to any person; or

(e) give such a document, or a copy of, or an extract from, such a document, to any person.

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

(6) Subsection (5) does not prevent an officer, in the performance of his or her duties as an officer—

(a) from divulging or communicating information referred to in that subsection to another officer; or

(b) from giving any of the contents of, a copy of or an extract from a document referred to in that subsection to another officer; or

(c) from returning such a document that has been produced to the officer to the person lawfully entitled to the custody of the document.

(7) Subject to subsection (8), where the ombudsman proposes, for purposes connected with the exercise of powers or performance of functions under this Act, to provide information, or to send a document, or a copy of or extract from a document, to the Commonwealth ombudsman or the ombudsman of a State, the ombudsman shall satisfy himself or herself that a law of the



Commonwealth or the State makes provision corresponding to the provision made by this section with respect to the confidentiality of information acquired by the Commonwealth ombudsman or the ombudsman of the State, as the case may be.

- (8) Subsection (7) does not apply in relation to any information or document obtained by the ombudsman in the exercise of a power of the Commonwealth ombudsman or the ombudsman of the State that the ombudsman was authorised to exercise under section 32 (3).
- (9) A person who is or has been an officer is not compellable, in any proceedings before a court or before a person authorised by a law, or by consent of parties, to hear, receive and examine evidence, to disclose any information acquired because of the person's being or having been an officer, being information that was disclosed or obtained under the provisions of this Act.

### **34 Disclosure of information by ombudsman**

- (1) Nothing in this Act precludes the ombudsman from disclosing information or making a statement to any person or to the public or a section of the public with respect to the performance of the functions of, or an investigation by, the ombudsman under this Act if, in the opinion of the ombudsman, it is in the interests of any agency or person, or is otherwise in the public interest, so to disclose that information or to make that statement.
- (2) The ombudsman shall not disclose information or make a statement under subsection (1) with respect to a particular investigation where the disclosure of that information, or the making of that statement, is likely to interfere with the carrying out of that or any other investigation or the making of a report under this Act.
- (3) The ombudsman shall not, in disclosing information or making a statement under subsection (1) with respect to a particular investigation—

- (a) set out opinions that are, either expressly or impliedly, critical of an agency or person unless the ombudsman has complied with section 9 (6) in relation to the investigation; or
  - (b) disclose the name of a complainant or any other matter that would enable a complainant to be identified unless it is fair and reasonable in all the circumstances to do so.
- (4) This section has effect notwithstanding sections 9 (3) and 33 (other than section 33 (5)).

**35 Failing to comply with requirement under Act**

A person shall not refuse or fail, without reasonable excuse—

- (a) to attend before the ombudsman; or
- (b) to be sworn or make an affirmation; or
- (c) to provide information; or
- (d) to answer a question or produce a document or record;

when so required under this Act.

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

**36 Protection from civil actions**

Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person as a result of any of the following acts done in good faith:

- (a) the making of a complaint to the ombudsman under this Act;
- (b) the making of a statement to, or the giving of a document or information to, a person who is an officer within the meaning of section 33, for this Act, whether or not the statement was made, or the document or information was given, under a requirement under section 11 or an order under section 14.

**37 Determination of fees and witness expenses etc**

- (1) The Minister may, in writing, determine—
  - (a) fees and expenses payable to witnesses appearing before the ombudsman; or
  - (b) matters connected with those fees and expenses.
- (2) A determination is a notifiable instrument.

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

**38 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.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
cl = clause	pres = present
def = definition	prev = previous
dict = dictionary	(prev...) = previously
disallowed = disallowed by the Legislative Assembly	pt = part
div = division	r = rule/subrule
exp = expires/expired	reg = regulation/subregulation
Gaz = Gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	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

This Act was originally a Commonwealth ordinance—the *Ombudsman Ordinance 1989* (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on 11 May 1989 (self-government day).

#### Legislation before becoming Territory enactment

##### **Ombudsman Act 1989 No 45**

notified 10 May 1989 (Gaz 1989 No S160)

commenced 11 May 1989 (s 2 and Gaz 1989 No S164)

as amended by

##### **Self-Government (Consequential Amendments) Ordinance 1989 No 38 sch 1**

notified 10 May 1989 (Gaz 1989 No S160)

s 1, s 2 commenced 10 May 1989 (s 2 (1))

sch 1 commenced 11 May 1989 (s 2 (2) and Gaz 1989 No S164)

#### Legislation after becoming Territory enactment

##### **Royal Commissions and Inquiries (Consequential Provisions) Act 1991 No 3 sch**

notified 1 March 1991 (Gaz 1991 No S7)

s 1, s 2 commenced 1 March 1991 (s 2 (1))

sch commenced 1 May 1991 (s 2 (2))

##### **Ombudsman (Amendment) Act 1993 No 38**

notified 29 June 1993 (Gaz 1993 No S111)

commenced 1 July 1993 (s 2 and Gaz 1993 No S129)

## Endnotes

3 Legislation history

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**Ombudsman (Amendment) Act (No 2) 1993 No 97**

notified 24 December 1993 (Gaz 1993 No S267)  
s 1, s 2 commenced 24 December 1993 (s 2 (1))  
remainder (ss 3-6) commenced 24 June 1994 (s 2 (2))

**Judicial Commissions (Consequential Amendments) Act 1994  
No 10 s 8**

notified 14 March 1994 (Gaz 1994 No S44)  
commenced 14 March 1994 (s 2))

**Statute Law Revision Act 1994 No 26 sch**

notified 31 May 1994 (Gaz 1994 No S93)  
commenced 31 May 1994 (s 2))

**Public Sector Management (Consequential and Transitional  
Provisions) Act 1994 No 38 sch 1 pt 63**

notified 30 June 1994 (Gaz 1994 No S121)  
s 1, s 2 commenced 30 June 1994 (s 2 (1))  
sch 1 pt 63 commenced 1 July 1994 (Gaz 1994 No S142)

**Administrative Appeals (Consequential Amendments) Act 1994  
No 60 sch 1**

notified 11 October 1994 (Gaz 1994 No S197)  
s 1, s 2 commenced 11 October 1994 (s 2 (1))  
sch 1 commenced 14 November 1994 (s 2 (2) and Gaz 1994 No S250)

**Statute Law Revision (Penalties) Act 1994 No 81 sch**

notified 29 November 1994 (Gaz 1994 No S253)  
s 1, s 2 commenced 29 November 1994 (s 2 (1))  
sch commenced 29 November 1994 (Gaz 1994 No S269)

**Public Interest Disclosure Act 1994 No 108 s 39**

notified 22 December 1994 (Gaz 1994 No S289)  
s 1, s 2 commenced 22 December 1994 (s 2 (1))  
s 39 commenced 21 June 1995 (Gaz 1995 No S126)

**Electricity and Water (Corporatisation) (Consequential Amendments)  
Act 1995 No 7 sch**

notified 28 June 1995 (Gaz 1995 No S148)  
commenced 1 July 1995 (s 2)

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

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

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

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

**Remuneration Tribunal (Consequential Amendments) Act 1997 No 41 sch 1 (as am by Act 2002 No 49 amdt 3.222)**

notified 19 September 1997 (Gaz 1997 No S264)  
commenced 24 September 1997 (s 2 as am by Act 2002 No 49 amdt 3.222)

**Community and Health Services Complaints (Amendment) Act 1997 No 50 sch 2**

notified 19 September 1997 (Gaz 1997 No S264)  
ss 1-3 commenced 19 September 1997 (s 2 (1))  
sch 2 commenced 3 October 1997 (Gaz 1997 No S288)

**Electricity (National Scheme) (Consequential Amendments) Act 1997 No 80 sch**

notified 25 November 1997 (Gaz 1997 No S360)  
commenced 13 December 1998 (s 2 and Gaz 1998 No S209)

**Utilities (Consequential Provisions) Act 2000 No 66 sch 1 pt 11**

notified 20 December 2000 (Gaz 2000 No S68)  
s 1, s 2 commenced 20 December 2000 (IA s 10B)  
sch 1 pt 11 commenced 1 January 2001 (Gaz 2000 No S69)

**Subordinate Laws Amendment Act 2000 No 71 sch 2**

notified 21 December 2000 (Gaz 2000 No S69)  
s 1, s 2 commenced 21 December 2000 (IA s 10B)  
sch 2 commenced 21 June 2001 (IA s 10C)

**Legislation (Consequential Amendments) Act 2001 No 44 pt 269**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 269 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

## Endnotes

### 4 Amendment history

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#### **Statute Law Amendment Act 2002 (No 2) No 49 amdt 3.222**

notified LR 20 December 2002

s 1, s 2 taken to have commenced 7 October 1994 (LA s 75 (2))

amdt 3.222 commenced 24 September 1997 (s 2 (3))

*Note* This Act only amends the Remuneration Tribunal (Consequential Amendments) Act 1997 No 41.

#### **Annual Reports Legislation Amendment Act 2004 A2004-9 sch 1 pt 1.25**

notified LR 19 March 2004

s 1, s 2 commenced 19 March 2004 (LA s 75 (1))

[sch 1 pt 1.25 awaiting commencement \(s 2 and see Annual Reports \(Government Agencies\) Act 2004 A2004-8 s 2\)](#)

*Note* default commencement under LA s 79: 19 September 2004

#### **Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Act 2004 A2004-15 sch 2 pt 2.61**

notified LR 26 March 2004

s 1, s 2 commenced 26 March 2004 (LA s 75 (1))

sch 2 pt 2.61 commenced 9 April 2004 (s 2 (1))

## 4 Amendment history

title am 1996 No 17 s 4

### **Commencement**

s 2 om 2001 No 44 amdt 1.3062

### **Interpretation for Act**

s 3 am 1994 No 38 sch 1  
def **agency** am 1994 No 38 sch 1  
def **commissioner** ins 1993 No 38 s 4  
om 1996 No 17 s 5  
def **commissioner for health complaints** ins 1993 No 97 s 4  
om 1996 No 17 s 5  
def **department** om 1994 No 38 sch 1  
def **enactment** am 1997 No 80 sch  
def **officer** am 1994 No 38 sch 1  
def **ombudsman** om 1996 No 17 s 5  
def **prescribed authority** am 1991 No 3 sch; 1993 No 38 s 4; 1993 No 97 s 4; 1995 No 7 sch; 1996 No 17 s 5; 1997 No 5 sch 2  
def **principal officer** am 1994 No 38 sch 1; 1996 No 17 s 5; 1997 No 50 sch 2



**Application**

s 3A ins 1997 No 80 sch

**Establishment of office of ombudsman**

s 4 am 1994 No 108 s 39; 1996 No 17 s 6

**Functions**

s 5 am 1991 No 3 sch; 1994 No 38 s 5; 1993 No 97 s 5; 1994 No 10 s 8; 1994 No 38 sch 1; 1996 No 17 s 7; 1997 No 50 sch 2; 2000 No 66 sch 1; 2000 No 71 amdt 2.2; 2001 No 44 amdt 1.3063; R5 LA

**Discretion to refer complaint to another statutory office-holder**

s 6A ins 1996 No 17 s 8

**Mandatory referral**s 6B (prev s 37A) ins 1993 No 38 s 6  
renum and reloc 1996 No 17 s 10  
sub 1993 No 97 s 6  
am 1996 No 17 s 9; 1997 No 50 sch 2  
sub 2000 No 66 sch 1**Complaints**

s 7 am 1994 No 26 sch

**Investigations**

s 9 am 1994 No 38 sch 1

**Power to obtain information and documents**

s 11 am A2004-15 amdt 2.133

**Unreasonable delay in exercising power**

s 12 am 1994 No 60 sch 1

**Reference of question to the Administrative Appeals Tribunal**

s 13 am 1994 No 60 sch 1

**Reports to the Legislative Assembly**

s 21 hdg am 1995 No 25 note

s 21 am 1995 No 25 sch

**Salary and allowances**

s 24 am 1997 No 41 sch 1

**Officers to observe confidentiality**s 33 am 1994 No 81 sch; 1995 No 25 sch; A2004-9 amdt 1.33**Failing to comply with requirement under Act**

s 35 hdg sub A2004-15 amdt 2.134

s 35 am 1994 No 81 sch; A2004-15 amdt 2.135, amdt 2.136

**Referral to Commissioner**

s 37A reloc and renum as s 6B 1996 No 17 s 10

## Endnotes

### 5 Earlier republications

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#### **Determination of fees and witness expenses etc**

s 37 sub 2001 No 44 amdt 1.3064

#### **Regulations**

s 38 am 1989 No 38 sch  
sub 2001 No 44 amdt 1.3064

## 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.

<b>Republication No</b>	<b>Amendments to</b>	<b>Republication date</b>
1	Act 1991 No 3	31 August 1991
2	Act 1993 No 38	31 August 1993
3	Act 1995 No 7	31 January 1996
4	Act 1997 No 80	28 February 1999
5	Act 2001 No 44	16 November 2001
5 (RI)	A2001-44 ‡	13 February 2003

‡ includes retrospective amendments by A2002-49

## 6 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

**Annual Reports Legislation Amendment Act 2004**  
**A2004-9 sch 1 pt 1.25**

## Part 1.25 Ombudsman Act 1989

### [1.33] Section 33 (4)

*substitute*

- (4) Subject to subsection (5), subsection (2) does not prevent the ombudsman from disclosing, in a report prepared under the *Annual Reports (Government Agencies) Act 2004*, matters that, in the ombudsman's opinion, should be disclosed in the course of setting out the grounds for the conclusions and recommendations contained in the report.

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