

OMBUDSMAN ACT 1976

No. 181 of 1976

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OMBUDSMAN ACT 1976

No. 181 of 1976

An Act to Provide for the Appointment of a Commonwealth Ombudsman, and to Define his Functions and Powers.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:—

PART I—PRELIMINARY

1. This Act may be cited as the *Ombudsman Act 1976*.¹

Short title.

2. This Act shall come into operation on a date to be fixed by Proclamation.

Commencement.

3. (1) In this Act, unless the contrary intention appears—
“authorized person” means—

Interpretation.

- (a) a person appointed by the Ombudsman to be an authorized person for the purposes of this Act; or
- (b) a person included in a class of persons appointed by the Ombudsman to be authorized persons for the purposes of this Act;

“Department” means—

- (a) a Department of the Australian Public Service other than the Department of the Senate, the Department of the House of Representatives, the Department of the Parliamentary Library, the Department of the Parliamentary Reporting Staff and the Joint House Department; or
- (b) a Department of the Public Service of the Northern Territory;

“Deputy Ombudsman” means a Deputy Commonwealth Ombudsman;

“Deputy Ombudsman for the Australian Capital Territory” means the Deputy Ombudsman who is, by virtue of a notice under subsection 23 (1) that is in force, designated as the Deputy Ombudsman for the Australian Capital Territory;

“Deputy Ombudsman for the Northern Territory” means the Deputy Ombudsman who is, by virtue of a notice under subsection 23 (1) that is in force, designated as the Deputy Ombudsman for the Northern Territory;

“enactment” means—

- (a) an Act;
- (b) an Ordinance of the Australian Capital Territory or of the Northern Territory; or
- (c) an instrument (including rules, regulations or by-laws) made under an Act or under such an Ordinance;

“Local Government Ordinance of the Northern Territory” means the *Local Government Ordinance* 1954 of the Northern Territory or that Ordinance as amended and in force at any time;

“officer” means—

(a) in relation to a Department—

- (i) a person (including the principal officer of the Department) employed, whether in a permanent or temporary capacity, in the Department; or
- (ii) any other person (not being a Minister) authorized to exercise powers or perform functions of the Department on behalf of the Department; and

(b) in relation to a prescribed authority—

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

“Ombudsman” means the Commonwealth Ombudsman;

“Ordinance”, in relation to the Australian Capital Territory or the Northern Territory, includes a law of a State that applies, or the provisions of a law of a State that apply, in the Territory by virtue of an enactment;

“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;
 - (ii) a body that has the power to take evidence on oath or affirmation and is constituted by, or includes among its members, a person who is a

Justice or Judge of a court created by the Parliament or a person who has, by virtue of an Act, the same status as a Justice or Judge of such a court;

- (iii) a body that, under sub-section (2) or the regulations, is not to be taken to be a prescribed authority for the purposes of this Act;
 - (iv) the Australian Capital Territory Legislative Assembly; and
 - (v) the Legislative Assembly for the Northern Territory;
- (b) any other body, whether incorporated or unincorporated, declared by the regulations to be a prescribed authority for the purposes of this Act, being—
- (i) a body established by the Governor-General or by a Minister; or
 - (ii) an incorporated company over which the Commonwealth is in a position to exercise control;
- (c) the person holding, or performing the duties of, an office established by an enactment, other than such a person who, under sub-section (3) or the regulations, is not to be taken to be a prescribed authority for the purposes of this Act; or
- (d) the person performing the duties of an appointment declared by the regulations to be an appointment the holder of which is a prescribed authority for the purposes of this Act, being an appointment made by the Governor-General, or by a Minister, otherwise than under an enactment;

“principal officer” means—

- (a) in relation to a Department of the Australian Public Service—the person holding, or performing the duties of, the office of Permanent Head of the Department;
- (b) in relation to a Department of the Public Service of the Northern Territory—the person holding, or performing the duties of, the office of Administrator of that Territory; and
- (c) in relation to a prescribed authority—
 - (i) if the regulations declare an office to be the principal office in respect of the authority—the person holding, or performing the duties of, that office; or
 - (ii) in any other case—the person who constitutes, or is acting as the person who constitutes, that authority 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 he is present;

“responsible Minister”, in relation to a matter, or to action taken in or in relation to a matter, means—

- (a) if a Department of the Australian Public Service is responsible for dealing with the matter—the Minister administering that Department;
- (b) if a Department of the Public Service of the Northern Territory is responsible for dealing with the matter—the Minister for the Northern Territory;
- (c) if a prescribed authority referred to in paragraph (a) of the definition of “prescribed authority” is responsible for dealing with a matter—the Minister administering the enactment by which, or in accordance with the provisions of which, the prescribed authority is established;
- (d) if a prescribed authority referred to in paragraph (c) of that definition is responsible for dealing with the matter—the Minister administering the enactment by which the office is established; or
- (e) if any other prescribed authority is responsible for dealing with the matter—the Minister declared by the regulations to be the responsible Minister in respect of that authority,

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

(2) An unincorporated body, being a board, council, committee, sub-committee or other body established by, or in accordance with the provisions of, an enactment for the purpose of assisting, or performing functions connected with, a prescribed authority shall not be taken to be a prescribed authority for the purpose of this Act, but action taken by the body, or by a person on its behalf, shall, for the purpose of this Act, be deemed to have been taken by that prescribed authority.

(3) A person shall not be taken to be a prescribed authority—

- (a) by virtue of his holding an office of member of the Australian Capital Territory Legislative Assembly or member of the Legislative Assembly for the Northern Territory; or
- (b) by virtue of his holding, or performing the duties of—
 - (i) an office the duties of which he performs as duties of his employment as an officer or employee of a Department or as a member of the staff of a prescribed authority;
 - (ii) an office of member of a body; or
 - (iii) an office established by an enactment for the purposes of a prescribed authority,

but any action taken by or on behalf of a person holding, or performing the duties of, an office referred to in paragraph (b) shall, for the purposes of this Act, be deemed to have been taken by the Department, body or prescribed authority concerned.

(4) Where—

(a) action is taken in the exercise of a power or the performance of a function conferred by an enactment on a person who is authorized to exercise the power or perform the function by reason of his holding an appointment made by, or by reason of authority given by, the Governor-General, a Minister, the Permanent Head of a Department or the Administrator of the Northern Territory under the same or another enactment; and

(b) the person—

(i) is not an officer of a Department, or of a prescribed authority, for the purposes of this Act; and

(ii) does not exercise the power or perform the function by reason of his holding, or performing the duties of, an office established by, or in accordance with the provisions of, an enactment or by reason of his being a Judge of a court of, or a magistrate of, a State or Territory,

the action shall be deemed to be taken, for the purposes of this Act, by the Department responsible for dealing with the matter in connexion with which the action is taken.

(5) For the purposes of this Act, action that is taken by an officer of a Department shall be deemed to be taken by the Department—

(a) if the officer takes, or purports to take, the action by virtue of his being an officer of the Department, whether or not—

(i) the action is taken for or in connexion with, or as incidental to, the performance of the functions of the Department; or

(ii) the taking of the action is within the duties of the officer;
or

(b) if the officer takes, or purports to take, the action in the exercise of powers or the performance of functions conferred on him by an enactment.

(6) For the purposes of this Act, action that is taken by an officer of a prescribed authority shall be deemed to be taken by the authority—

(a) if the officer takes, or purports to take, the action by virtue of his being an officer of the authority, whether or not—

(i) the action is taken for or in connexion with, or as incidental to, the performance of the functions of the prescribed authority; or

(ii) the taking of the action is within the duties of the officer;
or

- (b) if the officer takes, or purports to take, the action in the exercise of powers or the performance of functions conferred on him by an enactment.

(7) In this Act, unless the contrary intention appears, a reference to the taking of action includes a reference to—

- (a) the making of a decision or recommendation; and
- (b) failure or refusal to take any action or to make a decision or recommendation.

(8) A reference in this Act to the international relations of the Commonwealth is a reference to the relations of the Commonwealth with the Government of another country or with an international organization.

(9) For the purposes of this Act, each of the following Police Forces shall be deemed to be a prescribed authority, namely—

- (a) the Commonwealth Police Force;
- (b) the Police Force of the Australian Capital Territory; and
- (c) the Police Force of the Northern Territory.

(10) In the application of this Act to and in relation to a Police Force referred to in sub-section (9), references in this Act to an officer of a prescribed authority shall be read as references to—

- (a) in the case of the Commonwealth Police Force—a Commonwealth Police Officer or a special Commonwealth Police Officer;
- (b) in the case of the Police Force of the Australian Capital Territory—a person included in the persons who constitute that Police Force or a person who is a member of that Police Force by virtue of having been appointed as a special constable; and
- (c) in the case of the Police Force of the Northern Territory—a member of that Police Force.

PART II—ESTABLISHMENT, FUNCTIONS, POWERS AND DUTIES OF THE OMBUDSMAN

Division 1—Establishment and Functions

The establishment of offices of Ombudsman and Deputy Ombudsman.

4. (1) For the purposes of this Act, there shall be—

- (a) a Commonwealth Ombudsman; and
- (b) 2 Deputy Commonwealth Ombudsmen.

(2) The functions of the Commonwealth Ombudsman are to investigate complaints made to him under this Act and to perform such other functions as are conferred on him by this Act.

Functions of Ombudsman.

5. (1) Subject to this Act, the Ombudsman—

- (a) shall investigate action, being action that relates to a matter of administration, taken either before or after the commencement

of this Act by a Department, or by a prescribed authority, and in respect of which a complaint has been made to the Ombudsman; and

- (b) may, of his own motion, investigate any other action, being action that relates to a matter of administration, taken either before or after the commencement of this Act by a Department or by a prescribed authority.

(2) The Ombudsman is not authorized to investigate—

- (a) action taken by a Minister;
- (b) action taken by a Justice or Judge of a court created by the Parliament;
- (c) action taken by a magistrate or coroner for the Australian Capital Territory or the Northern Territory;
- (d) action taken by any body or person with respect to persons employed in the Australian Public Service, the Public Service of the Northern Territory or the service of a prescribed authority, being action taken in relation to that employment, including action taken with respect to the promotion, termination of appointment or discipline of a person so employed or the payment of remuneration to such a person;
- (e) action that a person employed in the Public Service of the Northern Territory as a member of the staff of the Legislative Assembly for the Northern Territory takes, or purports to take, by virtue of his being a member of that staff;
- (f) action that the Defence Force Ombudsman is authorized to investigate; or
- (g) action taken by a Department or by a prescribed authority with respect to the appointment of a person to an office established by or under an enactment, not being an office in the Australian Public Service, an office in the Public Service of the Northern Territory or an office in the service of a prescribed authority.

(3) A reference in paragraph (2) (a) to action taken by a Minister does not include a reference to action taken by a delegate of a Minister.

(4) Paragraph (2) (d) does not prevent the Ombudsman from investigating action taken by a member of a Police Force referred to in sub-section 3 (10), or by any other person, with respect to a complaint made to a member of that Police Force concerning action taken by another member of that Police Force.

6. (1) Where a complaint has been made to the Ombudsman with respect to action taken by a Department or by a prescribed authority, the Ombudsman may, in his discretion, decide not to investigate the action

Discretion
not to
investigate
certain
complaints.

or, if he has commenced to investigate the action, 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 and that his declining to investigate the action, or to investigate the action further, will not cause undue hardship to the complainant;
- (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,and there are no special reasons justifying the investigation of the action, or the investigation of the action further; or
- (c) if, in the opinion of the Ombudsman, investigation, or further investigation, of the action is unnecessary having regard to all the circumstances of the case.

(2) Where a complainant has exercised, or exercises, a right to cause action to which his 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, as the case may be, the complaint unless the Ombudsman is of the opinion that there are special reasons justifying the investigation of the complaint or the investigation of the complaint further.

(3) 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 shall not investigate, or continue to investigate, as the case may be, the complaint unless the Ombudsman is of the opinion that, in all the circumstances of the case, the failure to exercise the right is not or was not unreasonable.

(4) Where, before the Ombudsman commences, or after the Ombudsman has commenced, to investigate action taken by a Department or by a prescribed authority, being action that is the subject matter of a complaint, the Ombudsman becomes of the opinion that adequate provision is made under an administrative practice for the review of action of that kind taken by that Department or prescribed authority, the Ombudsman may decide not to investigate the action or not to investigate the action further, as the case may be—

- (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.

(5) 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.

7. (1) A complaint under this Act shall be made to the Ombudsman Complaints. in writing.

(2) A person who is detained in custody is entitled, upon making a request to the person in whose custody he is detained or to another person performing duties in connexion with his detention—

- (a) to be provided with facilities for preparing a complaint under this Act and for enclosing the complaint in a sealed envelope; and
- (b) to have forwarded to the Ombudsman, without undue delay, a sealed envelope delivered by him to the person and addressed to the Ombudsman.

(3) Where a sealed envelope is delivered to a person under subsection (2) for forwarding to the Ombudsman, neither the person in whose custody he is detained nor any other person performing duties in connexion with his detention is entitled to open the envelope or inspect any document enclosed in the envelope.

8. (1) Before commencing to investigate under this Act action taken Investi- by a Department or by a prescribed authority, the Ombudsman shall in- gations. form the responsible Minister and the principal officer of the Department or authority that the action is to be investigated.

(2) An investigation under this Act shall be conducted in private and, subject to this Act, in such manner as the Ombudsman thinks fit.

(3) Subject to this Act, the Ombudsman may, for the purposes of this Act, obtain information from such persons, and make such inquiries, as he thinks fit.

(4) Subject to sub-section (5), 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 connexion with an investigation by the Ombudsman under this Act.

(5) The Ombudsman shall not make a report in respect of an investigation under this Act in which he sets out opinions that are, either expressly or impliedly, critical of a Department, prescribed authority or person unless, before completing the investigation, he has—

- (a) if the opinions relate to a Department or prescribed authority—afforded the principal officer of the Department or authority and the officer principally concerned in the action to which the investigation relates opportunities to appear before him, or before an authorized 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—afforded that person an opportunity to appear before him, or before an authorized person, and to make such submissions, either orally or in writing, in relation to the action to which the investigation relates as he thinks fit.

(6) Where the Ombudsman affords the principal officer of a Department or of a prescribed authority an opportunity to appear before him, or before an authorized person, under sub-section (5), the principal officer may appear before the Ombudsman or before the authorized person in person or a person authorized by the principal officer may appear before the Ombudsman or before the authorized person on behalf of the principal officer.

(7) Where the Ombudsman affords a person other than the principal officer of a Department or of a prescribed authority an opportunity to appear before him, or before an authorized person, under sub-section (5), the person may, with the approval of the Ombudsman or of the authorized person, as the case may be, be represented by another person.

(8) 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.

(9) On the request of the responsible Minister, the Ombudsman shall consult that Minister before he forms a final opinion on any of the matters referred to in sub-section 15 (1) or (2) that are relevant to the action under investigation.

(10) 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 a Department or of a prescribed authority, 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 his doing so, the Ombudsman shall bring the evidence to the notice of—

- (a) if the person is the principal officer of the Department—the Minister administering the Department;
- (b) if the person is an officer of a Department but not the principal officer of that Department—the principal officer of that Department;
- (c) if the person is the principal officer of a prescribed authority—the responsible Minister in respect of the action under investigation; or
- (d) if the person is an officer of a prescribed authority but not the principal officer of that authority—the principal officer of that authority.

9. (1) The Ombudsman may, by notice in writing, require a person whom he believes to be capable of giving information relevant to an investigation under this Act to furnish to him in writing, within a period specified in the notice, such information, and to produce to him such documents and other records, being information, documents or records relevant to the investigation, as are specified in the notice.

Power to require persons to answer questions and produce documents.

(2) For the purposes of an investigation under this Act, the Ombudsman may, by notice in writing, require—

- (a) the complainant;
- (b) if the complaint was made to the Ombudsman by the complainant at the request of another person or of a body of persons—that other person or a person included in that body of persons;
- (c) an officer of a Department, or of a prescribed authority, who is, in the opinion of the Ombudsman, able to give information relevant to the investigation; or
- (d) with the approval of the Minister, any other person who is, in the opinion of the Ombudsman, able to give any such information,

to attend before him at a time and place specified in the notice and there to answer questions relevant to the investigation.

(3) Where the Attorney-General furnishes to the Ombudsman a certificate certifying that the disclosure of information concerning a specified matter (including the furnishing of information in answer to a question) or the disclosure of the contents of any documents or records would be contrary to the public interest—

- (a) by reason that it would prejudice the security, defence or international relations of the Commonwealth;
- (b) by reason that it would involve the disclosure of communications between a Minister and a Minister of a State, being a disclosure that would prejudice relations between the Commonwealth Government and the Government of a State;
- (c) by reason that it would involve the disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet; or
- (d) by reason that it would involve the disclosure of deliberations or decisions of the Executive Council of the Northern Territory of Australia established under section 4ZA of the *Northern Territory (Administration) Act 1910*,

the Ombudsman is not entitled to require a person to furnish any information concerning the matter, to answer questions concerning the matter or to produce those documents or records to the Ombudsman.

(4) Notwithstanding the provisions of any enactment, a person is not excused from furnishing 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 furnishing of the information, the production of the document or record or the answer to the question—

- (a) would contravene the provisions of any other Act, would be contrary to the public interest or might tend to incriminate him or make him liable to a penalty; or
- (b) would disclose legal advice furnished to a Minister, a Department or a prescribed authority,

but his answer to any such question is not admissible in evidence against him in proceedings other than proceedings for an offence against section 36.

(5) A person is not liable to any penalty under the provisions of any other enactment by reason of his furnishing information, producing a document or other record or answering a question when required to do so under this Act.

Unreasonable delay in exercising power.

10. (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) there is no enactment that prescribes a period within which the person is required to do or refuse to do the act or thing;
- (c) an enactment provides that application may be made to the Administrative Appeals 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, after having investigated the complaint, may, if he is of the opinion that there has been unreasonable delay in deciding whether to do the act or thing, grant 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 and, if the Ombudsman does so, the person required or permitted to exercise the power, shall, for the purpose of enabling application to be made to the Administrative Appeals Tribunal under the enactment referred to in paragraph (c), be deemed to have made, on the date on which the certificate is granted, a decision, in the exercise of that power, not to do the act or thing.

(2) Where a board, committee or other unincorporated body constituted by 2 or more persons is empowered by an enactment to make decisions, sub-section (1) applies as if the board, committee or other body were a person empowered to make those decisions.

Reference of question to the Administrative Appeals Tribunal.

11. (1) Where the Ombudsman investigates a complaint concerning the taking of action in pursuance of a discretionary power conferred by an enactment, the Ombudsman may recommend to the principal officer concerned that a specified question relating to the taking of that action or to the exercise of the power be referred to the Administrative Appeals Tribunal for an advisory opinion.

(2) The Ombudsman may make a recommendation under sub-section (1)—

- (a) by furnishing the recommendation to the principal officer concerned at any time before the completion of the investigation by the Ombudsman; or
- (b) by including the recommendation in a report made by the Ombudsman to the Department or prescribed authority concerned under section 15 after the completion of the investigation.

(3) Where the Ombudsman makes a recommendation to a principal officer in accordance with sub-section (1), the principal officer shall refer the question specified in the recommendation to the Administrative Appeals Tribunal and that Tribunal may then give an advisory opinion on the question.

12. (1) Where complaint is made to the Ombudsman with respect to action taken by a Department or by a prescribed authority— Complainant to be informed.

- (a) if the Ombudsman does not, for any reason, investigate, or complete an investigation of, the action, the Ombudsman shall inform the complainant and the Department or authority accordingly in writing and furnish to the complainant and to the Department or authority particulars of the grounds on which he did not investigate, or complete the investigation of, the action; or
- (b) if the Ombudsman completes his investigation of the action, the Ombudsman shall furnish to the complainant and the Department or authority, in such manner and at such time as he thinks fit, particulars of the results of the investigation of the action.

(2) Where action that is, in the opinion of the Ombudsman, adequate and appropriate in the circumstances is not taken with respect to recommendations included in a report made by the Ombudsman under this Act within a reasonable time after the report is furnished to the Department or prescribed authority concerned, the Ombudsman shall furnish to the complainant a copy of the recommendations made by him in the report, together with such comments (if any) as he thinks fit.

13. The Ombudsman may administer an oath or affirmation to a person required to attend before him in pursuance of section 9 and may examine the person on oath or affirmation. Power to examine witnesses.

14. (1) For the purposes of an investigation under this Act, an authorized person may, at any reasonable time of the day, enter any place occupied by a Department or prescribed authority and may carry on the investigation at the place. Power to enter premises.

(2) Sub-section (1) does not authorize a person to enter, or carry on an investigation at—

- (a) a place referred to in paragraph 80 (c) of the *Crimes Act* 1914;
- (b) a place that is a prohibited place for the purposes of the *Defence (Special Undertakings) Act* 1952 by virtue of section 7 of that Act; or
- (c) an area of land or water or an area of land and water that is declared under section 14 of the *Defence (Special Undertakings) Act* 1952 to be a restricted area for the purposes of that Act,

unless the Minister administering that Act, or another Minister acting for and on behalf of that Minister, has approved his entering the place or area and he complies with any conditions imposed by the Minister giving the approval in relation to his entering that place or area and the manner in which his investigation is to be conducted at that place or area.

(3) Where the Attorney-General is satisfied that the carrying on of an investigation at a place might prejudice the security or defence of the Commonwealth, the Attorney-General may, by notice in writing delivered to the Ombudsman, declare the place to be a place to which this sub-section applies and, while the declaration is in force, sub-section (1) does not authorize a person to enter, or carry on an investigation at, the place unless a Minister specified in the declaration, or another Minister acting for and on behalf of that Minister, has approved his entering the place and he complies with any conditions imposed by the Minister giving the approval in relation to his entering the place and the manner in which his investigation is to be conducted at that place.

(4) For the purposes of an investigation under this Act, an authorized person is entitled to inspect any documents relevant to the investigation kept at premises entered by him under this section, other than documents in respect of which the Attorney-General has furnished a certificate under sub-section 9 (3), at a reasonable time of the day arranged with the principal officer of the Department or prescribed authority concerned.

(5) Sub-section (4) shall not be taken to restrict the operation of section 9.

(6) A reference under this section to an authorized person includes a reference to the Ombudsman and a Deputy Ombudsman.

Division 2—Reports

Reports by
Ombudsman.

15. (1) Where, after an investigation under this Act into action taken by a Department or prescribed authority has been completed, the Ombudsman is of the opinion—

- (a) that the action—
 - (i) appears to have been contrary to law;

- (ii) was unreasonable, unjust, oppressive or improperly discriminatory;
 - (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;
 - (iv) was based either wholly or partly on a mistake of law or of fact; or
 - (v) was otherwise, in all the circumstances, wrong;
- (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) in a case where 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 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 furnished, but was not furnished, with 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;
 - (b) that some particular action could be, and should be, taken to rectify, mitigate or alter the effects of, a decision, recommendation, act or omission to which this section applies;
 - (c) that a decision to which this section applies should be cancelled or varied;
 - (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;
 - (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 Department or prescribed authority concerned.

(3) The Ombudsman—

- (a) shall include in a report under sub-section (2) his reasons for the opinions specified in the report; and
- (b) may also include in such a report any recommendations he thinks fit to make.

(4) The Ombudsman may request the Department or prescribed authority to which the report is furnished to furnish to him, 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 sub-section (2) to a Department or prescribed authority, the Department or authority may furnish to the Ombudsman such comments concerning the report as it wishes to make.

(6) The Ombudsman shall furnish a copy of a report made by him under sub-section (2) to the Minister concerned.

Reports to
Prime
Minister.

16. (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 a Department or to a prescribed authority under section 15 within a reasonable time after the Ombudsman furnished the report to the Department or to the prescribed authority, the Ombudsman may inform the Prime Minister accordingly in writing.

(2) Where the Ombudsman furnishes information to the Prime Minister in accordance with sub-section (1) in relation to a report, the Ombudsman shall furnish to the Prime Minister with the information—

- (a) if a copy of the report has not previously been forwarded to the Prime Minister under sub-section 15 (6)—a copy of the report; and
- (b) if the Department or prescribed authority to which the report was made has furnished comments concerning the report to the Ombudsman—a copy of those comments.

(3) In considering whether to furnish information in relation to a report to the Prime Minister in accordance with sub-section (1), the Ombudsman shall have regard to any comments furnished to him by the Department or prescribed authority to which the report was made.

Special
reports to
Parliament.

17. Where the Ombudsman has, in accordance with sub-section 16 (1), furnished information to the Prime Minister in relation to a report concerning an investigation made by him, the Ombudsman may also forward to the President of the Senate and the Speaker of the House of Representatives, for presentation to the Senate and the House of Representatives, respectively, copies of a report prepared by him concerning the investigation for presentation to both Houses of the Parliament, being a report that sets out a copy of any comments furnished to

the Ombudsman under sub-section 15 (5) by the Department or prescribed authority concerned.

18. (1) Where the Ombudsman reports to the Parliament concerning an investigation of action taken under an Ordinance of the Northern Territory or under an instrument (including rules, regulations or by-laws) made under such an Ordinance, he shall forward a copy of the report to the Speaker of the Legislative Assembly for the Northern Territory for presentation to that Assembly.

Reports
relating to
Northern
Territory.

(2) Where, within a reasonable time after the Ombudsman reports to a Department or to a prescribed authority under sub-section 15 (2) concerning an investigation made by him into action taken under the Local Government Ordinance of the Northern Territory or by a Council established under that Ordinance or an officer or employee of such a Council, 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 the report, the Ombudsman may inform the Minister for the Northern Territory accordingly.

(3) Where the Ombudsman furnishes information to the Minister for the Northern Territory in accordance with sub-section (2) in relation to a report, the Ombudsman shall furnish to him with the information—

- (a) if a copy of the report has not previously been forwarded to him under sub-section 15 (6)—a copy of the report; and
- (b) if the Department or prescribed authority to which the report was made has furnished comments concerning the report to the Ombudsman—a copy of those comments.

(4) In considering whether to furnish information in relation to a report to the Minister for the Northern Territory in accordance with sub-section (2), the Ombudsman shall have regard to any comments furnished to him by the Department or prescribed authority to which the report was made.

(5) Where the Ombudsman has furnished information to the Minister for the Northern Territory in accordance with sub-section (2) in relation to a report concerning an investigation made by him, the Ombudsman may also forward to the Speaker of the Legislative Assembly for the Northern Territory, for presentation to that Assembly, a copy of a report prepared by him concerning the investigation for presentation to that Assembly, being a report that sets out a copy of any comments furnished to the Ombudsman under sub-section 15 (5) by the Department or prescribed authority concerned.

Annual
report and
additional
reports to
Parliament.

19. (1) The Ombudsman shall, as soon as practicable after 30 June in each year—
- (a) submit to the Minister, for presentation to the Parliament, a report of the operations of the Ombudsman during that year, including operations referred to in paragraphs (b) and (c);
 - (b) submit to the Minister for the Capital Territory, for presentation to the Australian Capital Territory Legislative Assembly, a report of the operations of the Ombudsman during that year with respect to complaints made under this Act concerning action taken by officers in the exercise of powers or the performance of functions conferred by enactments of the Australian Capital Territory; and
 - (c) submit to the Minister for the Northern Territory, for presentation to the Legislative Assembly for the Northern Territory, a report of the operations of the Ombudsman during that year with respect to complaints made under this Act concerning action taken by officers in the exercise of powers or the performance of functions conferred by enactments of the Northern Territory.
- (2) The Ombudsman may, from time to time, submit to the Minister, for presentation to the Parliament, reports of the operations of the Ombudsman during parts of a year.
- (3) Where the Ombudsman submits a report under sub-section (2) in relation to a part of a year, the Ombudsman shall—
- (a) submit to the Minister for the Capital Territory, for presentation to the Australian Capital Territory Legislative Assembly, a report of the operations of the Ombudsman during that part of the year with respect to complaints made under this Act concerning action taken by officers in the exercise of powers or the performance of functions conferred by an enactment of the Australian Capital Territory; and
 - (b) submit to the Minister for the Northern Territory, for presentation to the Legislative Assembly for the Northern Territory, a report of the operations of the Ombudsman during that part of the year with respect to the complaints made under this Act concerning action taken by officers in the exercise of powers or the performance of functions conferred by enactments of the Northern Territory.
- (4) Where the Ombudsman submits a report to the Minister under paragraph (1) (a) or under sub-section (2), the Minister shall cause the report to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.
- (5) Where the Ombudsman submits a report to the Minister for the Capital Territory under paragraph (1) (b) or (3) (a), the Minister for the Capital Territory shall cause the report to be forwarded, as soon as

practicable after its receipt by him, to the President of the Australian Capital Territory Legislative Assembly for presentation to that Assembly.

(6) Where the Ombudsman submits a report to the Minister for the Northern Territory under paragraph (1) (c) or (3) (b), the Minister for the Northern Territory shall cause the report to be forwarded, as soon as practicable after its receipt by him, to the Speaker of the Legislative Assembly for the Northern Territory for presentation to that Assembly.

(7) The first report under sub-section (1) shall be submitted as soon as practicable after 30 June 1977, and shall relate to the operations of the Ombudsman during the period that commenced at the commencement of this Act and ended on that date.

(8) Where the Ombudsman refers in a report referred to in sub-section (1), (2) or (3) to an investigation made by him under this Act, the Ombudsman shall not, in referring to the investigation, set out opinions that are, either expressly or impliedly, critical of a Department, prescribed authority or person unless the Ombudsman has complied with sub-section 8 (5) in relation to the investigation.

(9) In this section—

“enactment of the Australian Capital Territory” means—

- (a) an Ordinance of the Australian Capital Territory; or
- (b) an instrument (including rules, regulations or by-laws) made under such an Ordinance;

“enactment of the Northern Territory” means—

- (a) an Ordinance of the Northern Territory; or
- (b) an instrument (including rules, regulations or by-laws) made under such an Ordinance.

PART III—CONDITIONS OF SERVICE, AND STAFF, OF THE OMBUDSMAN

Division 1—Ombudsman

20. In this Division, unless the contrary intention appears, **Definition.**
“Ombudsman” means the Commonwealth Ombudsman or a Deputy Commonwealth Ombudsman.

21. (1) An Ombudsman shall be appointed by the Governor- **Appoint-**
General. **ment of**
Ombudsman.

(2) An Ombudsman holds office on such terms and conditions (if any) in respect to matters not provided for in this Act as are prescribed.

22. (1) Subject to this Act, an Ombudsman holds office for such **Tenure of**
period, not exceeding 7 years, as is specified in the instrument of his **office.**
appointment, but is eligible for re-appointment.

(2) A person who has attained the age of 65 years shall not be appointed or re-appointed as an Ombudsman, and a person shall not be appointed or re-appointed as an Ombudsman for a period that extends beyond the date on which he will attain the age of 65 years.

Deputy
Ombudsmen.

23. (1) The Minister may—

- (a) by notice published in the *Gazette*, designate a Deputy Ombudsman as the Deputy Ombudsman for the Australian Capital Territory; and
- (b) by notice published in the *Gazette* and in the *Northern Territory Government Gazette*, designate a Deputy Ombudsman as the Deputy Ombudsman for the Northern Territory.

(2) The Deputy Ombudsman for the Australian Capital Territory has all the powers, and may exercise all the functions, of the Commonwealth Ombudsman in relation to action taken by a Department or by a prescribed authority in the Australian Capital Territory, except the power to report to the Parliament under section 17 or 19.

(3) The Deputy Ombudsman for the Northern Territory has all the powers, and may exercise all the functions, of the Commonwealth Ombudsman in relation to action taken by a Department or by a prescribed authority in the Northern Territory, except the power to report to the Parliament under section 17 or 19 and the power to report to the Legislative Assembly for the Northern Territory under sub-section 18 (5).

(4) Nothing in this section prevents the exercise of a power or the performance of a function by the Commonwealth Ombudsman.

Salary and
allowances.

24. (1) An Ombudsman shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed.

(2) An Ombudsman shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act* 1973.

Leave of
absence.

25. The Minister may grant leave of absence to an Ombudsman upon such terms and conditions as to remuneration or otherwise as the Minister determines.

Resignation.

26. An Ombudsman may resign his office by writing under his hand delivered to the Governor-General.

Retirement.

27. The Governor-General may, with the consent of an Ombudsman, retire that Ombudsman on the ground of physical or mental incapacity.

28. (1) The Governor-General may remove an Ombudsman from office on an address praying for his removal on the ground of misbehaviour or physical or mental incapacity being presented to the Governor-General by each House of the Parliament in the same session of the Parliament. Suspension and removal of Ombudsman.

(2) The Governor-General may suspend an Ombudsman from office on the ground of misbehaviour or physical or mental incapacity.

(3) Where the Governor-General suspends an Ombudsman from office, the Minister shall cause a statement of the grounds of the suspension to be laid before each House of the Parliament within 7 sitting days of the House after the suspension.

(4) Where such a statement has been laid before a House of the Parliament, that House may, within 15 sitting days of that House after the day on which the statement has been laid before it, by resolution, declare that the Ombudsman should be removed from office and, if each House so passes such a resolution, the Governor-General shall remove the Ombudsman from office.

(5) If, at the expiration of 15 sitting days of a House of the Parliament after the day on which the statement has been laid before that House, that House had not passed such a resolution, the suspension terminates.

(6) The suspension of an Ombudsman from office under this section does not affect any entitlement of the Ombudsman to be paid remuneration and allowances.

(7) If an Ombudsman becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit, the Governor-General shall remove him from office.

(8) An Ombudsman shall not be removed or suspended from office except as provided by this section.

29. (1) The Governor-General may appoint a person to act in the office of Commonwealth Ombudsman or in an office of Deputy Commonwealth Ombudsman— Acting appointments.

(a) during any period, or during all periods, when the person holding the office is absent from duty or from Australia;

(b) during the suspension from office of the person holding the office; or

(c) during a vacancy in the office,

and may, at any time, terminate such an appointment.

(2) A person appointed to act as an Ombudsman during a vacancy in an office shall not continue so to act after the expiration of 12 months after the occurrence of the vacancy.

(3) If a Deputy Commonwealth Ombudsman is at any time appointed to act in the office of Commonwealth Ombudsman, his office shall, during the period of his appointment, be deemed, for the purposes of this section, to be vacant.

(4) Where a person is acting in an office of Commonwealth Ombudsman or Deputy Commonwealth Ombudsman in pursuance of an appointment under this section otherwise than during a vacancy in that office and the office becomes vacant while that person is so acting, that person may continue to act in the office until the Governor-General otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(5) The Minister may determine the terms and conditions of appointment of a person appointed under this section.

(6) Sections 25 and 26 apply in relation to a person appointed under this section in like manner as they apply in relation to an Ombudsman.

(7) Where a person is acting in an office in pursuance of an appointment under this section, he has, and may exercise, all the powers, and he may perform all the functions, of the holder of that office under this Act.

(8) The validity of anything done by a person appointed under this section shall not be called in question on the ground that the occasion for his appointment had not arisen or that his appointment had ceased to have effect.

Super-
annuation.

30. For the purposes of the *Superannuation Act 1976*, the removal under section 28 of this Act of an Ombudsman from office following his suspension from office on the ground of physical or mental incapacity shall be deemed to be retirement on the ground of invalidity.

Division 2—Staff

Staff.

31. (1) The staff required for the purposes of this Act shall be persons appointed or employed under the *Public Service Act 1922*.

(2) The Ombudsman has all the powers of, or exercisable by, a Permanent Head under the *Public Service Act 1922* so far as those powers relate to the branch of the Public Service comprising the staff referred to in sub-section (1) as if that branch were a separate Department of the Public Service.

(3) For the purposes of sub-sections 25 (5) and (6) of the *Public Service Act 1922*, the Ombudsman shall be deemed to be a Permanent Head.

Division 3—Miscellaneous

32. Where the Ombudsman or a Deputy Ombudsman was, immediately before his appointment, an officer of the Public Service or a person to whom the *Officers' Rights Declaration Act 1928* applied—

Preservation
of rights.

- (a) he retains his existing and accruing rights;
- (b) for the purpose of determining those rights, his service under this Act shall be taken into account as if it were service in the Public Service; and
- (c) the *Officers' Rights Declaration Act 1928* applies as if this Act and this section had been specified in the Schedule to that Act.

PART IV—MISCELLANEOUS

33. (1) Subject to section 35, neither the Ombudsman nor a person acting under his direction or authority is liable to an action, suit or proceeding for or 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.

Ombudsman
not to be
sued.

(2) A reference in this section to the Ombudsman includes a reference to a Deputy Ombudsman.

34. (1) The Ombudsman may, by instrument in writing, delegate to a Deputy Ombudsman, to a member of the staff referred to in sub-section 31 (1) or, with the consent of the Minister, to any other person any of his powers under this Act, except this power of delegation or the power conferred by section 15, 16, 17, 18 or 19.

Delegation.

(2) A power so delegated may be exercised by the delegate in accordance with the instrument of delegation.

(3) A delegate shall, upon request by a person affected by the exercise of any powers delegated to him, produce the instrument of delegation, or a copy of the instrument, for inspection.

(4) A delegation under this section is revocable at will and does not prevent the exercise of a power by the Ombudsman.

(5) Powers conferred on a Deputy Ombudsman by virtue of an instrument of delegation under this section are in addition to, and not in substitution for, any powers conferred on him by sub-section 23 (2) or (3).

35. (1) In this section, “officer” means—

- (a) the Ombudsman;
- (b) a Deputy Ombudsman;
- (c) a person who is a member of the staff referred to in sub-section 31 (1); or

Officers to
observe
secrecy.

- (d) a person, not being a person referred to in paragraph (b) or (c), to whom the Ombudsman has delegated any of his powers under section 34 or who is an authorized person.

(2) Subject to this section, an officer shall not, either directly or indirectly, and either while he is, or after he ceases to be, an officer, make a record of, or divulge or communicate to any person, any information acquired by him by reason of his being an officer, being information that was disclosed or obtained under the provisions of this Act.

Penalty: \$500.

- (3) Sub-section (2) does not prevent an officer—

- (a) from making a record of, or divulging or communicating to any person, information acquired by him in the performance of his duties as an officer and for purposes connected with 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 furnished by an officer of a Department or prescribed authority in the performance of his duties as such an officer—with the consent of the principal officer of the Department or authority or of the responsible Minister; or

- (ii) if the information was furnished by a person otherwise than as set out in sub-paragraph (i)—with the consent of the person who furnished the information.

(4) Subject to sub-section (5), sub-section (2) does not prevent the Ombudsman or a Deputy Ombudsman from disclosing, in a report made under this Act, such matters as, in his opinion, ought to be disclosed in the course of setting out the grounds for the conclusions and recommendations contained in the report.

(5) Where the Attorney-General furnishes to the Ombudsman a certificate in writing certifying that—

- (a) the disclosure of information or documents concerning a specified matter or matters included in a specified class of matters; or

- (b) the disclosure of a specified document or of documents included in a specified class of documents,

would, for a reason specified in the certificate, being a reason referred to in paragraph 9 (3) (a), (b), (c) or (d), be contrary to the public interest, an officer shall not, either directly or indirectly and either while he is, or after he ceases to be, an officer, except as provided in sub-section (6)—

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

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

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

Penalty: Imprisonment for 2 years.

(6) Sub-section (5) does not prevent an officer, in the performance of his duties as an officer—

- (a) from divulging or communicating information referred to in that sub-section to another officer;
- (b) from furnishing any of the contents of, a copy of or an extract from a document referred to in that sub-section to another officer; or
- (c) from returning such a document that has been produced to him to the person lawfully entitled to the custody of the document.

(7) Sub-section (2) does not prevent the Ombudsman from furnishing any information, not being information referred to in sub-section (5), or forwarding a document, or a copy of, or extract from, a document, not being a document referred to in sub-section (5), being information or a document relating to a matter arising under an Act of a State or relating to an undertaking that is being carried out jointly by the Commonwealth and a State, to a person exercising, under a law of a State, functions similar to the functions exercised by the Ombudsman under this Act.

(8) A person who is or has been an officer is not compellable, in any proceedings before a court (whether exercising federal jurisdiction or not) or before a person authorized by a law of the Commonwealth or of a State or Territory, or by consent of parties, to hear, receive and examine evidence, to disclose any information acquired by him by reason of his being or having been an officer, being information that was disclosed or obtained under the provisions of this Act.

36. (1) A person shall not refuse or fail, without lawful excuse— Offences.

- (a) to attend before the Ombudsman;
- (b) to be sworn or make an affirmation; or
- (c) to answer a question or produce a document or record,

when so required in pursuance of this Act.

Penalty: \$1,000 or imprisonment for 3 months.

(2) A person shall not—

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

Penalty: \$1,000 or imprisonment for 3 months.

(3) A reference in this section to the Ombudsman includes a reference to a Deputy Ombudsman.

Protection
from civil
actions.

37. Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person by reason of—

- (a) the making of a complaint to the Ombudsman under this Act; or
- (b) the making of a statement to, or the furnishing of a document or information to, a person, being an officer within the meaning of section 35, for the purposes of this Act.

Regulations.

38. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, prescribing matters in connexion with fees and expenses of witnesses appearing before the Ombudsman.

NOTE

1. Act No. 181, 1976; assented to 13 December 1976.