

2004-2005

The Parliament of the  
Commonwealth of Australia

THE SENATE

*As read a third time*

## **Postal Industry Ombudsman Bill 2005**

**No.     , 2005**

**A Bill for an Act to amend the *Ombudsman Act 1976*, and for related purposes**

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1 THIS bill originated in the Senate; and,  
2 having this day passed, is now ready for  
3 presentation to the House of  
4 Representatives for its concurrence.

5 HARRY EVANS  
6 *Clerk of the Senate*

7 The Senate  
8 8 March 2005

9 **A Bill for an Act to amend the *Ombudsman Act***  
10 ***1976, and for related purposes***

11 The Parliament of Australia enacts:

12 **1 Short title**

13 This Act may be cited as the *Postal Industry Ombudsman Act*  
14 *2005*.

15 **2 Commencement**

16 (1) Each provision of this Act specified in column 1 of the table  
17 commences, or is taken to have commenced, in accordance with  
18 column 2 of the table. Any other statement in column 2 has effect  
19 according to its terms.  
20

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
3. Schedule 2, item 1	Immediately after the commencement of item 2 of Schedule 2 to the <i>Prime Minister and Cabinet Legislation Amendment (Application of Criminal Code) Act 2001</i> .	26 July 2001
4. Schedule 2, item 2	Immediately after the commencement of item 1 of Schedule 2 to the <i>Prime Minister and Cabinet Legislation Amendment (Application of Criminal Code) Act 2001</i> .	26 July 2001
5. Schedule 2, item 3	Immediately after the commencement of item 717 of Schedule 1 to the <i>Public Employment (Consequential and Transitional) Amendment Act 1999</i> .	5 December 1999
6. Schedule 2, item 4	Immediately after the commencement of Schedule 5 to the <i>A.C.T. Self-Government (Consequential Provisions) Act 1988</i> .	11 May 1989
7. Schedule 2, item 5	Immediately after the commencement of item 11 of Schedule 3 to the <i>National Crime Authority Legislation Amendment Act 2001</i> .	12 October 2001

1 Note: This table relates only to the provisions of this Act as originally  
2 passed by the Parliament and assented to. It will not be expanded to  
3 deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not  
5 part of this Act. Information in this column may be added to or  
6 edited in any published version of this Act.

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1  
2  
3  
4  
5

### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

1  
2 **Schedule 1—Amendments relating to the**  
3 **Postal Industry Ombudsman**

4 **Part 1—Amendment of the Ombudsman Act 1976**

5 *Ombudsman Act 1976*

6 **1 Title**

7 Omit “**and a Defence Force Ombudsman**”, substitute “, **a Defence**  
8 **Force Ombudsman and a Postal Industry Ombudsman,**”.

9 **2 Subsection 3(1)**

10 Insert:

11 *ACA* means the Australian Communications Authority.

12 **3 Subsection 3(1)**

13 Insert:

14 *Australia Post* means the Australian Postal Corporation.

15 **4 Subsection 3(1) (at the end of the definition of *officer*)**

16 Add:

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

19 **5 Subsection 3(1)**

20 Insert:

21 *postal or similar service* includes:

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

25 **6 Subsection 3(1)**

26 Insert:

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

4                    **7 Subsection 3(1) (at the end of the definition of *principal***  
5                    ***officer*)**

6                    Add:

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

9                    **8 Subsection 3(1)**

10                  Insert:

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

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

16                  **9 After subsection 3(6C)**

17                  Insert:

18                  (6D) For the purposes of this Act, action that is taken by an officer of a  
19                  registered PPO is taken to have been taken by the registered PPO if  
20                  the officer takes, or purports to take, the action because he or she is  
21                  an officer of the registered PPO, whether or not:

22                          (a) the action is taken for or in connection with, or as incidental  
23                          to, the provision of a postal or similar service by the registered  
24                          PPO; or

25                          (b) the taking of the action is within the duties of the officer.

26                  **10 Subsection 6(4F)**

27                  Repeal the subsection.

28                  **11 After Part IIA**

29                  Insert:

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

3 **Division 1—Preliminary**

4 **19G Definitions**

5 In this Part:

6 *officer* means:

7 (a) in relation to Australia Post:

8 (i) a person who is employed in the service of, or is a  
9 member of the staff of, Australia Post, whether or not he  
10 or she is employed by Australia Post; or

11 (ii) a person authorised by Australia Post to exercise any  
12 powers or perform any functions of Australia Post on  
13 behalf of Australia Post; or

14 (b) in relation to a registered PPO:

15 (i) if the registered PPO is an individual—the individual or  
16 an employee of the individual; or

17 (ii) if the registered PPO is a body corporate—a director, the  
18 secretary or an employee of the registered PPO; or

19 (iii) if the registered PPO is a partnership—a partner in, or  
20 an employee of, the partnership.

21 *principal officer* means:

22 (a) in relation to Australia Post—the Managing Director of  
23 Australia Post; or

24 (b) in relation to a registered PPO:

25 (i) if the registered PPO is an individual—the individual; or

26 (ii) in any other case—the individual primarily responsible  
27 for the management of the registered PPO.

28 **19H Action taken by contractors**

29 (1) Subsections (2) and (3) apply if:

30 (a) a contractor, or an employee of a contractor, in relation to a  
31 postal services contract with Australia Post or a registered

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

9 *Attribution of action to Australia Post or registered PPO*

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

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

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

23 *Contractors and postal services contracts*

- 24 (4) In this section:

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

- 27 (a) a party to the postal services contract; or  
28 (b) both:  
29 (i) a party to a contract (the **subcontract**) with a person  
30 who is a contractor, in relation to the postal services  
31 contract, because of a previous application of this  
32 definition; and

1 (ii) responsible under the subcontract for the provision of  
2 services covered by the postal services contract.

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

### 5 **19J Continued application of this Act to deregistered PPOs**

6 (1) This section applies if:

- 7 (a) a registered PPO took action at a particular time; and  
8 (b) the Postal Industry Ombudsman receives a complaint in  
9 respect of that action within 12 months after that time; and  
10 (c) the PPO applies after that time, under subsection 19ZC(1), to  
11 no longer be registered for the purposes of this Part (whether  
12 or not the application was made before the complaint was  
13 received).

14 (2) This Act applies as if the PPO were a registered PPO in relation to  
15 that complaint.

### 16 **19K Part IIB not to affect operation of other provisions of this Act**

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

## 19 **Division 2—Establishment and functions of the Postal** 20 **Industry Ombudsman**

### 21 **19L Establishment of office of Postal Industry Ombudsman**

22 (1) For the purposes of this Act, there is to be a Postal Industry  
23 Ombudsman.

24 (2) The office of Postal Industry Ombudsman is to be held by the  
25 person who holds the office of Commonwealth Ombudsman.

26 (3) The reference in subsection (2) to the person who holds the office of  
27 Commonwealth Ombudsman includes a reference to a person for the  
28 time being acting in that office because of an appointment under  
29 section 29.

1 **19M Functions of Postal Industry Ombudsman**

- 2 (1) The functions of the Postal Industry Ombudsman are to investigate  
3 complaints made to him or her under this Act and to perform such  
4 other functions as are conferred on him or her by this Act.
- 5 (2) Subject to this Act, the Postal Industry Ombudsman:  
6 (a) is to investigate action that he or she is authorised by this Act  
7 to investigate and in respect of which a complaint has been  
8 made to him or her (other than a complaint excluded by  
9 subsection (4)); and  
10 (b) may, on his or her own initiative, investigate action that he or  
11 she is authorised by this Act to investigate.
- 12 (3) The Postal Industry Ombudsman is authorised by this Act to  
13 investigate action taken by:  
14 (a) Australia Post; or  
15 (b) a registered PPO;  
16 with respect to the provision of a postal or similar service.
- 17 (4) A complaint is excluded by this subsection if:  
18 (a) the complaint was made by Australia Post in respect of action  
19 taken by a registered PPO; or  
20 (b) the complaint was made by a registered PPO in respect of  
21 action taken by Australia Post or another registered PPO; or  
22 (c) the complaint was made more than 12 months after the action  
23 was taken.
- 24 (5) Paragraph (2)(b) applies only if the Postal Industry Ombudsman  
25 starts the investigation no later than 12 months after the action was  
26 taken.

27 **19N Discretion to investigate complaints as Commonwealth**  
28 **Ombudsman or as Postal Industry Ombudsman**

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



- 1 (i) decide not to deal with the complaint, or part of the  
2 complaint; or  
3 (ii) if he or she has started to deal with the complaint—  
4 decide not to deal further with the complaint, or part of  
5 the complaint; and  
6 (b) transfer the complaint, or part of the complaint, to the Postal  
7 Industry Ombudsman.

8 (7) A complaint that is transferred under subsection (6) is taken to be a  
9 complaint that was made to the Postal Industry Ombudsman.

10 (8) In forming an opinion under paragraph (2)(b) or (5)(c), the person  
11 holding the office of the Commonwealth Ombudsman and of the  
12 Postal Industry Ombudsman must have regard to the functions and  
13 duties of each of those offices.

14 *Notice of transferral to be given to complainant*

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

18 **19P Discretion to refer complaint to another statutory office-holder**

19 (1) This section applies if:

20 (a) Australia Post or a registered PPO has taken action; and

21 (b) before or after starting to investigate that action under  
22 paragraph 19M(2)(a), the Postal Industry Ombudsman  
23 becomes of the opinion that:

24 (i) a statutory office-holder (other than the Postal Industry  
25 Ombudsman or the Commonwealth Ombudsman) has the  
26 function of investigating, reviewing or enquiring into  
27 action of that kind; and

28 (ii) the action could be more conveniently or effectively dealt  
29 with by that statutory office-holder.

30 (2) The Postal Industry Ombudsman may decide not to investigate the  
31 action, or not to investigate the action further, as the case may be,  
32 and, if the Postal Industry Ombudsman so decides, he or she must  
33 transfer the complaint to that other statutory office-holder.

- 1 (3) If the Postal Industry Ombudsman transfers a complaint under  
2 subsection (2), the Postal Industry Ombudsman must, as soon as is  
3 reasonably practicable:  
4 (a) give notice of the transfer, in writing, to the complainant; and  
5 (b) give to the other statutory office-holder any information or  
6 documents that relate to the complaint and are in the  
7 possession or under the control of the Postal Industry  
8 Ombudsman.
- 9 (4) In this section:  
10 *statutory office-holder* means a person who holds any office or  
11 appointment under a law of the Commonwealth, or under a law of a  
12 State or Territory.

### 13 **19Q Discretion not to investigate certain complaints**

- 14 (1) This section applies if:  
15 (a) a complaint has been made to the Postal Industry Ombudsman  
16 with respect to action taken by Australia Post or by a  
17 registered PPO; and  
18 (b) in the opinion of the Postal Industry Ombudsman:  
19 (i) the complaint is frivolous or vexatious or was not made  
20 in good faith; or  
21 (ii) the complainant does not have a sufficient interest in the  
22 subject matter of the complaint; or  
23 (iii) an investigation, or further investigation, of the action is  
24 not warranted having regard to all the circumstances.
- 25 (2) The Postal Industry Ombudsman may, in his or her discretion:  
26 (a) decide not to investigate the action; or  
27 (b) if he or she has started to investigate the action—decide not to  
28 investigate the action further.

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

3 **19R Application of other provisions of this Act to the Postal**  
4 **Industry Ombudsman**

- 5 (1) Subject to this section, the provisions covered by subsection (3)  
6 apply in relation to the Postal Industry Ombudsman.
- 7 (2) Unless the contrary intention appears, the provisions covered by  
8 subsection (3) apply as if:
- 9 (a) a reference in any of those provisions to the Ombudsman were  
10 a reference to the Postal Industry Ombudsman; and
  - 11 (b) a reference in any of those provisions to any of the following  
12 were a reference to Australia Post or a registered PPO:
    - 13 (i) a Department;
    - 14 (ii) a prescribed authority;
    - 15 (iii) a Department or a prescribed authority; and
  - 16 (c) a reference in any of those provisions to an officer were a  
17 reference to an officer within the meaning of this Part; and
  - 18 (d) a reference in any of those provisions to a principal officer  
19 were a reference to a principal officer within the meaning of  
20 this Part.
- 21 (3) The provisions covered by this subsection are:
- 22 (a) Part I, other than the following provisions:
    - 23 (i) subsections 3(2) to (5A);
    - 24 (ii) subsections 3(6A) to (6C);
    - 25 (iii) subsections 3(7A) and (7B);
    - 26 (iv) subsections 3(9) to (18);
    - 27 (v) section 3A; and
  - 28 (b) Part II, other than the following provisions:
    - 29 (i) sections 4 and 5;
    - 30 (ii) subsection 6(1);
    - 31 (iii) subsections 6(4A) to (4H);
    - 32 (iv) subsections 6(6) to (15);
    - 33 (v) section 6A;

**Schedule 1** Amendments relating to the Postal Industry Ombudsman  
**Part 1** Amendment of the Ombudsman Act 1976

- 1 (vi) paragraph 8(7A)(b);  
2 (vii) subsections 8(8) to (10);  
3 (viii) sections 8A and 8B;  
4 (ix) paragraph 9(4)(ab);  
5 (x) sections 10, 10A and 11;  
6 (xi) subsections 11A(1) and (5);  
7 (xii) sections 14 to 18;  
8 (xiii) subsection 19(8); and  
9 (c) subsection 31(1); and  
10 (d) Part IV, other than the following provisions:  
11 (i) section 34;  
12 (ii) subsections 35(7) and (7A);  
13 (iii) paragraph 35A(3)(a).

14 (4) Each provision of this Act specified in column 1 of the table applies  
15 in relation to the Postal Industry Ombudsman in accordance with  
16 the table:  
17

<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)
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(4A)(e) or (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

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**Application of Act to Postal Industry Ombudsman**

	<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>
6	subsection 35B(2) (paragraph (b) of the definition of <i>listed disclosure method</i> )	section 6 or 6A	section 19N or 19P

1

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

5 **19S Powers of the Postal Industry Ombudsman under section 9**

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

- 8 (a) to determine whether he or she may investigate action under  
9 this Part;
- 10 (b) to decide whether or not to investigate action, or to investigate  
11 action further, under this Part;
- 12 (c) to start or further the conduct of an investigation under this  
13 Part;
- 14 (d) to prepare a report in relation to an investigation under this  
15 Part;
- 16 (e) if he or she has exercised a power for any of the purposes  
17 mentioned in paragraphs (a) to (d)—to ascertain what action  
18 has been taken by Australia Post or by a registered PPO  
19 following the exercise of that power.

20 **19T Duty to accord procedural fairness**

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

23 Example 1: If the Postal Industry Ombudsman sets out a critical opinion of a  
24 person in a report under section 19V, he or she must give that person

1 an opportunity to appear and make submissions to him or her (see  
2 subsection 8(5)).

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

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

## 8 **19U Disclosure of identifying information**

9 The Postal Industry Ombudsman must not, in referring to an  
10 investigation in a report under section 19V or 19X, disclose the  
11 name of a complainant or any other matter that would enable a  
12 complainant to be identified, unless it is fair and reasonable in all  
13 the circumstances to do so.

## 14 **19V Postal Industry Ombudsman may report to Australia Post or** 15 **registered PPO**

- 16 (1) This section applies if:
- 17 (a) an investigation under this Act into action taken by Australia  
18 Post or a registered PPO (the *investigated body*) has been  
19 completed; and
- 20 (b) the Postal Industry Ombudsman is of the opinion that the  
21 action taken:
- 22 (i) appears to have been contrary to law; or  
23 (ii) was unreasonable, unjust, oppressive or improperly  
24 discriminatory; or  
25 (iii) was otherwise, in all the circumstances, wrong; and
- 26 (c) the Postal Industry Ombudsman is of the opinion that:
- 27 (i) some particular action could be, and should be, taken to  
28 rectify, mitigate or alter the effects of the action taken; or  
29 (ii) a policy or practice on which the action taken was based  
30 should be altered; or  
31 (iii) reasons should have been, but were not, given for the  
32 action taken; or  
33 (iv) any other thing should be done in relation to the action  
34 taken.

- 1 (2) The Postal Industry Ombudsman must report accordingly to the  
2 investigated body.
- 3 (3) The Postal Industry Ombudsman:  
4 (a) must include in the report his or her reasons for the opinions  
5 specified in the report; and  
6 (b) may also include in the report any recommendations he or she  
7 thinks fit to make.
- 8 (4) The Postal Industry Ombudsman may ask the investigated body to  
9 give him or her, within a specified time, particulars of any action  
10 that the investigated body proposes to take with respect to the  
11 matters and recommendations included in the report.
- 12 (5) The investigated body may give the Postal Industry Ombudsman  
13 comments about the report.
- 14 (6) The Postal Industry Ombudsman must give a copy of:  
15 (a) the report; and  
16 (b) any comments given under subsection (5);  
17 to the Minister administering the *Australian Postal Corporation*  
18 *Act 1989*.

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

- 20 (1) This section applies if:  
21 (a) the Postal Industry Ombudsman has given a report under  
22 section 19V to an investigated body; and  
23 (b) action that is, in the opinion of the Postal Industry  
24 Ombudsman, adequate and appropriate in the circumstances  
25 is not taken with respect to the matters and recommendations  
26 included in the report within a reasonable time after the report  
27 was given to the investigated body.
- 28 (2) The Postal Industry Ombudsman may request the Minister  
29 administering the *Australian Postal Corporation Act 1989* to cause  
30 copies of the report to be laid before each House of the Parliament.
- 31 (3) If the Postal Industry Ombudsman makes a request under  
32 subsection (2), the Minister administering the *Australian Postal*  
33 *Corporation Act 1989* must cause copies of:

- 1 (a) the report; and  
2 (b) any comments given under subsection 19V(5) before the  
3 request was made;  
4 to be laid before each House of the Parliament within 15 sitting days  
5 of that House after that Minister receives the request.

6 **19X Annual reports**

- 7 (1) The Postal Industry Ombudsman has the same powers and duties  
8 under this section as the Ombudsman has under subsections 19(1)  
9 to (7B) with respect to the submission of reports relating to:  
10 (a) his or her operations; and  
11 (b) the exercise of his or her powers and the performance of his or  
12 her functions.
- 13 (2) For the purposes of subsection (1), the powers and duties of the  
14 Ombudsman do not include his or her powers and duties with  
15 respect to reports relating to the Australian Capital Territory.
- 16 (3) A report relating to the operations of the Postal Industry  
17 Ombudsman during a year may be included in a report under  
18 section 19 relating to the operations of the Ombudsman during that  
19 year.
- 20 (4) A report relating to the operations of the Postal Industry  
21 Ombudsman during a year must:  
22 (a) identify the number of complaints received by the Postal  
23 Industry Ombudsman under this Part during that year; and  
24 (b) if the Postal Industry Ombudsman has investigated action  
25 under paragraph 19M(2)(a)—identify:  
26 (i) the number of such investigations started during that  
27 year; and  
28 (ii) the number of such investigations completed during that  
29 year; and  
30 (c) if the Postal Industry Ombudsman has investigated action  
31 under paragraph 19M(2)(b)—identify:  
32 (i) the number of such investigations started during that  
33 year; and  
34 (ii) the number of such investigations completed during that  
35 year; and
-

- 1 (d) include details of the circumstances and number of occasions  
2 where the Postal Industry Ombudsman has made a  
3 requirement of a person under section 9 (as that section  
4 applies because of sections 19R and 19S) during that year;  
5 and  
6 (e) include details of the circumstances and number of occasions  
7 where the holder of the office of Postal Industry Ombudsman  
8 has decided under subsection 19N(3) to deal with, or to  
9 continue to deal with, a complaint or part of a complaint in his  
10 or her capacity as the holder of the office of Commonwealth  
11 Ombudsman during that year; and  
12 (f) include details of recommendations made during that year in  
13 reports under section 19V; and  
14 (g) include statistical information about actions taken during that  
15 year as a result of such recommendations.

16 **19Y Postal Industry Ombudsman may notify employer of**  
17 **misconduct**

- 18 (1) This section applies if the Postal Industry Ombudsman becomes of  
19 the opinion, either before or after completing an investigation under  
20 this Act, that there is evidence that a person who is an officer of  
21 Australia Post or of a registered PPO, has engaged in misconduct.
- 22 (2) If the Postal Industry Ombudsman is of the opinion that the  
23 evidence is, in all the circumstances, of sufficient force to justify his  
24 or her doing so, the Postal Industry Ombudsman may bring the  
25 evidence to the notice of:
- 26 (a) if the person is the principal officer of Australia Post—the  
27 Minister administering the *Australian Postal Corporation Act*  
28 *1989*; or  
29 (b) if the person is an officer of Australia Post but not the  
30 principal officer of Australia Post—the principal officer of  
31 Australia Post; or  
32 (c) if the person is an officer of a registered PPO—the principal  
33 officer of that PPO.

1 **19Z Limitation on liability where information or documents**  
2 **provided in good faith or when required to do so**

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

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

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

18 **Division 4—Register of PPOs**

19 **19ZA Registration of PPOs**

- 20 (1) The Postal Industry Ombudsman is to establish and maintain a  
21 Register of PPOs.
- 22 (2) A PPO may apply, in writing, to the Postal Industry Ombudsman to  
23 be registered for the purposes of this Part.
- 24 (2A) Notwithstanding subsection (2), where a PPO meets the conditions  
25 specified in this section, it must apply in writing to the Postal  
26 Industry Ombudsman to be registered for the purposes of this Part  
27 where:  
28 (a) the PPO comprises 20 or more employees; and  
29 (b) the PPO annual financial turnover threshold is greater than  
30 \$1,000,000.

- 1 (3) If the Postal Industry Ombudsman receives an application under  
2 subsection (2), the Postal Industry Ombudsman must include that  
3 PPO on the Register of PPOs.
- 4 (4) A PPO is taken to be registered for the purposes of this Part from  
5 the time when the Postal Industry Ombudsman includes that PPO on  
6 the Register.

7 **19ZB Information to be included in Register**

- 8 (1) The Postal Industry Ombudsman must include the following  
9 information in the register:  
10 (a) the name of the PPO;  
11 (b) if the PPO has an ABN (within the meaning of the section 41  
12 of the *A New Tax System (Australian Business Number) Act*  
13 *1999*)—that ABN;  
14 (c) the date on which the PPO was included on the Register.
- 15 (2) A registered PPO must notify the Postal Industry Ombudsman of  
16 any changes to the information included in relation to that PPO in  
17 the Register.

18 **19ZC Deregistration of PPOs**

- 19 (1) A registered PPO may apply, in writing, to the Postal Industry  
20 Ombudsman to no longer be registered for the purposes of this Part.
- 21 (2) If the Postal Industry Ombudsman receives an application under  
22 subsection (1) on a particular date (the **deregistration date**):  
23 (a) the Postal Industry Ombudsman must enter the deregistration  
24 date in the Register of PPOs; and  
25 (b) the Postal Industry Ombudsman must remove the PPO from  
26 the Register of PPOs 12 months after the deregistration date;  
27 and  
28 (c) the PPO is taken to no longer be registered for the purposes of  
29 this Part from the deregistration date.

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

1 **19ZD Register may be maintained by electronic means**

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

4 **Division 5—Fees for investigations**

5 **19ZE Fees for investigations**

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

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

- 16 (2) The amount of a fee:  
17 (a) must not be more than the amount that, in the opinion of the  
18 Postal Industry Ombudsman, represents the costs incurred by  
19 the Postal Industry Ombudsman in conducting the  
20 investigation; and  
21 (b) must not be such as to amount to taxation.
- 22 (3) The Minister administering the *Australian Postal Corporation Act*  
23 *1989* may make a written determination specifying the total amount  
24 of fees that may be charged under this section in relation to  
25 investigations that the Postal Industry Ombudsman completed  
26 during a specified financial year.
- 27 (4) A determination made under subsection (3) is not a legislative  
28 instrument for the purposes of the *Legislative Instruments Act*  
29 *2003*.
- 30 (5) If a determination has been made under subsection (3) for a  
31 financial year, the total amount of fees charged under this section in  
32 relation to investigations that the Postal Industry Ombudsman

1 completed during that financial year must not exceed the amount  
2 specified in the determination.

3 (6) The regulations may:

4 (a) prescribe one or more methods to be used in working out the  
5 amount of a fee; and

6 (b) prescribe the time by which a fee is due and payable.

7 (7) A fee is payable to the ACA on behalf of the Commonwealth.

8 (8) The ACA must, as soon as practicable, bank any amount it receives  
9 under subsection (7) in an official account within the meaning of the  
10 *Financial Management and Accountability Act 1997*.

11 (9) A fee:

12 (a) is a debt due to the ACA on behalf of the Commonwealth; and

13 (b) is recoverable by the ACA, on behalf of the Commonwealth,  
14 in a court of competent jurisdiction.

## 15 **12 After subsection 34(2)**

16 Insert:

17 (2A) The Postal Industry Ombudsman may, either generally or as  
18 otherwise provided by the instrument of delegation, by instrument in  
19 writing, delegate to a person all or any of his or her powers under  
20 this Act, other than his or her powers under sections 19V and 19W  
21 and his or her powers referred to in section 19X.

## 22 **13 Subsections 34(3) and (4)**

23 Omit “(1) or (2)”, substitute “(1), (2) or (2A)”.

## 24 **14 Subsections 34(3) and (4)**

25 Omit “or Defence Force Ombudsman”, substitute “, Defence Force  
26 Ombudsman or Postal Industry Ombudsman”.

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2 **Part 2—Amendment of other Acts**

3 ***Migration Act 1958***

4 **15 Paragraph 193(3)(b)**

5 Omit “the person.”, substitute “the person; and”.

6 **16 At the end of subsection 193(3)**

7 Add:

8 (c) a person covered by subsection (1) has not made a complaint  
9 to the Postal Industry Ombudsman, paragraph 7(3)(b) of the  
10 *Ombudsman Act 1976* (as that paragraph applies because of  
11 section 19R of that Act) does not apply to the person.

12 ***Privacy Act 1988***

13 **17 At the end of paragraph 50(2)(a)**

14 Add:

15 (iii) to the Postal Industry Ombudsman under the  
16 *Ombudsman Act 1976*; or

17 **18 Subsection 50(2)**

18 Omit “the Human Rights and Equal Opportunity Commission, the  
19 Ombudsman, or the Public Service Commissioner” (wherever occurring),  
20 substitute “the Human Rights and Equal Opportunity Commission, the  
21 Ombudsman, the Postal Industry Ombudsman or the Public Service  
22 Commissioner”.

23 **19 At the end of paragraph 50(3)(a)**

24 Add:

25 (iii) to the Postal Industry Ombudsman under the  
26 *Ombudsman Act 1976*; or

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2 **Part 3—Application and transitional provisions**

3 **20 Application**

4 (1) The amendments made by Part 1 of this Schedule apply in relation to  
5 action taken by Australia Post or a registered PPO after the  
6 commencement of this Part.

7 (2) The amendments made by items 17, 18 and 19 of this Schedule apply in  
8 relation to complaints made after the commencement of this Part.

9 **21 Transitional—reports under section 19X**

10 The first report under section 19X of the *Ombudsman Act 1976* relating  
11 to the operations of the Postal Industry Ombudsman during a year must  
12 relate to the operations of the Postal Industry Ombudsman during the  
13 period that:

14 (a) started on the commencement of this Part; and

15 (b) ended on the 30 June first occurring after that commencement.

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## Schedule 2—Other amendments of the Ombudsman Act 1976

### *Ombudsman Act 1976*

#### **1 Subsection 3(1) (definition of *enactment*)**

Omit “section 3AA”, substitute “section 3B”.

#### **2 Subsection 3(1) (paragraph (b) of the definition of *prescribed authority*)**

Omit “section 3AB”, substitute “section 3A”.

#### **3 Subsection 19F(1)**

Omit “subsections 31(2) and (3)”, substitute “subsection 31(2)”.

#### **4 Subsection 34(6)**

Repeal the subsection.

#### **5 Subsection 35B(2) (paragraph (a) of the definition of *listed disclosure method*)**

Omit “Part 2”, substitute “Part II”.