



# **Ombudsman Act 1976**

**No. 181, 1976**

## **Compilation No. 52**

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Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Ombudsman Act 1976* that shows the text of the law as amended and in force on 1 January 2020 (the **compilation date**).

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

### Uncommenced amendments

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

### Application, saving and transitional provisions for provisions and amendments

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

### Editorial changes

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

### Modifications

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

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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**An Act to provide for the appointment of a  
Commonwealth Ombudsman, a Defence Force  
Ombudsman, a Postal Industry Ombudsman, an  
Overseas Students Ombudsman, a Private Health  
Insurance Ombudsman and a VET Student Loans  
Ombudsman, and to define their respective  
functions and powers**

**Part I—Preliminary**

**1 Short title**

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

**2 Commencement**

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

**3 Interpretation**

(1) In this Act, unless the contrary intention appears:

**ACC** means the Australian Crime Commission established under  
section 7 of the *Australian Crime Commission Act 2002*.

**ACMA** means the Australian Communications and Media  
Authority.

**ACT enactment** means an enactment as defined by section 3 of the  
*Australian Capital Territory (Self-Government) Act 1988*.

**adult** has the same meaning as in the *Private Health Insurance Act  
2007*.

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**AFP appointee** has the same meaning as in the *Australian Federal Police Act 1979*.

**AFP Commissioner** means the Commissioner within the meaning of the *Australian Federal Police Act 1979*.

**AFP conduct issue** has the same meaning as in the *Australian Federal Police Act 1979*.

**AFP practices issue** has the same meaning as in the *Australian Federal Police Act 1979*.

**Agency Head** has the same meaning as in the *Public Service Act 1999*.

**APS Code of Conduct** means the rules in section 13 of the *Public Service Act 1999*.

**Australia Post** means the Australian Postal Corporation.

**authorized person** means:

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

**Board of the ACC** means the Board of the Australian Crime Commission established under section 7B of the *Australian Crime Commission Act 2002*.

**Chief Executive Medicare** has the same meaning as in the *Private Health Insurance Act 2007*.

**chief executive officer of a court or tribunal** means the person holding, or performing the duties of, one of the following offices:

- (a) Chief Executive and Principal Registrar of the High Court;
- (b) Chief Executive Officer and Principal Registrar of the Federal Court of Australia;

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- (c) Chief Executive Officer and Principal Registrar of the Family Court of Australia;
- (ca) Chief Executive Officer and Principal Registrar of the Federal Circuit Court of Australia;
- (d) Registrar of the Administrative Appeals Tribunal;
- (e) an office declared by the regulations to be an office of chief executive officer of a court or tribunal for the purposes of this Act;
- (f) an office prescribed by the regulations in lieu of an office referred to in paragraph (a), (b), (c), (ca) or (d).

***Commonwealth-controlled company*** means an incorporated company in which the Commonwealth has an interest that enables the Commonwealth:

- (a) to control the composition of the board of directors of the company; or
- (b) to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the company; or
- (c) to control more than one-half of the issued share capital of the company (excluding any part of that share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

***Commonwealth service provider*** has the meaning given by section 3BA.

***complying health insurance policy*** has the same meaning as in the *Private Health Insurance Act 2007*.

***complying health insurance product*** has the same meaning as in the *Private Health Insurance Act 2007*.

***CSC*** (short for Commonwealth Superannuation Corporation) has the same meaning as in the *Governance of Australian Government Superannuation Schemes Act 2011*.

***Department*** means a Department within the meaning of the *Public Service Act 1999*, but does not include the branch of the Australian

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Public Service comprising the transitional staff as defined by section 3 of the *A.C.T. Self-Government (Consequential Provisions) Act 1988*.

**Deputy Ombudsman** means a Deputy Commonwealth Ombudsman.

**Deputy Ombudsman (Defence Force)** means the Deputy Ombudsman who is, by virtue of a notice under subsection 23(1) that is in force, designated as the Deputy Ombudsman (Defence Force).

**disclosable conduct** has the same meaning as in the *Public Interest Disclosure Act 2013*.

**enactment** means, subject to section 3B:

- (a) an Act; or
- (b) an Ordinance of the Australian Capital Territory; or
- (c) an Ordinance of Norfolk Island, of the Territory of Christmas Island or of the Territory of Cocos (Keeling) Islands; or
- (d) an instrument made under an Act or under an Ordinance referred to in paragraph (b) or (c); or
- (e) a law (not being an Act, an Ordinance referred to in paragraph (c) or an instrument referred to in paragraph (d)) in force in Norfolk Island, the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands;

but does not include the *Northern Territory (Self-Government) Act 1978* or an enactment of the Northern Territory.

**enactment of the Northern Territory** means:

- (a) a law or Ordinance referred to in paragraph (a) or (b) of the definition of **enactment** in subsection 4(1) of the *Northern Territory (Self-Government) Act 1978*; or
- (b) an instrument (including rules, regulations or by-laws) made under such a law or Ordinance.

**health care provider** has the same meaning as in the *Private Health Insurance Act 2007*.

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**Health Department** means the Department administered by the Health Minister.

**health insurance business** has the same meaning as in the *Private Health Insurance Act 2007*.

**Health Minister** means the Minister administering the *Private Health Insurance Act 2007*.

**law enforcement agency** has the same meaning as in the *Australian Crime Commission Act 2002*.

**medical practitioner** has the same meaning as in the *Private Health Insurance Act 2007*.

**officer** means:

- (a) in relation to a Department:
  - (i) a person (including the principal officer of the Department) employed, whether in a permanent or temporary capacity, in the Department; or
  - (ii) any other person (not being a Minister) authorized to exercise powers or perform functions of the Department on behalf of the Department; or
- (b) in relation to a prescribed authority:
  - (i) the person who constitutes, or is acting as the person who constitutes, the authority;
  - (ii) a person who is, or is acting as, a member of the authority or is a deputy of such a member;
  - (iii) a person who is employed in the service of, or is a member of the staff of, the authority, whether or not he or she is employed by the authority; or
  - (iv) a person authorized by the authority to exercise any powers or perform any functions of the authority on behalf of the authority.

Note: For the meaning of **officer** in Parts IIB, IIC and IID, see sections 19G, 19ZF and 20A respectively.

**Ombudsman** means the Commonwealth Ombudsman.

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**ombudsman scheme** means a scheme providing for the investigation of complaints by consumers about matters relating to decisions or actions of the holders of licences or authorities granted under an enactment.

**Ordinance**, in relation to the Australian Capital Territory, includes a law of a State that applies, or the provisions of a law of a State that apply, in the Territory by virtue of an enactment (other than a law that is, or provisions that are, an ACT enactment).

**Parliamentary Department** means a Department of the Parliament established under the *Parliamentary Service Act 1999*.

**personal information** has the same meaning as in the *Private Health Insurance Act 2007*.

**PHI records**, of a subject of a complaint under Division 3 of Part IID or an investigation under Division 4 of Part IID, includes any of the following documents that are in the possession, or under the control, of the subject:

- (a) the constitution and rules of the subject, if the subject is a private health insurer;
- (b) the internal training manuals and related documents of the subject;
- (c) any documents relevant to a private health insurance arrangement to which the subject is a party or that applies to the subject;
- (d) to the extent that the complaint or investigation relates to the subject's dealings with a particular person—the subject's documents relating to its dealings with that particular person including correspondence, internal memoranda, emails, and recordings of taped conversations;

whenever those documents came into existence.

**postal or similar service** includes:

- (a) a postal service; and
- (b) a courier service; and
- (c) a packet or parcel carrying service.



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**PPO** (short for Private Postal Operator) means an entity (other than Australia Post) that provides a postal or similar service, whether or not that entity also provides other services.

**prescribed authority** means:

- (a) a body corporate, or an unincorporated body, established for a public purpose by, or in accordance with the provisions of, an enactment, other than:
  - (i) an incorporated company or association;
  - (ii) a body that has the power to take evidence on oath or affirmation and is required, or is expressly permitted, by an enactment to be constituted by, or to include among its members, a person who is a Justice or Judge of a court created by the Parliament or a person who has, by virtue of an Act, the same status as a Justice or Judge of such a court;
  - (iii) a body that, under subsection (2) or the regulations, is not to be taken to be a prescribed authority for the purposes of this Act; and
  - (v) a Royal Commission; or
- (b) a Commonwealth-controlled company that is a prescribed authority by virtue of section 3A; or
- (ba) a body corporate, or an unincorporated body, established by the Governor-General or by a Minister and declared by the regulations to be a prescribed authority; or
- (bb) a chief executive officer of a court or tribunal; or
- (c) the person holding, or performing the duties of, an office established by an enactment, other than:
  - (i) the chief executive officer of a court or tribunal or a person who, for the purposes of this Act, is to be taken to be a member of the staff of the chief executive officer of a court or tribunal; or
  - (ii) a person who, under subsection (3) or the regulations, is not to be taken to be a prescribed authority for the purposes of this Act; or

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- (d) the person performing the duties of an appointment declared by the regulations to be an appointment the holder of which is a prescribed authority for the purposes of this Act, being an appointment made by the Governor-General, or by a Minister, otherwise than under an enactment.

***principal officer*** means:

- (a) in relation to a Department of the Australian Public Service—the person holding, or performing the duties of, the office of Secretary of the Department; or
- (c) in relation to a prescribed authority:
  - (i) if the regulations declare an office to be the principal office in respect of the authority—the person holding, or performing the duties of, that office; or
  - (ii) in any other case—the person who constitutes, or is acting as the person who constitutes, that authority or, if the authority is constituted by 2 or more persons, the person who is entitled to preside at any meeting of the authority at which he or she is present.

Note: For the meaning of ***principal officer*** for the purposes of Part IIB, see section 19G.

***private health insurance arrangement*** has the same meaning as in the *Private Health Insurance Act 2007*.

***private health insurance broker*** has the same meaning as in the *Private Health Insurance Act 2007*.

***Private Health Insurance (Information Disclosure) Rules*** means rules mentioned in subsection 333-20(1), table item 16, of the *Private Health Insurance Act 2007*.

***Private Health Insurance Ombudsman Rules*** means rules made under section 20ZJ.

***private health insurance policy*** has the same meaning as in the *Private Health Insurance Act 2007*.

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**private health insurer** has the same meaning as in the *Private Health Insurance Act 2007*.

**product** has the same meaning as in the *Private Health Insurance Act 2007*.

**registered PPO** means a PPO that is registered for the purposes of Part IIB (see section 19ZA).

Note: In certain circumstances, a PPO that is no longer registered for the purposes of Part IIB may still be treated as a registered PPO (see section 19J).

**responsible Minister**, in relation to a matter, or to action taken in or in relation to a matter, means:

- (a) if a Department of the Australian Public Service is responsible for dealing with the matter—the Minister administering that Department; or
  - (c) if a prescribed authority referred to in paragraph (a) of the definition of **prescribed authority** is responsible for dealing with the matter—the Minister administering the enactment by which, or in accordance with the provisions of which, the prescribed authority is established; or
  - (d) if a prescribed authority referred to in paragraph (c) of that definition is responsible for dealing with the matter—the Minister administering the enactment by which the office is established; or
  - (e) if any other prescribed authority is responsible for dealing with the matter—the Minister declared by the regulations to be the responsible Minister in respect of that authority;
- or another Minister acting for and on behalf of that Minister.

**rules**, of a private health insurer, has the same meaning as in the *Private Health Insurance Act 2007*.

**Secretary** means:

- (a) in relation to a Department—the person who is the Secretary of the Department for the purposes of the *Public Service Act 1999*; or

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- (b) in relation to a Parliamentary Department—the person who is the Secretary of the Parliamentary Department for the purposes of the *Parliamentary Service Act 1999*.

**taxation law** has the same meaning as in the *Income Tax Assessment Act 1997*.

**VET loan assistance** has the meaning given by subsection 20ZM(4).

**VET student** means:

- (a) a student enrolled in a course of study with a VET student loan scheme provider; or
- (b) a prospective student, or a former student, in relation to such a course.

**VET student loan officer** has the meaning given by subsection 20ZS(4).

**VET student loan principal executive officer** has the meaning given by subsection 20ZS(5).

**VET student loan scheme provider** means:

- (a) an approved course provider within the meaning of the *VET Student Loans Act 2016*, including a body that has been (but is no longer) such a provider; or
  - (b) a VET provider within the meaning of the *Higher Education Support Act 2003*, including a body that has been (but is no longer) such a provider.
- (2) An unincorporated body, being a board, council, committee, sub-committee or other body established by, or in accordance with the provisions of, an enactment for the purpose of assisting, or performing functions connected with, a prescribed authority shall not be taken to be a prescribed authority for the purpose of this Act, but action taken by the body, or by a person on its behalf, shall, for the purpose of this Act, be deemed to have been taken by that prescribed authority.

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- (3) A person shall not be taken to be a prescribed authority by virtue of holding, or performing the duties of:
- (a) an office whose duties the person performs as duties of employment as an officer or employee of a Department or as a member of the staff of a prescribed authority;
  - (b) an office of member of a body; or
  - (c) an office established by an enactment for the purposes of a prescribed authority;

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

- (4) Where:

- (a) a person who is not an officer of a Department, or of a prescribed authority, for the purposes of this Act takes action in the exercise of a power or the performance of a function that the person is authorized to exercise or to perform, as the case may be, by reason of his or her holding an appointment made by, or by reason of authority given by, the Governor-General, a Minister or the Secretary of a Department; and
- (b) the person does not exercise the power or perform the function by reason of his or her holding, or performing the duties of, an office established by, or in accordance with the provisions of, an enactment or by reason of his or her being a Judge of a court of, or a magistrate of, a State or Territory;

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

- (4A) Notwithstanding subsection (4), where a person is authorized to exercise a power or perform a function by reason of his or her holding an appointment made by, or by reason of authority given by, the Governor-General, a Minister or the Secretary of a Department otherwise than under an enactment, the regulations may provide that action taken by the person in the exercise of that power or the performance of that function shall not be deemed to
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be taken, for the purposes of this Act, by the Department responsible for dealing with the matter in connection with which the action is taken.

- (4B) For the purposes of this Act, if:
- (a) a person is not an officer of a Department or prescribed authority; and
  - (b) the person is, or is an employee of, a Commonwealth service provider of the Department or prescribed authority under a contract; and
  - (c) for the purposes of the contract, the person takes action in the exercise of a power or the performance of a function for or on behalf of the Department or prescribed authority; and
  - (d) the person does not exercise the power or perform the function by reason of:
    - (i) his or her holding, or performing the duties of, an office established by, or in accordance with the provisions of, an enactment; or
    - (ii) his or her being a Judge of a court of, or a magistrate of, a State or Territory; and
  - (e) the regulations do not otherwise provide;
- the action is taken to be action taken by the Department or prescribed authority.
- (5) For the purposes of this Act, action that is taken by an officer of a Department shall be deemed to be taken by the Department:
- (a) if the officer takes, or purports to take, the action by virtue of his or her being an officer of the Department, whether or not:
    - (i) the action is taken for or in connexion with, or as incidental to, the performance of the functions of the Department; or
    - (ii) the taking of the action is within the duties of the officer; or
  - (b) if the officer takes, or purports to take, the action in the exercise of powers or the performance of functions conferred on him or her by an enactment.

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- (5A) Notwithstanding subsection (5), where the person holding, or performing the duties of, an office established by an enactment is, under the regulations, not to be taken to be a prescribed authority for the purposes of this Act, the regulations may also provide that action taken by an officer of a Department, being action in the furtherance of the duties of that office, shall, for the purposes of this Act, be deemed not to be action taken by that Department.
- (6) For the purposes of this Act, action that is taken by an officer of a prescribed authority shall be deemed to be taken by the authority:
- (a) if the officer takes, or purports to take, the action by virtue of his or her being an officer of the authority, whether or not:
    - (i) the action is taken for or in connexion with, or as incidental to, the performance of the functions of the prescribed authority; or
    - (ii) the taking of the action is within the duties of the officer; or
  - (b) if the officer takes, or purports to take, the action in the exercise of powers or the performance of functions conferred on him or her by an enactment.
- (6A) For the purposes of this Act, action that is taken by a member of the Defence Force shall be deemed to be taken by the Defence Force if the member takes, or purports to take, the action by virtue of his or her being a member of the Defence Force, whether or not:
- (a) the action is taken in connection with, in the course of, or as incidental to, his or her service as a member of the Defence Force; or
  - (b) the taking of the action is within his or her duties as a member of the Defence Force.
- (6B) Action taken by any person or persons by way of, or in connection with, the appointment of a person to be the Chief of the Defence Force, the Chief of Navy, the Chief of Army or the Chief of Air Force is not action taken by the Defence Force or by a Department for the purposes of this Act.

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- (6C) In this Act (other than subsection (6A)), unless the contrary intention appears, a reference to a member of the Defence Force or of an arm or part of the Defence Force includes a reference to:
- (a) a person who has been a member of the Defence Force or of that arm or part of the Defence Force; or
  - (b) a deceased person who was at any time before his or her death a member of the Defence Force or of that arm or part of the Defence Force.
- (6D) For the purposes of this Act, action that is taken by an officer of a registered PPO is taken to have been taken by the registered PPO if the officer takes, or purports to take, the action because he or she is an officer of the registered PPO, whether or not:
- (a) the action is taken for or in connection with, or as incidental to, the provision of a postal or similar service by the registered PPO; or
  - (b) the taking of the action is within the duties of the officer.
- (7) In this Act, unless the contrary intention appears, a reference to the taking of action includes a reference to:
- (a) the making of a decision or recommendation;
  - (b) the formulation of a proposal; and
  - (c) failure or refusal to take any action, to make a decision or recommendation or to formulate a proposal.
- (7A) In this Act, unless the contrary intention appears, a reference to the Ombudsman of a State shall be read as a reference to a person performing, under a law of the State, functions similar to the functions performed by the Ombudsman.
- (7B) For the purposes of a provision of this Act (other than this subsection) in which a reference to the Ombudsman of a State occurs:
- (a) a reference to a State, in relation to the Ombudsman of a State, shall be read as including a reference to the Australian Capital Territory and a reference to the Northern Territory;
  - (b) a reference to a law of a State, in relation to the Ombudsman of a State, shall be read as including a reference to an ACT



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enactment and a reference to an enactment of the Northern Territory; and

- (c) a reference to a Department or authority of a State, in relation to the Ombudsman of a State, shall be read as including a reference to:

- (i) the Australian Capital Territory; or
- (ii) a Territory authority as defined by section 3 of the *Australian Capital Territory (Self-Government) Act 1988*;

as the case requires.

- (8) A reference in this Act to the international relations of the Commonwealth is a reference to the relations of the Commonwealth with the Government of another country or with an international organization.
- (9) For the purposes of this Act, the Australian Federal Police shall be deemed to be a prescribed authority.
- (10) In the application of this Act in relation to the Australian Federal Police, references in this Act to an officer of a prescribed authority shall be read as references to an AFP appointee.
- (11) For the purposes of this Act (other than subsection (6)), the Defence Force shall be deemed to be a prescribed authority.
- (12) In the application of this Act in relation to the Defence Force:
  - (a) references in this Act to an officer of a prescribed authority shall be read as references to a member of the Defence Force;
  - (b) references in this Act to the principal officer of a prescribed authority shall be read as references to the Chief of the Defence Force; and

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- (c) references in this Act to the responsible Minister, in relation to a matter in relation to a prescribed authority, or in relation to action taken by a prescribed authority in or in relation to a matter, shall be read as references to the Minister for Defence or another Minister acting for and on behalf of the Minister for Defence.
- (13) For the purposes of this Act, any matter (including a report) concerning both the Defence Force and the Department of Defence may, by arrangement between the Defence Force Ombudsman, the Chief of the Defence Force and the principal officer of the Department of Defence, be communicated by the Defence Force Ombudsman to either the Chief of the Defence Force or the principal officer of that Department.
- (13A) For the purposes of this Act, the ACC is taken to be a prescribed authority.
- (14) For the purposes of this Act:
  - (a) the officers (other than the chief executive officer) of a court or tribunal; and
  - (b) the members of the staff of the registry or registries of a court or tribunal; and
  - (c) officers or employees of a Department, or of an authority of the Commonwealth, whose services are made available to a court or tribunal; and
  - (d) persons declared by the regulations to be members of the staff of a court or tribunal for the purposes of this Act;are to be taken to be members of the staff of the chief executive officer of the court or tribunal.
- (15) A reference in this section to an officer of a court or tribunal does not include a judge of a court or a member of a tribunal.
- (16) In relation to anything that concerns:
  - (a) a chief executive officer of a court or tribunal; or
  - (b) a Parliamentary Department;

a reference to which this subsection applies has effect in accordance with subsection (18).

- (17) Subsection (16) applies to the following references:
- (a) a reference in any of the following provisions to the responsible Minister:
    - (i) paragraph 8(7A)(b);
    - (ii) subsections 8(8) and (9);
    - (iii) paragraph 8(10)(c);
    - (iv) subsection 11A(5);
    - (v) subparagraphs 35(3)(b)(i) and (ia);
  - (b) the reference in paragraph 8(10)(a) to the Minister administering a Department;
  - (c) the reference in subsection 15(6) to the Minister concerned.
- (18) A reference to which subsection (16) applies is to be read as follows:
- (a) in the case of the chief executive officer of a court, the reference is to be read as a reference to the chief justice or chief judge (however described) of the court;
  - (b) in the case of the Registrar of the Administrative Appeals Tribunal, the reference is to be read as a reference to the President of the Administrative Appeals Tribunal;
  - (c) in the case of the chief executive officer of a tribunal other than the Administrative Appeals Tribunal, the reference is to be read as a reference to the president or principal member (however described) of the tribunal or, if the tribunal consists of a single member, as a reference to that member;
  - (d) in the case of the Department of the Senate, the reference is to be read as a reference to the President of the Senate;
  - (e) in the case of the Department of the House of Representatives, the reference is to be read as a reference to the Speaker;
  - (f) in the case of any other Parliamentary Department, the reference is to be read as a reference to the President of the Senate and the Speaker.

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**3A Prescribed authorities: Commonwealth-controlled companies**

- (1) A Commonwealth-controlled company is a prescribed authority unless:
  - (a) it is excluded by subsection (2); or
  - (b) under the regulations it is to be taken not to be a prescribed authority.
- (2) Subject to subsection (3), a Commonwealth-controlled company is excluded for the purposes of paragraph (1)(a) if:
  - (a) the company was a Commonwealth-controlled company immediately before the commencement of Part 6 of the *Prime Minister and Cabinet (Miscellaneous Provisions) Act 1994*; and
  - (b) immediately before that commencement the company was not a prescribed authority for the purposes of this Act as then in force.
- (3) A Commonwealth-controlled company that, but for this subsection, would be excluded by subsection (2) is not so excluded if the regulations declare that the company is to be taken to be a prescribed authority.

**3B Certain legislation relating to Australian Capital Territory not to be enactment**

- (1) ACT enactments are not enactments.
- (2) The *Australian Capital Territory (Self-Government) Act 1988* and the *Canberra Water Supply (Googong Dam) Act 1974* are not enactments.
- (3) Part IV, sections 29 and 30, subsection 63(2), section 66 and Division 5 of Part X of the *Australian Capital Territory Planning and Land Management Act 1988* are not enactments.
- (4) Where the whole of an Act or Ordinance is not an enactment, an instrument made under it is not an enactment.

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- (5) Where part of an Act or Ordinance is not an enactment, an instrument made under the Act or Ordinance, as the case may be, is not an enactment unless made for the purposes of the other part of the Act or Ordinance, as the case may be.

**3BA Commonwealth service providers**

A person is a *Commonwealth service provider* of a Department or prescribed authority under a contract (the *Commonwealth contract*) if:

- (a) both of the following apply:
  - (i) the person, and the Department or prescribed authority or the Commonwealth, are parties to the Commonwealth contract;
  - (ii) for the purposes of the Commonwealth contract, the person is responsible for providing goods or services, for or on behalf of the Department or prescribed authority, to another person who is not a Department or prescribed authority or the Commonwealth; or
- (b) both of the following apply:
  - (i) the person, and a person who is (under a previous application of this section) a Commonwealth service provider of the Department or prescribed authority under the Commonwealth contract, are parties to another contract (the *subcontract*);
  - (ii) under the subcontract and for the purposes of the Commonwealth contract, the person is responsible for providing goods or services, for or on behalf of the Department or prescribed authority, to another person who is not a Department or prescribed authority or the Commonwealth.

**3C Application of Act**

This Act applies both within and outside Australia and extends to every external Territory.

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**3D Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## **Part II—Establishment, functions, powers and duties of the Ombudsman**

### **Division 1—Establishment and functions**

#### **4 Establishment of offices of Ombudsman and Deputy Ombudsman**

- (1) For the purposes of this Act, there shall be:
  - (a) a Commonwealth Ombudsman; and
  - (b) at least one, and not more than 3, Deputy Commonwealth Ombudsmen.
- (2) The functions of the Commonwealth Ombudsman are to investigate complaints made to him or her under this Act and to perform such other functions as are conferred on him or her by:
  - (a) this Act or the regulations; or
  - (b) another Act or regulations made under another Act; or
  - (c) an ACT enactment or regulations made under an ACT enactment.
- (4) The Commonwealth Ombudsman, in performing his or her functions in relation to immigration (including immigration detention), may, if he or she so chooses, be called the Immigration Ombudsman.
- (5) The Commonwealth Ombudsman, in performing his or her functions in relation to the Australian Federal Police, may, if he or she so chooses, be called the Law Enforcement Ombudsman.

#### **4A The Office of the Commonwealth Ombudsman**

For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):

- (a) the following group of persons is a listed entity:
  - (i) the Commonwealth Ombudsman;
  - (ii) the Deputy Commonwealth Ombudsmen;

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- (iii) the staff referred to in subsection 31(1); and
- (b) the listed entity is to be known as the Office of the Commonwealth Ombudsman; and
- (c) the Commonwealth Ombudsman is the accountable authority of the Office of the Commonwealth Ombudsman; and
- (d) the persons referred to in paragraph (a) are officials of the Office of the Commonwealth Ombudsman; and
- (e) the purposes of the Office of the Commonwealth Ombudsman include:
  - (i) the functions of the Commonwealth Ombudsman referred to in subsection 4(2) and section 5; and
  - (ii) the functions of the Defence Force Ombudsman referred to in section 19C; and
  - (iii) the functions of the Postal Industry Ombudsman referred to in section 19M; and
  - (iv) the functions of the Overseas Students Ombudsman referred to in section 19ZJ; and
  - (v) the functions of the Private Health Insurance Ombudsman referred to in section 20D; and
  - (vi) the functions of the VET Student Loans Ombudsman referred to in section 20ZM.

## 5 Functions of Ombudsman

- (1) Subject to this Act, the Ombudsman:
  - (a) shall investigate action, being action that relates to a matter of administration, taken either before or after the commencement of this Act by a Department, or by a prescribed authority, and in respect of which a complaint has been made to the Ombudsman; and
  - (b) may, of his or her own motion, investigate any action, being action that relates to a matter of administration, taken either before or after the commencement of this Act by a Department or by a prescribed authority; and
  - (c) with the consent of the Minister, may enter into an arrangement under which the Ombudsman will perform



functions of an ombudsman under an ombudsman scheme established in accordance with the conditions of licences or authorities granted under an enactment.

- (2) The Ombudsman is not authorized to investigate:
- (a) action taken by a Minister; or
  - (aa) action that constitutes proceedings in Parliament for the purposes of section 16 of the *Parliamentary Privileges Act 1987*; or
  - (b) action taken by a Justice or Judge of a court created by the Parliament; or
  - (ba) action by the chief executive officer of a court or by a person who, for the purposes of this Act, is to be taken to be a member of the staff of the chief executive officer of a court:
    - (i) when exercising a power of the court; or
    - (ii) when performing a function, or exercising a power, of a judicial nature; or
  - (c) action taken by:
    - (i) a magistrate or coroner for the Australian Capital Territory, Norfolk Island, the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands; or
    - (ii) a person who holds office as a magistrate in a State or the Northern Territory in the performance of the functions of a magistrate conferred on him or her by or under an Act; or
  - (d) action taken by any body or person with respect to persons employed in the Australian Public Service or the service of a prescribed authority, being action taken in relation to that employment, including action taken with respect to the promotion, termination of appointment or discipline of a person so employed or the payment of remuneration to such a person; or
  - (g) action taken by a Department or by a prescribed authority with respect to the appointment of a person to an office or position established by or under an enactment, not being an office or position in the Australian Public Service or an office in the service of a prescribed authority.
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- (3) The reference in paragraph (2)(a) to action taken by a Minister does not include a reference to action taken by a delegate of a Minister, and, for the purposes of this subsection, action shall be deemed to have been taken by such a delegate notwithstanding that the action is taken in pursuance of a power that is deemed by a provision of an enactment, when exercised by the delegate, to have been exercised by the Minister.
- (3A) For the purposes of the application of this Act to or in relation to the Ombudsman, action taken by a Department or by a prescribed authority shall not be regarded as having been taken by a Minister by reason only that the action was taken by the Department or authority in relation to action that has been, is proposed to be, or may be, taken by a Minister personally.
- (3B) Paragraph (2)(b) does not prevent the Ombudsman from investigating action taken by the Integrity Commissioner, or an Assistant Integrity Commissioner, who happens to be a Justice or Judge of a court created by the Parliament.
- (4) Paragraph (2)(d) does not prevent the Ombudsman from investigating action taken by an AFP appointee, or by any other person, with respect to information that:
  - (a) is given to the AFP appointee; and
  - (b) raises an AFP conduct issue or AFP practices issue; and
  - (c) relates to action taken by another AFP appointee.
- (5) The Ombudsman is not authorised to investigate action taken under:
  - (a) a law of Western Australia in its application in the Territory of Christmas Island by virtue of the *Christmas Island Act 1958*; or
  - (b) a law of Western Australia in its application in the Territory of Cocos (Keeling) Islands by virtue of the *Cocos (Keeling) Islands Act 1955*;by a person employed by Western Australia.
- (6) The reference in subsection (5) to a person employed by Western Australia includes a reference to:

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- (a) a person occupying, or acting in, an office or position under a law of Western Australia; and
  - (b) a person employed by a body established by or under a law of Western Australia.
- (6A) The Ombudsman is not authorised to investigate action taken under a law of New South Wales, in its application in Norfolk Island by virtue of the *Norfolk Island Act 1979*, by a person employed by New South Wales.
- (6B) The reference in subsection (6A) to a person employed by New South Wales includes a reference to:
  - (a) a person occupying, or acting in, an office or position under a law of New South Wales; and
  - (b) a person employed by a body established by or under a law of New South Wales.
- (7) An arrangement referred to in paragraph (1)(c) may include provision for payment by the other party to the arrangement for the performance of functions by the Ombudsman in accordance with the arrangement.

**5A Public interest disclosure functions of Ombudsman**

- (1) If:
  - (a) a disclosure of information has been, or is required to be, allocated under section 43 of the *Public Interest Disclosure Act 2013*; and
  - (b) some or all of the disclosable conduct with which the information is concerned relates (within the meaning of that Act) to an agency (within the meaning of that Act); and
  - (c) the agency is neither an intelligence agency (within the meaning of that Act) nor the Inspector-General of Intelligence and Security;to the extent that the conduct so relates, it is taken, for the purposes of this Act, to be action that relates to a matter of administration.
- (2) For the purposes of the application of this Act to the action:

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- (a) the agency is taken to be a prescribed authority; and
  - (b) the action is to be treated as if it were action taken by the prescribed authority; and
  - (c) a public official who belongs (within the meaning of the *Public Interest Disclosure Act 2013*) to the agency is taken to be an officer of the prescribed authority; and
  - (d) the person who disclosed the information is taken, if the disclosure is allocated to the Ombudsman, to have made a complaint to the Ombudsman in respect of the action.
- (3) It is immaterial whether the disclosable conduct occurred before or after the commencement of this section.

**6 Discretion not to investigate certain complaints**

- (1) Where a complaint has been made to the Ombudsman with respect to action taken by a Department or by a prescribed authority, the Ombudsman may, in his or her discretion, decide not to investigate the action or, if he or she has commenced to investigate the action, decide not to investigate the action further:
- (a) if the Ombudsman is satisfied that the complainant became aware of the action more than 12 months before the complaint was made to the Ombudsman; or
  - (b) if, in the opinion of the Ombudsman:
    - (i) the complaint is frivolous or vexatious or was not made in good faith;
    - (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.
- (1A) Where a person who makes a complaint to the Ombudsman with respect to action taken by a Department or by a prescribed authority has not complained to the Department or authority 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 Department or authority.

(1B) Where a person who makes a complaint to the Ombudsman with respect to action taken by a Department or prescribed authority has complained to the Department or authority with respect to that action, the Ombudsman may, in his or her discretion, decide not to investigate the action unless and until 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.

(1C) Where:

- (a) a person who has made a complaint to the Ombudsman with respect to action taken by a Department or by a prescribed authority and who has complained to the Department or authority with respect to that action informs the Ombudsman as provided by subsection (1B) that no redress, or no adequate redress, has been granted by the Department or authority; and
- (b) the Ombudsman is of the opinion:
  - (i) if no redress has been granted—that, since the complainant complained to the Department or authority, 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 shall, subject to this section, investigate the action.

- (2) Where a complainant has exercised, or exercises, a right to cause 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 shall not investigate, or continue to investigate, as the case may be, the action unless the Ombudsman is of the opinion that there are special reasons justifying the investigation of the action or the investigation of the action further.
- (3) Where the Ombudsman is of the opinion that a complainant has or had a right to cause the action to which the complaint relates to be reviewed by a court or by a tribunal constituted by or under an

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enactment but has not exercised that right, the Ombudsman may decide not to investigate the action or not to investigate the action further, as the case may be, 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.

- (4) Where, before the Ombudsman commences, or after the Ombudsman has commenced, to investigate action taken by a Department or by a prescribed authority, being action that is the subject matter of a complaint, the Ombudsman becomes of the opinion that adequate provision is made under an administrative practice for the review of action of that kind taken by that Department or prescribed authority, the Ombudsman may decide not to investigate the action or not to investigate the action further, as the case may be:
- (a) if the action has been, is being or is to be reviewed under that practice at the request of the complainant; or
  - (b) if the Ombudsman is satisfied that the complainant is entitled to cause the action to be reviewed under that practice and it would be reasonable for the complainant to cause it to be so reviewed.

- (4D) Where, before the Ombudsman commences, or after the Ombudsman has commenced, to investigate action taken by a Department or by a prescribed authority, being action that is the subject matter of a complaint, the Ombudsman becomes of the opinion that:
- (a) a complaint with respect to the action has been, or could have been, made by the complainant to the ACMA under Part 26 of the *Telecommunications Act 1997*; and
  - (b) the action could be more conveniently or effectively dealt with by the ACMA;

the Ombudsman may decide not to investigate the action, or not to investigate the action further, as the case may be, and, if the Ombudsman so decides, the Ombudsman shall:

- (c) transfer the complaint to the ACMA;

- (d) forthwith give notice in writing to the complainant stating that the complaint has been so transferred; and
  - (e) give to the ACMA any information or documents that relate to the complaint and are in the possession, or under the control, of the Ombudsman.
- (4E) A complaint transferred under subsection (4D) shall be taken to be a complaint made to the ACMA under Part 26 of the *Telecommunications Act 1997*.
- (5) Where a complaint is made to the Ombudsman by a complainant at the request of another person or of a body of persons, this section applies as if references to the complainant were references to the person or the body of persons at whose request the complaint is made.
- (6) If the Ombudsman forms the opinion:
  - (a) that a complaint relates to action of a prescribed authority that is a national broadcasting service for the purposes of the *Broadcasting Services Act 1992*; and
  - (b) that the complaint could have been made to the Australian Communications and Media Authority under Part 11 of the *Broadcasting Services Act 1992* and could be more conveniently or effectively dealt with by that Authority;the Ombudsman may decide not to investigate the action, or not to investigate the action further, as the case may be, and to transfer the complaint to the Australian Communications and Media Authority.
- (7) If the Ombudsman makes a decision under subsection (6), the Ombudsman must:
  - (a) transfer the complaint to the Authority as soon as is reasonably practicable; and
  - (b) give the Authority any information or documents relating to the complaint that are in the possession, or under the control, of the Ombudsman; and

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- (c) as soon as is reasonably practicable, give the complainant written notice that the complaint has been transferred to the Authority.
- (8) A complaint transferred under subsection (7) is to be taken to be a complaint made under Part 11 of the *Broadcasting Services Act 1992*.
- (9) If the Ombudsman forms the opinion:
  - (a) that a complaint could have been made under the *Public Service Act 1999*; and
  - (b) that the complaint could be more conveniently or effectively dealt with by the Australian Public Service Commissioner;the Ombudsman may decide not to investigate the complaint, or not to investigate the complaint further, as the case may be, and to transfer the complaint to the Australian Public Service Commissioner.
- (10) If the Ombudsman makes a decision under subsection (9), the Ombudsman must:
  - (a) transfer the complaint to the Australian Public Service Commissioner as soon as is reasonably practicable; and
  - (b) give the Australian Public Service Commissioner any information or documents relating to the complaint that are in the possession, or under the control, of the Ombudsman; and
  - (c) as soon as is reasonably practicable, give the complainant written notice that the complaint has been transferred to the Australian Public Service Commissioner.
- (11) In considering whether to make a decision under subsection (9) relating to a complaint that includes an allegation of misconduct by an Agency Head, the Ombudsman must consult with the Australian Public Service Commissioner.
- (11A) If the Ombudsman forms the opinion:
  - (a) that a complaint could have been made under the *Parliamentary Service Act 1999*; and



- (b) that the complaint could be more conveniently or effectively dealt with by the Parliamentary Service Commissioner;  
the Ombudsman may decide not to investigate the complaint, or not to investigate the complaint further, as the case may be, and to transfer the complaint to the Parliamentary Service Commissioner.
- (11B) If the Ombudsman makes a decision under subsection (11A), the Ombudsman must:
- (a) transfer the complaint to the Parliamentary Service Commissioner as soon as is reasonably practicable; and
  - (b) give the Parliamentary Service Commissioner any information or documents relating to the complaint that are in the possession, or under the control, of the Ombudsman; and
  - (c) as soon as is reasonably practicable, give the complainant written notice that the complaint has been transferred to the Parliamentary Service Commissioner.
- (11C) In considering whether to make a decision under subsection (11A) relating to a complaint that includes an allegation of misconduct by the Secretary of a Parliamentary Department, the Ombudsman must consult with the Parliamentary Service Commissioner.
- (12) If the Ombudsman forms the opinion that action in respect of which a complaint has been made relates to a commercial activity of a Department or prescribed authority, the Ombudsman may decide not to investigate the complaint, or to cease investigating the complaint, as the case may be.
- (13) If the Ombudsman forms the opinion:
- (a) that a complaint relates to action taken by a Department or a prescribed authority; and
  - (b) that the complaint could be more conveniently or effectively dealt with by the industry ombudsman for a particular industry;
- the Ombudsman may decide not to investigate the action, or not to investigate the action further, as the case may be, and to transfer the complaint to that industry ombudsman.
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- (14) If the Ombudsman makes a decision under subsection (13), the Ombudsman must:
- (a) transfer the complaint to the industry ombudsman as soon as is reasonably practicable; and
  - (b) give the industry ombudsman such information or documents relating to the complaint that are in the possession, or under the control, of the Ombudsman as the Ombudsman believes are reasonably necessary to enable the industry ombudsman to deal effectively with the complaint; and
  - (c) as soon as is reasonably practicable, give the complainant written notice of the transfer of the complaint.
- (15) For the purposes of subsection (13), the industry ombudsman for a particular industry is the person holding, or acting in, the office or appointment declared by the regulations to be the office or appointment the holder of which is the ombudsman for that industry.
- (16) If the Ombudsman forms the opinion:
- (a) that a complaint involves an allegation, or information, that raises a corruption issue (other than a significant corruption issue); and
  - (b) that the allegation or information could have been referred to the Integrity Commissioner under Part 4 of the *Law Enforcement Integrity Commissioner Act 2006* and could be more conveniently or effectively dealt with by the Integrity Commissioner;
- the Ombudsman may decide not to investigate the complaint, or not to investigate the complaint further, as the case may be, and to refer the allegation or information to the Integrity Commissioner.
- (17) If the Ombudsman forms the opinion:
- (a) that a complaint involves an allegation, or information, that raises a significant corruption issue; and
  - (b) that the allegation or information could have been referred to the Integrity Commissioner under Part 4 of the *Law Enforcement Integrity Commissioner Act 2006* and could be

more conveniently or effectively dealt with by the Integrity Commissioner;

the Ombudsman must not investigate the complaint, or must not investigate the complaint further, as the case may be, and must refer the allegation or information to the Integrity Commissioner.

(18) If:

- (a) the Ombudsman makes a decision under subsection (16); or
- (b) subsection (17) applies;

the Ombudsman must:

- (c) refer the allegation, or information, that raises the corruption issue or significant corruption issue to the Integrity Commissioner as soon as is reasonably practicable; and
- (d) give the Integrity Commissioner any information or documents relating to the complaint that are in the possession, or under the control, of the Ombudsman; and
- (e) as soon as is reasonably practicable, give the complainant written notice that the complaint has been transferred to the Integrity Commissioner.

(19) In subsections (16) to (18):

**corruption issue** has the same meaning as in the *Law Enforcement Integrity Commissioner Act 2006*.

**Integrity Commissioner** has the same meaning as in the *Law Enforcement Integrity Commissioner Act 2006*.

**significant corruption issue** has the same meaning as in the *Law Enforcement Integrity Commissioner Act 2006*.

(20) If the Ombudsman forms the opinion:

- (a) that a complaint includes information about an AFP conduct issue or an AFP practices issue; and
- (b) that the information could have been given under section 40SA of the *Australian Federal Police Act 1979* and the issue could be more conveniently or effectively dealt with under Part V of that Act;

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the Ombudsman may decide not to investigate the complaint, or not to investigate the complaint further, as the case may be, and to give the information to the AFP Commissioner under that section of that Act.

- (21) If the Ombudsman makes a decision under subsection (20), the Ombudsman must:
- (a) give the information to the AFP Commissioner under section 40SA of the *Australian Federal Police Act 1979* as soon as is reasonably practicable; and
  - (b) give the AFP Commissioner any information or documents relating to the complaint that are in the possession, or under the control, of the Ombudsman; and
  - (c) as soon as is reasonably practicable, give the complainant written notice that the complaint has been transferred to the AFP Commissioner to be dealt with under that Act.

**6A Transfer of complaints about ACC**

- (1) If:
- (a) the Ombudsman forms the opinion that:
    - (i) a complaint in respect of action taken by the ACC could have been made to another authority established under a law of the Commonwealth, a State or a Territory; and
    - (ii) the complaint could be more conveniently or effectively dealt with by the other authority; and
  - (b) the other authority can deal with the complaint if the Ombudsman transfers the complaint to the other authority;
- the Ombudsman may decide not to investigate the complaint, or not to investigate the complaint further, as the case may be, and to transfer the complaint to the other authority.
- (2) If the Ombudsman decides to transfer the complaint, the Ombudsman must:
- (a) do so as soon as is reasonably practicable; and

- (b) subject to section 35B, give the other authority any information or documents relating to the complaint that are in the possession, or under the control, of the Ombudsman; and
- (c) as soon as is reasonably practicable, give the complainant written notice that the complaint has been transferred to the other authority.

## **6B Transfer of complaints about Integrity Commissioner**

- (1) If:
  - (a) the Ombudsman forms the opinion that:
    - (i) a complaint in respect of action taken by the Integrity Commissioner could have been made to another authority established under a law of the Commonwealth, a State or a Territory; and
    - (ii) the complaint could be more conveniently or effectively dealt with by the other authority; and
  - (b) the other authority can deal with the complaint if the Ombudsman transfers the complaint to the other authority;the Ombudsman may decide not to investigate the complaint, or not to investigate the complaint further, as the case may be, and to transfer the complaint to the other authority.
- (2) If the Ombudsman decides to transfer the complaint, the Ombudsman must:
  - (a) do so as soon as is reasonably practicable; and
  - (b) subject to section 35C, give the other authority any information or documents relating to the complaint that are in the possession, or under the control, of the Ombudsman; and
  - (c) as soon as is reasonably practicable, give the complainant written notice that the complaint has been transferred to the other authority.

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**6C Transfer of complaints to Information Commissioner**

*Scope*

- (1) This section applies if the Ombudsman is satisfied of either of the following:
- (a) that:
    - (i) a complainant has complained, or could complain, to the Information Commissioner about an action taken by a Department or prescribed authority under Part V of the *Privacy Act 1988* or Part VIIB of the *Freedom of Information Act 1982*; and
    - (ii) the action could be more appropriately or effectively dealt with by the Information Commissioner;
  - (b) a complaint about an action taken by a Department or prescribed authority has been the subject of a completed investigation by the Information Commissioner under Part V of the *Privacy Act 1988* or Part VIIB of the *Freedom of Information Act 1982*.

*Requirement to consult with Information Commissioner*

- (2) The Ombudsman:
- (a) must consult the Information Commissioner about the complaint with a view to avoid inquiries being conducted into that matter by both the Information Commissioner and the Ombudsman; and
  - (b) may decide not to investigate the action, or not to continue to investigate the action.

*Transfer to Information Commissioner*

- (3) If the Ombudsman decides not to investigate, or not to continue to investigate, an action under paragraph (2)(b), the Ombudsman must:
- (a) transfer the complaint to the Information Commissioner; and
  - (b) notify the complainant in writing that the complaint has been transferred; and

- (c) give the Information Commissioner any information or documents that relate to the complaint in the possession, or under the control of, the Ombudsman.
- (4) A complaint transferred under subsection (3) is taken to be a complaint made to the Information Commissioner under Part V of the *Privacy Act 1988* or Part VIIB of the *Freedom of Information Act 1982*, as the case requires.

## **6D Tax administration matters and transfer of complaints to Inspector-General of Taxation**

### *Ombudsman not to investigate action relating to tax administration*

- (1) The Ombudsman must not investigate action that the Inspector-General of Taxation can investigate under paragraph 7(1)(a) or (b) of the *Inspector-General of Taxation Act 2003* (***tax administration action***).

### *Exception—transferred complaints*

- (2) However, the Ombudsman may investigate tax administration action that:
  - (a) is the subject of a part of a complaint transferred to the Ombudsman under paragraph 10(2)(b) of the *Inspector-General of Taxation Act 2003*; or
  - (b) is the subject of a part of a complaint that the Inspector-General of Taxation advises, under paragraph (3)(b) of this section, does not need to be transferred under subsection (3); or
  - (c) is also action relating to a matter of administration under:
    - (i) the *Public Interest Disclosure Act 2013*; or
    - (ii) the *Freedom of Information Act 1982*; or
    - (iii) another Act (other than a taxation law) prescribed by regulations made for the purposes of this paragraph.

Note: Subsection (1) does not apply to any part of a complaint that is not in respect of tax administration action.

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*Transferring complaints to the Inspector-General of Taxation*

- (3) The Ombudsman must transfer the following to the Inspector-General of Taxation:
  - (a) a complaint made to the Ombudsman that is wholly in respect of tax administration action;
  - (b) if part of a complaint made to the Ombudsman is in respect of tax administration action—that part of the complaint, unless the Inspector-General advises otherwise.
- (4) For a complaint made to the Ombudsman that is only partly in respect of tax administration action, the Ombudsman:
  - (a) must consult the Inspector-General of Taxation about the complaint or about complaints of that kind; and
  - (b) may transfer to the Inspector-General the part of the complaint that is not in respect of tax administration action if the Ombudsman is satisfied that the whole complaint could be more appropriately or effectively dealt with by the Inspector-General of Taxation.
- (5) The Ombudsman must, for each complaint (or part of a complaint) transferred to the Inspector-General of Taxation:
  - (a) notify the complainant in writing of that transfer; and
  - (b) give the Inspector-General of Taxation any related information or documents that are:
    - (i) in the Ombudsman's possession; or
    - (ii) under the Ombudsman's control.
- (6) For the purposes of the *Inspector-General of Taxation Act 2003* (other than subsection 10(1) or (2) of that Act), a complaint (or part of a complaint) transferred under this section is taken to be a complaint made to the Inspector-General of Taxation under that Act.

Note: A similar provision for transferring to the Ombudsman complaints made to the Inspector-General is contained in section 10 of the *Inspector-General of Taxation Act 2003*. Subsection 10(4) of that Act deems transferred complaints to be complaints made to the Ombudsman under this Act.



**6E Transfer of complaints to the Australian Small Business and Family Enterprise Ombudsman**

- (1) If:
- (a) the Ombudsman forms the opinion that:
    - (i) a complaint could have been made to the Australian Small Business and Family Enterprise Ombudsman (the **ASBFE Ombudsman**); and
    - (ii) the complaint could be more conveniently or effectively dealt with by the ASBFE Ombudsman; and
  - (b) under the *Australian Small Business and Family Enterprise Ombudsman Act 2015*, the ASBFE Ombudsman has the power to deal with the complaint;
- the Ombudsman may decide not to investigate the complaint, or not to investigate the complaint further, and to transfer the complaint to the ASBFE Ombudsman.
- (2) The Ombudsman must not make a decision under subsection (1) unless:
- (a) the Ombudsman has consulted with the ASBFE Ombudsman about whether it would be more convenient or effective for the ASBFE Ombudsman to deal with the complaint; or
  - (b) the Ombudsman has consulted with the ASBFE Ombudsman about whether it would be more convenient or effective for the ASBFE Ombudsman to deal with a particular class of complaints, and the complaint is one of that class.
- (3) If the Ombudsman makes a decision under subsection (1), the Ombudsman must:
- (a) transfer the complaint to the ASBFE Ombudsman as soon as is reasonably practicable; and
  - (b) give the ASBFE Ombudsman any information or documents relating to the complaint that are in the possession, or under the control, of the Ombudsman; and
  - (c) as soon as is reasonably practicable, give the complainant written notice that the complaint has been transferred to the ASBFE Ombudsman.
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- (4) The *Australian Small Business and Family Enterprise Ombudsman Act 2015* applies to the complaint, once transferred, as if a request for assistance had been made to the ASBFE Ombudsman under that Act on the day on which the complaint is transferred.
- (5) If a complaint is transferred to the ASBFE Ombudsman under this section, the complaint is taken to be a formal request for assistance made to the ASBFE Ombudsman under the *Australian Small Business and Family Enterprise Ombudsman Act 2015*.

**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 reduce the complaint to writing or at any time require the complainant to reduce the complaint to 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 reduces the complaint to writing.
- (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 his or her detention:
    - (i) to be provided with facilities for preparing a complaint in writing under this Act, for furnishing 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 delivered by him or her to any such person and addressed to the Ombudsman; and
  - (b) to have delivered to him or her, without undue delay, any sealed envelope, addressed to him or her and sent by the

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Ombudsman, that comes into the possession or under the control of the person in whose custody he or she is detained or of any other person performing duties in connection with his or her detention.

- (4) Where a sealed envelope addressed to the Ombudsman is delivered by a person detained in custody to a person referred to in subsection (3) for sending to the Ombudsman, or a sealed envelope addressed to a person so detained and sent by the Ombudsman comes into the possession or under the control of a person referred to in that subsection, neither the person in whose custody the first-mentioned person is detained nor any other person performing duties in connection with his or her detention is entitled to open the envelope or to inspect any document enclosed in the envelope.
- (5) For the purposes of subsections (3) and (4), the Ombudsman may make arrangements with the appropriate authority of a State or a Territory for the identification and delivery of sealed envelopes sent by the Ombudsman to persons detained in custody in that State or Territory.

**7A Preliminary inquiries***Ombudsman may make preliminary inquiries*

- (1) Where a complaint has been made to the Ombudsman with respect to action taken by a Department or by a prescribed authority or it appears to the Ombudsman that the Ombudsman may, under paragraph 5(1)(b), investigate action so taken, the Ombudsman may, for the purpose of:
- (a) determining whether or not the Ombudsman is authorized to investigate the action; or
  - (b) if the Ombudsman is authorized 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 Department or prescribed authority or, if an arrangement with the principal officer

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of the Department or authority is in force under subsection (2), of such officers as are referred to in the arrangement.

*Disclosure of information*

(1A) Subsections (1B), (1C), (1D) and (1E) apply if:

- (a) the Ombudsman requests the principal officer, or (if applicable) an officer referred to in the arrangement, to give information (including an answer to a question) to the Ombudsman or to produce a document or other record to the Ombudsman; or
- (b) the principal officer, or (if applicable) an officer referred to in the arrangement, reasonably believes that information or a document or other record would assist the Ombudsman to make a determination under subsection (1).

(1B) If the officer:

- (a) gives the information to the Ombudsman or produces the document or record to the Ombudsman; and
- (b) by doing so:
  - (i) contravenes any other enactment; or
  - (ii) might tend to incriminate the officer or make the officer liable to a penalty; or
  - (iii) discloses a legal advice given to a Minister, a Department or a prescribed authority; or
  - (iv) discloses a communication between an officer of a Department or of a prescribed authority and another person or body, being a communication protected against disclosure by legal professional privilege; or
  - (v) otherwise acts contrary to the public interest;

the information or the production of the document or record is not admissible in evidence against the officer in proceedings other than proceedings for an offence against section 137.1, 137.2 or 149.1 of the *Criminal Code* that relates to this Act.

(1C) The officer is not liable to any penalty under the provisions of any other enactment by reason of his or her giving the information to

the Ombudsman or producing the document or record to the Ombudsman.

- (1D) For the purposes of the *Privacy Act 1988*, the giving of the information to the Ombudsman or the production of the document or record to the Ombudsman is taken to be authorised by this Act.
- (1E) Subsection (1B) does not otherwise affect a claim of legal professional privilege that anyone may make in relation to the information, document or record.

*Arrangements with Departments and prescribed authorities*

- (2) The Ombudsman may from time to time make with the principal officer of a Department or of a prescribed authority an arrangement with respect to the officers of whom all inquiries, or inquiries included in a class or classes of inquiries specified in the arrangement, are to be made by the Ombudsman in pursuance of subsection (1) with respect to action that has been or is taken by the Department or authority.

## **8 Investigations**

*Ombudsman must inform of investigation*

- (1) The Ombudsman shall, before commencing an investigation under this Act of action taken by a Department or by a prescribed authority, inform the principal officer of the Department or of the authority that the action is to be investigated.
- (1A) The Ombudsman may from time to time make with the principal officer of a Department or of a prescribed authority an arrangement with respect to the manner in which, and the period within which, the Ombudsman is to inform that principal officer that he or she proposes to investigate action taken by the Department or authority, being action included in a class or classes of actions specified in the arrangement.

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*Investigations to be in private*

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

*Disclosure of information*

- (2A) Subsections (2B), (2C), (2D) and (2E) apply if:

(a) either:

- (i) for the purposes of an investigation under this Act (whether or not the investigation has been completed), the Ombudsman requests a person to give information (including an answer to a question) to the Ombudsman or to produce a document or other record to the Ombudsman; or
- (ii) a person reasonably believes that information or a document or other record is relevant to an investigation under this Act (whether or not the investigation has been completed); and

(b) any of the following apply:

- (i) the person obtained the information, document or record in the course of the person's duties as the principal officer of a Department or prescribed authority, and the person is still the principal officer of the Department or prescribed authority;
- (ii) the person obtained the information, document or record in the course of the person's duties as the principal officer of a Department or prescribed authority, the person is no longer the principal officer of the Department or prescribed authority, and the principal officer of the Department or prescribed authority has authorised the person to give the information to the Ombudsman or to produce the document or other record to the Ombudsman;
- (iii) the person obtained the information, document or record in the course of the person's duties as an officer (other than as the principal officer) of a Department or prescribed authority, and the principal officer of the

Department or prescribed authority has authorised the officer to give the information to the Ombudsman or to produce the document or other record to the Ombudsman;

- (iv) the person obtained the information, document or record lawfully but not in the course of the person's duties as an officer (including as the principal officer) of a Department or prescribed authority.

(2B) If the person:

- (a) gives the information to the Ombudsman or produces the document or record to the Ombudsman; and
- (b) by doing so:
  - (i) contravenes any other enactment; or
  - (ii) might tend to incriminate the person or make the person liable to a penalty; or
  - (iii) discloses a legal advice given to a Minister, a Department or a prescribed authority; or
  - (iv) discloses a communication between an officer of a Department or of a prescribed authority and another person or body, being a communication protected against disclosure by legal professional privilege; or
  - (v) otherwise acts contrary to the public interest;

the information or the production of the document or record is not admissible in evidence against the person in proceedings other than proceedings for an offence against section 137.1, 137.2 or 149.1 of the *Criminal Code* that relates to this Act.

(2C) The person is not liable to any penalty under the provisions of any other enactment by reason of his or her giving the information to the Ombudsman or producing the document or record to the Ombudsman.

(2D) For the purposes of the *Privacy Act 1988*, the giving of the information to the Ombudsman or the production of the document or record to the Ombudsman is taken to be authorised by this Act.

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- (2E) Subsection (2B) does not otherwise affect a claim of legal professional privilege that anyone may make in relation to the information, document or record.

*Ombudsman may obtain information*

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

*Rights to appear*

- (4) Subject to subsection (5), it is not necessary for the complainant or any other person to be afforded an opportunity to appear before the Ombudsman or any other person in connexion with an investigation by the Ombudsman under this Act.
- (5) The Ombudsman shall not make a report in respect of an investigation under this Act in which he or she sets out opinions that are, either expressly or impliedly, critical of a Department, prescribed authority or person unless, before completing the investigation, he or she has:
- (a) if the opinions relate to a Department or prescribed authority—afforded the principal officer of the Department or authority and the officer principally concerned in the action to which the investigation relates opportunities to appear before him or her, or before an authorized person, and to make such submissions, either orally or in writing, in relation to that action as they think fit; and
  - (b) if the opinions relate to a person—afforded that person an opportunity to appear before him or her, or before an authorized person, and to make such submissions, either orally or in writing, in relation to the action to which the investigation relates as he or she thinks fit.
- (6) Where the Ombudsman affords the principal officer of a Department or of a prescribed authority an opportunity to appear before him or her, or before an authorized person, under subsection (5), the principal officer may appear before the



Ombudsman or before the authorized person in person or a person authorized by the principal officer may appear before the Ombudsman or before the authorized person on behalf of the principal officer.

- (7) Where the Ombudsman affords a person other than the principal officer of a Department or of a prescribed authority an opportunity to appear before him or her, or before an authorized person, under subsection (5), the person may, with the approval of the Ombudsman or of the authorized person, as the case may be, be represented by another person.
- (7A) Where, in relation to an investigation under this Act, the Ombudsman proposes to afford a person an opportunity to appear before him or her or before an authorized person and to make submissions under subsection (5), or proposes to make a requirement of a person under section 9:
- (a) if a complaint was made orally with respect to the action and the complaint has not been reduced to writing—the complaint shall be reduced to writing accordingly; and
  - (b) the Ombudsman shall, if he or she has not previously informed the responsible Minister that the action is being investigated, inform that Minister accordingly.

*Ombudsman may discuss investigation with Ministers*

- (8) The Ombudsman may, either before or after the completion of an investigation under this Act, discuss any matter relevant to the investigation with:
- (a) the responsible Minister; or
  - (b) any other Minister concerned with the matter.
- (9) On the request of the responsible Minister, the Ombudsman shall consult that Minister before he or she forms a final opinion on any of the matters referred to in subsection 15(1) or (2) that are relevant to the action under investigation.

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*Breaches of duty etc.*

- (10) Where the Ombudsman forms the opinion, either before or after completing an investigation under this Act, that there is evidence that a person, being an officer of a Department or of a prescribed authority, has been guilty of a breach of duty or of misconduct and that the evidence is, in all the circumstances, of sufficient force to justify his or her doing so, the Ombudsman shall bring the evidence to the notice of:
- (a) if the person is the Secretary of the Department—the Minister administering the Department; or
  - (b) if the person is an officer of a Department but not the Secretary of that Department—the Secretary of that Department; or
  - (ba) if the person is the Secretary of a Parliamentary Department—the Presiding Officer or Presiding Officers (within the meaning of the *Parliamentary Service Act 1999*) in relation to the Parliamentary Department; or
  - (bb) if the person is an officer of a Parliamentary Department but not the Secretary of that Parliamentary Department—the Secretary of that Parliamentary Department; or
  - (c) if the person is the principal officer of a prescribed authority (other than a Parliamentary Department)—the responsible Minister in respect of the action under investigation; or
  - (d) if the person is an officer of a prescribed authority (other than a Parliamentary Department) but not the principal officer of that authority—the principal officer of that authority.
- (10A) Without limiting subsection (10), if the Ombudsman forms the opinion, either before or after completing an investigation under this Act, that there is evidence that an Agency Head may have breached the APS Code of Conduct, the Ombudsman must:
- (a) unless the Agency Head is the Australian Public Service Commissioner—bring the evidence to the notice of the Australian Public Service Commissioner; or

- (b) if the Agency Head is the Australian Public Service Commissioner—bring the evidence to the notice of the Merit Protection Commissioner.
- (10B) Without limiting subsection (10), if the Ombudsman forms the opinion, either before or after completing an investigation under this Act, that there is evidence that the Secretary of a Parliamentary Department may have breached the Code of Conduct (within the meaning of the *Parliamentary Service Act 1999*), the Ombudsman must bring the evidence to the notice of the Parliamentary Service Commissioner.
- (10C) Without limiting subsection (10), if the Ombudsman forms the opinion, either before or after completing an investigation under this Act, that there is evidence that the Parliamentary Service Commissioner may have breached the Code of Conduct (within the meaning of the *Parliamentary Service Act 1999*), the Ombudsman must bring the evidence to the notice of the Parliamentary Service Merit Protection Commissioner.
- (11) If:
- (a) a person is, or is an employee of, a Commonwealth service provider of a Department or prescribed authority under a contract; and
  - (b) in the opinion of the Ombudsman, there is evidence that the person has engaged in conduct that:
    - (i) would, if the person were an officer of the Department or prescribed authority, amount to a breach of duty or to misconduct; or
    - (ii) should be brought to the attention of the principal officer of the Department or prescribed authority; and
  - (c) in the opinion of the Ombudsman, the evidence is, in all the circumstances, of sufficient force to justify the Ombudsman doing so;
- the Ombudsman must bring the evidence to the notice of the principal officer of the Department or prescribed authority.

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*Arrangements for having police officers assist Ombudsman in relation to investigation*

- (12) Whenever it becomes necessary or desirable for the Ombudsman to use persons with police training in connection with his or her investigation of a complaint about an AFP conduct issue or AFP practices issue, the Ombudsman may, and must in so far as it is practicable to do so, use, in connection with that investigation:
- (a) an AFP appointee who is made available to him or her by the AFP Commissioner for the purposes of the investigation; or
  - (b) a member of the police force of a State whom the police force of the State agrees to make available to the Ombudsman, for the purposes of the investigation, under arrangements made by the AFP Commissioner.

**8A Investigations by Commonwealth and State Ombudsmen**

- (1) The Commonwealth Ombudsman may, if he or she thinks fit, make an arrangement with the Ombudsman of a State, or the Ombudsmen of 2 or more States, for and in relation to the investigation by any one or more of the Ombudsmen of action, being action that relates to a matter of administration, referred to in any of the following paragraphs:
- (a) action taken by a Department or prescribed authority and action taken by a Department of a State or an authority of a State;
  - (b) action taken by an authority or other agency established jointly or administered jointly by the Commonwealth and one or more States;
  - (c) action taken by an authority or other agency referred to in paragraph (b) and action taken by:
    - (i) a Department or prescribed authority; or
    - (ii) a Department of a State or an authority of a State.
- (1A) The Commonwealth Ombudsman may, if he or she thinks fit, make an arrangement with the Ombudsman of a State, or the Ombudsmen of 2 or more States, for and in relation to the

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investigation, by any one or more of the Ombudsmen, of action to which subsection (1B), (1C) or (1D) applies.

- (1B) This subsection applies to action that:
- (a) gives rise to an AFP conduct issue or AFP practices issue; and
  - (b) involves:
    - (i) an AFP conduct issue that relates to a member of the police force of a State; or
    - (ii) action taken by the police force of a State; or
    - (iii) action taken by a Department of a State or by an authority of a State.
- (1C) This subsection applies to action taken by a body if the body:
- (a) is established jointly, or administered jointly, by the Commonwealth and one or more States; and
  - (b) includes at least one AFP appointee and a member or members of the police force of a State or the police forces of 2 or more States.
- (1D) This subsection applies to action taken by a body referred to in subsection (1C) together with action taken by:
- (a) by an AFP appointee or by the Australian Federal Police; or
  - (b) by a member of the police force of a State; or
  - (c) by the police force of a State; or
  - (d) by a Department of a State or by an authority of a State.
- (2) A reference in subsection (1) or (1B) to action taken by a Department, prescribed or other authority or an agency includes a reference to action taken by such a Department, prescribed or other authority or agency on behalf of another Department, prescribed or other authority or agency.
- (3) An arrangement made in pursuance of subsection (1) or (1A) may relate to particular action or actions, to a series of related actions or to actions included in a class or classes of actions.

**Section 8B**

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- (4) The Commonwealth Ombudsman may arrange with the other Ombudsman or Ombudsmen with whom an arrangement is in force under this section for the variation or revocation of the arrangement.
- (5) An arrangement under this section, or the variation or revocation of such an arrangement, shall be in writing.
- (6) The regulations may make provision for and in relation to the participation by the Ombudsman in the carrying out of an investigation in pursuance of an arrangement under this section.
- (7) Nothing in this section affects the powers and duties of the Ombudsman under any other provision of this Act.
- (8) Subsection (1) or (1A) shall not be taken to empower the Ombudsman:
  - (a) to exercise any of the powers of the Ombudsman of a State except in accordance with subsection 34(7); or
  - (b) to make an arrangement for the exercise by the Ombudsman of a State of a power of the Ombudsman except in accordance with an instrument of delegation referred to in subsection 34(1).

**8B Investigations by other authorities of ACC actions**

- (1) If an authority established under a law of the Commonwealth, a State or a Territory has power to investigate action taken by the ACC, or a member of the staff of the ACC, the Ombudsman may enter into an arrangement with the authority for such an investigation.
- (2) If the Ombudsman enters into such an arrangement with an authority established under a law of a State or a Territory, the authority may conduct the investigation to the full extent of its powers under State or Territory law.
- (3) The Ombudsman may arrange with the authority for the variation or revocation of the arrangement.

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Section 8C

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- (4) The arrangement may relate to particular action or actions, to a series of related actions or to actions included in a class of actions.
- (5) The arrangement, or the variation or revocation of the arrangement, must be in writing.
- (6) The regulations may make provision for and in relation to the participation by the Ombudsman in the carrying out of an investigation in accordance with an arrangement under this section.
- (7) Nothing in this section affects the powers and duties of the Ombudsman under any other provision of this Act.
- (8) In this section:

*member of the staff of the ACC* has the same meaning as in the *Australian Crime Commission Act 2002*.

**8C Investigations by other authorities of ACLEI actions**

- (1) If an authority established under a law of the Commonwealth, or of a State or Territory, has power to investigate action taken by the Integrity Commissioner or a staff member of ACLEI, the Ombudsman may arrange with the head of the authority for the authority to investigate the action.
- (2) If the Ombudsman enters into such an arrangement, the authority may investigate the action to the full extent of its powers under any laws of the Commonwealth or of a State or Territory.
- (3) The Integrity Commissioner may arrange with the head of the authority for the variation or revocation of the arrangement.
- (4) The arrangement, or the variation or revocation of the arrangement, must be in writing.
- (5) The regulations may make provision for and in relation to the participation by the Ombudsman in the carrying out of an investigation in accordance with an arrangement under this section.

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- (6) Nothing in this section affects the powers and duties of the Ombudsman under any other provision of this Act.

- (7) In this section:

***Integrity Commissioner*** has the same meaning as in the *Law Enforcement Integrity Commissioner Act 2006*.

***staff member of ACLEI*** has the same meaning as in the *Law Enforcement Integrity Commissioner Act 2006*.

**8D Investigations by Ombudsman and Australian Federal Police**

- (1) The Ombudsman may, if he or she thinks fit, make an arrangement with the AFP Commissioner for:

- (a) a category 3 conduct issue; or
- (b) an AFP practices issue;

to be dealt with jointly by the Ombudsman and the Australian Federal Police.

- (2) The arrangement may relate to:

- (a) a particular category 3 conduct issue or issues; or
- (b) a series of related category 3 conduct issues; or
- (c) a particular AFP practices issue or issues; or
- (d) a series of related AFP practices issues.

- (3) The Ombudsman may arrange with the AFP Commissioner for the variation or revocation of the arrangement.

- (4) The arrangement, or the variation or revocation of the arrangement, must be in writing.

- (5) Nothing in this section affects the powers or duties of the Ombudsman under any other provision of this Act.

- (6) In this section:

***category 3 conduct issue*** has the same meaning as in the *Australian Federal Police Act 1979*.



**9 Power to obtain information and documents**

- (1) Where the Ombudsman has reason to believe that a person is capable of furnishing 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 that person, at such place, and within such period or on such date and at such time, as are specified in the notice:
- (a) to furnish 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.
- (1AA) If the Ombudsman has reason to believe that a person who is:
- (aa) an officer of a Department or prescribed authority; or
  - (ab) a Commonwealth service provider of a Department or prescribed authority under a contract; or
  - (ac) an employee of Commonwealth service provider of a Department or prescribed authority under a contract;
- is capable of furnishing information or producing documents or other records relevant to an investigation under this Act but the Ombudsman does not know the identity of the person, the Ombudsman may, by notice in writing served on the principal officer of the Department or authority, require the principal officer or a person nominated by the principal officer, at such place, and within such period or on such date 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.
- (1A) Where documents or other records are produced to the Ombudsman in accordance with a requirement under subsection (1) or (1AA) or an order under subsection 11A(2), the Ombudsman:

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- (a) may take possession of, and may make copies of, or take extracts from, the documents or other records;
  - (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 shall permit a person who would be entitled to inspect any one 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.
- (2) 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 date and at such time and place as are specified in the notice, to answer questions relevant to the investigation.
- (3) Where the Attorney-General furnishes to the Ombudsman a certificate certifying that the disclosure to the Ombudsman of information concerning a specified matter (including the furnishing of information in answer to a question) or the disclosure to the Ombudsman of the contents of any documents or records would be contrary to the public interest:
  - (a) by reason that it would prejudice the security, defence or international relations of the Commonwealth; or
  - (b) by reason that it would involve the disclosure of communications between a Minister and a Minister of a State, being a disclosure that would prejudice relations between the Commonwealth Government and the Government of a State; or
  - (c) by reason that it would involve the disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet; or
  - (d) by reason that it would involve the disclosure of deliberations or advice of the Executive Council; or

- (e) if the information, documents or records are, or were, in the possession or under the control of the ACC or the Board of the ACC—by reason that it would:
    - (i) endanger the life of a person; or
    - (ii) create a risk of serious injury to a person; or
  - (f) if the information, documents or records are, or were, in the possession or under the control of the Integrity Commissioner (within the meaning of the *Law Enforcement Integrity Commissioner Act 2006*)—by reason that it would:
    - (i) endanger the life of a person; or
    - (ii) create a risk of serious injury to a person;
- the Ombudsman is not entitled to require a person to furnish any information concerning the matter, to answer questions concerning the matter or to produce those documents or records to the Ombudsman.
- (4) Notwithstanding the provisions of any enactment, a person is not excused from furnishing any information, producing a document or other record or answering a question when required to do so under this Act on the ground that the furnishing of the information, the production of the document or record or the answer to the question:
- (a) would contravene the provisions of any other enactment (whether enacted before or after the commencement of the *Prime Minister and Cabinet Legislation Amendment Act 1991*); or
  - (aa) might tend to incriminate the person or make the person liable to a penalty; or
  - (ab) would disclose one of the following:
    - (i) a legal advice given to a Minister, a Department or a prescribed authority;
    - (ii) a communication between an officer of a Department or of a prescribed authority and another person or body, being a communication protected against disclosure by legal professional privilege; or

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(b) would be otherwise contrary to the public interest;  
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 subsection 11A(2); or

(d) proceedings for an offence against section 36 of this Act or  
an offence against section 137.1, 137.2 or 149.1 of the  
*Criminal Code* that relates to this Act.

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

(5A) The fact that a person is not excused under subsection (4) from  
furnishing information, producing a document or other record or  
answering a question does not otherwise affect a claim of legal  
professional privilege that anyone may make in relation to that  
information, document or other record or answer.

(6) 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.

(7) In this section:

**State** includes the Australian Capital Territory and the Northern  
Territory.

## 10 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) there is no enactment that prescribes a period within which  
the person is required to do or refuse to do the act or thing;

- (c) an enactment provides that application may be made to 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, after having investigated the complaint, may, if he or she is of the opinion that there has been unreasonable delay in deciding whether to do the act or thing, grant to the complainant a certificate certifying, that, in the opinion of the Ombudsman, there has been unreasonable delay in deciding whether to do the act or thing and, if the Ombudsman does so, the person required or permitted to exercise the power, shall, for the purpose of enabling application to be made under the enactment referred to in paragraph (c) to the prescribed tribunal concerned, be deemed to have made, on the date on which the certificate is granted, a decision, in the exercise of that power, not to do the act or thing.
- (1A) Where:
- (a) under an enactment, a person has a power to do an act or thing in the exercise of a discretion or otherwise;
  - (b) there is no enactment that prescribes a period within which the person is required to do or refuse to do the act or thing;
  - (c) an enactment provides that application may be made to 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 application may be made to a prescribed tribunal for the review of decisions made by the last-mentioned 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, after having investigated the complaint, may, if he or she is of the opinion that there has been unreasonable delay in deciding whether to do the act or thing, grant to the complainant a certificate certifying that, in the opinion of the Ombudsman, there has been unreasonable delay in deciding whether to do the act or thing and, if the Ombudsman does so, the person required or

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permitted to exercise the power, shall, for the purpose of enabling application to be made to the person other than a prescribed tribunal referred to in paragraph (c) under the enactment first referred to in that paragraph, be deemed to have made, on the date on which the certificate is granted, a decision, in the exercise of that power, not to do the act or thing.

- (2) Where a board, committee or other unincorporated body constituted by 2 or more persons is empowered by an enactment to make decisions, subsections (1) and (1A) apply as if the board, committee or other body were a person empowered to make those decisions.
- (3) In this section, *prescribed tribunal* means:
  - (a) the Administrative Appeals Tribunal; or
  - (b) any other tribunal that is declared by the regulations to be a prescribed tribunal for the purposes of this section.

**10A Ombudsman may refer questions to the AAT**

- (1) Where the Ombudsman is investigating the taking of action by a Department or by a prescribed authority under a power, whether conferred by an enactment or otherwise, the Ombudsman may refer a specified question about the taking of the action, or the exercise of the power, to the Administrative Appeals Tribunal if he or she thinks it appropriate.
- (2) If the Ombudsman refers a question to the Tribunal, the Ombudsman must, as soon as practicable, give written notice of the referral to the principal officer.
- (3) The Tribunal may give an advisory opinion on the question.

**11 Ombudsman may recommend that the principal officer refer questions to the AAT**

- (1) Where the Ombudsman is investigating the taking of action by a Department or by a prescribed authority under a power, whether conferred by an enactment or otherwise, the Ombudsman may

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recommend, in writing, to the principal officer of the Department or authority that the principal officer refer a specified question about the taking of the action, or the exercise of the power, to the Administrative Appeals Tribunal for an advisory opinion.

- (2) The Ombudsman may:
  - (a) give the recommendation to the principal officer at any time before the Ombudsman completes the investigation; or
  - (b) include the recommendation in his or her report to the Department or prescribed authority under section 15.
- (3) If the Ombudsman makes a recommendation, the principal officer must refer the question to the Tribunal within 30 days, or such longer period as is agreed to by the Ombudsman and the principal officer, after the day on which the principal officer received the recommendation.
- (4) The Tribunal may give an advisory opinion on the question.
- (5) This section does not limit the Ombudsman's power under section 10A.

**11A Powers of Federal Court of Australia**

- (1) Where a question with respect to the exercise or proposed exercise of a power, or the performance or proposed performance of a function, of the Ombudsman arose before, or arises after, the commencement of this section between the Ombudsman and the principal officer of any Department or prescribed authority that is affected by that exercise or performance, or that would be affected by the exercise or performance of the power or function proposed to be exercised or performed, as the case may be, the Ombudsman or the principal officer of the Department or of the prescribed authority may, subject to subsections (4) and (5), make an application to the Federal Court of Australia for a determination of the question.
- (2) Where a person fails to comply with a requirement made by the Ombudsman by notice under section 9 to furnish information, to

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produce documents or other records or to attend before the Ombudsman to answer questions in relation to an investigation under this Act, the Ombudsman may make an application to the Federal Court of Australia for an order directing that person to furnish the information, or to produce the documents or other records, at such place, and within such period or on such date and at such time, as are specified in the order, or to attend before the Ombudsman to answer questions at such place, and on such date and at such time, as are specified in the order, as the case may be.

- (3) The Federal Court of Australia has jurisdiction with respect to matters arising under this section in respect of which applications are made to the Court.
- (4) The Ombudsman shall not make an application to the Federal Court of Australia under this section unless he or she has informed the Minister in writing of the reasons for the proposed application.
- (5) The principal officer of a Department or of a prescribed authority shall not make an application to the Federal Court of Australia under subsection (1) unless he or she has informed the responsible Minister in writing of the reasons for the proposed application.

## **12 Complainant and Department etc. to be informed**

- (1) Where the Ombudsman does not, for any reason, investigate, or continue to investigate, action taken by a Department or by a prescribed authority in respect of which a complaint has been made to him or her, the Ombudsman shall, as soon as practicable and in such manner as the Ombudsman thinks fit, inform the complainant and, except where an arrangement with the Department or authority is in force under subsection (2) relating to a class of actions in which that action is included, the Department or authority, of his or her decision and of the reasons for his or her decision.
- (2) The Ombudsman may from time to time make with a Department or with a prescribed authority an arrangement in relation to actions in respect of which complaints have been or are made to the



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Section 12

Ombudsman, being actions taken by the Department or authority that are included in a class or classes of actions specified in the arrangement:

- (a) providing for the manner in which, and the period within which, the Ombudsman is to inform the Department or authority of his or her decision not to investigate, or to continue to investigate, such actions and of the reasons for his or her decision; or
  - (b) providing that the Ombudsman is not required to inform the Department or authority of his or her decision not to investigate, or to continue to investigate, such actions and of the reasons for his or her decision.
- (3) Where the Ombudsman completes an investigation of action taken by a Department or by a prescribed authority in respect of which a complaint has been made to him or her, the Ombudsman shall, in such manner and at such times as he or she thinks fit, furnish to the complainant and to the Department or authority particulars of the investigation.
- (4) The Ombudsman may, if he or she thinks fit, furnish comments or suggestions with respect to any matter relating to or arising out of an investigation by him or her to any Department, body or person other than a Department, body or person to which or to whom he or she has furnished a report under section 15 relating to that matter or to matters that include that matter.
- (5) Where the Ombudsman furnishes a report to a Department or prescribed authority under section 15 containing recommendations with respect to action in respect of which a complaint has been made:
- (a) the Ombudsman shall, 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 furnished to the Department or authority—furnish to the complainant a copy of the recommendations, together with such comments (if any) as he or she thinks fit; or

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- (b) in any other case—the Ombudsman may furnish to the complainant a copy of the recommendations, together with such comments (if any) as he or she thinks fit.

### 13 Power to examine witnesses

- (1) The Ombudsman may administer an oath or affirmation to a person required to attend before him or her in pursuance of section 9 and may examine the person on oath or affirmation.
- (2) A person before whom another person (in this subsection called the **respondent**) attends in accordance with a notice under subsection 9(2) may:
  - (a) administer an oath or affirmation to the respondent; and
  - (b) examine the respondent on oath or affirmation.

### 14 Power to enter premises

- (1) For the purposes of an investigation under this Act, an authorised person may, at any reasonable time of the day:
  - (a) enter a place that is:
    - (i) occupied by a Department or prescribed authority; or
    - (ii) occupied by a person who is a Commonwealth service provider of a Department or prescribed authority under a contract, if the person occupies the place predominantly for the purposes of the contract; and
  - (b) carry on the investigation at the place.
- (2) Subsection (1) does not authorize a person to enter, or carry on an investigation at:
  - (b) a place that is a prohibited place for the purposes of the *Defence (Special Undertakings) Act 1952* by virtue of section 7 of that Act; or
  - (c) an area of land or water or an area of land and water that is declared under section 14 of the *Defence (Special Undertakings) Act 1952* to be a restricted area for the purposes of that Act;

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

- (3) Where the Minister administering the *Australian Security Intelligence Organisation Act 1979* (the **ASIO Minister**) is satisfied that the carrying on of an investigation at a place might prejudice the security or defence of the Commonwealth, the ASIO Minister may, by notice in writing delivered to the Ombudsman, declare the place to be a place to which this subsection applies and, while the declaration is in force, subsection (1) does not authorize a person to enter, or carry on an investigation at, the place unless a Minister specified in the declaration, or another Minister acting for and on behalf of such a Minister, has approved the person entering the place and he or she complies with any conditions imposed by the Minister giving the approval in relation to his or her entering the place and the manner in which his or her investigation is to be conducted at that place.
- (4) For the purposes of an investigation under this Act, an authorized person is entitled to inspect any documents relevant to the investigation kept at premises entered by him or her under this section (including premises occupied by a Commonwealth service provider), other than documents in respect of which the Attorney-General has furnished a certificate under subsection 9(3), at a reasonable time of the day arranged with the principal officer of the Department or prescribed authority concerned.
- (5) Subsection (4) shall not be taken to restrict the operation of section 9.
- (6) A reference in this section to an authorized person includes a reference to the Ombudsman and a Deputy Ombudsman.

## **Division 2—Reports**

### **15 Reports by Ombudsman**

- (1) Where, after an investigation under this Act into action taken by a Department or prescribed authority has been completed, the Ombudsman is of the opinion:
- (a) that the action:
    - (i) appears to have been contrary to law;
    - (ii) was unreasonable, unjust, oppressive or improperly discriminatory;
    - (iii) was in accordance with a rule of law, a provision of an enactment or a practice but the rule, provision or practice is or may be unreasonable, unjust, oppressive or improperly discriminatory;
    - (iv) was based either wholly or partly on a mistake of law or of fact; or
    - (v) was otherwise, in all the circumstances, wrong;
  - (b) that, in the course of the taking of the action, a discretionary power had been exercised for an improper purpose or on irrelevant grounds; or
  - (c) in a case where the action comprised or included a decision to exercise a discretionary power in a particular manner or to refuse to exercise such a power:
    - (i) that irrelevant considerations were taken into account, 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 furnished, but was not furnished, with particulars of the reasons for deciding to exercise the power in that manner or to refuse to exercise the power, as the case may be;

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

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

the Ombudsman shall report accordingly to the Department or prescribed authority concerned.

- (3) The Ombudsman:
- (a) shall include in a report under subsection (2) his or her 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 Department or prescribed authority to which the report is furnished to furnish 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 a Department or prescribed authority, the Department or authority

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may furnish to the Ombudsman such comments concerning the report as it wishes to make.

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

**16 Reports where appropriate action not taken on Ombudsman's report**

- (1) Where action that is, in the opinion of the Ombudsman, adequate and appropriate in the circumstances is not taken with respect to the matters and recommendations included in a report to a Department or to a prescribed authority under section 15 within a reasonable time after the Ombudsman furnished the report to the Department or to the prescribed authority, the Ombudsman may inform the Prime Minister accordingly in writing.
- (2) Where the Ombudsman furnishes information to the Prime Minister in accordance with subsection (1) in relation to a report, the Ombudsman shall furnish to the Prime Minister with the information:
- (a) if a copy of the report has not previously been forwarded to the Prime Minister under subsection 15(6)—a copy of the report; and
  - (b) if the Department or prescribed authority to which the report was made has furnished comments concerning the report to the Ombudsman—a copy of those comments.
- (3) In considering whether to furnish information in relation to a report to the Prime Minister in accordance with subsection (1), the Ombudsman shall have regard to any comments furnished to him or her by the Department or prescribed authority to which the report was made.
- (4) In the case of a report relating to a Parliamentary Department, subsections (1) to (3) have effect as follows:
- (a) if the report relates to the Department of the Senate—a reference to the Prime Minister is to be read as a reference to the President of the Senate;

- (b) if the report relates to the Department of the House of Representatives—a reference to the Prime Minister is to be read as a reference to the Speaker of the House of Representatives;
  - (c) in any other case—a reference to the Prime Minister is to be read as a reference to the President of the Senate and the Speaker of the House of Representatives.
- (5) In the case of a report relating to a prescribed authority constituted by the chief executive officer of a court or tribunal, subsections (1) to (3) have effect as follows:
  - (a) if the report relates to the chief executive officer of a court—a reference to the Prime Minister is to be read as a reference to the chief justice or chief judge (however described) of the court, as the case requires;
  - (b) if the report relates to the Registrar of the Administrative Appeals Tribunal—a reference to the Prime Minister is to be read as a reference to the President of the Tribunal;
  - (c) if the report relates to the chief executive officer of a tribunal other than the Administrative Appeals Tribunal—a reference to the Prime Minister is to be read as a reference to the president or principal member (however described) of the tribunal or, if the tribunal consists of a single member, as a reference to that member.

## **17 Special reports to Parliament**

Where the Ombudsman has acted under subsection 16(1) in relation to a report concerning an investigation made by him or her, the Ombudsman may also forward to the President of the Senate and the Speaker of the House of Representatives, for presentation to the Senate and the House of Representatives, respectively, copies of a report prepared by him or her concerning the investigation for presentation to both Houses of the Parliament, being a report that sets out a copy of any comments furnished to the Ombudsman under subsection 15(5) by the Department or prescribed authority concerned.

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**18 Ombudsman may have further discussion with principal officer**

After presentation to the Parliament of a report under section 17 in relation to action taken by a Department or prescribed authority, the Ombudsman may discuss any matter to which the report relates with the principal officer of the Department or authority for the purpose of resolving the matter.

**19 Reports to Parliament**

*Reporting generally*

- (1) The Ombudsman may, from time to time, give the Minister, for presentation to the Parliament, a report:
  - (a) on the operations of the Ombudsman during a part of a year; or
  - (b) in relation to any matter relating to, or arising in connection with, the exercise of the powers, or the performance of the functions, of the Ombudsman.

Note: The Ombudsman must also give the Minister an annual report under section 46 of the *Public Governance, Performance and Accountability Act 2013*.

- (2) The Minister must cause the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.
- (3) Subsection (1) does not affect the powers and duties of the Ombudsman under section 15, 16 or 17.

*Reporting on investigations*

- (4) Subsection (5) applies if the Ombudsman refers to an investigation made by him or her under this Act in a report given to the Minister under:
  - (a) subsection (1); or
  - (b) section 46 of the *Public Governance, Performance and Accountability Act 2013*.



- (5) The report must not, in referring to the investigation, set out opinions that are (either expressly or impliedly) critical of a Department, prescribed authority or person unless the Ombudsman has complied with subsection 8(5) in relation to the investigation.

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**Part IIA—Establishment, functions, powers and  
duties of the Defence Force Ombudsman**

**19B Establishment of office of Defence Force Ombudsman**

- (1) For the purposes of this Act, there shall be a Defence Force Ombudsman.
- (2) The office of Defence Force Ombudsman shall be held by the person who holds the office of Commonwealth Ombudsman.
- (3) The reference in subsection (2) to the person who holds the office of Commonwealth Ombudsman includes a reference to a person for the time being acting in that office by virtue of an appointment under section 29.

**19C Functions of Defence Force Ombudsman**

- (1) The functions of the Defence Force Ombudsman are to investigate complaints made to him or her under this Act and to perform such other functions as are conferred on him or her by:
  - (a) this Act or the regulations; or
  - (b) another Act or regulations made under another Act.
- (2) Subject to this Act, the Defence Force Ombudsman:
  - (a) shall investigate action that he or she is authorized by this Act to investigate and in respect of which a complaint has been made to him or her; and
  - (b) may, of his or her own motion, investigate action that he or she is authorized by this Act to investigate.
- (3) Subject to subsection (5), the Defence Force Ombudsman is authorized by this Act to investigate action, being action that relates to a matter of administration, taken either before or after the commencement of this Part by a Department or by a prescribed authority, with respect to a matter that is related to the service of a

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member of the Defence Force or that arises in consequence of a person serving or having served in the Defence Force.

- (4) Without limiting the generality of subsection (3), action referred to in that subsection includes action taken by a Department, or by a prescribed authority, with respect to the payment of an allowance or pension to, or the provision of a benefit for, a member of the Defence Force or a dependant of such a member, being an allowance, pension or benefit that is or may be payable or is or may be provided by reason of, or as a result of, the service of the member in the Defence Force.
- (5) The Defence Force Ombudsman is not authorized by this Act to investigate:
- (a) action taken by a Minister;
  - (b) action taken by a Justice or Judge of a court created by the Parliament;
  - (c) action taken by:
    - (i) a magistrate or coroner for the Australian Capital Territory, Norfolk Island, the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands; or
    - (ii) a person who holds office as a magistrate in a State or the Northern Territory in the performance of the functions of a magistrate conferred on him or her by or under an Act;
  - (d) action taken in connection with proceedings against a member of the Defence Force for an offence arising under any law, including a law of the United Kingdom as applying by virtue of a law of the Commonwealth, relating to the discipline of the Defence Force or of an arm or part of the Defence Force; or
  - (e) action taken in relation to the grant or refusal of an honour or award to a particular member of the Defence Force.
- (6) The reference in paragraph (5)(a) to action taken by a Minister does not include a reference to action taken by a delegate of a Minister, and, for the purposes of this subsection, action shall be

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deemed to have been taken by such a delegate notwithstanding that the action is taken in pursuance of a power that is deemed by a provision of an enactment, when exercised by the delegate, to have been exercised by the Minister.

- (7) For the purposes of the application of this Act to or in relation to the Defence Force Ombudsman, action taken by a Department or by a prescribed authority shall not be regarded as having been taken by a Minister by reason only that the action was taken by the Department or authority in relation to action that has been, is proposed to be, or may be, taken by a Minister personally.
- (8) The reference in paragraph (5)(e) to action taken in relation to the grant or refusal of an honour or award to a particular member of the Defence Force does not include a reference to action taken in relation to the grant or refusal of honours or awards to members of the Defence Force generally, or of an arm or part of the Defence Force, with respect to their service in a particular area or for a particular period.
- (9) The reference in subsection (4) to a dependant of a member of the Defence Force means:
  - (a) in relation to action taken under an enactment—a person who is, or is claiming to be, a dependant of a member, or was, or is claiming to have been, a dependant of a deceased member, of the Defence Force for the purposes of that enactment; or
  - (b) in any other case—a person who is, or is claiming to be, wholly or partly dependent on a member of the Defence Force or who was, or is claiming to have been, at the date of the death of a deceased member of the Defence Force, wholly or partly dependent on that member.

### **19D Discretion to investigate complaints as Commonwealth Ombudsman or as Defence Force Ombudsman**

Where a complaint with respect to action taken by a Department or by a prescribed authority is made to the Commonwealth Ombudsman or the Defence Force Ombudsman and the person

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holding that office considers, having regard to the functions and duties of each of those offices, that it would be more appropriate to deal with, or to continue to deal with, the complaint or part of the complaint in his or her capacity as the holder of the other office, he or she may deal with, or continue or deal with, as the case may be, the complaint or that part of the complaint accordingly.

**19E Discretion with respect to certain complaints**

- (1) Where a member of the Defence Force makes a complaint to the Defence Force Ombudsman with respect to action in respect of which the member was entitled to seek and has sought, in the manner provided by or under the *Defence Act 1903*, redress from a member of the Defence Force authorized by or under that Act to grant redress:
  - (a) the Defence Force Ombudsman shall not commence to investigate the action before the twenty-ninth day after the complainant sought the redress unless:
    - (i) redress is granted before that day and the conditions set out in subparagraphs (b)(i) and (ii) are satisfied in respect of the redress; or
    - (ii) the Defence Force Ombudsman is of the opinion that there are special reasons justifying the commencement of the investigation of the complaint before that day; and
  - (b) where redress is granted before the Defence Force Ombudsman commences, or after he or she has commenced, to investigate the action, the Defence Force Ombudsman shall not investigate, or continue to investigate, the action unless:
    - (i) the complainant notifies the Defence Force Ombudsman that the redress is not, in the opinion of the complainant, adequate in all the circumstances; and
    - (ii) the Defence Force Ombudsman is of the opinion that the redress was not reasonably adequate.

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- (2) Where a member of the Defence Force who has complained to the Defence Force Ombudsman is able to seek, but has not sought, in the manner provided by or under the *Defence Act 1903*, redress in respect of the action to which the complaint relates from a member of the Defence Force authorized by or under that Act to grant redress, the Defence Force Ombudsman shall not investigate the complaint unless he or she is of the opinion that the member was, by reason of special circumstances, justified in refraining from seeking redress.

### **19F Application of provisions of Act to Defence Force Ombudsman**

- (1) The provisions of Part I, Part II (other than sections 4, 5, 8A and 19), Division 2 of Part III (other than subsection 31(2)) and Part IV (other than subsections 35(7) and (7A)) apply to and in relation to the Defence Force Ombudsman and so apply as if:
- (a) a reference in any of those provisions (other than section 34) to the Ombudsman were a reference to the Defence Force Ombudsman; and
  - (b) a reference in any of those provisions to a complaint made to the Ombudsman were a reference to a complaint made to the Defence Force Ombudsman.
- (2) Subsection 6(1A) does not apply in relation to a complaint made by a member of the Defence Force to the Defence Force Ombudsman.

### **19FA Reports of the Defence Force Ombudsman**

#### *Annual reports*

- (1) As soon as practicable after the end of each financial year, the Defence Force Ombudsman must give an annual report to the Minister, for presentation to the Parliament, on the operations of the Defence Force Ombudsman during the financial year.

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*Additional reports*

- (2) The Defence Force Ombudsman may, from time to time, give the Minister, for presentation to the Parliament, a report:
  - (a) on the operations of the Defence Force Ombudsman during a part of a year; or
  - (b) in relation to any matter relating to, or arising in connection with, the exercise of the powers, or the performance of the functions, of the Defence Force Ombudsman.
- (3) Subsections (1) and (2) do not affect the powers and duties of the Defence Force Ombudsman under section 15, 16 or 17 (as the section applies because of subsection 19F(1)).

*Tabling and inclusion in other reports*

- (4) If the Defence Force Ombudsman gives a report to the Minister under subsection (1) or (2), the Minister must cause the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.
- (5) A report relating to the operations of the Defence Force Ombudsman during a period may be included in a report under:
  - (a) section 19; or
  - (b) section 46 of the *Public Governance, Performance and Accountability Act 2013*;relating to the operations of the Ombudsman during that period.

*Reporting on investigations*

- (6) If the Defence Force Ombudsman refers to an investigation made by him or her under this Act in a report given under this section, the report must not, in referring to the investigation, set out opinions that are (either expressly or impliedly) critical of:
  - (a) a Department; or
  - (b) a prescribed authority; or
  - (c) a person;

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unless the Defence Force Ombudsman has complied with  
subsection 8(5) in relation to the investigation.



## **Part IIB—Establishment, functions, powers and duties of the Postal Industry Ombudsman**

### **Division 1—Preliminary**

#### **19G Definitions**

In this Part:

*officer* means:

- (a) in relation to Australia Post:
  - (i) a person who is employed in the service of, or is a member of the staff of, Australia Post, whether or not he or she is employed by Australia Post; or
  - (ii) a person authorised by Australia Post to exercise any powers or perform any functions of Australia Post on behalf of Australia Post; or
- (b) in relation to a registered PPO:
  - (i) if the registered PPO is an individual—the individual or an employee of the individual; or
  - (ii) if the registered PPO is a body corporate—a director, the secretary or an employee of the registered PPO; or
  - (iii) if the registered PPO is a partnership—a partner in, or an employee of, the partnership.

*principal officer* means:

- (a) in relation to Australia Post—the Managing Director of Australia Post; or
- (b) in relation to a registered PPO:
  - (i) if the registered PPO is an individual—the individual; or
  - (ii) in any other case—the individual primarily responsible for the management of the registered PPO.

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**19H Action taken by contractors**

- (1) Subsections (2) and (3) apply if:
- (a) a contractor, or an employee of a contractor, in relation to a postal services contract with Australia Post or a registered PPO, takes action with respect to the provision of a postal or similar service; and
  - (b) the contractor, or the employee, took the action to fulfil or purport to fulfil an obligation under:
    - (i) if the contractor is responsible under another contract for the provision of services covered by the postal services contract—the other contract; or
    - (ii) otherwise—the postal services contract.

*Attribution of action to Australia Post or registered PPO*

- (2) For the purposes of this Part, the action is taken to have been taken by Australia Post or the registered PPO (as the case may be).

*Persons taken to be officers of Australia Post or registered PPO*

- (3) For the purposes of this Part, the following are taken to be officers of Australia Post or the registered PPO (as the case may be) in relation to that action:
- (a) the person who took the action;
  - (b) if the person who took the action was the employee of a contractor—the contractor;
  - (c) if paragraph (b) applies and the contractor is:
    - (i) a body corporate—the directors and the secretary of the body corporate; or
    - (ii) a partnership—the partners in the partnership.

*Contractors and postal services contracts*

- (4) In this section:

**contractor**, in relation to a postal services contract, means a person who is:

- (a) a party to the postal services contract; or
- (b) both:
  - (i) a party to a contract (the *subcontract*) with a person who is a contractor, in relation to the postal services contract, because of a previous application of this definition; and
  - (ii) responsible under the subcontract for the provision of services covered by the postal services contract.

*postal services contract* means a contract relating to the provision of postal or similar services within Australia.

### **19J Continued application of this Act to deregistered PPOs**

- (1) This section applies if:
  - (a) a registered PPO took action at a particular time; and
  - (b) the Postal Industry Ombudsman receives a complaint in respect of that action within 12 months after that time; and
  - (c) the PPO applies after that time, under subsection 19ZC(1), to no longer be registered for the purposes of this Part (whether or not the application was made before the complaint was received).
- (2) This Act applies as if the PPO were a registered PPO in relation to that complaint.

### **19K Part IIB not to affect operation of other provisions of this Act**

This Part does not, by implication, affect the operation of other provisions in this Act.

## **Division 2—Establishment and functions of the Postal Industry Ombudsman**

### **19L Establishment of office of Postal Industry Ombudsman**

- (1) For the purposes of this Act, there is to be a Postal Industry Ombudsman.
- (2) The office of Postal Industry Ombudsman is to be held by the person who holds the office of Commonwealth Ombudsman.
- (3) The reference in subsection (2) to the person who holds the office of Commonwealth Ombudsman includes a reference to a person for the time being acting in that office because of an appointment under section 29.

### **19M Functions of Postal Industry Ombudsman**

- (1) The functions of the Postal Industry Ombudsman are to investigate complaints made to him or her under this Act and to perform such other functions as are conferred on him or her by:
  - (a) this Act or the regulations; or
  - (b) another Act or regulations made under another Act.
- (2) Subject to this Act, the Postal Industry Ombudsman:
  - (a) is to investigate action that he or she is authorised by this Act to investigate and in respect of which a complaint has been made to him or her (other than a complaint excluded by subsection (4)); and
  - (b) may, on his or her own initiative, investigate action that he or she is authorised by this Act to investigate.
- (3) The Postal Industry Ombudsman is authorised by this Act to investigate action taken by:
  - (a) Australia Post; or
  - (b) a registered PPO;

with respect to the provision of a postal or similar service.

- (4) A complaint is excluded by this subsection if:
- (a) the complaint was made by Australia Post in respect of action taken by a registered PPO; or
  - (b) the complaint was made by a registered PPO in respect of action taken by Australia Post or another registered PPO; or
  - (c) the complaint was made more than 12 months after the action was taken.
- (5) Paragraph (2)(b) applies only if the Postal Industry Ombudsman starts the investigation no later than 12 months after the action was taken.

### **19N Discretion to investigate complaints as Commonwealth Ombudsman or as Postal Industry Ombudsman**

- (1) This section applies if a complaint has been made to the Postal Industry Ombudsman or the Commonwealth Ombudsman with respect to action taken by Australia Post.

*Postal Industry Ombudsman may transfer complaint to Commonwealth Ombudsman*

- (2) Subsection (3) applies if:
- (a) the complaint was made to the Postal Industry Ombudsman; and
  - (b) in the opinion of the Postal Industry Ombudsman, it would be more appropriate to deal with, or to continue to deal with, the complaint or part of the complaint in his or her capacity as the Commonwealth Ombudsman.
- (3) The Postal Industry Ombudsman may:
- (a) either:
    - (i) decide not to deal with the complaint, or part of the complaint; or

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- (ii) if he or she has started to deal with the complaint—  
decide not to deal further with the complaint, or part of  
the complaint; and
  - (b) transfer the complaint, or part of the complaint, to the  
Commonwealth Ombudsman.
- (4) A complaint that is transferred under subsection (3) is taken to be a  
complaint that was made to the Commonwealth Ombudsman.

*Commonwealth Ombudsman may transfer complaint to Postal  
Industry Ombudsman*

- (5) Subsection (6) applies if:
  - (a) the complaint was made to the Commonwealth Ombudsman;  
and
  - (b) the complaint was made no later than 12 months after the  
action was taken; and
  - (c) in the opinion of the Commonwealth Ombudsman, it would  
be more appropriate to deal with, or to continue to deal with,  
the complaint or part of the complaint in his or her capacity  
as the Postal Industry Ombudsman.
- (6) The Commonwealth Ombudsman may:
  - (a) either:
    - (i) decide not to deal with the complaint, or part of the  
complaint; or
    - (ii) if he or she has started to deal with the complaint—  
decide not to deal further with the complaint, or part of  
the complaint; and
  - (b) transfer the complaint, or part of the complaint, to the Postal  
Industry Ombudsman.
- (7) A complaint that is transferred under subsection (6) is taken to be a  
complaint that was made to the Postal Industry Ombudsman.
- (8) In forming an opinion under paragraph (2)(b) or (5)(c), the person  
holding the office of the Commonwealth Ombudsman and of the

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Postal Industry Ombudsman must have regard to the functions and duties of each of those offices.

*Notice of transferral to be given to complainant*

- (9) If the Commonwealth Ombudsman or the Postal Industry Ombudsman transfers a complaint, or part of a complaint, he or she must give notice of the transfer, in writing, to the complainant.

**19P Discretion to refer complaint to another statutory office-holder**

- (1) This section applies if:
- (a) Australia Post or a registered PPO has taken action; and
  - (b) before or after starting to investigate that action under paragraph 19M(2)(a), the Postal Industry Ombudsman becomes of the opinion that:
    - (i) a statutory office-holder (other than the Postal Industry Ombudsman or the Commonwealth Ombudsman) has the function of investigating, reviewing or enquiring into action of that kind; and
    - (ii) the action could be more conveniently or effectively dealt with by that statutory office-holder.
- (2) The Postal Industry Ombudsman may decide not to investigate the action, or not to investigate the action further, as the case may be, and, if the Postal Industry Ombudsman so decides, he or she must transfer the complaint to that other statutory office-holder.
- (3) If the Postal Industry Ombudsman transfers a complaint under subsection (2), the Postal Industry Ombudsman must, as soon as is reasonably practicable:
- (a) give notice of the transfer, in writing, to the complainant; and
  - (b) give to the other statutory office-holder any information or documents that relate to the complaint and are in the possession or under the control of the Postal Industry Ombudsman.
- (4) In this section:
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***statutory office-holder*** means a person who holds any office or appointment under a law of the Commonwealth, or under a law of a State or Territory.

### **19Q Discretion not to investigate certain complaints**

- (1) This section applies if:
  - (a) a complaint has been made to the Postal Industry Ombudsman with respect to action taken by Australia Post or by a registered PPO; and
  - (b) in the opinion of the Postal Industry 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) The Postal Industry Ombudsman may, in his or her discretion:
  - (a) decide not to investigate the action; or
  - (b) if he or she has started to investigate the action—decide not to investigate the action further.



## **Division 3—Powers and duties of the Postal Industry Ombudsman**

### **19R Application of other provisions of this Act to the Postal Industry Ombudsman**

- (1) Subject to this section, the provisions covered by subsection (3) apply in relation to the Postal Industry Ombudsman.
- (2) Unless the contrary intention appears, the provisions covered by subsection (3) apply as if:
  - (a) a reference in any of those provisions to the Ombudsman were a reference to the Postal Industry Ombudsman; and
  - (b) a reference in any of those provisions to any of the following were a reference to Australia Post or a registered PPO:
    - (i) a Department;
    - (ii) a prescribed authority;
    - (iii) a Department or a prescribed authority; and
  - (c) a reference in any of those provisions to an officer were a reference to an officer within the meaning of this Part; and
  - (d) a reference in any of those provisions to a principal officer were a reference to a principal officer within the meaning of this Part.
- (3) The provisions covered by this subsection are:
  - (a) Part I, other than the following provisions:
    - (i) subsections 3(2) to (5A);
    - (ii) subsections 3(6A) to (6C);
    - (iii) subsections 3(7A) and (7B);
    - (iv) subsections 3(9) to (18);
    - (v) section 3A; and
  - (b) Part II, other than the following provisions:
    - (i) sections 4 and 5;
    - (ii) subsection 6(1);

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- (iii) subsections 6(4D) to (4E);
- (iv) subsections 6(6) to (15);
- (v) section 6A;
- (vi) paragraph 8(7A)(b);
- (vii) subsections 8(8) to (11);
- (viii) sections 8A and 8B;
- (viiiia) paragraphs 9(1AA)(ab) and (ac);
- (ix) paragraph 9(4)(ab);
- (x) sections 10, 10A and 11;
- (xi) subsections 11A(1) and (5);
- (xii) sections 14 to 18;
- (xiii) section 19; and
- (c) subsection 31(1); and
- (d) Part IV, other than the following provisions:
  - (i) section 34;
  - (ia) subparagraph 35(3)(b)(ia);
  - (ii) subsections 35(7) and (7A);
  - (iii) paragraph 35A(3)(a).

- (4) Each provision of this Act specified in column 1 of the table applies in relation to the Postal Industry Ombudsman in accordance with the table:

<b>Application of Act to Postal Industry Ombudsman</b>			
	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>This provision of this Act...</b>	<b>applies in relation to the Postal Industry Ombudsman as if a reference in that provision to...</b>	<b>were a reference to...</b>
1	subsection 7A(1)	paragraph 5(1)(b)	paragraph 19M(2)(b)

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<b>Application of Act to Postal Industry Ombudsman</b>			
	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>This provision of this Act...</b>	<b>applies in relation to the Postal Industry Ombudsman as if a reference in that provision to...</b>	<b>were a reference to...</b>
2	subsection 11A(4)	the Minister	the Minister and the Minister administering the <i>Australian Postal Corporation Act 1989</i>
3	subsections 12(4) and (5)	section 15	section 19V
4	subsection 35(6A)	paragraph 6(4D)(e)	paragraph 19P(3)(b)
5	subsection 35B(2) (paragraph (a) of the definition of <i>listed disclosure method</i> )	Division 2 of Part II	section 19V, 19W or 19X
6	subsection 35B(2) (paragraph (b) of the definition of <i>listed disclosure method</i> )	section 6 or 6A	section 19N or 19P

- (5) For the purposes of this Part, subsection 3(6) applies in relation to the Postal Industry Ombudsman as if a reference in that subsection to a prescribed authority were a reference to Australia Post.

### 19S Powers of the Postal Industry Ombudsman under section 9

The Postal Industry Ombudsman may exercise his or her powers under section 9 for any of the following purposes:

- (a) to determine whether he or she may investigate action under this Part;
- (b) to decide whether or not to investigate action, or to investigate action further, under this Part;

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- (c) to start or further the conduct of an investigation under this Part;
- (d) to prepare a report in relation to an investigation under this Part;
- (e) if he or she has exercised a power for any of the purposes mentioned in paragraphs (a) to (d)—to ascertain what action has been taken by Australia Post or by a registered PPO following the exercise of that power.

### **19T Duty to accord procedural fairness**

The Postal Industry Ombudsman must comply with the rules of procedural fairness when exercising a power under this Act.

Example 1: If the Postal Industry Ombudsman sets out a critical opinion of a person in a report under section 19V, he or she must give that person an opportunity to appear and make submissions to him or her (see subsection 8(5)).

Example 2: The Postal Industry Ombudsman must accord procedural fairness to a person if he or she sets out a critical opinion of the person:

- (a) in disclosing information, or making a statement, under subsection 35A(1); or
- (b) in referring to an investigation in a report under section 19X.

### **19U Disclosure of identifying information**

The Postal Industry Ombudsman must not, in referring to an investigation in a report under section 19V or 19X, 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.

### **19V Postal Industry Ombudsman may report to Australia Post or registered PPO**

- (1) This section applies if:
  - (a) an investigation under this Act into action taken by Australia Post or a registered PPO (the *investigated body*) has been completed; and

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- (b) the Postal Industry Ombudsman is of the opinion that the action taken:
  - (i) appears to have been contrary to law; or
  - (ii) was unreasonable, unjust, oppressive or improperly discriminatory; or
  - (iii) was otherwise, in all the circumstances, wrong; and
- (c) the Postal Industry Ombudsman is of the opinion that:
  - (i) some particular action could be, and should be, taken to rectify, mitigate or alter the effects of the action taken; or
  - (ii) a policy or practice on which the action taken was based should be altered; or
  - (iii) reasons should have been, but were not, given for the action taken; or
  - (iv) any other thing should be done in relation to the action taken.
- (2) The Postal Industry Ombudsman must report accordingly to the investigated body.
- (3) The Postal Industry Ombudsman:
  - (a) must include in the report his or her reasons for the opinions specified in the report; and
  - (b) may also include in the report any recommendations he or she thinks fit to make.
- (4) The Postal Industry Ombudsman may ask the investigated body to give him or her, within a specified time, particulars of any action that the investigated body proposes to take with respect to the matters and recommendations included in the report.
- (5) The investigated body may give the Postal Industry Ombudsman comments about the report.
- (6) The Postal Industry Ombudsman must give a copy of:
  - (a) the report; and
  - (b) any comments given under subsection (5);

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to the Minister administering the *Australian Postal Corporation Act 1989*.

**19W Minister to table certain reports in Parliament**

- (1) This section applies if:
  - (a) the Postal Industry Ombudsman has given a report under section 19V to an investigated body; and
  - (b) action that is, in the opinion of the Postal Industry Ombudsman, adequate and appropriate in the circumstances is not taken with respect to the matters and recommendations included in the report within a reasonable time after the report was given to the investigated body.
- (2) The Postal Industry Ombudsman may request the Minister administering the *Australian Postal Corporation Act 1989* to cause copies of the report to be laid before each House of the Parliament.
- (3) If the Postal Industry Ombudsman makes a request under subsection (2), the Minister administering the *Australian Postal Corporation Act 1989* must cause copies of:
  - (a) the report; and
  - (b) any comments given under subsection 19V(5) before the request was made;to be laid before each House of the Parliament within 15 sitting days of that House after that Minister receives the request.

**19X Reports of the Postal Industry Ombudsman**

*Annual reports*

- (1) As soon as practicable after the end of each financial year, the Postal Industry Ombudsman must give an annual report to the Minister, for presentation to the Parliament, on the operations of the Postal Industry Ombudsman during the financial year.

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*Additional reports*

- (2) The Postal Industry Ombudsman may, from time to time, give the Minister, for presentation to the Parliament, a report:
  - (a) on the operations of the Postal Industry Ombudsman during a part of a year; or
  - (b) in relation to any matter relating to, or arising in connection with, the exercise of the powers, or the performance of the functions, of the Postal Industry Ombudsman.
- (3) Subsections (1) and (2) do not affect the powers and duties of the Postal Industry Ombudsman under section 19V or 19W.

*Tabling and inclusion in other reports*

- (4) If the Postal Industry Ombudsman gives a report to the Minister under subsection (1) or (2), the Minister must cause the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.
- (5) A report relating to the operations of the Postal Industry Ombudsman during a period may be included in a report under:
  - (a) section 19; or
  - (b) section 46 of the *Public Governance, Performance and Accountability Act 2013*;relating to the operations of the Ombudsman during that period.

*Content of report*

- (6) A report relating to the operations of the Postal Industry Ombudsman during a period must:
  - (a) set out the number of complaints received by the Postal Industry Ombudsman under this Part during that period; and
  - (b) if the Postal Industry Ombudsman has investigated action under paragraph 19M(2)(a)—set out:
    - (i) the number of such investigations started during that period; and

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- (ii) the number of such investigations completed during that period; and
- (c) if the Postal Industry Ombudsman has investigated action under paragraph 19M(2)(b)—set out:
  - (i) the number of such investigations started during that period; and
  - (ii) the number of such investigations completed during that period; and
- (d) include details of the circumstances and number of occasions where the Postal Industry Ombudsman has made a requirement of a person under section 9 (as that section applies because of sections 19R and 19S) during that period; and
- (e) include details of the circumstances and number of occasions where the holder of the office of Postal Industry Ombudsman has decided under subsection 19N(3) to deal with, or to continue to deal with, a complaint or part of a complaint in his or her capacity as the holder of the office of Commonwealth Ombudsman during that period; and
- (f) include details of recommendations made during that period in reports under section 19V; and
- (g) include statistical information about actions taken during that period as a result of such recommendations.

**19Y Postal Industry Ombudsman may notify employer of misconduct**

- (1) This section applies if the Postal Industry Ombudsman becomes of the opinion, either before or after completing an investigation under this Act, that there is evidence that a person who is an officer of Australia Post or of a registered PPO, has engaged in misconduct.
- (2) If the Postal Industry Ombudsman is of the opinion that the evidence is, in all the circumstances, of sufficient force to justify his or her doing so, the Postal Industry Ombudsman may bring the evidence to the notice of:



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- (a) if the person is the principal officer of Australia Post—the Minister administering the *Australian Postal Corporation Act 1989*; or
- (b) if the person is an officer of Australia Post but not the principal officer of Australia Post—the principal officer of Australia Post; or
- (c) if the person is an officer of a registered PPO—the principal officer of that PPO.

**19Z Limitation on liability where information or documents provided in good faith or when required to do so**

- (1) A person is neither liable to a proceeding, nor subject to a liability, under an enactment merely because the person, in good faith and in relation to the Postal Industry Ombudsman's functions or powers:
    - (a) gives information to the Postal Industry Ombudsman (other than in accordance with a requirement under section 9); or
    - (b) gives a document or other record to the Postal Industry Ombudsman (other than in accordance with a requirement under section 9).
- Note: For information, documents or other records given in accordance with a requirement under section 9, see subsections 9(4) and (5).
- (2) To avoid doubt, subsection (1) does not prevent the person from being liable to a proceeding, or being subject to a liability, for conduct of the person that is revealed by the information, document or record given to the Postal Industry Ombudsman.
  - (3) This section does not limit section 37.

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## **Division 4—Register of PPOs**

### **19ZA Registration of PPOs**

- (1) The Postal Industry Ombudsman is to establish and maintain a Register of PPOs.
- (2) A PPO may apply, in writing, to the Postal Industry Ombudsman to be registered for the purposes of this Part.
- (3) If the Postal Industry Ombudsman receives an application under subsection (2), the Postal Industry Ombudsman must include that PPO on the Register of PPOs.
- (4) A PPO is taken to be registered for the purposes of this Part from the time when the Postal Industry Ombudsman includes that PPO on the Register.

### **19ZB Information to be included in Register**

- (1) The Postal Industry Ombudsman must include the following information in the register:
  - (a) the name of the PPO;
  - (b) if the PPO has an ABN (within the meaning of the section 41 of the *A New Tax System (Australian Business Number) Act 1999*)—that ABN;
  - (c) the date on which the PPO was included on the Register.
- (2) A registered PPO must notify the Postal Industry Ombudsman of any changes to the information included in relation to that PPO in the Register.

### **19ZC Deregistration of PPOs**

- (1) A registered PPO may apply, in writing, to the Postal Industry Ombudsman to no longer be registered for the purposes of this Part.

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- (2) If the Postal Industry Ombudsman receives an application under subsection (1) on a particular date (the *deregistration date*):
- (a) the Postal Industry Ombudsman must enter the deregistration date in the Register of PPOs; and
  - (b) the Postal Industry Ombudsman must remove the PPO from the Register of PPOs 12 months after the deregistration date; and
  - (c) the PPO is taken to no longer be registered for the purposes of this Part from the deregistration date.

Note: In certain circumstances, a PPO that is no longer registered for the purposes of this Part may still be treated as a registered PPO (see section 19J).

**19ZD Register may be maintained by electronic means**

- (1) The Register may be maintained by electronic means.
- (2) The Register is to be made available for inspection on the internet.

## **Division 5—Fees for investigations**

### **19ZE Fees for investigations**

- (1) The Postal Industry Ombudsman may, on behalf of the Commonwealth, charge Australia Post or a registered PPO fees in relation to an investigation:
  - (a) that was conducted under paragraph 19M(2)(a), into action taken by Australia Post or the registered PPO (as the case may be); and
  - (b) that has been completed.

**Note:** In certain circumstances, a PPO that is no longer registered for the purposes of this Part may still be treated as a registered PPO (see section 19J).

- (2) The amount of a fee:
  - (a) must not be more than the amount that, in the opinion of the Postal Industry Ombudsman, represents the costs incurred by the Postal Industry Ombudsman in conducting the investigation; and
  - (b) must not be such as to amount to taxation.
- (3) The Minister administering the *Australian Postal Corporation Act 1989* may make a written determination specifying the total amount of fees that may be charged under this section in relation to investigations that the Postal Industry Ombudsman completed during a specified financial year.
- (4) A determination made under subsection (3) is not a legislative instrument.
- (5) If a determination has been made under subsection (3) for a financial year, the total amount of fees charged under this section in relation to investigations that the Postal Industry Ombudsman completed during that financial year must not exceed the amount specified in the determination.

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- (6) The regulations may:
  - (a) prescribe one or more methods to be used in working out the amount of a fee; and
  - (b) prescribe the time by which a fee is due and payable.
- (7) A fee is payable to the ACMA on behalf of the Commonwealth.
- (9) A fee:
  - (a) is a debt due to the ACMA on behalf of the Commonwealth; and
  - (b) is recoverable by the ACMA, on behalf of the Commonwealth, in a court of competent jurisdiction.

## **Part IIC—Establishment, functions, powers and duties of the Overseas Students Ombudsman**

### **Division 1—Preliminary**

#### **19ZF Definitions**

In this Part:

***officer***, of a private registered provider, means a person who:

- (a) is employed in the service of a private registered provider; or
- (b) is a member of the staff of a private registered provider, whether or not the person is employed by a private registered provider; or
- (c) is authorised by a private registered provider to exercise any powers, or perform any functions, of the private registered provider (including a contractor, for example).

***Overseas Students Act*** means the *Education Services for Overseas Students Act 2000*.

***principal executive officer*** has the same meaning as in the Overseas Students Act.

***private registered provider*** means a registered provider, within the meaning of the Overseas Students Act, that is not owned or administered by:

- (a) the Commonwealth; or
- (b) a State or Territory.

#### **19ZG Continued application of Part to former registered providers**

- (1) This section applies if:

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- (a) a private registered provider took action at a particular time; and
  - (b) the Overseas Students Ombudsman receives a complaint in relation to that action within 12 months after that time; and
  - (c) after that time, the private registered provider ceases to be a private registered provider for the purposes of this Part.
- (2) This Part applies, in relation to that complaint, as if the private registered provider continued to be a private registered provider.

**19ZH Part not to affect operation of other provisions of this Act**

This Part does not, by implication, affect the operation of other provisions in this Act.

## **Division 2—Establishment and functions of the Overseas Students Ombudsman**

### **19ZI Establishment of office of Overseas Students Ombudsman**

- (1) For the purposes of this Act, there is to be an Overseas Students Ombudsman.
- (2) The office of Overseas Students Ombudsman is to be held by the person who holds the office of Commonwealth Ombudsman.
- (3) The reference in subsection (2) to the person who holds the office of Commonwealth Ombudsman includes a reference to a person for the time being acting in that office because of an appointment under section 29.

### **19ZJ Functions of Overseas Students Ombudsman**

- (1) The functions of the Overseas Students Ombudsman are:
  - (a) to investigate complaints made to him or her under this Act; and
  - (b) to give private registered providers advice and training about the best practice for the handling of complaints made by overseas students; and
  - (c) to perform such other functions as are conferred on him or her by:
    - (i) this Act or the regulations; or
    - (ii) another Act or regulations made under another Act.
- (2) Subject to this Act, the Overseas Students Ombudsman:
  - (a) is to investigate action that he or she is authorised by this Act to investigate and in respect of which a complaint has been made to him or her; and
  - (b) may, on his or her own initiative, investigate action that he or she is authorised by this Act to investigate.



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- (3) The Overseas Students Ombudsman is authorised by this Act to investigate action taken by a private registered provider in connection with an overseas student, an intending overseas student, an accepted student, or a former accepted student, within the meaning of the Overseas Students Act.

**19ZK Transfer of complaints**

- (1) This section applies if:
- (a) a complaint has been made to the Overseas Students Ombudsman with respect to action taken by a private registered provider; and
  - (b) the Overseas Students Ombudsman, either before or after starting to investigate that action, forms the opinion that:
    - (i) a statutory complaint handler has the function of investigating, reviewing or enquiring into action of that kind; or
    - (ii) a statutory office-holder has the function of investigating, reviewing or enquiring into action of that kind.
- (2) In the case of a statutory complaint handler, the Overseas Students Ombudsman:
- (a) must not investigate or further investigate the action; and
  - (b) must transfer the complaint to the statutory complaint handler.
- (3) In the case of a statutory office-holder, if the Overseas Students Ombudsman considers the action could be more conveniently or effectively dealt with by the statutory office-holder, the Overseas Students Ombudsman:
- (a) may decide not to investigate or further investigate the action; and
  - (b) if that decision is made, must transfer the complaint to the statutory office-holder.

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- (4) If the Overseas Students Ombudsman transfers a complaint under this section, the Overseas Students Ombudsman must, as soon as is reasonably practicable:
- (a) give notice of the transfer to the complainant; and
  - (b) give any information or documents that relate to the complaint and are in the possession or under the control of the Overseas Students Ombudsman to the statutory complaint handler or statutory office-holder.
- (5) In this section:

***statutory complaint handler*** means a person, prescribed under the regulations, who has a function of investigating action taken by a private registered provider in connection with an overseas student, an intending overseas student, an accepted student, or a former accepted student, within the meaning of the Overseas Students Act.

***statutory office-holder*** means a person who holds any office or appointment under a law of the Commonwealth, or under a law of a State or Territory.

### **19ZL Discretion not to investigate certain complaints**

- (1) This section applies if:
- (a) a complaint has been made to the Overseas Students Ombudsman with respect to action taken by a private registered provider; and
  - (b) the Overseas Students Ombudsman is of the opinion that:
    - (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; or
    - (iv) the complainant has not yet raised the complaint with the registered provider; or

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- (v) the action came to the complainant's knowledge more than 12 months before the complaint was made; or
  - (vi) the 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.
- (2) The Overseas Students Ombudsman may, in his or her discretion:
  - (a) decide not to investigate the action; or
  - (b) if he or she has started to investigate the action—decide not to investigate the action further.

## **Division 3—Powers and duties of the Overseas Students Ombudsman**

### **19ZM Application of other provisions of this Act to the Overseas Students Ombudsman**

- (1) Subject to this section, the provisions covered by subsection (3) apply in relation to the Overseas Students Ombudsman.
- (2) Unless the contrary intention appears, the provisions covered by subsection (3) apply as if:
  - (a) a reference in any of those provisions to the Ombudsman were a reference to the Overseas Students Ombudsman; and
  - (b) a reference in any of those provisions to any of the following were a reference to a private registered provider:
    - (i) a Department;
    - (ii) a prescribed authority;
    - (iii) a Department or a prescribed authority; and
  - (c) a reference in any of those provisions to an officer were a reference to an officer within the meaning of this Part; and
  - (d) a reference in any of those provisions to a principal officer were a reference to a principal executive officer within the meaning of this Part.
- (3) The following provisions are covered by this subsection:
  - (a) subsections 3(1) and (8);
  - (b) sections 3C and 3D;
  - (c) sections 6A to 7A;
  - (d) section 8, other than:
    - (i) paragraph (7A)(b); and
    - (ii) subsections (8) to (12);
  - (e) section 8A, other than subsections (1B) to (1D);
  - (f) section 9, other than:
    - (i) paragraphs (1AA)(ab) and (ac); and

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- (ii) paragraph (4)(ab);
  - (g) section 11A, other than subsections (1) and (5);
  - (h) sections 12 to 14;
  - (i) section 18;
  - (k) subsection 31(1);
  - (l) section 33;
  - (m) section 34, other than subsections 34(1) to (2A);
  - (n) section 35, other than paragraph (1)(e) and subparagraph (3)(b)(ia);
  - (o) section 35AA;
  - (p) section 35A, other than subsection (3A);
  - (q) sections 35B to 38.
- (4) Each provision of this Act specified in column 1 of the table applies in relation to the Overseas Students Ombudsman in accordance with the table:

<b>Application of Act to Overseas Students Ombudsman</b>			
<b>Item</b>	<b>Column 1 This provision of this Act ...</b>	<b>Column 2 applies in relation to the Overseas Students Ombudsman as if a reference in that provision to ...</b>	<b>Column 3 were a reference to ...</b>
1	subsection 7A(1)	paragraph 5(1)(b)	paragraph 19ZJ(2)(b)
2	subsection 11A(4)	the Minister	the Minister and the Minister administering the Overseas Students Act
3	subsections 12(4) and (5)	section 15	section 19ZQ
4	section 18	section 17	section 19ZR
6	subsection 35(6A)	paragraph 6(4A)(e), (4D)(e) or (18)(d)	paragraph 19ZK(4)(b)
7	paragraph 35AA(1)(a)	paragraph 5(1)(b)	paragraph 19ZJ(2)(b)

**Part IIC** Establishment, functions, powers and duties of the Overseas Students Ombudsman

**Division 3** Powers and duties of the Overseas Students Ombudsman

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<b>Application of Act to Overseas Students Ombudsman</b>			
	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>This provision of this Act ...</b>	<b>applies in relation to the Overseas Students Ombudsman as if a reference in that provision to ...</b>	<b>were a reference to ...</b>
8	subsection 35B(2) (paragraph (a) of the definition of <i>listed disclosure method</i> )	Division 2 of Part II	section 19ZQ, 19ZR or 19ZS
9	subsection 35B(2) (paragraph (b) of the definition of <i>listed disclosure method</i> )	section 6A	section 19ZK

**19ZN Powers of the Overseas Students Ombudsman under section 9**

The Overseas Students Ombudsman may exercise his or her powers under section 9 for any of the following purposes:

- (a) to determine whether he or she may investigate action under this Part;
- (b) to decide whether or not to investigate action, or to investigate action further, under this Part;
- (c) to start or further the conduct of an investigation under this Part;
- (d) to prepare a report in relation to an investigation under this Part;
- (e) if he or she has exercised a power for any of the purposes mentioned in paragraphs (a) to (d)—to ascertain what action has been taken by a private registered provider following the exercise of that power.

### **19ZO Duty to accord procedural fairness**

The Overseas Students Ombudsman must comply with the rules of procedural fairness when exercising a power under this Act.

Example 1: If the Overseas Students Ombudsman sets out a critical opinion of a person in a report under section 19ZQ, he or she must give that person an opportunity to appear and make submissions to him or her (see subsection 8(5)).

Example 2: The Overseas Students Ombudsman must accord procedural fairness to a person if he or she sets out a critical opinion of the person:

- (a) in disclosing information, or making a statement, under subsection 35A(1); or
- (b) in referring to an investigation in a report under section 19ZS.

### **19ZP Disclosure of identifying information**

The Overseas Students Ombudsman must not, in referring to an investigation in a report under section 19ZQ or 19ZS, 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.

### **19ZQ Overseas Students Ombudsman may report to private registered provider**

- (1) This section applies if:
  - (a) an investigation under this Act into action taken by a private registered provider has been completed; and
  - (b) the Overseas Students Ombudsman is of the opinion that the action taken:
    - (i) appears to have been contrary to law; or
    - (ii) was unreasonable, unjust, oppressive or improperly discriminatory; or
    - (iii) was otherwise, in all the circumstances, wrong; and
  - (c) the Overseas Students Ombudsman is of the opinion that:

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- (i) some particular action could be, and should be, taken to rectify, mitigate or alter the effects of the action taken; or
  - (ii) a policy or practice on which the action taken was based should be altered; or
  - (iii) reasons should have been, but were not, given for the action taken; or
  - (iv) any other thing should be done in relation to the action taken.
- (2) The Overseas Students Ombudsman must report accordingly to the private registered provider.
- (3) The Overseas Students Ombudsman:
  - (a) must include in the report his or her reasons for the opinions specified in the report; and
  - (b) may also include in the report any recommendations he or she thinks fit to make.
- (4) The Overseas Students Ombudsman may ask the private registered provider to give him or her, within a specified time, particulars of any action that the private registered provider proposes to take with respect to the matters and recommendations included in the report.
- (5) The private registered provider may give the Overseas Students Ombudsman comments about the report.
- (6) The Overseas Students Ombudsman must give a copy of:
  - (a) the report; and
  - (b) any comments given under subsection (5);to the Minister administering the Overseas Students Act.

### **19ZR Minister to table certain reports in Parliament**

- (1) This section applies if:
  - (a) the Overseas Students Ombudsman has given a report under section 19ZQ to a private registered provider; and



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- (b) action that is, in the opinion of the Overseas Students Ombudsman, adequate and appropriate in the circumstances is not taken with respect to the matters and recommendations included in the report within a reasonable time after the report was given to the private registered provider.
- (2) The Overseas Students Ombudsman may request the Minister administering the Overseas Students Act to cause copies of the report to be laid before each House of the Parliament.
- (3) If the Overseas Students Ombudsman makes a request under subsection (2), the Minister administering the Overseas Students Act must cause copies of:
  - (a) the report; and
  - (b) any comments given under subsection 19ZQ(5) before the request was made;to be laid before each House of the Parliament within 15 sitting days of that House after that Minister receives the request.

**19ZS Reports of the Overseas Students Ombudsman**

*Annual reports*

- (1) As soon as practicable after the end of each financial year, the Overseas Students Ombudsman must give an annual report to the Minister, for presentation to the Parliament, on the operations of the Overseas Students Ombudsman during the financial year.

*Additional reports*

- (2) The Overseas Students Ombudsman may, from time to time, give the Minister, for presentation to the Parliament, a report:
  - (a) on the operations of the Overseas Students Ombudsman during a part of a year; or
  - (b) in relation to any matter relating to, or arising in connection with, the exercise of the powers, or the performance of the functions, of the Overseas Students Ombudsman.

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- (3) Subsections (1) and (2) do not affect the powers and duties of the Overseas Students Ombudsman under section 19ZQ or 19ZR.

*Tabling and inclusion in other reports*

- (4) If the Overseas Students Ombudsman gives a report to the Minister under subsection (1) or (2), the Minister must cause the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.
- (5) A report relating to the operations of the Overseas Students Ombudsman during a period may be included in a report under:
- (a) section 19; or
  - (b) section 46 of the *Public Governance, Performance and Accountability Act 2013*;
- relating to the operations of the Ombudsman during that period.

*Content of report*

- (6) A report relating to the operations of the Overseas Students Ombudsman during a period must:
- (a) set out the number of complaints received by the Overseas Students Ombudsman under this Part during that period; and
  - (b) if the Overseas Students Ombudsman has investigated action under paragraph 19ZJ(2)(a)—set out:
    - (i) the number of such investigations started during that period; and
    - (ii) the number of such investigations completed during that period; and
  - (c) if the Overseas Students Ombudsman has investigated action under paragraph 19ZJ(2)(b)—set out:
    - (i) the number of such investigations started during that period; and
    - (ii) the number of such investigations completed during that period; and
  - (d) set out:

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- (i) the number of times when the Overseas Students Ombudsman has made a requirement of a person under section 9 (as that section applies because of sections 19ZM and 19ZN) during that period; and
  - (ii) the circumstances in which each of those requirements was made.
- (7) A report relating to the operations of the Overseas Students Ombudsman during a period may include:
  - (a) details of the circumstances and number of occasions during that period where the holder of the office of Overseas Students Ombudsman decided, under section 19ZK, to transfer a complaint to a statutory complaint handler or statutory office-holder; and
  - (b) details of recommendations made during that period in reports under section 19ZQ; and
  - (c) statistical information about actions taken during that period as a result of such recommendations; and
  - (d) details of action that the Overseas Students Ombudsman took during the period to promote best practice in dealing with complaints; and
  - (e) details of the Overseas Students Ombudsman's observations during the period regarding:
    - (i) any trends in complaints; or
    - (ii) any broader issues that arise from investigations.

**19ZT Overseas Students Ombudsman may notify of misconduct**

- (1) This section applies if the Overseas Students Ombudsman forms the opinion, either before or after completing an investigation under this Act, that there is evidence that a person who is an officer of a private registered provider has engaged in misconduct.
- (2) If the Overseas Students Ombudsman is of the opinion that the evidence is, in all the circumstances, of sufficient force to justify his or her doing so, the Overseas Students Ombudsman may bring

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the evidence to the notice of the principal executive officer of the private registered provider.

**19ZU Limitation on liability where information or documents provided in good faith or when required to do so**

- (1) A person is neither liable to a proceeding, nor subject to a liability, under an enactment merely because the person, in good faith and in relation to the Overseas Students Ombudsman's functions or powers:
- (a) gives information to the Overseas Students Ombudsman (other than in accordance with a requirement under section 9); or
  - (b) gives a document or other record to the Overseas Students Ombudsman (other than in accordance with a requirement under section 9).

Note: For information, documents or other records given in accordance with a requirement under section 9, see subsections 9(4) and (5).

- (2) To avoid doubt, subsection (1) does not prevent the person from being liable to a proceeding, or being subject to a liability, for conduct of the person that is revealed by the information, document or record given to the Overseas Students Ombudsman.
- (3) This section does not limit section 37.

## **Part IID—Private Health Insurance Ombudsman**

### **Division 1—Preliminary**

#### **20 Principal object of this Part**

The principal object of this Part is to establish the office of, and set out the powers and functions of, the Private Health Insurance Ombudsman so that he or she may protect the interests of people who are covered by private health insurance by:

- (a) assisting people who have made complaints relating to private health insurance to resolve those complaints; and
- (b) investigating the practices and procedures of private health insurers, private health insurance brokers and health care providers; and
- (c) mediating between private health insurers and health care providers; and
- (d) disseminating information about private health insurance and the rights and obligations of privately insured people.

#### **20A Definitions for this Part**

In this Part:

**officer**, of a private health insurer, has the same meaning as in the *Private Health Insurance Act 2007*.

**officer**, of a subject of a complaint under Division 3 or an investigation under Division 4, means:

- (a) if the subject is an individual—the individual; or
- (b) if the subject is a private health insurer—a person who is an officer of the insurer; or
- (c) if the subject is a company within the meaning of the *Corporations Act 2001*—a director of the company; or
- (d) if the subject is an incorporated association—a member of the management committee of the association; or

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- (e) if the subject is an unincorporated entity—a member of the governing body of the entity; or
- (f) if the subject is a partnership—a partner in the partnership.

**20B Private Health Insurance Ombudsman Rules**

Matters relevant to this Part are also dealt with in the Private Health Insurance Ombudsman Rules. The provisions of this Part indicate when a particular matter is or may be dealt with in these Rules.

Note: The Private Health Insurance Ombudsman Rules are made by the Ombudsman under section 20ZJ.

## **Division 2—Establishment and functions of the Private Health Insurance Ombudsman**

### **20C Establishment of office of Private Health Insurance Ombudsman**

- (1) For the purposes of this Act, there is to be a Private Health Insurance Ombudsman.
- (2) The office of Private Health Insurance Ombudsman is to be held by the person who holds the office of Commonwealth Ombudsman.
- (3) The reference in subsection (2) to the person who holds the office of Commonwealth Ombudsman includes a reference to a person for the time being acting in that office because of an appointment under section 29 (acting appointments).

### **20D Functions of Private Health Insurance Ombudsman**

The Private Health Insurance Ombudsman has the following functions:

- (a) dealing with complaints under Division 3;
- (b) conducting investigations under Division 4;
- (c) publishing (in written form and on the Private Health Insurance Ombudsman's website) a report, called the State of the Health Funds Report, as soon as practicable after the end of each financial year providing comparative information on the performance and service delivery of all private health insurers during that financial year;
- (d) collecting and publishing (in written form and on the internet) information about the complying health insurance products available to people, in order to assist people to understand the entitlements and benefits available under those products;

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- (e) publishing, in aggregate form, information (not personal information) about complaints under Division 3;
- (f) reporting and making recommendations to the Health Minister under sections 20R and 20V;
- (g) reporting to the Health Minister or to the Health Department about the practices of particular private health insurers or private health insurance brokers;
- (h) reporting (as part of reports mentioned in paragraph (g)) to the Health Minister or to the Health Department about the practices of particular health care providers, to the extent to which those practices relate to:
  - (i) the application of private health insurance arrangements or classes of private health insurance arrangements to services or goods provided, or to goods manufactured or supplied, by the health care providers; or
  - (ii) private health insurance arrangements or classes of private health insurance arrangements to which those kinds of health care providers may be party;
- (i) making recommendations to the Health Minister or the Health Department about regulatory practices or industry practices relating to private health insurers or private health insurance brokers;
- (j) making recommendations (as part of recommendations mentioned in paragraph (i)) to the Health Minister or to the Health Department about regulatory practices or industry practices relating to health care providers, to the extent to which those practices relate to:
  - (i) the application of private health insurance arrangements or classes of private health insurance arrangements to services or goods provided, or to goods manufactured or supplied, by the health care providers; or
  - (ii) private health insurance arrangements or classes of private health insurance arrangements to which those kinds of health care providers may be party;
- (k) promoting a knowledge and understanding of the Private Health Insurance Ombudsman's functions;



- (l) any other functions that are incidental to the performance of any of the preceding functions.

## **Division 3—Complaints**

### **Subdivision A—Relevant complaints**

#### **20E Who may make a complaint**

- (1) A complaint may be made to the Private Health Insurance Ombudsman by any of the following:
  - (a) a person who is, or was at the time of the incident to which the complaint relates, insured or seeking to be insured under a private health insurance policy;
  - (b) a private health insurer;
  - (c) a health care provider;
  - (d) a private health insurance broker.

Note: Section 7 also deals with making complaints. For the application of section 7 to the Private Health Insurance Ombudsman, see section 20ZK.

- (2) A complaint may be made by a person on behalf of a person mentioned in subsection (1).

#### **20F Persons against whom complaints may be made**

A complaint may be made to the Private Health Insurance Ombudsman against any of the following:

- (a) a private health insurer;
- (b) a health care provider;
- (c) a private health insurance broker.

#### **20G Grounds for complaint**

- (1) The complaint may be about:
  - (a) any matter arising out of or connected with a private health insurance arrangement; or
  - (b) any matter arising out of or connected with Chapter 2 of the *Private Health Insurance Act 2007*.

- (2) A complaint against a health care provider must, in addition to being about a matter in subsection (1), also:
  - (a) be about either or both of the following:
    - (i) the application of a private health insurance arrangement to goods or a service provided, or goods manufactured or supplied, by the health care provider;
    - (ii) a private health insurance arrangement to which the health care provider is, or was at the time of the incident to which the complaint relates, a party; and
  - (b) satisfy at least one of the following:
    - (i) the complaint must also be made against a private health insurer;
    - (ii) the complainant must be a private health insurer or a person insured under a private health insurance policy;
    - (iii) if the complainant is another health care provider or a private health insurance broker—a private health insurer or a person insured under a private health insurance policy must also be a complainant in relation to the complaint.
- (3) The Private Health Insurance Ombudsman Rules may prescribe matters about which complaints cannot be made.

## **Subdivision B—Dealing with complaints**

### **20H Initial receipt of complaint**

On receiving a complaint, the Private Health Insurance Ombudsman may:

- (a) inform the subject of the complaint of the nature of the complaint; and
- (b) request or require information from the subject under Division 6.

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**20J Ways of dealing with complaints**

- (1) The Private Health Insurance Ombudsman may deal with a complaint by:
  - (a) conducting mediation under Division 5; or
  - (b) referring the complaint to the subject of the complaint under Subdivision C; or
  - (c) if section 20P applies—investigating the complaint under Subdivision D.
- (2) The Private Health Insurance Ombudsman must not take any action mentioned in subsection (1) unless the complainant agrees to the action being taken.
- (3) The Private Health Insurance Ombudsman must not take, or continue to take, any action mentioned in paragraph (1)(a) or (c) if the complainant withdraws the complaint.
- (4) The Private Health Insurance Ombudsman must not take any action mentioned in subsection (1) if the complaint is about a matter prescribed by the Private Health Insurance Ombudsman Rules for the purposes of subsection 20G(3).

**20K Referral to the Australian Competition and Consumer Commission**

- (1) If, in the Private Health Insurance Ombudsman's opinion, a complaint raises a matter that could be dealt with more effectively or conveniently by the Australian Competition and Consumer Commission, the Private Health Insurance Ombudsman must, subject to subsections (2) and (3), refer the matter to the Australian Competition and Consumer Commission.
- (2) The Private Health Insurance Ombudsman must not refer the matter to the Australian Competition and Consumer Commission unless the complainant agrees to the referral.

- (3) The Private Health Insurance Ombudsman must not refer the matter to the Australian Competition and Consumer Commission if the complainant withdraws the complaint.
- (4) If the Private Health Insurance Ombudsman refers the matter to the Australian Competition and Consumer Commission, the Private Health Insurance Ombudsman must:
  - (a) tell the complainant of the matter's referral; and
  - (b) give the Australian Competition and Consumer Commission any information or documents that relate to the complaint and that are in the Private Health Insurance Ombudsman's possession or under his or her control.
- (5) The Australian Competition and Consumer Commission may investigate the matter. If it does, it must, within 30 days after the referral, report to the Private Health Insurance Ombudsman on:
  - (a) the conduct of the investigation; and
  - (b) any findings that it has made as a result of the investigation.
- (6) If the Australian Competition and Consumer Commission decides not to investigate the matter, it must, within 30 days after the referral, give the Private Health Insurance Ombudsman a written notice informing the Private Health Insurance Ombudsman of its decision and of the reasons for its decision.

## **20L Referral to other bodies**

- (1) If, in the Private Health Insurance Ombudsman's opinion, a complaint raises a matter that could be dealt with more effectively or conveniently by another body, the Private Health Insurance Ombudsman must, subject to this section, refer the matter to that body.
- (2) The Private Health Insurance Ombudsman must not refer the matter to the other body unless the complainant agrees to the referral.

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- (3) The Private Health Insurance Ombudsman must not refer the matter to the other body if the complainant withdraws the complaint.
- (4) If the Private Health Insurance Ombudsman refers the matter to the other body, the Private Health Insurance Ombudsman must:
  - (a) tell the complainant of the matter's referral; and
  - (b) give the other body any information or documents that relate to the complaint and that are in the Private Health Insurance Ombudsman's possession or under his or her control.

**20M Deciding not to deal with a complaint**

- (1) The Private Health Insurance Ombudsman may decide not to deal, or not to continue to deal, with a complaint in accordance with this section. If the Private Health Insurance Ombudsman so decides, he or she must:
  - (a) tell the complainant of the decision and the reasons for the decision; and
  - (b) if requested by the complainant—give the complainant written notice of the decision and the reasons for the decision.
- (2) The Private Health Insurance Ombudsman may decide not to take any action in relation to a complaint if the incident to which the complaint relates occurred more than 12 months before the complaint is made.
- (3) The Private Health Insurance Ombudsman may decide not to deal with a complaint if he or she is satisfied that the complainant has not taken reasonable steps to negotiate a settlement of the complaint with the subject of the complaint.
- (4) The Private Health Insurance Ombudsman may decide not to deal, or not to continue to deal, with a complaint if the complainant does not agree to a matter relating to the complaint being referred to another body under section 20L.

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- (5) The Private Health Insurance Ombudsman may decide not to deal, or not to continue to deal, with a complaint, if he or she believes that:
- (a) the subject of the complaint has dealt, or is dealing, adequately with the complaint, or has not yet had an adequate opportunity to do so; or
  - (b) the Private Health Insurance Ombudsman has dealt adequately with the complaint; or
  - (c) the complainant is capable of assisting the Private Health Insurance Ombudsman in dealing with the complaint but does not do so on request; or
  - (d) the complainant does not have a sufficient interest in the subject matter of the complaint; or
  - (e) the matter is trivial; or
  - (f) the complaint is frivolous or vexatious or was not made in good faith; or
  - (g) the complaint is mainly about commercial negotiations and, having regard to the object of this Part, it is not appropriate to deal, or to continue to deal, with the complaint; or
  - (h) the complaint is mainly about clinical matters and, having regard to the object of this Part, it is not appropriate to deal, or continue to deal, with the complaint; or
  - (i) the complainant has exercised, or exercises, a right to have the matter to which the complaint relates reviewed by a court or tribunal constituted by or under a law of the Commonwealth or of a State or Territory; or
  - (j) both:
    - (i) the complainant has, or had, a right to have the matter to which the complaint relates reviewed by a court or by a tribunal constituted by or under a law of the Commonwealth or of a State or Territory, but has not exercised that right; and
    - (ii) it is, or would have been, reasonable for the complainant to exercise that right; or
  - (k) to deal, or continue to deal, with the complaint is not warranted having regard to all the circumstances.
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### **Subdivision C—Referral to subjects of complaints**

#### **20N Referral to the subject of the complaint**

The Private Health Insurance Ombudsman may, at any time and whether or not mediation has been conducted under Division 5, refer a complaint to the subject of the complaint and request the subject:

- (a) to investigate the complaint; and
- (b) to report to the Private Health Insurance Ombudsman on the outcome of the investigation and any action that the subject proposes to take as a result, before the end of the period specified in the request.

**Note:** The Private Health Insurance Ombudsman must have the complainant's agreement to act under this section (see subsection 20J(2)).

### **Subdivision D—Investigation of complaints**

#### **20P Investigation of complaint**

The Private Health Insurance Ombudsman may investigate a complaint if:

- (a) the complaint is not resolved to the complainant's satisfaction by mediation under Division 5; or
- (b) the Private Health Insurance Ombudsman is not satisfied with the outcome of a referral under Subdivision C.

**Note:** The Private Health Insurance Ombudsman must have the complainant's agreement to act under this section and cannot continue if the complaint is withdrawn (see subsections 20J(2) and (3)).

### **Subdivision E—Recommendations and reports**

#### **20Q Recommendations as a result of referral or investigation**

- (1) The Private Health Insurance Ombudsman may make recommendations under this section after:



- (a) receiving a report from the subject of a complaint after referral under Subdivision C; or
  - (b) investigating a complaint under Subdivision D.
- (2) The Private Health Insurance Ombudsman may recommend any or all of the following:
  - (a) to a private health insurer, that the insurer take a specific course of action in relation to the complaint or make changes to its rules, or both;
  - (b) to a private health insurer, that the insurer request a health care provider or private health insurance broker to take a specific course of action in relation to the complaint;
  - (c) to a health care provider or private health insurance broker, that the provider or broker take a specific course of action in relation to the complaint.
- (3) The Private Health Insurance Ombudsman may, by written notice given to the person to whom the recommendation was made, or an officer of that person, require the person to report to the Private Health Insurance Ombudsman, before action is taken to give effect to the recommendation, on the action proposed to be taken. The notice must specify the period within which the report is to be given.

#### **20R Report to Health Minister on outcome of investigation under Subdivision D**

- (1) The Private Health Insurance Ombudsman may report and make recommendations under this section after completing an investigation of a complaint against a particular subject under Subdivision D.
- (2) The Private Health Insurance Ombudsman may report to the Health Minister on the outcome of the investigation (including any recommendations made to the subject of the complaint and any responses to those recommendations).
- (3) The Private Health Insurance Ombudsman may recommend to the Health Minister either or both of the following:

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- (a) general changes in regulatory practice or industry practices relating to the kind of subject of complaint;
  - (b) possible means of dealing with specific problems arising in relation to the particular subject of the complaint.
- (4) The Private Health Insurance Ombudsman may make recommendations under paragraph (3)(b) concerning health care providers or a particular health care provider only to the extent to which the recommendations relate to:
  - (a) the application of a private health insurance arrangement or a class of private health insurance arrangements to services or goods provided, or goods manufactured or supplied, by that kind of health care provider; or
  - (b) a private health insurance arrangement or a class of private health insurance arrangements to which that kind of health care provider may be party.
- (5) Before reporting to the Health Minister under this section, the Private Health Insurance Ombudsman must:
  - (a) inform the subject of the complaint that the Private Health Insurance Ombudsman proposes to make the report and of the nature of any criticism of the subject's conduct that will appear in the report; and
  - (b) invite the subject to comment on such criticism, before the end of the period specified in the invitation.

The Private Health Insurance Ombudsman must include in the report any comments made by the subject.

**Subdivision F—Miscellaneous**

**20S Complainant to be kept informed**

- (1) The Private Health Insurance Ombudsman must keep the complainant informed about the Private Health Insurance Ombudsman's handling of the complaint.

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- (2) The Private Health Insurance Ombudsman must inform the complainant in writing of:
- (a) any action taken by a private health insurer, a health care provider or private health insurance broker as a result of the Private Health Insurance Ombudsman's handling of the complaint; and
  - (b) any recommendations made by the Private Health Insurance Ombudsman under section 20Q;
- and the reasons for the action or recommendation.

## **Division 3A—Inspection and audit**

### **Subdivision A—Inspection and audit**

#### **20SA Powers to conduct inspections and audits**

The Private Health Insurance Ombudsman may:

- (a) at any reasonable time of the day, enter:
  - (i) a place occupied by a private health insurer or private health insurance broker; or
  - (ii) a place occupied by a person predominantly for the purpose of performing services for, or on behalf of, a private health insurer or private health insurance broker; or
  - (iii) a place where documents or other records relating to a private health insurer, a private health insurance broker or the carrying on of health insurance business are kept; and
- (b) may exercise the following powers in relation to the place:
  - (i) the power to inspect any documents or other records to verify evidence provided in relation to a complaint made under Division 3;
  - (ii) the power to take extracts from, or make copies of, any such document or other record.

Note: See also sections 20ZHA and 20ZHB.

## **Subdivision B—Recommendations and reports**

### **20SB Recommendation and reporting powers as a result of inspection or audit**

#### *Recommendations to insurers or brokers*

- (1) After exercising powers under section 20SA, the Private Health Insurance Ombudsman may make recommendations under this section.
- (2) The Private Health Insurance Ombudsman may recommend either or both of the following:
  - (a) to a private health insurer, that the insurer take a specific course of action or make changes to its rules, or both;
  - (b) to a health care provider or private health insurance broker, that the provider or broker take a specific course of action.
- (3) The Private Health Insurance Ombudsman may, by written notice given to the person to whom the recommendation was made, or an officer of that person, require the person to report to the Private Health Insurance Ombudsman, before action is taken to give effect to the recommendation, on the action proposed to be taken. The notice must specify the period within which the report is to be given.

#### *Reports to the Health Minister*

- (4) After exercising powers under section 20SA, the Private Health Insurance Ombudsman may:
  - (a) report to the Health Minister on any recommendations made to a private health insurer or private health insurance broker and any responses to those recommendations; or
  - (b) report to the Health Minister on any recommendations to general changes in regulatory practice or industry practices relating to the kind of issues raised as a result of the exercise of those powers.

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- (5) If the Private Health Insurance Ombudsman provides a report to the Health Minister, as mentioned in subsection (4):
  - (a) the report must refer to the Private Health Insurance Ombudsman's exercise of powers under section 20SA; and
  - (b) the Private Health Insurance Ombudsman must notify any private health insurer or private health insurance broker named in a report provided to the Health Minister of that fact, unless doing so would, or could be reasonably expected to, prejudice the conduct of a current or pending investigation.

## **Division 4—Investigations**

### **Subdivision A—Investigations**

#### **20T Initiating investigations**

- (1) The Private Health Insurance Ombudsman may, on his or her own initiative, investigate the practices and procedures of a private health insurer or a private health insurance broker.
- (2) The Private Health Insurance Ombudsman may, on his or her own initiative, investigate the practices and procedures of a health care provider together with an investigation of a private health insurer under subsection (1), if:
  - (a) the investigation relates to a matter arising out of or connected with a private health insurance arrangement; and
  - (b) the practices and procedures relate to either or both of the following:
    - (i) the application of a private health insurance arrangement to services or goods provided, or to goods manufactured or supplied, by the health care provider;
    - (ii) a private health insurance arrangement to which the health care provider is, or was in the period to be investigated, a party; and
  - (c) the Private Health Insurance Ombudsman considers, having regard to the object of this Part, that investigation of the health care provider together with the private health insurer is necessary or appropriate in order to consider the matter effectively.

Note: An investigation may include mediation (see section 20X).

#### **20TA Powers to inspect documents etc.**

For the purposes of conducting an investigation under this Division, the Private Health Insurance Ombudsman may:

- (a) at any reasonable time of the day, enter:

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- (i) a place occupied by a private health insurer or private health insurance broker; or
  - (ii) a place occupied by a person predominantly for the purpose of performing services for, or on behalf of, a private health insurer or private health insurance broker; or
  - (iii) a place where documents or other records relating to a private health insurer, a private health insurance broker or the carrying on of health insurance business are kept; and
- (b) exercise the following powers:
- (i) the power to inspect any documents or other records;
  - (ii) the power to take extracts from, or make copies of, any such document or other record.

Note: See also sections 20ZHA and 20ZHB.

**Subdivision B—Recommendations and reports**

**20U Recommendations as a result of investigation**

- (1) The Private Health Insurance Ombudsman may make recommendations under this section after conducting an investigation under this Division.
- (2) The Private Health Insurance Ombudsman may recommend either or both of the following:
  - (a) to a private health insurer, that the insurer take a specific course of action or make changes to its rules, or both;
  - (b) to a health care provider or private health insurance broker, that the provider or broker take a specific course of action.
- (3) The Private Health Insurance Ombudsman may, by written notice given to the person to whom the recommendation was made, or an officer of that person, require the person to report to the Private Health Insurance Ombudsman, before action is taken to give effect to the recommendation, on the action proposed to be taken. The



notice must specify the period within which the report is to be given.

**20V Report to Health Minister on outcome of investigations under this Division**

- (1) The Private Health Insurance Ombudsman may, after completing an investigation under section 20T:
  - (a) report to the Health Minister on the outcome of the investigation and any mediation conducted as part of the investigation (including any recommendations made to the subject of the investigation); and
  - (b) make recommendations to the Health Minister:
    - (i) concerning general changes in regulatory practice or industry practices relating to that kind of subject of investigation; or
    - (ii) concerning possible means of dealing with specific problems arising in relation to the particular subject of the investigation.
- (2) The Private Health Insurance Ombudsman may make recommendations under paragraph (1)(b) concerning health care providers or a particular health care provider only to the extent to which the recommendations relate to:
  - (a) the application of a private health insurance arrangement or a class of private health insurance arrangements to services or goods provided, or to goods manufactured or supplied, by that kind of health care provider; or
  - (b) a private health insurance arrangement or a class of private health insurance arrangements to which that kind of health care provider may be party.
- (3) Before reporting to the Health Minister under this section, the Private Health Insurance Ombudsman must:
  - (a) inform the subject of the investigation that the Private Health Insurance Ombudsman proposes to make the report and of the nature of any criticism of the conduct of the subject that will appear in the report; and

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- (b) invite the subject to comment on such criticism, before the end of the period specified in the invitation.

The Private Health Insurance Ombudsman must include in the report any comments made by the subject.

**20W Consultation with Australian Competition and Consumer Commission**

If the Private Health Insurance Ombudsman considers, as a result of an investigation under this Division, that there might have been conduct in the nature of a restrictive trade practice for the purposes of the *Competition and Consumer Act 2010*, the Private Health Insurance Ombudsman must, before reporting on the matter under section 20V:

- (a) consult with the Australian Competition and Consumer Commission; and
- (b) have regard to the advice of the Australian Competition and Consumer Commission on the matter.

## **Division 5—Mediation**

### **20X Conducting mediation**

- (1) The Private Health Insurance Ombudsman may, at any time, try to settle a complaint made under Division 3 by mediating between the complainant and the subject of the complaint.
- (2) The Private Health Insurance Ombudsman may, if he or she considers it appropriate and consistent with the object of this Part, try to resolve a matter being investigated under Division 4 by mediating between a private health insurer and a health care provider.
- (3) A party's participation in the mediation may be:
  - (a) voluntary; or
  - (b) required by a direction given to the party by the Private Health Insurance Ombudsman under section 20Y.

Note: If mediating a complaint, the Private Health Insurance Ombudsman must have the complainant's agreement to act under this section and cannot continue if the complaint is withdrawn (see subsections 20J(2) and (3)).

### **20Y Participation in mediation may be compulsory**

- (1) The Private Health Insurance Ombudsman may direct:
  - (a) the subject of a complaint made under Division 3; or
  - (b) a private health insurer that is the subject of an investigation under Division 4; or
  - (c) a health care provider that is the subject of an investigation under Division 4;to participate in mediation under section 20X.
- (2) The Private Health Insurance Ombudsman Rules may prescribe matters to which the Private Health Insurance Ombudsman is to have regard when deciding whether or not to give a direction under subsection (1).

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- (3) The direction must:
- (a) be in writing; and
  - (b) name either or both of the following:
    - (i) the subject of the complaint or investigation;
    - (ii) an officer, or officers, of that subject; and
  - (c) be given to those named in it; and
  - (d) specify the time of the mediation, which must not be earlier than 14 days after the day the direction is given; and
  - (e) specify the place of the mediation.

Note: Subsection 33(3) of the *Acts Interpretation Act 1901* has the effect that the direction may be varied or revoked.

- (4) A person commits an offence if:
- (a) the person is directed under subsection (1) to participate in mediation; and
  - (b) the other party to the mediation attends, or was willing to attend, the mediation; and
  - (c) the person, or, if the person is a medical practitioner who has appointed a representative in relation to the mediation under section 20Z, the person's representative, fails to participate in part or all of the mediation.

Penalty: 10 penalty units.

**20Z Medical practitioners may appoint representatives**

- (1) If the Private Health Insurance Ombudsman directs a medical practitioner under subsection 20Y(1) to participate in mediation, the medical practitioner may appoint an individual to participate in the mediation on the practitioner's behalf.
- (2) The appointment must be:
- (a) in writing; and
  - (b) signed by the medical practitioner; and
  - (c) made before the mediation starts.

**20ZA Conduct of compulsory mediation**

- (1) If the Private Health Insurance Ombudsman directs a party to participate in mediation, the mediation may be conducted by:
  - (a) the Private Health Insurance Ombudsman; or
  - (b) a person appointed by the Private Health Insurance Ombudsman under section 20ZC.
- (2) Mediation in which a party is directed to participate ceases:
  - (a) if the parties agree to settle the matter; or
  - (b) if the Private Health Insurance Ombudsman concludes that the matter cannot be settled by mediation.
- (3) The Private Health Insurance Ombudsman Rules may prescribe matters to which the Private Health Insurance Ombudsman is to have regard before concluding that a matter cannot be settled by mediation.
- (4) A person appointed by the Private Health Insurance Ombudsman under section 20ZC to conduct mediation must, as soon as practicable after the mediation is conducted or should have been conducted, report to the Private Health Insurance Ombudsman about:
  - (a) whether the mediation was conducted; and
  - (b) if the mediation failed—the reasons for the failure; and
  - (c) if the parties agreed to settle the complaint—the terms of the settlement, including any action to be taken.

**20ZB Admissibility of things said in mediation**

- (1) Evidence of anything said, or any admission made, during participation in mediation under section 20X is not admissible:
  - (a) in any court (whether exercising federal jurisdiction or not); or
  - (b) in any proceedings before a person authorised by a law of the Commonwealth or of a State or Territory, or by the consent of the parties, to hear evidence.

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- (2) This section applies whether or not a party is directed to participate in the mediation.

**20ZC Appointment of mediators**

- (1) The Private Health Insurance Ombudsman may appoint a person to conduct mediation in which a person is or will be directed to participate under section 20Y.
- (2) The Private Health Insurance Ombudsman Rules may prescribe matters to which the Private Health Insurance Ombudsman is to have regard when appointing a person under this section.
- (3) The person is appointed for the period specified by the Private Health Insurance Ombudsman in the instrument of appointment.
- (4) Subject to section 35, the person is not personally liable to an action or other proceeding for damages in relation to anything done or omitted to be done, reasonably and in good faith, in or in relation to the conduct of the mediation.

## **Division 6—Information-gathering**

### **20ZD Information-gathering—requests for PHI records and information**

- (1) The Private Health Insurance Ombudsman may, in accordance with this section, obtain such information, and make such inquiries, as he or she thinks fit.
- (2) The Private Health Insurance Ombudsman may request a person to give the Private Health Insurance Ombudsman a PHI record or information under this section only if the Private Health Insurance Ombudsman could require the person to give the PHI record or information to the Private Health Insurance Ombudsman under section 20ZE.

Note: Section 20ZF deals with matters such as the person's exposure to penalty and the admissibility of such information or PHI records.

### **20ZE Information-gathering—notices requiring PHI records and information**

- (1) If the Private Health Insurance Ombudsman reasonably believes that a person is capable of giving information or PHI records relevant to:
  - (a) deciding if, and how, to deal with a complaint made under Division 3; or
  - (b) mediating a complaint made under Division 3; or
  - (c) investigating a complaint made under Division 3; or
  - (d) evaluating action proposed by the subject of a complaint after referral of the complaint to the subject under Subdivision C of Division 3; or
  - (e) an investigation under Division 4 (including mediating as part of the investigation under Division 5);the Private Health Insurance Ombudsman may, by notice in writing given to the person, require the person to give the Private Health Insurance Ombudsman the information or the PHI records (relating

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to the complaint or the practices and procedures being investigated) that are specified in the notice, before the end of the period specified in the notice.

- (2) The Private Health Insurance Ombudsman may give one or more notices under subsection (1) in relation to a complaint or investigation, at any time while the Private Health Insurance Ombudsman is dealing with the complaint or investigation.

*Self-incrimination*

- (3) A person is not excused from giving information or a PHI record when required to do so under subsection (1) on the ground that the information or PHI record might tend to incriminate the person or expose the person to a penalty.

Note: Section 20ZF deals with matters such as the person's exposure to penalty and the admissibility of such information or PHI records.

**20ZF Information-gathering—compliance with requests and notices**

- (1) This section applies if a person gives information or a PHI record to the Private Health Insurance Ombudsman:
- (a) in compliance with a request under section 20ZD or a notice under section 20ZE; or
  - (b) reasonably believing that this would assist the Private Health Insurance Ombudsman in:
    - (i) mediating a complaint under Division 5 or otherwise dealing with it under Subdivision B or D of Division 3; or
    - (ii) referring a complaint under section 20K or 20L; or
    - (iii) making a decision under section 20M not to deal, or not to continue to deal, with a complaint; or
    - (iv) investigating a matter under section 20T.
- (2) The person is not liable to any penalty under the provisions of any other enactment by reason of his or her giving the information or PHI record to the Private Health Insurance Ombudsman.



- (3) For the purposes of:
- (a) the *Privacy Act 1988*; and
  - (b) any provision of a law of a State or Territory that provides that personal information contained in a record or information may be disclosed if the disclosure is authorised by law;
- the giving of the information or PHI record to the Private Health Insurance Ombudsman is taken to be authorised by this Act.
- (4) This section does not otherwise affect a claim of legal professional privilege that anyone may make in relation to the information or PHI record.

*Self-incrimination etc.*

- (5) If the information or PHI record is given by an individual and, by giving the information or the PHI record, the individual:
- (a) contravenes any other enactment; or
  - (b) might tend to incriminate himself or herself or make himself or herself liable to a penalty; or
  - (c) discloses a legal advice given to the subject of a complaint made under Division 3 or an investigation under Division 4; or
  - (d) if the subject of a complaint made under Division 3 or an investigation under Division 4 is an individual—discloses a privileged communication between the subject and another person or body; or
  - (e) if the subject of a complaint made under Division 3 or an investigation under Division 4 is not an individual—discloses a privileged communication between:
    - (i) an officer of the subject and another person or body; or
    - (ii) a person who is employed in the service of, or engaged to provide services to, the subject, and another person or body; or
  - (f) otherwise acts contrary to the public interest;
- then none of the following are admissible in evidence against the individual in any proceedings, other than proceedings for an

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offence against section 137.1, 137.2 or 149.1 of the *Criminal Code* that relates to this Act:

- (g) the information or PHI record given;
  - (h) giving the information or PHI record;
  - (i) any information, document or thing obtained as a direct or indirect consequence of giving the information or PHI record.
- (6) In this section:

***privileged communication*** means a communication protected against disclosure by legal professional privilege.

## **Division 7—Provisions relating to the Private Health Insurance Ombudsman**

### **20ZG Reports of the Private Health Insurance Ombudsman**

#### *Annual reports*

- (1) As soon as practicable after the end of each financial year, the Private Health Insurance Ombudsman must give an annual report to the Minister, for presentation to the Parliament, on the operations of the Private Health Insurance Ombudsman during the financial year.

#### *Additional reports*

- (2) The Private Health Insurance Ombudsman may, from time to time, give the Minister, for presentation to the Parliament, a report:
  - (a) on the operations of the Private Health Insurance Ombudsman during a part of a year; or
  - (b) in relation to any matter relating to, or arising in connection with, the exercise of the powers, or the performance of the functions, of the Private Health Insurance Ombudsman.
- (3) Subsections (1) and (2) do not affect the powers and duties of the Private Health Insurance Ombudsman under paragraph 20D(c) or (g) or section 20R or 20V.

#### *Tabling and inclusion in other reports*

- (4) If the Private Health Insurance Ombudsman gives a report to the Minister under subsection (1) or (2), the Minister must cause the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.
- (5) A report relating to the operations of the Private Health Insurance Ombudsman during a period may be included in a report under:
  - (a) section 19; or

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(b) section 46 of the *Public Governance, Performance and Accountability Act 2013*;  
relating to the operations of the Ombudsman during that period.

*Content of report*

- (6) A report relating to the operations of the Private Health Insurance Ombudsman during a period must include the following:
- (a) the number and nature of complaints received under section 20E;
  - (b) the outcomes of any actions taken, recommendations made or investigations conducted in relation to such complaints;
  - (c) the outcomes in relation to complaints referred to another body under section 20L;
  - (ca) a summary of the exercise of powers during the period by the Private Health Insurance Ombudsman under section 20SA;
  - (d) the number and nature of investigations (if any) conducted by the Private Health Insurance Ombudsman under section 20T;
  - (e) the outcomes of investigations conducted under section 20T.

## **Division 8—Miscellaneous**

### **20ZH Victimisation**

A person commits an offence if:

- (a) the person subjects, or threatens to subject, another person to detriment; and
- (b) the person does so because the other person has made, or proposes to make, a complaint under this Part.

Penalty: Imprisonment for 6 months.

### **20ZHA Announcement before entry**

- (1) This section applies if the Private Health Insurance Ombudsman:
  - (a) enters a place mentioned in paragraph 20SA(a) for the purposes of conducting an inspection and audit; or
  - (b) enters a place mentioned in paragraph 20TA(a) for the purposes of conducting an investigation under section 20T.
- (1A) Before entering the place, the Private Health Insurance Ombudsman must give the occupier of the place at least 48 hours' written notice of the Private Health Insurance Ombudsman's intention to enter the place.
- (2) Before entering the place, the Private Health Insurance Ombudsman must show the Private Health Insurance Ombudsman's identity card to the occupier of the place, or to another person who apparently represents the occupier, if the occupier or other person is present at the place.

Note: See also section 20ZIA.

### **20ZHB Responsibility to provide facilities and assistance**

- (1) A person commits an offence if:
  - (a) the person is the occupier of, or is in charge of, a place mentioned in paragraph 20SA(a); and

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- (b) the Private Health Insurance Ombudsman exercises, or purports to exercise, the powers mentioned in paragraph 20SA(b) in relation to the place; and
- (c) the person does not provide the Private Health Insurance Ombudsman with reasonable facilities and assistance for the effective exercise of those powers.

Penalty: 30 penalty units.

- (2) A person commits an offence if:
  - (a) the person is the occupier of, or is in charge of, a place entered mentioned in paragraph 20TA(a); and
  - (b) the Private Health Insurance Ombudsman exercises, or purports to exercise, the powers mentioned in paragraph 20TA(b) in relation to the place; and
  - (c) the person does not provide the Private Health Insurance Ombudsman with reasonable facilities and assistance for the effective exercise of those powers.

Penalty: 30 penalty units.

**20ZI Giving information about the Private Health Insurance Ombudsman**

- (1) The Private Health Insurance Ombudsman may, by written notice given to private health insurers, require private health insurers:
  - (a) to give adults insured under the insurers' products the information specified in the notice, in the manner specified in the notice; or
  - (b) to publish the information specified in the notice, in the manner specified in the notice.
- (2) A notice must only specify information that relates to the functions of the Private Health Insurance Ombudsman.
- (3) If more than one adult is insured under a single complying health insurance policy of a private health insurer, the insurer is taken to comply with a notice if the insurer complies with the notice in relation to only one of those adults.

### **20ZIA Identity cards**

- (1) The Private Health Insurance Ombudsman must issue an identity card to a person who exercises the powers mentioned in paragraph 20SA(b) or 20TA(b).
- (2) The identity card must:
  - (a) be in the form approved by the Private Health Insurance Ombudsman; and
  - (b) contain a photograph that is no more than 5 years old of the person to whom it is issued.
- (3) A person must carry an identity card at all times when exercising powers under section 20SA or 20TA.
- (4) A person commits an offence of strict liability if:
  - (a) the person ceases to be:
    - (i) a member of staff mentioned in section 31; or
    - (ii) a person to whom the Private Health Insurance Ombudsman has delegated powers under section 34 in relation to section 20SA or 20TA; and
  - (b) the person does not, within 14 days of so ceasing, return the person's identity card to the Private Health Insurance Ombudsman.

Penalty: 1 penalty unit.

- (5) Subsection (4) does not apply if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

### **20ZJ Private Health Insurance Ombudsman Rules**

- (1) The Ombudsman may, by legislative instrument (and subject to subsection (2)), make rules prescribing matters:
  - (a) required or permitted by this Part to be prescribed by the rules; or

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- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Part.
- (2) To avoid doubt, the rules may not do the following:
  - (a) create an offence or civil penalty provision;
  - (b) provide:
    - (i) powers of arrest or detention; or
    - (ii) powers relating to entry, search or seizure;
  - (c) impose a tax;
  - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
  - (e) amend this Act.

**20ZK Application of certain provisions of the Act**

- (1) Subject to this section, the following provisions apply in relation to the Private Health Insurance Ombudsman as if a reference in any of those provisions to the Ombudsman were a reference to the Private Health Insurance Ombudsman:
  - (a) the definition of *authorized person* in subsection 3(1);
  - (b) section 7 (complaints);
  - (c) section 11A (powers of Federal Court of Australia);
  - (d) subsection 31(1) (staff);
  - (e) section 33 (Ombudsman not to be sued);
  - (f) subsection 34(7) (delegation from State Ombudsman);
  - (g) section 35 (officers to observe confidentiality);
  - (h) section 35AA (disclosure of information and documents to Integrity Commissioner);
  - (i) section 35A (disclosure of information by Ombudsman);
  - (j) section 35B (disclosure of ACC information);
  - (k) section 35C (disclosure of ACLEI information);
  - (l) section 36 (offences);
  - (m) section 37 (protection from civil actions).
- (2) The following provisions apply in accordance with this subsection:



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- (a) section 7 applies as if a reference to investigating a complaint were a reference to dealing with a complaint as mentioned in subsection 20J(1);
- (b) section 11A applies as if:
  - (i) the reference to a requirement made by the Ombudsman by notice under section 9 to furnish information, to produce documents or other records or to attend before the Ombudsman to answer questions in relation to an investigation under this Act were a reference to a requirement made by the Private Health Insurance Ombudsman by notice under section 20ZE to give information or PHI records in relation to a complaint made under Division 3 of Part IID or an investigation under Division 4 of Part IID; and
  - (ii) the reference to an order directing the person to furnish the information, produce the documents or attend before the Ombudsman to answer questions were a reference to an order directing the person to give the information or PHI records to the Private Health Insurance Ombudsman;
- (c) subparagraph 35(3)(b)(i) applies, in relation to information relating to a complaint made under Division 3 of Part IID or an investigation under Division 4 of Part IID the subject of which is not an individual, as if:
  - (i) the reference to information given by an officer of a Department or prescribed authority in the performance of his or her duties were a reference to information given by an officer of the subject or a person employed in the service of, or engaged to provide services to, the subject; and
  - (ii) the reference to the principal officer of the Department or authority or the responsible Minister were a reference to the individual primarily responsible for the management of the subject;
- (d) subsection 35(6A) applies as if the reference to paragraph 6(4D)(e) or 6(18)(d) were a reference to paragraph 20K(4)(b) or 20L(4)(b) or section 20W;

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- (e) section 35AA applies as if the reference to the investigation of an action as mentioned in paragraph 5(1)(b) were a reference to an investigation under Division 4 of Part IID or mediation undertaken to try to resolve a matter being investigated under Division 4 of Part IID;
- (f) section 35A applies as if a reference to an investigation were a reference to:
  - (i) dealing with a complaint as mentioned in subsection 20J(1); or
  - (ii) an investigation under Division 4 of Part IID or mediation undertaken to try to resolve a matter being investigated under Division 4 of Part IID;
- (g) the definition of *listed disclosure method* in subsections 35B(2) and 35C(2) applies as if:
  - (i) a reference to Division 2 of Part II were a reference to section 20R, 20V or 20ZG; and
  - (ii) a reference to section 6 or 6A were a reference to section 20K or 20L;
- (h) section 37 applies as if the reference to a requirement under section 9 were a reference to a requirement under section 20ZE.

## **Part IIE—VET Student Loans Ombudsman**

### **Division 1—Establishment and functions**

#### **20ZL Establishment of office of VET Student Loans Ombudsman**

- (1) For the purposes of this Act, there is to be a VET Student Loans Ombudsman.
- (2) The office of VET Student Loans Ombudsman is to be held by the person who holds the office of Commonwealth Ombudsman.
- (3) The reference in subsection (2) to the person who holds the office of Commonwealth Ombudsman includes a reference to a person for the time being acting in that office because of an appointment under section 29.

#### **20ZM Functions of VET Student Loans Ombudsman**

- (1) The functions of the VET Student Loans Ombudsman are as follows:
  - (a) to conduct investigations, and make recommendations and other reports, under this Part in relation to the following:
    - (i) VET loan assistance;
    - (ii) compliance by VET student loan scheme providers with the *VET Student Loans Act 2016*, the *Higher Education Support Act 2003* and any legislative instruments under either of those Acts;
  - (b) to give VET student loan scheme providers advice and training about the best practice for the handling of complaints made to them by VET students in relation to VET loan assistance;
  - (c) to develop and promote, and to review from time to time, a code of practice relating to the following:

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- (i) the provision of services to VET students by VET student loan scheme providers in relation to VET loan assistance;
- (ii) the handling of complaints made by VET students to VET student loan scheme providers in relation to VET loan assistance;
- (ca) to make recommendations, to the Secretary of the Department administered by the Minister administering the *Higher Education Support Act 2003*, about the re-crediting of the HELP balances of particular persons or classes of persons under clauses 46A and 46AA of Schedule 1A of that Act;
- (d) to perform any other function conferred on the VET Student Loans Ombudsman by this Act or another Act, or a legislative instrument made under this Act or another Act.

Note: The VET Student Loans Ombudsman may conduct an investigation in relation to a complaint, or on his or her own initiative (see section 20ZO).

- (2) In developing or reviewing a code of practice for the purposes of paragraph (1)(c), the VET Student Loans Ombudsman may consult with the following:
  - (a) VET student loan scheme providers;
  - (b) vocational education and training industry groups;
  - (c) vocational education and training student bodies;
  - (d) Commonwealth, State and Territory agencies and other bodies with responsibilities in relation to vocational education and training, including the following:
    - (i) the Department responsible for the administration of the *VET Student Loans Act 2016*;
    - (ii) the National VET Regulator within the meaning of the *National Vocational Education and Training Regulator Act 2011*;
    - (iii) State and Territory bodies with responsibility for registering vocational education and training providers.
- (3) A code of practice developed for the purposes of paragraph (1)(c) is not a legislative instrument.

(4) **VET loan assistance** means:

- (a) a VET student loan within the meaning of the *VET Student Loans Act 2016*; or
- (b) VET FEE-HELP assistance within the meaning of the *Higher Education Support Act 2003*.

Note: This Part does not prevent actions taken by a Department, the Secretary of a Department or a Minister in relation to the provision of VET loan assistance from being investigated by the Commonwealth Ombudsman under provisions of this Act other than this Part: see section 20ZZA.

**20ZN Performance of functions**

- (1) The VET Student Loans Ombudsman is not required to act in a formal manner in the performance of his or her functions, unless otherwise required to do so under this Act, or any other Act or legislative instrument.
- (2) In the performance of his or her functions, the VET Student Loans Ombudsman may, subject to this Act, and any other Act or legislative instrument:
  - (a) inform himself or herself on any matter in any way he or she thinks fit; and
  - (b) consult with anyone he or she thinks fit; and
  - (c) receive written or oral information or submissions.
- (3) The VET Student Loans Ombudsman has power to do all things necessary or convenient to be done for, or in connection with, the performance of his or her functions.

## **Division 2—Investigations and complaints**

### **20ZO Investigations**

In performing his or her functions, the VET Student Loans Ombudsman may conduct an investigation:

- (a) in relation to a complaint made under section 20ZP; or
- (b) on his or her own initiative.

### **20ZP Complaints**

A complaint may be made to the VET Student Loans Ombudsman against a VET student loan scheme provider:

- (a) by a VET student; or
- (b) on behalf of a VET student.

### **20ZQ Referral of complaints to other bodies**

- (1) If, in the opinion of the VET Student Loans Ombudsman, a complaint raises a matter that could be dealt with more effectively or conveniently by another body, the VET Student Loans Ombudsman must refer the matter to that body.
- (2) If the VET Student Loans Ombudsman refers the matter to the other body, the VET Student Loans Ombudsman must:
  - (a) give notice to the complainant of the referral; and
  - (b) give the other body any information or documents that relate to the complaint and that are in the possession or under the control of the VET Student Loans Ombudsman.

### **20ZR Deciding not to investigate complaints**

The VET Student Loans Ombudsman may decide not to investigate, or not to further investigate, a complaint with respect to an action by a VET student loan scheme provider if he or she is of the opinion that:

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- (a) the complaint is frivolous or vexatious, or was not made in good faith; or
- (b) the complainant does not have a sufficient interest in the subject matter of the complaint; or
- (c) an investigation, or further investigation, of the action is not warranted having regard to all the circumstances; or
- (d) the complainant has not yet raised the subject matter of the complaint with the VET student loan scheme provider; or
- (e) the action came to the complainant's knowledge more than 3 years before the complaint was made; or
- (f) the complainant has, or had, a right to cause the action to be reviewed by a court or by a tribunal constituted by or under an enactment but has not exercised that right.

## **Division 3—Other powers of the VET Student Loans Ombudsman**

### **20ZS Application of Act to VET Student Loans Ombudsman**

- (1) Each provision of this Act specified in Column 1 of this table applies in relation to the VET Student Loans Ombudsman in accordance with the table:

<b>Application of Act to VET Student Loans Ombudsman</b>			
	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>This provision of this Act ...</b>	<b>applies in relation to the VET Student Loans Ombudsman as if any reference in that provision to ...</b>	<b>were a reference to ...</b>
1	A provision covered by subsection (2) of this section	the Ombudsman, or the Commonwealth Ombudsman	the VET Student Loans Ombudsman.
2	A provision covered by subsection (2) of this section	a Department or a prescribed authority	a VET student loan scheme provider.
3	A provision covered by subsection (2) of this section	the principal officer of a Department or a prescribed authority	the VET student loan principal executive officer of a VET student loan scheme provider.
4	A provision covered by subsection (2) of this section	an officer of a Department or a prescribed authority	a VET student loan officer of a VET student loan scheme provider.
5	Subsection 7A(1) (preliminary inquiries)	paragraph 5(1)(b) (functions of Ombudsman)	paragraph 20ZO(b) (investigations).



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<b>Application of Act to VET Student Loans Ombudsman</b>			
	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>This provision of this Act ...</b>	<b>applies in relation to the VET Student Loans Ombudsman as if any reference in that provision to ...</b>	<b>were a reference to ...</b>
6	Subsection 8A(1) (investigations by Commonwealth and State Ombudsmen)	a matter of administration	a function of the VET Student Loans Ombudsman.
7	subsection 11A(4) (powers of the Federal Court of Australia)	the Minister	the Minister administering this Act and the Minister administering the <i>VET Student Loans Act 2016</i> .
8	subsections 12(4) and (5) (complainant and Department etc. to be informed)	section 15 (reports by Ombudsman)	section 20ZV (reports to VET student loan scheme providers).
9	subsection 35(6A) (officers to observe confidentiality)	paragraph 6(4D)(e) or 6(18)(d) (discretion not to investigate certain complaints)	paragraph 20ZQ(2)(b) (referral of complaints to other bodies).
10	paragraph 35AA(1)(a) (disclosure of information and documents to Integrity Commissioner)	paragraph 5(1)(b) (functions of Ombudsman)	paragraph 20ZO(b) (investigations).
11	subsections 35B(2) and 35C(2)(paragraph (a) of the definition of <i>listed disclosure method</i> ) (disclosure of ACC and ACLEI information)	Division 2 of Part II (reports)	Division 4 of this Part (reporting by the VET Student Loans Ombudsman).

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Application of Act to VET Student Loans Ombudsman			
	Column 1	Column 2	Column 3
Item	This provision of this Act ...	applies in relation to the VET Student Loans Ombudsman as if any reference in that provision to ...	were a reference to ...
12	subsections 35B(2) and 35C(2) (paragraph (b) of the definitions of <i>listed disclosure method</i> ) (disclosure of ACC and ACLEI information)	section 6 or 6A (discretion not to investigate certain complaints; transfer of complaints about ACC)	paragraph 20ZQ(2)(b) (referral of complaints to other bodies).

(2) This subsection covers the following provisions:

- (a) the definition of *authorized person* in subsection 3(1) (interpretation);
- (b) section 7 (complaints);
- (c) section 7A (preliminary inquiries);
- (d) section 8 (investigations), other than:
  - (i) paragraph (7A)(b); and
  - (ii) subsections (8) to (12);
- (e) section 8A (investigations by Commonwealth and State Ombudsmen), other than subsections (1A) to (1D);
- (f) section 9 (power to obtain information and documents), other than:
  - (i) paragraphs (1AA)(ab) and (ac); and
  - (ii) paragraph (4)(ab);
- (g) section 11A (powers of Federal Court of Australia), other than subsections (1) and (5);
- (h) section 12 (complainant and Department etc. to be informed);
- (i) section 13 (power to examine witnesses);
- (j) section 31 (staff), other than subsection (2);
- (k) Part IV (miscellaneous), other than the following:

- (i) subsections 34(1) to (2C) (delegation);
  - (ii) paragraph 35(1)(e) and (f) and subparagraph (3)(b)(ia) (officers to observe confidentiality);
  - (iii) subsection 35A(3) (disclosure of information by Ombudsman).
- (3) Section 14 (power to enter premises) applies in relation to the VET Student Loans Ombudsman as if paragraph 14(a) referred to:
  - (a) a place that is occupied by a VET student loan scheme provider; or
  - (b) a place that is occupied by a VET student loan scheme officer of a VET student loan scheme provider predominantly for the purposes of:
    - (i) carrying out the officer's powers, duties and functions as an employee in the provider's service, or a member of the provider's staff; or
    - (ii) performing services for or on behalf of the provider.
- (4) A ***VET student loan officer*** of a VET student loan scheme provider is a person who:
  - (a) is employed in the service of the provider; or
  - (b) is a member of the staff of the provider, whether or not the person is employed by the provider; or
  - (c) performs services for or on behalf of the provider.
- (5) The ***VET student loan principal executive officer*** of a VET student loan scheme provider is the person who has executive responsibility for the operation of the provider.

## **20ZT Duty to accord procedural fairness**

The VET Student Loans Ombudsman must comply with the rules of procedural fairness when exercising a power under this Act.

Example 1: If the VET Student Loans Ombudsman sets out a critical opinion of a person in a report under section 20ZV (reports to VET student loan scheme providers), he or she must give that person an opportunity to appear and make submissions to him or her (see subsection 8(5)).

**Part IIE** VET Student Loans Ombudsman

**Division 3** Other powers of the VET Student Loans Ombudsman

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Example 2: The VET Student Loans Ombudsman must accord procedural fairness to a person if he or she sets out a critical opinion of the person:

- (a) in disclosing information, or making a statement, under subsection 35A(1) (disclosure of information by Ombudsman); or
- (b) in referring to an investigation in a report under section 20ZX (annual and other reports by the VET Student Loans Ombudsman).

## **Division 4—Reporting by the VET Student Loans Ombudsman**

### **20ZU Disclosure of identifying information**

The VET Student Loans Ombudsman must not, in referring to an investigation in a report under section 20ZV or 20ZX, disclose the name of a complainant who is an individual, or any other matter that would enable such an individual to be identified, unless it is fair and reasonable in all the circumstances to do so.

### **20ZV Reports to VET student loan scheme providers**

- (1) This section applies if:
  - (a) an investigation under this Act into action taken by a VET student loan scheme provider has been completed; and
  - (b) the VET Student Loans Ombudsman is of the opinion that the action taken:
    - (i) appears to have been contrary to law; or
    - (ii) was unreasonable, unjust, oppressive or improperly discriminatory; or
    - (iii) was otherwise, in all the circumstances, wrong; and
  - (c) the VET Student Loans Ombudsman is of the opinion that:
    - (i) some particular action could be, and should be, taken to rectify, mitigate or alter the effects of the action taken; or
    - (ii) a policy or practice on which the action taken was based should be altered; or
    - (iii) reasons should have been, but were not, given for the action taken; or
    - (iv) any other thing should be done in relation to the action taken.
- (2) The VET Student Loans Ombudsman must report accordingly to the VET student loan scheme provider.

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- (3) The VET Student Loans Ombudsman:
  - (a) must include in the report his or her reasons for the opinions specified in the report; and
  - (b) may also include in the report any recommendations he or she thinks fit to make.
- (4) The VET Student Loans Ombudsman may ask the VET student loan scheme provider to give him or her, within a specified time, particulars of any action that the VET student loan scheme provider proposes to take with respect to the matters and recommendations included in the report.
- (5) The VET student loan scheme provider may give the VET Student Loans Ombudsman comments about the report.
- (6) The VET Student Loans Ombudsman must give the Secretary of the Department administered by the Minister administering the *VET Student Loans Act 2016* a copy of:
  - (a) the report; and
  - (b) any comments given under subsection (5).
- (7) The VET Student Loans Ombudsman may also give to that Minister a copy of:
  - (a) the report; and
  - (b) any comments given under subsection (5).

**20ZW Minister to table reports about VET student loan scheme providers in Parliament**

- (1) This section applies if:
  - (a) the VET Student Loans Ombudsman has given a report under section 20ZV to a VET student loan scheme provider (together with any comments by the provider under that section); and
  - (b) action that is, in the opinion of the VET Student Loans Ombudsman, adequate and appropriate in the circumstances is not taken with respect to the matters and recommendations

included in the report within a reasonable time after the report was given to the VET student loan scheme provider.

- (2) The VET Student Loans Ombudsman may:
  - (a) give a copy of the report and any comments to the Minister administering the *VET Student Loans Act 2016* (if not already given to that Minister under 20ZV(7)); and
  - (b) request that Minister to cause copies of the report and any comments to be laid before each House of the Parliament.
- (3) If the VET Student Loans Ombudsman makes a request under subsection (2), the Minister administering the *VET Student Loans Act 2016* must cause copies of the report and any comments to be laid before each House of the Parliament within 15 sitting days of that House after that Minister receives the request.

## **20ZX Annual and other reports by the VET Student Loans Ombudsman**

### *Annual reports and other reports*

- (1) As soon as practicable after the end of each financial year, the VET Student Loans Ombudsman must give an annual report to the Minister administering this Act, for presentation to the Parliament, on the operations of the VET Student Loans Ombudsman during the financial year.
- (2) The VET Student Loans Ombudsman may, from time to time, give the Minister administering this Act, for presentation to the Parliament, a report:
  - (a) on the operations of the VET Student Loans Ombudsman during a part of a year; or
  - (b) in relation to any matter relating to, or arising in connection with, the exercise of the powers, or the performance of the functions, of the VET Student Loans Ombudsman.
- (3) The VET Student Loans Ombudsman may also give a copy of a report under subsection (1) or (2) to the Secretary of the

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Department administered by the Minister administering the *VET Student Loans Act 2016*.

- (4) Subsections (1), (2) and (3) do not affect the powers and duties of the VET Student Loans Ombudsman under section 20ZV or 20ZW.

*Tabling and inclusion in other reports*

- (5) If the VET Student Loans Ombudsman gives a report to the Minister administering this Act under subsection (1) or (2), the Minister must cause the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.
- (6) A report relating to the operations of the VET Student Loans Ombudsman during a period may be included in a report under:
- (a) section 19 of this Act; or
  - (b) section 46 of the *Public Governance, Performance and Accountability Act 2013*;
- relating to the operations of the Ombudsman during that period.

*Content of report*

- (7) A report relating to the operations of the VET Student Loans Ombudsman during a period must:
- (a) set out the number of complaints received by the VET Student Loans Ombudsman under this Part during that period; and
  - (b) if the VET Student Loans Ombudsman has investigated any matters under paragraph 20ZO(a)—set out:
    - (i) the number of such investigations started during that period; and
    - (ii) the number of such investigations completed during that period; and
  - (c) if the VET Student Loans Ombudsman has investigated any matters under paragraph 20ZO(b)—set out:



- (i) the number of such investigations started during that period; and
    - (ii) the number of such investigations completed during that period; and
  - (d) set out:
    - (i) the number of times the VET Student Loans Ombudsman has made a requirement of a person under section 9 during that period; and
    - (ii) the circumstances in which each of those requirements was made; and
  - (e) in relation to the function mentioned in paragraph 20ZM(1)(ca)—set out the number of persons whose HELP balances the VET Student Loans Ombudsman has recommended be re-credited.
- (8) A report relating to the operations of the VET Student Loans Ombudsman during a period may include:
- (a) details of the circumstances and number of occasions during that period when the VET Student Loans Ombudsman decided, under section 20ZQ, to refer a matter to another body; and
  - (b) details of recommendations made during that period in reports under section 20ZV; and
  - (c) statistical information about actions taken during that period as a result of such recommendations; and
  - (d) details of action that the VET Student Loans Ombudsman took during the period to promote best practice in dealing with complaints; and
  - (e) details of the VET Student Loans Ombudsman's observations during the period regarding:
    - (i) any trends in complaints; or
    - (ii) any broader issues that arise from investigations.

### **20ZY VET Student Loans Ombudsman may notify of misconduct**

- (1) This section applies if the VET Student Loans Ombudsman forms the opinion, either before or after completing an investigation
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under this Act, that there is evidence that a VET student loan officer of a VET student loan scheme provider has engaged in misconduct.

- (2) If the VET Student Loans Ombudsman is of the opinion that the evidence is, in all the circumstances, of sufficient force to justify his or her doing so, the VET Student Loans Ombudsman may bring the evidence to the notice of the VET student loan principal executive officer of the provider.

**20ZZ Limitation on liability where information or documents provided in good faith or when required to do so**

- (1) A person is neither liable to a proceeding, nor subject to a liability, under an enactment merely because the person, in good faith and in relation to the VET Student Loans Ombudsman's functions or powers:
- (a) gives information to the VET Student Loans Ombudsman (other than in accordance with a requirement under section 9); or
  - (b) gives a document or other record to the VET Student Loans Ombudsman (other than in accordance with a requirement under section 9).

Note: For information, documents or other records given in accordance with a requirement under section 9, see subsections 9(4) and (5).

- (2) To avoid doubt, subsection (1) does not prevent the person from being liable to a proceeding, or being subject to a liability, for conduct of the person that is revealed by the information, document or record given to the VET Student Loans Ombudsman.
- (3) This section does not limit section 37.

## **Division 5—Other provisions relating to the VET Student Loans Ombudsman**

### **20ZZA Part does not limit application of other provisions**

This Part does not, by implication, affect the operation of other provisions of this Act.

### **20ZZB Alternative constitutional basis**

Without limiting its effect apart from this section, this Part also has the effect it would have if each reference to a VET student loan scheme provider were expressly confined to a VET student loan scheme provider that is a corporation to which paragraph 51(xx) of the Constitution applies.

## **Part III—Conditions of service, and staff, of the Ombudsman**

### **Division 1—Ombudsman**

#### **21A Interpretation**

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

#### **21 Appointment of Ombudsman**

- (1) An Ombudsman shall be appointed by the Governor-General.
- (2) An Ombudsman holds office on such terms and conditions (if any) in respect to matters not provided for in this Act as are prescribed.

#### **22 Tenure of office**

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

#### **23 Deputy Ombudsman**

- (1) The Minister may:
  - (b) by notice in writing published in the *Gazette*, designate a Deputy Ombudsman as the Deputy Ombudsman (Defence Force).

#### **24 Salary and allowances**

- (1) An Ombudsman shall be paid such remuneration as is determined by the Remuneration Tribunal.
- (2) An Ombudsman shall be paid such allowances as are prescribed.

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

## **25 Leave of absence**

- (1) The Ombudsman has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Ombudsman leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.

## **26 Resignation**

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

## **27 Retirement**

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

## **28 Suspension and removal of Ombudsman**

- (1) The Governor-General may remove an Ombudsman from office on an address praying for his or her removal on the ground of misbehaviour or physical or mental incapacity being presented to the Governor-General by each House of the Parliament in the same session of the Parliament.
- (2) The Governor-General may suspend an Ombudsman from office on the ground of misbehaviour or physical or mental incapacity.
- (3) Where the Governor-General suspends an Ombudsman from office, the Minister shall cause a statement of the grounds of the suspension to be laid before each House of the Parliament within 7 sitting days of the House after the suspension.

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- (4) Where such a statement has been laid before a House of the Parliament, that House may, within 15 sitting days of that House after the day on which the statement has been laid before it, by resolution, declare that the Ombudsman should be removed from office and, if each House so passes such a resolution, the Governor-General shall remove the Ombudsman from office.
- (5) If, at the expiration of 15 sitting days of a House of the Parliament after the day on which the statement has been laid before that House, that House has not passed such a resolution, the suspension terminates.
- (6) The suspension of an Ombudsman from office under this section does not affect any entitlement of the Ombudsman to be paid remuneration and allowances.
- (7) If an Ombudsman becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, the Governor-General shall remove him or her from office.
- (7A) If an Ombudsman is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months, the Governor-General may remove him or her from office.
- (8) An Ombudsman shall not be removed or suspended from office except as provided by this section.

**28A Removal taken to be retirement on ground of invalidity**

- (1) If an Ombudsman is removed from office under section 28 of this Act following his or her suspension from office on the ground of physical or mental incapacity, then, for the purposes of the *Superannuation Act 1976*, he or she is taken to have been retired on the ground of invalidity within the meaning of Part IVA of that Act.
- (2) In spite of subsection (1), section 54C of the *Superannuation Act 1976* applies in relation to the Ombudsman.

- (3) If an Ombudsman is removed from office under section 28 of this Act following his or her suspension from office on the ground of physical or mental incapacity, then, for the purposes of the *Superannuation Act 1990*, he or she is taken to have been retired on the ground of invalidity within the meaning of that Act.
- (4) In spite of subsection (3), section 13 of the *Superannuation Act 1990* applies in relation to the Ombudsman.
- (5) If an Ombudsman is removed from office under section 28 of this Act following his or her suspension from office on the ground of physical or mental incapacity, then, for the purposes of the *Superannuation Act 2005*, he or she is taken to have been retired on the ground of invalidity within the meaning of that Act.
- (6) In spite of subsection (5), section 43 of the *Superannuation Act 2005* applies in relation to the Ombudsman.

#### **28B Retirement on ground of invalidity under the Superannuation Acts**

- (1) In spite of anything contained in sections 27 and 28, an Ombudsman who:
  - (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and
  - (b) has not reached his or her maximum retiring age (within the meaning of that Act);is not capable of being retired from office on the ground of invalidity (within the meaning of Part IVA of that Act) unless CSC has given a certificate under section 54C of that Act.
- (2) In spite of anything contained in sections 27 and 28, an Ombudsman who:
  - (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and
  - (b) is under 60 years of age;

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is not capable of being retired from office on the ground of invalidity (within the meaning of that Act) unless CSC has given a certificate under section 13 of that Act.

- (3) In spite of anything contained in sections 27 and 28, an Ombudsman who:

- (a) is an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*; and
- (b) is under 60 years of age;

is not capable of being retired from office on the ground of invalidity (within the meaning of that Act) unless CSC has given an approval and certificate under section 43 of that Act.

## 29 Acting appointments

- (1) The Minister may appoint a person to act in the office of Commonwealth Ombudsman:
- (a) during a vacancy in that office, whether or not an appointment has previously been made to that office; or
  - (b) during any period, or during all periods, when the Ombudsman is absent from duty or from Australia or is, for any other reason, unable to perform the functions of his or her office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

- (1A) The Minister may appoint a person to act in an office of Deputy Commonwealth Ombudsman:
- (a) during a vacancy in that office, whether or not an appointment has previously been made to that office; or
  - (b) during any period, or during all periods, when a Deputy Ombudsman is absent from duty or from Australia or is, for any other reason, unable to perform the functions of Deputy Ombudsman.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.



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- (3) If a Deputy Commonwealth Ombudsman is at any time appointed to act in the office of Commonwealth Ombudsman, his or her office shall, during the period of his or her appointment, be deemed, for the purposes of this section, to be vacant.
- (7) Sections 25 and 26 apply in relation to a person appointed under this section in like manner as they apply in relation to an Ombudsman.

## **Division 2—Staff**

### **31 Staff**

- (1) The staff required for the purposes of this Act shall be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
  - (a) the Ombudsman and the APS employees assisting the Ombudsman together constitute a Statutory Agency; and
  - (b) the Ombudsman is the Head of that Statutory Agency.

## **Part IV—Miscellaneous**

### **33 Ombudsman not to be sued**

- (1) Subject to section 35, neither the Ombudsman nor a person acting under his or her direction or authority is liable to an action, suit or proceeding for or in relation to an act done or omitted to be done in good faith in exercise or purported exercise of any power or authority conferred by this Act or Division 7 of Part V of the *Australian Federal Police Act 1979*.
- (2) A reference in this section to the Ombudsman includes a reference to a Deputy Ombudsman or a delegate of the Ombudsman.

### **34 Delegation**

- (1) The Ombudsman may, either generally or as otherwise provided by the instrument of delegation, by instrument in writing, delegate to a person:
  - (a) all or any of his or her powers under this Act, other than his or her powers under sections 15, 16, 17, 19 and 20ZJ and this power of delegation; and
  - (b) any power exercisable by him or her by virtue of an instrument of delegation referred to in subsection (7) the sub-delegation of which is permitted by the relevant law of the State or by the instrument of delegation; and
  - (c) all or any of his or her powers under Division 7 of Part V of the *Australian Federal Police Act 1979*.
- (2) The Defence Force Ombudsman may, either generally or as otherwise provided by the instrument of delegation, by instrument in writing, delegate to a person all or any of his or her powers under this Act, other than his or her powers under sections 15, 16 and 17 and his or her powers referred to in section 19FA.

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- (2A) The Postal Industry Ombudsman may, either generally or as otherwise provided by the instrument of delegation, by instrument in writing, delegate to a person all or any of his or her powers under this Act, other than his or her powers under sections 19V and 19W and his or her powers referred to in section 19X.
- (2B) The Overseas Students Ombudsman may, either generally or as otherwise provided by the instrument of delegation, by instrument in writing, delegate to a person all or any of his or her powers under this Act, other than his or her powers under sections 19ZQ and 19ZR and his or her powers referred to in section 19ZS.
- (2C) The Private Health Insurance Ombudsman may, either generally or as otherwise provided by the instrument of delegation, by instrument in writing, delegate all or any of the Private Health Insurance Ombudsman's functions or powers under this Act (other than those under section 20R, paragraph 20SB(4)(b) and section 20V) to a person whom the Private Health Insurance Ombudsman considers has expertise appropriate to the function or power delegated.
- (3) The VET Student Loans Ombudsman may, either generally or as otherwise provided by the instrument of delegation, by instrument in writing, delegate to a person all or any of his or her powers under this Act, other than his or her powers under, or referred to, in the following provisions:
  - (a) section 20ZV (reports to VET student loan scheme providers);
  - (b) section 20ZW (Minister to table reports about VET student loan scheme providers in Parliament);
  - (c) section 20ZX (annual and other reports by the VET Student Loans Ombudsman).
- (5) A delegate shall, upon request by a person affected by the exercise of any powers delegated to him or her, produce the instrument of delegation or a copy of the instrument, for inspection by the person.
- (7) Where:

- (a) in accordance with a law of a State, the Ombudsman of the State delegates to the Commonwealth Ombudsman, either generally or as otherwise provided by the instrument of delegation, any of his or her powers under such a law; and
  - (b) the Minister consents to the exercise by the Ombudsman in accordance with the instrument of delegation of a power so delegated;
- the Ombudsman is authorized to exercise that power accordingly.

### **35 Officers to observe confidentiality**

- (1) In this section, ***officer*** means:
  - (a) the Ombudsman;
  - (b) a Deputy Ombudsman;
  - (c) a person who is a member of the staff referred to in subsection 31(1); or
  - (d) a person, not being a person referred to in paragraph (b) or (c), to whom the Ombudsman has delegated any of his or her powers under section 34 or who is an authorized person; or
  - (e) a person who is made available to the Ombudsman as mentioned in subsection 8(12); or
  - (f) a person appointed by the Private Health Insurance Ombudsman under section 20ZC (appointment of mediators).
- (2) Subject to this section, an officer shall not, either directly or indirectly, and either while he or she is, or after he or she ceases to be, an officer, make a record of, or divulge or communicate to any person, any information acquired by him or her by reason of his or her being an officer, being information that was disclosed or obtained under the provisions of this Act or under Division 7 of Part V of the *Australian Federal Police Act 1979*, including information furnished by the Ombudsman of a State or information disclosed to or obtained by the Commonwealth Ombudsman in the exercise of a power of the Ombudsman of a State delegated to him or her as provided by subsection 34(7).

Penalty: 5 penalty units.

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- (3) Subsection (2) does not prevent an officer:
- (a) from making a record of, or divulging or communicating to any person, information acquired by him or her in the performance of his or her duties as an officer for purposes connected with the exercise of the powers and the performance of the functions of the Ombudsman; or
  - (b) from divulging or communicating information to a person:
    - (i) if the information was given by an officer of a Department or prescribed authority in the performance of his or her duties as such an officer—with the consent of the principal officer of the Department or authority or of the responsible Minister; or
    - (ia) if the information was given by a person who is, or is an employee of, a Commonwealth service provider of a Department or prescribed authority under a contract—with the consent of the principal officer of the Department or prescribed authority or of the responsible Minister; or
    - (ii) if the information was given by a person otherwise than as set out in subparagraph (i) or (ia)—with the consent of the person who gave the information.
- (4) Subject to subsection (5), subsection (2) does not prevent the Ombudsman or a Deputy Ombudsman from disclosing, in a report made under this Act, such matters as, in his or her opinion, ought to be disclosed in the course of setting out the grounds for the findings, conclusions and recommendations contained in the report.
- (5) Where the Attorney-General furnishes to the Ombudsman a certificate in writing certifying that:
- (a) the disclosure of information or documents concerning a specified matter or matters included in a specified class of matters; or
  - (b) the disclosure of a specified document or of documents included in a specified class of documents;

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

- (c) divulge or communicate to any person any information acquired by him or her under the provisions of this Act concerning such a matter or such a document;
- (d) divulge or communicate any of the contents of such a document to any person; or
- (e) furnish such a document, or a copy of, or an extract from, such a document, to any person.

Penalty: Imprisonment for 2 years.

- (6) Subsection (5) does not prevent an officer, in the performance of his or her duties as an officer:
  - (a) from divulging or communicating information referred to in that subsection to another officer;
  - (b) from furnishing any of the contents of, a copy of or an extract from a document referred to in that subsection to another officer; or
  - (c) from returning such a document that has been produced to him or her to the person lawfully entitled to the custody of the document.

- (6A) Subsection (2) does not prevent the Ombudsman, or an officer acting on behalf of the Ombudsman, from giving information or documents under paragraph 6(4D)(e) or paragraph 6(18)(d).

*Sharing information about private health insurers among agencies*

- (6B) Subsections (2) and (5) do not prevent an officer, in the performance of his or her duties as an officer, from disclosing information mentioned in subsection (6C) in accordance with subsection (6D).

- (6C) For subsection (6B), the information is information that:

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- (a) relates to any or all of the following:
    - (i) a private health insurer;
    - (ii) an applicant to become a private health insurer;
    - (iii) a person carrying on health insurance business;
    - (iv) a director or officer of a person mentioned in subparagraph (i), (ii) or (iii); and
  - (b) is not information of a kind specified in the Private Health Insurance (Information Disclosure) Rules as information that must not be disclosed under section 323-10 of the *Private Health Insurance Act 2007*.
- (6D) For subsection (6B), the officer may disclose the information to the following:
- (a) the Health Minister;
  - (b) the Secretary of the Health Department;
  - (c) an APS employee in, or a person holding or performing the duties of an office in, the Health Department;
  - (d) an APRA member, within the meaning of the *Australian Prudential Regulation Authority Act 1998*;
  - (e) an APRA staff member, within the meaning of the *Australian Prudential Regulation Authority Act 1998*;
  - (f) the Chief Executive Medicare;
  - (g) a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*);
- if the disclosure is made in accordance with any requirements in the Private Health Insurance (Information Disclosure) Rules.
- (7) Subject to subsection (7A), where the Ombudsman proposes, for purposes connected with the exercise of his or her powers or performance of his or her functions, to furnish information, or to send a document, or a copy of, or extract from, a document, to the Ombudsman of a State, the Ombudsman shall satisfy himself or herself that a law of the State makes provision corresponding to the provision made by this section with respect to the confidentiality of information acquired by the Ombudsman of the State.



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- (7A) Subsection (7) does not apply in relation to any information or document obtained by the Ombudsman in the exercise of a power of the Ombudsman of the State that the Ombudsman was authorized to exercise in pursuance of subsection 34(7).
- (8) A person who is or has been an officer is not compellable, in any proceedings before a court (whether exercising federal jurisdiction or not) or before a person authorized by a law of the Commonwealth or of a State or Territory, or by consent of parties, to hear, receive and examine evidence, to disclose any information acquired by him or her by reason of his or her being or having been an officer, being information that was disclosed or obtained under the provisions of this Act or under Division 7 of Part V of the *Australian Federal Police Act 1979*.

**35AA Disclosure of information and documents to Integrity Commissioner**

- (1) This section applies if:
- (a) the Ombudsman, of his or her own motion, investigates any action as mentioned in paragraph 5(1)(b); and
  - (b) in the course of the investigation, the Ombudsman obtains information or a document that is, or may be, relevant to a corruption issue.
- (2) Subject to section 35B, nothing in this Act precludes the Ombudsman from:
- (a) disclosing the information; or
  - (b) making a statement; or
  - (c) giving the document;
- to the Integrity Commissioner.
- (3) In this section:

***corruption issue*** has the same meaning as in the *Law Enforcement Integrity Commissioner Act 2006*.

***Integrity Commissioner*** has the same meaning as in the *Law Enforcement Integrity Commissioner Act 2006*.

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### 35A Disclosure of information by Ombudsman

- (1) Subject to sections 35B and 35C, nothing in this Act shall be taken to preclude 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 if, in the opinion of the Ombudsman, it is in the interests of any Department, prescribed authority or person, or is otherwise in the public interest, so to disclose that information or to make that statement.
- (2) The Ombudsman shall 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.
- (3) The Ombudsman shall 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 a Department, prescribed authority or person unless the Ombudsman has complied with subsection 8(5) 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 subsection 8(2) and section 35 (other than subsection (5) of that section).

### 35B Disclosure of ACC information

- (1) If the Minister administering section 7 of the *Australian Crime Commission Act 2002* gives the Ombudsman a certificate certifying that the disclosure of certain ACC information by one or more listed disclosure methods specified in the certificate would be contrary to the public interest by reason that it would prejudice:
  - (a) the safety of a person; or

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- (b) the fair trial of a person who has been, or may be, charged with an offence; or
  - (c) the proper performance of the functions of the ACC; or
  - (d) the operations of a law enforcement agency;
- the Ombudsman must not so disclose the ACC information.

(2) In this section:

**ACC information** means information or the contents of a document or a record that is, or was, in the possession or under the control of the ACC or the Board of the ACC.

**listed disclosure method**, in relation to information, a document or a record, means:

- (a) including the information or the contents of the document or record in any report under:
  - (i) Division 2 of Part II; or
  - (ii) section 46 of the *Public Governance, Performance and Accountability Act 2013*; or
- (b) giving the information, document or record to another person or authority under section 6 or 6A; or
- (c) giving the information, document or record to an Ombudsman of a State; or
- (d) giving the information, document or record to an authority with which the Ombudsman has made an arrangement under section 8B; or
- (e) disclosing, or making a statement that discloses, the information or the contents of the document or record under subsection 35A(1); or
- (f) disclosing information or the contents of a document or record by any other specified method.

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### 35C Disclosure of ACLEI information

- (1) If the Attorney-General gives the Ombudsman a certificate certifying that the disclosure of certain ACLEI information by one or more listed disclosure methods specified in the certificate would be contrary to the public interest by reason that it would prejudice:
- (a) the safety of a person; or
  - (b) the fair trial of a person who has been, or may be, charged with an offence; or
  - (c) the proper performance of the functions of the Integrity Commissioner; or
  - (d) the operations of a law enforcement agency;
- the Ombudsman must not so disclose the ACLEI information.

- (2) In this section:

**ACLEI information** means information or the contents of a document that is, or was, in the possession or under the control of the Integrity Commissioner.

**listed disclosure method**, in relation to information, a document or a record, means:

- (a) including the information or the contents of the document or record in any report under Division 2 of Part II; or
- (b) giving the information, document or record to another person or authority under section 6 or 6A; or
- (c) giving the information, document or record to an Ombudsman of a State; or
- (d) giving the information, document or record to an authority with which the Ombudsman has made an arrangement under section 8B; or
- (e) disclosing, or making a statement that discloses, the information or the contents of the document or record under subsection 35A(1); or
- (f) disclosing information or the contents of a document or record by any other specified method.

**36 Offences**

- (1) A person shall not refuse or fail:
- (a) to attend before the Ombudsman;
  - (b) to be sworn or make an affirmation;
  - (ba) to furnish or publish information; or
  - (c) to answer a question or produce a document or record; or
  - (d) to give a report;
- when so required in pursuance of this Act.

Penalty: Imprisonment for 3 months or 10 penalty units.

- (2A) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

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

**37 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 by reason 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 furnishing of a document or information to, a person, being an officer within the meaning of section 35, for the purposes of this Act, whether or not the statement was made, or the document or information was furnished, in pursuance of a requirement under section 9 or an order under section 11A.

**38 Regulations**

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be

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prescribed for carrying out or giving effect to this Act and, in particular, prescribing matters in connexion with fees and expenses of witnesses appearing before the Ombudsman.

## Endnotes

### Endnote 1—About the endnotes

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

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

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

### Legislation history and amendment history—Endnotes 3 and 4

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

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

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

### Editorial changes

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

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

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

## Endnotes

### Endnote 1—About the endnotes

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

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



## Endnote 2—Abbreviation key

**Endnote 2—Abbreviation key**

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

## Endnotes

### Endnote 3—Legislation history

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Ombudsman Act 1976	181, 1976	13 Dec 1976	1 July 1977 ( <i>see Gazette</i> 1977, No. S115)	
Ombudsman Amendment Act 1978	63, 1978	22 June 1978	1 July 1978	s. 11
Ombudsman Amendment Act 1979	107, 1979	25 Oct 1979	2 June 1979	—
Australian Federal Police (Consequential Amendments) Act 1979	155, 1979	28 Nov 1979	19 Oct 1979 ( <i>see</i> s. 2 and <i>Gazette</i> 1979, No. S206)	—
Statute Law Revision Act 1981	61, 1981	12 June 1981	Sch 1: 12 June 1981 (s 2(1))	—
Ombudsman Amendment Act 1983	61, 1983	12 Oct 1983	ss. 3, 4(2), 6, 20, 21 and 30: 5 Dec 1983 ( <i>see Gazette</i> 1983, No. S305) Remainder: Royal Assent	s. 30
Public Service Reform Act 1984	63, 1984	25 June 1984	s 151(9) and Sch 4: 1 July 1984 (s 2(4) and <i>gaz</i> 1984, No S245)	s 151(9)
<b>as amended by</b>				
Statute Law (Miscellaneous Provisions) Act (No. 2) 1985	193, 1985	16 Dec 1985	s 16: 16 Dec 1985 (s 2(1)) Sch 1: 1 July 1984 (s 2(11))	s 16
Statute Law (Miscellaneous Provisions) Act (No. 1) 1985	65, 1985	5 June 1985	Sch 1: 3 July 1985 (s 2(1))	—

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Law (Miscellaneous Provisions) Act (No. 2) 1986	168, 1986	18 Dec 1986	s 5(1) and Sch 1: 18 Dec 1986 (s 2(1))	s 5(1)
A.C.T. Self-Government (Consequential Provisions) Act 1988	109, 1988	6 Dec 1988	Sch 5: 11 May 1989 (s 2(3) and gaz 1989, No S164)	—
Privacy Act 1988	119, 1988	14 Dec 1988	1 Jan 1989 ( <i>see Gazette</i> 1988, No. 399)	—
Telecommunications and Postal Services (Transitional Provisions and Consequential Amendments) Act 1989	63, 1989	19 June 1989	ss. 1 and 2: Royal Assent Part 5 (ss. 17, 18): 30 June 1989 ( <i>see</i> s. 2(3) and <i>Gazette</i> 1989, No. S216) Remainder: 1 July 1989 ( <i>see Gazette</i> 1989, No. S230)	—
Telecommunications (Transitional Provisions and Consequential Amendments) Act 1991	99, 1991	27 June 1991	Part 1 (ss. 1, 2): Royal Assent s. 24 and Part 5 (s. 26): 1 Feb 1992 ( <i>see</i> s. 2(3) and <i>Gazette</i> 1992, No. S32) Remainder: 1 July 1991	—
Industrial Relations Legislation Amendment Act 1991	122, 1991	27 June 1991	ss. 4(1), 10(b) and 15–20: 1 Dec 1988 ss. 28(b)–(e), 30 and 31: 10 Dec 1991 ( <i>see Gazette</i> 1991, No. S332) Remainder: Royal Assent	—
Prime Minister and Cabinet Legislation Amendment Act 1991	199, 1991	18 Dec 1991	18 Dec 1991	—

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### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 1992	94, 1992	30 June 1992	s. 3: 1 July 1990 Remainder: Royal Assent	—
Qantas Sale Act 1992	196, 1992	21 Dec 1992	Sch (Part 1): 10 Mar 1993 ( <i>see Gazette</i> 1993, No. GN17) Sch (Part 5): 30 Aug 1995 ( <i>see Gazette</i> 1995, No. S324)	s 2(6)
<b>as amended by</b>				
Qantas Sale Amendment Act 1993	60, 1993	3 Nov 1993	10 Mar 1993 (s 2)	—
Qantas Sale Amendment Act 1994	168, 1994	16 Dec 1994	Schedule (item 17): 16 Dec 1994 (s 2(1))	—
Prime Minister and Cabinet (Miscellaneous Provisions) Act 1994	33, 1994	15 Mar 1994	s 18–27: 15 Mar 1994 (2(1))	s 27(2)
Employment Services (Consequential Amendments) Act 1994	177, 1994	19 Dec 1994	ss. 1, 2(1), (3) and 3–8: 19 Dec 1994 ( <i>see</i> s. 2(1)) ss. 2(2) and 32–39: Royal Assent Remainder: 1 Jan 1995 ( <i>see</i> s. 2(3) and <i>Gazette</i> 1994, No. S472)	s. 13
Taxation Laws Amendment Act (No. 1) 1995	120, 1995	25 Oct 1995	Schedule 1 (item 58): 23 Nov 1994 ( <i>see</i> s. 2(2)) Schedule 2 (items 8–13): 1 July 1994 Remainder: Royal Assent	—

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Sch 2 (item 78): 3 July 1985 (s 2(2)) Sch 4 (item 117) and Sch 5 (items 109–111): 25 Oct 1996 (s 2(1))	—
Defence Legislation Amendment Act (No. 1) 1997	1, 1997	19 Feb 1997	Sch 2 (items 47, 86, 112): 19 Feb 1997 (s 2(1))	—
Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997	59, 1997	3 May 1997	Sch 1 (items 40–42): 1 July 1997 (s 2(2)(d))	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (items 711–717): 5 Dec 1999 (s 2(1)(2))	—
Federal Magistrates (Consequential Amendments) Act 1999	194, 1999	23 Dec 1999	Sch 21: 23 Dec 1999 (s 2(1))	—
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	Sch 2 (items 308, 309, 418, 419): 24 May 2001 (s 2(3))	Sch 2 (items 418, 419)
Prime Minister and Cabinet Legislation Amendment (Application of Criminal Code) Act 2001	49, 2001	21 June 2001	19 July 2001	s. 4

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
National Crime Authority Legislation Amendment Act 2001	135, 2001	1 Oct 2001	Schedules 1–7 and 9–12: 12 Oct 2001 ( <i>see Gazette</i> 2001, No. S428) Schedule 8: 13 Oct 2001 ( <i>see Gazette</i> 2001, No. S428) Remainder: Royal Assent	—
Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001	159, 2001	1 Oct 2001	29 Oct 2001	Sch. 1 (item 97)
Statute Law Revision Act 2002	63, 2002	3 July 2002	Sch 1 (item 24): 25 Oct 1996 (s 2(1) item 19)	—
Australian Crime Commission Establishment Act 2002	125, 2002	10 Dec 2002	Schedule 2 (items 84–98, 226): 1 Jan 2003	Sch. 2 (item 226)
Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005	45, 2005	1 Apr 2005	Sch 3 (items 3, 4): 6 Oct 2006 (s 2(1) item 5) Sch 3 (items 5–8) and Sch 4: 1 July 2005 (s 2(1) items 6–8) Sch 3 (items 9–11): 6 Oct 2006 (s 2(1) item 9)	Sch 4
<b>as amended by</b>				
Statute Law Revision Act 2007	8, 2007	15 Mar 2007	Sch 2 (items 2–4): 1 Apr 2005 (s 2(1) item 29)	—
Migration and Ombudsman Legislation Amendment Act 2005	141, 2005	12 Dec 2005	Sch 2 (items 2–25): 12 Dec 2005 (s 2(1) item 3) Sch 2 (items 28–31): 6 Oct 2006 (s 2(1) item 6)	—

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Postal Industry Ombudsman Act 2006	25, 2006	6 Apr 2006	Sch 1 (items 1–14, 20(1), 21): 6 Oct 2006 (s 2(1) item 2) Sch 2 (items 1, 2): 26 July 2001 (s 2(1) items 3, 4) Sch 2 (item 3): 5 Dec 1999 (s 2(1) item 5) Sch 2 (item 4): 11 May 1989 (s 2(1) item 6) Sch 2 (item 5): 12 Oct 2001 (s 2(1) item 7)	Sch 1 (items 20(1), 21)
Law Enforcement (AFP Professional Standards and Related Measures) Act 2006	84, 2006	30 June 2006	Schedule 3 (items 46–64): 30 Dec 2006 ( <i>see</i> s. 2(1))	—
Law Enforcement Integrity Commissioner (Consequential Amendments) Act 2006	86, 2006	30 June 2006	Schedule 1 (items 41–47): 30 Dec 2006 ( <i>see</i> s. 2(1))	—
Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Act 2008	26, 2008	23 June 2008	Schedule 1 (items 98–101): Royal Assent	—
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Sch 5 (item 137(a)): 1 Mar 2010 (s 2(1) item 38)	—
Freedom of Information Amendment (Reform) Act 2010	51, 2010	31 May 2010	Sch 4 (items 59–64, 66, 67) and Sch 7: 1 Nov 2010 (s 2(1) item 7)	Sch 4 (items 66, 67) and Sch 7

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<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Territories Law Reform Act 2010	139, 2010	10 Dec 2010	Sch 1 (items 241, 242): 10 June 2011 (s 2(1) item 9)	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 1 (items 70–86): 22 March 2011 (s 2(1) item 2) Sch 6 (item 130): 19 Apr 2011 (s 2(1) item 17)	—
Education Services for Overseas Students Legislation Amendment Act 2011	11, 2011	8 Apr 2011	Sch 2 (items 1–4, 8, 9): 9 Apr 2011 (s 2(1) item 2)	Sch 2 (items 8, 9)
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 894–900) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 7, 12)	Sch 3 (items 10, 11)
Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011	58, 2011	28 June 2011	Sch 1 (items 123, 124): 1 July 2011 (s 2(1) item 2)	—
Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Act 2012	9, 2012	20 Mar 2012	Sch 5 (items 6, 7, 8(2)): 1 July 2012 (s 2(1) item 15)	Sch 5 (item 8(2))
Privacy Amendment (Enhancing Privacy Protection) Act 2012	197, 2012	12 Dec 2012	Sch 5 (item 68) and Sch 6 (items 15–19): 12 Mar 2014 (s 2(1) items 3, 19) Sch 6 (item 1): 12 Dec 2012 (s 2(1) item 16)	Sch 6 (items 1, 15–19)



## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Public Service Amendment Act 2013	2, 2013	14 Feb 2013	Sch 3 (items 5, 6): 1 July 2013 (s 2(1) item 2)	—
Courts and Tribunals Legislation Amendment (Administration) Act 2013	7, 2013	12 Mar 2013	Sch 2 (items 24–28): 1 July 2013 (s 2(1) item 3)	Sch 2 (items 25– 28)
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Schedule 1 (item 460): 12 Apr 2013 ( <i>see</i> s. 2(1))	—
Public Interest Disclosure (Consequential Amendments) Act 2013	134, 2013	15 July 2013	Sch 1 (items 6–17): 15 Jan 2014 ( <i>see</i> s 2(1))	—
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014  <b>as amended by</b>	62, 2014	30 June 2014	Sch 6 (item 64), Sch 11 (items 16–25) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
Public Governance and Resources Legislation Amendment Act (No. 1) 2015  <b>as amended by</b>	36, 2015	13 Apr 2015	Sch 2 (item 7) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—

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### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Tax and Superannuation Laws Amendment (2014 Measures No. 7) Act 2015	21, 2015	19 Mar 2015	Sch 2 (items 33–35, 44–46): 1 May 2015 (s 2(1) item 3)	Sch 2 (items 44–46)
Private Health Insurance Amendment Act 2015	57, 2015	26 May 2015	Sch 1 (items 1–13, 25–31): 1 July 2015 (s 2(1) item 2) Sch 2 (items 2, 3): 26 May 2015 (s 2(1) item 3)	Sch 1 (items 25–31) and Sch 2 (items 2, 3)
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 2 (items 280–292): 1 July 2016 (s 2(1) item 5) Sch 2 (items 356–396): 18 June 2015 (s 2(1) item 6)	Sch 2 (items 356–396)
<b>as amended by</b>				
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 2: 24 Mar 2016 (s 2(1) item 2)	—
Private Health Insurance (Prudential Supervision) (Consequential Amendments and Transitional Provisions) Act 2015	87, 2015	26 June 2015	Sch 1 (item 178): 1 July 2015 (s 2(1) item 3) Sch 2: 27 June 2015 (s 2(1) item 9)	Sch 2

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Australian Small Business and Family Enterprise Ombudsman (Consequential and Transitional Provisions) Act 2015	124, 2015	10 Sept 2015	Sch 1: 10 Mar 2016 (s 2(1) item 2) Remainder: 10 Sept 2015 (s 2(1) items 1, 3)	Sch 2
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 462): 5 Mar 2016 (s 2(1) item 2)	—
Courts Administration Legislation Amendment Act 2016	24, 2016	18 Mar 2016	Sch 5 (items 25–27): 1 July 2016 (s 2(1) item 7) Sch 5 (item 32): 1 Jan 2018 (s 2(1) item 8) Sch 6: 18 Mar 2016 (s 2(1) item 9)	Sch 6
Statute Update Act 2016	61, 2016	23 Sept 2016	Sch 1 (items 349, 350): 21 Oct 2016 (s 2(1) item 1)	—
Education and Other Legislation Amendment Act (No. 1) 2017	31, 2017	12 Apr 2017	Sch 1 (items 1–6): 1 July 2017 (s 2(1) item 2)	—
Home Affairs and Integrity Agencies Legislation Amendment Act 2018	31, 2018	9 May 2018	Sch 2 (items 135–139, 284): 11 May 2018 (s 2(1) items 3, 7)	Sch 2 (item 284)
National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018	67, 2018	29 June 2018	Sch 2 (item 26): 29 Dec 2018 (s 2(1) item 3)	—

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<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Private Health Insurance Legislation Amendment Act 2018	101, 2018	21 Sept 2018	Sch 3 and 4: 22 Sept 2018 (s 2(1) items 3, 4)	Sch 3 (items 8, 9) and Sch 4
Higher Education Support Amendment (VET FEE-HELP Student Protection) Act 2018	160, 2018	10 Dec 2018	Sch 1 (items 7–9): 1 Jan 2019 (s 2(1) item 2) Sch 2 (item 8): 1 Jan 2020 (s 2(1) item 3)	Sch 1 (item 9)

## Endnote 4—Amendment history

## Endnote 4—Amendment history

Provision affected	How affected
Title .....	rs No 61, 1983 am No 25, 2006; No 11, 2011; No 57, 2015; No 31, 2017
<b>Part I</b>	
s 3 .....	am No 63, 1978; No 107, 1979; No 155, 1979; No 61, 1983; No 63, 1984 (as am by No 193, 1985); No 168, 1986; No 109, 1988; No 199, 1991; No 196, 1992; No 33, 1994; No 177, 1994; No 43, 1996; No 1, 1997; No 146, 1999; No 194, 1999; No 135, 2001; No 63, 2002; No 125, 2002; No 45, 2005; No 141, 2005; No 25, 2006; No 84, 2006; No 5, 2011; No 58, 2011; No 7, 2013; No 13, 2013; No 134, 2013; No 21, 2015; No 57, 2015; No 59, 2015; No 24, 2016; No 31, 2017
s 3AB.....	ad No 33, 1994
Renumbered s 3A .....	No 49, 2001
s 3AA .....	ad No 109, 1988
Renumbered s 3B .....	No 49, 2001
s 3BA.....	ad No 141, 2005
s 3A .....	ad No 61, 1983
Renumbered s 3C .....	No 49, 2001
s 3D .....	ad No 49, 2001
<b>Part II</b>	
<b>Division 1</b>	
s 4 .....	am No 61, 1983; No 199, 1991; No 33, 1994; No 120, 1995; No 141, 2005; No 84, 2006; No 139, 2010; No 21, 2015; No 59, 2015
s 4A .....	ad No 62, 2014 am No 57, 2015; No 31, 2017
s 5 .....	am No 63, 1978; No 155, 1979; No 61, 1983; No 199, 1991; No 33, 1994; No 177, 1994; No 146, 1999; No 135, 2001; No 125, 2002; No 84, 2006; No 86, 2006; No 5, 2011; No 59, 2015
s 5A .....	ad No 134, 2013

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### Endnote 4—Amendment history

Provision affected	How affected
s 6 .....	am No 61, 1983; No 168, 1986; No 119, 1988; No 63, 1989; No 99, 1991; No 199, 1991; No 33, 1994; No 177, 1994; No 59, 1997; No 146, 1999; No 45, 2005; No 25, 2006; No 84, 2006; No 86, 2006; No 51, 2010; No 5, 2011; No 2, 2013; No 134, 2013
Heading to s 6A .....	am No 125, 2002
s 6A .....	ad No 135, 2001 am No 125, 2002
s 6B .....	ad No 86, 2006
s 6C .....	ad No 51, 2010
s 6D .....	ad No 21, 2015
s 6E .....	ad No 124, 2015
s 7 .....	rs No 61, 1983 am No 199, 1991
s 7A .....	ad No 61, 1983 am No 168, 1986; No 199, 1991; No 141, 2005; No 197, 2012
s 8 .....	am No 61, 1983; No 199, 1991; No 33, 1994; No 43, 1996; No 141, 2005; No 84, 2006; No 197, 2012; No 134, 2013
s 8A .....	ad No 61, 1983 am No 199, 1991; No 84, 2006
s 8B .....	ad No 135, 2001 am No 125, 2002
s 8C .....	ad No 86, 2006
s 8D .....	ad No 84, 2006
s 9 .....	am No 63, 1978; No 61, 1983; No 168, 1986; No 109, 1988; No 199, 1991; No 137, 2000; No 135, 2001; No 125, 2002; No 141, 2005; No 86, 2006
s 10 .....	am No 61, 1983; No 199, 1991
s 10A .....	ad No 199, 1991
s 11 .....	am No 61, 1983 rs No 199, 1991
s 11A .....	ad No 61, 1983 am No 199, 1991; No 141, 2005

## Endnote 4—Amendment history

Provision affected	How affected
s 12 .....	rs No 61, 1983 am No 199, 1991
s 13 .....	am No 199, 1991; No 33, 1994
s 14 .....	am No 168, 1986; No 199, 1991; No 141, 2005; No 31, 2018; No 67, 2018
<b>Division 2</b>	
s 15 .....	am No 61, 1983; No 199, 1991
s 16 .....	am No 199, 1991; No 33, 1994; No 31, 2018
s 17 .....	am No 199, 1991; No 33, 1994
s 18 .....	rs No 63, 1978 rep No 61, 1983 ad No 199, 1991
s 19 .....	am No 63, 1978; No 107, 1979; No 61, 1983; No 168, 1986; No 109, 1988; No 199, 1991; No 141, 2005; No 51, 2010 rs No 62, 2014
<b>Part IIA</b>	
Part IIA .....	ad No 61, 1983
s 19A .....	ad No 61, 1983 rep No 168, 1986
s 19B .....	ad No 61, 1983
s 19C .....	ad No 61, 1983 am No 199, 1991; No 141, 2005; No 59, 2015
s 19D .....	ad No 61, 1983 am No 199, 1991
s 19E .....	ad No 61, 1983 am No 168, 1986; No 199, 1991
s 19F .....	ad No 61, 1983 am No 25, 2006; No 62, 2014
s 19FA .....	ad No 62, 2014
<b>Part IIB</b>	
Part IIB .....	ad No 25, 2006

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### Endnote 4—Amendment history

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Provision affected	How affected
<b>Division 1</b>	
s 19G .....	ad No 25, 2006
s 19H .....	ad No 25, 2006
s 19J .....	ad No 25, 2006
s 19K .....	ad No 25, 2006
<b>Division 2</b>	
s 19L .....	ad No 25, 2006
s 19M .....	ad No 25, 2006 am No 141, 2005
s 19N .....	ad No 25, 2006
s 19P .....	ad No 25, 2006
s 19Q .....	ad No 25, 2006
<b>Division 3</b>	
s 19R .....	ad No 25, 2006 am No 141, 2005; No 51, 2010; No 5, 2011; No 62, 2014
s 19S .....	ad No 25, 2006
s 19T .....	ad No 25, 2006
s 19U .....	ad No 25, 2006
s 19V .....	ad No 25, 2006
s 19W .....	ad No 25, 2006
s 19X .....	ad No 25, 2006 rs No 62, 2014
s 19Y .....	ad No 25, 2006
s 19Z .....	ad No 25, 2006
<b>Division 4</b>	
s 19ZA .....	ad No 25, 2006
s 19ZB .....	ad No 25, 2006
s 19ZC .....	ad No 25, 2006
s 19ZD .....	ad No 25, 2006 am No 8, 2010



## Endnote 4—Amendment history

Provision affected	How affected
<b>Division 5</b>	
s 19ZE .....	ad No 25, 2006 am No 45, 2005; No 126, 2015
<b>Part IIC</b>	
Part IIC .....	ad No 11, 2011
<b>Division 1</b>	
s 19ZF .....	ad No 11, 2011
s 19ZG .....	ad No 11, 2011
s 19ZH .....	ad No 11, 2011
<b>Division 2</b>	
s 19ZI .....	ad No 11, 2011
s 19ZJ .....	ad No 11, 2011 am No 9, 2012
s 19ZK .....	ad No 11, 2011 am No 9, 2012
s 19ZL .....	ad No 11, 2011
<b>Division 3</b>	
s 19ZM .....	ad No 11, 2011 am No 62, 2014
s 19ZN .....	ad No 11, 2011
s 19ZO .....	ad No 11, 2011
s 19ZP .....	ad No 11, 2011
s 19ZQ .....	ad No 11, 2011
s 19ZR .....	ad No 11, 2011
s 19ZS .....	ad No 11, 2011 rs No 62, 2014
s 19ZT .....	ad No 11, 2011
s 19ZU .....	ad No 11, 2011
<b>Part IID</b>	
Part IID .....	ad No 57, 2015

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
<b>Division 1</b>	
s 20 .....	ad No 57, 2015
s 20A .....	ad No 57, 2015
s 20B .....	ad No 57, 2015
<b>Division 2</b>	
s 20C .....	ad No 57, 2015
s 20D .....	ad No 57, 2015
<b>Division 3</b>	
<b>Subdivision A</b>	
s 20E .....	ad No 57, 2015
s 20F .....	ad No 57, 2015
s 20G .....	ad No 57, 2015
<b>Subdivision B</b>	
s 20H .....	ad No 57, 2015
s 20J .....	ad No 57, 2015
s 20K .....	ad No 57, 2015
s 20L .....	ad No 57, 2015
s 20M .....	ad No 57, 2015
<b>Subdivision C</b>	
s 20N .....	ad No 57, 2015
<b>Subdivision D</b>	
s 20P .....	ad No 57, 2015
<b>Subdivision E</b>	
s 20Q .....	ad No 57, 2015
s 20R .....	ad No 57, 2015
<b>Subdivision F</b>	
s 20S .....	ad No 57, 2015
<b>Division 3A</b>	
Division 3A .....	ad No 101, 2018
<b>Subdivision A</b>	
s 20SA .....	ad No 101, 2018

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## Endnote 4—Amendment history

Provision affected	How affected
<b>Subdivision B</b>	
s 20SB .....	ad No 101, 2018
<b>Division 4</b>	
<b>Subdivision A</b>	
s 20T .....	ad No 57, 2015
s 20TA .....	ad No 101, 2018
<b>Subdivision B</b>	
s 20U .....	ad No 57, 2015
s 20V .....	ad No 57, 2015
s 20W .....	ad No 57, 2015
<b>Division 5</b>	
s 20X .....	ad No 57, 2015
s 20Y .....	ad No 57, 2015
s 20Z .....	ad No 57, 2015
s 20ZA .....	ad No 57, 2015
s 20ZB .....	ad No 57, 2015
s 20ZC .....	ad No 57, 2015
<b>Division 6</b>	
s 20ZD .....	ad No 57, 2015
s 20ZE .....	ad No 57, 2015
s 20ZF .....	ad No 57, 2015
<b>Division 7</b>	
s 20ZG .....	ad No 57, 2015
	am No 101, 2018
<b>Division 8</b>	
s 20ZH .....	ad No 57, 2015
s 20ZHA .....	ad No 101, 2018
s 20ZHB .....	ad No 101, 2018
s 20ZI .....	ad No 57, 2015
s 20ZIA .....	ad No 101, 2018
s 20ZJ .....	ad No 57, 2015

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s 20ZK .....	ad No 57, 2015
<b>Part IIE</b>	
Part IIE .....	ad No 31, 2017
<b>Division 1</b>	
s 20ZL .....	ad No 31, 2017
s 20ZM .....	ad No 31, 2017
	am No 160, 2018
s 20ZN .....	ad No 31, 2017
<b>Division 2</b>	
s 20ZO .....	ad No 31, 2017
s 20ZP .....	ad No 31, 2017
s 20ZQ .....	ad No 31, 2017
s 20ZR .....	ad No 31, 2017
<b>Division 3</b>	
s 20ZS .....	ad No 31, 2017
s 20ZT .....	ad No 31, 2017
<b>Division 4</b>	
s 20ZU .....	ad No 31, 2017
s 20ZV .....	ad No 31, 2017
s 20ZW .....	ad No 31, 2017
s 20ZX .....	ad No 31, 2017
	am No 160, 2018
s 20ZY .....	ad No 31, 2017
s 20ZZ .....	ad No 31, 2017
<b>Division 5</b>	
s 20ZZA .....	ad No 31, 2017
s 20ZZB .....	ad No 31, 2017
<b>Part III</b>	
<b>Division 1</b>	
s 20 .....	renum No 57, 2015
s 20ZL (prev s 20) .....	renum No 31, 2017

## Endnote 4—Amendment history

Provision affected	How affected
s 21A (prev s 20ZL)	
s 22 .....	am No 199, 1991; No 43, 1996; No 159, 2001
s 23 .....	am No 63, 1978; No 61, 1983; No 109, 1988
s 24 .....	am No 168, 1986; No 43, 1996
s 25 .....	rs No 122, 1991
	am No 146, 1999
s 26 .....	am No 199, 1991
s 28 .....	am No 61, 1981; No 61, 1983; Nos 122 and 199, 1991
s 28A .....	ad No 94, 1992
	am No 26, 2008
s 28B .....	ad No 94, 1992
	am No 26, 2008; No 58, 2011
s 29 .....	rs No 61, 1983
	am No 168, 1986; No 199, 1991; No 33, 1994; No 141, 2005; No 46, 2011
s 30 .....	am No 199, 1991
	rep No 94, 1992
<b>Division 2</b>	
s 31 .....	am No 63, 1984; No 146, 1999
s 32 .....	rep No 65, 1985
Division 3 heading.....	rep No 43, 1996
<b>Part IV</b>	
s 33 .....	am No 61, 1983; No 199, 1991; No 84, 2006
s 34 .....	am No 63, 1978
	rs No 61, 1983
	am No 199, 1991; No 25, 2006; No 84, 2006; No 11, 2011; No 62, 2014; No 57, 2015; No 31, 2017; No 101, 2018
s 35 .....	am No 63, 1978; No 61, 1983; No 119, 1988; No 63, 1989; No 199, 1991; No 135, 2001; No 141, 2005; No 84, 2006; No 86, 2006; No 51, 2010; No 134, 2013; No 57, 2015; No 87, 2015; No 61, 2016
s 35AA .....	ad No 86, 2006
s 35A .....	ad No 61, 1983

## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
	am No 177, 1994; No 135, 2001; No 141, 2005; No 86, 2006; No 5, 2011
s 35B .....	ad No 135, 2001
	am No 125, 2002; No 25, 2006; No 62, 2014; No 31, 2018
s 35C .....	ad No 86, 2006
	am No 57, 2015
s 36 .....	am No 61, 1983; No 199, 1991; No 137, 2000; No 49, 2001; No 57, 2015; No 61, 2016
s 37 .....	am No 61, 1983
Part V .....	ad Statutory Rules 1978 No 104
	rep No 168, 1986
ss 39–42 .....	ad Statutory Rules 1978 No 104
	rep No 168, 1986