



Australian Capital Territory

# **Ombudsman Act 1989**

**A1989-45**

**Republication No 20**

**Effective: 1 July 2011 – 11 December 2011**

Republication date: 1 July 2011

Last amendment made by A2011-22

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 1 July 2011. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 1 July 2011.

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, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)). For more information, see the home page for this law on the register.

### 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 the *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

# Ombudsman Act 1989

## Contents

---

	Page
<b>Part 1</b>	<b>Preliminary</b>
1	Name of Act 2
2	Dictionary 2
2A	Notes 2
3	Entities not necessarily prescribed authorities 3
3A	Conduct by person taken as conduct by administrative unit 4
3B	Conduct by person taken as conduct by prescribed authority 5
3C	Application of Act—National Electricity (ACT) Law 6

---

R20  
01/07/11

Ombudsman Act 1989  
Effective: 01/07/11-11/12/11

contents 1

	Page
<b>Part 2</b>	<b>Establishment, functions, powers and duties of ombudsman</b>
<b>Division 2.1</b>	<b>Establishment and functions</b>
4	Establishment of office of ombudsman 7
4A	Functions—generally 7
5	Functions—investigating complaints under Act 7
6	Discretion not to investigate certain complaints 10
6A	Discretion to refer complaint to another statutory office-holder 13
6B	Mandatory referral of complaints to other entities 14
7	Complaints 14
8	Preliminary inquiries 16
9	Investigations 16
10	Arrangements with another ombudsman 19
11	Power to obtain information and documents 20
12	Unreasonable delay in exercising power 24
13	Referring questions to ACAT 26
14	Powers of Supreme Court 27
15	Complainant and agency to be informed 28
16	Power to examine witnesses 29
17	Power to enter premises 29
<b>Division 2.2</b>	<b>Monitoring police compliance with Crimes (Child Sex Offenders) Act 2005</b>
17A	What is the <i>child sex offenders register</i> ? 30
17B	Police to give ombudsman reasonable assistance 30
17C	Power to enter police premises 31
<b>Division 2.3</b>	<b>Reports</b>
18	Reports by ombudsman 31
19	Reports to Chief Minister 33
20	Special reports to Legislative Assembly 34
20A	Reports on police compliance with Crimes (Child Sex Offenders) Act 2005 34
21	Reports to the Legislative Assembly 35

---

	Page
<b>Part 3</b>	<b>Conditions of service, and staff, of ombudsman</b>
<b>Division 3.1</b>	<b>Ombudsman</b>
22	Appointment of ombudsman 36
23	Tenure of office 36
24	Salary and allowances 36
25	Leave of absence 37
27	Retirement 37
28	Suspension and removal of ombudsman 38
29	Acting appointment 39
<b>Division 3.2</b>	<b>Staff</b>
30	Staff 39
<b>Part 4</b>	<b>Miscellaneous</b>
31	Ombudsman not to be sued 40
32	Delegation 40
33	Officers to observe confidentiality 41
34	Disclosure of information by ombudsman 44
35	Failing to comply with requirement under Act 45
36	Protection from civil actions 45
37	Determination of fees and witness expenses etc 45
38	Regulation-making power 46
<b>Dictionary</b>	<b>47</b>
<b>Endnotes</b>	
1	About the endnotes 51
2	Abbreviation key 51
3	Legislation history 52
4	Amendment history 57
5	Earlier republications 61





Australian Capital Territory

## Ombudsman Act 1989

---

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

---

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Ombudsman Act 1989*.

### 2 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*National Electricity (ACT) Law*—see the *Electricity (National Scheme) Act 1997*, section 5 (Application in ACT of National Electricity Law).' means that the term 'National electricity (ACT) Law' is defined in that section and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

### 2A Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.



### 3 Entities not necessarily prescribed authorities

- (1) For this Act, an unincorporated body established under an enactment for the purpose of assisting, or exercising functions connected with, a prescribed authority is not taken to be a prescribed authority but action taken by the body, or by a person for the body, is taken to be action by the prescribed authority.

#### Examples of bodies

A board, council and committee

*Note 1* **Body** includes any group of people joined together for a common purpose (see Legislation Act, dict, pt 1).

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) For this Act, a person is not taken to be a prescribed authority only because the person holds or performs the duties of a specified office, but any action taken by or for the person is taken to have been taken by the agency or body concerned.

*Note* **Agency** includes a prescribed authority (see dictionary).

- (3) In this section:

**specified office** means—

- (a) an office the duties of which the person performs as employment duties as an officer of an agency; or
- (b) an office of a member of a body; or
- (c) an office established by an enactment for a prescribed authority; or
- (d) an office prescribed by regulation.

**3A Conduct by person taken as conduct by administrative unit**

- (1) For this Act, an action taken by an officer of an administrative unit is taken as an action by the unit if the officer takes, or purports to take, the action—
  - (a) because of being an officer of the unit, whether or not—
    - (i) the action is taken in connection with, or as incidental to, the exercise of the functions of the unit; or
    - (ii) the taking of the action is within the duties of the officer; or
  - (b) in the exercise of functions given to the officer by an enactment.
- (2) Despite subsection (1), if a regulation provides that a person holding, or performing the duties of, an office established by an enactment is not a prescribed authority for this Act, a regulation may also provide that action taken by an officer of an administrative unit for the duties of the office, must, for this Act, be taken not to be action taken by the administrative unit.
- (3) For this Act, an action taken by a person, who is not an officer of an agency, in the exercise of a function that the person is authorised to exercise because the person holds an appointment made, or because of authority given, by the Executive, a Minister or a director-general of an administrative unit is taken to be action by the administrative unit responsible for dealing with the matter in connection with which the action is taken if the person does not exercise the function because the person—
  - (a) holds, or performs the duties of, an office established under an enactment; or
  - (b) is a judge of a court created by the Commonwealth Parliament or of a court of a State; or

(c) is a Commonwealth or State magistrate.

*Note* **State** includes the Northern Territory (see Legislation Act, dictionary part 1).

- (4) Despite subsection (3), if a person is authorised to exercise a function because the person holds an appointment made, or because of authority given, by the Executive, a Minister or a director-general of an administrative unit otherwise than under an enactment, a regulation may provide that action taken by the person in the exercise of the function must not be taken, for this Act, by the administrative unit responsible for dealing with the matter in connection with which the action is taken.

### **3B Conduct by person taken as conduct by prescribed authority**

For this Act, an action taken by an officer of a prescribed authority is taken as an action by the authority if the officer takes, or purports to take, the action—

- (a) because of being an officer of the authority, whether or not—
- (i) the action is taken in connection with, or as incidental to, the exercise of the functions of the authority; or
  - (ii) the taking of the action is within the duties of the officer; or
- (b) in the exercise of functions given to the officer by an enactment.

**3C Application of Act—National Electricity (ACT) Law**

(1) This Act does not apply to an agency in relation to functions exercised by it as an agent for AER or NEMMCO under the national electricity rules.

(2) In this section:

*AER* means the Australian Energy Regulator under the National Electricity (ACT) Law.

*national electricity rules* means the national electricity rules approved under the National Electricity (ACT) Law, section 6.

*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**

The office of the ombudsman is established.

#### **4A**                    **Functions—generally**

The functions of the ombudsman are—

- (a) to investigate complaints made under this Act; and
- (b) to exercise other functions given to the ombudsman under this Act; and
- (c) to exercise other functions given to the ombudsman under the *Public Interest Disclosure Act 1994*; and
- (d) to monitor compliance with the *Crimes (Child Sex Offenders) Act 2005*, chapter 4 (Child sex offenders register) by the chief police officer and other people authorised by the chief police officer to have access to the child sex offenders register.

#### **5**                      **Functions—investigating complaints under Act**

- (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 tribunal, a member of a tribunal, or a member of the staff of a tribunal, in the exercise of the tribunal's deliberative functions; or
  - (e) action taken by a royal commission under the *Royal Commissions Act 1991*; or
  - (f) action taken by a board of inquiry under the *Inquiries Act 1991*; or
  - (g) action taken by the commissioner for the environment; or

- (h) action taken by the Territory or a territory authority for the management of the environment (not including action taken under the *Utilities Act 2000*, part 14 (Streetlighting and stormwater)); or
- (i) action taken by the human rights commission, a member of the commission, or a member of the staff of the commission, in the exercise of the commission's deliberative functions; or
- (j) action taken by a judicial commission under the *Judicial Commissions Act 1994*; or
- (k) 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
- (l) 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
- (m) action taken, or not taken, under the *Legislation Act 2001*, part 5.2 (Requirements for regulatory impact statements); or
- (n) action taken by an agency—
  - (i) for the purpose or in the course of providing, or purporting to provide, a disability service, a health service, a service for children and young people or a service for older people; or
  - (ii) in refusing to provide a disability service, a health service, a service for children and young people or a service for older people.

- (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:
  - disability service*—see the *Human Rights Commission Act 2005*, section 8.
  - health service*—see the *Human Rights Commission Act 2005*, section 7.
  - service for children and young people*—see the *Human Rights Commission Act 2005*, section 8A.
  - service for older people*—see the *Human Rights Commission Act 2005*, section 9.

## **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) This section applies if—
- (a) the ombudsman forms the opinion that the action to which a complaint under this Act relates is such that—
    - (i) a complaint about 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
    - (ii) the matter could be more conveniently or effectively dealt with by the statutory office-holder; and
    - (iii) it would otherwise be appropriate in all the circumstances for the complaint to be referred to the statutory office-holder; and
  - (b) the statutory office-holder consents to the reference.
- (2) The ombudsman may decide not to investigate, or further investigate, the action.
- (3) If the ombudsman decides not to investigate, or further investigate, the action, the ombudsman must refer the complaint, together with any relevant documents or information in the ombudsman's possession or control, to the statutory office-holder.

(4) 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 of complaints to other entities**

- (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 human rights commission;
  - (c) the public advocate.
- (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 director-general 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 director-general—the director-general 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 ACAT; or
  - (b) any other tribunal prescribed by regulation.

### **13 Referring questions to ACAT**

- (1) This section applies if the ombudsman investigates the taking of action under a power under an enactment.
- (2) The ombudsman may recommend to the relevant principal officer that a stated question in relation to the taking of action or exercise of power be referred to the ACAT for an advisory opinion.
- (3) The ombudsman may make the recommendation—
  - (a) by giving the recommendation to the principal officer 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 relevant agency under section 18 after the completion of the investigation.
- (4) If the ombudsman makes a recommendation to the principal officer, the principal officer must refer the question stated in the recommendation to the ACAT.
- (5) The ACAT may give the principal officer an advisory opinion on the stated 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**                      **Monitoring police compliance with  
Crimes (Child Sex Offenders) Act  
2005**

**17A**            **What is the *child sex offenders register*?**

In this Act:

*child sex offenders register*—see the *Crimes (Child Sex Offenders) Act 2005*, section 117.

**17B**            **Police to give ombudsman reasonable assistance**

The chief police officer must ensure that police officers and other people authorised by the chief police officer to have access to the child sex offenders register give the ombudsman any assistance that the ombudsman reasonably requires to enable the ombudsman to exercise the ombudsman's functions in relation to the *Crimes (Child Sex Offenders) Act 2005*, chapter 4 (Child sex offenders register).

### **17C Power to enter police premises**

- (1) The ombudsman or a police officer may, after notifying the chief police officer of the intended entry, enter, at any time, any premises occupied by the Australian Federal Police where the ombudsman reasonably believes there are documents that contain, or relate to, the child sex offenders register or that are relevant to the ombudsman's functions in relation to the *Crimes (Child Sex Offenders) Act 2005*, chapter 4 (Child sex offenders register).
- (2) The ombudsman or a police officer may inspect or copy any document found at any premises entered under this section and do anything that it is necessary or convenient to do to enable an inspection to be carried out under this section.

## **Division 2.3 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.

## **20A Reports on police compliance with Crimes (Child Sex Offenders) Act 2005**

- (1) The ombudsman may, at any time, give the Minister administering the *Crimes (Child Sex Offenders) Act 2005* a written report on—
  - (a) the results of any inspections carried out under section 17C (Power to enter police premises); and



- (b) compliance with the *Crimes (Child Sex Offenders) Act 2005*, chapter 4 (Child sex offenders register) in the period to which the report relates by the chief police officer and other people authorised by the chief police officer to have access to the child sex offenders register.
- (2) If the Minister administering the *Crimes (Child Sex Offenders) Act 2005* asks the ombudsman for a report under this section, the ombudsman must give the Minister a report under this section as soon as practicable after receiving the request.
- (3) The ombudsman must give a copy of any report under this section to the chief police officer.

## **21 Reports to the Legislative Assembly**

- (1) 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.
- (2) Where the ombudsman submits a report to the Minister under subsection (1), the Minister must present the report to 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 Executive must appoint a person as ombudsman.

*Note 1* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

- (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 part, the ombudsman must not be appointed for more than 7 years.

*Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

- (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).

## **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.

*Note* The ombudsman's appointment also ends if the ombudsman resigns (see Legislation Act, s 210).

- (2) The Executive may suspend the ombudsman from office on the ground of misbehaviour or physical or mental incapacity.
- (3) The Minister must present a statement of the grounds of the suspension to the Legislative Assembly not later than 7 sitting days after the day the ombudsman is suspended from office.
- (4) If a statement is presented to the Legislative Assembly under subsection (3)—
- (a) the Assembly may, not later than 15 sitting days after the day the statement is presented to the Assembly, by resolution, declare that the ombudsman should be removed from office; and
  - (b) if the Assembly makes a declaration under paragraph (a)—the Executive must 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) The Executive must remove the ombudsman from office if the ombudsman becomes bankrupt or personally insolvent.

*Note* **Bankrupt or personally insolvent**—see the Legislation Act, dictionary, pt 1.

- (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 appointment**

If the Commonwealth ombudsman holds the office of ombudsman, a person appointed under the *Ombudsman Act 1976* (Cwlth) to act in the office of Commonwealth ombudsman during an absence or unavailability of the Commonwealth ombudsman may act in the office of ombudsman under this Act during the absence or unavailability.

## **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**

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.

### **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.

**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 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.
- (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*.

---

## Dictionary

(see s 2)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1 defines the following terms:

- ACAT
- ACT
- bankrupt or personally insolvent
- body
- Commonwealth
- director-general (see s 163)
- exercise
- function
- sitting day
- State
- the Territory.

**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 subordinate law, but does not include the National Electricity (ACT) Law or National Electricity (ACT) Regulations.

**National Electricity (ACT) Law**—see the *Electricity (National Scheme) Act 1997*, section 5 (Application in ACT of National Electricity 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.

**ombudsman**, of a State, includes a person exercising, under a law of a State, functions similar to the functions exercised by the ombudsman under part 2 (Establishment, functions, powers and duties of ombudsman).

*Note* **State** includes the Northern Territory (see Legislation Act, dict, pt 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, an enactment, other than—
  - (i) an incorporated company or association; or

- 
- (ii) a body that, under section 3 (1) (Entities not necessarily prescribed authorities) 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 section 3 (2), the person holding, or performing the duties of, an office, other than the office of commissioner for the environment, 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 director-general 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
  - (ii) 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

- (iii) 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.

**taking of action** includes—

- (a) making a decision or recommendation; and
- (b) formulating a proposal; and
- (c) failing to—
  - (i) take an action; or
  - (ii) make a decision; or
  - (iii) make a recommendation; or
  - (iv) formulate a proposal.



## 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

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

---

### 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)

**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)

## Endnotes

3 Legislation history

---

**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)

**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 commenced 13 April 2004 (s 2 and see Annual Reports (Government Agencies) Act 2004 A2004-8, s 2 and CN2004-5)

**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))

**Justice and Community Safety Legislation Amendment Act 2004 (No 2) A2004-32 pt 14**

notified LR 29 June 2004

s 1, s 2 commenced 29 June 2004 (LA s 75 (1))

pt 14 commenced 13 July 2004 (s 2 (3))

**Utilities Amendment Act 2005 A2005-14 s 20**

notified LR 24 March 2005

s 1, s 2 commenced 24 March 2005 (LA s 75 (1))

s 20 commenced 24 September 2005 (s 2 and LA s 79)

**Crimes (Child Sex Offenders) Act 2005 A2005-30 sch 3**

notified LR 29 June 2005

s 1, s 2 commenced 29 June 2005 (LA s 75 (1))

sch 3 commenced 29 December 2005 (s 2 and LA s 79)

**Human Rights Commission Legislation Amendment Act 2005 A2005-41 sch 1 pt 1.10 (as am by A2006-3 amdt 1.3)**

notified LR 1 September 2005

s 1, s 2 commenced 1 September 2005 (LA s 75 (1))

sch 1 pt 1.10 commenced 1 November 2006 (s 2 (3) (as am by A2006-3 amdt 1.3) and see Human Rights Commission Act 2005 A2005-40, s 2 (as am by A2006-3 s 4) and CN2006-21)

## Endnotes

3 Legislation history

---

**Human Rights Commission (Children and Young People Commissioner) Amendment Act 2005 A2005-46 sch 1 pt 1.2 (as am by A2006-3 amdt 1.2)**

notified LR 2 September 2005  
s 1, s 2 commenced 2 September 2005 (LA s 75 (1))  
sch 1 pt 1.2 commenced 1 November 2006 (s 2 (as am by A2006-3 amdt 1.2) and see Human Rights Commission Act 2005 A2005-40, s 2 (as am by A2006-3 s 4) and CN2006-21)

**Public Advocate Act 2005 A2005-47 sch 1 pt 1.8 (as am by A2006-3 amdt 1.8)**

notified LR 2 September 2005  
s 1, s 2 commenced 2 September 2005 (LA s 75 (1))  
sch 1 pt 1.8 commenced 1 March 2006 (s 2 (1) as am by A2006-3 amdt 1.8)

**Statute Law Amendment Act 2005 (No 2) A2005-62 sch 3 pt 3.18**

notified LR 21 December 2005  
s 1, s 2 commenced 21 December 2005 (LA s 75 (1))  
sch 3 pt 3.18 commenced 11 January 2006 (s 2 (1))

**Human Rights Commission Legislation Amendment Act 2006 A2006-3 amds 1.2, 1.3, 1.8**

notified LR 22 February 2006  
s 1, s 2 commenced 22 February 2006 (LA s 75 (1))  
amds 1.2, 1.3, 1.8 commenced 23 February 2006 (s 2)

*Note* This Act only amends the Human Rights Commission Legislation Amendment Act 2005 A2005-41, Human Rights Commission (Children and Young People Commissioner) Amendment Act 2005 A2005-46 and the Public Advocate Act 2005 A2005-47

**Statute Law Amendment Act 2007 A2007-3 sch 3 pt 3.72**

notified LR 22 March 2007  
s 1, s 2 taken to have commenced 1 July 2006 (LA s 75 (2))  
sch 3 pt 3.72 commenced 12 April 2007 (s 2 (2))

**Justice and Community Safety Legislation Amendment Act 2008 (No 2) A2008-22 sch 1 pt 1.7**

notified LR 8 July 2008  
s 1, s 2 commenced 8 July 2008 (LA s 75 (1))  
sch 1 pt 1.7 commenced 29 July 2008 (s 2)

**Statute Law Amendment Act 2008 A2008-28 sch 3 pt 3.42**

notified LR 12 August 2008  
 s 1, s 2 commenced 12 August 2008 (LA s 75 (1))  
 sch 3 pt 3.42 commenced 26 August 2008 (s 2)

**ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 (No 2) A2008-37 sch 1 pt 1.79**

notified LR 4 September 2008  
 s 1, s 2 commenced 4 September 2008 (LA s 75 (1))  
 sch 1 pt 1.79 commenced 2 February 2009 (s 2 (1) and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

**Justice and Community Safety Legislation Amendment Act 2010 (No 2) A2010-30 sch 1 pt 1.16**

notified LR 31 August 2010  
 s 1, s 2 commenced 31 August 2010 (LA s 75 (1))  
 s 3 commenced 1 September 2010 (s 2 (1))  
 sch 1 pt 1.16 commenced 28 September 2010 (s 2 (2))

**Administrative (One ACT Public Service Miscellaneous Amendments) Act 2011 A2011-22 sch 1 pt 1.117**

notified LR 30 June 2011  
 s 1, s 2 commenced 30 June 2011 (LA s 75 (1))  
 sch 1 pt 1.117 commenced 1 July 2011 (s 2 (1))

**4 Amendment history**

<b>Title</b>	
title	am 1996 No 17 s 4
<b>Name of Act</b>	
s 1	sub A2005-41 amdt 1.115
<b>Dictionary</b>	
s 2	om 2001 No 44 amdt 1.3062 ins A2007-3 amdt 3.385
<b>Notes</b>	
s 2A	ins A2007-3 amdt 3.385

## Endnotes

4 Amendment history

---

### **Entities not necessarily prescribed authorities**

s 3 am 1994 No 38 sch 1  
defs reloc to dict A2007-3 amdt 3.384  
sub A2007-3 amdt 3.385  
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 **ombudsman** om 1996 No 17 s 5

### **Conduct by person taken as conduct by administrative unit**

s 3A **orig s 3A**  
renum as s 3C  
**pres s 3A**  
ins A2007-3 amdt 3.385  
am A2011-22 amdt 1.343

### **Conduct by person taken as conduct by prescribed authority**

s 3B ins A2007-3 amdt 3.385

### **Application of Act—National Electricity (ACT) Law**

s 3C (prev s 3A) ins 1997 No 80 sch  
sub A2005-62 amdt 3.170  
renum as s 3C A2007-3 amdt 3.386

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

s 4 am 1994 No 108 s 39; 1996 No 17 s 6  
sub A2005-30 amdt 3.1

### **Functions—generally**

s 4A ins A2005-30 amdt 3.1

### **Functions—investigating complaints under Act**

s 5 hdg sub A2005-30 amdt 3.2  
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; A2004-32 s 92; pars renum R8 LA (see  
A2004-32 s 93); A2005-14 s 20; A2005-41  
amds 1.117-1.119; A2005-46 amds 1.2-1.4; A2008-22  
amdt 1.37; A2008-37 amdt 1.340

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

s 6A ins 1996 No 17 s 8  
sub A2008-28 amdt 3.115



**Mandatory referral of complaints to other entities**

s 6B hdg sub A2008-28 amdt 3.116  
 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  
 am A2005-47 amdt 1.2; A2005-41 amdt 1.120; A2008-22  
 amdt 1.38; A2008-37 amdt 1.341; pars renum R18 LA

**Complaints**

s 7 am 1994 No 26 sch

**Investigations**

s 9 am 1994 No 38 sch 1; A2011-22 amdt 1.344

**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; A2008-37 amdt 1.342

**Referring questions to ACAT**

s 13 am 1994 No 60 sch 1  
 sub A2008-37 amdt 1.343

**Monitoring police compliance with Crimes (Child Sex Offenders) Act 2005**

div 2.1A hdg renum as div 2.2 hdg

**Monitoring police compliance with Crimes (Child Sex Offenders) Act 2005**

div 2.2 hdg orig div 2.2 hdg renum as div 2.3 hdg  
 (prev div 2.1A hdg) ins A2005-30 amdt 3.3  
 renum R10 LA (see A2005-30 amdt 3.5)

**What is the *child sex offenders register*?**

s 17A ins A2005-30 amdt 3.3

**Police to give ombudsman reasonable assistance**

s 17B ins A2005-30 amdt 3.3

**Power to enter police premises**

s 17C ins A2005-30 amdt 3.3

**Reports**

div 2.3 hdg (prev div 2.2 hdg) renum R10 LA (see A2005-30 amdt 3.5)

**Reports on police compliance with Crimes (Child Sex Offenders) Act 2005**

s 20A ins A2005-30 amdt 3.4

**Reports to the Legislative Assembly**

s 21 hdg am 1995 No 25 note  
 s 21 am 1995 No 25 sch; A2007-3 amdt 3.387

## Endnotes

4 Amendment history

---

### Appointment of ombudsman

s 22 am A2007-3 amdt 3.388

### Tenure of office

s 23 am A2007-3 amdt 3.389

### Salary and allowances

s 24 am 1997 No 41 sch 1

### Resignation

s 26 om A2007-3 amdt 3.390

### Suspension and removal of ombudsman

s 28 am A2007-3 amdts 3.391-3.393; A2010-30 amdt 1.43

### Acting appointment

s 29 sub A2007-3 amdt 3.394

### Ombudsman not to be sued

s 31 am A2007-3 amdt 3.395

### 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

### 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

### Dictionary

dict ins A2007-3 amdt 3.396  
am A2008-37 amdt 1.344; A2010-30 amdt 1.44; A2011-22  
amdt 1.345  
def **agency** am 1994 No 38 sch 1  
reloc from s 3 A2007-3 amdt 3.384  
def **authorised person** reloc from s 3 A2007-3 amdt 3.384  
def **enactment** am 1997 No 80 sch  
sub A2005-62 amdt 3.168  
reloc from s 3 A2007-3 amdt 3.384  
def **National Electricity (ACT) Law** ins A2005-62 amdt 3.169  
reloc from s 3 A2007-3 amdt 3.384  
def **officer** am 1994 No 38 sch 1  
reloc from s 3 A2007-3 amdt 3.384

def **ombudsman** ins A2007-3 amdt 3.396  
 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; A2005-41 amdt 1.116; A2007-3 amdt 3.382,  
 amdt 3.383  
 reloc from s 3 A2007-3 amdt 3.384  
 def **principal officer** am 1994 No 38 sch 1; 1996 No 17 s 5;  
 1997 No 50 sch 2  
 reloc from s 3 A2007-3 amdt 3.384  
 pars renum R19 LA  
 am A2011-22 amdt 1.346  
 def **responsible Minister** reloc from s 3 A2007-3 amdt 3.384  
 def **taking of action** ins A2007-3 amdt 3.396

## 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. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
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
6	A2004-15	9 April 2004
7	A2004-15	13 April 2004
8	A2004-32	13 July 2004
9	<u>A2005-47</u>	24 September 2005
10	<u>A2005-47</u>	29 December 2005
11	A2005-62	11 January 2006

## Endnotes

5 Earlier republications

---

<b>Republication No</b>	<b>Amendments to</b>	<b>Republication date</b>
12	A2006-3	23 February 2006
13	A2006-3	1 March 2006
14	A2006-3	1 November 2006
15	A2007-3	12 April 2007
16	A2008-22	29 July 2008
17	A2008-28	26 August 2008
18*	A2008-37	2 February 2009
19	A2010-30	28 September 2010

‡ includes retrospective amendments by A2002-49

© Australian Capital Territory 2011