



Ombudsman Act 1976

Act No. 181 of 1976 as amended

This compilation was prepared on 10 June 2011
taking into account amendments up to Act No. 11 of 2011

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

Contents

Part I—Preliminary	1
1 Short title [see Note 1].....	1
2 Commencement [see Note 1].....	1
3 Interpretation	1
3A Prescribed authorities: Commonwealth-controlled companies	13
3B Certain legislation relating to Australian Capital Territory not to be enactment.....	14
3BA Commonwealth service providers	15
3C Application of Act	15
3D Application of the <i>Criminal Code</i>	15
Part II—Establishment, functions, powers and duties of the Ombudsman	16
Division 1—Establishment and functions	16
4 Establishment of offices of Ombudsman and Deputy Ombudsman.....	16
5 Functions of Ombudsman.....	17
6 Discretion not to investigate certain complaints	19
6A Transfer of complaints about ACC.....	26
6B Transfer of complaints about Integrity Commissioner	26
6C Transfer of complaints to Information Commissioner	27
7 Complaints	28
7A Preliminary inquiries	29
8 Investigations.....	31
8A Investigations by Commonwealth and State Ombudsmen.....	36
8B Investigations by other authorities of ACC actions	38
8C Investigations by other authorities of ACLEI actions.....	39
8D Investigations by Ombudsman and Australian Federal Police.....	40
9 Power to obtain information and documents	40
10 Unreasonable delay in exercising power	44
10A Ombudsman may refer questions to the AAT	45
11 Ombudsman may recommend that the principal officer refer questions to the AAT.....	46
11A Powers of Federal Court of Australia	46
12 Complainant and Department etc. to be informed	47
13 Power to examine witnesses	49
14 Power to enter premises.....	49
Division 2—Reports	51
15 Reports by Ombudsman	51
16 Reports where appropriate action not taken on Ombudsman’s report	53

17	Special reports to Parliament	54
18	Ombudsman may have further discussion with principal officer	54
19	Annual report and additional reports to Parliament	55
Part IIA—Establishment, functions, powers and duties of the Defence Force Ombudsman		57
19B	Establishment of office of Defence Force Ombudsman	57
19C	Functions of Defence Force Ombudsman.....	57
19D	Discretion to investigate complaints as Commonwealth Ombudsman or as Defence Force Ombudsman.....	59
19E	Discretion with respect to certain complaints	60
19F	Application of provisions of Act to Defence Force Ombudsman.....	61
Part IIB—Establishment, functions, powers and duties of the Postal Industry Ombudsman		62
Division 1—Preliminary		62
19G	Definitions	62
19H	Action taken by contractors	63
19J	Continued application of this Act to deregistered PPOs	64
19K	Part IIB not to affect operation of other provisions of this Act	64
Division 2—Establishment and functions of the Postal Industry Ombudsman		65
19L	Establishment of office of Postal Industry Ombudsman.....	65
19M	Functions of Postal Industry Ombudsman	65
19N	Discretion to investigate complaints as Commonwealth Ombudsman or as Postal Industry Ombudsman	66
19P	Discretion to refer complaint to another statutory office-holder	68
19Q	Discretion not to investigate certain complaints	68
Division 3—Powers and duties of the Postal Industry Ombudsman		70
19R	Application of other provisions of this Act to the Postal Industry Ombudsman	70
19S	Powers of the Postal Industry Ombudsman under section 9.....	72
19T	Duty to accord procedural fairness	72
19U	Disclosure of identifying information.....	73
19V	Postal Industry Ombudsman may report to Australia Post or registered PPO	73
19W	Minister to table certain reports in Parliament.....	74
19X	Annual reports	75

19Y	Postal Industry Ombudsman may notify employer of misconduct	76
19Z	Limitation on liability where information or documents provided in good faith or when required to do so	77
Division 4—Register of PPOs		78
19ZA	Registration of PPOs	78
19ZB	Information to be included in Register	78
19ZC	Deregistration of PPOs	78
19ZD	Register may be maintained by electronic means	79
Division 5—Fees for investigations		80
19ZE	Fees for investigations	80
Part IIC—Establishment, functions, powers and duties of the Overseas Students Ombudsman		82
Division 1—Preliminary		82
19ZF	Definitions	82
19ZG	Continued application of Part to former registered providers	82
19ZH	Part not to affect operation of other provisions of this Act	83
Division 2—Establishment and functions of the Overseas Students Ombudsman		84
19ZI	Establishment of office of Overseas Students Ombudsman	84
19ZJ	Functions of Overseas Students Ombudsman	84
19ZK	Transfer of complaints	85
19ZL	Discretion not to investigate certain complaints	86
Division 3—Powers and duties of the Overseas Students Ombudsman		87
19ZM	Application of other provisions of this Act to the Overseas Students Ombudsman	87
19ZN	Powers of the Overseas Students Ombudsman under section 9	89
19ZO	Duty to accord procedural fairness	89
19ZP	Disclosure of identifying information	90
19ZQ	Overseas Students Ombudsman may report to private registered provider	90
19ZR	Minister to table certain reports in Parliament	91
19ZS	Annual reports	92
19ZT	Overseas Students Ombudsman may notify of misconduct	93
19ZU	Limitation on liability where information or documents provided in good faith or when required to do so	93
Part III—Conditions of service, and staff, of the Ombudsman		95
Division 1—Ombudsman		95
20	Interpretation	95

21	Appointment of Ombudsman	95
22	Tenure of office	95
23	Deputy Ombudsman	95
24	Salary and allowances	95
25	Leave of absence	96
26	Resignation	96
27	Retirement	96
28	Suspension and removal of Ombudsman	96
28A	Removal taken to be retirement on ground of invalidity	97
28B	Retirement on ground of invalidity under the Superannuation Acts	98
29	Acting appointments	99
Division 2—Staff		101
31	Staff	101
Part IV—Miscellaneous		102
33	Ombudsman not to be sued	102
34	Delegation	102
35	Officers to observe confidentiality	103
35AA	Disclosure of information and documents to Integrity Commissioner	106
35A	Disclosure of information by Ombudsman	106
35B	Disclosure of ACC information	107
35C	Disclosure of ACLEI information	108
36	Offences	109
37	Protection from civil actions	109
38	Regulations	110
Notes		111

An Act to provide for the appointment of a Commonwealth Ombudsman, a Defence Force Ombudsman, a Postal Industry Ombudsman and an Overseas Students Ombudsman, and to define their respective functions and powers

Part I—Preliminary

1 Short title [see Note 1]

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

2 Commencement [see Note 1]

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

3 Interpretation

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

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

ACMA means the Australian Communications and Media Authority.

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

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

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

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

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

Australia Post means the Australian Postal Corporation.

authorized person means:

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

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

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

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

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

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

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

Department means a Department within the meaning of the *Public Service Act 1999*, but does not include the branch of the Australian Public Service comprising the transitional staff as defined by section 3 of the *A.C.T. Self-Government (Consequential Provisions) Act 1988*.

Deputy Ombudsman means a Deputy Commonwealth Ombudsman.

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

enactment means, subject to section 3B:

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

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

officer means:

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

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

Ombudsman means the Commonwealth Ombudsman.

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

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

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

postal or similar service includes:

- (a) a postal service; and

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

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

prescribed authority means:

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

Section 3

is a prescribed authority for the purposes of this Act, being an appointment made by the Governor-General, or by a Minister, otherwise than under an enactment.

principal officer means:

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

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

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

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

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

- (a) if a Department of the Australian Public Service is responsible for dealing with the matter—the Minister administering that Department; or
- (c) if a prescribed authority referred to in paragraph (a) of the definition of **prescribed authority** is responsible for dealing with the matter—the Minister administering the enactment by which, or in accordance with the provisions of which, the prescribed authority is established; or

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

Secretary, in relation to a Department, means the person who is the Secretary of the Department for the purposes of the *Public Service Act 1999*.

- (2) An unincorporated body, being a board, council, committee, sub-committee or other body established by, or in accordance with the provisions of, an enactment for the purpose of assisting, or performing functions connected with, a prescribed authority shall not be taken to be a prescribed authority for the purpose of this Act, but action taken by the body, or by a person on its behalf, shall, for the purpose of this Act, be deemed to have been taken by that prescribed authority.
- (3) A person shall not be taken to be a prescribed authority by virtue of holding, or performing the duties of:
 - (a) an office whose duties the person performs as duties of employment as an officer or employee of a Department or as a member of the staff of a prescribed authority;
 - (b) an office of member of a body; or
 - (c) an office established by an enactment for the purposes of a prescribed authority;but any action taken by or on behalf of a person holding, or performing the duties of, such an office shall, for the purposes of this Act, be deemed to have been taken by the Department, body or authority concerned.
- (4) Where:
 - (a) a person who is not an officer of a Department, or of a prescribed authority, for the purposes of this Act takes action in the exercise of a power or the performance of a function that the person is authorized to exercise or to perform, as the case may be, by reason of his or her holding an appointment made by, or by reason of authority given by, the

Section 3

Governor-General, a Minister or the Secretary of a Department; and

- (b) the person does not exercise the power or perform the function by reason of his or her holding, or performing the duties of, an office established by, or in accordance with the provisions of, an enactment or by reason of his or her being a Judge of a court of, or a magistrate of, a State or Territory;

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

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

- (4B) For the purposes of this Act, if:

- (a) a person is not an officer of a Department or prescribed authority; and
- (b) the person is, or is an employee of, a Commonwealth service provider of the Department or prescribed authority under a contract; and
- (c) for the purposes of the contract, the person takes action in the exercise of a power or the performance of a function for or on behalf of the Department or prescribed authority; and
- (d) the person does not exercise the power or perform the function by reason of:
 - (i) his or her holding, or performing the duties of, an office established by, or in accordance with the provisions of, an enactment; or
 - (ii) his or her being a Judge of a court of, or a magistrate of, a State or Territory; and
- (e) the regulations do not otherwise provide;

the action is taken to be action taken by the Department or prescribed authority.

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

Section 3

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

- (a) a reference to a State, in relation to the Ombudsman of a State, shall be read as including a reference to the Australian Capital Territory and a reference to the Northern Territory;
 - (b) a reference to a law of a State, in relation to the Ombudsman of a State, shall be read as including a reference to an ACT enactment and a reference to an enactment of the Northern Territory; and
 - (c) a reference to a Department or authority of a State, in relation to the Ombudsman of a State, shall be read as including a reference to:
 - (i) the Australian Capital Territory; or
 - (ii) a Territory authority as defined by section 3 of the *Australian Capital Territory (Self-Government) Act 1988*;as the case requires.
- (8) A reference in this Act to the international relations of the Commonwealth is a reference to the relations of the Commonwealth with the Government of another country or with an international organization.
- (9) For the purposes of this Act, the Australian Federal Police shall be deemed to be a prescribed authority.
- (10) In the application of this Act in relation to the Australian Federal Police, references in this Act to an officer of a prescribed authority shall be read as references to an AFP appointee.
- (11) For the purposes of this Act (other than subsection (6)), the Defence Force shall be deemed to be a prescribed authority.
- (12) In the application of this Act in relation to the Defence Force:
- (a) references in this Act to an officer of a prescribed authority shall be read as references to a member of the Defence Force;
 - (b) references in this Act to the principal officer of a prescribed authority shall be read as references to the Chief of the Defence Force; and

Section 3

- (c) references in this Act to the responsible Minister, in relation to a matter in relation to a prescribed authority, or in relation to action taken by a prescribed authority in or in relation to a matter, shall be read as references to the Minister for Defence or another Minister acting for and on behalf of the Minister for Defence.
- (13) For the purposes of this Act, any matter (including a report) concerning both the Defence Force and the Department of Defence may, by arrangement between the Defence Force Ombudsman, the Chief of the Defence Force and the principal officer of the Department of Defence, be communicated by the Defence Force Ombudsman to either the Chief of the Defence Force or the principal officer of that Department.
- (13A) For the purposes of this Act, the ACC is taken to be a prescribed authority.
- (14) For the purposes of this Act:
- (a) the officers (other than the chief executive officer) of a court or tribunal; and
 - (b) the members of the staff of the registry or registries of a court or tribunal; and
 - (c) officers or employees of a Department, or of an authority of the Commonwealth, whose services are made available to a court or tribunal; and
 - (d) persons declared by the regulations to be members of the staff of a court or tribunal for the purposes of this Act;
- are to be taken to be members of the staff of the chief executive officer of the court or tribunal.
- (15) A reference in this section to an officer of a court or tribunal does not include a judge of a court or a member of a tribunal.
- (16) In relation to anything that concerns:
- (a) a chief executive officer of a court or tribunal; or
 - (b) a Parliamentary Department;
- a reference to which this subsection applies has effect in accordance with subsection (18).

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

3A Prescribed authorities: Commonwealth-controlled companies

- (1) A Commonwealth-controlled company is a prescribed authority unless:
- (a) it is excluded by subsection (2); or

Section 3B

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

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

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

3BA Commonwealth service providers

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

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

3C Application of Act

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

3D Application of the *Criminal Code*

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

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

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

Division 1—Establishment and functions

4 Establishment of offices of Ombudsman and Deputy Ombudsman

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

5 Functions of Ombudsman

- (1) Subject to this Act, the Ombudsman:
- (a) shall investigate action, being action that relates to a matter of administration, taken either before or after the commencement of this Act by a Department, or by a prescribed authority, and in respect of which a complaint has been made to the Ombudsman; and
 - (b) may, of his or her own motion, investigate any action, being action that relates to a matter of administration, taken either before or after the commencement of this Act by a Department or by a prescribed authority; and
 - (c) with the consent of the Minister, may enter into an arrangement under which the Ombudsman will perform functions of an ombudsman under an ombudsman scheme established in accordance with the conditions of licences or authorities granted under an enactment.
- (2) The Ombudsman is not authorized to investigate:
- (a) action taken by a Minister; or
 - (aa) action that constitutes proceedings in Parliament for the purposes of section 16 of the *Parliamentary Privileges Act 1987*; or
 - (b) action taken by a Justice or Judge of a court created by the Parliament; or
 - (ba) action by the chief executive officer of a court or by a person who, for the purposes of this Act, is to be taken to be a member of the staff of the chief executive officer of a court:
 - (i) when exercising a power of the court; or
 - (ii) when performing a function, or exercising a power, of a judicial nature; or
 - (c) action taken by:
 - (i) a magistrate or coroner for the Australian Capital Territory, the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands; or
 - (ii) a person who holds office as a magistrate in a State or the Northern Territory in the performance of the functions of a magistrate conferred on him or her by or under an Act; or

Section 5

- (d) action taken by any body or person with respect to persons employed in the Australian Public Service or the service of a prescribed authority, being action taken in relation to that employment, including action taken with respect to the promotion, termination of appointment or discipline of a person so employed or the payment of remuneration to such a person; or
 - (g) action taken by a Department or by a prescribed authority with respect to the appointment of a person to an office or position established by or under an enactment, not being an office or position in the Australian Public Service or an office in the service of a prescribed authority.
- (3) The reference in paragraph (2)(a) to action taken by a Minister does not include a reference to action taken by a delegate of a Minister, and, for the purposes of this subsection, action shall be deemed to have been taken by such a delegate notwithstanding that the action is taken in pursuance of a power that is deemed by a provision of an enactment, when exercised by the delegate, to have been exercised by the Minister.
- (3A) For the purposes of the application of this Act to or in relation to the Ombudsman, action taken by a Department or by a prescribed authority shall not be regarded as having been taken by a Minister by reason only that the action was taken by the Department or authority in relation to action that has been, is proposed to be, or may be, taken by a Minister personally.
- (3B) Paragraph (2)(b) does not prevent the Ombudsman from investigating action taken by the Integrity Commissioner, or an Assistant Integrity Commissioner, who happens to be a Justice or Judge of a court created by the Parliament.
- (4) Paragraph (2)(d) does not prevent the Ombudsman from investigating action taken by an AFP appointee, or by any other person, with respect to information that:
 - (a) is given to the AFP appointee; and
 - (b) raises an AFP conduct issue or AFP practices issue; and
 - (c) relates to action taken by another AFP appointee.
- (5) The Ombudsman is not authorised to investigate action taken under:

- (a) a law of Western Australia in its application in the Territory of Christmas Island by virtue of the *Christmas Island Act 1958*; or
 - (b) a law of Western Australia in its application in the Territory of Cocos (Keeling) Islands by virtue of the *Cocos (Keeling) Islands Act 1955*;
- by a person employed by Western Australia.
- (6) The reference in subsection (5) to a person employed by Western Australia includes a reference to:
 - (a) a person occupying, or acting in, an office or position under a law of Western Australia; and
 - (b) a person employed by a body established by or under a law of Western Australia.
 - (7) An arrangement referred to in paragraph (1)(c) may include provision for payment by the other party to the arrangement for the performance of functions by the Ombudsman in accordance with the arrangement.

6 Discretion not to investigate certain complaints

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

Section 6

respect to that action, the Ombudsman may, in his or her discretion, decide not to investigate the action until the complainant so complains to the Department or authority.

(1B) Where a person who makes a complaint to the Ombudsman with respect to action taken by a Department or prescribed authority has complained to the Department or authority with respect to that action, the Ombudsman may, in his or her discretion, decide not to investigate the action unless and until the complainant informs the Ombudsman that no redress has been granted or that redress has been granted but the redress is not, in the opinion of the complainant, adequate.

(1C) Where:

(a) a person who has made a complaint to the Ombudsman with respect to action taken by a Department or by a prescribed authority and who has complained to the Department or authority with respect to that action informs the Ombudsman as provided by subsection (1B) that no redress, or no adequate redress, has been granted by the Department or authority; and

(b) the Ombudsman is of the opinion:

(i) if no redress has been granted—that, since the complainant complained to the Department or authority, a reasonable period has elapsed in which redress could have been granted; or

(ii) if redress has been granted—that the redress was not reasonably adequate;

the Ombudsman shall, subject to this section, investigate the action.

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

(3) Where the Ombudsman is of the opinion that a complainant has or had a right to cause the action to which the complaint relates to be reviewed by a court or by a tribunal constituted by or under an

enactment but has not exercised that right, the Ombudsman may decide not to investigate the action or not to investigate the action further, as the case may be, if he or she is of the opinion that, in all the circumstances, it would be reasonable for the complainant to exercise, or would have been reasonable for the complainant to have exercised, that right.

- (4) Where, before the Ombudsman commences, or after the Ombudsman has commenced, to investigate action taken by a Department or by a prescribed authority, being action that is the subject matter of a complaint, the Ombudsman becomes of the opinion that adequate provision is made under an administrative practice for the review of action of that kind taken by that Department or prescribed authority, the Ombudsman may decide not to investigate the action or not to investigate the action further, as the case may be:
- (a) if the action has been, is being or is to be reviewed under that practice at the request of the complainant; or
 - (b) if the Ombudsman is satisfied that the complainant is entitled to cause the action to be reviewed under that practice and it would be reasonable for the complainant to cause it to be so reviewed.
- (4D) Where, before the Ombudsman commences, or after the Ombudsman has commenced, to investigate action taken by a Department or by a prescribed authority, being action that is the subject matter of a complaint, the Ombudsman becomes of the opinion that:
- (a) a complaint with respect to the action has been, or could have been, made by the complainant to the ACMA under Part 26 of the *Telecommunications Act 1997*; and
 - (b) the action could be more conveniently or effectively dealt with by the ACMA;
- the Ombudsman may decide not to investigate the action, or not to investigate the action further, as the case may be, and, if the Ombudsman so decides, the Ombudsman shall:
- (c) transfer the complaint to the ACMA;
 - (d) forthwith give notice in writing to the complainant stating that the complaint has been so transferred; and

Section 6

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

- (9) If the Ombudsman forms the opinion:
- (a) that a complaint could have been made under the *Public Service Act 1999*; and
 - (b) that the complaint could be more conveniently or effectively dealt with by the Public Service Commissioner;
- the Ombudsman may decide not to investigate the complaint, or not to investigate the complaint further, as the case may be, and to transfer the complaint to the Public Service Commissioner.
- (10) If the Ombudsman makes a decision under subsection (9), the Ombudsman must:
- (a) transfer the complaint to the Public Service Commissioner as soon as is reasonably practicable; and
 - (b) give the Public Service Commissioner any information or documents relating to the complaint that are in the possession, or under the control, of the Ombudsman; and
 - (c) as soon as is reasonably practicable, give the complainant written notice that the complaint has been transferred to the Public Service Commissioner.
- (12) If the Ombudsman forms the opinion that action in respect of which a complaint has been made relates to a commercial activity of a Department or prescribed authority, the Ombudsman may decide not to investigate the complaint, or to cease investigating the complaint, as the case may be.
- (13) If the Ombudsman forms the opinion:
- (a) that a complaint relates to action taken by a Department or a prescribed authority; and
 - (b) that the complaint could be more conveniently or effectively dealt with by the industry ombudsman for a particular industry;
- the Ombudsman may decide not to investigate the action, or not to investigate the action further, as the case may be, and to transfer the complaint to that industry ombudsman.
- (14) If the Ombudsman makes a decision under subsection (13), the Ombudsman must:
- (a) transfer the complaint to the industry ombudsman as soon as is reasonably practicable; and

Section 6

- (b) give the industry ombudsman such information or documents relating to the complaint that are in the possession, or under the control, of the Ombudsman as the Ombudsman believes are reasonably necessary to enable the industry ombudsman to deal effectively with the complaint; and
 - (c) as soon as is reasonably practicable, give the complainant written notice of the transfer of the complaint.
- (15) For the purposes of subsection (13), the industry ombudsman for a particular industry is the person holding, or acting in, the office or appointment declared by the regulations to be the office or appointment the holder of which is the ombudsman for that industry.
- (16) If the Ombudsman forms the opinion:
 - (a) that a complaint involves an allegation, or information, that raises a corruption issue (other than a significant corruption issue); and
 - (b) that the allegation or information could have been referred to the Integrity Commissioner under Part 4 of the *Law Enforcement Integrity Commissioner Act 2006* and could be more conveniently or effectively dealt with by the Integrity Commissioner;the Ombudsman may decide not to investigate the complaint, or not to investigate the complaint further, as the case may be, and to refer the allegation or information to the Integrity Commissioner.
- (17) If the Ombudsman forms the opinion:
 - (a) that a complaint involves an allegation, or information, that raises a significant corruption issue; and
 - (b) that the allegation or information could have been referred to the Integrity Commissioner under Part 4 of the *Law Enforcement Integrity Commissioner Act 2006* and could be more conveniently or effectively dealt with by the Integrity Commissioner;the Ombudsman must not investigate the complaint, or must not investigate the complaint further, as the case may be, and must refer the allegation or information to the Integrity Commissioner.
- (18) If:
 - (a) the Ombudsman makes a decision under subsection (16); or
 - (b) subsection (17) applies;

the Ombudsman must:

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

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

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

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

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

(20) If the Ombudsman forms the opinion:

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

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

(21) If the Ombudsman makes a decision under subsection (20), the Ombudsman must:

- (a) give the information to the AFP Commissioner under section 40SA of the *Australian Federal Police Act 1979* as soon as is reasonably practicable; and
- (b) give the AFP Commissioner any information or documents relating to the complaint that are in the possession, or under the control, of the Ombudsman; and

Section 6A

- (c) as soon as is reasonably practicable, give the complainant written notice that the complaint has been transferred to the AFP Commissioner to be dealt with under that Act.

6A Transfer of complaints about ACC

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

6B Transfer of complaints about Integrity Commissioner

- (1) If:
 - (a) the Ombudsman forms the opinion that:
 - (i) a complaint in respect of action taken by the Integrity Commissioner could have been made to another authority established under a law of the Commonwealth, a State or a Territory; and
 - (ii) the complaint could be more conveniently or effectively dealt with by the other authority; and
 - (b) the other authority can deal with the complaint if the Ombudsman transfers the complaint to the other authority;
-

the Ombudsman may decide not to investigate the complaint, or not to investigate the complaint further, as the case may be, and to transfer the complaint to the other authority.

- (2) If the Ombudsman decides to transfer the complaint, the Ombudsman must:
- (a) do so as soon as is reasonably practicable; and
 - (b) subject to section 35C, give the other authority any information or documents relating to the complaint that are in the possession, or under the control, of the Ombudsman; and
 - (c) as soon as is reasonably practicable, give the complainant written notice that the complaint has been transferred to the other authority.

6C Transfer of complaints to Information Commissioner

Scope

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

Requirement to consult with Information Commissioner

- (2) The Ombudsman:
- (a) must consult the Information Commissioner about the complaint with a view to avoid inquiries being conducted into that matter by both the Information Commissioner and the Ombudsman; and

Section 7

- (b) may decide not to investigate the action, or not to continue to investigate the action.

Transfer to Information Commissioner

- (3) If the Ombudsman decides not to investigate, or not to continue to investigate, an action under paragraph (2)(b), the Ombudsman must:
 - (a) transfer the complaint to the Information Commissioner; and
 - (b) notify the complainant in writing that the complaint has been transferred; and
 - (c) give the Information Commissioner any information or documents that relate to the complaint in the possession, or under the control of, the Ombudsman.
- (4) A complaint transferred under subsection (3) is taken to be a complaint made to the Information Commissioner under Part V of the *Privacy Act 1988* or Part VIIB of the *Freedom of Information Act 1982*, as the case requires.

7 Complaints

- (1) Subject to subsection (2), a complaint under this Act may be made to the Ombudsman orally or in writing.
- (2) Where a complaint is made orally to the Ombudsman, the Ombudsman may reduce the complaint to writing or at any time require the complainant to reduce the complaint to writing and, where the Ombudsman makes such a requirement of a complainant, the Ombudsman may decline to investigate the complaint, or to investigate the complaint further, until the complainant reduces the complaint to writing.
- (3) A person who is detained in custody is entitled:
 - (a) upon making a request to the person in whose custody he or she is detained or to any other person performing duties in connection with his or her detention:
 - (i) to be provided with facilities for preparing a complaint in writing under this Act, for furnishing in writing to the Ombudsman, after the complaint has been made, any other relevant information and for enclosing the

- complaint or the other information (if any) in a sealed envelope; and
- (ii) to have sent to the Ombudsman, without undue delay, a sealed envelope delivered by him or her to any such person and addressed to the Ombudsman; and
 - (b) to have delivered to him or her, without undue delay, any sealed envelope, addressed to him or her and sent by the Ombudsman, that comes into the possession or under the control of the person in whose custody he or she is detained or of any other person performing duties in connection with his or her detention.
- (4) Where a sealed envelope addressed to the Ombudsman is delivered by a person detained in custody to a person referred to in subsection (3) for sending to the Ombudsman, or a sealed envelope addressed to a person so detained and sent by the Ombudsman comes into the possession or under the control of a person referred to in that subsection, neither the person in whose custody the first-mentioned person is detained nor any other person performing duties in connection with his or her detention is entitled to open the envelope or to inspect any document enclosed in the envelope.
- (5) For the purposes of subsections (3) and (4), the Ombudsman may make arrangements with the appropriate authority of a State or a Territory for the identification and delivery of sealed envelopes sent by the Ombudsman to persons detained in custody in that State or Territory.

7A Preliminary inquiries

Ombudsman may make preliminary inquiries

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

Section 7A

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 subsection (2), of such officers as are referred to in the arrangement.

Disclosure of information

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

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

(1B) If the officer:

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

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

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

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

Arrangements with Departments and prescribed authorities

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

8 Investigations

Ombudsman must inform of investigation

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

Investigations to be in private

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

Disclosure of information

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

Section 8

- (i) for the purposes of an investigation under this Act (whether or not the investigation has been completed), the Ombudsman requests a person to give information (including an answer to a question) to the Ombudsman or to produce a document or other record to the Ombudsman; or
 - (ii) a person reasonably believes that information or a document or other record is relevant to an investigation under this Act (whether or not the investigation has been completed); and
- (b) any of the following apply:
- (i) the person obtained the information, document or record in the course of the person's duties as the principal officer of a Department or prescribed authority, and the person is still the principal officer of the Department or prescribed authority;
 - (ii) the person obtained the information, document or record in the course of the person's duties as the principal officer of a Department or prescribed authority, the person is no longer the principal officer of the Department or prescribed authority, and the principal officer of the Department or prescribed authority has authorised the person to give the information to the Ombudsman or to produce the document or other record to the Ombudsman;
 - (iii) the person obtained the information, document or record in the course of the person's duties as an officer (other than as the principal officer) of a Department or prescribed authority, and the principal officer of the Department or prescribed authority has authorised the officer to give the information to the Ombudsman or to produce the document or other record to the Ombudsman;
 - (iv) the person obtained the information, document or record lawfully but not in the course of the person's duties as an officer (including as the principal officer) of a Department or prescribed authority.

(2B) If the person:

- (a) gives the information to the Ombudsman or produces the document or record to the Ombudsman; and

(b) by doing so:

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

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

- (2C) The person is not liable to any penalty under the provisions of any other enactment by reason of his or her giving the information to the Ombudsman or producing the document or record to the Ombudsman.
- (2D) For the purposes of the *Privacy Act 1988*, the giving of the information to the Ombudsman or the production of the document or record to the Ombudsman is taken to be authorised by law.
- (2E) Subsection (2B) does not otherwise affect a claim of legal professional privilege that anyone may make in relation to the information, document or record.

Ombudsman may obtain information

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

Rights to appear

- (4) Subject to subsection (5), it is not necessary for the complainant or any other person to be afforded an opportunity to appear before the Ombudsman or any other person in connexion with an investigation by the Ombudsman under this Act.

Section 8

- (5) The Ombudsman shall not make a report in respect of an investigation under this Act in which he or she sets out opinions that are, either expressly or impliedly, critical of a Department, prescribed authority or person unless, before completing the investigation, he or she has:
- (a) if the opinions relate to a Department or prescribed authority—afforded the principal officer of the Department or authority and the officer principally concerned in the action to which the investigation relates opportunities to appear before him or her, or before an authorized person, and to make such submissions, either orally or in writing, in relation to that action as they think fit; and
 - (b) if the opinions relate to a person—afforded that person an opportunity to appear before him or her, or before an authorized person, and to make such submissions, either orally or in writing, in relation to the action to which the investigation relates as he or she thinks fit.
- (6) Where the Ombudsman affords the principal officer of a Department or of a prescribed authority an opportunity to appear before him or her, or before an authorized person, under subsection (5), the principal officer may appear before the Ombudsman or before the authorized person in person or a person authorized by the principal officer may appear before the Ombudsman or before the authorized person on behalf of the principal officer.
- (7) Where the Ombudsman affords a person other than the principal officer of a Department or of a prescribed authority an opportunity to appear before him or her, or before an authorized person, under subsection (5), the person may, with the approval of the Ombudsman or of the authorized person, as the case may be, be represented by another person.
- (7A) Where, in relation to an investigation under this Act, the Ombudsman proposes to afford a person an opportunity to appear before him or her or before an authorized person and to make submissions under subsection (5), or proposes to make a requirement of a person under section 9:
- (a) if a complaint was made orally with respect to the action and the complaint has not been reduced to writing—the complaint shall be reduced to writing accordingly; and

- (b) the Ombudsman shall, if he or she has not previously informed the responsible Minister that the action is being investigated, inform that Minister accordingly.

Ombudsman may discuss investigation with Ministers

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

Breaches of duty etc.

- (10) Where the Ombudsman becomes of the opinion, either before or after completing an investigation under this Act, that there is evidence that a person, being an officer of a Department or of a prescribed authority, has been guilty of a breach of duty or of misconduct and that the evidence is, in all the circumstances, of sufficient force to justify his or her doing so, the Ombudsman shall bring the evidence to the notice of:
 - (a) if the person is the principal officer of the Department—the Minister administering the Department;
 - (b) if the person is an officer of a Department but not the principal officer of that Department—the principal officer of that Department;
 - (c) if the person is the principal officer of a prescribed authority—the responsible Minister in respect of the action under investigation; or
 - (d) if the person is an officer of a prescribed authority but not the principal officer of that authority—the principal officer of that authority.
- (11) If:
 - (a) a person is, or is an employee of, a Commonwealth service provider of a Department or prescribed authority under a contract; and

Section 8A

- (b) in the opinion of the Ombudsman, there is evidence that the person has engaged in conduct that:
 - (i) would, if the person were an officer of the Department or prescribed authority, amount to a breach of duty or to misconduct; or
 - (ii) should be brought to the attention of the principal officer of the Department or prescribed authority; and
- (c) in the opinion of the Ombudsman, the evidence is, in all the circumstances, of sufficient force to justify the Ombudsman doing so;

the Ombudsman must bring the evidence to the notice of the principal officer of the Department or prescribed authority.

Arrangements for having police officers assist Ombudsman in relation to investigation

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

8A Investigations by Commonwealth and State Ombudsmen

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

- (b) action taken by an authority or other agency established jointly or administered jointly by the Commonwealth and one or more States;
 - (c) action taken by an authority or other agency referred to in paragraph (b) and action taken by:
 - (i) a Department or prescribed authority; or
 - (ii) a Department of a State or an authority of a State.
- (1A) The Commonwealth Ombudsman may, if he or she thinks fit, make an arrangement with the Ombudsman of a State, or the Ombudsmen of 2 or more States, for and in relation to the investigation, by any one or more of the Ombudsmen, of action to which subsection (1B), (1C) or (1D) applies.
- (1B) This subsection applies to action that:
- (a) gives rise to an AFP conduct issue or AFP practices issue; and
 - (b) involves:
 - (i) an AFP conduct issue that relates to a member of the police force of a State; or
 - (ii) action taken by the police force of a State; or
 - (iii) action taken by a Department of a State or by an authority of a State.
- (1C) This subsection applies to action taken by a body if the body:
- (a) is established jointly, or administered jointly, by the Commonwealth and one or more States; and
 - (b) includes at least one AFP appointee and a member or members of the police force of a State or the police forces of 2 or more States.
- (1D) This subsection applies to action taken by a body referred to in subsection (1C) together with action taken by:
- (a) by an AFP appointee or by the Australian Federal Police; or
 - (b) by a member of the police force of a State; or
 - (c) by the police force of a State; or
 - (d) by a Department of a State or by an authority of a State.
- (2) A reference in subsection (1) or (1B) to action taken by a Department, prescribed or other authority or an agency includes a reference to action taken by such a Department, prescribed or other
-

Section 8B

authority or agency on behalf of another Department, prescribed or other authority or agency.

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

8B Investigations by other authorities of ACC actions

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

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

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

8C Investigations by other authorities of ACLEI actions

- (1) If an authority established under a law of the Commonwealth, or of a State or Territory, has power to investigate action taken by the Integrity Commissioner or a staff member of ACLEI, the Ombudsman may arrange with the head of the authority for the authority to investigate the action.
- (2) If the Ombudsman enters into such an arrangement, the authority may investigate the action to the full extent of its powers under any laws of the Commonwealth or of a State or Territory.
- (3) The Integrity Commissioner may arrange with the head of the authority for the variation or revocation of the arrangement.
- (4) The arrangement, or the variation or revocation of the arrangement, must be in writing.
- (5) The regulations may make provision for and in relation to the participation by the Ombudsman in the carrying out of an investigation in accordance with an arrangement under this section.
- (6) Nothing in this section affects the powers and duties of the Ombudsman under any other provision of this Act.

Section 8D

(7) In this section:

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

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

8D Investigations by Ombudsman and Australian Federal Police

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

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

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

(2) The arrangement may relate to:

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

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

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

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

(6) In this section:

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

9 Power to obtain information and documents

(1) Where the Ombudsman has reason to believe that a person is capable of furnishing information or producing documents or other records relevant to an investigation under this Act, the Ombudsman may, by notice in writing served on the person, require that person,

at such place, and within such period or on such date and at such time, as are specified in the notice:

- (a) to furnish to the Ombudsman, by writing signed by that person or, in the case of a body corporate, by an officer of the body corporate, any such information; or
- (b) to produce to the Ombudsman such documents or other records as are specified in the notice.

(1AA) If the Ombudsman has reason to believe that a person who is:

- (aa) an officer of a Department or prescribed authority; or
- (ab) a Commonwealth service provider of a Department or prescribed authority under a contract; or
- (ac) an employee of Commonwealth service provider of a Department or prescribed authority under a contract;

is capable of furnishing information or producing documents or other records relevant to an investigation under this Act but the Ombudsman does not know the identity of the person, the Ombudsman may, by notice in writing served on the principal officer of the Department or authority, require the principal officer or a person nominated by the principal officer, at such place, and within such period or on such date and at such time, as are specified in the notice:

- (a) to attend before a person specified in the notice to answer questions relevant to the investigation; or
- (b) to produce to a person specified in the notice such documents or other records as are so specified.

(1A) Where documents or other records are produced to the Ombudsman in accordance with a requirement under subsection (1) or (1AA) or an order under subsection 11A(2), the Ombudsman:

- (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

Section 9

to inspect at all reasonable times such of the documents or other records as that person would be so entitled to inspect.

- (2) Where the Ombudsman has reason to believe that a person is able to give information relevant to an investigation under this Act, the Ombudsman may, by notice in writing served on the person, require the person to attend before a person specified in the notice, on such date and at such time and place as are specified in the notice, to answer questions relevant to the investigation.
- (3) Where the Attorney-General furnishes to the Ombudsman a certificate certifying that the disclosure to the Ombudsman of information concerning a specified matter (including the furnishing of information in answer to a question) or the disclosure to the Ombudsman of the contents of any documents or records would be contrary to the public interest:
- (a) by reason that it would prejudice the security, defence or international relations of the Commonwealth; or
 - (b) by reason that it would involve the disclosure of communications between a Minister and a Minister of a State, being a disclosure that would prejudice relations between the Commonwealth Government and the Government of a State; or
 - (c) by reason that it would involve the disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet; or
 - (d) by reason that it would involve the disclosure of deliberations or advice of the Executive Council; or
 - (e) if the information, documents or records are, or were, in the possession or under the control of the ACC or the Board of the ACC—by reason that it would:
 - (i) endanger the life of a person; or
 - (ii) create a risk of serious injury to a person; or
 - (f) if the information, documents or records are, or were, in the possession or under the control of the Integrity Commissioner (within the meaning of the *Law Enforcement Integrity Commissioner Act 2006*)—by reason that it would:
 - (i) endanger the life of a person; or
 - (ii) create a risk of serious injury to a person;
- the Ombudsman is not entitled to require a person to furnish any information concerning the matter, to answer questions concerning

the matter or to produce those documents or records to the Ombudsman.

- (4) Notwithstanding the provisions of any enactment, a person is not excused from furnishing any information, producing a document or other record or answering a question when required to do so under this Act on the ground that the furnishing of the information, the production of the document or record or the answer to the question:
- (a) would contravene the provisions of any other enactment (whether enacted before or after the commencement of the *Prime Minister and Cabinet Legislation Amendment Act 1991*); or
 - (aa) might tend to incriminate the person or make the person liable to a penalty; or
 - (ab) would disclose one of the following:
 - (i) a legal advice given to a Minister, a Department or a prescribed authority;
 - (ii) a communication between an officer of a Department or of a prescribed authority and another person or body, being a communication protected against disclosure by legal professional privilege; or
 - (b) would be otherwise contrary to the public interest; but the information, the production of the document or record or the answer to the question is not admissible in evidence against the person in proceedings other than:
 - (c) an application under subsection 11A(2); or
 - (d) proceedings for an offence against section 36 of this Act or an offence against section 137.1, 137.2 or 149.1 of the *Criminal Code* that relates to this Act.
- (5) A person is not liable to any penalty under the provisions of any other enactment by reason of his or her furnishing information, producing a document or other record or answering a question when required to do so under this Act.
- (5A) The fact that a person is not excused under subsection (4) from furnishing information, producing a document or other record or answering a question does not otherwise affect a claim of legal professional privilege that anyone may make in relation to that information, document or other record or answer.

Section 10

(6) The reference in subsection (1) to an officer, in relation to a body corporate, being a body corporate that is not a prescribed authority, includes a reference to a director, secretary, executive officer or employee of the body corporate.

(7) In this section:

State includes the Australian Capital Territory and the Northern Territory.

10 Unreasonable delay in exercising power

(1) Where:

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

(1A) Where:

- (a) under an enactment, a person has a power to do an act or thing in the exercise of a discretion or otherwise;
 - (b) there is no enactment that prescribes a period within which the person is required to do or refuse to do the act or thing;
 - (c) an enactment provides that application may be made to a person other than a prescribed tribunal for the review of decisions made in the exercise of that power and an
-

enactment also provides that application may be made to a prescribed tribunal for the review of decisions made by the last-mentioned person upon an application first referred to in this paragraph; and

- (d) a complaint has been made to the Ombudsman concerning a failure to do the act or thing in the exercise of that power; the Ombudsman, after having investigated the complaint, may, if he or she is of the opinion that there has been unreasonable delay in deciding whether to do the act or thing, grant to the complainant a certificate certifying that, in the opinion of the Ombudsman, there has been unreasonable delay in deciding whether to do the act or thing and, if the Ombudsman does so, the person required or permitted to exercise the power, shall, for the purpose of enabling application to be made to the person other than a prescribed tribunal referred to in paragraph (c) under the enactment first referred to in that paragraph, be deemed to have made, on the date on which the certificate is granted, a decision, in the exercise of that power, not to do the act or thing.
- (2) Where a board, committee or other unincorporated body constituted by 2 or more persons is empowered by an enactment to make decisions, subsections (1) and (1A) apply as if the board, committee or other body were a person empowered to make those decisions.
- (3) In this section, *prescribed tribunal* means:
- (a) the Administrative Appeals Tribunal; or
 - (b) any other tribunal that is declared by the regulations to be a prescribed tribunal for the purposes of this section.

10A Ombudsman may refer questions to the AAT

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

Section 11

- (3) The Tribunal may give an advisory opinion on the question.

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

- (1) Where the Ombudsman is investigating the taking of action by a Department or by a prescribed authority under a power, whether conferred by an enactment or otherwise, the Ombudsman may recommend, in writing, to the principal officer of the Department or authority that the principal officer refer a specified question about the taking of the action, or the exercise of the power, to the Administrative Appeals Tribunal for an advisory opinion.
- (2) The Ombudsman may:
- (a) give the recommendation to the principal officer at any time before the Ombudsman completes the investigation; or
 - (b) include the recommendation in his or her report to the Department or prescribed authority under section 15.
- (3) If the Ombudsman makes a recommendation, the principal officer must refer the question to the Tribunal within 30 days, or such longer period as is agreed to by the Ombudsman and the principal officer, after the day on which the principal officer received the recommendation.
- (4) The Tribunal may give an advisory opinion on the question.
- (5) This section does not limit the Ombudsman's power under section 10A.

11A Powers of Federal Court of Australia

- (1) Where a question with respect to the exercise or proposed exercise of a power, or the performance or proposed performance of a function, of the Ombudsman arose before, or arises after, the commencement of this section between the Ombudsman and the principal officer of any Department or prescribed authority that is affected by that exercise or performance, or that would be affected by the exercise or performance of the power or function proposed to be exercised or performed, as the case may be, the Ombudsman or the principal officer of the Department or of the prescribed authority may, subject to subsections (4) and (5), make an

application to the Federal Court of Australia for a determination of the question.

- (2) Where a person fails to comply with a requirement made by the Ombudsman by notice under section 9 to furnish information, to produce documents or other records or to attend before the Ombudsman to answer questions in relation to an investigation under this Act, the Ombudsman may make an application to the Federal Court of Australia for an order directing that person to furnish the information, or to produce the documents or other records, at such place, and within such period or on such date and at such time, as are specified in the order, or to attend before the Ombudsman to answer questions at such place, and on such date and at such time, as are specified in the order, as the case may be.
- (3) The Federal Court of Australia has jurisdiction with respect to matters arising under this section in respect of which applications are made to the Court.
- (4) The Ombudsman shall not make an application to the Federal Court of Australia under this section unless he or she has informed the Minister in writing of the reasons for the proposed application.
- (5) The principal officer of a Department or of a prescribed authority shall not make an application to the Federal Court of Australia under subsection (1) unless he or she has informed the responsible Minister in writing of the reasons for the proposed application.

12 Complainant and Department etc. to be informed

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

Section 12

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

13 Power to examine witnesses

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

14 Power to enter premises

- (1) For the purposes of an investigation under this Act, an authorised person may, at any reasonable time of the day:
 - (a) enter a place that is:
 - (i) occupied by a Department or prescribed authority; or
 - (ii) occupied by a person who is a Commonwealth service provider of a Department or prescribed authority under a contract, if the person occupies the place predominantly for the purposes of the contract; and
 - (b) carry on the investigation at the place.
- (2) Subsection (1) does not authorize a person to enter, or carry on an investigation at:
 - (a) a place referred to in paragraph 80(c) of the *Crimes Act 1914*;
 - (b) a place that is a prohibited place for the purposes of the *Defence (Special Undertakings) Act 1952* by virtue of section 7 of that Act; or
 - (c) an area of land or water or an area of land and water that is declared under section 14 of the *Defence (Special Undertakings) Act 1952* to be a restricted area for the purposes of that Act;unless the Minister administering that Act, or another Minister acting for and on behalf of that Minister, has approved the person entering the place or area and he or she complies with any conditions imposed by the Minister giving the approval in relation to his or her entering that place or area and the manner in which his or her investigation is to be conducted at that place or area.

Section 14

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

Division 2—Reports

15 Reports by Ombudsman

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

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

Section 15

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

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

- (3) The Ombudsman:
- (a) shall include in a report under subsection (2) his or her reasons for the opinions specified in the report; and
 - (b) may also include in such a report any recommendations he or she thinks fit to make.
- (4) The Ombudsman may request the Department or prescribed authority to which the report is furnished to furnish to him or her, within a specified time, particulars of any action that it proposes to take with respect to the matters and recommendations included in the report.
- (5) Where the Ombudsman reports under subsection (2) to a Department or prescribed authority, the Department or authority may furnish to the Ombudsman such comments concerning the report as it wishes to make.
- (6) The Ombudsman shall furnish a copy of a report made by him or her under subsection (2) to the Minister concerned.

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

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

Section 17

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

17 Special reports to Parliament

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

18 Ombudsman may have further discussion with principal officer

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

19 Annual report and additional reports to Parliament

- (1) The Ombudsman must, as soon as practicable, and in any event within 6 months, after each 30 June 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.
- (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;but nothing in this section affects the powers and duties of the Ombudsman under sections 15, 16 and 17.
- (4) Where the Ombudsman submits a report to the Minister under subsection (1) or (2), the Minister shall cause the report to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.
- (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) 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 or she 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 subsection (6), grant such extension as he or she considers reasonable in the circumstances.
- (7A) Notwithstanding subsection (1), where the Minister grants an extension pursuant to an application under subsection (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 or she grants the extension, a copy of the statement furnished pursuant to subsection (6) in respect of the application together with a statement specifying the extension granted and his or her reasons for granting the extension;

Section 19

- (b) the Ombudsman shall submit the report concerned to the Minister within the period as so extended; and
 - (c) the Minister shall cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after receipt of the report by the Minister.
- (7B) Where:
- (a) the Ombudsman fails to submit a report in accordance with paragraph (1)(a) within 6 months after the end of a particular year; or
 - (b) the Minister grants an extension pursuant to an application under subsection (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 cause a copy of the statement to be laid before each House of the Parliament within 3 sitting days of that House after receipt of the statement by the Minister.
- (8) Where the Ombudsman refers in a report referred to in subsection (1) or (2) to an investigation made by him or her under this Act, the Ombudsman shall not, in referring to the investigation, set out opinions that are, either expressly or impliedly, critical of a Department, prescribed authority or person unless the Ombudsman has complied with subsection 8(5) in relation to the investigation.

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

19B Establishment of office of Defence Force Ombudsman

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

19C Functions of Defence Force Ombudsman

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

Section 19C

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

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

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

Where a complaint with respect to action taken by a Department or by a prescribed authority is made to the Commonwealth Ombudsman or the Defence Force Ombudsman and the person holding that office considers, having regard to the functions and duties of each of those offices, that it would be more appropriate to deal with, or to continue to deal with, the complaint or part of the complaint in his or her capacity as the holder of the other office, he or she may deal with, or continue or deal with, as the case may be, the complaint or that part of the complaint accordingly.

Section 19E

19E Discretion with respect to certain complaints

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

19F Application of provisions of Act to Defence Force Ombudsman

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

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

Division 1—Preliminary

19G Definitions

In this Part:

officer means:

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

principal officer means:

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

19H Action taken by contractors

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

Attribution of action to Australia Post or registered PPO

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

Persons taken to be officers of Australia Post or registered PPO

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

Contractors and postal services contracts

- (4) In this section:

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

- (a) a party to the postal services contract; or

Section 19J

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

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

19J Continued application of this Act to deregistered PPOs

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

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

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

Division 2—Establishment and functions of the Postal Industry Ombudsman

19L Establishment of office of Postal Industry Ombudsman

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

19M Functions of Postal Industry Ombudsman

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

Section 19N

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

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

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

Postal Industry Ombudsman may transfer complaint to Commonwealth Ombudsman

- (2) Subsection (3) applies if:
- (a) the complaint was made to the Postal Industry Ombudsman; and
 - (b) in the opinion of the Postal Industry Ombudsman, it would be more appropriate to deal with, or to continue to deal with, the complaint or part of the complaint in his or her capacity as the Commonwealth Ombudsman.
- (3) The Postal Industry Ombudsman may:
- (a) either:
 - (i) decide not to deal with the complaint, or part of the complaint; or
 - (ii) if he or she has started to deal with the complaint—decide not to deal further with the complaint, or part of the complaint; and
 - (b) transfer the complaint, or part of the complaint, to the Commonwealth Ombudsman.
- (4) A complaint that is transferred under subsection (3) is taken to be a complaint that was made to the Commonwealth Ombudsman.

Commonwealth Ombudsman may transfer complaint to Postal Industry Ombudsman

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

Notice of transferral to be given to complainant

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

Section 19P

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

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

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

19Q Discretion not to investigate certain complaints

- (1) This section applies if:
 - (a) a complaint has been made to the Postal Industry Ombudsman with respect to action taken by Australia Post or by a registered PPO; and
-

- (b) in the opinion of the Postal Industry Ombudsman:
 - (i) the complaint is frivolous or vexatious or was not made in good faith; or
 - (ii) the complainant does not have a sufficient interest in the subject matter of the complaint; or
 - (iii) an investigation, or further investigation, of the action is not warranted having regard to all the circumstances.
- (2) The Postal Industry Ombudsman may, in his or her discretion:
 - (a) decide not to investigate the action; or
 - (b) if he or she has started to investigate the action—decide not to investigate the action further.

Division 3—Powers and duties of the Postal Industry Ombudsman

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

- (1) Subject to this section, the provisions covered by subsection (3) apply in relation to the Postal Industry Ombudsman.
- (2) Unless the contrary intention appears, the provisions covered by subsection (3) apply as if:
 - (a) a reference in any of those provisions to the Ombudsman were a reference to the Postal Industry Ombudsman; and
 - (b) a reference in any of those provisions to any of the following were a reference to Australia Post or a registered PPO:
 - (i) a Department;
 - (ii) a prescribed authority;
 - (iii) a Department or a prescribed authority; and
 - (c) a reference in any of those provisions to an officer were a reference to an officer within the meaning of this Part; and
 - (d) a reference in any of those provisions to a principal officer were a reference to a principal officer within the meaning of this Part.
- (3) The provisions covered by this subsection are:
 - (a) Part I, other than the following provisions:
 - (i) subsections 3(2) to (5A);
 - (ii) subsections 3(6A) to (6C);
 - (iii) subsections 3(7A) and (7B);
 - (iv) subsections 3(9) to (18);
 - (v) section 3A; and
 - (b) Part II, other than the following provisions:
 - (i) sections 4 and 5;
 - (ii) subsection 6(1);
 - (iii) subsections 6(4D) to (4E);
 - (iv) subsections 6(6) to (15);
 - (v) section 6A;
 - (vi) paragraph 8(7A)(b);

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

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

Application of Act to Postal Industry Ombudsman			
	Column 1	Column 2	Column 3
Item	This provision of this Act...	applies in relation to the Postal Industry Ombudsman as if a reference in that provision to...	were a reference to...
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(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

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

Division 3 Powers and duties of the Postal Industry Ombudsman

Section 19S

Application of Act to Postal Industry Ombudsman			
	Column 1	Column 2	Column 3
Item	This provision of this Act...	applies in relation to the Postal Industry Ombudsman as if a reference in that provision to...	were a reference to...
6	subsection 35B(2) (paragraph (b) of the definition of <i>listed disclosure method</i>)	section 6 or 6A	section 19N or 19P

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

19S Powers of the Postal Industry Ombudsman under section 9

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

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

19T Duty to accord procedural fairness

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

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

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

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

19U Disclosure of identifying information

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

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

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

Section 19W

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

19W Minister to table certain reports in Parliament

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

to be laid before each House of the Parliament within 15 sitting days of that House after that Minister receives the request.

19X Annual reports

- (1) The Postal Industry Ombudsman has the same powers and duties under this section as the Ombudsman has under subsections 19(1) to (7B) with respect to the submission of reports relating to:
 - (a) his or her operations; and
 - (b) the exercise of his or her powers and the performance of his or her functions.
- (2) For the purposes of subsection (1), the powers and duties of the Ombudsman do not include his or her powers and duties with respect to reports relating to the Australian Capital Territory.
- (3) A report relating to the operations of the Postal Industry Ombudsman during a year may be included in a report under section 19 relating to the operations of the Ombudsman during that year.
- (4) A report relating to the operations of the Postal Industry Ombudsman during a year must:
 - (a) identify the number of complaints received by the Postal Industry Ombudsman under this Part during that year; and
 - (b) if the Postal Industry Ombudsman has investigated action under paragraph 19M(2)(a)—identify:
 - (i) the number of such investigations started during that year; and
 - (ii) the number of such investigations completed during that year; and
 - (c) if the Postal Industry Ombudsman has investigated action under paragraph 19M(2)(b)—identify:
 - (i) the number of such investigations started during that year; and
 - (ii) the number of such investigations completed during that year; and
 - (d) include details of the circumstances and number of occasions where the Postal Industry Ombudsman has made a requirement of a person under section 9 (as that section

Section 19Y

applies because of sections 19R and 19S) during that year; and

- (e) include details of the circumstances and number of occasions where the holder of the office of Postal Industry Ombudsman has decided under subsection 19N(3) to deal with, or to continue to deal with, a complaint or part of a complaint in his or her capacity as the holder of the office of Commonwealth Ombudsman during that year; and
- (f) include details of recommendations made during that year in reports under section 19V; and
- (g) include statistical information about actions taken during that year as a result of such recommendations.

19Y Postal Industry Ombudsman may notify employer of misconduct

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

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

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

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

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

Division 4—Register of PPOs

19ZA Registration of PPOs

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

19ZB Information to be included in Register

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

19ZC Deregistration of PPOs

- (1) A registered PPO may apply, in writing, to the Postal Industry Ombudsman to no longer be registered for the purposes of this Part.
 - (2) If the Postal Industry Ombudsman receives an application under subsection (1) on a particular date (the **deregistration date**):
 - (a) the Postal Industry Ombudsman must enter the deregistration date in the Register of PPOs; and
-

Section 19ZD

- (b) the Postal Industry Ombudsman must remove the PPO from the Register of PPOs 12 months after the deregistration date; and
- (c) the PPO is taken to no longer be registered for the purposes of this Part from the deregistration date.

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

19ZD Register may be maintained by electronic means

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

Division 5—Fees for investigations

19ZE Fees for investigations

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

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

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

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

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

Division 1—Preliminary

19ZF Definitions

In this Part:

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

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

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

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

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

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

19ZG Continued application of Part to former registered providers

- (1) This section applies if:
 - (a) a private registered provider took action at a particular time; and
 - (b) the Overseas Students Ombudsman receives a complaint in relation to that action within 12 months after that time; and

- (c) after that time, the private registered provider ceases to be a private registered provider for the purposes of this Part.
- (2) This Part applies, in relation to that complaint, as if the private registered provider continued to be a private registered provider.

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

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

Division 2—Establishment and functions of the Overseas Students Ombudsman

19ZI Establishment of office of Overseas Students Ombudsman

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

19ZJ Functions of Overseas Students Ombudsman

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

or an accepted student, within the meaning of the Overseas Students Act.

19ZK Transfer of complaints

- (1) This section applies if:
 - (a) a complaint has been made to the Overseas Students Ombudsman with respect to action taken by a private registered provider; and
 - (b) the Overseas Students Ombudsman, either before or after starting to investigate that action, forms the opinion that:
 - (i) a statutory complaint handler has the function of investigating, reviewing or enquiring into action of that kind; or
 - (ii) a statutory office-holder has the function of investigating, reviewing or enquiring into action of that kind.
 - (2) In the case of a statutory complaint handler, the Overseas Students Ombudsman:
 - (a) must not investigate or further investigate the action; and
 - (b) must transfer the complaint to the statutory complaint handler.
 - (3) In the case of a statutory office-holder, if the Overseas Students Ombudsman considers the action could be more conveniently or effectively dealt with by the statutory office-holder, the Overseas Students Ombudsman:
 - (a) may decide not to investigate or further investigate the action; and
 - (b) if that decision is made, must transfer the complaint to the statutory office-holder.
 - (4) If the Overseas Students Ombudsman transfers a complaint under this section, the Overseas Students Ombudsman must, as soon as is reasonably practicable:
 - (a) give notice of the transfer to the complainant; and
 - (b) give any information or documents that relate to the complaint and are in the possession or under the control of the Overseas Students Ombudsman to the statutory complaint handler or statutory office-holder.
-

Section 19ZL

(5) In this section:

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

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

19ZL Discretion not to investigate certain complaints

(1) This section applies if:

- (a) a complaint has been made to the Overseas Students Ombudsman with respect to action taken by a private registered provider; and
- (b) the Overseas Students Ombudsman is of the opinion that:
 - (i) the complaint is frivolous or vexatious or was not made in good faith; or
 - (ii) the complainant does not have a sufficient interest in the subject matter of the complaint; or
 - (iii) an investigation, or further investigation, of the action is not warranted having regard to all the circumstances; or
 - (iv) the complainant has not yet raised the complaint with the registered provider; or
 - (v) the action came to the complainant's knowledge more than 12 months before the complaint was made; or
 - (vi) the complainant has, or had, a right to cause the action to which the complaint relates to be reviewed by a court or by a tribunal constituted by or under an enactment but has not exercised that right.

(2) The Overseas Students Ombudsman may, in his or her discretion:

- (a) decide not to investigate the action; or
- (b) if he or she has started to investigate the action—decide not to investigate the action further.

Division 3—Powers and duties of the Overseas Students Ombudsman

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

- (1) Subject to this section, the provisions covered by subsection (3) apply in relation to the Overseas Students Ombudsman.
- (2) Unless the contrary intention appears, the provisions covered by subsection (3) apply as if:
 - (a) a reference in any of those provisions to the Ombudsman were a reference to the Overseas Students Ombudsman; and
 - (b) a reference in any of those provisions to any of the following were a reference to a private registered provider:
 - (i) a Department;
 - (ii) a prescribed authority;
 - (iii) a Department or a prescribed authority; and
 - (c) a reference in any of those provisions to an officer were a reference to an officer within the meaning of this Part; and
 - (d) a reference in any of those provisions to a principal officer were a reference to a principal executive officer within the meaning of this Part.
- (3) The following provisions are covered by this subsection:
 - (a) subsections 3(1) and (8);
 - (b) sections 3C and 3D;
 - (c) sections 6A to 7A;
 - (d) section 8, other than:
 - (i) paragraph (7A)(b); and
 - (ii) subsections (8) to (12);
 - (e) section 8A, other than subsections (1B) to (1D);
 - (f) section 9, other than:
 - (i) paragraphs (1AA)(ab) and (ac); and
 - (ii) paragraph (4)(ab);
 - (g) section 11A, other than subsections (1) and (5);
 - (h) sections 12 to 14;

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

Division 3 Powers and duties of the Overseas Students Ombudsman

Section 19ZM

- (i) section 18;
 - (j) section 19, other than subsection (8);
 - (k) subsection 31(1);
 - (l) section 33;
 - (m) section 34, other than subsections 34(1) to (2A);
 - (n) section 35, other than paragraph (1)(e) and subparagraph (3)(b)(ia);
 - (o) section 35AA;
 - (p) section 35A, other than subsection (3A);
 - (q) sections 35B to 38.
- (4) Each provision of this Act specified in column 1 of the table applies in relation to the Overseas Students Ombudsman in accordance with the table:

Application of Act to Overseas Students Ombudsman			
	Column 1	Column 2	Column 3
Item	This provision of this Act ...	applies in relation to the Overseas Students Ombudsman as if a reference in that provision to ...	were a reference to ...
1	subsection 7A(1)	paragraph 5(1)(b)	paragraph 19ZJ(2)(b)
2	subsection 11A(4)	the Minister	the Minister and the Minister administering the Overseas Students Act
3	subsections 12(4) and (5)	section 15	section 19ZQ
4	section 18	section 17	section 19ZR
5	subsection 19(2)	section 15, 16 or 17	section 19ZQ or 19ZR
6	subsection 35(6A)	paragraph 6(4A)(e), (4D)(e) or (18)(d)	paragraph 19ZK(4)(b)
7	paragraph 35AA(1)(a)	paragraph 5(1)(b)	paragraph 19ZJ(2)(b)
8	subsection 35B(2) (paragraph (a) of the definition of <i>listed disclosure method</i>)	Division 2 of Part II	section 19ZQ, 19ZR or 19ZS

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

19ZN Powers of the Overseas Students Ombudsman under section 9

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

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

19ZO Duty to accord procedural fairness

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

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

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

Division 3 Powers and duties of the Overseas Students Ombudsman

Section 19ZP

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

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

19ZP Disclosure of identifying information

The Overseas Students Ombudsman must not, in referring to an investigation in a report under section 19ZQ or 19ZS, disclose the name of a complainant or any other matter that would enable a complainant to be identified, unless it is fair and reasonable in all the circumstances to do so.

19ZQ Overseas Students Ombudsman may report to private registered provider

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

- (3) The Overseas Students Ombudsman:
 - (a) must include in the report his or her reasons for the opinions specified in the report; and
 - (b) may also include in the report any recommendations he or she thinks fit to make.
- (4) The Overseas Students Ombudsman may ask the private registered provider to give him or her, within a specified time, particulars of any action that the private registered provider proposes to take with respect to the matters and recommendations included in the report.
- (5) The private registered provider may give the Overseas Students Ombudsman comments about the report.
- (6) The Overseas Students Ombudsman must give a copy of:
 - (a) the report; and
 - (b) any comments given under subsection (5);to the Minister administering the Overseas Students Act.

19ZR Minister to table certain reports in Parliament

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

Section 19ZS

19ZS Annual reports

- (1) The Overseas Students Ombudsman has the same powers and duties under this section as the Ombudsman has under subsections 19(1) to (7B) with respect to the submission of reports relating to:
 - (a) his or her operations; and
 - (b) the exercise of his or her powers and the performance of his or her functions.
- (2) For the purposes of subsection (1), the powers and duties of the Ombudsman do not include his or her powers and duties with respect to reports relating to the Australian Capital Territory.
- (3) A report relating to the operations of the Overseas Students Ombudsman during a year may be included in a report under section 19 relating to the operations of the Ombudsman during that year.
- (4) A report relating to the operations of the Overseas Students Ombudsman during a year must:
 - (a) identify the number of complaints received by the Overseas Students Ombudsman under this Part during that year; and
 - (b) if the Overseas Students Ombudsman has investigated action under paragraph 19ZJ(2)(a)—identify:
 - (i) the number of the investigations started during that year; and
 - (ii) the number of the investigations completed during that year; and
 - (c) if the Overseas Students Ombudsman has investigated action under paragraph 19ZJ(2)(b)—identify:
 - (i) the number of the investigations started during that year; and
 - (ii) the number of the investigations completed during that year; and
 - (d) identify:
 - (i) the number of times when the Overseas Students Ombudsman has made a requirement of a person under section 9 during that year; and
 - (ii) the circumstances in which each of those requirements was made.

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

19ZT Overseas Students Ombudsman may notify of misconduct

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

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

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

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

Division 3 Powers and duties of the Overseas Students Ombudsman

Section 19ZU

- (b) gives a document or other record to the Overseas Students Ombudsman (other than in accordance with a requirement under section 9).

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

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

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

Division 1—Ombudsman

20 Interpretation

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

21 Appointment of Ombudsman

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

22 Tenure of office

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

23 Deputy Ombudsman

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

24 Salary and allowances

- (1) An Ombudsman shall be paid such remuneration as is determined by the Remuneration Tribunal.
- (2) An Ombudsman shall be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

25 Leave of absence

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

26 Resignation

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

27 Retirement

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

28 Suspension and removal of Ombudsman

- (1) The Governor-General may remove an Ombudsman from office on an address praying for his or her removal on the ground of misbehaviour or physical or mental incapacity being presented to the Governor-General by each House of the Parliament in the same session of the Parliament.
- (2) The Governor-General may suspend an Ombudsman from office on the ground of misbehaviour or physical or mental incapacity.
- (3) Where the Governor-General suspends an Ombudsman from office, the Minister shall cause a statement of the grounds of the suspension to be laid before each House of the Parliament within 7 sitting days of the House after the suspension.
- (4) Where such a statement has been laid before a House of the Parliament, that House may, within 15 sitting days of that House after the day on which the statement has been laid before it, by resolution, declare that the Ombudsman should be removed from office and, if each House so passes such a resolution, the Governor-General shall remove the Ombudsman from office.

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

28A Removal taken to be retirement on ground of invalidity

- (1) If an Ombudsman is removed from office under section 28 of this Act following his or her suspension from office on the ground of physical or mental incapacity, then, for the purposes of the *Superannuation Act 1976*, he or she is taken to have been retired on the ground of invalidity within the meaning of Part IVA of that Act.
- (2) In spite of subsection (1), section 54C of the *Superannuation Act 1976* applies in relation to the Ombudsman.
- (3) If an Ombudsman is removed from office under section 28 of this Act following his or her suspension from office on the ground of physical or mental incapacity, then, for the purposes of the *Superannuation Act 1990*, he or she is taken to have been retired on the ground of invalidity within the meaning of that Act.
- (4) In spite of subsection (3), section 13 of the *Superannuation Act 1990* applies in relation to the Ombudsman.

Section 28B

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

28B Retirement on ground of invalidity under the Superannuation Acts

- (1) In spite of anything contained in sections 27 and 28, an Ombudsman who:
 - (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and
 - (b) has not reached his or her maximum retiring age (within the meaning of that Act);is not capable of being retired from office on the ground of invalidity (within the meaning of Part IVA of that Act) unless the Board (within the meaning of that Act) has given a certificate under section 54C of that Act.
- (2) In spite of anything contained in sections 27 and 28, an Ombudsman who:
 - (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and
 - (b) is under 60 years of age;is not capable of being retired from office on the ground of invalidity (within the meaning of that Act) unless the Board (within the meaning of that Act) has given a certificate under section 13 of that Act.
- (3) In spite of anything contained in sections 27 and 28, an Ombudsman who:
 - (a) is an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*; and
 - (b) is under 60 years of age;is not capable of being retired from office on the ground of invalidity (within the meaning of that Act) unless the Board (within

the meaning of that Act) has given an approval and certificate under section 43 of that Act.

29 Acting appointments

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

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

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

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 subsection (1) or (1A) 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 or her office shall, during the period of his or her 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) or (1A)(b) and the office becomes vacant while that person is so acting, then, subject to subsection (2), that person may continue to act in the office until the Minister otherwise directs, the vacancy is filled or a period of

Section 29

12 months from the date on which the vacancy occurred expires, whichever first happens.

- (5) The Minister may terminate an appointment under subsection (1) or (1A) 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 or she has, and may exercise, all the powers, and he or she may perform all the functions, of the holder of that office.
- (9) The validity of anything done by or in relation to a person purporting to act in an office under this section shall not be called in question on the ground that the occasion for the appointment had not arisen, that there was a defect or irregularity in or in connection with the appointment, that the appointment had ceased to have effect or that the occasion for the person to act had not arisen or had ceased.

Division 2—Staff

31 Staff

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

Part IV—Miscellaneous

33 Ombudsman not to be sued

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

34 Delegation

- (1) The Ombudsman may, either generally or as otherwise provided by the instrument of delegation, by instrument in writing, delegate to a person:
 - (a) all or any of his or her powers under this Act, other than his or her powers under sections 15, 16, 17 and 19 and this power of delegation; and
 - (b) any power exercisable by him or her by virtue of an instrument of delegation referred to in subsection (7) the sub-delegation of which is permitted by the relevant law of the State or by the instrument of delegation; and
 - (c) all or any of his or her powers under Division 7 of Part V of the *Australian Federal Police Act 1979*.
- (2) The Defence Force Ombudsman may, either generally or as otherwise provided by the instrument of delegation, by instrument in writing, delegate to a person all or any of his or her powers under this Act, other than his or her powers under sections 15, 16 and 17 and his or her powers referred to in subsection 19F(3).
- (2A) The Postal Industry Ombudsman may, either generally or as otherwise provided by the instrument of delegation, by instrument in writing, delegate to a person all or any of his or her powers under this Act, other than his or her powers under sections 19V and 19W and his or her powers referred to in section 19X.

- (2B) The Overseas Students Ombudsman may, either generally or as otherwise provided by the instrument of delegation, by instrument in writing, delegate to a person all or any of his or her powers under this Act, other than his or her powers under sections 19ZQ and 19ZR and his or her powers referred to in section 19ZS.
- (5) A delegate shall, upon request by a person affected by the exercise of any powers delegated to him or her, produce the instrument of delegation or a copy of the instrument, for inspection by the person.
- (7) Where:
- (a) in accordance with a law of a State, the Ombudsman of the State delegates to the Commonwealth Ombudsman, either generally or as otherwise provided by the instrument of delegation, any of his or her powers under such a law; and
 - (b) the Minister consents to the exercise by the Ombudsman in accordance with the instrument of delegation of a power so delegated;
- the Ombudsman is authorized to exercise that power accordingly.

35 Officers to observe confidentiality

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

Section 35

disclosed to or obtained by the Commonwealth Ombudsman in the exercise of a power of the Ombudsman of a State delegated to him or her as provided by subsection 34(7).

Penalty: \$500.

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

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

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

Penalty: Imprisonment for 2 years.

- (6) Subsection (5) does not prevent an officer, in the performance of his or her duties as an officer:
 - (a) from divulging or communicating information referred to in that subsection to another officer;
 - (b) from furnishing any of the contents of, a copy of or an extract from a document referred to in that subsection to another officer; or
 - (c) from returning such a document that has been produced to him or her to the person lawfully entitled to the custody of the document.
- (6A) Subsection (2) does not prevent the Ombudsman, or an officer acting on behalf of the Ombudsman, from giving information or documents under paragraph 6(4D)(e) or paragraph 6(18)(d).
- (7) Subject to subsection (7A), where the Ombudsman proposes, for purposes connected with the exercise of his or her powers or performance of his or her functions, to furnish information, or to send a document, or a copy of, or extract from, a document, to the Ombudsman of a State, the Ombudsman shall satisfy himself or herself that a law of the State makes provision corresponding to the provision made by this section with respect to the confidentiality of information acquired by the Ombudsman of the State.
- (7A) Subsection (7) does not apply in relation to any information or document obtained by the Ombudsman in the exercise of a power

Section 35AA

of the Ombudsman of the State that the Ombudsman was authorized to exercise in pursuance of subsection 34(7).

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

35AA Disclosure of information and documents to Integrity Commissioner

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

- (3) In this section:

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

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

35A Disclosure of information by Ombudsman

- (1) Subject to sections 35B and 35C, nothing in this Act shall be taken to preclude the Ombudsman from disclosing information, or making a statement, to any person or to the public or a section of

the public with respect to the performance of the functions of, or an investigation by, the Ombudsman if, in the opinion of the Ombudsman, it is in the interests of any Department, prescribed authority or person, or is otherwise in the public interest, so to disclose that information or to make that statement.

- (2) The Ombudsman shall not disclose information or make a statement under subsection (1) with respect to a particular investigation where the disclosure of that information, or the making of that statement, is likely to interfere with the carrying out of that or any other investigation or the making of a report.
- (3) The Ombudsman shall not, in disclosing information or making a statement under subsection (1) with respect to a particular investigation:
 - (a) set out opinions that are, either expressly or impliedly, critical of a Department, prescribed authority or person unless the Ombudsman has complied with subsection 8(5) in relation to the investigation; or
 - (b) disclose the name of a complainant or any other matter that would enable a complainant to be identified unless it is fair and reasonable in all the circumstances to do so.
- (4) This section has effect notwithstanding subsection 8(2) and section 35 (other than subsection (5) of that section).

35B Disclosure of ACC information

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

Section 35C

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

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

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

35C Disclosure of ACLEI information

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

- (2) In this section:

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

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

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

36 Offences

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

Penalty: \$1,000 or imprisonment for 3 months.

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

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

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

37 Protection from civil actions

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

Section 38

- (a) the making of a complaint to the Ombudsman under this Act;
- (b) the making of a statement to, or the furnishing of a document or information to, a person, being an officer within the meaning of section 35, for the purposes of this Act, whether or not the statement was made, or the document or information was furnished, in pursuance of a requirement under section 9 or an order under section 11A.

38 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, prescribing matters in connexion with fees and expenses of witnesses appearing before the Ombudsman.

Table of Acts**Notes to the *Ombudsman Act 1976*****Note 1**

The *Ombudsman Act 1976* as shown in this compilation comprises Act No. 181, 1976 amended as indicated in the Tables below.

For application, saving or transitional provisions made by the *Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005*, see Act No. 45, 2005.

For application, saving or transitional provisions made by Schedule 7 of the *Freedom of Information Amendment (Reform) Act 2010*, see Act No. 51, 2010.

All relevant information pertaining to application, saving or transitional provisions prior to 24 November 2000 is not included in this compilation. For subsequent information see Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Ombudsman Act 1976</i>	181, 1976	13 Dec 1976	1 July 1977 (see <i>Gazette</i> 1977, No. S115)	
<i>Ombudsman Amendment Act 1978</i>	63, 1978	22 June 1978	1 July 1978	S. 11
<i>Ombudsman Amendment Act 1979</i>	107, 1979	25 Oct 1979	2 June 1979	—
<i>Australian Federal Police (Consequential Amendments) Act 1979</i>	155, 1979	28 Nov 1979	19 Oct 1979 (see s. 2 and <i>Gazette</i> 1979, No. S206)	—
<i>Statute Law Revision Act 1981</i>	61, 1981	12 June 1981	S. 115: Royal Assent (a)	—
<i>Ombudsman Amendment Act 1983</i>	61, 1983	12 Oct 1983	Ss. 3, 4(2), 6, 20, 21 and 30: 5 Dec 1983 (see <i>Gazette</i> 1983, No. S305) Remainder: Royal Assent	S. 30
<i>Public Service Reform Act 1984</i>	63, 1984	25 June 1984	S. 151(1): 1 July 1984 (see <i>Gazette</i> 1984, No. S245) (b)	S. 151(9)

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
as amended by				
<i>Statute Law (Miscellaneous Provisions) Act (No. 2) 1985</i>	193, 1985	16 Dec 1985	S. 3: (c)	S. 16
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1985</i>	65, 1985	5 June 1985	S. 3: 3 July 1985 (d)	—
<i>Statute Law (Miscellaneous Provisions) Act (No. 2) 1986</i>	168, 1986	18 Dec 1986	S. 3: Royal Assent (e)	S. 5(1)
<i>A.C.T. Self-Government (Consequential Provisions) Act 1988</i>	109, 1988	6 Dec 1988	Schedule 5 (in part): 11 May 1989 (see <i>Gazette</i> 1989, No. S164) (f)	—
<i>Privacy Act 1988</i>	119, 1988	14 Dec 1988	1 Jan 1989 (see <i>Gazette</i> 1988, No. 399)	—
<i>Telecommunications and Postal Services (Transitional Provisions and Consequential Amendments) Act 1989</i>	63, 1989	19 June 1989	Ss. 1 and 2: Royal Assent Part 5 (ss. 17, 18): 30 June 1989 (see s. 2(3) and <i>Gazette</i> 1989, No. S216) Remainder: 1 July 1989 (see <i>Gazette</i> 1989, No. S230)	—
<i>Telecommunications (Transitional Provisions and Consequential Amendments) Act 1991</i>	99, 1991	27 June 1991	Part 1 (ss. 1, 2): Royal Assent S. 24 and Part 5 (s. 26): 1 Feb 1992 (see s. 2(3) and <i>Gazette</i> 1992, No. S32) Remainder: 1 July 1991	—
<i>Industrial Relations Legislation Amendment Act 1991</i>	122, 1991	27 June 1991	Ss. 4(1), 10(b) and 15–20: 1 Dec 1988 Ss. 28(b)–(e), 30 and 31: 10 Dec 1991 (see <i>Gazette</i> 1991, No. S332) Remainder: Royal Assent	—
<i>Prime Minister and Cabinet Legislation Amendment Act 1991</i>	199, 1991	18 Dec 1991	18 Dec 1991	—
<i>Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 1992</i>	94, 1992	30 June 1992	S. 3: 1 July 1990 Remainder: Royal Assent	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Qantas Sale Act 1992</i>	196, 1992	21 Dec 1992	Schedule (Part 1): 10 Mar 1993 (see <i>Gazette</i> 1993, No. GN17) (g) Schedule (Part 5): 30 Aug 1995 (see <i>Gazette</i> 1995, No. S324) (g)	S. 2(6) (am. by 60, 1993, s. 4; 168, 1994, Sch. [item 17])
as amended by				
<i>Qantas Sale Amendment Act 1993</i>	60, 1993	3 Nov 1993	10 Mar 1993	—
<i>Qantas Sale Amendment Act 1994</i>	168, 1994	16 Dec 1994	Schedule (item 17): Royal Assent (h)	—
<i>Prime Minister and Cabinet (Miscellaneous Provisions) Act 1994</i>	33, 1994	15 Mar 1994	Ss. 18–27: Royal Assent (i)	S. 27(2)
<i>Employment Services (Consequential Amendments) Act 1994</i>	177, 1994	19 Dec 1994	Ss. 1, 2(1), (3) and 3–8: 19 Dec 1994 (see s. 2(1)) Ss. 2(2) and 32–39: Royal Assent Remainder: 1 Jan 1995 (see s. 2(3) and <i>Gazette</i> 1994, No. S472)	S. 13
<i>Taxation Laws Amendment Act (No. 1) 1995</i>	120, 1995	25 Oct 1995	Schedule 1 (item 58): 23 Nov 1994 (see s. 2(2)) Schedule 2 (items 8–13): 1 July 1994 Remainder: Royal Assent	—
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 2 (item 78): (j) Schedule 4 (item 117) and Schedule 5 (items 109–111): Royal Assent (j)	—
<i>Defence Legislation Amendment Act (No. 1) 1997</i>	1, 1997	19 Feb 1997	Schedules 1 and 3: 30 Apr 1997 (see <i>Gazette</i> 1997, No. S91) Remainder: Royal Assent	—
<i>Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997</i>	59, 1997	3 May 1997	Schedule 1 (items 40–42): 1 July 1997 (k)	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 711–717): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (<i>l</i>)	—
<i>Federal Magistrates (Consequential Amendments) Act 1999</i>	194, 1999	23 Dec 1999	Schedule 21: 23 Dec 1999 (<i>m</i>)	—
<i>Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000</i>	137, 2000	24 Nov 2000	Ss. 1–3 and Schedule 1 (items 1, 4, 6, 7, 9–11, 32): Royal Assent Remainder: 24 May 2001	Sch. 2 (items 418, 419) [see Table A]
<i>Prime Minister and Cabinet Legislation Amendment (Application of Criminal Code) Act 2001</i>	49, 2001	21 June 2001	19 July 2001	S. 4 [see Table A]
<i>National Crime Authority Legislation Amendment Act 2001</i>	135, 2001	1 Oct 2001	Schedules 1–7 and 9–12: 12 Oct 2001 (see <i>Gazette</i> 2001, No. S428) Schedule 8: 13 Oct 2001 (see <i>Gazette</i> 2001, No. S428) Remainder: Royal Assent	—
<i>Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001</i>	159, 2001	1 Oct 2001	29 Oct 2001	Sch. 1 (item 97) [see Table A]
<i>Statute Law Revision Act 2002</i>	63, 2002	3 July 2002	Schedule 1 (item 24): (<i>n</i>)	—
<i>Australian Crime Commission Establishment Act 2002</i>	125, 2002	10 Dec 2002	Schedule 2 (items 84–98, 226): 1 Jan 2003	Sch. 2 (item 226) [see Table A]
<i>Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005</i>	45, 2005	1 Apr 2005	Schedule 3 (items 3, 4): (<i>o</i>) Schedule 3 (items 5, 6, 8) and Schedule 4: 1 July 2005 (see s. 2(1)) Schedule 3 (item 7): (<i>o</i>) Schedule 3 (items 9–11): (<i>o</i>)	Sch. 4 [see Note 1] S. 2(1) (items 5, 7, 9) (am. by 8, 2007, Sch. 1 [items 2–4])
as amended by <i>Statute Law Revision Act 2007</i>	8, 2007	15 Mar 2007	Schedule 2 (items 2–4): (<i>oa</i>)	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Migration and Ombudsman Legislation Amendment Act 2005</i>	141, 2005	12 Dec 2005	Schedule 2 (items 2–25): Royal Assent Schedule 2 (items 28–31): (p)	—
<i>Postal Industry Ombudsman Act 2006</i>	25, 2006	6 Apr 2006	Schedule 1 (items 1–14, 20(1), 21): 6 Oct 2006 Schedule 2 (item 1): (q) Schedule 2 (item 2): (q) Schedule 2 (item 3): (q) Schedule 2 (item 4): (q) Schedule 2 (item 5): (q)	Sch. 1 (items 20(1), 21) [see Table A]
<i>Law Enforcement (AFP Professional Standards and Related Measures) Act 2006</i>	84, 2006	30 June 2006	Schedule 3 (items 46–64): 30 Dec 2006 (see s. 2(1))	—
<i>Law Enforcement Integrity Commissioner (Consequential Amendments) Act 2006</i>	86, 2006	30 June 2006	Schedule 1 (items 41–47): 30 Dec 2006 (see s. 2(1))	—
<i>Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Act 2008</i>	26, 2008	23 June 2008	Schedule 1 (items 98–101): Royal Assent	—
<i>Statute Law Revision Act 2010</i>	8, 2010	1 Mar 2010	Schedule 5 (item 137(a)): (r)	—
<i>Freedom of Information Amendment (Reform) Act 2010</i>	51, 2010	31 May 2010	Schedule 4 (items 59–64, 66, 67) and Schedule 7: (s)	Sch. 4 (items 66, 67) [see Table A] Sch. 7 [see Note 1]
<i>Territories Law Reform Act 2010</i>	139, 2010	10 Dec 2010	Schedule 1 (items 241, 242): 10 June 2011	—
<i>Statute Law Revision Act 2011</i>	5, 2011	22 Mar 2011	Schedule 1 (items 70–86): Royal Assent Schedule 6 (item 130): 19 Apr 2011	—
<i>Education Services for Overseas Students Legislation Amendment Act 2011</i>	11, 2011	8 Apr 2011	Schedule 2 (items 1–4, 8, 9): 9 Apr 2011	Sch. 2 (items 8, 9) [see Table A]

Act Notes

- (a) The *Ombudsman Act 1976* was amended by section 115 only of the *Statute Law Revision Act 1981*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (b) The *Ombudsman Act 1976* was amended by subsection 151(1) only of the *Public Service Reform Act 1984*, subsection 2(4) of which provides as follows:
- (4) The remaining provisions of this Act shall come into operation on such day as is, or on such respective days as are, fixed by Proclamation.
- (c) The *Public Service Reform Act 1984* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1985*, subsection 2(11) of which provides as follows:
- (11) The amendment of Schedule 4 to the *Public Service Reform Act 1984* made by this Act shall be deemed to have come into operation on 1 July 1984.
- (d) The *Ombudsman Act 1976* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.
- (e) The *Ombudsman Act 1976* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1986*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (f) The *Ombudsman Act 1976* was amended by Schedule 5 (in part) only of the *A.C.T. Self-Government (Consequential Provisions) Act 1988*, subsection 2(3) of which provides as follows:
- (3) The remaining provisions of this Act (including the amendments made by Schedule 5) commence on a day or days to be fixed by Proclamation.
- (g) The *Ombudsman Act 1976* was amended by the Schedule (Parts 1 and 5) only of the *Qantas Sale Act 1992*, subsections 2(2), (3)(a) and (c) of which provide as follows:
- (2) Subject to subsection (3), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.
 - (3) A Proclamation may fix a day that is earlier than the day on which the Proclamation is published in the *Gazette* but only if:
 - (a) in the case of sections 30, 31, 35, 37, 39, 43 and 50 and Parts 1 and 2 of the Schedule—the day is not earlier than the substantial minority sale day; and
 - (c) in the case of sections 25, 36, 38, 44 and 51 and Parts 5, 6 and 7 of the Schedule—the day is not earlier than the 100% sale day.
- (h) The *Qantas Sale Act 1992* was amended by the Schedule (item 17) only of the *Qantas Sale Amendment Act 1994*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (i) The *Ombudsman Act 1976* was amended by sections 18–27 only of the *Prime Minister and Cabinet (Miscellaneous Provisions) Act 1994*, subsection 2(1) of which provides as follows:
- (1) Except for subsection 15(1), this Act commences on the day on which it receives the Royal Assent.
- (j) The *Ombudsman Act 1976* was amended by Schedule 2 (item 78), Schedule 4 (item 117) and Schedule 5 (items 109–111) only of the *Statute Law Revision Act 1996*, subsections 2(1) and (2) of which provide as follows:
- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
 - (2) Each item in Schedule 2 commences or is taken to have commenced (as the case requires) at the time specified in the note at the end of the item.

Act Notes

Item 78 is taken to have commenced immediately after the commencement of the amendment of the *Ombudsman Act 1976* in Schedule 1 to the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*.

The abovementioned amendment commenced on 3 July 1985.

- (k) The *Ombudsman Act 1976* was amended by Schedule 1 (items 40–42) only of the *Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997*, subsection 2(2)(d) of which provides as follows:
- (2) The following provisions commence on 1 July 1997:
- (d) Schedule 1;
- (l) The *Ombudsman Act 1976* was amended by Schedule 1 (items 711–717) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
- (2) Subject to this section, this Act commences at the commencing time.
- (m) The *Ombudsman Act 1976* was amended by Schedule 21 only of the *Federal Magistrates (Consequential Amendments) Act 1999*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the commencement of the *Federal Magistrates Act 1999*.
- (n) The *Ombudsman Act 1976* was amended by Schedule 1 (item 24) only of the *Statute Law Revision Act 2002*, subsection 2(1) (item 19) of which provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
19. Schedule 1, item 24	Immediately after item 111 of Schedule 5 to the <i>Statute Law Revision Act 1996</i> commenced	25 October 1996

- (o) Subsection 2(1) (items 5–10) of the *Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005* provide as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
5. Schedule 3, items 3 and 4	The later of: (a) the commencement of section 6 of the <i>Australian Communications and Media Authority Act 2005</i> ; and (b) immediately after the commencement of item 2 of Schedule 1 to the <i>Postal Industry Ombudsman Act 2006</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	6 October 2006 (paragraph (b) applies)

Act Notes

Provision(s)	Commencement	Date/Details
7. Schedule 3, item 7	At the same time as section 6 of the <i>Australian Communications and Media Authority Act 2005</i> commences. However, if item 10 of Schedule 1 to the <i>Postal Industry Ombudsman Act 2006</i> has commenced on or before that time, the provision(s) do not commence at all.	1 July 2005
9. Schedule 3, items 9, 10 and 11	The later of: (a) the commencement of section 6 of the <i>Australian Communications and Media Authority Act 2005</i> ; and (b) immediately after the commencement of item 11 of Schedule 1 to the <i>Postal Industry Ombudsman Act 2006</i> . However, if item 11 of Schedule 1 to the <i>Postal Industry Ombudsman Act 2006</i> does not commence, the provision(s) do not commence at all.	6 October 2006 (paragraph (b) applies)
(oa) Subsection 2(1) (item 29) of the <i>Statute Law Revision Act 2007</i> provides as follows: (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.		

Provision(s)	Commencement	Date/Details
29. Schedule 2, items 2, 3 and 4	Immediately after the commencement of section 2 of the <i>Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005</i> .	1 April 2005
(p) Subsection 2(1) (item 6) of the <i>Migration and Ombudsman Legislation Amendment Act 2005</i> provides as follows: (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.		

Provision(s)	Commencement	Date/Details
6. Schedule 2, items 28 to 31	The later of: (a) the start of the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of item 11 of Schedule 1 to the <i>Postal Industry Ombudsman Act 2006</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	6 October 2006 (paragraph (b) applies)

Act Notes

(g) Subsection 2(1) (items 3–7) of the *Postal Industry Ombudsman Act 2006* provide as follows:

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

Provision(s)	Commencement	Date/Details
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

(r) Subsection 2(1) (items 31 and 38) of the *Statute Law Revision Act 2010* provides as follows:

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

Provision(s)	Commencement	Date/Details
31. Schedule 5, items 1 to 51	The day this Act receives the Royal Assent.	1 March 2010
38. Schedule 5, Parts 2 and 3	Immediately after the provision(s) covered by table item 31.	1 March 2010

(s) Subsection 2(1) (item 7) of the *Freedom of Information Amendment (Reform) Act 2010* provides as follows:

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

Act Notes

Provision(s)	Commencement	Date/Details
7. Schedules 4 to 7	Immediately after the commencement of section 3 of the <i>Australian Information Commissioner Act 2010</i> . However, if section 3 of the <i>Australian Information Commissioner Act 2010</i> does not commence, the provision(s) do not commence at all.	1 November 2010

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Title	rs. No. 61, 1983 am. No. 25, 2006; No. 11, 2011
Part I	
S. 3	am. No. 63, 1978; Nos. 107 and 155, 1979; No. 61, 1983; No. 63, 1984 (as am. by No. 193, 1985); No. 168, 1986; No. 109, 1988; No. 199, 1991; No. 196, 1992; Nos. 33 and 177, 1994; No. 43, 1996; No. 1, 1997; Nos. 146 and 194, 1999; No. 135, 2001; Nos. 63 and 125, 2002; Nos. 45 and 141, 2005; Nos. 25 and 84, 2006; No. 5, 2011
S. 3AB	ad. No. 33, 1994
Renumbered s. 3A	No. 49, 2001
S. 3AA	ad. No. 109, 1988
Renumbered s. 3B	No. 49, 2001
S. 3BA	ad. No. 141, 2005
S. 3A	ad. No. 61, 1983
Renumbered s. 3C	No. 49, 2001
S. 3D	ad. No. 49, 2001
Part II	
Division 1	
S. 4	am. No. 61, 1983; No. 199, 1991; No. 33, 1994; No. 120, 1995; No. 141, 2005; No. 84, 2006; No. 139, 2010
S. 5	am. No. 63, 1978; No. 155, 1979; No. 61, 1983; No. 199, 1991; Nos. 33 and 177, 1994; No. 146, 1999; No. 135, 2001; No. 125, 2002; Nos. 84 and 86, 2006; No. 5, 2011
S. 6	am. No. 61, 1983; No. 168, 1986; No. 119, 1988; No. 63, 1989; Nos. 99 and 199, 1991; Nos. 33 and 177, 1994; No. 59, 1997; No. 146, 1999; No. 45, 2005; Nos. 25, 84 and 86, 2006; No. 51, 2010; No. 5, 2011
Heading to s. 6A	am. No. 125, 2002
S. 6A	ad. No. 135, 2001 am. No. 125, 2002
S. 6B	ad. No. 86, 2006
S. 6C.....	ad. No. 51, 2010
S. 7	rs. No. 61, 1983 am. No. 199, 1991
Subhead to s. 7A(1)	ad. No. 141, 2005
Subhead to s. 7A(2)	ad. No. 141, 2005
S. 7A	ad. No. 61, 1983 am. No. 168, 1986; No. 199, 1991; No. 141, 2005

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subhead to s. 8(1).....	ad. No. 141, 2005
Subhead to s. 8(2).....	ad. No. 141, 2005
Subhead to s. 8(3).....	ad. No. 141, 2005
Subhead to s. 8(4).....	ad. No. 141, 2005
Subhead to s. 8(8).....	ad. No. 141, 2005
Subhead to s. 8(10).....	ad. No. 141, 2005
S. 8	am. No. 61, 1983; No. 199, 1991; No. 33, 1994; No. 43, 1996; No. 141, 2005; No. 84, 2006
S. 8A	ad. No. 61, 1983 am. No. 199, 1991; No. 84, 2006
Heading to s. 8B	am. No. 125, 2002
S. 8B	ad. No. 135, 2001 am. No. 125, 2002
S. 8C	ad. No. 86, 2006
S. 8D	ad. No. 84, 2006
S. 9	am. No. 63, 1978; No. 61, 1983; No. 168, 1986; No. 109, 1988; No. 199, 1991; No. 137, 2000; No. 135, 2001; No. 125, 2002; No. 141, 2005; No. 86, 2006
S. 10	am. No. 61, 1983; No. 199, 1991
S. 10A	ad. No. 199, 1991
S. 11	am. No. 61, 1983 rs. No. 199, 1991
S. 11A	ad. No. 61, 1983 am. No. 199, 1991; No. 141, 2005
S. 12	rs. No. 61, 1983 am. No. 199, 1991
S. 13	am. No. 199, 1991; No. 33, 1994
S. 14	am. No. 168, 1986; No. 199, 1991; No. 141, 2005
Division 2	
S. 15	am. No. 61, 1983; No. 199, 1991
Ss. 16, 17	am. No. 199, 1991; No. 33, 1994
S. 18	rs. No. 63, 1978 rep. No. 61, 1983 ad. No. 199, 1991
S. 19	am. No. 63, 1978; No. 107, 1979; No. 61, 1983; No. 168, 1986; No. 109, 1988; No. 199, 1991; No. 141, 2005; No. 51, 2010
Part IIA	
Part IIA.....	ad. No. 61, 1983
S. 19A	ad. No. 61, 1983 rep. No. 168, 1986
S. 19B	ad. No. 61, 1983
S. 19C	ad. No. 61, 1983 am. No. 199, 1991; No. 141, 2005

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 19D	ad. No. 61, 1983 am. No. 199, 1991
S. 19E	ad. No. 61, 1983 am. No. 168, 1986; No. 199, 1991
S. 19F	ad. No. 61, 1983 am. No. 25, 2006
Part IIB	
Part IIB.....	ad. No. 25, 2006
Division 1	
Ss. 19G, 19H	ad. No. 25, 2006
Ss. 19J, 19K.....	ad. No. 25, 2006
Division 2	
S. 19L	ad. No. 25, 2006
S. 19M	ad. No. 25, 2006 am. No. 141, 2005
S. 19N.....	ad. No. 25, 2006
Ss. 19P, 19Q.....	ad. No. 25, 2006
Division 3	
S. 19R.....	ad. No. 25, 2006 am. No. 141, 2005; No. 51, 2010; No. 5, 2011
Ss. 19S–19Z.....	ad. No. 25, 2006
Division 4	
Ss. 19ZA–19ZC	ad. No. 25, 2006
S. 19ZD.....	ad. No. 25, 2006 am. No. 8, 2010
Division 5	
S. 19ZE.....	ad. No. 25, 2006 am. No. 45, 2005
Part IIC	
Part IIC.....	ad. No. 11, 2011
Division 1	
Ss. 19ZF–19ZH.....	ad. No. 11, 2011
Division 2	
Ss. 19ZI–19ZL	ad. No. 11, 2011
Division 3	
Ss. 19ZM–19ZU.....	ad. No. 11, 2011
Part III	
Division 1	
S. 22	am. No. 199, 1991; No. 43, 1996; No. 159, 2001
S. 23	am. No. 63, 1978; No. 61, 1983; No. 109, 1988
S. 24	am. No. 168, 1986; No. 43, 1996
S. 25	rs. No. 122, 1991 am. No. 146, 1999
S. 26	am. No. 199, 1991

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 28	am. No. 61, 1981; No. 61, 1983; Nos. 122 and 199, 1991
Ss. 28A, 28B	ad. No. 94, 1992 am. No. 26, 2008
S. 29	rs. No. 61, 1983 am. No. 168, 1986; No. 199, 1991; No. 33, 1994; No. 141, 2005
S. 30	am. No. 199, 1991 rep. No. 94, 1992
Division 2	
S. 31	am. No. 63, 1984; No. 146, 1999
S. 32	rep. No. 65, 1985
Heading to Div. 3 of Part III	rep. No. 43, 1996
Part IV	
S. 33	am. No. 61, 1983; No. 199, 1991; No. 84, 2006
S. 34	am. No. 63, 1978 rs. No. 61, 1983 am. No. 199, 1991; Nos. 25 and 84, 2006; No. 11, 2011
S. 35	am. No. 63, 1978; No. 61, 1983; No. 119, 1988; No. 63, 1989; No. 199, 1991; No. 135, 2001; No. 141, 2005; Nos. 84 and 86, 2006; No. 51, 2010
S. 35AA	ad. No. 86, 2006
S. 35A	ad. No. 61, 1983 am. No. 177, 1994; No. 135, 2001; No. 141, 2005; No. 86, 2006; No. 5, 2011
Heading to s. 35B.....	am. No. 125, 2002
S. 35B	ad. No. 135, 2001 am. No. 125, 2002; No. 25, 2006
S. 35C	ad. No. 86, 2006
S. 36	am. No. 61, 1983; No. 199, 1991; No. 137, 2000; No. 49, 2001
S. 37	am. No. 61, 1983
Part V	ad. Statutory Rules 1978 No. 104 rep. No. 168, 1986
Ss. 39–42	ad. Statutory Rules 1978 No. 104 rep. No. 168, 1986

Table A**Table A****Application, saving or transitional provisions**

Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences)
Act 2000 (No. 137, 2000)

Schedule 2**418 Transitional—pre-commencement offences**

- (1) Despite the amendment or repeal of a provision by this Schedule, that provision continues to apply, after the commencement of this item, in relation to:
- (a) an offence committed before the commencement of this item; or
 - (b) proceedings for an offence alleged to have been committed before the commencement of this item; or
 - (c) any matter connected with, or arising out of, such proceedings;
- as if the amendment or repeal had not been made.
- (2) Subitem (1) does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

419 Transitional—pre-commencement notices

If:

- (a) a provision in force immediately before the commencement of this item required that a notice set out the effect of one or more other provisions; and
 - (b) any or all of those other provisions are repealed by this Schedule; and
 - (c) the first-mentioned provision is amended by this Schedule;
- the amendment of the first-mentioned provision by this Schedule does not affect the validity of such a notice that was given before the commencement of this item.

Table A

Prime Minister and Cabinet Legislation Amendment (Application of Criminal Code) Act 2001 (No. 49, 2001)

4 Application of amendments

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001 (No. 159, 2001)

Schedule 1

97 Application of amendments

The amendments made by this Schedule do not apply to an appointment if the term of the appointment began before the commencement of this item.

Australian Crime Commission Establishment Act 2002 (No. 125, 2002)

Schedule 2

226 Transitional regulations

- (1) The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) arising out of the amendments made by this Schedule.
 - (2) Despite subsection 48(2) of the *Acts Interpretation Act 1901*, regulations made under this item within 1 year after commencement of this item may commence on a day earlier than the day on which they are made, but not earlier than the commencement of this item.
-

Table A

Postal Industry Ombudsman Act 2006 (No. 25, 2006)

Schedule 1**20 Application**

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

21 Transitional—reports under section 19X

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

- (a) started on the commencement of this Part; and
- (b) ended on the 30 June first occurring after that commencement.

Freedom of Information Amendment (Reform) Act 2010 (No. 51, 2010)

Schedule 4**66 Application—Part 2**

The amendments made by Part 2 apply in relation to a complaint made to the Ombudsman under the *Ombudsman Act 1976* at or after the commencement of that Part (whether or not the action to which the complaint relates was taken before, at or after that commencement).

67 Savings—complaints on foot continue under old law

- (1) This item applies if:
- (a) before the commencement of Part 2, a complaint is made to the Ombudsman under the *Ombudsman Act 1976*; and
 - (b) at the commencement of that Part, the Ombudsman has not informed the complainant of the result of the complaint under section 12 of that Act.

Table A

- (2) Despite the amendments made to the *Ombudsman Act 1976* by Part 2, the Ombudsman must continue to deal with the complaint under the *Ombudsman Act 1976* as if those amendments had not been made.

Education Services for Overseas Students Legislation Amendment Act 2011
(No. 11, 2011)

Schedule 2

8 Application of Part 1

The amendments made by Part 1 of this Schedule apply in relation to action taken by a private registered provider before or after this Schedule commences.

9 Transitional provision—reports under section 19ZS

The first report under section 19ZS of the *Ombudsman Act 1976* relating to the operations of the Overseas Students Ombudsman during a year must relate to the operations of the Overseas Students Ombudsman during the period that:

- (a) started on the commencement of this Part; and
- (b) ended on the 30 June first occurring after that commencement.