

1996

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**OMBUDSMAN (AMENDMENT) BILL 1996**

**EXPLANATORY MEMORANDUM**

**Circulated by authority of**

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Attorney-General**

## **OMBUDSMAN (AMENDMENT) BILL 1996**

### **Outline**

The *Ombudsman Act 1989* (the Principal Act) establishes the office of Ombudsman and enables him or her to investigate complaints about action that relates to a matter of administration taken by a department or a prescribed authority. The Act gives the Ombudsman wide powers to obtain information and where the Ombudsman finds evidence of maladministration he or she can make recommendations to have the defect remedied. Where recommendations are not acted upon, the Ombudsman can inform the Chief Minister and make a report to the Legislative Assembly. By virtue of section 28 of the *ACT Self-Government (Consequential Provisions) Act 1988* (Cth), until an appointment is made under the Act, the Commonwealth Ombudsman is taken to be the Territory's Ombudsman.

The Ombudsman (Amendment) Bill 1996 will amend the Principal Act to provide the Ombudsman with a jurisdiction over Territory owned corporations and their subsidiaries, to exclude from the Ombudsman's jurisdiction action taken by the Master of the Supreme Court and the Registrars and Deputy Registrars of the Supreme Court and the Magistrates Court when performing a function of a judicial nature and will provide the Ombudsman with a greater discretion in determining how best to deal with a matter. The Bill will also make a number of "housekeeping" amendments of the Principal Act and of certain other Acts.

### **Revenue/Cost Implications**

The Bill has no significant revenue or cost implications.

### **Formal Clauses**

Clauses 1, 2 and 3 are formal requirements. They refer to the short title of the Bill and its commencement and to the definition of the Principal Act. The Act will commence on the day on which it is notified in the *Gazette*.

### **Long title**

**Clause 4** will amend the long title of the Principal Act to refer simply to the Ombudsman rather than to the Australian Capital Territory Ombudsman in line with current practice of not including the words "Australian Capital Territory" as part of a reference to a Territory body.

### **Definitions**

**Clause 5** will amend subsection 3(1) of the Principal Act which defines various terms used in the Act.

**Paragraphs 5(a) and 5(e)** will remove the definitions of "Commissioner" and "Commissioner for Health Complaints" from section 3 and will amend the reference to "Commissioner" in paragraph (c) of the definition of "prescribed authority" to make it clear that it is a reference to the "Commissioner for the Environment". The Commissioner for the Environment is appointed under the *Commissioner for the Environment Act 1993* and the Commissioner for Health Complaints is appointed under the *Health Complaints Act 1993*. The definitions will be removed as, given the clear statutory basis for the offices, it is no longer considered that they are required. For the same reason, paragraph 5(e) will also omit the definition of "Ombudsman".

**Paragraphs 5(b), (c), and (d)** will provide the Ombudsman with a jurisdiction over Territory owned corporations and their subsidiaries and will define the chief executive officer of a corporation or subsidiary to be the principal officer of that body for the purposes of the Principal Act.

**Clause 6** will omit the words "Australian Capital Territory" as they appear before "Ombudsman" in subsection 4(1) for the same reason that **clause 4** will omit those words from the long title.

**Clause 7** will remove the Ombudsman's jurisdiction in respect of the actions of the Master of the Supreme Court and in respect of certain actions of the Registrars and Deputy Registrars of the Supreme Court and the Magistrates Court.

Subsection 5(2) of the Principal Act sets out those actions the Ombudsman is not authorised to investigate. The Ombudsman, under paragraph 5(2)(b) of the Principal Act, is not authorised to investigate

action taken by a judge of a court and under paragraph 5(2)(c) is not authorised to investigate action taken by a magistrate or a coroner. Paragraph 7(a) will put the Master of the Supreme Court and the Registrars and Deputy Registrars of the Supreme Court and the Magistrates Court, when performing a function of a judicial nature, in the same position as the judges and the magistrates in relation to the Ombudsman. Paragraph 7(a) will also replace the reference to "a judge of a court" in paragraph 5(2)(b) of the Principal Act with a reference to a Judge of the Supreme Court in recognition of the fact that the Supreme Court is the only Territory court to have judges.

Paragraph 7(b) will make an amendment of paragraph 5(2)(cc) of the Principal Act consequent upon the removal of the definition of "Commissioner" from subsection 3(1).

Clause 8 will insert a new section 6A into the Principal Act which will give the Ombudsman a wider discretion in the way a particular matter should be treated.

At present, under subsections 6(6) and (7) of the Act, the Ombudsman has a discretion not to investigate a matter if in his or her opinion it would be reasonable for the complainant to seek review by a court or tribunal or review under an administrative practice if such reviews are available. Under section 37A, the Ombudsman must refer a complaint and any relevant documents and information to the Commissioner for the Environment or the Commissioner for Health Complaints if, in his or her opinion, either of those officers has jurisdiction in respect of the complaint.

New section 6A will allow the Ombudsman to decide not to investigate, or to cease investigating, an action and to refer a complaint, application or request, together with any relevant documents or information, to another statutory office holder if the Ombudsman forms the opinion that:

- (a) the complaint, application or request could have been made to that other statutory office holder;

- (b) the matter could be more conveniently or effectively dealt with by that office holder;
- (c) it is appropriate in the circumstances to refer the complaint; and
- (d) that other statutory office holder consents to the referral.

Proposed subsection 6A(2) ensures that the term "statutory office holder" will not be limited to statutory offices established under a Territory enactment but that it will cover any such office established under the law of the Commonwealth, a State or another Territory.

Clause 9 will provide for consequential amendments of section 37A required by the removal of the definitions of "Commissioner" and "Commissioner for Health Complaints" from subsection 3(1) of the Principal Act.

Clause 10 will relocate and renumber section 37A of the Principal Act. Section 37A requires the Ombudsman to refer to the Commissioner for the Environment or to the Commissioner for Health Complaints, as appropriate, any complaint that is within the jurisdiction of either of those offices. Subclause 10(1) will renumber the section (it will become section 6B) and will relocate it so that it is more conveniently co-located with those provisions relating to the Ombudsman's jurisdiction and discretion not to investigate a matter or to refer a matter to another statutory office holder. Subclause 10(2) will ensure that any reference to subsection 37A in another law, instrument or document is construed as a reference to the section as renumbered.

Clauses 11, 13 and 14 will omit the definitions of Ombudsman from the *Commissioner for the Environment Act 1993*, the *Freedom of Information Act 1989* and the *Health Complaints Act 1993* as they are no longer considered to be required given the clear statutory basis for the office of Ombudsman.

Clause 12 will omit the words "Australian Capital Territory" from the reference to "Australian Capital Territory Ombudsman" in the definition of "court" in subsection 3(1) of the *Epidemiological Studies (Confidentiality)*

**Act 1992 in line with the current practice of not including the words "Australian Capital Territory" as part of a reference to a Territory body.**