



Australian Capital Territory

Ombudsman Act 1989

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About this republication

The republished law

This is a republication of the *Ombudsman Act 1989* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 30 September 2023. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 30 September 2023.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register (www.legislation.act.gov.au). For more information, see the home page for this law on the register.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$160 for an individual and \$810 for a corporation (see *Legislation Act 2001*, s 133).



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Australian Capital Territory

Ombudsman Act 1989

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

Part 1 Preliminary

1 Name of Act

This Act is the *Ombudsman Act 1989*.

2 Dictionary

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

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

For example, the signpost definition ‘*child sex offenders register*—see the *Crimes (Child Sex Offenders) Act 2005*, section 117.’ means that the term ‘child sex offenders register’ is defined in that section and the definition applies to this Act.

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

2A Notes

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

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

2B Offence against Act—application of Criminal Code etc

Other legislation applies in relation to an offence against this Act.

Note 1 **Criminal Code**

The [Criminal Code](#), ch 2 applies to an offence against s 17P (Offence—false allegation) (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 **Penalty units**

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

3 Entities not necessarily prescribed authorities

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

Examples of bodies

A board, council and committee

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

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

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

(3) In this section:

specified office means—

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

3A Conduct by person taken as conduct by administrative unit

- (1) For this Act, an action taken by an officer of an administrative unit is taken as an action by the unit if the officer takes, or purports to take, the action—
 - (a) because of being an officer of the unit, whether or not—
 - (i) the action is taken in connection with, or as incidental to, the exercise of the functions of the unit; or
 - (ii) the taking of the action is within the duties of the officer; or
 - (b) in the exercise of functions given to the officer by an enactment.
- (2) Despite subsection (1), if a regulation provides that a person holding, or performing the duties of, an office established by an enactment is not a prescribed authority for this Act, a regulation may also provide that action taken by an officer of an administrative unit for the duties of the office, must, for this Act, be taken not to be action taken by the administrative unit.

- (3) For this Act, an action taken by a person, who is not an officer of an agency, in the exercise of a function that the person is authorised to exercise because the person holds an appointment made, or because of authority given, by the Executive, a Minister or a director-general of an administrative unit is taken to be action by the administrative unit responsible for dealing with the matter in connection with which the action is taken if the person does not exercise the function because the person—
- (a) holds, or performs the duties of, an office established under an enactment; or
 - (b) is a judge of a court created by the Commonwealth Parliament or of a court of a State; or
 - (c) is a Commonwealth or State magistrate.

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

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

3B Conduct by person taken as conduct by prescribed authority

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

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

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

- (1) This Act does not apply to an agency in relation to functions exercised by it as an agent for AER or AEMO under the national electricity rules.
- (2) In this section:

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

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

national electricity rules means the national electricity rules under the *National Electricity (ACT) Law*.

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

Division 2.1 **Establishment and functions**

4 **Establishment of office of ombudsman**

The office of the ombudsman is established.

4A **Officer of the Legislative Assembly**

- (1) The ombudsman is an independent officer of the Legislative Assembly.
- (2) The functions, powers, rights, immunities and obligations of the ombudsman are as stated in this Act and any other law in force in the ACT.

Note A law in force in the ACT includes a territory law and a Commonwealth law.

- (3) There are no implied functions, powers, rights, immunities or obligations arising from the ombudsman being an independent officer of the Legislative Assembly.
- (4) The powers of the Legislative Assembly to act in relation to the ombudsman are as stated in this Act and any other law in force in the ACT.
- (5) In subsection (4):

Legislative Assembly includes—

- (a) the members of the Legislative Assembly; and
 - (b) the committees of the Legislative Assembly.
- (6) There are no implied powers of the Legislative Assembly arising from the ombudsman being an independent officer of the Legislative Assembly.

4B Independence of ombudsman

Subject to this Act and to other territory laws, the ombudsman has complete discretion in the exercise of the ombudsman's functions.

4C Functions—generally

The functions of the ombudsman are—

- (a) to investigate complaints made under this Act; and
- (b) to exercise other functions given to the ombudsman under this Act; and
- (c) to exercise other functions given to the ombudsman under the *Freedom of Information Act 2016*; and
- (d) to exercise other functions given to the ombudsman under the *Public Interest Disclosure Act 2012*; and
- (e) to monitor compliance with the *Crimes (Child Sex Offenders) Act 2005*, part 3.11 (Entry and search warrants) by the chief police officer and other officers and people assisting in exercising functions under that part; and
- (f) to monitor compliance with the *Crimes (Child Sex Offenders) Act 2005*, chapter 4 (Child sex offenders register) by the chief police officer and other people authorised by the chief police officer to have access to the child sex offenders register.

5 Functions—investigating complaints under Act

- (1) Subject to this Act, the ombudsman—
 - (a) must investigate action that relates to a matter of administration, being action—
 - (i) taken after the commencement of this Act by an agency and in respect of which a complaint has been made to the ombudsman; or

- (ii) in respect of which a complaint is transferred to the ombudsman under the *A.C.T. Self-Government (Consequential Provisions) Act 1988* (Cwlth), section 28; or
 - (iii) taken before the commencement of this Act and in respect of which a complaint is made to the ombudsman after that commencement in a case where, if that complaint had been made to the Commonwealth ombudsman before that commencement, that complaint would have been transferred to the ombudsman under the *A.C.T. Self-Government (Consequential Provisions) Act 1988* (Cwlth), section 28; and
- (b) may, of his or her own motion, investigate action of that kind.

Note The ombudsman—

- (a) must consult with the inspector of correctional services in relation to any investigation under par (b) involving a detainee or correctional centre or service (see *Inspector of Correctional Services Act 2017*, s 33); and
 - (b) may refer a matter to the inspector if the ombudsman reasonably believes the matter can be more appropriately dealt with by the inspector (see *Inspector of Correctional Services Act 2017*, s 34).
- (2) The ombudsman is not authorised to investigate—
- (a) action taken by a Minister; or
 - (b) action taken by—
 - (i) a judge or the associate judge; or
 - (ii) the registrar or a deputy registrar of the Supreme Court or of the Magistrates Court when performing a function of a judicial nature; or
 - (c) action taken by a magistrate or coroner for the Territory; or

- (d) action taken by a tribunal, a member of a tribunal, or a member of the staff of a tribunal, in the exercise of the tribunal's deliberative functions; or
- (e) action taken by a royal commission under the *Royal Commissions Act 1991*; or
- (f) action taken by a board of inquiry under the *Inquiries Act 1991*; or
- (g) action taken by the commissioner for sustainability and the environment; or
- (h) action taken by the Territory or a territory authority for the management of the environment (not including action taken under the *Utilities Act 2000*, part 14 (Streetlighting and stormwater)); or
- (i) action taken by the human rights commission, a member of the commission, or a member of the staff of the commission, in the exercise of the commission's deliberative functions; or
- (j) action taken by a judicial commission under the *Judicial Commissions Act 1994*; or
- (k) action taken by the judicial council under the *Judicial Commissions Act 1994*, section 5A; or
- (l) action taken by any body or person with respect to persons employed in the public service or the service of a prescribed authority, being action taken in relation to the employment of those persons, including action taken with respect to the promotion, termination of appointment or discipline of, or the payment of remuneration to, those persons, other than action taken in relation to a reportable allegation or a reportable conviction; or

Note The ombudsman may, under s 17K, conduct an investigation into any reportable allegation or reportable conviction involving an employee of a designated entity.

- (m) action taken by an agency with respect to the appointment of a person to an office established by or under an enactment, not being an office in the public service or an office in the service of a prescribed authority; or
 - (n) action taken, or not taken, under the *Legislation Act 2001*, part 5.2 (Requirements for regulatory impact statements); or
 - (o) action taken by an agency, other than action taken in relation to a reportable allegation or a reportable conviction—
 - (i) for the purpose or in the course of providing, or purporting to provide, a disability service, a health service, a service for children and young people or a service for older people; or
 - (ii) in refusing to provide a disability service, a health service, a service for children and young people or a service for older people.
- (3) Nothing in subsection (2) prevents the ombudsman from—
- (a) exercising a function given to the ombudsman under—
 - (i) the *Freedom of Information Act 2016*; or
 - (ii) the *Public Interest Disclosure Act 2012*; or
 - (b) investigating a complaint made under—
 - (i) the *Freedom of Information Act 2016*, section 69; or
 - (ii) the *Public Interest Disclosure Act 2012*, section 34 (4).
- (4) The reference in subsection (2) (a) to action taken by a Minister does not include a reference to action taken by a delegate of a Minister.
- (5) For subsection (4), action is taken to have been taken by a delegate of the Minister even if the action is taken under a power that is deemed by a provision of an enactment, when exercised by the delegate, to have been exercised by the Minister.

- (6) Subsection (2) (o) has effect subject to division 2.2A (Reportable conduct).
- (7) For the application of this Act in relation to the ombudsman, action taken by an agency must not be regarded as having been taken by a Minister only because the action was taken by the agency in relation to action taken or to be taken by a Minister personally.
- (8) In this section:

associate judge means the Master of the Supreme Court under the *Supreme Court Act 1933*, as in force at any time before the day the *Courts Legislation Amendment Act 2023*, section 23 commences.

Note The *Courts Legislation Amendment Act 2023*, s 23 omitted the *Supreme Court Act 1933*, pt 3, which provided for the Master of the Supreme Court (known as the Associate Judge).

disability service—see the *Human Rights Commission Act 2005*, section 8.

health service—see the *Human Rights Commission Act 2005*, section 7.

reportable allegation—see section 17D.

reportable conviction—see section 17D.

service for children and young people—see the *Human Rights Commission Act 2005*, section 8A.

service for older people—see the *Human Rights Commission Act 2005*, section 9.

6 Discretion not to investigate certain complaints

- (1) Where a complaint has been made to the ombudsman with respect to action taken by an agency, the ombudsman may, in his or her discretion, decide not to investigate the action or, if investigation has commenced, decide not to investigate the action further—
 - (a) if the ombudsman is satisfied that the complainant became aware of the action more than 12 months before the complaint was made to the ombudsman; or
 - (b) if, in the opinion of the ombudsman—
 - (i) the complaint is frivolous or vexatious or was not made in good faith; or
 - (ii) the complainant does not have a sufficient interest in the subject matter of the complaint; or
 - (iii) an investigation, or further investigation, of the action is not warranted having regard to all the circumstances.
- (2) Where a person who makes a complaint to the ombudsman with respect to action taken by an agency has not complained to the agency with respect to that action, the ombudsman may, in his or her discretion, decide not to investigate the action until the complainant so complains to the agency.
- (3) Where a person who makes a complaint to the ombudsman with respect to action taken by an agency has complained to the agency with respect to that action, the ombudsman may, in his or her discretion, decide not to investigate the action unless the complainant informs the ombudsman that no redress has been granted or that redress has been granted but the redress is not, in the opinion of the complainant, adequate.

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

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

- (5) Where a complainant has caused or causes action to which his or her complaint relates to be reviewed by a court, or by a tribunal constituted by or under an enactment, the ombudsman must not investigate, or continue to investigate, the action unless the ombudsman is of the opinion that there are special reasons justifying the investigation or the continued investigation.
- (6) Where the ombudsman is of the opinion that a complainant has or had a right to cause the action to which the complaint relates to be reviewed by a court, or by a tribunal constituted by or under an enactment, but has not exercised that right, the ombudsman may decide not to investigate the action or not to investigate the action further, if he or she is of the opinion that, in all the circumstances, it would be reasonable for the complainant to exercise, or would have been reasonable for the complainant to have exercised, that right.

- (7) Where, before the ombudsman commences, or after the ombudsman has commenced, to investigate action taken by an agency, being action that is the subject matter of a complaint, the ombudsman forms the opinion that adequate provision is made under an administrative practice for the review of action of that kind, the ombudsman may decide not to investigate the action or not to investigate the action further—
- (a) if the action has been, is being or is to be reviewed under that practice at the request of the complainant; or
 - (b) if the ombudsman is satisfied that the complainant is entitled to cause the action to be reviewed under that practice and it would be reasonable for the complainant to cause it to be so reviewed.
- (8) Where a complaint is made to the ombudsman by a complainant at the request of another person or of a body of persons, this section applies as if references to the complainant were references to the person or the body of persons at whose request the complaint is made.

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

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

- (b) the statutory office-holder consents to the reference.
- (2) The ombudsman may decide not to investigate, or further investigate, the action.
- (3) If the ombudsman decides not to investigate, or further investigate, the action, the ombudsman must refer the complaint, together with any relevant documents or information in the ombudsman's possession or control, to the statutory office-holder.
- (4) In this section:

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

6B Mandatory referral of complaints to other entities

- (1) If the ombudsman decides that it would be more appropriate for a complaint to be investigated by the commissioner for sustainability and the environment or the human rights commission, the ombudsman must refer the complaint to the entity.
- (2) If a complaint is referred to an entity, the ombudsman must give the entity the relevant documents and information about the complaint.

7 Complaints

- (1) Subject to subsection (2), a complaint under this Act may be made to the ombudsman orally or in writing.
- (2) Where a complaint is made orally to the ombudsman, the ombudsman may put the complaint in writing or at any time require the complainant to put the complaint in writing and, where the ombudsman makes such a requirement of a complainant, the ombudsman may decline to investigate the complaint, or to investigate the complaint further, until the complainant complies with the requirement.
- (3) A person who is detained in custody is entitled—
 - (a) upon making a request to the person in whose custody he or she is detained or to any other person performing duties in connection with the detention (the *custodian*)—
 - (i) to be provided with facilities for preparing a complaint in writing under this Act, for giving in writing to the ombudsman, after the complaint has been made, any other relevant information and for enclosing the complaint or the other information (if any) in a sealed envelope; and
 - (ii) to have sent to the ombudsman, without undue delay, a sealed envelope addressed to the ombudsman and delivered by the person in custody to the custodian; and
 - (b) to have delivered to him or her, without undue delay, any sealed envelope addressed to him or her and sent by the ombudsman, that comes into the possession or under the control of the custodian.

- (4) Where—
- (a) a sealed envelope addressed to the ombudsman is delivered by a person detained in custody to the custodian for sending to the ombudsman; or
 - (b) a sealed envelope addressed to a person so detained and sent by the ombudsman comes into the possession or under the control of the custodian;

the custodian is not entitled to open the envelope or to inspect any document enclosed in the envelope.

- (5) For subsections (3) and (4), the ombudsman may make arrangements with the appropriate authority of the Commonwealth or of a State or a Territory for the identification and delivery of sealed envelopes sent by the ombudsman to persons detained in custody.

8 Preliminary inquiries

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

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

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

9 Investigations

- (1) The ombudsman must, before commencing an investigation under this Act of action taken by an agency, inform the principal officer of the agency that the action is to be investigated.
- (2) The ombudsman may from time to time make an arrangement with the principal officer of an agency with respect to the manner in which, and the period within which, the ombudsman is to inform the principal officer that he or she proposes to investigate action taken by the agency, being action to which the arrangement relates.
- (3) An investigation under this Act must be conducted in private and, subject to this Act, in such manner as the ombudsman thinks fit.
- (4) Subject to this Act, the ombudsman may, for the purposes of this Act, obtain information from such persons, and make such inquiries, as he or she thinks fit.
- (5) Subject to subsection (6), it is not necessary for the complainant or any other person to be afforded an opportunity to appear before the ombudsman or any other person in connection with an investigation by the ombudsman under this Act.
- (6) The ombudsman must not make a report in respect of an investigation under this Act in which he or she sets out opinions that are, either expressly or impliedly, critical of an agency or person unless, before completing the investigation, the ombudsman has—
 - (a) if the opinions relate to an agency—given the principal officer of the agency and the officer principally concerned in the action to which the investigation relates opportunities to appear before the ombudsman or before an authorised person, and to make such submissions, either orally or in writing, in relation to that action as they think fit; and

- (b) if the opinions relate to a person—given that person an opportunity to appear before the ombudsman or before an authorised person, and to make such submissions, either orally or in writing, in relation to the action to which the investigation relates as the person thinks fit.
- (7) Where the ombudsman gives the principal officer of an agency an opportunity to appear before the ombudsman or before an authorised person under subsection (6), the principal officer may appear in person or a person authorised by the principal officer may appear on behalf of the principal officer.
- (8) Where the ombudsman gives a person other than the principal officer of an agency an opportunity to appear before the ombudsman or before an authorised person under subsection (6), the person may, with the approval of the ombudsman or of the authorised person, as the case may be, be represented by another person.
- (9) Where, in relation to an investigation under this Act, the ombudsman proposes to give a person an opportunity to appear before the ombudsman or before an authorised person and to make submissions under subsection (6), or proposes to make a requirement of a person under section 11—
- (a) if a complaint was made orally with respect to the action and the complaint has not been put in writing—the complaint must be put in writing; and
- (b) the ombudsman must, if he or she has not previously informed the responsible Minister that the action is being investigated, inform that Minister accordingly.
- (10) The ombudsman may, either before or after the completion of an investigation under this Act, discuss any matter that is relevant to the investigation with a Minister concerned with the matter.

- (11) On the request of the responsible Minister, the ombudsman must consult that Minister before forming a final opinion on any of the matters referred to in section 18 (1) or (2) that are relevant to the action under investigation.
- (12) Where the ombudsman becomes of the opinion, either before or after completing an investigation under this Act, that there is evidence that a person, being an officer of an agency, has been guilty of a breach of duty or of misconduct and that the evidence is, in all the circumstances, of sufficient force to justify doing so, the ombudsman must bring the evidence to the notice of—
- (a) if the person is the head of service—the Chief Minister; or
 - (b) in the case of an administrative unit—
 - (i) if the person is the director-general of the administrative unit—the responsible Minister of the administrative unit; or
 - (ii) if the person is a member of the administrative unit other than the director-general—the director-general of the administrative unit; or
 - (c) in the case of a prescribed authority—
 - (i) if the person is the principal officer of the authority—the responsible Minister of the authority; or
 - (ii) if the person is not the principal officer of the authority—the principal officer of the authority.

10 Arrangements with another ombudsman

- (1) The ombudsman may make an arrangement in writing with the Commonwealth ombudsman, the ombudsman of a State, or 2 or more of them, in relation to the investigation by any 1 or more of them of action that relates to a matter of administration referred to in any of the following paragraphs:
 - (a) action taken by an agency and action taken by a Commonwealth or State department or authority;
 - (b) action taken by an authority or other agency established or administered jointly by the Territory and the Commonwealth, the Territory and 1 or more States or the Territory, the Commonwealth and 1 or more States;
 - (c) action taken by an authority or other agency referred to in paragraph (b) and action taken by—
 - (i) an agency; or
 - (ii) a Commonwealth or State department or authority.
- (2) A reference in subsection (1) to action taken by an agency or other authority includes a reference to action taken by such an agency or authority on behalf of another body.
- (3) The ombudsman may arrange in writing with another ombudsman with whom such an arrangement is in force for the variation or revocation of the arrangement.
- (4) The regulations may make provision in relation to the participation by the ombudsman in the carrying out of an investigation under an arrangement under this section.
- (5) Nothing in this section affects the powers and duties of the ombudsman under any other provision of this Act.

- (6) Subsection (1) does not empower the ombudsman to make an arrangement for the exercise by the Commonwealth ombudsman or the ombudsman of a State of a power of the ombudsman except in accordance with an instrument of delegation mentioned in section 32.

11 Power to obtain information and documents

- (1) Where the ombudsman has reason to believe that a person is capable of providing information or producing documents or other records relevant to an investigation under this Act, the ombudsman may, by notice in writing served on the person, require the person, at such place, and within such period or on such day and at such time, as are specified in the notice—
- (a) to provide to the ombudsman, by writing signed by that person or, in the case of a body corporate, by an officer of the body corporate, any such information; or
 - (b) to produce to the ombudsman such documents or other records as are specified in the notice; or
 - (c) to provide to the ombudsman any such information and to produce to the ombudsman such documents or other records as are specified in the notice.
- (2) Where the ombudsman has reason to believe that an officer of an agency is capable of providing information or producing documents or other records relevant to an investigation under this Act or both providing information and producing documents or other records of that kind, but the ombudsman does not know the identity of the officer, the ombudsman may, by notice in writing served on the principal officer of the agency, require the principal officer or a person nominated by the principal officer, at such place, and within such period or on such day and at such time, as are specified in the notice—
- (a) to attend before a person specified in the notice to answer questions relevant to the investigation; or

- (b) to produce to a person specified in the notice such documents or other records as are so specified; or
 - (c) to attend before a person so specified to answer questions of that kind and to produce to a person so specified such documents or other records as are so specified.
- (3) Where documents or other records are produced to the ombudsman in accordance with a requirement under subsection (1) or (2) or an order under section 14 (2), the ombudsman—
 - (a) may take possession of, and may make copies of, or take extracts from, the documents or other records; and
 - (b) may retain possession of the documents or other records for such period as is necessary for the purposes of the investigation to which the documents or other records relate; and
 - (c) during that period must permit a person who would be entitled to inspect any 1 or more of the documents or other records if they were not in the possession of the ombudsman to inspect at all reasonable times such of the documents or other records as that person would be so entitled to inspect.
- (4) Where the ombudsman has reason to believe that a person is able to give information relevant to an investigation under this Act, the ombudsman may, by notice in writing served on the person, require the person to attend before a person specified in the notice, on such day and at such time and place as are specified in the notice, to answer questions relevant to the investigation.

- (5) Notwithstanding the provisions of any enactment, a person is not excused from providing any information, producing a document or other record or answering a question when required to do so under this Act on the ground that the providing of the information, the production of the document or record or the answer to the question—
- (a) would contravene the provisions of any other enactment, would be contrary to the public interest or might tend to incriminate the person or make the person liable to a penalty; or
 - (b) would disclose legal advice provided to a Minister or an agency; but the information, the production of the document or record or the answer to the question is not admissible in evidence against the person in proceedings other than—
 - (c) an application under section 14 (2); or
 - (d) proceedings for an offence against the [Criminal Code](#), part 3.4 (False or misleading statements, information and documents).
- (6) A person is not liable to any penalty under the provisions of any other enactment because of the person having furnished information, produced a document or other record or answered a question when required to do so under this Act.
- (7) The reference in subsection (1) to an *officer*, in relation to a body corporate, being a body corporate that is not a prescribed authority, includes a reference to a director, secretary, executive officer or employee of the body corporate.

12 Unreasonable delay in exercising power

- (1) Where—
- (a) under an enactment, a person has a power to do an act or thing in the exercise of a discretion or otherwise;
 - (b) no enactment prescribes a period within which the person is required to do or refuse to do the act or thing;

- (c) under an enactment, an application may be made to a prescribed tribunal for the review of decisions made in the exercise of that power; and
- (d) a complaint has been made to the ombudsman concerning a failure to do the act or thing in the exercise of that power;

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

- (2) Where the ombudsman gives a certificate under subsection (1), the person required or permitted to exercise the power must, for the purpose of enabling an application to be made under the enactment referred to in subsection (1) (c) to the prescribed tribunal concerned, be taken to have made, on the day on which the certificate is given, a decision in the exercise of that power not to do the act or thing.
- (3) Where—
 - (a) under an enactment, a person has a power to do an act or thing in the exercise of a discretion or otherwise; and
 - (b) no enactment prescribes a period within which the person is required to do or refuse to do the act or thing; and
 - (c) under an enactment, an application may be made to a person other than a prescribed tribunal for the review of decisions made in the exercise of that power and an enactment also provides that an application may be made to a prescribed tribunal for the review of decisions made by the lastmentioned person upon an application first referred to in this paragraph; and

- (d) a complaint has been made to the ombudsman concerning a failure to do the act or thing in the exercise of that power;

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

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

13 Referring questions to ACAT

- (1) This section applies if the ombudsman investigates the taking of action under a power under an enactment.
- (2) The ombudsman may recommend to the relevant principal officer that a stated question in relation to the taking of action or exercise of power be referred to the ACAT for an advisory opinion.

- (3) The ombudsman may make the recommendation—
- (a) by giving the recommendation to the principal officer at any time before the completion of the investigation by the ombudsman; or
 - (b) by including the recommendation in a report made by the ombudsman to the relevant agency under section 18 after the completion of the investigation.
- (4) If the ombudsman makes a recommendation to the principal officer, the principal officer must refer the question stated in the recommendation to the ACAT.
- (5) The ACAT may give the principal officer an advisory opinion on the stated question.
- (6) In this section:
- taking of action* includes the following:
- (a) making a decision or recommendation;
 - (b) formulating a proposal;
 - (c) failing to—
 - (i) take an action; or
 - (ii) make a decision; or
 - (iii) make a recommendation; or
 - (iv) formulate a proposal.

14 Powers of Supreme Court

- (1) Where a question with respect to the exercise of a power, or the performance of a function, of the ombudsman by or under this Act or any other enactment arises between the ombudsman and the principal officer of any agency that is affected by that exercise or performance, the ombudsman or the principal officer of the agency may, subject to subsections (3) and (4), make an application to the Supreme Court for a determination of the question.
- (2) Where a person fails to comply with a requirement made by the ombudsman by notice under section 11 to provide information, to produce documents or other records or to attend before the ombudsman to answer questions, the ombudsman may make an application to the Supreme Court for an order directing that person to provide the information, to produce the documents or other records, or to attend before the ombudsman to answer questions, at such place, and within such period or on such day and at such time, as are specified in the order.
- (3) The ombudsman must not make an application to the Supreme Court under this section unless he or she has informed the responsible Minister of the agency concerned in writing of the reasons for the proposed application.
- (4) The principal officer of an agency must not make an application to the Supreme Court under subsection (1) unless he or she has informed the responsible Minister of the agency in writing of the reasons for the proposed application.
- (5) The Supreme Court has jurisdiction with respect to matters arising under this section in respect of which applications are made to the Supreme Court.

15 Complainant and agency to be informed

- (1) Where the ombudsman does not, for any reason, investigate, or continue to investigate, action taken by an agency in respect of which a complaint has been made to him or her, the ombudsman must, as soon as practicable and in such manner as the ombudsman thinks fit, inform—
 - (a) the complainant; and
 - (b) except where an arrangement with the agency is in force under subsection (2) relating to actions of that kind, the agency;
of the decision and of the reasons for the decision.
 - (2) The ombudsman may from time to time make with an agency an arrangement in relation to actions in respect of which complaints have been or are made to the ombudsman, being actions taken by the agency that are specified in the arrangement—
 - (a) providing for the manner in which, and the period within which, the ombudsman is to inform the agency of a decision not to investigate, or to continue to investigate, such actions and of the reasons for the decision; or
 - (b) providing that the ombudsman is not required to inform the agency of a decision not to investigate, or to continue to investigate, such actions and of the reasons for the decision.
- Note* For what must be included in a statement of reasons, see the [Legislation Act](#), s 179.
- (3) Where the ombudsman completes an investigation of action taken by an agency in respect of which a complaint has been made to him or her, the ombudsman must, in such manner and at such times as he or she thinks fit, give to the complainant and to the agency particulars of the investigation.

- (4) The ombudsman may, if he or she thinks fit, provide comments or suggestions with respect to any matter relating to or arising out of an investigation by the ombudsman to any agency, body or person other than an agency, body or person to which or to whom he or she has given a report under section 18 relating to that matter or to matters that include that matter.
- (5) Where the ombudsman gives a report to an agency under section 18 containing recommendations with respect to action in respect of which a complaint has been made—
 - (a) the ombudsman must, if action that is, in the opinion of the ombudsman, adequate and appropriate in the circumstances is not taken with respect to the recommendations within a reasonable time after the recommendations are given to the agency—give to the complainant a copy of the recommendations, together with such comments (if any) as the ombudsman thinks fit; or
 - (b) in any other case—the ombudsman may give to the complainant a copy of the recommendations, together with such comments (if any) as he or she thinks fit.

16 Power to examine witnesses

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

17 Power to enter premises

- (1) For the purposes of an investigation under this Act, the ombudsman or an authorised person may, at any reasonable time of the day, enter any place occupied by an agency and may carry on the investigation at the place.

- (2) For the purposes of an investigation under this Act, an authorised person is entitled to inspect any documents relevant to the investigation that are kept at premises entered under this section at a reasonable time of the day arranged with the principal officer of the agency concerned.
- (3) Subsection (2) does not restrict the operation of section 11.

Division 2.2 **Monitoring police compliance with Crimes (Child Sex Offenders) Act 2005**

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

In this Act:

child sex offenders register—see the [Crimes \(Child Sex Offenders\) Act 2005](#), section 117.

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

- (1) The chief police officer, and other officers and people assisting in exercising functions under the [Crimes \(Child Sex Offenders\) Act 2005](#), part 3.11 (Entry and search warrants) must give the ombudsman any assistance that the ombudsman reasonably requires to exercise the ombudsman’s functions in relation to that part.
- (2) The chief police officer must ensure that police officers and other people authorised by the chief police officer to have access to the child sex offenders register give the ombudsman any assistance that the ombudsman reasonably requires to exercise the ombudsman’s functions in relation to the [Crimes \(Child Sex Offenders\) Act 2005](#), chapter 4 (Child sex offenders register).

17C Power to enter police premises

- (1) The ombudsman or a police officer may, after notifying the chief police officer of the intended entry, enter, at any time, any premises occupied by the Australian Federal Police where the ombudsman reasonably believes there are documents that contain, or relate to, the child sex offenders register or that are relevant to the ombudsman's functions in relation to the *Crimes (Child Sex Offenders) Act 2005*, part 3.11 (Entry and search warrants) or chapter 4 (Child sex offenders register).
- (2) The ombudsman or a police officer may inspect or copy any document found at any premises entered under this section and do anything that it is necessary or convenient to do to enable an inspection to be carried out under this section.

Division 2.2A Reportable conduct

17D Definitions—div 2.2A

In this division:

designated entity—see section 17EA.

investigation, of a matter, means any inquiry or examination into the matter.

investigation information means information—

- (a) obtained as a result of an investigation into a reportable allegation or reportable conviction conducted by the ombudsman or a designated entity; and
- (b) about any of the following:
 - (i) the progress, conduct or findings of the investigation;
 - (ii) action taken as a result of the findings.

out-of-home carer—see the *Children and Young People Act 2008*, dictionary.

religious body means a body—

- (a) established or operated for a religious purpose, that operates under the auspices of 1 or more religious denominations or faiths; and
- (b) that provides, or has provided, activities, facilities, programs or services that provide a means for people to have contact with children.

Examples—activities, facilities, programs or services

- religious services
- altar serving
- art groups
- bible study groups
- choirs and music groups
- church-run crèches
- dance groups
- faith-based children’s and youth groups
- multi-faith networks
- open days
- prayer groups
- religious community engagement and outreach
- religious festivals and celebrations
- sports teams
- Sunday school
- tutoring services
- youth camps

reportable conduct—see section 17E.

reportable conviction, in relation to a person, means a conviction or finding of guilt—

- (a) for an offence, under a territory law or a State or Commonwealth law, involving reportable conduct; and

- (b) entered against the person before or after the commencement of the *Reportable Conduct and Information Sharing Legislation Amendment Act 2016*, section 3.

17E Meaning of reportable conduct—div 2.2A

- (1) In this division:

reportable conduct means conduct—

- (a) engaged in by an employee of a designated entity, whether or not in the course of employment with the entity; and
- (b) that results in any of the following, regardless of a child's consent:
 - (i) ill treatment or neglect of the child;
 - (ii) exposing or subjecting the child to—
 - (A) behaviour, or a circumstance, that psychologically harms the child; or
 - (B) misconduct of a sexual nature that does not form part of an offence mentioned in subparagraph (iii);

Example—subpar (ii) (B)

engaging in contact with a child as a preliminary step to obtaining the child's compliance in sexual activities

- (iii) an offence against any of the following provisions of the *Crimes Act 1900* for which the child is either present or a victim at the time of the conduct:
 - (A) part 2 (Offences against the person);
 - (B) part 3 (Sexual offences);
 - (C) part 4 (Female genital mutilation);
 - (D) part 5 (Sexual servitude);

- (iv) an offence against either of the following provisions of the *Education and Care Service National Law (ACT)*:
 - (A) section 166 (Offence to use inappropriate discipline);
 - (B) section 167 (Offence relating to protection of children from harm and hazards).
- (2) However, **reportable conduct** does not include conduct—
 - (a) that is reasonable discipline, management or care of a child taking into account the characteristics of the child, and any relevant code of conduct or professional standard that at the time applied to the discipline, management or care of the child; or
 - (b) if the conduct is investigated and recorded as part of workplace procedure—that is trivial or negligible; or
 - (c) prescribed by regulation.

Examples—s (2)

- 1 touching a child to attract the child’s attention, to guide a child, or to comfort a distressed child
- 2 a school teacher raising the teacher’s voice to attract attention or restore order in a classroom
- 3 accidental conduct

- (3) In this section:

characteristics, of a child, includes the age, health and developmental stage of the child.

conduct means an act or an omission to do an act.

17EA Meaning of *designated entity*—div 2.2A

- (1) For this division, an entity is a **designated entity** if—
 - (a) it is 1 of the following:
 - (i) an administrative unit;
 - (ii) a health service;

- (iii) a government school or a non-government school;
- (iv) an education and care service;
- (v) a childcare service;
- (vi) an approved kinship and foster care organisation;
- (vii) an approved residential care organisation;
- (viii) a religious body not otherwise included in this paragraph;
- (ix) any other entity prescribed by regulation; and

(b) it is not exempted by regulation.

(2) In this section:

approved kinship and foster care organisation—see the *Children and Young People Act 2008*, section 502.

approved residential care organisation—see the *Children and Young People Act 2008*, section 502.

childcare service—see the *Children and Young People Act 2008*, section 732.

education and care service—see the *Education and Care Services National Law (ACT)*.

government school—see the *Education Act 2004*, dictionary.

health service means the following services:

- (a) ambulance services;
- (b) services provided by a public health facility;
- (c) hospital services;
- (d) any other services prescribed by regulation.

non-government school—see the *Education Act 2004*, dictionary.

17EAA Meaning of *head* of a designated entity—div 2.2A

- (1) In this division:
head, of a designated entity, means—
 - (a) for an administrative unit—the director-general of the administrative unit; or
 - (b) for a religious body—the individual nominated under subsection (2) or (3); or
 - (c) for any other designated entity—
 - (i) if a regulation prescribes the head of the entity—the prescribed head of the entity; or
 - (ii) in any other case—the individual primarily in charge of the management of the entity.
- (2) A religious body must—
 - (a) nominate an individual as the head of the body for this division; and
 - (b) give the nomination to the ombudsman.
- (3) If a religious body does not make a nomination under subsection (2), the ombudsman may, in writing, nominate an individual as the head of the body for this division.

17EAB Meaning of *reportable allegation*—div 2.2A

- (1) For this division, a *reportable allegation* is an express assertion that reportable conduct has happened.
- (2) However, if an express assertion that reportable conduct has happened was made as a religious confession, the assertion is a reportable allegation if, and only if, it relates to—
 - (a) sexual abuse against a child; or
 - (b) non-accidental physical injury to a child.

(3) A person who is or was a member of the clergy of a church or religious denomination is not entitled to refuse to report a reportable allegation because it contains information communicated to the member during a religious confession.

(4) In this section:

religious confession means a confession made by a person to a member of the clergy in the member's professional capacity according to the ritual of the member's church or religious denomination.

17EAC Meaning of *employee*—div 2.2A

(1) In this division:

employee, of a designated entity—

(a) means a person who is engaged—

(i) under a contract of employment with the designated entity;
or

(ii) by the designated entity to provide services to children (other than under a contract of employment); or

Examples

- out-of-home carer
- volunteer

(iii) by another entity (whether or not under a contract of employment) to provide services to children on behalf of the designated entity; and

Example

subcontractor

- (b) for a designated entity that, in accordance with the *Children and Young People Act 2008*, authorises an out-of-home carer to exercise daily care responsibility or long-term care responsibility for a child—includes an adult who stays for at least 21 days at premises provided by the authorised out-of-home carer for the child to live.
- (2) However, for a designated entity that is a religious body, **employee**—
- (a) means—
 - (i) a minister of religion, a religious leader or an officer of the religious body; or
 - (ii) a person who is engaged under a contract of employment with the religious body; or
 - (iii) a person who is engaged by the religious body to provide services (other than under a contract of employment) whether or not the services are provided to children; but
 - (b) does not include a person only because the person participates in worship.

17EB Designated entity to have practices and procedures to deal with reportable conduct

- (1) The head of a designated entity must ensure that the entity has in place practices and procedures—
- (a) for preventing reportable conduct by an employee of the entity—
 - (i) in the course of the employee’s employment with the entity; or
 - (ii) other than in the course of the employee’s employment with the entity if the employment would facilitate the employee’s reportable conduct; and

- (b) to enable any person, including an employee of the entity, to notify the head of the entity of a reportable allegation or reportable conviction involving an employee of the entity; and
 - (c) for dealing with a reportable allegation or reportable conviction involving an employee of the entity; and
 - (d) for the receipt, handling and disclosure of information relating to reportable allegations, reportable convictions and investigation information.
- (2) In this section:
procedures includes policies.

17F Ombudsman must monitor designated entity

- (1) The ombudsman must monitor the practices and procedures of a designated entity for—
- (a) the prevention of reportable conduct involving an employee of the entity; and
 - (b) dealing with reportable allegations or reportable convictions involving an employee of the entity.
- (2) The ombudsman may, by written notice, require the head of a designated entity to provide information about the entity's practices and procedures for the purpose of assisting the ombudsman to carry out a function under this section.
- (3) In this section:
procedures includes policies.

17G Designated entity must report to ombudsman

- (1) The head of a designated entity must provide a written report to the ombudsman about—
 - (a) any reportable allegation or any reportable conviction involving an employee of the entity; and
 - (b) whether or not the entity proposes to take any action against the employee based on the allegation or conviction, and the entity's reasons for taking or not taking action; and
 - (c) any written submissions made by the employee to the head of the entity about the allegation or conviction that the employee asked the entity to take into account when deciding any action against the employee.
- (2) A report under subsection (1) must be given to the ombudsman within 30 days after the day the head of the entity becomes aware of the allegation or conviction, or another period allowed by the ombudsman.
- (3) The ombudsman may declare that subsection (1) does not apply in relation to any of the following (an *exempt matter*):
 - (a) a reportable allegation or reportable conviction of a particular kind;
 - (b) a particular entity;
 - (c) a particular employee.
- (4) The head of an entity is not required to provide a written report to the ombudsman under subsection (1) if the report would deal only with an exempt matter.

17H Information may be disclosed to ombudsman

The head, or an employee, of a designated entity may disclose any information to the ombudsman that the head or employee believes on reasonable grounds reveals—

- (a) reportable conduct involving an employee of the entity; or
- (b) a reportable conviction against an employee of the entity.

17I Ombudsman may monitor investigation

- (1) The ombudsman may monitor an investigation carried out by a designated entity into a reportable allegation or reportable conviction involving an employee of the entity if satisfied on reasonable grounds that monitoring the investigation is in the public interest.
- (2) For the purpose of monitoring an entity's investigation under this section, the ombudsman or an officer of the ombudsman may—
 - (a) attend any interview conducted by or on behalf of a designated entity in its investigation; and
 - (b) confer with any person carrying out the investigation about the nature, conduct or progress of the investigation; and
 - (c) request information relating to the investigation by written notice given to the head of the entity.

Note It is an offence to obstruct a territory public official (see [Criminal Code](#), s 361).

17J Designated entity must report outcome of investigation

- (1) The head of a designated entity must, as soon as practicable after the end of an investigation by the entity into a reportable allegation or reportable conviction, provide the ombudsman with—
 - (a) a written report about—
 - (i) the results of the investigation; and

- (ii) any action taken, or proposed to be taken, in relation to the reportable allegation or reportable conviction; and
 - (b) copies of all—
 - (i) statements taken in the course of the investigation; and
 - (ii) documents mentioned in the report; and
 - (c) any other information that the head of the entity considers relevant to the report.
- (2) After receiving the report and other information, the ombudsman may by written notice given to the head of the entity request any additional information specified in the notice that the ombudsman considers relevant to determine whether—
- (a) the reportable allegation or reportable conviction was properly investigated; and
 - (b) appropriate action was taken as a result of the investigation.

17K Ombudsman may conduct own investigation

- (1) The ombudsman may, on the ombudsman's own initiative or in response to a complaint, conduct an investigation into—
- (a) any reportable allegation or reportable conviction involving an employee of a designated entity; or
 - (b) the response of the designated entity to the reportable allegation or reportable conviction.
- (2) If the ombudsman decides to conduct an investigation under this section, the ombudsman must give the head of the designated entity written notice stating—
- (a) that the ombudsman intends carrying out an investigation under this section; and
 - (b) particulars of the investigation; and

- (c) whether the ombudsman requires the entity not to commence, or to suspend, an investigation by the entity into a matter the ombudsman has decided to investigate.
- (3) As soon as practicable after the ombudsman's investigation has ended, the ombudsman—
- (a) must—
 - (i) give the head of the entity written notice that the investigation has ended; and
 - (ii) prepare a report setting out the ombudsman's findings; and
 - (b) may make recommendations to any person or body; and
 - (c) if an investigation by the entity was suspended by the ombudsman— may require the head of the entity to continue the investigation.
- (4) An entity must, as far as practicable, comply with a requirement of the ombudsman under this section.

17L Investigation information may be disclosed to child, parent and carer

- (1) The ombudsman or the head of a designated entity may disclose investigation information to any of the following:
- (a) a child who is the subject of conduct that forms the basis of a reportable allegation or a reportable conviction into which an investigation was conducted by the ombudsman or the designated entity;
 - (b) a parent of the child;
 - (c) if the child has been placed with an out-of-home carer—the child's out-of-home carer.

(2) In this section:

parent, of a child, means a person who has parental responsibility for the child.

parental responsibility—see the *Children and Young People Act 2008*, dictionary.

17M Ombudsman may give information to commissioner for fair trading

The ombudsman may disclose the following information to the commissioner for fair trading if satisfied on reasonable grounds that the information is relevant to the exercise of the commissioner's functions under the *Working with Vulnerable People (Background Checking) Act 2011*:

- (a) information about an employee of a designated entity;
- (b) information about an exemption under section 17G;
- (c) information about reports of investigations into reportable allegations or reportable convictions carried out by the ombudsman or a designated entity.

17N Human rights commission may give information to ombudsman

- (1) A member of the human rights commission may disclose information to the ombudsman if satisfied on reasonable grounds that the information is relevant to the exercise of the ombudsman's functions under this division.
- (2) This section does not limit the information that the member may otherwise disclose to the ombudsman under this Act or any other territory law.

(3) In this section:

member, of the human rights commission, means a member of the commission under the *Human Rights Commission Act 2005*, section 12.

17O Protection of disclosures made under this division

- (1) An authorisation to disclose information under this division—
- (a) applies despite any territory law to the contrary; and
 - (b) does not limit the disclosure of investigation information that may be made under any other territory law.
- (2) A person disclosing information under this division is not civilly liable for anything done or omitted to be done honestly and without recklessness—
- (a) in complying with this division; or
 - (b) in the reasonable belief that the disclosure complied with this division.

17P Offence—false allegation

A person commits an offence if—

- (a) the person makes an allegation against another person; and
- (b) the person intends to cause the other person to be investigated under this division for—
 - (i) having engaged in reportable conduct; or
 - (ii) being the subject of a reportable conviction; and
- (c) the person knows the allegation is false or misleading in a material particular.

Maximum penalty: 100 penalty units, imprisonment for 12 months or both.

Division 2.3 Reports

18 Reports by ombudsman

- (1) Where, after an investigation under this Act into action taken by an agency has been completed, the ombudsman is of the opinion—
- (a) that the action—
 - (i) appears to have been contrary to law; or
 - (ii) was unreasonable, unjust, oppressive or improperly discriminatory; or
 - (iii) was in accordance with a rule of law, a provision of an enactment or a practice but the rule, provision or practice is or may be unreasonable, unjust, oppressive or improperly discriminatory; or
 - (iv) was based either wholly or partly on a mistake of law or of fact; or
 - (v) was otherwise, in all the circumstances, wrong; or
 - (b) that, in the course of the taking of the action, a discretionary power had been exercised for an improper purpose or on irrelevant grounds; or
 - (c) if the action comprised or included a decision to exercise a discretionary power in a particular manner or to refuse to exercise such a power—
 - (i) that irrelevant considerations were taken into account, or that there was a failure to take relevant considerations into account, in the course of reaching the decision to exercise the power in that manner or to refuse to exercise the power, as the case may be; or

- (ii) that the complainant in respect of the investigation or some other person should have been given, but was not given, particulars of the reasons for deciding to exercise the power in that manner or to refuse to exercise the power, as the case may be;

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

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

the ombudsman must report accordingly to the agency concerned.

Note For what must be included in a statement of reasons, see the [Legislation Act](#), s 179.

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

19 Reports to Speaker

- (1) This section applies if the ombudsman—
 - (a) gives an agency a report under section 18; and
 - (b) considers that action that is adequate and appropriate in the circumstances is not taken within a reasonable time in relation to a matter or recommendation stated in the report.
- (2) After having regard to any comments given to the ombudsman by the agency in relation to the report, the ombudsman may give the report and any comments from the agency about the report (the *final report*)—
 - (a) to the Chief Minister for a written response; or
 - (b) if the ombudsman considers that in the circumstances it is appropriate for the final report to be given directly to the Speaker—to the Speaker.

- (3) If the ombudsman gives the Chief Minister the final report under subsection (2) (a), the ombudsman may give the Speaker the final report if—
 - (a) the ombudsman considers that the Chief Minister’s written response is not adequate or appropriate; or
 - (b) the Chief Minister has not given the ombudsman a written response within a reasonable time.
- (4) The Speaker must present the final report to the Legislative Assembly on the first sitting day after receiving the report.
- (5) The Minister must present a written response to the final report to the Legislative Assembly within 3 months after the day the report was presented to the Legislative Assembly.

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

- (1) The ombudsman may, at any time, give the Minister administering the *Crimes (Child Sex Offenders) Act 2005* a written report on—
 - (a) the results of any inspections carried out under section 17C (Power to enter police premises); and
 - (b) compliance with the *Crimes (Child Sex Offenders) Act 2005*, part 3.11 (Entry and search warrants) in the period to which the report relates by the chief police officer and other officers and people assisting in exercising functions under that part; and
 - (c) compliance with the *Crimes (Child Sex Offenders) Act 2005*, chapter 4 (Child sex offenders register) in the period to which the report relates by the chief police officer and other people authorised by the chief police officer to have access to the child sex offenders register.

- (2) If the Minister administering the *Crimes (Child Sex Offenders) Act 2005* asks the ombudsman for a report under this section, the ombudsman must give the Minister a report under this section as soon as practicable after receiving the request.
- (3) The ombudsman must give a copy of any report under this section to the chief police officer.

21 Reports to the Legislative Assembly

- (1) The ombudsman may, from time to time, submit to the Speaker for presentation to the Legislative Assembly—
 - (a) a report of the operations of the ombudsman during a part of a year; or
 - (b) a report in respect of any matter relating to, or arising in connection with, the exercise of the powers, or the performance of the functions, of the ombudsman under this Act;but nothing in this section affects the powers and duties of the ombudsman under sections 18 and 19.
- (2) Where the ombudsman submits a report to the Speaker under subsection (1), the Speaker must present the report to the Legislative Assembly on the next sitting day of the Legislative Assembly after its receipt by the Speaker.
- (3) The Minister must present a written response to the report to the Legislative Assembly within 3 months after the day the report was presented to the Legislative Assembly.

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

Division 3.1 **Ombudsman**

22 **Appointment**

- (1) The Speaker may, on behalf of the Territory, appoint a person who is not the Commonwealth ombudsman as the ombudsman.

Note The person holding office as the Commonwealth ombudsman is taken to be the ACT ombudsman until an appointment is made under this Act (see [A.C.T. Self-Government \(Consequential Provisions\) Act 1988](#) (Cwlth), s 28).

- (2) The Speaker must not make an appointment under this section for the first time unless the Chief Minister has consented, in writing, to an appointment being made.
- (3) The appointment must not be made before—
- (a) the time stated by the Chief Minister in the consent; or
 - (b) if there is no time stated in the consent—6 months after the Chief Minister’s consent.
- (4) The appointment must be made—
- (a) in consultation with the Chief Minister; and
 - (b) in consultation with the Leader of the Opposition; and
 - (c) in consultation with the leader (however described) of a registered party (other than the party to which the Chief Minister or Leader of the Opposition belongs) if at least 2 members of the Legislative Assembly are members of the party; and
 - (d) in accordance with an open and accountable selection process.

- (5) The Speaker must not appoint a person as the ombudsman unless—
- (a) the Speaker is satisfied that the person has extensive knowledge of, and experience in—
 - (i) public administration; or
 - (ii) dispute resolution; or
 - (iii) complaint handling; and
 - (b) the relevant Assembly committee agrees to the person's appointment.
- (6) The appointment is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

23 Tenure of office

Subject to this part, the ombudsman must not be appointed for more than 7 years.

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

24 Terms of appointment

- (1) The ombudsman is appointed on the terms (if any) in relation to matters not provided for by this part or a determination under the [Remuneration Tribunal Act 1995](#) that are prescribed by the management standards under the [Public Sector Management Act 1994](#).
- (2) This section does not apply to a person holding the office of ombudsman under—
- (a) the [A.C.T. Self-Government \(Consequential Provisions\) Act 1988](#), section 28 (Cwlth); or
 - (b) an arrangement between the Territory and the Commonwealth.

24A Oath or affirmation of office

Before a person is appointed as ombudsman, the person must take an oath of office, or make an affirmation of office, before the Speaker.

Note For the form of the oath and affirmation of office, see the [Oaths and Affirmations Act 1984](#), s 6 and sch 1.

24B Disclosure of interests

The ombudsman must give a written statement of the ombudsman's personal and financial interests to the Speaker within 7 days after—

- (a) the day the ombudsman is appointed; and
- (b) the first day of each financial year; and
- (c) the day there is a change in the interest.

24C Ombudsman must not do inconsistent work etc

The ombudsman must not—

- (a) have paid employment that is inconsistent with the ombudsman's functions; or
- (b) engage in any unpaid activity that is inconsistent with the ombudsman's functions.

25 Leave of absence

- (1) The Speaker may approve leave of absence for the ombudsman on the terms the Speaker decides.
- (2) Where—
 - (a) the Commonwealth ombudsman holds the office of ombudsman; and

- (b) the Commonwealth ombudsman is granted leave of absence under the *Ombudsman Act 1976* (Cwlth);

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

27 Retirement

- (1) The Speaker may retire the ombudsman on the ground of physical or mental incapacity if—
 - (a) the incapacity substantially affects the exercise of the ombudsman’s functions; and
 - (b) the ombudsman consents to the retirement.
- (2) However, the ombudsman must not be retired on the ground of invalidity unless—
 - (a) if the ombudsman is an eligible employee for the *Superannuation Act 1976* (Cwlth)—
 - (i) the ombudsman is under the ombudsman’s maximum retiring age within the meaning of that *Act*; and
 - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 2 under that *Act*, section 54C for the ombudsman; or
 - (b) if the ombudsman is a member of the superannuation scheme established under the *Superannuation Act 1990* (Cwlth)—
 - (i) the ombudsman is under 60 years old; and
 - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 1 under that *Act*, section 13 for the ombudsman; or

- (c) if the ombudsman is an ordinary employer-sponsored member of PSSAP within the meaning of the *Superannuation Act 2005* (Cwlth)—
- (i) the ombudsman is under 60 years old; and
 - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 1 under that *Act*, section 43 for the ombudsman.
- (3) In this section:
- invalidity* means—
- (a) for an eligible employee for the *Superannuation Act 1976* (Cwlth)—invalidity under that Act; or
 - (b) for a member of the superannuation scheme established under the *Superannuation Act 1990* (Cwlth)—invalidity under that Act; or
 - (c) for an ordinary employer-sponsored member of PSSAP within the meaning of the *Superannuation Act 2005* (Cwlth)—invalidity under that Act.

physical or mental incapacity includes invalidity.

28 Resignation

The ombudsman may resign by giving a signed notice of resignation to the Speaker.

28A Suspension—generally

- (1) The Speaker may suspend the ombudsman on the ground of—
 - (a) misbehaviour; or
 - (b) physical or mental incapacity, if the incapacity substantially affects the exercise of the ombudsman’s functions.

Note Power given by a law to make a decision includes power to reverse or change the decision. The power to reverse or change the decision is exercisable in the same way, and subject to the same conditions, as the power to make the decision (see [Legislation Act](#), s 180).

- (2) If the Speaker is considering suspending the ombudsman, the Speaker may ask 1 or more of the following for advice about the proposed suspension:
 - (a) the public sector standards commissioner;
 - (b) anyone else the Speaker considers appropriate.
- (3) If the Speaker suspends the ombudsman, the Speaker must give the ombudsman written notice of the suspension and a copy of a statement of the reasons for the suspension.

Note For what must be included in a statement of reasons, see the [Legislation Act](#), s 179.

- (4) The suspension takes effect when the notice and statement are given to the ombudsman under subsection (3).
- (5) The ombudsman may be suspended only under this section.
- (6) The ombudsman is entitled to be paid salary and allowances while suspended.

28B Suspension—relevant Assembly committee notice and meetings

- (1) If the Speaker suspends the ombudsman, the Speaker must give written notice of the suspension and a copy of the statement of the reasons for the suspension to each member of the relevant Assembly committee not later than the next business day, or if the committee has not been established, the next business day after the day the committee is established.
- (2) The relevant Assembly committee must meet in relation to the ombudsman's suspension—
 - (a) not later than 3 business days after the day the committee is given written notice of the suspension (the *notice day*); and
 - (b) at subsequent intervals of not longer than 30 days while the ombudsman is suspended (a *regular meeting*).
- (3) The relevant Assembly committee must give the ombudsman written notice that a regular meeting will be held at least 3 business days before the day the meeting is to be held.
- (4) The ombudsman may make an oral or written submission (or both) to the committee about the ombudsman's suspension.
- (5) At each regular meeting, the relevant Assembly committee must review the ombudsman's suspension and may at any time pass a resolution about the suspension, including a resolution—
 - (a) recommending to the Speaker that the Speaker end the suspension; or
 - (b) to make a statement to the Legislative Assembly recommending that the Speaker end the ombudsman's appointment.

28C Suspension—ending suspension

- (1) If the Speaker does not comply with section 28B (1), the suspension ends at the end of the notice day.
- (2) If the relevant Assembly committee fails to hold a meeting as required under section 28B (2), the suspension ends on the day after the last day when the meeting could have been held.
- (3) If the relevant Assembly committee makes a recommendation mentioned in section 28B (5) (a) and the Speaker does not end the suspension within 1 business day after the day the recommendation is made—
 - (a) the committee may at any time resolve to make a statement to the Legislative Assembly recommending that the suspension be ended; and
 - (b) if the committee makes a statement mentioned in paragraph (a) and—
 - (i) the Legislative Assembly resolves to end the suspension—the suspension ends on the passing of the resolution; or
 - (ii) the Legislative Assembly does not deal with the statement within 3 sitting days—the suspension ends at the end of the 3rd sitting day.
- (4) If the relevant Assembly committee makes a statement mentioned in section 28B (5) (b)—
 - (a) the Legislative Assembly may resolve to require the Speaker to end the ombudsman’s appointment; but
 - (b) if the Legislative Assembly does not, within 3 sitting days, pass a resolution mentioned in paragraph (a)—the suspension ends at the end of the 3rd sitting day.

- (5) If the Speaker ends the ombudsman's suspension, the Speaker must give written notice of the ending of the suspension and a copy of a statement of the reasons for ending the suspension to the ombudsman and the relevant Assembly committee.

Note For what must be included in a statement of reasons, see the [Legislation Act](#), s 179.

- (6) In this section:

notice day—see section 28B (2) (a).

28D Ending of appointment

- (1) The Speaker must end the ombudsman's appointment if—
- (a) the Legislative Assembly—
 - (i) passes a resolution under section 28C (4) (a); or
 - (ii) otherwise resolves to require the Speaker to end the ombudsman's appointment—
 - (A) for misbehaviour; or
 - (B) for physical or mental incapacity, if the incapacity substantially affects the exercise of the ombudsman's functions; or
 - (b) the ombudsman becomes bankrupt or personally insolvent.
- (2) For a resolution mentioned in subsection (1) (a) (ii)—
- (a) at least 7 days before the day the motion to which the resolution relates is first debated in the Legislative Assembly—
 - (i) the Assembly must be given the notice of the motion and a statement of reasons for the motion; and
 - (ii) the Speaker must—
 - (A) give the ombudsman a copy of the notice and the statement of reasons; and

(B) tell the ombudsman that a written submission about the motion may be made to the Speaker not later than 3 days after the day the ombudsman is given the notice; and

(b) the Speaker must give any written submission to the Legislative Assembly before the day the motion is first debated in the Legislative Assembly.

Note For what must be included in a statement of reasons, see the [Legislation Act](#), s 179.

- (3) The Speaker may end the ombudsman's appointment if the ombudsman is absent from duty, except on leave granted by the Speaker, for 14 consecutive days or for 28 days in any 12 months.
- (4) The ombudsman's appointment may be ended by the Speaker only under this section or section 27 (Retirement).

29 Acting appointment

- (1) If the Commonwealth ombudsman holds the office of ombudsman, a person appointed under the [Ombudsman Act 1976](#) (Cwlth) to act in the office of Commonwealth ombudsman during an absence or unavailability of the Commonwealth ombudsman may act in the office of ombudsman under this Act during the absence or unavailability.
- (2) If the Commonwealth ombudsman does not hold the office of ombudsman, before the Speaker appoints a person to act as the ombudsman, the Speaker must consult with the chair of the relevant Assembly committee about the proposed appointment.
- (3) However, for a period of leave of absence approved by the Speaker under section 25 (1) or mentioned in section 25 (2), the ombudsman may appoint a person to act as ombudsman after consulting with the Speaker.

Division 3.2 Staff

30 Ombudsman's staff

- (1) The ombudsman may employ staff on behalf of the Territory.
- (2) The ombudsman's staff—
 - (a) must be employed under the *Public Sector Management Act 1994*; or
 - (b) if the Commonwealth ombudsman is the ombudsman—must be appointed or employed under the *Public Service Act 1999* (Cwlth).

Note The *Public Sector Management Act 1994*, div 8.2 applies to the ombudsman in relation to the employment of staff under the *Public Sector Management Act 1994* (see *Public Sector Management Act 1994*, s 152).

30AA Arrangements for staff and facilities

The ombudsman may arrange with the head of service to use the services of a public servant or Territory facilities.

Note The head of service may delegate powers in relation to the management of public servants to a public servant or another person (see *Public Sector Management Act 1994*, s 18).

30AB Contractors and consultants

- (1) The ombudsman may engage contractors and consultants.
- (2) However, the ombudsman must not enter into a contract of employment under this section.

30A Direction to ombudsman's staff

The ombudsman's staff are not subject to direction from anyone other than the following people in relation to the exercise of the ombudsman's functions:

- (a) the ombudsman;
- (b) another member of the ombudsman's staff authorised by the ombudsman to give directions.

Part 4 Miscellaneous

31 Ombudsman not to be sued

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

32 Delegation by ombudsman

- (1) The ombudsman may delegate the ombudsman's functions under this Act or another territory law to—
 - (a) if the Commonwealth ombudsman is the ombudsman—a deputy ombudsman under the *Ombudsman Act 1976* (Cwlth); or
 - (b) a person who is a member of the staff mentioned in section 30; or
 - (c) a public servant mentioned in section 30AA; or
 - (d) a contractor or consultant mentioned in section 30AB; or
 - (e) an authorised person; or
 - (f) any other person.

Note For the making of delegations and the exercise of delegated functions, see the [Legislation Act](#), pt 19.4.

- (2) However, the ombudsman must not delegate a function to a person who is not a public employee without first being satisfied that the function needs to be exercised by a person who is not a public employee.

(3) In this section:

public employee includes—

- (a) a person appointed or employed under the *Public Service Act 1999* (Cwlth); and
- (b) a deputy ombudsman under the *Ombudsman Act 1976* (Cwlth).

Note *Public employee* means a public servant, a person employed by a territory instrumentality, or a statutory office-holder or a person employed by a statutory office-holder (see the *Legislation Act*, dictionary, part 1.

33 Officers to observe confidentiality

(1) In this section:

information holder means—

- (a) the ombudsman; or
- (b) if the Commonwealth ombudsman is the ombudsman—a deputy ombudsman under the *Ombudsman Act 1976* (Cwlth); or
- (c) a person who is a member of the staff mentioned in section 30; or
- (d) a public servant mentioned in section 30AA; or
- (e) a contractor or consultant mentioned in section 30AB; or
- (f) an authorised person; or
- (g) a person who is delegated a function under section 32; or
- (h) any other person exercising a function in connection with this Act.

- (2) Subject to this section, an information holder must not, either directly or indirectly, and either while the person is, or after ceasing to be, an information holder, make a record of, or divulge or communicate to any person, any information acquired because of the person being an information holder, being information that was disclosed or obtained under the provisions of this Act, including information provided by the Commonwealth ombudsman or the ombudsman of a State or information disclosed to or obtained by the ombudsman in the exercise of a power of the Commonwealth ombudsman or of the ombudsman of a State.

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

- (3) Subsection (2) does not prevent an information holder—
- (a) from making a record of, or divulging or communicating to any person, information acquired in the performance of the information holder's functions as an information holder for purposes connected with the exercise of the powers and the performance of the functions of the ombudsman under this Act; or
 - (b) from divulging or communicating information to a person—
 - (i) if the information was provided by an information holder of an agency in the performance of the person's duties as such an information holder—with the consent of the principal information holder of the agency or of the responsible Minister of the agency; or
 - (ii) if the information was provided by a person otherwise than as set out in subparagraph (i)—with the consent of the person who provided the information.

- (4) Subsection (2) does not prevent the ombudsman from disclosing, in a report prepared under the *Annual Reports (Government Agencies) Act 2004*, matters that, in the ombudsman's opinion, should be disclosed in the course of setting out the grounds for the conclusions and recommendations contained in the report.
- (5) Where the ombudsman proposes, for purposes connected with the exercise of powers or performance of functions under this Act, to provide information, or to send a document, or a copy of or extract from a document, to the Commonwealth ombudsman or the ombudsman of a State, the ombudsman must satisfy himself or herself that a law of the Commonwealth or the State makes provision corresponding to the provision made by this section with respect to the confidentiality of information acquired by the Commonwealth ombudsman or the ombudsman of the State, as the case may be.
- (6) A person who is or has been an information holder is not compellable, in any proceedings before a court or before a person authorised by a law, or by consent of parties, to hear, receive and examine evidence, to disclose any information acquired because of the person's being or having been an information holder, being information that was disclosed or obtained under the provisions of this Act.

34 Disclosure of information by ombudsman

- (1) Nothing in this Act precludes the ombudsman from disclosing information or making a statement to any person or to the public or a section of the public with respect to the performance of the functions of, or an investigation by, the ombudsman under this Act if, in the opinion of the ombudsman, it is in the interests of any agency or person, or is otherwise in the public interest, so to disclose that information or to make that statement.

- (2) The ombudsman must not disclose information or make a statement under subsection (1) with respect to a particular investigation where the disclosure of that information, or the making of that statement, is likely to interfere with the carrying out of that or any other investigation or the making of a report under this Act.
- (3) The ombudsman must not, in disclosing information or making a statement under subsection (1) with respect to a particular investigation—
 - (a) set out opinions that are, either expressly or impliedly, critical of an agency or person unless the ombudsman has complied with section 9 (6) in relation to the investigation; or
 - (b) disclose the name of a complainant or any other matter that would enable a complainant to be identified unless it is fair and reasonable in all the circumstances to do so.
- (4) This section has effect notwithstanding sections 9 (3) and 33.

34A Ombudsman may disclose child safety information

- (1) The ombudsman may, if the ombudsman is satisfied on reasonable grounds that information received by the ombudsman under this Act is relevant to the safety, health or wellbeing of a child or class of child, disclose the information to any of the following:
 - (a) the chief police officer;
 - (b) a law enforcement agency;
 - (c) the human rights commission;
 - (d) the director-general responsible for the *Children and Young People Act 2008*, other than that Act, chapter 20;
 - (e) the director-general responsible for the *Education Act 2004*;
 - (f) the director-general responsible for the *Education and Care Services National Law (ACT)*;

- (g) the chief executive officer of the ACT Teacher Quality Institute;
- (h) the commissioner for fair trading;
- (i) the director-general responsible for the *Health Act 1993*;
- (j) any other entity prescribed by regulation.

(2) In this section:

ACT Teacher Quality Institute means the institute established under the *ACT Teacher Quality Institute Act 2010*, section 10.

law enforcement agency—see the *Spent Convictions Act 2000*, dictionary.

35 Failing to comply with requirement under Act

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

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

when so required under this Act.

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

36 Protection from civil actions

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

- (a) the making of a complaint to the ombudsman under this Act;

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

37 Determination of fees and witness expenses etc

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

Note A notifiable instrument must be notified under the [Legislation Act 2001](#).

37A Assistance for Speaker

In exercising a power under this Act, the Speaker may seek administrative support or advice from—

- (a) the Office of the Legislative Assembly; or
- (b) an entity that is able to provide objective administrative support or advice.

38 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the [Legislation Act 2001](#).

- (2) The Executive must consult with the ombudsman and the relevant Assembly committee before making a regulation under this Act.

- (3) Subject to any disallowance or amendment under the [Legislation Act](#), chapter 7, a regulation under this Act commences—
- (a) if there is a motion to disallow the regulation and the motion is negated by the Legislative Assembly—on the day after the day the motion is negated; or
 - (b) on the day after the 6th sitting day after the day it is presented to the Legislative Assembly under that chapter; or
 - (c) if the regulation provides for a later date or time of commencement—on that date or at that time.

Dictionary

(see s 2)

Note 1 The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

Note 2 For example, the [Legislation Act](#), dict, pt 1 defines the following terms:

- ACAT
- ACT
- administrative unit
- adult
- bankrupt or personally insolvent
- body
- child
- commissioner for fair trading
- Commonwealth
- coroner
- director-general (see s 163)
- exercise
- function
- head of service
- human rights commission
- judge
- Legislative Assembly
- magistrate
- National Electricity (ACT) Law
- public sector standards commissioner
- public servant
- public service
- sitting day
- Speaker
- State
- the Territory.

agency means an administrative unit or a prescribed authority.

authorised person means a person appointed by the ombudsman to be an authorised person for the purposes of this Act.

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

designated entity, for division 2.2A (Reportable conduct)—see section 17EA.

employee, of a designated entity, for division 2.2A (Reportable conduct)—see section 17EAC.

enactment means an Act or subordinate law, but does not include the *National Electricity (ACT) Law* or *National Electricity (ACT) Regulation*.

head, of a designated entity, for division 2.2A (Reportable conduct)—see section 17EAA.

investigation, of a matter, for division 2.2A (Reportable conduct)—see section 17D.

investigation information for division 2.2A (Reportable conduct)—see section 17D.

officer means—

- (a) in relation to an administrative unit—
 - (i) a public servant (including the principal officer of that administrative unit) who is a member of that administrative unit; or
 - (ii) any other person (not being a Minister) authorised to exercise powers or perform functions on behalf of that administrative unit by the principal officer of that administrative unit; and

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

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

Note **State** includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

out-of-home carer, for division 2.2A (Reportable conduct)—see section 17D.

prescribed authority means—

- (a) a body corporate, or an unincorporated body, established for a public purpose by, or in accordance with the provisions of, an enactment, other than—
 - (i) an incorporated company or association; or
 - (ii) a body that, under section 3 (1) (Entities not necessarily prescribed authorities) or the regulations, is not a prescribed authority for the purposes of this Act; or
- (b) any other body, whether incorporated or unincorporated, that is declared by the regulations to be a prescribed authority for the purposes of this Act, being—
 - (i) a body established by the Executive or by a Minister; or

- (ii) an incorporated company or association over which the Territory is in a position to exercise control; or
- (c) subject to section 3 (2), the person holding, or performing the duties of, an office, other than the office of commissioner for sustainability and the environment, established by an enactment; or
- (d) a person holding, or performing the duties of, an office declared by the regulations to be an office the holder of which is a prescribed authority for the purposes of this Act, being an office created by the Executive or by a Minister otherwise than under an enactment; or
- (e) a territory-owned corporation or a subsidiary within the meaning of the *Territory-owned Corporations Act 1990*.

principal officer means—

- (a) in relation to an administrative unit—the director-general of the administrative unit; or
- (b) in relation to a prescribed authority—
 - (i) if the regulations declare an office to be the principal office in respect of the authority—the person holding, or performing the duties of, that office; or
 - (ii) in the case of a territory-owned corporation or a subsidiary within the meaning of the *Territory-owned Corporations Act 1990*—the chief executive officer of the corporation or subsidiary; or
 - (iii) in any other case—the person who constitutes that authority or a person acting in his or her office or, if the authority is constituted by 2 or more persons, the person who is entitled to preside at any meeting of the authority at which the person is present or a person acting in his or her office.

relevant Assembly committee means the standing committee of the Legislative Assembly whose functions include the examination of matters related to corruption and integrity in public administration.

reportable allegation, for division 2.2A (Reportable conduct)—see section 17EAB.

reportable conduct, for division 2.2A (Reportable conduct)—see section 17E.

reportable conviction, in relation to a person, for division 2.2A (Reportable conduct)—see section 17D.

responsible Minister means—

- (a) in relation to an agency—the Minister responsible for the agency; or
- (b) in relation to a prescribed authority mentioned in the definition of **prescribed authority**, paragraph (c)—the Minister administering the enactment concerned; or
- (c) in relation to a prescribed authority mentioned in the definition of **prescribed authority**, paragraph (b) or (d)—the Minister declared by regulation to be the responsible Minister for that authority; or
- (d) another Minister acting for and on behalf of a Minister mentioned in paragraph (a), (b) or (c).

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

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

3 Legislation history

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

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

As with most ordinances in force in the ACT, the name was changed from *Ordinance to Act* by the *Self-Government (Citation of Laws) Act 1989* A1989-21, s 5 on 11 May 1989 (self-government day).

Legislation before becoming Territory enactment

Ombudsman Act 1989 A1989-45

notified 10 May 1989 (Gaz 1989 No S160)

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

as amended by

Self-Government (Consequential Amendments) Ordinance 1989

Ord1989-38 sch 1

notified 10 May 1989 (Gaz 1989 No S160)

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

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

Legislation after becoming Territory enactment

Royal Commissions and Inquiries (Consequential Provisions) Act

1991 A1991-3 sch

notified 1 March 1991 (Gaz 1991 No S7)

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

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

Ombudsman (Amendment) Act 1993 A1993-38

notified 29 June 1993 (Gaz 1993 No S111)

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

Endnotes

3 Legislation history

Ombudsman (Amendment) Act (No 2) 1993 A1993-97

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

**Judicial Commissions (Consequential Amendments) Act 1994
A1994-10 s 8**

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

Statute Law Revision Act 1994 A1994-26 sch

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

**Public Sector Management (Consequential and Transitional
Provisions) Act 1994 A1994-38 sch 1 pt 63**

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

**Administrative Appeals (Consequential Amendments) Act 1994
A1994-60 sch 1**

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

Statute Law Revision (Penalties) Act 1994 A1994-81 sch

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

Public Interest Disclosure Act 1994 A1994-108 s 39

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

**Electricity and Water (Corporatisation) (Consequential Amendments)
Act 1995 A1995-7 sch**

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

Annual Reports (Government Agencies) (Consequential Provisions) Act 1995 A1995-25 sch

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

Ombudsman (Amendment) Act 1996 A1996-17

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

Remuneration Tribunal (Consequential Amendments) Act 1997**A1997-41 sch 1 (as am by A2002-49 amdt 3.222)**

notified 19 September 1997 (Gaz 1997 No S264)
commenced 24 September 1997 (s 2 as am by [A2002-49](#) amdt 3.222)

Community and Health Services Complaints (Amendment) Act 1997**A1997-50 sch 2**

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

Electricity (National Scheme) (Consequential Amendments) Act 1997**A1997-80 sch**

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

Utilities (Consequential Provisions) Act 2000 A2000-66 sch 1 pt 11

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

Subordinate Laws Amendment Act 2000 A2000-71 sch 2

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

Legislation (Consequential Amendments) Act 2001 A2001-44 pt 269

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

Endnotes

3 Legislation history

Statute Law Amendment Act 2002 (No 2) A2002-49 amdt 3.222

notified LR 20 December 2002

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

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

Note This Act only amends the [Remuneration Tribunal \(Consequential Amendments\) Act 1997 A1997-41](#) .

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

notified LR 19 March 2004

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

sch 1 pt 1.25 commenced 13 April 2004 (s 2 and see [Annual Reports \(Government Agencies\) Act 2004 A2004-8](#), s 2 and [CN2004-5](#))

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

notified LR 26 March 2004

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

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

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

notified LR 29 June 2004

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

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

Utilities Amendment Act 2005 A2005-14 s 20

notified LR 24 March 2005

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

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

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

notified LR 29 June 2005

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

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

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

notified LR 1 September 2005
s 1, s 2 commenced 1 September 2005 (LA s 75 (1))
sch 1 pt 1.10 commenced 1 November 2006 (s 2 (3) (as am by
[A2006-3 amdt 1.3](#)) and see [Human Rights Commission Act 2005](#)
A2005-40, s 2 (as am by [A2006-3 s 4](#)) and [CN2006-21](#))

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

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

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

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

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

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

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

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

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

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

notified LR 22 March 2007

s 1, s 2 taken to have commenced 1 July 2006 (LA s 75 (2))

sch 3 pt 3.72 commenced 12 April 2007 (s 2 (2))

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

notified LR 8 July 2008

s 1, s 2 commenced 8 July 2008 (LA s 75 (1))

sch 1 pt 1.7 commenced 29 July 2008 (s 2)

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

notified LR 12 August 2008

s 1, s 2 commenced 12 August 2008 (LA s 75 (1))

sch 3 pt 3.42 commenced 26 August 2008 (s 2)

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

notified LR 4 September 2008

s 1, s 2 commenced 4 September 2008 (LA s 75 (1))

sch 1 pt 1.79 commenced 2 February 2009 (s 2 (1) and see [ACT Civil and Administrative Tribunal Act 2008 A2008-35](#), s 2 (1) and [CN2009-2](#))

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

notified LR 31 August 2010

s 1, s 2 commenced 31 August 2010 (LA s 75 (1))

s 3 commenced 1 September 2010 (s 2 (1))

sch 1 pt 1.16 commenced 28 September 2010 (s 2 (2))

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

notified LR 30 June 2011

s 1, s 2 commenced 30 June 2011 (LA s 75 (1))

sch 1 pt 1.117 commenced 1 July 2011 (s 2 (1))

Statute Law Amendment Act 2011 (No 3) A2011-52 sch 3 pt 3.40

notified LR 28 November 2011

s 1, s 2 commenced 28 November 2011 (LA s 75 (1))

sch 3 pt 3.40 commenced 12 December 2011 (s 2)

Statute Law Amendment Act 2012 A2012-21 sch 3 pt 3.32

notified LR 22 May 2012
s 1, s 2 commenced 22 May 2012 (LA s 75 (1))
sch 3 pt 3.32 commenced 5 June 2012 (s 2 (1))

**Commissioner for the Environment Amendment Act 2012 A2012-25
sch 1 pt 1.3**

notified LR 28 May 2012
s 1, s 2 commenced 28 May 2012 (LA s 75 (1))
sch 1 pt 1.3 commenced 29 May 2012 (s 2)

Public Interest Disclosure Act 2012 A2012-43 s 105, s 106

notified LR 5 September 2012
s 1, s 2 commenced 5 September 2012 (LA s 75 (1))
s 105, s 106 commenced 1 February 2013 (s 2)

Statute Law Amendment Act 2013 A2013-19 sch 1 pt 1.2, sch 3 pt 3.31

notified LR 24 May 2013
s 1, s 2 commenced 24 May 2013 (LA s 75 (1))
sch 1 pt 1.2, sch 3 pt 3.31 commenced 14 June 2013 (s 2)

**Officers of the Assembly Legislation Amendment Act 2013 A2013-41
pt 4**

notified LR 7 November 2013
s 1, s 2 commenced 7 November 2013 (LA s 75 (1))
pt 4 commenced 1 July 2014 (s 2)

**Judicial Commissions Amendment Act 2015 A2015-1 sch 1 pt 1.6
(as am by A2015-52 s 28)**

notified LR 25 February 2015
s 1, s 2 commenced 25 February 2015 (LA s 75 (1))
sch 1 pt 1.6 commenced 1 February 2017 (s 2 (as am by A2015-52
s 28))

Courts Legislation Amendment Act 2015 A2015-10 pt 14

notified LR 7 April 2015
s 1, s 2 commenced 7 April 2015 (LA s 75 (1))
pt 14 commenced 21 April 2015 (s 2 (2))

Endnotes

3 Legislation history

Crimes (Child Sex Offenders) Amendment Act 2015 A2015-35 sch 1 pt 1.4

notified LR 1 October 2015
s 1, s 2 commenced 1 October 2015 (LA s 75 (1))
sch 1 pt 1.4 commenced 2 October 2015 (s 2)

Statute Law Amendment Act 2015 (No 2) A2015-50 sch 3 pt 3.25

notified LR 25 November 2015
s 1, s 2 commenced 25 November 2015 (LA s 75 (1))
sch 3 pt 3.25 commenced 9 December 2015 (s 2)

Courts Legislation Amendment Act 2015 (No 2) A2015-52 pt 10

notified LR 26 November 2015
s 1, s 2 commenced 26 November 2015 (LA s 75 (1))
pt 10 (s 28) commenced 10 December 2015 (s 2 (2))

Note Pt 10 (s 28) only amends the [Judicial Commissions Amendment Act 2015 A2015-1](#)

Protection of Rights (Services) Legislation Amendment Act 2016 (No 2) A2016-13 sch 1 pt 1.30

notified LR 16 March 2016
s 1, s 2 commenced 16 March 2016 (LA s 75 (1))
sch 1 pt 1.30 commenced 1 April 2016 (s 2 and see [Protection of Rights \(Services\) Legislation Amendment Act 2016 A2016-1 s 2](#))

Reportable Conduct and Information Sharing Legislation Amendment Act 2016 A2016-39 pt 3

notified LR 17 August 2016
s 1, s 2 commenced 17 August 2016 (LA s 75 (1))
pt 3 commenced 1 July 2017 (s 2 (2) and [CN2017-2](#))

Public Sector Management Amendment Act 2016 A2016-52 sch 1 pt 1.52

notified LR 25 August 2016
s 1, s 2 commenced 25 August 2016 (LA s 75 (1))
sch 1 pt 1.52 commenced 1 September 2016 (s 2)

Freedom of Information Act 2016 A2016-55 sch 4 pt 4.19 (as am by A2017-14 s 19)

notified LR 26 August 2016
s 1, s 2 commenced 26 August 2016 (LA s 75 (1))
sch 4 pt 4.19 commenced 1 January 2018 (s 2 as am by A2017-14 s 19)

Justice and Community Safety Legislation Amendment Act 2017 (No 2) A2017-14 s 19

notified LR 17 May 2017
s 1, s 2 commenced 17 May 2017 (LA s 75 (1))
s 19 commenced 24 May 2017 (s 2 (1))

Note This Act only amends the Freedom of Information Act 2016 A2016-55.

Legislative Assembly Legislation Amendment Act 2017 A2017-41 pt 7

notified LR 13 November 2017
s 1, s 2 commenced 13 November 2017 (LA s 75 (1))
pt 7 commenced 14 November 2017 (s 2)

Inspector of Correctional Services Act 2017 A2017-47 sch 2 pt 2.4

notified LR 7 December 2017
s 1, s 2 commenced 7 December 2017 (LA s 75 (1))
sch 2 pt 2.4 commenced 8 December 2017 (s 2 (1))

Reportable Conduct and Information Sharing Legislation Amendment Act 2017 A2017-48 pt 3

notified LR 12 December 2017
s 1, s 2 commenced 12 December 2017 (LA s 75 (1))
pt 3 commenced 13 December 2017 (s 2)

Ombudsman Amendment Act 2018 A2018-22

notified LR 14 June 2018
s 1, s 2 commenced 14 June 2018 (LA s 75 (1))
remainder commenced 1 July 2018 (s 2)

Statute Law Amendment Act 2018 A2018-42 sch 1 pt 1.4

notified LR 8 November 2018
s 1, s 2 taken to have commenced 1 July 2018 (LA s 75 (2))
sch 1 pt 1.4 commenced 22 November 2018 (s 2 (1))

Endnotes

3 Legislation history

Royal Commission Criminal Justice Legislation Amendment Act 2019 A2019-6 pt 5

notified LR 27 March 2019
s 1, s 2 commenced 27 March 2019 (LA s 75 (1))
s 3 commenced 28 March 2019 (LA s 75AA)
s 15 commenced 28 March 2019 (s 2 (1))
pt 5 remainder commenced 1 September 2019 (s 2 (2) and
[CN2019-15](#))

Public Interest Disclosure Amendment Act 2020 A2020-46 sch 1 pt 1.3

notified LR 4 September 2020
s 1, s 2 commenced 4 September 2020 (LA s 75 (1))
sch 1 pt 1.3 commenced 4 March 2021 (s 2 and LA s 79)

Legislation (Legislative Assembly Committees) Amendment Act 2022 A2022-4 sch 1 pt 1.17

notified LR 30 March 2022
s 1, s 2 commenced 30 March 2022 (LA s 75 (1))
sch 1 pt 1.17 commenced 6 April 2022 (s 2)

Courts Legislation Amendment Act 2023 A2023-37 sch 1 pt 1.11

notified LR 29 September 2023
s 1, s 2 commenced 29 September 2023 (LA s 75 (1))
sch 1 pt 1.11 commenced 30 September 2023 (s 2)

4 Amendment history

Title

title am [A1996-17](#) s 4

Name of Act

s 1 sub [A2005-41](#) amdt 1.115

Dictionary

s 2 om [A2001-44](#) amdt 1.3062
ins [A2007-3](#) amdt 3.385
am [A2011-52](#) amdt 3.145

Notes

s 2A ins [A2007-3](#) amdt 3.385

Offence against Act—application of Criminal Code etc

s 2B ins [A2016-39](#) s 7

Entities not necessarily prescribed authorities

s 3 am [A1994-38](#) sch 1
defs reloc to dict [A2007-3](#) amdt 3.384
sub [A2007-3](#) amdt 3.385
def **commissioner** ins [A1993-38](#) s 4
om [A1996-17](#) s 5
def **commissioner for health complaints** ins [A1993-97](#) s 4
om [A1996-17](#) s 5
def **department** om [A1994-38](#) sch 1
def **ombudsman** om [A1996-17](#) s 5

Conduct by person taken as conduct by administrative unit

s 3A **orig s 3A**
renum as s 3C
pres s 3A
ins [A2007-3](#) amdt 3.385
am [A2011-22](#) amdt 1.343

Conduct by person taken as conduct by prescribed authority

s 3B ins [A2007-3](#) amdt 3.385

Application of Act—National Electricity (ACT) Law

s 3C (prev s 3A) ins [A1997-80](#) sch
sub [A2005-62](#) amdt 3.170
renum as s 3C [A2007-3](#) amdt 3.386
am [A2012-21](#) amdt 3.125; [A2013-19](#) amdts 3.212-3.214

Establishment of office of ombudsman

s 4 am [A1994-108](#) s 39; [A1996-17](#) s 6
sub [A2005-30](#) amdt 3.1

Endnotes

4 Amendment history

Officer of the Legislative Assembly

s 4A **orig s 4A**
renum as s 4C
pres s 4A
ins [A2013-41](#) s 47
am [A2017-41](#) ss 25-27

Independence of ombudsman

s 4B ins [A2013-41](#) s 47

Functions—generally

s 4C (prev s 4A) ins [A2005-30](#) amdt 3.1
am [A2012-43](#) s 105
renum as s 4C [A2013-41](#) s 46
am [A2015-35](#) amdt 1.18; pars renum R29 LA; [A2016-55](#) amdt 4.28; pars renum R39 LA

Functions—investigating complaints under Act

s 5 hdg sub [A2005-30](#) amdt 3.2
s 5 am [A1991-3](#) sch; [A1994-38](#) s 5; [A1993-97](#) s 5; [A1994-10](#) s 8;
[A1994-38](#) sch 1; [A1996-17](#) s 7; [A1997-50](#) sch 2; [A2000-66](#)
sch 1; [A2000-71](#) amdt 2.2; [A2001-44](#) amdt 1.3063; R5 LA;
[A2004-32](#) s 92; pars renum R8 LA (see [A2004-32](#) s 93);
[A2005-14](#) s 20; [A2005-41](#) amdts 1.117-1.119; [A2005-46](#)
amdts 1.2-1.4; [A2008-22](#) amdt 1.37; [A2008-37](#) amdt 1.340;
[A2012-25](#) amdt 1.3; [A2012-43](#) s 106; ss renum R24 LA;
[A2015-10](#) s 37; [A2015-50](#) amdt 3.127, amdt 3.134; [A2015-1](#)
amdt 1.6; [A2016-39](#) s 8; pars, ss renum R35 LA; [A2017-47](#)
amdt 2.18; [A2017-48](#) ss 22-25; [A2016-55](#) amdt 4.29;
[A2020-46](#) amdt 1.9; [A2023-37](#) amdt 1.17, amdt 1.18

Discretion not to investigate certain complaints

s 6 am [A2015-50](#) amdt 3.134

Discretion to refer complaint to another statutory office-holder

s 6A ins [A1996-17](#) s 8
sub [A2008-28](#) amdt 3.115

Mandatory referral of complaints to other entities

s 6B hdg sub [A2008-28](#) amdt 3.116
s 6B (prev s 37A) ins [A1993-38](#) s 6
renum and reloc [A1996-17](#) s 10
sub [A1993-97](#) s 6
am [A1996-17](#) s 9; [A1997-50](#) sch 2
sub [A2000-66](#) sch 1
am [A2005-47](#) amdt 1.2; [A2005-41](#) amdt 1.120; [A2008-22](#)
amdt 1.38; [A2008-37](#) amdt 1.341; pars renum R18 LA;
[A2012-25](#) amdt 1.4; [A2016-13](#) amdt 1.105

Complaintss 7 am [A1994-26](#) sch**Investigations**s 9 am [A1994-38](#) sch 1; [A2011-22](#) amdt 1.344; [A2015-50](#) amdt 3.134; [A2016-52](#) amdt 1.137; pars renum R33 LA**Arrangements with another ombudsman**s 10 am [A2018-42](#) amdt 1.5**Power to obtain information and documents**s 11 am [A2004-15](#) amdt 2.133; [A2013-41](#) s 48; ss renum R26 LA; [A2015-50](#) amdt 3.134**Unreasonable delay in exercising power**s 12 am [A1994-60](#) sch 1; [A2008-37](#) amdt 1.342; [A2015-50](#) amdt 3.134**Referring questions to ACAT**s 13 am [A1994-60](#) sch 1
sub [A2008-37](#) amdt 1.343
am [A2011-52](#) amdt 3.146**Powers of Supreme Court**s 14 am [A2015-50](#) amdt 3.134**Complainant and agency to be informed**s 15 am [A2015-50](#) amdt 3.128, amdt 3.134**Power to enter premises**s 17 am [A2013-41](#) s 49; [A2015-50](#) amdt 3.129**Monitoring police compliance with Crimes (Child Sex Offenders) Act 2005**

div 2.1A hdg renum as div 2.2 hdg

Monitoring police compliance with Crimes (Child Sex Offenders) Act 2005div 2.2 hdg orig div 2.2 hdg renum as div 2.3 hdg
(prev div 2.1A hdg) ins [A2005-30](#) amdt 3.3
renum R10 LA (see [A2005-30](#) amdt 3.5)**What is the *child sex offenders register*?**s 17A ins [A2005-30](#) amdt 3.3**Police to give ombudsman reasonable assistance**s 17B ins [A2005-30](#) amdt 3.3
sub [A2015-35](#) amdt 1.19**Power to enter police premises**s 17C ins [A2005-30](#) amdt 3.3
am [A2015-35](#) amdt 1.20**Reportable conduct**div 2.2A hdg ins [A2016-39](#) s 9

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4 Amendment history

Definitions—div 2.2A

- s 17D ins [A2016-39](#) s 9
am [A2017-48](#) s 29
def **designated entity** ins [A2016-39](#) s 9
sub [A2017-48](#) s 26
def **employee** ins [A2016-39](#) s 9
sub [A2017-48](#) s 27
am [A2018-22](#) s 4; pars renum R40 LA
om [A2019-6](#) s 12
def **head** ins [A2016-39](#) s 9
am [A2018-22](#) s 5
om [A2019-6](#) s 12
def **investigation** ins [A2016-39](#) s 9
def **investigation information** ins [A2016-39](#) s 9
def **out-of-home carer** ins [A2016-39](#) s 9
def **religious body** reloc from s 17EA (2) [A2019-6](#) s 13
def **reportable allegation** ins [A2016-39](#) s 9
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def **reportable conduct** ins [A2017-48](#) s 28
def **reportable conviction** ins [A2016-39](#) s 9

Meaning of reportable conduct—div 2.2A

- s 17E ins [A2016-39](#) s 9

Meaning of designated entity—div 2.2A

- s 17EA ins [A2017-48](#) s 30
am [A2018-22](#) s 6, s 7; pars renum R40 LA; [A2019-6](#) s 13

Meaning of head of a designated entity—div 2.2A

- s 17EAA ins [A2019-6](#) s 14

Meaning of reportable allegation—div 2.2A

- s 17EAB ins [A2019-6](#) s 14

Meaning of employee—div 2.2A

- s 17EAC ins [A2019-6](#) s 14

Designated entity to have practices and procedures to deal with reportable conduct

- s 17EB ins [A2017-48](#) s 30

Ombudsman must monitor designated entity

- s 17F ins [A2016-39](#) s 9

Designated entity must report to ombudsman

- s 17G ins [A2016-39](#) s 9

Information may be disclosed to ombudsman

- s 17H hdg sub [A2017-48](#) s 31
s 17H ins [A2016-39](#) s 9
am [A2017-48](#) s 32

Ombudsman may monitor investigations 17I ins [A2016-39](#) s 9**Designated entity must report outcome of investigation**s 17J ins [A2016-39](#) s 9**Ombudsman may conduct own investigation**s 17K ins [A2016-39](#) s 9**Investigation information may be disclosed to child, parent and carer**s 17L ins [A2016-39](#) s 9**Ombudsman may give information to commissioner for fair trading**s 17M ins [A2016-39](#) s 9**Human rights commission may give information to ombudsman**s 17N ins [A2016-39](#) s 9**Protection of disclosures made under this division**s 17O ins [A2016-39](#) s 9**Offence—false allegation**s 17P ins [A2016-39](#) s 9**Reports**div 2.3 hdg (prev div 2.2 hdg) renum R10 LA (see [A2005-30](#) amdt 3.5)**Reports by ombudsman**s 18 am [A2015-50](#) amdt 3.130, amdt 3.134**Reports to Speaker**s 19 sub [A2013-41](#) s 50**Special reports to Legislative Assembly**s 20 om [A2013-41](#) s 50**Reports on police compliance with Crimes (Child Sex Offenders) Act 2005**s 20A ins [A2005-30](#) amdt 3.4
am [A2015-35](#) amdt 1.21; pars renum R29 LA**Reports to the Legislative Assembly**s 21 hdg am [A1995-25](#) note
s 21 am [A1995-25](#) sch; [A2007-3](#) amdt 3.387; [A2013-41](#) ss 51-54**Appointment**s 22 am [A2007-3](#) amdt 3.388
sub [A2013-41](#) s 55
am [A2016-52](#) amdt 1.138; [A2017-41](#) s 28, s 29; pars renum
R36 LA**Tenure of office**s 23 am [A2007-3](#) amdt 3.389; [A2013-19](#) amdt 1.2

Endnotes

4 Amendment history

Terms of appointment

s 24 hdg sub [A2013-41](#) s 56
s 24 am [A1997-41](#) sch 1; [A2013-41](#) s 56; ss renum R26 LA

Oath or affirmation of office

s 24A ins [A2013-41](#) s 57

Disclosure of interests

s 24B ins [A2013-41](#) s 57

Ombudsman must not do inconsistent work etc

s 24C ins [A2013-41](#) s 57

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s 25 am [A2013-41](#) s 58; [A2015-50](#) amdt 3.131

Resignation

s 26 om [A2007-3](#) amdt 3.390

Retirement

s 27 sub [A2013-41](#) s 59

Resignation

s 28 am [A2007-3](#) amdts 3.391-3.393; [A2010-30](#) amdt 1.43
sub [A2013-41](#) s 59

Suspension—generally

s 28A ins [A2013-41](#) s 59
am [A2015-50](#) amdt 3.132; [A2016-52](#) amdt 1.139

Suspension—relevant Assembly committee notice and meetings

s 28B ins [A2013-41](#) s 59

Suspension—ending suspension

s 28C ins [A2013-41](#) s 59
am [A2015-50](#) amdt 3.132

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s 28D ins [A2013-41](#) s 59
am [A2015-50](#) amdt 3.133

Acting appointment

s 29 sub [A2007-3](#) amdt 3.394
am [A2013-41](#) s 60

Ombudsman's staff

s 30 sub [A2013-41](#) s 61; [A2016-52](#) amdt 1.140

Arrangements for staff and facilities

s 30AA ins [A2018-42](#) amdt 1.6

Contractors and consultants

s 30AB ins [A2018-42](#) amdt 1.6

Direction to ombudsman's staffs 30A ins [A2016-52](#) amdt 1.140**Ombudsman not to be sued**s 31 am [A2007-3](#) amdt 3.395**Delegation by ombudsman**s 32 am [A2012-21](#) amdt 3.126
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am [A2016-52](#) amdt 1.141
sub [A2018-42](#) amdt 1.7**Officers to observe confidentiality**s 33 am [A1994-81](#) sch; [A1995-25](#) sch; [A2004-9](#) amdt 1.33;
[A2013-41](#) s 63; ss renum R26 LA; [A2015-50](#) amdt 3.134;
[A2018-42](#) amdts 1.8-1.15; ss renum R41 LA**Disclosure of information by ombudsman**s 34 am [A2013-41](#) s 64; [A2015-50](#) amdt 3.134**Ombudsman may disclose child safety information**s 34A ins [A2017-48](#) s 33**Failing to comply with requirement under Act**s 35 hdg sub [A2004-15](#) amdt 2.134
s 35 am [A1994-81](#) sch; [A2004-15](#) amdt 2.135, amdt 2.136;
[A2015-50](#) amdt 3.134**Protection from civil actions**s 36 am [A2018-42](#) amdt 1.15**Determination of fees and witness expenses etc**s 37 am [A2013-41](#) s 65**Assistance for Speaker**s 37A reloc and renum as s 6B [A1996-17](#) s 10
ins [A2017-41](#) s 30**Determination of fees and witness expenses etc**s 37 sub [A2001-44](#) amdt 1.3064
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exp 1 July 2015 (s 51)

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4 Amendment history

Existing appointment of ombudsman

s 50 ins [A2013-41](#) s 67
exp 1 July 2015 (s 51)

Expiry—pt 10

s 51 ins [A2013-41](#) s 67
exp 1 July 2015 (s 51)

Transitional—Ombudsman Amendment Act 2018

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exp 1 September 2019 (s 53)

Religious confession not reportable allegation

s 52 ins [A2018-22](#) s 8
exp 1 September 2019 (s 53)

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am [A2019-6](#) s 15
exp 1 September 2019 (s 53)

Dictionary

dict ins [A2007-3](#) amdt 3.396
am [A2008-37](#) amdt 1.344; [A2010-30](#) amdt 1.44; [A2011-22](#)
amdt 1.345; [A2011-52](#) amdt 3.148; [A2013-41](#) s 68; [A2016-52](#)
amdt 1.142; [A2016-39](#) s 10; [A2023-37](#) amdt 1.19
def **agency** am [A1994-38](#) sch 1
reloc from s 3 [A2007-3](#) amdt 3.384
def **authorised person** reloc from s 3 [A2007-3](#) amdt 3.384
def **child sex offenders register** ins [A2011-52](#) amdt 3.149
def **designated entity** ins [A2016-39](#) s 11
sub [A2017-48](#) s 34
def **employee** ins [A2016-39](#) s 11
am [A2019-6](#) s 16
def **enactment** am [A1997-80](#) sch
sub [A2005-62](#) amdt 3.168
reloc from s 3 [A2007-3](#) amdt 3.384
def **head** ins [A2016-39](#) s 11
am [A2019-6](#) s 17
def **investigation** ins [A2016-39](#) s 11
def **investigation information** ins [A2016-39](#) s 11
def **National Electricity (ACT) Law** ins [A2005-62](#) amdt 3.169
reloc from s 3 [A2007-3](#) amdt 3.384
om [A2011-52](#) amdt 3.150
def **officer** am [A1994-38](#) sch 1
reloc from s 3 [A2007-3](#) amdt 3.384
def **ombudsman** ins [A2007-3](#) amdt 3.396

- def **out-of-home carer** ins [A2016-39](#) s 11
- def **prescribed authority** am [A1991-3](#) sch; [A1993-38](#) s 4;
[A1993-97](#) s 4; [A1995-7](#) sch; [A1996-17](#) s 5; [A1997-50](#) sch 2;
[A2005-41](#) amdt 1.116; [A2007-3](#) amdt 3.382, amdt 3.383
reloc from s 3 [A2007-3](#) amdt 3.384
am [A2012-25](#) amdt 1.5
- def **principal officer** am [A1994-38](#) sch 1; [A1996-17](#) s 5;
[A1997-50](#) sch 2
reloc from s 3 [A2007-3](#) amdt 3.384
pars renum R19 LA
am [A2011-22](#) amdt 1.346
- def **relevant Assembly committee** ins [A2013-41](#) s 69
sub [A2022-4](#) amdt 1.56
- def **reportable allegation** ins [A2016-39](#) s 11
am [A2019-6](#) s 18
- def **reportable conduct** ins [A2016-39](#) s 11
- def **reportable conviction** ins [A2016-39](#) s 11
- def **responsible Minister** reloc from s 3 [A2007-3](#) amdt 3.384
sub [A2011-52](#) amdt 3.151
- def **taking of action** ins [A2007-3](#) amdt 3.396
om [A2011-52](#) amdt 3.152

Endnotes

5 Earlier republications

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	A1991-3	31 August 1991
2	A1993-38	31 August 1993
3	A1995-7	31 January 1996
4	A1997-80	28 February 1999
5	A2001-44	16 November 2001
5 (RI)	A2001-44 ‡	13 February 2003
6	A2004-15	9 April 2004
7	A2004-15	13 April 2004
8	A2004-32	13 July 2004
9	A2005-47	24 September 2005
10	A2005-47	29 December 2005
11	A2005-62	11 January 2006
12	A2006-3	23 February 2006
13	A2006-3	1 March 2006
14	A2006-3	1 November 2006
15	A2007-3	12 April 2007
16	A2008-22	29 July 2008
17	A2008-28	26 August 2008
18*	A2008-37	2 February 2009
19	A2010-30	28 September 2010
20	A2011-22	1 July 2011
21	A2011-52	12 December 2011

Republication No	Amendments to	Republication date
22	A2012-25	29 May 2012
23	A2012-25	5 June 2012
24	A2012-43	1 February 2013
25	A2013-19	14 June 2013
26	A2013-41	1 July 2014
27	A2015-10	21 April 2015
28	A2015-10	2 July 2015
29	A2015-35	2 October 2015
30	A2015-50	9 December 2015
31	A2015-50	10 December 2015
32	A2016-13	1 April 2016
33	A2016-52	1 September 2016
34	A2016-52	1 February 2017
35	A2016-52	1 July 2017
36	A2017-41	14 November 2017
37	A2017-47	8 December 2017
38	A2017-48	13 December 2017
39	A2017-48	1 January 2018
40	A2018-22	1 July 2018
41	A2018-42	22 November 2018
42	A2019-6	28 March 2019
43	A2019-6	1 September 2019
44	A2019-6	2 September 2019
45	A2020-46	4 March 2021
46	A2022-4	6 April 2022

‡ includes retrospective amendments by [A2002-49](#)

Endnotes

6 Expired transitional or validating provisions

6 Expired transitional or validating provisions

This Act may be affected by transitional or validating provisions that have expired. The expiry does not affect any continuing operation of the provisions (see [Legislation Act 2001](#), s 88 (1)).

Expired provisions are removed from the republished law when the expiry takes effect and are listed in the amendment history using the abbreviation ‘exp’ followed by the date of the expiry.

To find the expired provisions see the version of this Act before the expiry took effect. The ACT legislation register has point-in-time versions of this Act.

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