



Ombudsman Regulations 2017

made under the

Ombudsman Act 1976

Compilation No. 2

Compilation date: 10 April 2019

Includes amendments up to: F2019L00591

Registered: 7 May 2019

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Ombudsman Regulations 2017* that shows the text of the law as amended and in force on 10 April 2019 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part 1—Preliminary

1 Name

This instrument is the *Ombudsman Regulations 2017*.

3 Authority

This instrument is made under the *Ombudsman Act 1976*.

5 Definitions

In this instrument:

abuse, in relation to a complainant, includes:

- (a) sexual abuse of the complainant; and
- (b) serious physical abuse of the complainant; and
- (c) serious bullying or harassment of the complainant.

Act means the *Ombudsman Act 1976*.

administrative head of a court has the meaning given by the *Court Security Act 2013*.

amendment day means the day on which the *Ombudsman Amendment (Functions of the Defence Force Ombudsman) Regulations 2017* commenced.

complainant includes:

- (a) a person who is or was a member of the Defence Force; and
- (b) a person who is or was an APS employee deployed outside Australia:
 - (i) in connection with an operation of the Defence Force; or
 - (ii) for the purpose of capacity-building or peacekeeping functions by the Defence Force; and
- (c) a person who is or was contracted to provide services outside Australia:
 - (i) in connection with an operation of the Defence Force; or
 - (ii) for the purpose of capacity-building or peacekeeping functions by the Defence Force.

court has the meaning given by the *Court Security Act 2013*.

Defence Abuse Response Taskforce means the taskforce established by the then Attorney-General and Minister for Defence to respond to complaints of sexual and other forms of abuse by Defence personnel alleged to have occurred before 11 April 2011.

Defence Department means the Department administered by the Minister administering section 1 of the *Defence Act 1903*.

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Defence Force has the same meaning as in subsection 4(1) of the *Defence Act 1903*.

Defence Secretary means the Secretary of the Defence Department.

Determination 2017/06 means the instrument made by the Remuneration Tribunal under Division 4 of Part II of the *Remuneration Tribunal Act 1973* that is known as Determination 2017/06: Departmental Secretaries - Classification Structure and Terms and Conditions, as in force when this instrument commenced.

excluded complaint means a complaint that:

- (a) was previously made to, and dealt with by, the Defence Abuse Response Taskforce; or
- (b) is the same in substance as a complaint that was previously made to, and dealt with by, the Defence Abuse Response Taskforce.

member of Defence, in relation to a complaint of abuse, includes a person who, at the time the abuse is alleged to have occurred:

- (a) was a member of the Defence Force; and
- (b) was an APS employee deployed outside Australia:
 - (i) in connection with an operation of the Defence Force; or
 - (ii) for the purpose of capacity-building or peacekeeping functions by the Defence Force; and
- (c) was contracted to provide services outside Australia:
 - (i) in connection with an operation of the Defence Force; or
 - (ii) for the purpose of capacity-building or peacekeeping functions by the Defence Force.

National Preventive Mechanism Network means the persons and bodies separately appointed or established by the Commonwealth and each State and Territory to give effect to Australia's obligations under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

new complaint has the meaning given by subsection 14(1A).

old complaint has the meaning given by subsection 14B(2).

restorative engagement conference means a process facilitated by the Defence Force Ombudsman or another person in which a complainant engages with a member of Defence to have their complaint of abuse acknowledged.

Part 2—General matters

6 Bodies not to be taken to be prescribed authorities for the purposes of the Act

For the purposes of subparagraph (a)(iii) of the definition of *prescribed authority* in subsection 3(1) of the Act, each of the following bodies is not to be taken to be a prescribed authority for the purposes of the Act:

- (a) the Australian Security Intelligence Organisation;
- (b) the Commonwealth Grants Commission;
- (c) the Defence Force Remuneration Tribunal;
- (d) the Pharmaceutical Benefits Remuneration Tribunal;
- (e) the Remuneration Tribunal;
- (f) the Shire of the Cocos (Keeling) Islands.

7 Persons not to be taken to be prescribed authorities for the purposes of the Act

For the purposes of subparagraph (c)(ii) of the definition of *prescribed authority* in subsection 3(1) of the Act, a person is not to be taken to be a prescribed authority for the purposes of the Act if the person holds or performs the duties of:

- (a) an office established by a provision of an enactment of the Northern Territory, being a provision relating to a matter in respect of which the Ministers of that Territory have executive authority; or
- (b) any of the following offices:
 - (i) Auditor-General;
 - (ii) Australian Government Solicitor;
 - (iii) President of the Defence Force Remuneration Tribunal;
 - (iv) President of the Remuneration Tribunal;
 - (v) Director-General of Security;
 - (vi) Inspector-General of Intelligence and Security.

8 Principal offices

For the purposes of subparagraph (c)(i) of the definition of *principal officer* in subsection 3(1) of the Act, each office specified in column 1 of an item in the following table is declared to be the principal office in respect of the prescribed authority specified in column 2 of the table for the item.

Principal offices		
Item	Column 1	Column 2
1	Chief Executive Officer	Australian Crime Commission
2	Electoral Commissioner	Australian Electoral Commission
3	Commissioner of Police	Australian Federal Police

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Principal offices

Item	Column 1	Column 2
4	Chief Executive Officer	Australian Institute of Marine Science
5	Vice-Chancellor	Australian National University
6	Managing Director	Australian Postal Corporation
7	Chief Executive Officer	Australian Trade and Investment Commission
8	Director	Australian War Memorial
9	Managing Director	Export Finance and Insurance Corporation
10	Director-General	National Library of Australia
11	Managing Director	Special Broadcasting Service Corporation
12	Managing Director	Tourism Australia

9 Actions deemed not to be taken by Attorney-General's Department

- (1) For the purposes of subsection 3(5A) of the Act, action taken by the Australian Government Solicitor or any other officer of the Attorney-General's Department in furtherance of the duties of the Australian Government Solicitor is deemed not to be action taken by the Attorney-General's Department.
- (2) Subsection (1) does not apply to action that is disclosable conduct to which subsection 5A(1) of the Act applies.

10 Members of court staff

For the purposes of paragraph 3(14)(d) of the Act, if the administrative head of a court appoints a person as a security officer, that person is declared to be a member of the staff of the court for the purposes of the Act.

11 Commonwealth-controlled companies to be taken to be prescribed authorities

For the purposes of subsection 3A(3) of the Act, each of the following Commonwealth-controlled companies is to be taken to be a prescribed authority:

- (a) Aboriginal Hostels Limited;
- (b) ANU Enterprise Pty Limited.

12 Prescribed terms and conditions

For the purposes of subsection 21(2) of the Act, the terms and conditions set out in Part 7 of Determination 2017/06 that apply to a Departmental Secretary (within the meaning of the *Remuneration Tribunal Act 1973*) are prescribed.

13 Witness expenses

If:

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- (a) a person (the *witness*) attends before another person to answer questions relevant to an investigation in accordance with a notice served under subsection 9(1AA) or (2) of the Act; and
 - (b) the witness incurs expenses or suffers losses in so attending;
- the witness may be paid an amount equal to so much of those expenses or losses as the Ombudsman considers reasonable.

Part 3—Defence Force Ombudsman

14 Conferral of functions on Defence Force Ombudsman—new complaints etc.

- (1) For the purposes of paragraph 19C(1)(a) of the Act, the Defence Force Ombudsman has:
- (a) the function of taking appropriate action to respond to a new complaint of abuse made by a complainant if the Defence Force Ombudsman is satisfied that the abuse is reasonably likely to have occurred, including any of the following actions:
 - (i) facilitating counselling for the complainant;
 - (ii) using a process to address or resolve the complaint, facilitated by the Defence Force Ombudsman or another person, such as an alternative dispute resolution process or a restorative engagement conference;
 - (iii) making a recommendation to the Defence Department in respect of the complaint;
 - (iiia) if the new complaint is made before 1 July 2021 and relates to abuse that allegedly occurred on or before 30 June 2014—making recommendations under section 14A in relation to the complaint;
 - (iv) deciding not to take, or to continue to take, action in response to the complaint; and
 - (b) functions that are ancillary or incidental to the function mentioned in paragraph (a); and
 - (c) the function of inquiring into matters relating to complaints of abuse, including, for example:
 - (i) the Defence Department's and the Defence Force's procedures relating to making and responding to such complaints; and
 - (ii) the effectiveness and appropriateness of those procedures; and
 - (d) the function of dealing with any matter relating to complaints previously made to, and dealt with by, the Defence Abuse Response Taskforce.

Note: In addition to the ways mentioned in paragraph (a), certain provisions of the Act could also be used to respond to a complaint of abuse. For example, section 35A of the Act could be used to refer evidence relating to a complaint of abuse to the Australian Federal Police, the police force or police service of a State or Territory or a military justice authority for investigation and possible prosecution of an offence.

- (1A) A complaint is a *new complaint* if:
- (a) the complaint is about abuse engaged in by a member of Defence; and
 - (b) either:
 - (i) the complaint is made to the Defence Force Ombudsman on or after the amendment day; or
 - (ii) the complaint was made to the Defence Force Ombudsman on or after 1 December 2016 but before the amendment day and, immediately before the amendment day, the complaint had not been finally dealt with; and

- (c) the complaint is not an excluded complaint.
- (2) To avoid doubt, a complainant may make a complaint about abuse engaged in by a member of Defence even if the complainant has not approached the Defence Department in relation to the complaint.
- (4) The Chief of the Defence Force and the Defence Secretary must both use their best endeavours to assist the Defence Force Ombudsman in his or her performance of the functions set out in subsection (1).

14A Payments to complainants—new complaints

- (1) If:
 - (a) a complainant makes a new complaint of abuse of a kind referred to in subparagraph 14(1)(a)(iia); and
 - (b) the Defence Force Ombudsman is satisfied that the abuse involved the most serious forms of abuse;
 the Defence Force Ombudsman may recommend that the Defence Secretary make a reparation payment of up to \$45,000 to the complainant.
- (2) If:
 - (a) a complainant makes a new complaint of abuse of a kind referred to in subparagraph 14(1)(a)(iia); and
 - (b) the Defence Force Ombudsman is satisfied that the abuse involved unlawful interference with the complainant accompanied by some element of indecency;
 the Defence Force Ombudsman may recommend that the Defence Secretary make a reparation payment of up to \$20,000 to the complainant.
- (3) If:
 - (a) the Defence Force Ombudsman makes a recommendation under subsection (1) or (2) in relation to a new complaint of abuse made by a complainant; and
 - (b) the Defence Force Ombudsman is reasonably satisfied that the Defence Department did not respond appropriately to the abuse;
 the Defence Force Ombudsman may recommend that the Defence Secretary make an additional payment of up to \$5,000 to the complainant.

14B Conferral of functions on Defence Force Ombudsman—old complaints

- (1) For the purposes of paragraph 19C(1)(a) of the Act, the Defence Force Ombudsman has:
 - (a) the function of making recommendations under subsections (3) to (5) in relation to an old complaint if the Defence Force Ombudsman is satisfied that the abuse to which the old complaint relates is reasonably likely to have occurred; and
 - (b) functions that are ancillary or incidental to the function mentioned in paragraph (a).

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- (2) A complaint is an *old complaint* if:
 - (a) the complaint was made to the Defence Force Ombudsman on or after 1 December 2016 but before the amendment day; and
 - (b) immediately before the amendment day, the Defence Force Ombudsman had finally dealt with the complaint; and
 - (c) the complaint was about abuse allegedly engaged in by a member of Defence on or before 30 June 2014; and
 - (d) the complaint is not an excluded complaint.
- (3) If the Defence Force Ombudsman is satisfied that the abuse to which an old complaint relates involved the most serious forms of abuse, the Defence Force Ombudsman may recommend that the Defence Secretary make a reparation payment of up to \$45,000 to the complainant.
- (4) If the Defence Force Ombudsman is satisfied that the abuse to which an old complaint relates involved unlawful interference with the complainant accompanied by some element of indecency, the Defence Force Ombudsman may recommend that the Defence Secretary make a reparation payment of up to \$20,000 to the complainant.
- (5) If:
 - (a) the Defence Force Ombudsman makes a recommendation under subsection (3) or (4) in relation to an old complaint of abuse made by a complainant; and
 - (b) the Defence Force Ombudsman is reasonably satisfied that the Defence Department did not respond appropriately to the abuse;the Defence Force Ombudsman may recommend that the Defence Secretary make an additional payment of up to \$5,000 to the complainant.

15 Transitional—conferral of functions on Defence Force Ombudsman

Disclosure, collection and use of information and documents relating to the Defence Abuse Response Taskforce

- (1) The Defence Abuse Response Taskforce must disclose information and documents obtained by the Taskforce in the performance of its functions to the Defence Force Ombudsman for the purposes of the Defence Force Ombudsman performing his or her functions under the Act or this instrument.
- (2) The Attorney-General's Department must disclose information and documents relating to the Defence Abuse Response Taskforce to the Defence Force Ombudsman for the purposes of the Defence Force Ombudsman performing his or her functions under the Act or this instrument.
- (3) The Defence Force Ombudsman may collect and use information or documents disclosed under subsection (1) or (2), or disclose information or documents, for the purposes of performing his or her functions under the Act or this instrument.

Disclosure etc. of information and documents relating to new complaints or old complaints

- (4) A Department or prescribed authority may disclose information and documents relating to a new complaint, or an old complaint, of abuse to the Defence Force Ombudsman for the purposes of the Defence Force Ombudsman performing his or her function under paragraph 14(1)(a) or 14B(1)(a) of this instrument.
- (5) The Defence Force Ombudsman may collect and use information or documents disclosed under subsection (4), or disclose information or documents, for the purposes of performing his or her functions under the Act or this instrument.

Interaction with the Privacy Act 1988

- (6) For the purposes of the *Privacy Act 1988*, disclosing information or documents to the Defence Force Ombudsman, as mentioned in subsections (1), (2) and (4), is taken to be authorised by this instrument.

Part 4—National Preventive Mechanism functions

Division 1—National Preventive Mechanism Body function

16 National Preventive Mechanism Body function

- (1) For the purposes of paragraph 4(2)(a) of the Act, the National Preventive Mechanism Body function is conferred on the Ombudsman.
- (2) The National Preventive Mechanism Body function is to be performed for the purposes of giving effect to the Commonwealth's obligations under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the *Optional Protocol*), so far as those obligations relate to places of detention under the control of the Commonwealth.

Note: The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment is in Australian Treaty Series 2018 No. 5 ([2018] ATS 5) and could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

- (3) The National Preventive Mechanism Body function includes the following:
 - (a) undertaking regular inspections of places of detention;
 - (b) giving information to the United Nations Subcommittee on Prevention of Torture and other Cruel or Degrading Treatment or Punishment to facilitate the inspection of places of detention by the Subcommittee;
 - (c) functions incidental to the function of National Preventive Mechanism Body.
- (4) For the purposes of this section, the Commonwealth's obligations under the Optional Protocol do not include the obligations of each of the States and Territories under the Optional Protocol.

Division 2—National Preventive Mechanism Coordinator function

17 National Preventive Mechanism Coordinator function

- (1) For the purposes of paragraph 4(2)(a) of the Act, the function of National Preventive Mechanism Coordinator is conferred on the Ombudsman.
- (2) The function of National Preventive Mechanism Coordinator is to be performed for the purposes of giving effect to Australia's obligations under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the *Optional Protocol*).
- (3) The function of National Preventive Mechanism Coordinator includes the following:
 - (a) consulting with governments and other bodies on the development of standards and principles regarding the treatment and conditions of persons deprived of their liberty;
 - (b) collecting information on oversight arrangements in relation to persons deprived of their liberty and undertaking related research;
 - (c) proposing options and developing resources to facilitate improvements in oversight arrangements in relation to persons deprived of their liberty, including by:
 - (i) facilitating the sharing of expertise, knowledge and practice in order to build on the existing work of detention inspectorates of the Commonwealth, the States and the Territories; or
 - (ii) proposing options for reducing duplication of, and overlap in, inspections of places of detention; or
 - (iii) proposing options for covering gaps in oversight of places of detention;
 - (d) communicating, on behalf of the National Preventive Mechanism Network, with the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
 - (e) convening meetings and facilitating collaboration between any of the following for the purposes of giving effect to the Optional Protocol:
 - (i) State and Territory governments and governments of other countries;
 - (ii) National Preventive Mechanism persons and bodies, including such persons and bodies outside Australia;
 - (f) giving information to the following for the purposes of giving effect to the Optional Protocol:
 - (i) the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
 - (ii) State and Territory governments and governments of other countries;
 - (iii) National Preventive Mechanism persons and bodies, including such persons and bodies outside Australia;

Part 4 National Preventive Mechanism functions

Division 2 National Preventive Mechanism Coordinator function

Section 17

- (g) reporting to the public and to Commonwealth, State and Territory Ministers on the following:
 - (i) the implementation of the Optional Protocol;
 - (ii) the activities of the National Preventive Mechanism Network;
- (h) making recommendations to the Commonwealth in relation to the implementation of the Optional Protocol;
- (i) functions incidental to the function of National Preventive Mechanism Coordinator.

Note: For *National Preventive Mechanism Network*, see section 5.

- (4) In performing the function of National Preventive Mechanism Coordinator, the Commonwealth Ombudsman must not compel or direct a person or body that is a part of the National Preventive Mechanism Network.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
Ombudsman Regulations 2017	26 Sept 2017 (F2017L01248)	27 Sept 2017 (s 2(1) item 1)	
Ombudsman Amendment (Functions of the Defence Force Ombudsman) Regulations 2017	15 Dec 2017 (F2017L01625)	16 Dec 2017 (s 2(1) item 1)	—
Ombudsman Amendment (National Preventive Mechanism) Regulations 2019	9 Apr 2019 (F2019L00591)	10 Apr 2019 (s 2(1) item 1)	—

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 2	rep LA s 48D
s 4	rep LA s 48C
s 5	am F2017L01625; F2019L00591
Part 3	
s 14	am F2017L01625
s 14A	ad F2017L01625
s 14B	ad F2017L01625
s 15	am F2017L01625
Part 4	
Part 4	ad F2019L00591
Division 1	
s 16	ad F2019L00591
Division 2	
s 17	ad F2019L00591 ed C2
Schedule 1	rep LA s 48C

Endnote 5—Editorial changes

In preparing this compilation for registration, the following kinds of editorial change(s) were made under the *Legislation Act 2003*.

Paragraph 17(3)(g)**Kind of editorial change**

Changes to punctuation

Details of editorial change

Schedule 1 item 2 of the *Ombudsman Amendment (National Preventive Mechanism) Regulations 2019* instructs to add Part 4 at the end of the regulations.

Paragraph 17(3)(g) of the newly inserted Part 4 appears as follows:

- (g) reporting to the public and to Commonwealth, State and Territory Ministers on the following:
 - (i) the implementation of the Optional Protocol;
 - (ii) the activities of the National Preventive Mechanism Network;

This compilation was editorially changed to omit the semi-colon after “following” in paragraph 17(3)(g) and substitute a colon to bring it into line with legislative drafting practice.