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**AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY**

**OMBUDSMAN (AMENDMENT) BILL 1993** ✓ No 2

**EXPLANATORY MEMORANDUM**

**Circulated by the authority of  
the Minister for Health  
Wayne Berry MLA**

## OMBUDSMAN (AMENDMENT) BILL

### EXPLANATORY MEMORANDUM

#### OUTLINE

The *Ombudsman (Amendment) Bill* follows an administrative law precedent set by the *Commissioner for the Environment Act 1993* when an amendment to the *Ombudsman Act 1989* was prepared which excluded the Ombudsman from reviewing any decision or action taken by the Commissioner for the Environment.

A provision has been included to expedite the referral of appropriate complaints between the ACT Ombudsman and the Commissioner for Health Complaints.

As a result of the established administrative law model the ACT Ombudsman is to be excluded from any review of actions and/or decisions taken by the Commissioner for Health Complaints and the staff of the Health Complaints Unit. More specifically it should be noted that the process of conciliation does not involve the Conciliator or the Commissioner for Health Complaints taking any administrative decisions and/or actions. Therefore, the Ombudsman has no right of review of the actions or role of a Conciliator or the Commissioner for Health Complaints..

The Bill distinguishes the functions of the ACT Ombudsman and the Commissioner for Health Complaints and the types of complaints which may be dealt with and referred between the two agencies. For example, a complaint made to the Commissioner for Health Complaints may allege that during transportation by Police to a psychiatric facility a person was injured by those officers and that they also received inappropriate care after admission to the psychiatric facility. Such a complaint would be assessed as having two distinct allegations against the (a) Police for possible assault and (b) psychiatric facility about the care provided. The allegation concerning the Police would be referred to the ACT Ombudsman for her consideration and action and the other would remain with the Commissioner for Health Complaints.

#### CLAUSE NOTES

##### Clause 1: Short title

The legislation may be referred to as the *Ombudsman (Amendment) Act (No. 2) 1993*.

##### Clause 2: Commencement

Clause 1 and this clause will commence on the day the Bill is notified in the *Gazette*. The remaining clauses will commence on the day on which Part II of the *Health Complaints Act 1993* commences.

##### Clause 3: Principal Act

Defines "Principal Act" as the *Ombudsman Act 1989*.

**Clause 4: Interpretation**

This clause provides for amendment of section 3 of the *Ombudsman Act 1989*. The definitions of "officer" and "prescribed authority" in section 3 now include the Commissioner for Health Complaints.

**Clause 5: Functions of the Ombudsman**

This clause amends the functions of the Ombudsman by excluding any actions taken by the Commissioner for Health Complaints, a delegate, a member of staff of the Health Complaints Unit, a conciliator or a mentor from investigation by the Ombudsman as detailed in section 5 of the Principal Act. It also excludes the Ombudsman investigating any action taken by a health agency in the provision of a health service or in the refusal to provide a health service.

The proposed subsection (6) provides a definition of health service including those listed in Part 1 of the Schedule accompanying the *Health Complaints Act*.

**Clause 6: Substitution**

Repeals section 37A of the *Ombudsman Act 1989*. The proposed replacement section allows the Ombudsman to refer a complaint, that in the opinion of the Ombudsman, falls within the jurisdiction of the Commissioner for Health Complaints to the Commissioner for Health Complaints.