

NORTHERN TERRITORY OF AUSTRALIA

OMBUDSMAN (NORTHERN TERRITORY) ACT

As in force at 15 March 2004

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NORTHERN TERRITORY OF AUSTRALIA

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OMBUDSMAN (NORTHERN TERRITORY) ACT

An Act to provide for the appointment of an Ombudsman for the Northern Territory of Australia, and to define his functions and powers

Part I Preliminary

1 Short title

This Act may be cited as the *Ombudsman (Northern Territory) Act*.

2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3 Interpretation

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

administrative action means an action relating to a matter of administration, and includes:

- (a) a decision or an act;
- (b) the failure or refusal to take a decision or to perform an act;
- (c) the formulation of a proposal or intention; and
- (d) the making of a recommendation (including a recommendation made to the Administrator or to a Minister),

but does not include:

(e) any such action of or by a person while discharging or purporting to discharge a responsibility of a judicial nature.

(ea) any such action of:

- (i) a coroner, within the meaning of the *Coroners Act*, while discharging or purporting to discharge a responsibility relating to an inquest or inquiry under that Act; or

- (ii) a magistrate or Justice while discharging or purporting to discharge a responsibility relating to a preliminary examination under Part V of the *Justices Act*;
- (eb) any such action (not amounting to inordinate delay) of or by the Director of Public Prosecutions under the *Director of Public Prosecutions Act* relating to:
 - (i) the instituting and conducting of, or participation in or assistance with matters relating to, judicial proceedings, including such proceedings outside of the Territory;
 - (ii) the granting of immunity from prosecution;
 - (iii) an extradition;
 - (iv) the recovery of penalties or the enforcement of forfeitures;
 - (v) the issuing and contents of guidelines relating to prosecutions for offences;
 - (vi) the limiting of the powers of other officials; and
 - (vii) the investigation of offences;
- (ec) any such action (not amounting to inordinate delay) relating to an application to or decision of a consent authority under the *Planning Act* from which decision an appeal to the Appeals Tribunal under that Act would lie, the procedure in relation to the hearing of such an appeal, and the resulting decision of the Tribunal;
- (ed) any such action (not amounting to inordinate delay) relating to a decision of the Northern Territory Licensing Commission established by section 4 of the *Northern Territory Licensing Commission Act* as a result of which an application or request for a hearing under Part V of the *Liquor Act* may be made, the procedure in relation to any such hearing, and the resulting decision of the Commission;
- (ee) any such action (not amounting to inordinate delay) of or by the Anti-Discrimination Commissioner appointed under the *Anti-Discrimination Act* in relation to a complaint of prohibited conduct under that Act;
- (f) any such action of or by a person acting as counsel or legal adviser to the Crown or to a Minister in his capacity as such;

- (g) any such action taken by a person or body with respect to a person employed in the service of a department or authority, being an action taken in relation to that employment, including action taken with respect to the promotion, termination of employment or discipline of a person so employed or the payment of remuneration to such a person; or
- (h) any such action taken by the Parole Board of the Northern Territory.

authority means a person or body:

- (a) that is an Agency as defined in the Public Sector Employment and Management Act;
- (b) whether incorporated or unincorporated, that is constituted or established for a public purpose by or under a law of the Territory, not being a body which is a prescribed authority within the meaning of the Ombudsman Act 1976 of the Commonwealth;
- (c) that is a local government council; or
- (d) in respect of whom or which a declaration has been made by the Administrator under subsection (2).

complainant means the person or body who or which makes a complaint under this Act and includes the person or body aggrieved where the complaint is not made by the person or body aggrieved.

department means an Agency as defined in the *Public Sector Employment and Management Act*, and includes the Police Force of the Northern Territory, but does not include:

- (a) the Legislative Assembly; or
- (b) the Executive Council.

Executive Council means the Executive Council of the Northern Territory of Australia.

Information Commissioner means the Information Commissioner under the *Information Act*.

local government council means the council of a municipality or community government area constituted under the *Local Government Act*.

officer, in relation to a department or an authority that is an agency as defined in the *Public Sector Employment and Management Act*, includes an employee as defined in that Act.

Ombudsman means the person holding the office of the Ombudsman for the Northern Territory, and includes an acting Ombudsman.

presiding member, in relation to a local government council, means the mayor, president, chairman or person, by whatever name called, presiding over the council, and includes the deputy to the presiding member.

principal officer:

- (a) in relation to a department means the Chief Executive Officer, within the meaning of the *Public Sector Employment and Management Act*, of the department;
- (b) in relation to an authority, not being a local government council or an Agency, means the Chairman or presiding member for the time being of the authority; and
- (c) in relation to a local government council, means the person for the time being holding or acting in or performing the duties of clerk of the council.

responsible Minister means:

- (a) where the term is used in relation to a department, the Minister who, in the opinion of the Ombudsman, has the direction of the activities of that department; or
- (b) where the term is used in relation to an authority, the Minister who, in the opinion of the Ombudsman, administers the provisions of the Act by or under which that authority is constituted or established or, if that authority is not constituted or established by or under an Act, the Minister who, in the opinion of the Ombudsman, is the appropriate minister in relation to that authority,

and includes a Minister for the time being acting for and on behalf of the responsible Minister.

tribunal includes the person constituting a tribunal consisting of one person.

- (2) The Administrator may, by notice in the *Gazette*, declare a person or body, whether incorporated or unincorporated, to be an authority for the purposes of this Act either generally or in respect of

specified administrative actions or actions of a specified class of administrative action, or in respect of administrative actions other than specified administrative actions or actions of a specified class of administrative action.

- (3) For the purposes of this Act:
- (a) references to a department or an authority shall be construed as including references to the principal officer and other officers, members, and employees thereof;
 - (b) references to an officer of an authority shall be construed as including references to an officer appointed by or to that authority under any law in force in the Territory;
 - (c) references to a member of an authority shall be construed as including references to the person for the time being holding or acting in or performing the duties of any office or designation created or established by or under a law in force in the Territory, or in a department, who by virtue of his holding that office is a member of that authority; and
 - (d) references to an administrative action taken by, in or on behalf of a department or authority shall be construed as including references to action taken by any officer, member or employee thereof or any other person in or acting on behalf of the department or authority in the exercise or performance of any power or function conferred on him, whether pursuant to any law in force in the Territory or otherwise.
- (4) For the purpose of this Act, an action taken by an officer of a department or authority shall be deemed to be taken by the department or authority if the officer takes or purports to take the action:
- (a) by virtue of his being an officer of the department or authority, whether or not:
 - (i) the action is taken for or in connection with or is incidental to the performance of the functions of the department or authority; or
 - (ii) the taking of the action is within the duties of the officer; or
 - (b) in the exercise of a power or the performance of a function conferred on him by or under a law in force in the Territory.

Part II The Ombudsman for the Northern Territory

4 Ombudsman

- (1) For the purposes of this Act, there shall be an office which shall be known as the office of the Ombudsman for the Northern Territory.
- (2) A reference in any law in force in the Territory, other than a law of the Commonwealth, to the Ombudsman shall be read as a reference to the Ombudsman within the meaning of this Act.
- (3) The Administrator may, after receiving the recommendation of the Legislative Assembly, appoint a person to hold the office of the Ombudsman.
- (4) The Ombudsman shall hold office on such terms and conditions, not inconsistent with this Act, and shall be paid such remuneration, expenses and allowances, as the Administrator determines.
- (5) Subject to this Act, the Ombudsman holds office for such period not exceeding 5 years as the Administrator specifies in the instrument of appointment, but is eligible for re-appointment.
- (6) A person who is appointed or re-appointed the Ombudsman within 5 years before the day on which he will attain the age of 65 years and who is in office immediately before that day ceases to hold office on that day and a person who has attained that age shall not be appointed or re-appointed the Ombudsman.
- (7) The Minister shall cause to be laid before the Legislative Assembly any instrument of appointment or determination made by the Administrator pursuant to this section within 3 sitting days of the Assembly after the making of that instrument.
- (8) The Ombudsman shall not, without the consent in writing of the Minister, engage in any remunerative employment outside the duties of his office under this Act.

5 Leave of absence

The Minister may grant leave of absence to the Ombudsman upon such terms and conditions as the Minister determines.

6 Resignation

The Ombudsman may resign his office by writing signed by him and delivered to the Minister and, upon receipt of his resignation by the Minister, he vacates his office.

7 Retirement

The Minister may, with the consent of the Ombudsman, retire the Ombudsman on the ground of incapacity.

8 Suspension and removal

- (1) The Administrator may suspend the Ombudsman from office for misbehaviour or incapacity.
- (2) The Minister shall cause a statement of the ground of the suspension to be laid before the Legislative Assembly within 3 sitting days of the Assembly after the suspension.
- (3) Where a statement has been laid before the Legislative Assembly in pursuance of subsection (2), the Assembly may, within 7 sitting days of the Assembly after the day on which the statement has been laid before it, by resolution, declare that the Ombudsman ought to be restored to office and, if the Assembly so resolves, the Administrator shall terminate the suspension.
- (4) If, at the expiration of 7 sitting days of the Legislative Assembly after the day on which a statement has been laid before the Assembly in pursuance of subsection (2), the Assembly has not passed a resolution in accordance with subsection (3), the Administrator may remove the Ombudsman from office.
- (5) The suspension of the Ombudsman from office under this section does not affect his entitlement to be paid any remuneration, expenses and allowances.
- (6) If the Ombudsman becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit, the Administrator shall remove him from office.
- (7) The Ombudsman shall not be removed from office except as provided by this section.

9 Acting appointment

- (1) Subject to subsection (1AA), the Administrator may appoint a person to act in the office of the Ombudsman during:
 - (a) a period, or during all periods, when the person holding the office is absent from duty or from the Territory or is, for any other reason unable to perform the duties of his office;
 - (b) the suspension from office of the person holding the office; or

- (c) a vacancy in the office.
- (1AA) A person appointed under subsection (1) shall not act in the office of the Ombudsman for a continuous period exceeding 3 months unless the appointment was made on the recommendation of the Legislative Assembly.
- (1A) The appointment of a person under subsection (1) to act in the office of the Ombudsman shall not prevent a subsequent appointment of that person or another person in accordance with this section.
- (1B) The Administrator may, at any time, terminate an appointment under this section.
- (2) A person appointed to act as the Ombudsman during a vacancy in the office shall not continue so to act for more than 12 months.
- (4) The Administrator shall determine the terms and conditions of appointment of and remuneration, expenses and allowances payable to a person appointed under this section.
- (5) Where a person is acting in the office of the Ombudsman in pursuance of an appointment under this section, he has, and may exercise, all the powers, and he may perform all the functions, of the holder of that office under this Act.

10 Oath of office

- (1) Before first entering upon the exercise of the office of the Ombudsman, the Ombudsman and an acting Ombudsman shall each take an oath or make an affirmation that he will faithfully and impartially perform the duties of the office, and that he will not, except for the purpose of carrying out or giving effect to this Act, divulge any information received by him under this Act.
- (2) An oath taken or affirmation made under subsection (1) shall be administered by a Judge.

12 Delegation

- (1) The Ombudsman may, by instrument in writing, delegate to an employee within the meaning of the *Public Sector Employment and Management Act* or, with the consent of the Minister, to any other person, any of his powers under this Act except this power of delegation and the powers conferred by sections 15(2), 26(2), 26(6), 28 and 29 relating to reports.
- (2) A power so delegated may be exercised by the delegate in accordance with the instrument of delegation.

- (3) A delegate shall, upon request by a person affected by the exercise of any power delegated to him, produce the instrument of delegation, or a copy of the instrument, for inspection.
- (4) A delegation under this section is revocable at will and does not prevent the exercise of a power under this Act by the Ombudsman.

Part III Jurisdiction and functions of Ombudsman

13 Departments and authorities

Subject to the regulations this Act applies to all departments and authorities.

14 Matters for investigation

- (1) Subject to this Act, the functions of the Ombudsman are:
 - (a) to investigate any administrative action taken by, in or on behalf of any department or authority to which this Act applies; and
 - (b) to investigate any action taken, or refusal or failure to take an action, by a member of the Police Force of the Northern Territory, whether or not that action was an administrative action, where that action was, or was purported to be, for or in connection with or incidental to the exercise or performance of that member's powers, duties or functions as a member of the Police Force.
- (2) The Ombudsman shall not investigate a matter in pursuance of subsection (1)(b) unless that matter:
 - (a) is the subject of a complaint:
 - (i) not made by a member of the Police Force or by a person who is, within the meaning of the *Public Sector Employment and Management Act*, an employee under the direct control of the Commissioner of Police;
 - (ii) made, subject to section 17(3), by the person aggrieved to a member of the Police Force;
 - (iii) concerning a member of the Police Force other than the member to whom it is made; and
 - (iv) referred to the Ombudsman by the Commissioner of Police;

- (b) is or is alleged to be an action taken by a member of the Police Force in consequence of such a complaint so referred; or
 - (c) is the subject of a complaint concerning a member of the Police Force made direct to the Ombudsman.
- (3) As soon as practicable after a complaint about an action referred to in subsection (1)(b) is made to a member of the Police Force, that member shall refer the complaint to the Commissioner of Police who shall, as soon as practicable, refer it to the Ombudsman.
- (3A) Where a complaint concerning a member of the Police Force is made direct to the Ombudsman, the Ombudsman shall, before carrying out an investigation, refer the complaint to the Commissioner.
- (3AA) Subject to subsection (4), if the Ombudsman and the Commissioner of Police have agreed on administrative arrangements relating to the manner in which complaints referred to the Ombudsman pursuant to subsection (3) may be dealt with, any complaint referred to the Ombudsman in pursuance of that subsection shall be dealt with in accordance with those arrangements.
- (4) Where the Ombudsman investigates a matter in pursuance of this section:
- (a) his power to investigate the complaint referred to him by the Commissioner of Police includes a power to investigate any action taken by a member of the Police Force in consequence of that complaint; and
 - (b) for the purposes of the application of this Act, he shall investigate the matter as though:
 - (i) it was an administrative action; and
 - (ii) the complaint referred to him by the Commissioner of Police was a complaint made by the complainant to the Ombudsman under this Act and received by the Ombudsman on the date on which it was received by the member of the Police Force to whom it was made,
- but the Ombudsman is not required, in pursuance of section 19(1)(a), to inform the Commissioner of Police of his intention to conduct the investigation.
- (5) The power under this Act to investigate the making of any recommendation to the Administrator or to a minister includes a power to investigate any action taken as a consequence of that

recommendation, but nothing in this Act authorizes or requires the Ombudsman to investigate the deliberations of the Executive Council or to question the merits of any decision taken by the Administrator or personally by a minister.

- (6) Subject to subsection (7), the Ombudsman shall not conduct an investigation under this Act in respect of:
- (a) any administrative action in respect of which the complainant has or had a right of appeal, reference, or review to or before a tribunal constituted under any law in force in the Territory; or
 - (b) any administrative action in respect of which the complainant has or had a remedy by way of proceedings in a court of law.
- (7) The Ombudsman may conduct any investigation notwithstanding that the complainant has or had a right or remedy of the nature mentioned in subsection (6) if in the circumstances the Ombudsman considers that:
- (a) it would not be reasonable to expect or to have expected the complainant to resort to that right or remedy; or
 - (b) the matter merits investigation in order to avoid injustice.
- (8) The powers of the Ombudsman under this Act in relation to any administrative action taken by a department or authority to which this Act applies may be exercised notwithstanding that that action was in whole or part taken on behalf of, or in the exercise of any functions conferred on, a person or body to which this Act does not apply, but subject to subsection (9), nothing in this Act authorizes or requires the Ombudsman to question the merits of any decision made by the person or body to which this Act does not apply.
- (9) Where any administrative action is taken by a person or body to which this Act does not apply under any powers and functions conferred on or instructions given to it by a department or authority to which the Act applies, the administrative action so taken shall, for the purposes of this Act, be deemed to be the administrative action of the department or authority to which this Act applies, and the powers of the Ombudsman with respect to that action may be exercised accordingly.
- (10) The powers of the Ombudsman to investigate any administrative action may, if in the circumstances he considers it proper so to do, be exercised in respect of an administrative action by the department or authority to which this Act applies taken or in part taken before the commencement of this Act.

- (11) The powers conferred on the Ombudsman by this Act to investigate any administrative action may be exercised notwithstanding any provision in the law now or hereafter in force in the Territory to the effect that any such action shall be final or shall not be appealed against, challenged, reviewed, quashed or called in question.

14A Transfer of complaints and investigations to Ombudsman

- (1) The Ombudsman may, by arrangement with the Ombudsman within the meaning of the *Ombudsman Act 1976* of the Commonwealth, deal with a complaint made to, or conduct or complete an investigation commenced by, that second-mentioned Ombudsman in relation to an action taken by a department or authority, where the complaint was made to, or the investigation was commenced by, that second-mentioned Ombudsman, as though the complaint had been made or the investigation had been commenced under this Act.
- (2) Where the Ombudsman deals with a complaint or conducts or completes an investigation under subsection (1), he may have regard to any evidence adduced, information, documents or records furnished, or submissions or arguments made, in the course of investigations conducted by the second-mentioned Ombudsman.

14B Referral of complaints from Information Commissioner

The Ombudsman may deal with a complaint referred to the Ombudsman by the Information Commissioner under section 108 of the *Information Act* as though the complaint had been made under this Act.

15 Reference from Legislative Assembly

- (1) The Legislative Assembly or a Committee of the Assembly may refer to the Ombudsman for investigation any matter within his jurisdiction.
- (2) Upon a reference to the Ombudsman under this section, he shall as soon as practicable, carry out the investigation and submit his report to the Speaker of the Legislative Assembly.
- (3) Section 14(6) does not apply to any matter referred to the Ombudsman under this section, but, where, in relation to any such matter, any person has or had a right or remedy as referred to in section 14(6), the Ombudsman may refrain from commencing any investigation under this section until he is satisfied that that right or remedy cannot or will not be exercised or sought or, if it has been exercised or sought, the proceedings thereon have been finally concluded or abandoned.

16 Other investigations

- (1) Any investigation that the Ombudsman is authorized to conduct under this Act, other than pursuant to section 15, may be conducted either of his own motion or on a complaint made in accordance with section 17 or referred to him by the Commissioner of Police pursuant to section 14(3).
- (2) An investigation of a complaint made under this Act relating to an action of a department or authority to which this Act applies may proceed, notwithstanding that the complaint may not on its face appear to be in respect of any administrative action taken by that department or authority, if, in the opinion of the Ombudsman, there is a likelihood that the cause for complaint arose from or as a result of such an administrative action.

17 Complaints

- (1) Subject to this section, any person or body, whether incorporated or unincorporated, may make a complaint to the Ombudsman under this Act.
- (2) A complaint that could be investigated under this Act shall, if the Ombudsman so directs, be made in writing by the person or body aggrieved but no special form shall be required to make a complaint.
- (3) Where the person by whom a complaint might have been made (being a complaint that could be investigated under this Act) has died or is, in the opinion of the Ombudsman, unable to act for himself, the complaint may be made on his behalf by his personal representative or by any other person who is, in the opinion of the Ombudsman, suitable to represent him.
- (4) The provisions of any law now or hereafter in force in the Territory prohibiting or restricting or authorizing or requiring the imposition of prohibitions or restrictions on communication between any person and any other person shall not apply to any communication or to any proposed communication between any person and the Ombudsman for the purpose of making a complaint under this Act and any person having the right or being under a duty to keep in custody or to detain in any place a person who desires to make a complaint under this Act shall take all necessary steps to facilitate the making of the complaint.

- (5) A person who is in custody, including on remand, is entitled:
- (a) on making a request to the person in whose custody he is detained or to any other person performing duties in connection with his detention to:
 - (i) be provided with facilities for preparing a complaint in writing under this Act for furnishing in writing to the Ombudsman and 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) have sent to the Ombudsman, without undue delay, a sealed envelope delivered by him to any such person and addressed to the Ombudsman; and
 - (b) to have delivered to him, without undue delay, any sealed envelope, addressed to him and sent by the Ombudsman, that comes into the possession or under the control of the person in whose custody he is detained or of any other person performing duties in connection with his detention.
- (6) Where a sealed envelope addressed to the Ombudsman is delivered by a person detained in custody to a person referred to in subsection (5) 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 detention is entitled to open the envelope or to inspect any document enclosed in the envelope.
- (7) For the purposes of subsections (5) and (6), the Ombudsman may make arrangements with the appropriate department or authority for the identification and delivery of sealed envelopes sent by the Ombudsman to persons detained in custody.

17A Preliminary and minor inquiries

- (1) Where a complaint has been made to the Ombudsman in respect of an action taken by, in or on behalf of a department or authority to which this Act applies, the Ombudsman may make inquiries of the department or the authority for the purposes 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:
 - (i) determining whether or not the Ombudsman may, in his discretion, decide not to investigate the action; or
 - (ii) determining the complaint without the need for an investigation under the Act where the Ombudsman is of the opinion, having regard to the nature and seriousness of the complaint, that it may be resolved expeditiously.
- (2) An inquiry under subsection (1) is not an investigation for the purposes of section 19 of this Act.

17B Referral of complaints to Information Commissioner

- (1) If a complaint is about a matter that could be the subject of a complaint under section 104 of the *Information Act*, the Ombudsman may refer the complaint to the Information Commissioner.
- (2) The Ombudsman must give written notice of the referral to:
 - (a) the person or body that made the complaint; and
 - (b) if the Ombudsman has notified the department or authority the subject of the complaint in accordance with section 19(1) – the department or authority.

18 Refusal to investigate

- (1) The Ombudsman may refuse to entertain a complaint, or, having commenced to investigate a matter raised in a complaint, may refuse to continue the investigation if he is of the opinion that:
 - (a) the matter raised in the complaint is trivial;
 - (b) the complaint is frivolous or vexatious or is not made in good faith;
 - (c) the person who claims to be aggrieved has not a sufficient interest in the matter raised in the complaint;
 - (d) having regard to the circumstances of the case and to such informal inquiries, if any, as he has seen fit to make, the investigation or the continuation of the investigation of the matter raised in the complaint is unnecessary or unjustified; or

- (e) the complainant had had knowledge for more than 12 months prior to making the complaint of the action about which the complaint is made and he had failed to give a satisfactory explanation of the delay in making the complaint.
- (1A) Where a person who makes a complaint to the Ombudsman under this Act relating to an action of a department or authority to which this Act applies:
- (a) has not complained to the department or authority in respect of the action, the Ombudsman may, in his discretion, decide not to investigate the action until the complainant has complained to the department or authority;
 - (b) has complained to the department or authority in respect of the action, the Ombudsman may, in his discretion, decide not to investigate the action 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; or
 - (c) has complained to the department or authority in respect of the action, informs the Ombudsman as provided by paragraph (b) that no redress, or no adequate redress, has been granted by the department or authority and the Ombudsman is of the opinion if:
 - (i) 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) redress has been granted – that the redress was not reasonably adequate,the Ombudsman shall, subject to this section, investigate the action.
- (2) For the purposes of subsection (1)(e), a complainant shall be deemed to have first had knowledge of the matters alleged in the complaint at the time when he might reasonably be expected to have had that knowledge.
- (3) Where the Ombudsman is precluded from entertaining a complaint or refuses to entertain a complaint or refuses to continue an investigation of any matter raised in a complaint, he shall inform the complainant of his decision and the reasons for that decision.

19 Procedure for investigations

- (1) Before commencing an investigation under this Act relating to administrative action taken by, in or on behalf of a department or authority to which this Act applies, the Ombudsman shall in writing inform:
 - (a) the principal officer of that department or authority and the responsible Minister; or
 - (b) where the complaint relates to an administrative action taken by the principal officer of a local government council, the presiding member of the council and the responsible minister; and
 - (c) where the complainant resides in the Territory, the member of the Legislative Assembly for the electoral division in which the complainant resides,of his intention to conduct the investigation.
- (2) Every investigation under this Act shall be conducted in private.
- (3) The Ombudsman is not required to hold any hearing for the purposes of an investigation, and he may obtain information from and consult with such persons and in such manner as he thinks fit and may determine whether any person may be represented, by a legal practitioner or otherwise, in the course of the investigation.
- (4) If, at any time during the course of an investigation, it appears to the Ombudsman that there may be grounds for making a report adverse to a department or authority to which this Act applies, he shall, before making the report, afford the principal officer of that department or authority an opportunity to comment on the subject matter of the investigation.
- (5) If a Minister makes a request to the Ombudsman to be consulted or if an investigation by the Ombudsman relates to any recommendation made to a Minister or to the Administrator, the Ombudsman shall consult with the Minister who made the request or to whom the recommendation was made, or, in the case of a recommendation to the Administrator, with the responsible Minister in relation to the department or authority which made the recommendation or caused it to be made, before forming a final opinion adverse to the administrative action concerned.

- (6) Where an investigation by the Ombudsman concerns administrative action taken by an officer or employee of a local government council, the Ombudsman:
- (a) may at any time during or after the investigation consult with the presiding member of the council; and
 - (b) shall, if the presiding member makes a request to the Ombudsman to be consulted or if the investigation relates to any recommendation made to the local government council, consult with the presiding member before forming a final opinion adverse to the administrative action concerned.
- (7) If during or after an investigation the Ombudsman is of the final opinion that there is evidence of a breach of duty or misconduct on the part of an officer, member or employee of or within a department or authority to which this Act applies, he shall:
- (a) report the matter to the principal officer of that department or authority; and
 - (b) send a copy of the report to the responsible Minister and, where the authority is a local government council, to the presiding member of the council.

20 Evidence

- (1) Subject to this Act, the provisions of sections 6, 7, 8(1) and (2), 9 and 10 of the *Inquiries Act* apply to and in relation to any investigation which the Ombudsman is authorized to conduct under this Act as if he was a Commissioner appointed to conduct an inquiry under that Act and as if the investigation was an inquiry.
- (2) For the purpose of any investigation under this Act, the Ombudsman may require any information or other particulars furnished to him to be verified by statutory declaration.
- (3) Subject to section 22, no obligation to maintain secrecy or other restriction upon disclosure of information obtained by or furnished to an officer, member or employee of or within any department or authority to which this Act applies, whether imposed by any law in force in the Territory or otherwise, applies to or in relation to the disclosure of information for the purposes of an investigation by the Ombudsman under this Act.
- (4) Subject to section 22, a department or authority to which this Act applies is not entitled in relation to any investigation by the Ombudsman under this Act to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.

- (5) Subject to this Act, in any investigation by the Ombudsman under this Act, every person shall have the same privileges in relation to the giving of evidence and the production of documents, papers and things that he would have had as a witness in proceedings in a court of law.

21 Entry onto premises

The powers of the Ombudsman include the power at any time, either by himself or by a person authorized in writing by the Ombudsman so to do, to enter any premises occupied by any department or authority to which this Act applies, and to inspect those premises or anything for the time being therein or thereon.

22 Non-disclosure of certain matters

- (1) Where the Administrator furnishes to the Ombudsman a certificate certifying that the disclosure of information concerning a specified matter (including the furnishing of information in answer to a question) or the disclosure of the contents of any documents or records would be contrary to the public interest:
- (a) by reason that it would involve the disclosure of communications between:
 - (i) the Executive Council or any member thereof and the Administrator;
 - (ii) a Minister and a Minister of the Commonwealth or of a State; or
 - (iii) a Commonwealth Minister and a Minister of a State; or
 - (b) by reason that it would involve the disclosure of deliberations or decisions of:
 - (i) the Executive Council or of a Committee of the Executive Council;
 - (ii) a Committee of the Legislative Assembly formed for the purpose of advising the Administrator or a Minister; or
 - (iii) the Commonwealth or Territory Cabinet or a committee of the Commonwealth or Territory Cabinet, 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.

- (2) The Ombudsman shall not require any person to furnish any information or answer any question or produce any document, paper or thing where the Director of Public Prosecutions certifies that the furnishing of that information, the answer to that question or the production of that document, paper or thing would prejudice the investigation or detection of any offence against a law in force in the Territory.

23 Secrecy

- (1) A person who obtains information in the course of, or for the purposes of, an investigation by the Ombudsman under this Act (other than an investigation of a complaint referred to the Ombudsman under section 14(3)):

(a) shall not disclose that information except:

- (i) for the purposes of any investigation by the Ombudsman and of any report or recommendations to be made thereon or relating thereto pursuant to this Act;
- (ii) for the purposes of any proceedings for an offence of perjury or false affirmation or declaration or any offence under this Act; or
- (iii) for the purposes of:
 - (A) a matter arising under a law of the Territory or of the Commonwealth or a State or another Territory of the Commonwealth;
 - (B) an undertaking that is being carried out jointly by the Territory and the Commonwealth or a State; or
 - (C) the exchange of information between persons exercising, under a law of the Commonwealth or a State, functions similar to the functions exercised by the Ombudsman,

to a person exercising, under a law of the Commonwealth or a State, functions similar to the functions exercised by the Ombudsman under this Act; and

- (b) shall not take advantage of any knowledge acquired from that information to benefit himself or any other person.

Penalty: \$1,000 or imprisonment for 6 months.

- (2) The Ombudsman may in writing direct the person to whom a document is sent by the Ombudsman not to disclose to any other person any information contained in the document except for the purposes of the investigation to which that document relates, and a person to whom such a direction is given shall comply with and not contravene the direction.

Penalty: \$1,000 or imprisonment for 6 months.

24 Obstruction

A person shall not:

- (a) without lawful excuse (proof of which shall lie on him) wilfully obstruct, hinder, or resist the Ombudsman or any other person in the exercise of his powers under this Act;
- (b) without lawful excuse (proof of which shall lie on him) refuse or wilfully fail to comply with any lawful requirement of the Ombudsman or any other person acting pursuant to this Act; or
- (c) wilfully make any statement he knows to be false or to be misleading in a material particular, or mislead or attempt to mislead the Ombudsman or any other person acting pursuant to this Act.

Penalty: \$1,000 or imprisonment for 6 months.

25 Other offences

- (1) A person who has been served with a summons to attend before the Ombudsman shall not, without reasonable excuse (proof of which shall lie on him), fail to attend before the Ombudsman or to produce any documents, books or writings in his custody or control which he was required by the summons to produce.

Penalty: \$500.

- (2) It shall be a defence to a prosecution for an offence of failing to produce any documents, books or writings under subsection (1) for the defendant to prove that the documents, books or writings were not relevant to the investigation by the Ombudsman.

- (3) Subject to this Act, a person who appears as a witness before the Ombudsman shall not refuse to be sworn or to make an affirmation or to answer any question put to him by the Ombudsman that is relevant to the investigation by the Ombudsman.

Penalty: \$500.

- (4) Nothing in this section shall be construed as compelling a person to answer a question or to produce a document, book or writing that may incriminate him.
- (5) A person shall not knowingly give false testimony in evidence before the Ombudsman.

Penalty: \$2,000, or imprisonment for 12 months, or both.

26 Procedure on completion of investigation

- (1) This section applies where, as a result of an investigation by the Ombudsman under this Act (other than an investigation conducted pursuant to section 15), the Ombudsman is of the opinion that the administrative action to which the investigation relates:
 - (a) appears to have been taken contrary to law;
 - (b) was unreasonable, unjust, oppressive, or improperly discriminatory;
 - (c) was in accordance with a rule of law or a provision of any law in force in the Territory or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory;
 - (d) was taken in the exercise of a power or discretion, and was so taken for an improper purpose or on irrelevant grounds, or on the taking into account of irrelevant considerations;
 - (e) was a decision that was made in the exercise of a power or discretion and the reasons for the decision were not but should have been given;
 - (f) was based wholly or partly on a mistake of law or fact; or
 - (g) was wrong.
- (2) Where this section applies and the Ombudsman is of the further opinion:
 - (a) that the subject matter of the investigation should be referred to the appropriate department or authority for further consideration;
 - (b) that action could be, and should be, taken to rectify or mitigate or alter the effects of the administrative action to which the investigation relates;

- (c) that any practice in accordance with which the administrative action was taken should be varied;
- (d) that any law in accordance with which or on the basis of which the action was taken should be reconsidered;
- (e) that reasons should be given for the action; or
- (f) that any other steps should be taken,

he shall report his opinion and his reasons for that opinion to the principal officer of the appropriate department or authority, and may in addition make such recommendations as he thinks fit.

- (3) Where the Ombudsman makes any report or recommendations to the principal officer of a department or authority under subsection (2) he shall send a copy thereof to the responsible Minister, and, where relevant, to the presiding member of the local government council.
- (4) Where, under subsection (2), the Ombudsman makes recommendations to the principal officer of a department or authority he may request that officer to notify him within a specified time of the steps that have been taken or are proposed to be taken to give effect to any recommendations of the Ombudsman, or, if no such steps have been or are proposed to be taken, the reasons why no steps have been taken or are proposed to be taken.
- (5) Where it appears to the Ombudsman that no steps that seem to him appropriate have been taken within a reasonable time of his making any report or recommendations under subsection (2) he may, after considering the comments (if any) made by or on behalf of the principal officer to whom the report or recommendations were made, send:
 - (a) to the Minister; and
 - (b) where the report relates to a complaint concerning administrative action by the principal officer of a local government council, to the presiding member of the council,a copy of the report and the recommendations together with a copy of any such comments.
- (6) Where a copy of any report, recommendations or comments have been sent to the Minister under subsection (5), the Ombudsman may prepare and furnish to the Minister for presentation to the Legislative Assembly a report on such of the matters to which they relate as the Ombudsman thinks fit and the Minister shall cause the report to be laid before the Legislative Assembly within 3 sitting

days after its receipt by him.

- (7) The Ombudsman shall not in any report under this Act make any comment adverse to any person unless he has taken steps which are, in his opinion, sufficient to ensure that the person has been given a reasonable opportunity of being heard in the matter and the person's defence (if any) is fairly set out in the report.

27 Complainant to be informed

Where the Ombudsman conducts an investigation on a complaint made under this Act or referred to him by the Commissioner of Police pursuant to section 14(3), he shall inform the complainant in such manner and at such time as he thinks proper of the result of the investigation, and where the Ombudsman has made any recommendation under section 26(2) and it appears to him that steps which seem to him to be appropriate have not been taken within a reasonable time of the making of those recommendations, the Ombudsman shall inform the complainant of the recommendations, together with such comments as he thinks fit.

28 Annual and other reports

- (1) Without limiting his right under any other provision of this Act to cause a report to be laid before the Legislative Assembly, the Ombudsman shall as soon as practicable after 30 June in each year prepare and furnish to the Minister for presentation to the Legislative Assembly a report on the exercise and performance of his functions and duties during the 12 months (or in the case of the first report, the lesser period) ending on that date.
- (2) Subject to this Act, the Ombudsman may if he thinks fit at any time prepare and furnish to the Minister for presentation to the Legislative Assembly a report on any matter arising in connection with the exercise or performance of his functions and duties under this Act.
- (3) Upon receipt of a report under this section the Minister shall cause it to be laid before the Legislative Assembly within 3 sitting days of the Assembly after its receipt by him.

29 Other reports on authority of Speaker

The Speaker of the Legislative Assembly may authorize the Ombudsman to publish, in the public interest or in the interests of any department, authority or other organization, person or body of persons, reports relating generally to the exercise of his functions or to any particular case investigated by him, whether or not the matters to be dealt with in any such report have been the subject of a report laid before the Legislative Assembly under this Act.

Part IV Miscellaneous

30 Application to Supreme Court

- (1) Where, in the course of an investigation under this Act, the question arises whether the Ombudsman has jurisdiction to conduct the investigation, the Ombudsman, the complainant or the person or body the subject of the investigation may make an application to a Judge for a determination of that question, and on the application the Judge may make such orders as he considers fit.
- (2) An application to which subsection (1) relates shall be made in accordance with any rules made by the Chief Judge prescribing the practice and procedure applicable to such an application, and pending the making of rules, a Judge may give such directions as to the practice and procedure applicable to an application as he thinks fit.
- (3) For the purposes of this section the principal officer of the department or authority affected by the investigation shall be deemed to be a person the subject of the investigation.

31 Protection of Ombudsman and staff

- (1) The Ombudsman, an employee within the meaning of the *Public Sector Employment and Management Act*, a delegate of the Ombudsman or a person authorized by the Ombudsman is not liable, whether on the ground of want of jurisdiction or on any other ground, to any civil or criminal proceedings to which he would have been liable apart from this section in respect of any act done or purporting to be done in pursuance of this Act or of an authority given under this Act, unless the act was done in bad faith.
- (2) No civil or criminal proceedings shall be brought against the Ombudsman, an employee within the meaning of the *Public Sector Employment and Management Act*, a delegate of the Ombudsman or a person authorized by the Ombudsman in respect of an act referred to in subsection (1) without the leave of the Supreme Court, and the Supreme Court shall not give leave under this section unless it is satisfied that there is substantial ground for the contention that the person to be proceeded against has acted in bad faith.
- (3) Notwithstanding anything in the foregoing provisions of this section no prerogative writ shall be issued nor any application for an order of review granted restricting the Ombudsman from carrying out, or compelling him to carry out any investigation, and no proceedings shall be brought against the Ombudsman whereby the issue of such a writ or the granting of such an order of review is sought.

- (4) The Ombudsman, an employee within the meaning of the *Public Sector Employment and Management Act*, a delegate of the Ombudsman or a person authorized by the Ombudsman is not to be called to give evidence or produce any document in any court of law, or in any proceedings of a judicial nature, in respect of any matter coming to his knowledge in the exercise of his powers, functions and duties under this Act.

32 Regulations

The Administrator may make regulations not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular providing for and in relation to:

- (a) the payment of allowances and expenses to any person appearing before the Ombudsman as a witness for his travelling and maintenance while absent from his usual place of residence; and
- (b) the exemption of the whole or any part of a department or authority, or an action or class of action of a department or authority from the application of this Act.

ENDNOTES
1**KEY**

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
Gaz = Gazette	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2**LIST OF LEGISLATION*****Ombudsman (Northern Territory) Ordinance 1977 (Act No. 25, 1978)***

Assent date	14 June 1978
Commenced	1 July 1978 (<i>Gaz</i> 26B, 30 June 1978, p 2)

Ombudsman (Northern Territory) Ordinance 1978 (Act No. 60, 1978)

Assent date	1 July 1978
Commenced	1 July 1978

Ombudsman (Northern Territory) Amendment Act 1981 (Act No 54, 1981)

Assent date	1 July 1981
Commenced	1 July 1981

Ombudsman (Northern Territory) Amendment Act 1983 (Act No. 40, 1983)

Assent date	3 October 1983
Commenced	3 October 1983

Law Officers Amendment Act (No. 2) 1986 (Act No. 48, 1986)

Assent date	10 December 1986
Commenced	19 December 1986

Ombudsman (Northern Territory) Amendment Act 1988 (Act No. 60, 1988)

Assent date	15 December 1988
Commenced	15 December 1988

Amending Legislation***Statute Law Revisions Act (No. 2) 1993 (Act No. 70, 1993)***

Assent date	9 November 1993
Commenced	9 November 1993 (s3(2))

Director of Public Prosecutions (Consequential Amendments) Act 1990 (Act No. 29, 1990)

Assent date 11 June 1990
 Commenced 21 January 1991 (s 2, s 2 *Director of Public Prosecutions Act 1990* (Act No. 35, 1990) and Gaz G2, 16 January 1991, p 9)

Statute Law Revision Act 1990 (Act No. 33, 1990)

Assent date 11 June 1990
 Commenced 11 June 1990

Public Sector Employment and Management (Consequential Amendments) Act 1993 (Act No. 28, 1993)

Assent date 30 June 1993
 Commenced 1 July 1993 (s 2, s 2 *Public Sector Employment and Management Act 1993* (Act No. 11, 1993) and Gaz S53, 29 June 1993)

Local Government (Consequential Amendments) Act 1993 (Act No. 84, 1993)

Assent date 31 December 1993
 Commenced 1 June 1994 (s 2, s 2 *Local Government Act 1993* (Act No. 83, 1993) and Gaz S28, 18 April 1994)

Ombudsman (Northern Territory) Amendment Act 1995 (Act No. 22, 1995)

Assent date 26 June 1995
 Commenced 23 August 1995 (Gaz G34, 23 August 1995, p 3)

Statute Law Revision Act 1996 (Act No. 42, 1996)

Assent date 17 September 1996
 Commenced 17 September 1996

Ombudsman (Northern Territory) Amendment Act 1996 (Act No. 59, 1996)

Assent date 16 December 1996
 Commenced 16 December 1996

Statute Law Revision Act 1997 (Act No. 17, 1997)

Assent date 11 April 1997
 Commenced 1 May 1997 (Gaz G17, 30 April 1997, p 2)

Planning (Consequential Amendments) Act 1999 (Act No. 56, 1999)

Assent date 14 December 1999
 Commenced 12 April 2000 (s 2, s 2 *Planning Act 1999* (Act No. 55, 1999) and Gaz S15, 12 April 1999)

Statute Law Revision Act (No. 2) 2002 (Act No. 59, 2002)

Assent date 7 November 2002
 Commenced 7 November 2002

Ombudsman (Northern Territory) Amendment Act 2002 (Act No. 63, 2002)

Assent date 8 November 2002
 Commenced 1 July 2003 (s 2 and s 2(2) *Information Act 2002*)

Electoral (Consequential Amendments) Act 2004 (Act No. 12, 2004)

Assent date 1 March 2004
 Commenced 15 March 2004 (s 2, s 2 *Electoral Act 2004* (Act No. 11, 2004) and Gaz S6, 15 March 2004)

3 LIST OF AMENDMENTS

lt	amd No. 54, 1981, s 9
ss 1 – 2	amd No. 54, 1981, s 9
s 3	amd No. 60, 1978, ss 4, 11 and 14; No. 54, 1981, s 9; No. 60, 1988, s 3; No. 28, 1993, s 3; No. 84, 1993, s 5; No. 22, 1995, s 3; No. 59, 1996, s 2; No. 56, 1999, s 3; No. 59, 2002, s 5; No. 63, 2002, s 4
s 4	amd No. 60, 1978, ss 5 and 15; No. 54, 1981, s 9
s 5	amd No. 60, 1978, ss 6 and 15
ss 6 – 8	amd No. 60, 1978, s 15
s 9	amd No. 54, 1981, s 9; No. 40, 1983, s 2; No. 33, 1990, s 7
s 10	amd No. 54, 1981, s 9
s 11	amd No. 54, 1981, s 9 rep No. 28, 1993, s 3
s 12	amd No. 60, 1978, s 15; No. 54, 1981, s 9; No. 42, 1996, s 6
s 13	amd No. 54, 1981, s 9
s 14	amd No. 60, 1978, s 14; No. 54, 1981, ss 3 and 9; No. 60, 1988, s 4; No. 28, 1993, s 3
s 14A	ins No. 60, 1978, s 7 amd No. 54, 1981, s 9
s 14B	ins No. 63, 2002, s 5
s 16	amd No. 54, 1981, s 9; No. 60, 1988, s 5
s 17	amd No. 54, 1981, s 9; No. 60, 1988, s 6
s 17A	ins No. 60, 1988, s 7
s 17B	ins No. 63, 2002, s 6
s 18	amd No. 60, 1988, s 8
s 19	amd No. 60, 1978, ss 11, 13 and 14; No. 54, 1981, ss 4 and 9; No. 84, 1993, s 5; No. 12, 2004, s 6
s 20	amd No. 54, 1981, ss 5 and 9
s 21	amd No. 54, 1981, s 9; No. 17, 1997, s 14
s 22	amd No. 60, 1978, ss 8 and 14; No. 54, 1981, s 6; No. 48, 1986, s 9; No. 29, 1990, s 7
s 23	amd No. 60, 1978, s 9; No. 54, 1981, ss 7 and 9; No. 60, 1988, s 9
ss 24 – 25	amd No. 54, 1981, s 9
s 26	amd No. 60, 1978, ss 10, 13 and 15; No. 54, 1981, ss 8 and 9; No. 84, 1993, s 5
s 27	amd No. 54, 1981, s 9
s 28	amd No. 60, 1978, s 15; No. 54, 1981, s 9
ss 29 – 30	amd No. 54, 1981, s 9
s 31	amd No. 54, 1981, s 9; No. 17, 1997, s 14
s 32	amd No. 60, 1978, s 12; No. 54, 1981, s 9; No. 22, 1995, s 4