



# Ombudsman Amendment Act 1983

No. 61 of 1983

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# **Ombudsman Amendment Act 1983**

**No. 61 of 1983**

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## **An Act to amend the *Ombudsman Act 1976*, and for related purposes**

*[Assented to 12 October 1983]*

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

### **Short title, &c.**

1. (1) This Act may be cited as the *Ombudsman Amendment Act 1983*.
- (2) The *Ombudsman Act 1976*<sup>1</sup> is in this Act referred to as the Principal Act.

### **Commencement**

2. (1) Subject to sub-section (2), this Act shall come into operation on the day on which it receives the Royal Assent.
- (2) Section 3, sub-section 4 (2) and sections 6, 20, 21 and 30 shall come into operation on a date to be fixed by Proclamation.

**Amendment of title**

3. The title of the Principal Act is omitted and the following title is substituted:

“An Act to provide for the appointment of a Commonwealth Ombudsman and a Defence Force Ombudsman and to define their respective functions and powers”.

**Interpretation**

4. (1) Section 3 of the Principal Act is amended—

(a) by omitting from sub-section (1) the definition of “Department” and substituting the following definition:

“ ‘Department’ means a Department of the Australian Public Service that corresponds to a Department of State of the Commonwealth;”;

(b) by omitting from sub-section (1) the definitions of “enactment” and “enactment of the Northern Territory” and substituting the following definitions:

“ ‘enactment’ means—

- (a) an Act;
- (b) an Ordinance of the Australian Capital Territory;
- (c) an Ordinance of the Territory of Christmas Island or of the Territory of Cocos (Keeling) Islands;
- (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 the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands,

but does not include the *Norfolk Island Act 1979*, the *Northern Territory (Self-Government) Act 1978* or an enactment of Norfolk Island or of the Northern Territory;

‘enactment of Norfolk Island’ means—

- (a) a law or Ordinance referred to in paragraph (a), (b) or (c) of the definition of ‘enactment’ in sub-section 4 (1) of the *Norfolk Island Act 1979*; or
- (b) an instrument (including rules, regulations or by-laws) made under such a law or Ordinance;

‘enactment of the Northern Territory’ means—

- (a) a law or Ordinance referred to in paragraph (a) or (b) of the definition of ‘enactment’ in sub-section 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;”;

- (c) by omitting from the definition of “Ordinance” in sub-section (1) “or the Northern Territory”;
- (d) by omitting from paragraph (a) of the definition of “prescribed authority” in sub-section (1) “(not being an enactment of the Northern Territory)”;
- (e) by omitting from sub-paragraph (a) (ii) of the definition of “prescribed authority” in sub-section (1) “constituted by, or includes” and substituting “required, or is expressly permitted, by an enactment to be constituted by, or to include”;
- (f) by omitting sub-paragraph (a) (v) of the definition of “prescribed authority” in sub-section (1) and substituting the following sub-paragraph:
  - “(v) a Royal Commission;”;
- (g) by omitting sub-paragraphs (b) (ii) and (iii) of the definition of “prescribed authority” in sub-section (1) and substituting the following word and sub-paragraph:
  - “; or (ii) an incorporated company over which the Commonwealth is in a position to exercise control;”;
- (h) by omitting from paragraph (c) of the definition of “responsible Minister” in sub-section (1) “or sub-paragraph (b) (iii) of the definition of ‘prescribed authority’ is responsible for dealing with a matter” and substituting “of the definition of ‘prescribed authority’ is responsible for dealing with the matter”;
- (j) by omitting from paragraph (3) (a) “or member of the Legislative Assembly of the Northern Territory”;
- (k) by omitting sub-section (4) and substituting the following sub-sections:

“(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 holding an appointment made by, or by reason of authority given by, the Governor-General, a Minister or the Permanent Head of a Department; and
- (b) the person does not exercise the power or perform the function by reason of his holding, or performing the duties of, an office established by, or in accordance with the provisions of, an enactment or by reason of his being a Judge of a court of, or a magistrate of, a State or Territory,

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

“(4A) Notwithstanding sub-section (4), where a person is authorized to exercise a power or perform a function by reason of his

holding an appointment made by, or by reason of authority given by, the Governor-General, a Minister or the Permanent Head 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 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.”;

- (m) by inserting after sub-section (5) the following sub-section:

“(5A) Notwithstanding sub-section (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.”; and

- (n) by omitting sub-section (7) and substituting the following sub-sections:

“(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 under Part II.

“(7B) For the purposes of a provision of this Act (other than this sub-section) 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 Northern Territory; and
- (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 enactment of the Northern Territory.”.

- (2) Section 3 of the Principal Act is amended—

- (a) by inserting after the definition of “Deputy Ombudsman” in sub-section (1) the following definition:

“‘Deputy Ombudsman (Defence Force)’ means the Deputy Ombudsman who is, by virtue of a notice under sub-section 23 (1) that is in force, designated as the Deputy Ombudsman (Defence Force);”;

- (b) by inserting after sub-section (6) the following sub-sections:

“(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 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 service as a member of the Defence Force; or
- (b) the taking of the action is within his 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 Defence Force Staff, the Chief of Naval Staff, the Chief of the General Staff or the Chief of the Air Staff is not action taken by the Defence Force or by a Department for the purposes of this Act.

“(6C) In this Act (other than sub-section (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 death a member of the Defence Force or of that arm or part of the Defence Force.”; and

- (c) by adding at the end thereof the following sub-sections:

“(11) For the purposes of this Act (other than sub-section (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 Defence Force Staff; and
- (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 Defence Force Staff and the principal officer of the Department of Defence, be communicated by the Defence Force

Ombudsman to either the Chief of Defence Force Staff or the principal officer of that Department.”.

**5.** After section 3 of the Principal Act the following section is inserted in Part I:

**Application of Act**

“3A. This Act applies both within and outside Australia and extends to every external Territory.”.

**Establishment of offices of Ombudsman and Deputy Ombudsman**

**6.** Section 4 of the Principal Act is amended by omitting from paragraph (1) (b) “2” and substituting “3”.

**Functions of Ombudsman**

**7.** Section 5 of the Principal Act is amended—

- (a) by omitting “other” from paragraph (1)(b);
- (b) by omitting paragraph (2) (c) and substituting the following paragraph:

“(c) action taken by—

- (i) a magistrate or coroner for the Australian Capital Territory, 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 by or under an Act;”;

- (c) by omitting from paragraph (2)(d) “, the Public Service of the Northern Territory”;

- (d) by adding at the end of paragraph (2)(d) “or”;

- (e) by omitting paragraph (2) (f); and

- (f) by omitting sub-section (3) and substituting the following sub-sections:

“(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 sub-section, 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.”.



**Discretion not to investigate certain complaints**

**8. Section 6 of the Principal Act is amended—**

- (a) by omitting paragraphs (1)(a), (b) and (c) and substituting the following paragraphs:

“(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 of the case.”;

- (b) by inserting after sub-section (1) the following sub-sections:

“(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 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 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 sub-section (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.”;

- (c) by omitting from sub-section (2) “complaint” (second, third and fourth occurring) and substituting “action”; and
- (d) by omitting from sub-section (3) all the words after “Ombudsman” (second occurring) and substituting “may decide not to investigate the action or not to investigate the action further, as the case may be, if he is of the opinion that, in all the circumstances of the case, it would be reasonable for the complainant to exercise, or would have been reasonable for the complainant to have exercised, that right”.

9. Section 7 of the Principal Act is repealed and the following sections are substituted:

### **Complaints**

“7. (1) Subject to sub-section (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 is detained or to any other person performing duties in connection with his 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 to any such person and addressed to the Ombudsman; and
- (b) to have delivered to him, without undue delay, any sealed envelope, addressed to him and sent by the Ombudsman, that comes into the possession or under the control of the person in whose custody he is detained or of any other person performing duties in connection with his detention.

“(4) Where a sealed envelope addressed to the Ombudsman is delivered by a person detained in custody to a person referred to in sub-section (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 sub-section, neither the person in whose custody the first-mentioned person is detained nor any other person performing

duties in connection with his detention is entitled to open the envelope or to inspect any document enclosed in the envelope.

“(5) For the purposes of sub-sections (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.

### **Preliminary inquiries**

“7A. (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, 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 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 of the Department or authority is in force under sub-section (2), of such officers as are referred to in the arrangement.

“(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 sub-section (1) with respect to action that has been or is taken by the Department or authority.”.

### **Investigations**

**10.** Section 8 of the Principal Act is amended—

- (a) by omitting sub-section (1) and substituting the following sub-sections:

“(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 proposes to investigate action taken by the Department or authority, being action included in a class or classes of actions specified in the arrangement.”; and

- (b) by inserting after sub-section (7) the following sub-section:

“(7A) Where, in relation to an investigation under this Act, the Ombudsman proposes to afford a person an opportunity to appear before him or before an authorized person and to make submissions

under sub-section (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 has not previously informed the responsible Minister that the action is being investigated, inform that Minister accordingly.”.

**11.** After section 8 of the Principal Act the following section is inserted:

**Investigations by Commonwealth and State Ombudsmen**

“8A. (1) The Commonwealth Ombudsman may, if he 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.

“(2) A reference in sub-section (1) 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 sub-section (1) may relate to particular action or actions, to a series of related actions or to actions included in a class or classes of actions.

“(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) Sub-section (1) 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 sub-section 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 sub-section 34 (1).”.

**Power to obtain information and documents**

**12.** Section 9 of the Principal Act is amended—

- (a) by omitting sub-sections (1) and (2) and substituting the following sub-sections:

“(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.

“(1A) Where documents or other records are produced to the Ombudsman in accordance with a requirement under sub-section (1) or an order under sub-section 11A (2), the Ombudsman—

- (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 him, on such date and at such time and place as are specified in the notice, to answer questions relevant to the investigation.”;

- (b) by inserting in sub-section (3) “to the Ombudsman” after “disclosure” (first and second occurring);

- (c) by omitting paragraph (3) (d) and substituting the following paragraph:
  - “(d) by reason that it would involve the disclosure of deliberations or advice of the Executive Council,”;
- (d) by omitting from sub-section (4) “but his answer to any such question is not admissible in evidence against him in proceedings other than proceedings for an offence against section 36.” and substituting—
  - “but the information, the production of the document or record or the answer to the question is not admissible in evidence against him in proceedings other than—
  - (c) an application under sub-section 11A (2); or
  - (d) proceedings for an offence against section 36.”; and
- (e) by adding at the end thereof the following sub-section:
  - “(6) The reference in sub-section (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.”.

**Unreasonable delay in exercising power**

**13. Section 10 of the Principal Act is amended—**

- (a) by omitting from paragraph (1) (c) “the Administrative Appeals Tribunal” and substituting “a prescribed tribunal”;
  - (b) by omitting from sub-section (1) “to the Administrative Appeals Tribunal under the enactment referred to in paragraph (c)” and substituting “under the enactment referred to in paragraph (c) to the prescribed tribunal concerned”;
  - (c) by inserting after sub-section (1) the following sub-section:
    - “(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 is of the opinion that there has been unreasonable delay in deciding whether to do the act or thing, grant to the complainant a certificate certifying that, in the opinion of the Ombudsman, there has been

unreasonable delay in deciding whether to do the act or thing and, if the Ombudsman does so, the person required or permitted to exercise the power, shall, for the purpose of enabling application to be made to the 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.”;

- (d) by omitting from sub-section (2) “sub-section (1) applies” and substituting “sub-sections (1) and (1A) apply”; and
- (e) by adding at the end thereof the following sub-section:
  - “(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.”.

#### **Reference of question to the Administrative Appeals Tribunal**

**14.** Section 11 of the Principal Act is amended by omitting from sub-section (1) “a complaint concerning the taking of action in pursuance of a discretionary power” and substituting “the taking of action in pursuance of a power”.

**15.** After section 11 of the Principal Act the following section is inserted:

#### **Powers of Federal Court of Australia**

“11A. (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 by or under this Act or any other Act 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 sub-sections (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 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 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 sub-section (1) unless he has informed the responsible Minister in writing of the reasons for the proposed application.”.

**16.** Section 12 of the Principal Act is repealed and the following section is substituted:

**Complainant and Department, &c., to be informed**

“12. (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, 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 sub-section (2) relating to a class of actions in which that action is included, the Department or authority, of his decision and of the reasons for his 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 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 decision not to investigate, or to continue to investigate, such actions and of the reasons for his decision; or
- (b) providing that the Ombudsman is not required to inform the Department or authority of his decision not to investigate, or to continue to investigate, such actions and of the reasons for his 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, the Ombudsman shall, in such manner and at such times as he thinks fit, furnish to the complainant and to the Department or authority particulars of the investigation.

“(4) The Ombudsman may, if he thinks fit, furnish comments or suggestions with respect to any matter relating to or arising out of an investigation by him to any Department, body or person other than a Department, body or person to which or to whom he 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 thinks fit; or
- (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 thinks fit.”.

### **Reports by Ombudsman**

17. Section 15 of the Principal Act is amended by inserting in sub-paragraph (1) (c) (i) “, or that there was a failure to take relevant considerations into account,” after “account”.

### **Repeal of section 18**

18. Section 18 of the Principal Act is repealed.

### **Annual report and additional reports to Parliament**

19. Section 19 of the Principal Act is amended—

- (a) by omitting sub-sections (1), (2) and (3) and substituting the following sub-sections:

“(1) The Ombudsman shall, as soon as practicable, and in any event within 6 months, after each 30 June—

- (a) submit to the Minister, for presentation to the Parliament, a report of the operations of the Ombudsman during the year that ended on that 30 June, including operations referred to in paragraph (b); and
- (b) submit to the Minister for the time being administering the *Seat of Government (Administration) Act 1910*, for presentation to the Australian Capital Territory House of Assembly, a report of the operations of the Ombudsman during the year that ended on that 30 June with respect to action taken by officers in the exercise of powers or the performance of functions conferred by enactments of the Australian Capital Territory.

“(2) The Ombudsman may, from time to time, submit to the Minister for presentation to the Parliament—

- (a) a report of the operations of the Ombudsman during a part of a year; or
- (b) a report in respect of any matter relating to, or arising in connection with, the exercise of the powers, or the performance of the functions, of the Ombudsman under this Act,

but nothing in this section affects the powers and duties of the Ombudsman under sections 15, 16 and 17.

“(3) Where the Ombudsman submits a report to the Minister under sub-section (2)—

- (a) if the report relates to part of a year—the Ombudsman shall submit to the Minister for the time being administering the *Seat of Government (Administration) Act 1910*, for presentation to the Australian Capital Territory House of Assembly, a report of the operations of the Ombudsman during that part of a year with respect to action taken by officers in the exercise of powers or the performance of functions conferred by enactments of the Australian Capital Territory; or
- (b) if the report is in respect of a matter relating to action taken by an officer in the exercise of a power or the performance of a function conferred by an enactment of the Australian Capital Territory—the Ombudsman shall submit a copy of the report to the Minister for the time being administering the *Seat of Government (Administration) Act 1910*, for presentation to the Australian Capital Territory House of Assembly.

“(3A) Where a report referred to in paragraph (1) (a) includes a separate part concerning the operations of the Ombudsman referred to in paragraph (1) (b), the Ombudsman shall, for the purposes of this section, be taken to have submitted a report in accordance with paragraph (1) (b) if he submits a copy of that part to the Minister for the time being administering the *Seat of Government (Administration) Act 1910*, for presentation to the Australian Capital Territory House of Assembly.

“(3B) Where a report referred to in paragraph (2) (a) includes a separate part concerning the operations of the Ombudsman with respect to action taken by officers in the exercise of powers or the performance of functions conferred by enactments of the Australian Capital Territory, the Ombudsman shall, for the purposes of this section, be taken to have submitted a report in accordance with paragraph (3) (a) if he submits a copy of that part to the Minister for the time being administering the *Seat of Government (Administration) Act 1910*, for presentation to the Australian Capital Territory House of Assembly.”;

- (b) by omitting sub-sections (5), (6) and (7) and substituting the following sub-sections:

“(5) Where the Ombudsman submits a report to the Minister for the time being administering the *Seat of Government (Administration) Act 1910* under paragraph (1) (b) or (3) (a) or submits a copy of a report to that Minister under paragraph (3) (b), that Minister shall cause the report or copy to be forwarded, as soon as practicable after its receipt by him, to the Speaker of the Australian Capital Territory House of Assembly for presentation to that House.

“(6) Where the Ombudsman is of the opinion that it will not be reasonably possible to submit a report in accordance with paragraph (1) (a) or (b) within 6 months after the end of a particular year, the Ombudsman may, within that period of 6 months, apply to the Minister for an extension of the period, and, where the Ombudsman does so apply, he shall furnish to the Minister a statement in writing explaining why, in the Ombudsman’s opinion, it will not be reasonably possible so to submit the report.

“(7) The Minister may, on application under sub-section (6), grant such extension as he considers reasonable in the circumstances.

“(7A) Notwithstanding sub-section (1), where the Minister grants an extension pursuant to an application under sub-section (6)—

- (a) the Minister shall cause to be laid before each House of the Parliament, within 3 sitting days of that House after the day on which he grants the extension, a copy of the statement furnished pursuant to sub-section (6) in respect of the application together with a statement specifying the extension granted and his reasons for granting the extension;
- (b) the Ombudsman shall submit the report concerned to the Minister within the period as so extended; and
- (c) the Minister shall—
  - (i) cause the report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which he receives the report; and
  - (ii) where the report includes a separate part concerning the operations of the Ombudsman referred to in paragraph (1) (b)—cause a copy of that part to be forwarded to the Speaker of the Australian Capital Territory House of Assembly, for presentation to that House within 15 sitting days of that House after the day on which the Minister receives the report.

“(7B) Where—

- (a) the Ombudsman fails to submit a report in accordance with paragraph (1) (a) or (b) within 6 months after the end of a particular year; or
- (b) the Minister grants an extension pursuant to an application under sub-section (6) and the Ombudsman fails to submit the report within the period as so extended,

then—

- (c) the Ombudsman shall, not later than 14 days after the end of that period of 6 months or that period of extension, as the case may be, furnish to the Minister a statement in writing explaining why the report was not submitted as required; and

(d) the Minister shall—

- (i) cause to be laid before each House of the Parliament within 3 sitting days of that House after the day on which he receives the statement; and
- (ii) in the case of a report that is required to be submitted in accordance with paragraph (1) (b)—cause to be forwarded to the Speaker of the Australian Capital Territory House of Assembly, for presentation to that House within 3 sitting days of that House after the day on which the Minister receives the statement,

a copy of the statement.”; and

(c) by omitting sub-section (9) and substituting the following sub-section:

“(9) In this section, ‘enactment of the Australian Capital Territory’ means an Ordinance of the Australian Capital Territory or an instrument (including rules, regulations or by-laws) made under such an Ordinance.”.

**20.** After Part II of the Principal Act the following Part is inserted:

**“PART IIA—ESTABLISHMENT, FUNCTIONS, POWERS AND DUTIES OF THE DEFENCE FORCE OMBUDSMAN**

**Interpretation**

“19A. In this Part, a reference to the relevant law, in relation to a member of the Defence Force, is a reference to the *Defence Act 1903* and—

- (a) if the member is a member of the Australian Navy—the *Naval Defence Act 1910*; and
- (b) if the member is a member of the Australian Air Force—the *Air Force Act 1923*.

**Establishment of office of Defence Force Ombudsman**

“19B. (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 sub-section (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.

**Functions of Defence Force Ombudsman**

“19C. (1) The functions of the Defence Force Ombudsman are to investigate complaints made to him under this Act and to perform such other functions as are conferred on him by this Act.

“(2) Subject to this Act, the Defence Force Ombudsman—

- (a) shall investigate action that he is authorized by this Act to investigate and in respect of which a complaint has been made to him; and
- (b) may, of his own motion, investigate action that he is authorized by this Act to investigate.

“(3) Subject to sub-section (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 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 sub-section (3), action referred to in that sub-section 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, 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 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 sub-section, 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.

“(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 sub-section (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.

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

“19D. 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 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 capacity as the holder of the other office, he may deal with, or continue or deal with, as the case may be, the complaint or that part of the complaint accordingly.

#### **Discretion with respect to certain complaints**

“19E. (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 relevant law, redress from a member of the Defence Force authorized by or under that law 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 sub-paragraphs (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 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.

“(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 relevant law, redress in respect of the action to which the complaint relates from a member of the Defence Force authorized by or under that law to grant redress, the Defence Force Ombudsman shall not investigate the complaint unless he is of the opinion that the member was, by reason of special circumstances, justified in refraining from seeking redress.

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

“19F. (1) The provisions of Part I, Part II (other than sections 4, 5, 8A and 19), Division 2 of Part III (other than sub-sections 31 (2) and (3)) and Part IV (other than sub-sections 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) Sub-section 6 (1A) does not apply in relation to a complaint made by a member of the Defence Force to the Defence Force Ombudsman.

“(3) The Defence Force Ombudsman has the same powers and duties with respect to the submission of reports relating to the operations of, and to the exercise of the powers and performance of the functions of, the Defence Force Ombudsman, as the Ombudsman has under section 19 with respect to the submission of reports relating to the operations of, and to the exercise of the powers and performance of the functions of, the Ombudsman (other than such reports of the Ombudsman relating to the Australian Capital Territory).

“(4) The first report relating to the operations of the Defence Force Ombudsman during a year shall relate to the operations of the Defence Force Ombudsman during the period that commenced on the date of commencement of this Part and ended on the 30 June first occurring after that date.

“(5) A report relating to the operations of the Defence Force Ombudsman during a year may be included in a report under section 19 relating to the operations of the Ombudsman during that year.”.

### **Deputy Ombudsman**

**21.** Section 23 of the Principal Act is amended—

(a) by omitting sub-section (1) and substituting the following sub-section:

“(1) The Minister may—

(a) by notice in writing published in the *Gazette*, designate a Deputy Ombudsman as the Deputy Ombudsman for the Australian Capital Territory; and

(b) by notice in writing published in the *Gazette*, designate a Deputy Ombudsman as the Deputy Ombudsman (Defence Force).”;

(b) by omitting from sub-section (2) “in the Australian Capital Territory” and substituting “in, or in connection with, the administration of the Australian Capital Territory”; and

(c) by omitting from sub-section (4) “this section” and substituting “sub-section (2)”.

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

**22.** Section 28 of the Principal Act is amended by inserting after sub-section (7) the following sub-section:

“(7A) If an Ombudsman is absent from duty, except on leave granted by the Minister, for 14 consecutive days or for 28 days in any 12 months, the Governor-General may remove him from office.”.

**23.** Section 29 of the Principal Act is repealed and the following section is substituted:

### **Acting appointments**

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

(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 or a Deputy Ombudsman is absent from duty or from Australia or is, for any other reason, unable to perform the functions of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

“(2) An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.



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

“(4) Where a person is acting in an office of Commonwealth Ombudsman or Deputy Commonwealth Ombudsman in accordance with paragraph (1) (b) and the office becomes vacant while that person is so acting, then, subject to sub-section (2), that person may continue to act in the office until the Governor-General otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

“(5) The Governor-General may terminate the appointment of a person under this section at any time.

“(6) The Minister may determine the terms and conditions of appointment, including remuneration and allowances, of a person appointed under this section.

“(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.

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

“(9) The validity of anything done by or in relation to a person purporting to act under sub-section (1) shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.”.

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

**24.** Section 33 of the Principal Act is amended by adding at the end of sub-section (2) “or a delegate of the Ombudsman”.

**25.** Section 34 of the Principal Act is repealed and the following section is substituted:

### **Delegation**

“34. (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 powers under this Act, other than his powers under sections 15, 16, 17 and 19 and this power of delegation; and
- (b) any power exercisable by him by virtue of an instrument of delegation referred to in sub-section (7) the sub-delegation of which is permitted by the relevant law of the State or by the instrument of delegation.

“(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 powers under this Act, other than his powers under sections 15, 16 and 17 and his powers referred to in sub-section 19F (3).

“(3) A power delegated under sub-section (1) or (2), when exercised by the delegate shall, for the purposes of this Act, be deemed to have been exercised by the Ombudsman or Defence Force Ombudsman, as the case may be.

“(4) A delegation under sub-section (1) or (2) does not prevent the exercise of a power by the Ombudsman or Defence Force Ombudsman, as the case may be.

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

“(6) Powers conferred on a Deputy Ombudsman by virtue of an instrument of delegation under sub-section (1) are in addition to, and not in substitution for, any powers conferred on him by sub-section 23(2).

“(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 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.”.

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

**26. Section 35 of the Principal Act is amended—**

- (a) by inserting in sub-section (2) “, 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 as provided by sub-section 34 (7)” after “Act”;
- (b) by omitting from paragraph (3) (a) “and for purposes connected with” and substituting “for purposes connected with the exercise of the powers and”; and
- (c) by omitting sub-section (7) and substituting the following sub-sections:

“(7) Subject to sub-section (7A), where the Ombudsman proposes, for purposes connected with the exercise of his powers or performance of his functions under this Act, 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 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.

“(7A) Sub-section (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 sub-section 34 (7).”.

**27.** After section 35 of the Principal Act the following section is inserted:

**Disclosure of information by Ombudsman**

“35A. (1) 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 under this Act 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 sub-section (1) with respect to a particular investigation where the disclosure of that information, or the making of that statement, is likely to interfere with the carrying out of that or any other investigation or the making of a report under this Act.

“(3) The Ombudsman shall not, in disclosing information or making a statement under sub-section (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 sub-section 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 sub-section 8 (2) and section 35 (other than sub-section (5) of that section).”.

**Offences**

**28.** Section 36 of the Principal Act is amended—

- (a) by omitting “lawful” (wherever occurring) and substituting “reasonable”; and
- (b) by omitting paragraph (1) (b) and substituting the following paragraphs:
  - “(b) to be sworn or make an affirmation;
  - (ba) to furnish information; or”.

**Protection from civil actions**

**29.** Section 37 of the Principal Act is amended—

- (a) by inserting after “by reason of” and before paragraph (a) “any of the following acts done in good faith”;
- (b) by omitting from paragraph (a) “or”; and
- (c) by adding at the end of paragraph (b) “, 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.”.

**Transitional**

**30. (1)** In this section—

“commencing day” means the day fixed by Proclamation under sub-section 2 (2);

“prescribed provisions” means the provisions of this Act that come into operation on the commencing day.

(2) Where, before the commencing day, a complaint had been made to the Ombudsman with respect to action taken by a Department or by a prescribed authority but the Ombudsman had not commenced an investigation under the Principal Act of the action, the Principal Act as amended by the prescribed provisions has effect in relation to the complaint as if the complaint had been made on the commencing day.

(3) Subject to sub-section (4), where, before the commencing day—

- (a) the Ombudsman had commenced an investigation under the Principal Act of action taken by a Department or by a prescribed authority; and
- (b) the Ombudsman had not finally disposed of the matter,

the Ombudsman has the same rights, duties and powers, and the Principal Act applies, on and after the commencing day in relation to that action as if the prescribed provisions had not come into operation.

(4) Where the Ombudsman is of the opinion that an investigation referred to in sub-section (3) of action taken by a Department or by a prescribed authority could be more conveniently continued by him on and after the commencing day in his capacity as Defence Force Ombudsman, the following provisions apply:

- (a) if a complaint had been made to the Ombudsman with respect to the action—the Principal Act as amended by the prescribed provisions has effect in relation to the complaint as if the complaint had been made to the Defence Force Ombudsman on the commencing day;
- (b) the Defence Force Ombudsman shall investigate the action under Part IIA of the Principal Act as so amended as if the Ombudsman had not previously commenced to investigate the action; and
- (c) the Defence Force Ombudsman shall treat the information obtained by the Ombudsman in the course of his investigation as if it had been obtained by the Defence Force Ombudsman in the course of an investigation under Part IIA of the Principal Act as so amended.

**(5) Where—**

- (a) a complaint with respect to action referred to in sub-section 19C (3) of the Principal Act as amended by the prescribed provisions had been made in writing before the commencing day to a person whose function or duty was to investigate such action (in this sub-section referred to as the “authorized person”); and
- (b) before the commencing day the authorized person had not commenced, or had commenced but had not completed, an investigation of that action,

the Principal Act as so amended has effect on and after the commencing day in relation to the complaint as if the complaint had been made to the Defence Force Ombudsman on the commencing day, and, where the authorized person had commenced an investigation of the action to which the complaint relates—

- (c) the Defence Force Ombudsman shall deal with the complaint under Part IIA of the Principal Act as so amended as if the authorized person had not previously commenced to investigate the action to which the complaint relates; and
- (d) where the Defence Force Ombudsman decides to investigate the action to which the complaint relates—the authorized person shall furnish to the Defence Force Ombudsman the information obtained by him in the course of his investigation and, for the purposes of the investigation by the Defence Force Ombudsman, the Defence Force Ombudsman shall treat that information as if it had been obtained by him in the course of his investigation under Part IIA of the Principal Act as so amended.

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**NOTE**

- 1. No. 181, 1976, as amended. For previous amendments, see No. 63, 1978; Nos. 107 and 155, 1979; and No. 61, 1981.