

# NORTHERN TERRITORY OF AUSTRALIA

## OMBUDSMAN ACT

As in force at 14 October 2015

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ENDNOTES

# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 14 October 2015

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## OMBUDSMAN ACT

**An Act to establish the office of Ombudsman for the Northern Territory for investigating, and dealing with complaints about, particular actions of public authorities and conduct of police officers, and for related purposes**

### **Part 1 Preliminary matters**

#### **1 Short title**

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

#### **2 Commencement**

This Act commences on the date fixed by the Administrator by *Gazette* notice.

#### **3 Objects**

The objects of this Act are:

- (a) to give people a timely, effective, efficient, independent, impartial and fair way of investigating, and dealing with complaints about, administrative actions of public authorities and conduct of police officers; and
- (b) to improve the quality of decision-making and administrative practices in public authorities.

## Part 2 Interpretation

### Division 1 Defined terms

#### 4 Definitions

In this Act:

**acting in an official capacity**, in relation to a person, means the person is exercising powers or performing functions under this Act or exercising powers or performing functions otherwise related to the administration of this Act.

**administrative action**, see section 6.

**Agency**, see section 3(1) of the *Public Sector Employment and Management Act*.

**Commissioner** means the Commissioner of Police.

**complainant** means the person who makes a complaint, and includes the person aggrieved by the action or conduct the subject of a complaint if it is not made by that person.

**complaint** means a complaint made under Part 5, and includes part of a complaint.

**complaints entity** means an entity that under another Act has responsibility for the investigation or review of matters that may include administrative actions of public authorities or conduct of police officers.

**conduct**, of a police officer, see section 7.

**disciplinary action**, for a breach of discipline by a police officer, means action of a type mentioned in section 84D of the *Police Administration Act*.

**disciplinary procedures**, for a breach of discipline by a police officer, means procedures under Part IV of the *Police Administration Act*.

**DPP exempt matter** means:

- (a) the starting or conduct of, or participation in or help with matters relating to, a legal proceeding, including a legal proceeding outside the Territory; or
- (b) the granting of immunity from prosecution; or

- (c) an extradition; or
- (d) the recovery of penalties or enforcement of forfeitures; or
- (e) the issuing and contents of guidelines relating to prosecutions for offences; or
- (f) the limiting of the powers of officials as defined in section 23(4) of the *Director of Public Prosecutions Act*; or
- (g) the investigation of offences.

**failure** includes refusal.

**harm** includes:

- (a) injury, loss and damage; and
- (b) intimidation and harassment; and
- (c) discrimination, disadvantage and adverse treatment (including disciplinary action) in relation to employment, career, profession, trade or business.

**investigation** means an investigation under:

- (a) Part 6, Division 4; or
- (b) Part 7, Division 4, Subdivision 2; or
- (c) Part 7, Division 5, Subdivision 2.

**notified police complaint** means a police complaint about which the Ombudsman is notified under section 65(2).

**obstruct** includes hinder and resist.

**officer**, of a public authority, includes:

- (a) the authority's principal officer; and
- (b) a member of the authority; and
- (c) a person employed by or for the authority.

**officer**, of the Ombudsman's Office, means a person employed in the Ombudsman's Office.

**Ombudsman** means the person holding or occupying the office of Ombudsman for the Northern Territory established by section 9.

**Ombudsman's Office** means the Agency of that name specified in Schedule 1 to the *Public Sector Employment and Management Act*.

**parliamentary reference** means a reference made under section 17.

**party**, to a complaint, means:

- (a) if it relates to administrative action of a public authority:
  - (i) the complainant; or
  - (ii) the principal officer of the authority; or
- (b) if it relates to conduct of a police officer:
  - (i) the complainant; or
  - (ii) the Commissioner; or
  - (iii) the police officer.

**Police Civil Employment Unit** means the Agency of that name specified in Schedule 1 to the *Public Sector Employment and Management Act*.

**police complaint** means a complaint about conduct of a police officer.

**police complaints agreement**, see section 150.

**police complaints resolution process** means a process for the resolution of police complaints relating to conduct of a kind to which the police complaints agreement applies.

**Police Force** means the Police Force of the Northern Territory established under section 5 of the *Police Administration Act*.

**Police Minister** means the Minister administering the *Police Administration Act*.

**Police Standards Command** means the Ethical and Professional Standards Command of the Police Force established under section 34G of the *Police Administration Act*.

**Police Standards Command member** means a police officer assigned to the Police Standards Command.

**Police Standards Command report** means a report mentioned in section 92(1) or 95.

**preliminary inquiries**, for administrative action, means preliminary inquiries under section 28.

**presiding member**, of a local government council, means the mayor, president, chairman or person (however described) presiding over the council, and includes the deputy to the presiding member.

**principal officer**, of a public authority, means:

- (a) for an Agency – the Chief Executive Officer of the Agency; or
- (b) for the Police Force – the Commissioner; or
- (c) for a local government council:
  - (i) in relation to action taken by the chief executive officer of the council for the council – the presiding member of the council; or
  - (ii) otherwise – the chief executive officer of the council; or
- (d) for another entity constituted or established by or under a law of the Territory – the chairperson or presiding member (however described) of the entity or the person constituting the entity; or
- (e) for an entity prescribed by regulation to be a public authority – the person prescribed by regulation.

**prisoner**, see section 6 of the *Correctional Services Act*.

**public authority**, see section 5.

**public official** means a person who is appointed or authorised under an Act to perform inspection, investigation or other enforcement functions under the Act for the Territory, an Agency or another public authority.

**relevant official**, for Part 7, Division 3, see section 68.

**responsible Minister** means:

- (a) for an Agency – the Minister administering the Agency; or
- (b) for a public authority constituted or established under an Act – the Minister who administers the provisions of the Act by or under which it is constituted or established; or
- (c) for the Police Force – the Police Minister; or

- (d) for an entity prescribed by regulation to be a public authority – the Minister prescribed by regulation in relation to the entity.

**review right** means:

- (a) a right of appeal; or
- (b) a right of reference to or review before a tribunal; or
- (c) a remedy by way of a legal proceeding in a court.

**State** means the following:

- (a) a State of the Commonwealth;
- (b) the Australian Capital Territory.

**tribunal** means an entity (including an individual but not including a court) that:

- (a) is established or appointed under an Act; and
- (b) has judicial or quasi-judicial functions.

**witness**, at a hearing for an investigation, means a person required by notice under section 53 to attend the hearing to answer questions relevant to the investigation.

**working day** means a day other than:

- (a) a Saturday or Sunday; or
- (b) a public holiday.

## **Division 2 Basic concepts about public authorities and administrative actions**

### **5 Public authority**

A **public authority** is:

- (a) an Agency; or
- (b) the Police Force; or
- (c) a Government owned corporation; or
- (d) a local government council; or
- (e) another entity that is constituted or established for a public purpose by or under a law of the Territory; or

- (f) an entity declared to be a public authority by another Act or prescribed by regulation.

## 6 **Administrative action**

- (1) **Administrative action** is any action about a matter of administration, and includes:
  - (a) a decision or act; and
  - (b) a failure to make a decision or do an act; and
  - (c) the formulation of a proposal or intention; and
  - (d) the making of a recommendation, including a recommendation made to the Administrator or a minister; and
  - (e) a decision or act taken in consequence of the making of a recommendation.
- (2) Administrative action of a public authority includes:
  - (a) administrative action taken by, in or for the authority; and
  - (b) administrative action taken by or for an officer of the authority in relation to or incidental to the exercise or purported exercise of a power, or performance or purported performance of a function, of the authority or officer; and
  - (c) administrative action taken for, or in relation to or incidental to the performance of functions conferred on, the authority, by an entity that is not a public authority, including for example, by an entity under a contract.
- (3) Subsection (2)(a) applies even if the action is taken by a public authority wholly or partly for an entity that is not a public authority.
- (4) For subsection (2)(c), the action is taken to be administrative action of the public authority.

## Division 3 **Basic concepts about conduct of police officers**

### 7 **Conduct of police officer**

- (1) **Conduct** of a police officer is any decision or act, or a failure to make any decision or do any act, by the police officer for, in relation to or incidental to, the exercise of a power or performance of a function of a police officer.

(2) To avoid doubt, conduct of a police officer includes conduct mentioned in subsection (1) in the capacity of a public official.

(3) In this section:

**exercise**, of a power, includes the purported exercise of the power.

**performance**, of a function, includes the purported performance of the function.

## **Division 4 Criminal responsibility**

### **8 Application of Criminal Code**

Part IIAA of the Criminal Code applies to an offence against this Act.

*Note*

*Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.*

## **Part 3 Office of Ombudsman, functions and powers**

### **Division 1 Office of Ombudsman**

#### **9 Ombudsman**

There is to be an Ombudsman for the Northern Territory.

*Note*

*Part 9, Division 1, Subdivision 1, contains matters about the appointment of the Ombudsman and related matters.*

### **Division 2 Functions and powers**

#### **10 Functions**

(1) The Ombudsman's functions are:

(a) to investigate, and deal with complaints about, administrative actions of public authorities; and

- (b) to consider the administrative practices and procedures of public authorities whose actions are being investigated, or dealt with on complaint, and to make recommendations to authorities:
    - (i) about appropriate ways of addressing the effects of inappropriate administrative actions; or
    - (ii) for the improvement of their practices and procedures; and
  - (c) to consider the administrative practices and procedures of public authorities generally and to make recommendations or provide information or other help to the authorities for the improvement of their practices and procedures; and
  - (d) to investigate, and deal with complaints about, conduct of police officers; and
  - (e) to consider and prepare reports on investigations of the conduct of police officers and to make recommendations about action that should be taken in relation to them; and
  - (f) to perform other functions conferred on the Ombudsman under this or another Act.
- (2) The Ombudsman's functions under subsection (1) do not extend to a matter for which the Children's Commissioner is authorised to conduct an investigation under the *Children's Commissioner Act*.

## **11 Powers**

The Ombudsman may do all things necessary or convenient to be done for, or in relation to, the performance of the Ombudsman's functions.

## **12 Independence in relation to complaints and investigations**

- (1) The Ombudsman is not subject to direction by any person about:
- (a) the way the Ombudsman exercises or performs the Ombudsman's powers or functions in relation to complaints and investigations; or
  - (b) the priority given to investigations.
- (2) The Ombudsman must act independently, impartially and in the public interest in the exercise or performance of the Ombudsman's powers or functions in relation to complaints and investigations.

## **Part 4 Ombudsman's jurisdiction for administrative actions of public authorities and police conduct**

### **13 Interpretation**

A reference in this Part to the investigation of administrative action of a public authority or conduct of a police officer includes dealing with a complaint under Part 6 or 7 in another way provided in the Part.

### **14 Matters for investigation**

- (1) Subject to sections 15 and 16, the Ombudsman may investigate administrative action of a public authority or conduct of a police officer:
  - (a) on a complaint; or
  - (b) on the Ombudsman's own initiative.
- (2) The Ombudsman may investigate administrative action despite a provision in any Act to the effect that the action is final or cannot be appealed against, challenged, reviewed, quashed or called in question.

### **15 Executive and ministerial matters must not be investigated**

- (1) The Ombudsman must not investigate the deliberations of:
  - (a) the Executive Council or Cabinet; or
  - (b) a committee of the Executive Council or Cabinet.
- (2) In addition, the Ombudsman must not question the merits of a decision:
  - (a) made by:
    - (i) the Administrator, Executive Council or Cabinet; or
    - (ii) a committee of the Executive Council or Cabinet; or
  - (b) made personally by a minister.

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**16 What administrative actions may not be investigated**

- (1) The Ombudsman must not investigate administrative action taken by:
- (a) a person while discharging or purporting to discharge a responsibility of a judicial nature; or
  - (b) a tribunal or a member of a tribunal:
    - (i) in the performance or purported performance of the tribunal's deliberative functions; or
    - (ii) in relation to processes, prescribed under an Act, for conciliation or mediation in relation to a complaint, dispute or other matter within the meaning of that Act; or
  - (c) a person acting as counsel or legal adviser to the Territory for the Territory or a minister; or
  - (d) a coroner under the *Coroners Act*, while discharging or purporting to discharge a responsibility relating to an investigation or inquest under that Act; or
  - (e) a magistrate or Justice while discharging or purporting to discharge a responsibility relating to a preliminary examination under Part V of the *Justices Act*; or
  - (f) the Director of Public Prosecutions relating to a DPP exempt matter; or
  - (g) a public authority in relation to its employment of a person, including action taken in relation to the promotion, transfer, termination of employment or discipline of the person or the payment of remuneration to the person; or
  - (h) the Parole Board of the Northern Territory established by the *Parole Act* or the Chairman of that Board.
- (2) The Ombudsman must not investigate administrative action of a public authority not mentioned in subsection (1) for which there is a review right under the law under which the action is taken unless 1 of the following conditions applies:
- (a) the authority agrees to the investigation;

- (b) on complaint by the person who has the review right, the Ombudsman is satisfied:
  - (i) it would not be reasonable to expect or to have expected the complainant to resort to the review right; or
  - (ii) the matter merits investigation to avoid injustice.
- (3) Subsection (1)(b) and (f) does not prevent the Ombudsman investigating administrative action of a public authority if the Ombudsman is satisfied there has been unreasonable delay by the authority in relation to the action.

#### **17 Parliamentary reference of matter for investigation**

- (1) The Legislative Assembly or a committee of the Assembly may refer the following matters to the Ombudsman for investigation:
  - (a) any matter within the Ombudsman's jurisdiction;
  - (b) any administrative action taken by a public authority that would be within the Ombudsman's jurisdiction under section 16(2)(a) or (3) if:
    - (i) the authority were to agree to the investigation; or
    - (ii) the Ombudsman were satisfied there had been unreasonable delay by the authority in relation to the action.
- (2) The Ombudsman must investigate the matter.

#### **18 Ombudsman to deal with complaint referred by complaints entity**

- (1) The Ombudsman must deal with a referred complaint as if the complaint about the matter had been made under this Act.
- (2) In this section:

***deal with***, a complaint, includes declining to deal with, or discontinuing to deal with, a complaint as mentioned in section 33 or 67.

***referred complaint*** means a complaint about a matter referred to the Ombudsman by a complaints entity under the Act under which the entity has responsibility for the investigation or review of the matter.

**19 Liaison with complaints entity**

- (1) The Ombudsman may:
  - (a) liaise with a complaints entity about the performance by the Ombudsman and the complaints entity of their respective functions for investigating or reviewing administrative actions or police conduct; and
  - (b) enter into an arrangement with the complaints entity aimed at avoiding inappropriate duplication of investigative or review activity.
- (2) If an arrangement is entered into under subsection (1)(b) in a financial year:
  - (a) the Ombudsman must ensure particulars of it are included in the annual report under section 152 for the year; and
  - (b) if the complaints entity is under a statutory obligation to prepare an annual report – the entity must ensure particulars of the arrangement are included in its annual report for the year.
- (3) This section has effect subject to sections 10(2) and 32(1).

**20 Application to Supreme Court**

If a question arises in relation to an investigation about whether the Ombudsman has jurisdiction to conduct the investigation, any of the following persons may apply to the Supreme Court to decide the question:

- (a) the Ombudsman;
- (b) if the investigation relates to administrative action of a public authority:
  - (i) the principal officer of the authority; and
  - (ii) for an investigation on a complaint – the complainant;
- (c) if the investigation relates to a complaint about conduct of a police officer – the complainant, the Commissioner and the police officer.

## **Part 5            Complaints about administrative actions of public authorities and police conduct**

### **21            Who may make complaint**

- (1) A complaint about administrative action of a public authority or conduct of a police officer may be made by:
  - (a) a person aggrieved by the action or conduct; or
  - (b) a person representing a person aggrieved by the action or conduct; or
  - (c) a third party or a person representing a third party.
- (2) However, a police officer or person representing a police officer may make a complaint about conduct of a police officer only if the conduct:
  - (a) constitutes an offence punishable by imprisonment; or
  - (b) is likely to bring the Police Force into disrepute or diminish public confidence in it.
- (3) In addition, a third party may make a complaint only if:
  - (a) the complaint raises a substantive issue; or
  - (b) the party has first-hand evidence about the subject matter of the complaint.

*Example for subsection (3)(b)*

*An independent bystander who witnesses a police officer's conduct.*

### **22            Complaint for deceased person**

If a person who could have made a complaint has died, the complaint may be made by a person who is, in the Ombudsman's opinion, suitable to represent the deceased person.

### **23            Making complaint about administrative action**

- (1) A complaint about administrative action of a public authority must be made to the Ombudsman.
- (2) The complaint may be made orally or in writing.
- (3) However, the Ombudsman may require the complaint to be made in writing.

- (4) In addition, the Ombudsman may require the complaint to be made or verified by statutory declaration.

## **24            Making police complaint**

- (1) A police complaint must be made to the Ombudsman or a police officer.
- (2) However, a police officer must not accept a police complaint from a person if it relates to the officer's conduct but instead must inform the person to make the complaint to the Ombudsman or another police officer.
- (3) The complaint need not identify the police officer whose conduct is the subject of the complaint.
- (4) The complaint may be made orally or in writing.
- (5) However, the Ombudsman may require the complaint to be made in writing.
- (6) In addition, the Ombudsman may require the complaint to be made or verified by statutory declaration.

## **25            When complaint to be made**

- (1) A complaint must be made within 1 year after the person aggrieved by the administrative action or conduct the subject of the complaint first becomes aware of the action or conduct.
- (2) For subsection (1), a person is taken to have become aware of the action or conduct when the person might reasonably be expected to have become aware of the action or conduct.
- (3) However, the Ombudsman may accept a complaint after the 1-year period if the Ombudsman considers it is appropriate to do so in the public interest or because of special circumstances.

## **26            Prisoner complaints**

- (1) This section applies for the making of a complaint by a prisoner.
- (2) The prisoner may ask the officer in charge of the place in which the prisoner is detained for help in preparing a written complaint to make to the Ombudsman.
- (3) The officer in charge of the place must ensure:
  - (a) the prisoner is given facilities for preparing and making a written complaint; and

- (b) on preparation of the complaint by the prisoner, the prisoner is given relevant information about making the complaint and an envelope in which the complaint and any related documents can be enclosed and sealed; and
  - (c) when given to the officer or other person performing functions in relation to the prisoner's detention, the sealed envelope is sent to the Ombudsman without unreasonable delay; and
  - (d) a sealed envelope received by the officer addressed to the prisoner and sent by the Ombudsman is given to the prisoner without unreasonable delay.
- (4) In addition, the officer in charge or other person performing functions in relation to the prisoner's detention must not open or inspect anything in a sealed envelope addressed:
- (a) to the Ombudsman and given by the prisoner to the officer or person for sending to the Ombudsman; or
  - (b) to the prisoner and sent by the Ombudsman.
- (5) For this section, the Ombudsman may make arrangements with public authorities for the identification and delivery of sealed envelopes sent by the Ombudsman to prisoners.

## **27 Effect of restrictive provisions on complaint**

- (1) This section applies if a provision of an Act:
- (a) prohibits or restricts communication between any persons; or
  - (b) authorises or requires the imposition of a prohibition or restriction on communication between any persons.
- (2) The provision does not apply to the following communications for the purpose of making a complaint:
- (a) a communication between a person and the Ombudsman;
  - (b) a communication between a person and someone else representing another person.

## **Part 6 Administrative actions of public authorities**

### **Division 1 Preliminary inquiries**

#### **28 Preliminary inquiries about administrative action**

- (1) The Ombudsman may make preliminary inquiries of a public authority for deciding whether or not the Ombudsman is authorised to investigate administrative action of the authority.
- (2) In addition, if the Ombudsman decides the Ombudsman is authorised to investigate the action, the Ombudsman may make preliminary inquiries of the public authority for deciding whether or not the Ombudsman should investigate the action.
- (3) Subsections (1) and (2) apply regardless of whether a complaint has been made about the administrative action.
- (4) Also, if a complaint is made about an action (other than administrative action) of a public authority and the Ombudsman is satisfied the complaint is made because of administrative action of the authority, the complaint is taken to have been made about administrative action.
- (5) This section does not apply in relation to a parliamentary reference.

#### **29 Principal officer to give help**

The principal officer of a public authority must give the Ombudsman reasonable help in the making of preliminary inquiries.

#### **30 Request for non-disclosure of information and other things**

- (1) The principal officer of a public authority may ask the Ombudsman not to disclose information, or give a statement, document or thing given to the Ombudsman for preliminary inquiries, to anyone else without the principal officer's approval.
- (2) The request must be made in writing.
- (3) The Ombudsman must consider the request and agree to it or refuse it.
- (4) The Ombudsman must inform the principal officer of the Ombudsman's decision and, if the request is refused, the reasons for the refusal.

## **Division 2      Decisions about referring and investigating complaints**

### **31      Decision on complaint without investigation**

- (1) If, on completing preliminary inquiries, the Ombudsman decides an investigation of administrative action is authorised, the Ombudsman may make a decision on the complaint relating to the action without the need for an investigation.
- (2) The Ombudsman may make the decision on the complaint only if satisfied, having regard to the nature and seriousness of the complaint, it may be resolved expeditiously.
- (3) The Ombudsman must inform the parties to the complaint of the decision made on the complaint.

### **32      Referral of complaint to complaints entity**

- (1) If a complaint is made to the Ombudsman about a matter that could be the subject of a complaint under an Act to a complaints entity, the Ombudsman:
  - (a) if the complaints entity is the Children's Commissioner and the complaint does not relate to a matter mentioned in section 24(1)(b) of the *Children's Commissioner Act* – must refer the complaint to the Children's Commissioner; or
  - (b) otherwise – may refer the complaint to the complaints entity.
- (2) The Ombudsman must give written notice of the referral to:
  - (a) the complainant; and
  - (b) the public authority the subject of the complaint; and
  - (c) if the Ombudsman has given notice under section 47 to the responsible Minister – that Minister.

### **33      When Ombudsman may decline to deal with complaint**

The Ombudsman may decline to deal with, or discontinue dealing with, a complaint about administrative action of a public authority if satisfied:

- (a) the complaint is:
  - (i) trivial; or
  - (ii) frivolous or vexatious; or

- (iii) not made in good faith; or
- (b) the complainant does not have a sufficient interest in the action the subject of the complaint; or
- (c) the complainant has not made a complaint to the public authority about the action; or
- (d) having regard to the circumstances and any preliminary inquiries, the investigation or continuation of the investigation of the action complained of is unnecessary or unjustified; or
- (e) for a complaint made by a third party:
  - (i) the complaint does not raise a substantive issue; or
  - (ii) the party does not have first-hand evidence about the subject matter of the complaint.

**34 Ombudsman need not investigate if investigation by complaints entity**

The Ombudsman need not investigate a complaint about administrative action of a public authority to the extent the Ombudsman is satisfied a complaints entity has investigated, or will investigate, the action complained of at a level at least substantially equivalent to the level at which the Ombudsman would otherwise investigate the complaint.

**35 Decisions about investigating if complaint made to public authority**

- (1) If a complainant has also made a complaint to the public authority about the administrative action complained of, the Ombudsman may decide not to investigate the action until the complainant informs the Ombudsman that:
  - (a) no redress has been granted by the public authority; or
  - (b) redress has been granted but the redress is not, in the complainant's opinion, adequate.
- (2) However, if the complainant informs the Ombudsman that no redress or no adequate redress has been granted by the public authority, the Ombudsman must investigate the administrative action if satisfied:
  - (a) a reasonable period has elapsed in which redress could have been granted; or

- (b) the redress granted was not adequate.
- (3) Subsection (2) has effect subject to sections 33 and 34.

### **36 Notice of decision not to investigate**

- (1) This section applies if the Ombudsman decides:
  - (a) the Ombudsman is precluded from investigating a complaint; or
  - (b) under section 33, 34 or 35, not to investigate a complaint or continue an investigation of a complaint.
- (2) The Ombudsman must inform the complainant of the decision and the reasons for it.
- (3) In addition, if the Ombudsman has given notice under section 47 to the principal officer of the public authority, the Ombudsman must inform the principal officer of the decision and the reasons for it.

## **Division 3 Conciliation and mediation**

### **37 Dealing with complaint by conciliation or mediation**

The Ombudsman may, at any time on the Ombudsman's own initiative or at the request of a party to a complaint, decide to deal with the complaint by conciliation or mediation under this Division.

### **38 Who can be conciliator or mediator**

The conciliator or mediator must be a person who, in the Ombudsman's opinion, is appropriately qualified to act in the capacity.

### **39 Objection to conciliator or mediator**

If a party to the complaint objects to a person acting as conciliator or mediator in the conciliation or mediation process, the Ombudsman may appoint another person to act as conciliator or mediator in the process.

### **40 Suspending investigation**

If conciliation or mediation is to be conducted to deal with the complaint and the Ombudsman has started investigating the complaint, the investigation is suspended pending the result of the conciliation or mediation process.

**41 Participation voluntary**

Participation by the parties to the complaint in the conciliation or mediation process is voluntary and a party may withdraw at any time.

**42 Progress report**

The conciliator or mediator must give the Ombudsman a written report about the progress of the conciliation or mediation process if the Ombudsman asks for a report.

**43 Termination**

The Ombudsman may terminate the conciliation or mediation process if satisfied it is not likely to bring about agreement between the parties to the complaint.

**44 Resolution of complaint**

- (1) If the complaint is resolved by conciliation or mediation, the agreement reached between the parties may be recorded in writing.
- (2) After the agreement is signed by the parties, the Ombudsman must give a copy of the agreement to each of them.
- (3) There is a cooling-off period for the agreement during which a party may, by written notice to the other parties, cancel the agreement.
- (4) The cooling-off period starts when the agreement is made and ends 14 days after the day the period starts.
- (5) If the agreement is not cancelled under subsection (3), it is binding on the parties after the end of the cooling-off period.

**45 Restricted use of information**

- (1) Evidence of anything said or admitted during the conciliation or mediation process and any document prepared for the process:
  - (a) cannot be used in any later investigation of the complaint unless the person who said or admitted the thing, or to whom the document relates, consents to its use; and
  - (b) is not admissible in a proceeding for a breach of discipline or any proceeding in a court or tribunal.
- (2) However, the information or document may be used for the prosecution of a person for an offence against this Act.

- (3) In addition, subsection (1) does not prevent the use of an agreement for the resolution of a complaint that, under section 44(5), is binding on the parties to the complaint.

#### **46 Effect of unsuccessful conciliation or mediation**

- (1) If the conciliation or mediation process is unsuccessful:
- (a) the complaint must be treated as if the process had not taken place; and
  - (b) the conciliator or mediator must not be further involved in dealing with the complaint.
- (2) However, subsection (1)(b) does not affect the Ombudsman's powers and functions under this Part in relation to the complaint.

### **Division 4 Investigations**

#### **Subdivision 1 Procedures**

##### **47 Notice of investigation**

Before starting an investigation relating to administrative action taken by a public authority, the Ombudsman must give written notice of the Ombudsman's intention to conduct the investigation to:

- (a) the principal officer of the authority; and
- (b) the responsible Minister; and
- (c) if the investigation is conducted on a complaint – the complainant.

##### **48 Conduct of investigation**

- (1) The Ombudsman must complete the investigation as soon as practicable after:
- (a) for an investigation conducted on a complaint – giving notice of intention to conduct the investigation under section 47; or
  - (b) for an investigation conducted on the Ombudsman's own initiative – deciding to conduct the investigation; or
  - (c) for an investigation conducted on a parliamentary reference – the reference is made.

- (2) However, if a person has a review right in relation to the administrative action, the Ombudsman may decide not to start the investigation until satisfied the right cannot or will not be exercised or sought or, if it has been exercised or sought, the proceeding for it has ended.

#### **49 Procedure generally**

- (1) The Ombudsman must conduct the investigation in private and, subject to this Subdivision, may conduct the investigation in the way the Ombudsman considers appropriate.
- (2) In conducting the investigation, the Ombudsman:
- (a) is not bound by the rules of evidence but must comply with natural justice; and
  - (b) is not required to hold a hearing.
- (3) Without limiting subsection (2)(a), the Ombudsman may:
- (a) obtain relevant information from the persons, and in the way, the Ombudsman considers appropriate; and
  - (b) consult with the persons the Ombudsman considers appropriate; and
  - (c) make the inquiries the Ombudsman considers appropriate.
- (4) Without limiting subsection (3)(a), the Ombudsman may require:
- (a) information to be given on oath; or
  - (b) information or a document given to be verified by statutory declaration.

#### **50 Consultation**

- (1) In conducting the investigation, the Ombudsman must consult with the following persons:
- (a) the principal officer of the public authority;
  - (b) a minister who asks the Ombudsman to be consulted about the investigation;
  - (c) if the investigation relates to administrative action taken by a local government council and the presiding member of the council asks the Ombudsman to be consulted about the investigation – the presiding member.

- (2) If, in conducting the investigation of a recommendation made to the Administrator, a minister or a local government council, the Ombudsman is considering making an adverse report about the administrative action, the Ombudsman must consult with:
  - (a) for a recommendation made to the Administrator – the responsible Minister for the authority that made the recommendation; or
  - (b) for a recommendation made to a minister – the minister; or
  - (c) for a recommendation made to a local government council – the presiding member of the council.
- (3) During or after the investigation, the Ombudsman may consult with:
  - (a) a minister who is concerned in the action the subject of the investigation; or
  - (b) if the investigation relates to administrative action taken by a local government council – the presiding member of the council.
- (4) Subsection (3) does not limit section 49(3)(b).

## **51 Hearing for investigation**

- (1) This section applies if the Ombudsman conducts a hearing for the investigation.
- (2) At the hearing, a person required to attend before the Ombudsman may, with the Ombudsman's approval, be represented by a legal practitioner or agent.
- (3) The legal practitioner or agent may make submissions to the Ombudsman for the person and, with the Ombudsman's approval, ask witnesses questions relevant to the investigation.

## **Subdivision 2 Ombudsman's powers for investigation**

### **52 Requirement to give information, document or thing**

- (1) The Ombudsman may, by written notice, require a person within a stated reasonable period:
  - (a) to give the Ombudsman:
    - (i) an oral or written statement of information of a stated type relevant to the investigation; or

- (ii) a stated document or other stated thing relevant to the investigation or a copy of a stated document relevant to the investigation; or
    - (iii) all documents of a stated type containing information relevant to the investigation, or copies of all documents of a stated type containing information relevant to the investigation; or
  - (b) to create, and give the Ombudsman, a document containing information reasonably required for the investigation.
- (2) The principal officer of the public authority may ask the Ombudsman not to disclose information, or give a statement, document or thing given to the Ombudsman in compliance with the notice, to anyone else without the principal officer's approval.
- (3) The request must be made in writing.
- (4) The Ombudsman must consider the request and agree to it or refuse it.
- (5) The Ombudsman must inform the principal officer of the Ombudsman's decision and, if the request is refused, the reasons for the refusal.

### **53 Requirement to attend hearing**

The Ombudsman may, by written notice, require a person:

- (a) to attend a hearing for the investigation before the Ombudsman at a stated reasonable place and time; and
- (b) at the stated place and time, to do 1 or more of the following as stated in the notice:
  - (i) give the Ombudsman information of a stated type relevant to the investigation;
  - (ii) answer questions relevant to the investigation;
  - (iii) give the Ombudsman a stated document or other stated thing relevant to the investigation or a copy of a stated document relevant to the investigation;
  - (iv) give the Ombudsman all documents of a stated type containing information relevant to the investigation, or copies of all documents of a stated type containing information relevant to the investigation.

**54 Investigation at public authority's premises**

The Ombudsman may, at a reasonable time:

- (a) enter and inspect premises (other than premises, or the part of premises, used as a residence) occupied by a public authority; and
- (b) take into the premises the persons and things the Ombudsman reasonably requires for the investigation; and
- (c) take extracts from, or copy in any way, documents located at the premises; and
- (d) require an officer of the authority at the premises to give the Ombudsman reasonable help in exercising a power mentioned in paragraph (a), (b) or (c).

**55 Ombudsman may issue direction in relation to administrative action**

- (1) The Ombudsman may, by written notice, direct the public authority to stop performing a stated administrative action for a stated period (not more than 45 days in aggregate) if satisfied:
  - (a) the action is likely to prejudice:
    - (i) the investigation; or
    - (ii) the effect or implementation of a recommendation the Ombudsman might make as a result of the investigation; and
  - (b) compliance with the notice will not result in the authority breaching a contract or other legal obligation or cause any third parties undue hardship; and
  - (c) issue of the notice is necessary to prevent serious hardship to a person.
- (2) The notice may be given before starting the investigation or during the conduct of the investigation.
- (3) If the public authority is satisfied, in the circumstances, non-compliance with the direction would be reasonable and justifiable, the authority may decide not to comply with it.
- (4) The public authority must immediately give written notice to the Ombudsman of its decision not to comply with the direction.

- (5) If the public authority does not comply with the direction, the following provisions apply:
- (a) the principal officer of the authority must, at the request of the Ombudsman, report to the Ombudsman (within a stated reasonable period) on the reasons for the authority's non-compliance with the direction;
  - (b) if, on receipt of the principal officer's report, the Ombudsman is satisfied the authority's non-compliance with the direction was unjustified or unreasonable, the Ombudsman may give a report on the matter to the responsible Minister for tabling in the Legislative Assembly.

## **56 Custody of thing given to Ombudsman**

- (1) If a document or other thing is given to the Ombudsman under this Division:
- (a) the Ombudsman may keep it for a reasonable period for conducting the investigation; and
  - (b) if it is a document – take extracts from it and make copies of it.
- (2) While the Ombudsman has possession of it, the Ombudsman must allow it to be inspected at any reasonable time by a person who would have the right to inspect it if it were not in the Ombudsman's possession.

## **Division 5 Reports and recommendations on investigations**

### **57 Report to complainant**

After completing an investigation of administrative action of a public authority on complaint, the Ombudsman must inform the complainant of the result of the investigation in the way the Ombudsman considers appropriate.

### **58 Report to public authority**

After completing an investigation of administrative action of a public authority on complaint or on the Ombudsman's own initiative, the Ombudsman must inform the principal officer of the public authority of the result of the investigation in the way the Ombudsman considers appropriate.

## **59 Adverse reports**

- (1) This section applies if, on an investigation of administrative action of a public authority on complaint or on the Ombudsman's own initiative:
- (a) the Ombudsman is satisfied 1 or more of the following apply:
    - (i) the action appears to have been taken contrary to law;
    - (ii) the action was unreasonable, unjust, oppressive, or improperly discriminatory;
    - (iii) the action was in accordance with a rule of law or provision of a law of the Territory that is or may be unreasonable, unjust, oppressive or improperly discriminatory;
    - (iv) the action was in accordance with a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory;
    - (v) the action was taken in the purported exercise of a power or purported performance of a function for an improper purpose, on irrelevant grounds or taking into account irrelevant considerations;
    - (vi) the action was a decision that was made in the exercise of a power or performance of a function for which reasons should have been given but were not given;
    - (vii) the action was based wholly or partly on a mistake of law or fact;
    - (viii) the action was wrong; and
  - (b) the Ombudsman is satisfied 1 or more of the following apply:
    - (i) the action should be referred to the public authority for further consideration;
    - (ii) action could be, and should be, taken to rectify or mitigate or alter the effects of the action;
    - (iii) any practice in accordance with which the action was taken should be varied;
    - (iv) any law in accordance with which or on the basis of which the action was taken should be reconsidered;

- (v) reasons, or further reasons, should be given for the action;
  - (vi) any other steps should be taken.
- (2) The Ombudsman's report on the result of the investigation must state the reasons the Ombudsman is satisfied about the relevant matters mentioned in subsection (1).
- (3) The Ombudsman must give a copy of the report to:
  - (a) the responsible Minister for the public authority; and
  - (b) if the authority is a local government council – the presiding member of the council.

## **60 Report of breach of duty or misconduct**

If, during or after an investigation, the Ombudsman is satisfied there is evidence of a breach of duty or misconduct on the part of an officer of a public authority, the Ombudsman must report the matter to the principal officer of the authority.

## **61 Report containing adverse comment**

- (1) This section applies if the Ombudsman proposes to make an adverse comment about a person in a report under this Part.
- (2) The Ombudsman must not make the proposed comment unless, before the report is finalised, the Ombudsman gives the person and, if the proposed comment is about a public authority, the principal officer of the authority, a reasonable opportunity to make a submission about the proposed comment.
- (3) If the person or principal officer of the authority makes a submission and the Ombudsman still proposes to make the comment, the Ombudsman must ensure the submission is taken into account and fairly represented in finalising the report.

## **62 Report may include recommendations**

When reporting (whether orally or in writing) to the principal officer of a public authority on the result of an investigation of administrative action of the public authority, the Ombudsman may make the recommendations the Ombudsman considers appropriate.

### **63 Action after report and recommendations**

- (1) This section applies if the Ombudsman makes recommendations in the report the Ombudsman gives the principal officer of the public authority.
- (2) The Ombudsman may request the principal officer to give written notice to the Ombudsman within a stated period of:
  - (a) the steps taken or are proposed to be taken to give effect to the recommendations; or
  - (b) if no steps, or only some steps, have been taken or are proposed to be taken, the reasons for not taking all the steps necessary to give effect to the recommendations.
- (3) If the Ombudsman considers no appropriate steps, or inadequate appropriate steps, have been taken to give effect to the recommendations within a reasonable time after giving the principal officer the report (the **original report**), the Ombudsman may, after considering any comments made by or for the officer, give a copy of the report and a copy of the comments to:
  - (a) the responsible Minister for the public authority; and
  - (b) if the authority is a local government council – the presiding member of the council.
- (4) If the Ombudsman gives the responsible Minister a copy of the original report, the Ombudsman may give the responsible Minister for tabling in the Legislative Assembly another report that deals, to the extent the Ombudsman considers appropriate, with the original report.

### **64 Ombudsman to inform complainant of action taken**

- (1) If the Ombudsman takes action under section 63(3) or (4), the Ombudsman must inform the complainant about the action.
- (2) When informing the complainant, the Ombudsman may make the comments the Ombudsman considers appropriate.

## **Part 7            Police conduct**

### **Division 1        Preliminary procedures for police complaints**

#### **65            Notice of complaint to Ombudsman**

- (1) If a police complaint is made to a police officer, the officer must:
  - (a) immediately refer it to the officer in charge of the Police Standards Command; and
  - (b) comply with any general orders or instructions issued under section 14A of the *Police Administration Act* relating to the referral of a police complaint.
- (2) The officer in charge of the Police Standards Command must give the Ombudsman:
  - (a) written notice of the complaint; and
  - (b) if:
    - (i) the complaint was made in writing – a copy of the complaint; or
    - (ii) the complaint was made orally – a copy of the statement of particulars of the complaint prepared by the police officer to whom the complaint was made.
- (3) In the notice, the officer in charge may make a recommendation about the decision the Ombudsman should make under section 66 on the complaint.

#### **66            Ombudsman to assess and decide how to deal with complaint**

- (1) The Ombudsman must assess a police complaint (whether made to the Ombudsman or a notified police complaint) and decide how to deal with it, or to decline to deal with it, under this Part.
- (2) The Ombudsman must decide:
  - (a) under section 67, to decline to deal with the complaint; or
  - (b) under section 69, to deal with the complaint by conciliation; or
  - (c) under section 78, to deal with the complaint by the police complaints resolution process; or

- (d) under section 80, to deal with the complaint by investigation by a Police Standards Command member for which:
    - (i) the Commissioner reports to the other parties to the complaint; or
    - (ii) the Ombudsman reports to the parties to the complaint; or
  - (e) under section 86, to deal with the complaint by an Ombudsman investigation.
- (3) The Ombudsman must make the decision as soon as practicable after:
- (a) for a notified police complaint – receipt of the notice under section 65(2); or
  - (b) for a police complaint made to the Ombudsman – the complaint is made.
- (4) For subsection (1), the Ombudsman may:
- (a) make the inquiries the Ombudsman considers appropriate; or
  - (b) ask the officer in charge of the Police Standards Command to make the inquiries the Ombudsman considers appropriate.

## **Division 2            Declining to deal with police complaints**

### **67            When Ombudsman may decline to deal with complaint**

- (1) The Ombudsman may decline to deal with, or discontinue dealing with, a police complaint if satisfied:
- (a) the complaint is:
    - (i) trivial; or
    - (ii) frivolous or vexatious; or
    - (iii) not made in good faith; or
  - (b) the complainant does not have a sufficient interest in the conduct that is the subject of the complaint and there are no special reasons justifying dealing with the conduct under this Part; or

- (c) disciplinary procedures have been started against the police officer whose conduct is the subject of the complaint for a breach of discipline in relation to the conduct; or
  - (d) the police officer whose conduct is the subject of the complaint has been charged with an offence in relation to the conduct; or
  - (e) dealing with the complaint is not in the public interest.
- (2) In addition, the Ombudsman may decline to deal with a police complaint to the extent the Ombudsman is satisfied a complaints entity has investigated, or will investigate, the conduct complained of at a level at least substantially equivalent to the level at which the Ombudsman would otherwise investigate the complaint.

### **Division 3      Conciliation**

#### **68      Definition**

In this Division:

***relevant official***, for a police complaint, means:

- (a) if the complaint is being dealt with under this Part by a Police Standards Command member – the Commissioner; or
- (b) otherwise – the Ombudsman.

#### **69      When police complaint may be dealt with by conciliation**

The Ombudsman may, at any time on the Ombudsman's own initiative or at the request of a party to a police complaint, decide to deal with the complaint by conciliation under this Division.

#### **70      Who can be conciliator**

The conciliator must be a person who, in the relevant official's opinion, is appropriately qualified to act in the capacity.

#### **71      Objection to conciliator**

If a party to the police complaint objects to a person acting as conciliator in the conciliation process, the relevant official may appoint another person to act as conciliator in the process.

**72            Suspending other police complaint process**

If conciliation is to be conducted to deal with the police complaint and another process for dealing with the complaint under this Part has started, the other process is suspended pending the result of the conciliation unless the Ombudsman decides otherwise.

**73            Participation voluntary**

Participation by the parties to the police complaint in the conciliation process is voluntary and a party to the complaint may withdraw at any time.

**74            Progress report**

- (1) The relevant official for the police complaint may ask for a written report of the progress of the conciliation process.
- (2) The conciliator must comply with the request.

**75            Termination**

The relevant official for the police complaint may terminate the conciliation process if satisfied it is not likely to bring about agreement between the parties to the complaint.

**76            Report of results of conciliation**

- (1) The relevant official for the police complaint must report the results of the conciliation process to:
  - (a) if the official is the Ombudsman – the Commissioner; or
  - (b) if the official is the Commissioner – the Ombudsman.
- (2) The Ombudsman may, if satisfied the matter raised by the police complaint has been properly resolved by the conciliation process, decide the complaint should not be investigated or further investigated.

**77            Effect of unsuccessful conciliation**

- (1) If the conciliation process is unsuccessful:
  - (a) the police complaint must be treated as if the process had not taken place; and
  - (b) the conciliator must not be further involved in dealing with the complaint.

- (2) However, subsection (1)(b) does not affect the powers and functions of the Ombudsman, Commissioner or officer in charge of the Police Standards Command under this Part in relation to the police complaint.

## **Division 4            Police complaints resolution process and Police Standards Command investigations**

### **Subdivision 1    Police complaints resolution process**

#### **78            When police complaint may be dealt with by resolution process**

The Ombudsman may decide a police complaint should be dealt with by the police complaints resolution process under the police complaints agreement if the complaint relates only to conduct of a kind to which the agreement applies.

#### **79            Conduct and report of resolution process**

The police complaints resolution process must be conducted and the results of it reported in accordance with the police complaints agreement.

### **Subdivision 2    Police Standards Command investigations**

#### **80            When complaint to be investigated by Police Standards Command**

The Ombudsman may decide a police complaint should be investigated by a Police Standards Command member under this Subdivision.

#### **81            Conduct of investigation**

- (1) As soon as practicable after the decision to investigate the police complaint is made, the officer in charge of the Police Standards Command must ensure the investigation is completed.
- (2) The investigation must be conducted, subject to any direction of the Commissioner, in the way the officer in charge of the Police Standards Command considers appropriate.

**82 General powers of Police Standards Command**

- (1) For conducting the investigation, a Police Standards Command member may make the inquiries, and obtain the information, documents or things, relevant to the investigation the member considers appropriate.
- (2) However, subsection (1) does not authorise a Police Standards Command member to contravene a law that would otherwise apply in relation to the investigation.

**83 Police Standards Command member's power to give direction to police officer**

- (1) For conducting the investigation, a Police Standards Command member may direct a police officer to do 1 or more of the following:
  - (a) give information relevant to the investigation;
  - (b) produce a document or thing relevant to the investigation;
  - (c) answer a question relevant to the investigation.
- (2) If the direction is given to the police officer whose conduct is under investigation, the Police Standards Command member must inform the officer that:
  - (a) a complaint has been made about the officer's conduct and the nature of the complaint; and
  - (b) an investigation is being conducted into it.
- (3) However, subsection (2) does not apply if the officer in charge of the Police Standards Command is satisfied informing the police officer may prejudice the conduct of the investigation.
- (4) This section does not limit the powers or functions a police officer would have apart from this Act in relation to the investigation of an offence.

**84 Request by Ombudsman on how to conduct investigation**

- (1) If the Ombudsman considers it appropriate that the investigation of a police complaint should be conducted in a particular way, the Ombudsman may ask the officer in charge to conduct the investigation in that way.

- (2) The officer in charge must:
  - (a) if the officer agrees to the request – ensure the investigation is conducted in that way; or
  - (b) otherwise – inform the Ombudsman of the disagreement and the reasons for it.
- (3) On being informed of the disagreement, the Ombudsman may, by written notice, request the Commissioner to direct the officer in charge to conduct the investigation in the way stated in the notice.
- (4) The Commissioner must:
  - (a) if the Commissioner agrees to the request – direct the officer in charge to conduct the investigation in the stated way; or
  - (b) otherwise – give written notice to the Ombudsman of the disagreement and the reasons for it.
- (5) Subject to subsection (6), the officer in charge must conduct the investigation in the way stated in the direction under subsection (4)(a).
- (6) On receiving a notice under subsection (4)(b), the Ombudsman may decide, under section 66, to deal with the complaint in another way.
- (7) In this section:

***officer in charge*** means the officer in charge of the Police Standards Command.

### **Subdivision 3    General matters**

#### **85            Ombudsman to oversee police complaints resolution process and investigation**

- (1) The Ombudsman may:
  - (a) require the Commissioner to:
    - (i) give information to the Ombudsman about the progress of the police complaints resolution process or investigation of a police complaint; or

- (ii) arrange for the Ombudsman to inspect any document in the possession or under the control of a Police Standards Command member that is relevant to a police complaint; or
    - (iii) arrange for the Ombudsman to interview a person about a police complaint; or
  - (b) discuss a police complaint or any aspect of it with the complainant.
- (2) The Commissioner must ensure a requirement under subsection (1)(a) is complied with without unreasonable delay.

## **Division 5            Ombudsman's investigation of police conduct**

### **Subdivision 1    Police complaints**

#### **86            When complaint may be investigated by Ombudsman**

- (1) The Ombudsman may decide a police complaint should be investigated by the Ombudsman if satisfied it:
  - (a) concerns conduct of a police officer holding a rank equal or senior to the rank held by the officer in charge of the Police Standards Command; or
  - (b) concerns conduct of a Police Standards Command member; or
  - (c) is in substance about the practices, procedures or policies of the Police Force; or
  - (d) should for another reason be investigated by the Ombudsman.
- (2) In addition, the Ombudsman may decide a police complaint should be investigated by the Ombudsman if:
  - (a) under section 107, the Ombudsman:
    - (i) deferred a decision on the complaint pending completion of a proceeding or disciplinary procedures; or
    - (ii) discontinued an investigation of the complaint pending completion of a proceeding or disciplinary procedures; and
  - (b) on completion of the proceeding or disciplinary procedures, the Ombudsman considers an aspect of the complaint should be investigated.

- (3) Also, the Ombudsman may decide:
- (a) a police complaint should be investigated by the Ombudsman in conjunction with a Police Standards Command member; or
  - (b) a police complaint should not be investigated by a Police Standards Command member.

## **Subdivision 2    Conduct of investigations**

### **87            Application of Subdivision**

- (1) This Subdivision applies if:
- (a) under section 86, the Ombudsman decides to investigate a police complaint; or
  - (b) a parliamentary reference is made for the investigation of conduct of a police officer.
- (2) This Subdivision also applies to the investigation of conduct of a police officer on the Ombudsman's own initiative.

### **88            Conduct of investigation**

The Ombudsman must complete the investigation as soon as practicable after:

- (a) deciding to conduct the investigation; or
- (b) the parliamentary reference is made.

### **89            Procedures and powers**

- (1) Part 6, Division 4, other than sections 48, 50 and 55, applies (with the necessary changes) for conducting the investigation.
- (2) Without limiting subsection (1), section 54(d) applies as if the reference to an officer of a public authority were a reference to a police officer.
- (3) In addition, if notice is given under section 52 or 53 to a police officer whose conduct is under investigation on a police complaint, the notice must inform the officer that:
- (a) a complaint has been made about the officer's conduct and the nature of the complaint; and
  - (b) an investigation is being conducted into it.

- (4) However, subsection (3) does not apply if the Ombudsman is satisfied informing the police officer may prejudice the conduct of the investigation.

**90            Ombudsman may investigate consequential action**

If the Ombudsman investigates a police complaint under this Subdivision, the Ombudsman may also investigate any conduct of a police officer taken in consequence of the complaint as if a complaint were made to the Ombudsman for the conduct.

**Division 6            Reporting requirements and related provisions**

**Subdivision 1    Investigations if Commissioner reports to parties**

**91            Application of Subdivision**

This Subdivision applies if:

- (a) the investigation of a police complaint was conducted by a Police Standards Command member under Division 4, Subdivision 2; and
- (b) under the police complaints agreement, a Police Standards Command report of the investigation is required under this Subdivision for the complaint.

**92            Report of investigation by Police Standards Command member**

- (1) The officer in charge of the Police Standards Command must give the Commissioner a written report of the investigation.
- (2) The report must include an assessment of the conduct the subject of the police complaint.
- (3) Without limiting subsection (2), the report may include an assessment about any of the matters mentioned in section 101(1).
- (4) In addition, the report may make a recommendation that may be made in a report under section 101(3).

**93            Commissioner to release report and comments**

- (1) The Commissioner must give the Ombudsman:
- (a) a copy of the Police Standards Command report; and

- (b) the Commissioner's assessment of the conduct the subject of the police complaint together with any other comments the Commissioner considers appropriate to make in relation to the investigation.
- (2) In addition, the Commissioner must, at the time and in the way the Commissioner considers appropriate, inform the following persons of the outcome of the investigation:
  - (a) the complainant;
  - (b) if the complaint is made about a particular police officer – the officer.
- (3) When giving information under subsection (2), the Commissioner may make the comments in relation to the investigation that the Commissioner considers appropriate.
- (4) Despite subsections (1) and (2), if the Commissioner directs further investigation be conducted by a Police Standards Command member, the Commissioner does not have to comply with the subsections until the further investigation is completed.

## **Subdivision 2    Investigations if Commissioner reports to Ombudsman**

### **94            Application of Subdivision**

This Subdivision applies if:

- (a) the investigation of a police complaint was conducted by a Police Standards Command member under Division 4, Subdivision 2; and
- (b) under the police complaints agreement, a Police Standards Command report of the investigation is required under this Subdivision for the complaint.

### **95            Report of investigation by Police Standards Command member**

The officer in charge of the Police Standards Command must give the Commissioner a written report of the investigation.

### **96            Commissioner to give report and comments to Ombudsman**

- (1) The Commissioner must give the Ombudsman:
  - (a) a copy of the Police Standards Command report; and

- (b) the Commissioner's assessment of the conduct the subject of the complaint, together with any other comments the Commissioner considers appropriate to make in relation to the investigation.
- (2) However, if the Commissioner directs further investigation be conducted by a Police Standards Command member, the Commissioner does not have to comply with subsection (1) until the further investigation is completed.

**97            Ombudsman's assessment and recommendations on investigation**

- (1) On receipt of the Police Standards Command report and any comments of the Commissioner, the Ombudsman must:
- (a) consider the Police Standards Command report and comments; and
  - (b) give a written report to the Commissioner of the Ombudsman's assessment of the Police Standards Command report.
- (2) Section 101 applies to the Ombudsman's report.

**Subdivision 3   Investigations by Ombudsman**

**98            Application of Subdivision**

This Subdivision applies to the investigation of police conduct by the Ombudsman under Division 5, Subdivision 2.

**99            Ombudsman to report on investigation**

- (1) On completion of the investigation, the Ombudsman must give the Commissioner a written report of the investigation.
- (2) Section 101 applies to the report.

**100          Report containing adverse comment**

- (1) This section applies if, on the investigation, the Ombudsman proposes to make an adverse comment in the report about the Commissioner, the Police Force, the Police Civil Employment Unit, a police officer or another person.
- (2) The Ombudsman must not make the proposed comment unless, before the report on the investigation is finalised, the Ombudsman gives the Commissioner, police officer or other person a reasonable opportunity to make a submission about the report.

- (3) If any person makes a submission and the Ombudsman still proposes to make an adverse comment about the matter dealt with by the submission, the Ombudsman must ensure the person's submission is taken into account and fairly represented in finalising the report.

## **Subdivision 4   Content of reports**

### **101       Assessments and recommendations**

- (1) For preparing a report for section 97(1) or 99(1), the Ombudsman must:
- (a) consider whether the following apply:
    - (i) conduct of a police officer constituted an offence or breach of discipline or was contrary to law;
    - (ii) conduct of a police officer was unreasonable, unjust, oppressive or improperly discriminatory;
    - (iii) conduct of a police officer was in accordance with an Act or a practice, procedure or policy that is or may be unreasonable, unjust, oppressive or improperly discriminatory;
    - (iv) conduct of a police officer was based either wholly or partly on a mistake of law or of fact;
    - (v) conduct of a police officer was otherwise wrong in the circumstances; and
  - (b) consider whether a police officer exercised a power for an improper purpose or on irrelevant grounds; and
  - (c) if the investigation relates to conduct comprising or including a decision by a police officer to exercise a power in a particular way or to refuse to exercise a power, consider whether the following apply:
    - (i) irrelevant considerations were taken into account in the course of reaching the decision to exercise the power in that way or to refuse to exercise the power;
    - (ii) a person was entitled at law to have been given, but was not given, the reasons for deciding to exercise the power in that way or to refuse to exercise the power.
- (2) The report may include the Ombudsman's assessment about a matter mentioned in subsection (1).

- (3) The Ombudsman may, in the report, recommend:
- (a) stated action should be taken in relation to the conduct the subject of the investigation; or
  - (b) no action should be taken in relation to the conduct the subject of the investigation.
- (4) Without limiting subsection (3), the Ombudsman may recommend 1 or more of the following actions be taken:
- (a) a police officer be charged with an offence;
  - (b) disciplinary action be taken against a police officer for a breach of discipline;
  - (c) conciliation in relation to the conduct the subject of the investigation be conducted;
  - (d) a decision be reconsidered, varied or reversed or reasons be given for a decision;
  - (e) the effects of a decision, act or omission be rectified, mitigated or altered;
  - (f) an Act, practice, procedure or policy on which a decision, act or omission was based be amended.

## **Subdivision 5    Other provisions relating to reports, assessments and recommendations**

### **102            Application of Subdivision**

This Subdivision applies if the Ombudsman gives the Commissioner a report under section 97(1)(b) or 99(1) for an investigation.

### **103            Consideration of Ombudsman's report**

- (1) The Commissioner must:
- (a) consider the Ombudsman's assessment and recommendations in the report; and
  - (b) give written notice to the Ombudsman of:
    - (i) if the Commissioner agrees with the assessment and recommendations – the agreement; or

- (ii) if the Commissioner does not agree with the assessment or a recommendation – the disagreement and the reasons for it.
- (2) On receipt of a notice under subsection (1)(b)(ii), the Ombudsman must, after considering the Commissioner's reasons, by written notice given to the Commissioner:
  - (a) confirm or vary the assessment or recommendation; or
  - (b) substitute a new assessment or recommendation.

#### **104        Action on Ombudsman's report**

- (1) The Commissioner may:
  - (a) take the steps necessary to give effect to the Ombudsman's recommendations:
    - (i) as agreed to by the Commissioner; or
    - (ii) as confirmed, varied or substituted by the Ombudsman; and
  - (b) give written notice to the Ombudsman of the steps taken.
- (2) However, if the Commissioner does not take the steps necessary to give effect to the Ombudsman's recommendations, the Commissioner must give written notice to the Ombudsman of the reasons for not taking the steps.
- (3) On receipt of the notice, the Ombudsman may:
  - (a) give the Police Minister a copy of the Ombudsman's report (the **original report**) together with a copy of the notice; and
  - (b) give the Police Minister for tabling in the Legislative Assembly another report that deals, to the extent the Ombudsman considers appropriate, with the original report.

#### **105        Ombudsman to inform complainant and police officer of action taken**

- (1) This section applies only to the investigation of a police complaint.
- (2) The Ombudsman must, at the time and in the way the Ombudsman considers appropriate, inform the following persons of the outcome of the investigation:
  - (a) the complainant;

- (b) if the police complaint is made about a particular police officer – the officer.
- (3) In addition, if the Ombudsman takes action under section 104(3), the Ombudsman must inform the complainant accordingly.
- (4) When giving information under this section, the Ombudsman may make the comments the Ombudsman considers appropriate.

#### **106            Commissioner to notify Ombudsman of proceedings taken**

- (1) This section applies if, in consequence of the conduct of a police complaints resolution process or investigation of police conduct:
  - (a) a police officer is charged with an offence; or
  - (b) disciplinary procedures, or other steps the Commissioner considers necessary as mentioned in section 104(1)(a), are taken.
- (2) The Commissioner must give written notice to the Ombudsman of:
  - (a) the laying of the charge or the action taken; and
  - (b) if the police officer is charged with an offence or disciplinary procedures are started against the officer – the final outcome of the proceeding for the charge or disciplinary procedures.
- (3) The Ombudsman must not disclose the final outcome of the disciplinary procedures to the complainant or anyone else without the consent of the Commissioner.

### **Division 7            Other decision-making provisions**

#### **107            Deferral and discontinuing of dealing with complaint**

- (1) This section applies if the Ombudsman is satisfied:
  - (a) a proceeding before a court or tribunal has been or is to be started in relation to the conduct the subject of a police complaint; or
  - (b) disciplinary procedures against a police officer whose conduct is the subject of a police complaint have been or are to be started in relation to the conduct.
- (2) The Ombudsman may defer a decision on how to deal with, or to decline to deal with, a police complaint under this Part pending completion of the proceeding or disciplinary procedures.

- (3) In addition, if an investigation of the police complaint (whether by a Police Standards Command member or the Ombudsman) is being conducted, the Ombudsman may decide to discontinue the investigation pending completion of the proceeding or disciplinary procedures.
- (4) This section has effect despite another provision of this Part.

**108        Ombudsman may require further action**

- (1) If, on receipt of a report of the police complaints resolution process or investigation of a police complaint by a member of the Police Standards Command, the Ombudsman considers the complaint has not been adequately dealt with, the Ombudsman may:
  - (a) refer the complaint to the Commissioner for further investigation; or
  - (b) make a decision under section 66 to deal with the complaint in another way.
- (2) If the complaint is referred to the Commissioner under subsection (1)(a), the Commissioner must refer the complaint to the officer in charge of the Police Standards Command for further investigation.
- (3) This section applies despite section 97.

**109        Complainant may ask for investigation to be conducted**

- (1) A complainant may, during the conduct of the police complaints resolution process or investigation of a police complaint by a member of the Police Standards Command or after the process or investigation is completed, ask the Ombudsman to decide:
  - (a) for the conduct of the police complaints resolution process for the complaint – that the complaint be investigated by:
    - (i) a Police Standards Command member under Division 4, Subdivision 2; or
    - (ii) the Ombudsman under Division 5, Subdivision 2; or
  - (b) for the investigation of the complaint under Division 4, Subdivision 2 – that the complaint be investigated by the Ombudsman under Division 5, Subdivision 2.
- (2) The Ombudsman must decide the request as soon as practicable after it is made.

- (3) However, the Ombudsman must refuse the request if satisfied the issues raised in the complaint are being, or have been, adequately dealt with in the process or investigation.
- (4) If the Ombudsman refuses the request and the process or investigation has not been completed, the process or investigation must continue.
- (5) If the Ombudsman agrees to the request:
  - (a) section 66 and the other provisions of this Part (other than this Division) apply as if the complaint were made to the Ombudsman; and
  - (b) if the process or investigation has not been completed – the process or investigation ends.

**110        Revocation or variation of decision, assessment or recommendation**

- (1) The Ombudsman may revoke or vary a decision, assessment or recommendation made under this Part by the Ombudsman in relation to a police complaint if satisfied:
  - (a) information has not been properly taken into account in making the decision, assessment or recommendation; or
  - (b) significant new information is obtained relating to the complaint requiring a reconsideration of the decision, assessment or recommendation.
- (2) The power under subsection (1) must be exercised in the same way, and subject to the same conditions, as the power to make the decision, assessment or recommendation.
- (3) On the revocation or variation, this Act applies as if the decision, assessment or recommendation had not been made or had been made as varied.
- (4) Anything done in accordance with the decision, assessment or recommendation before the revocation or variation is not unlawful merely because of the revocation or variation.
- (5) This section does not limit section 43 of the *Interpretation Act*.

**111        Parties to complaint to be informed of decision**

- (1) The Ombudsman must, in the way the Ombudsman considers appropriate, inform the parties to a police complaint of a decision made under this Part and the reasons for it.

- (2) Subsection (1) has effect subject to a contrary intention.

## **Division 8            Miscellaneous provisions**

### **112            Commissioner may refer police conduct to Ombudsman**

- (1) The Commissioner may refer conduct of a police officer to the Ombudsman.
- (2) The following provisions apply to the referral as if a complaint had been made by the Commissioner to the Ombudsman about the conduct:
- (a) Division 3;
  - (b) Division 5, Subdivision 2;
  - (c) Division 6, Subdivisions 3, 4 and 5;
  - (d) Division 7;
  - (e) the other provisions of this Division.
- (3) However, section 47 (as applied by section 89) does not apply to the complaint.

### **113            Commissioner may request non-disclosure of information**

- (1) The Commissioner may, by written notice, ask the Ombudsman not to disclose stated information to a party to a police complaint or in a report prepared under this Part.
- (2) The notice must state the reasons for the request.
- (3) The Ombudsman must consider the request and refuse it or agree to it.
- (4) The Ombudsman must give the Commissioner written notice of the Ombudsman's decision and, if the request is refused, the reasons for the refusal.

**114            Restricted use of certain information**

- (1) Evidence of anything said or admitted during a conciliation process conducted under Division 3 or the police complaints resolution process and any document prepared for the conciliation process or police complaints resolution process:
  - (a) cannot be used in any later investigation of the complaint unless the person who said or admitted the thing, or to whom the document relates, consents to its use; and
  - (b) is not admissible in disciplinary procedures or any proceeding in a court or tribunal.
- (2) However, the information or document may be used for the prosecution of a person for an offence against this Act.

**115            Consultation**

- (1) In conducting an investigation of police conduct, the Ombudsman must consult with the Police Minister if asked to do so by the Police Minister.
- (2) In addition, for achieving the objects of this Act relating to the conduct of police officers, the Ombudsman may consult with the Commissioner or officer in charge of the Police Standards Command about dealing with a police complaint or police complaints generally:
  - (a) at any time on the Ombudsman's own initiative; or
  - (b) at the request of the Commissioner or officer in charge.

**116            Register of police complaints**

- (1) The Ombudsman must keep a register of police complaints.
- (2) The register may be in any form, including an electronic form.
- (3) For each complaint, the register must contain:
  - (a) particulars of a decision made about how to deal with it, or to decline to deal with it, under this Part; and
  - (b) particulars of a decision made under section 108(1)(a) for it; and
  - (c) particulars of the conduct of the police complaints resolution process or investigation for it; and
  - (d) particulars prescribed by regulation.

- (4) On the application of a party to a complaint, the Ombudsman may give the applicant an extract of particulars mentioned in subsection (3) for the complaint if the Ombudsman is satisfied it is appropriate to do so.
- (5) A fee is not payable for the extract.
- (6) If the Ombudsman refuses to give particulars to the applicant, the Ombudsman must inform the applicant of the reasons for the refusal.

## **Part 8 Confidentiality, offences and related provisions**

### **Division 1 Confidentiality and related provisions**

#### **117 Information disclosure and privilege**

- (1) An obligation to maintain secrecy or other restriction on the disclosure of information obtained by or given to officers of a public authority, whether imposed by any law of the Territory or otherwise, does not apply to the disclosure of information for preliminary inquiries or an investigation.
- (2) In the making of preliminary inquiries or conduct of an investigation, the Territory or a public authority is not entitled to any privilege that would apply in a legal proceeding to the production of documents, or the giving of evidence, for the inquiries or investigation.
- (3) Subsections (1) and (2) have effect subject to:
  - (a) section 118; and
  - (b) section 38 of the *Northern Territory Aboriginal Sacred Sites Act*.
- (4) Subject to this Part, an individual has, for the giving of information and the production of documents or other things for preliminary inquiries or an investigation, equivalent privileges to the privileges the person would have as a witness in a proceeding in a court.

### **118 Disclosure of particular matters not required**

- (1) Subsection (3) applies if the Administrator certifies the giving of stated information, answering of a stated question or production of a stated document or thing would be contrary to the public interest because it would involve:
  - (a) the disclosure of communications between:
    - (i) the Executive Council or a member of the Executive Council and the Administrator; or
    - (ii) a minister, a Commonwealth minister and a minister of a State; or
    - (iii) a Commonwealth minister and a minister of a State; or
  - (b) the disclosure of deliberations or a decision of:
    - (i) the Executive Council or a committee of the Executive Council; or
    - (ii) a committee of the Legislative Assembly formed to advise the Administrator or a minister; or
    - (iii) the Cabinet of the Commonwealth or of the Territory, or a committee of either of those Cabinet.
- (2) In addition, subsection (3) applies if the Director of Public Prosecutions certifies the giving of stated information, answering of a stated question or production of a stated document or thing, would prejudice the investigation or detection of an offence against a law of the Territory.
- (3) The Ombudsman must not require a person to:
  - (a) give the stated information; or
  - (b) answer the stated question; or
  - (c) produce the stated document or thing.

### **119 Non-compellable witnesses**

- (1) A person who acts, or has acted, in an official capacity under this Act must not be called to give evidence in any civil, criminal or disciplinary proceeding about any matter coming to the person's knowledge while acting in that capacity.
- (2) However, subsection (1) does not apply to a proceeding mentioned in section 120(3)(c).

## **120 Confidentiality of information**

(1) This section applies to a person who obtains information in the course of or for:

- (a) the making of preliminary inquiries; or
- (b) the conduct of conciliation or mediation of a complaint; or
- (c) the conduct of the police complaints resolution process; or
- (d) the conduct of an investigation.

(2) The person must not disclose the information to anyone else.

Fault element: Recklessness as to the disclosure of the information.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

(3) Subsection (2) does not apply if:

- (a) the information is disclosed for:
  - (i) the exercise of a power or performance of a function under this Act; or
  - (ii) formulating a report, or recommendations for a report, under this Act; or
- (b) the information is disclosed in:
  - (i) a report under this Act; or
  - (ii) an agreement for the resolution of a complaint that, under section 44(5), is binding on the parties to the complaint; or
- (c) the information is disclosed for:
  - (i) a proceeding under section 20; or
  - (ii) a proceeding for an offence against this Act; or
  - (iii) a proceeding for another offence, or breach of discipline, constituted by the action or conduct the subject of a complaint; or

- (d) the information is disclosed to the Ombudsman of the Commonwealth or a State for exercising a power or performing a function:
    - (i) under a law of the Territory, the Commonwealth or a State; or
    - (ii) under an arrangement made under section 148; or
  - (e) the information is disclosed in consulting a legal practitioner or, with the Ombudsman's consent, someone else.
- (4) The person must not make improper use of the information.
- Fault element: Intentionally making improper use of the information.
- Maximum penalty: 400 penalty units or imprisonment for 2 years.

- (5) In this section:

***improper use***, by a person of information, means the person uses the information to gain some private benefit or to benefit or cause harm to someone else.

## **121 Direction not to disclose information**

- (1) The Ombudsman may, by written notice, direct a person not to disclose:
- (a) information given to the person by the Ombudsman other than for the preliminary inquiries or investigation to which the information relates; or
  - (b) that preliminary inquiries are being or have been made or an investigation is being or has been conducted; or
  - (c) that the person has, under section 52, 53 or 83, been requested or required to give information or a document or thing.
- (2) The person must comply with the notice.
- Fault element: Strict liability offence.
- Maximum penalty: 100 penalty units.

- (3) Subsection (2) does not apply if the disclosure is made in consulting a legal practitioner or, with the Ombudsman's consent, someone else for the preliminary inquiries or investigation to which the notice relates.

## 122 Person consulted not to disclose information

- (1) This section applies if:
- (a) a person (the **consultant**) obtains information as a result of a consultation under section 120(3)(e) or 121(3); and
  - (b) the person who disclosed the information to the consultant is (apart from that provision) prohibited from disclosing the information.

- (2) The consultant must not disclose the information to anyone else.

Fault elements:

The person:

- (a) knows of the confidential nature of the information; and
- (b) is reckless as to the disclosure of the information.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

- (3) The consultant must not make improper use of the information.

Fault elements:

The person:

- (a) knows of the confidential nature of the information; and
- (b) intentionally makes improper use of the information.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

- (4) In this section:

**improper use**, by a person of information, means the person uses the information to gain some private benefit or to benefit or cause harm to someone else.

## **Division 2 Other offences, disciplinary provisions and related matters**

### **123 Misleading information or document**

- (1) A person must not give misleading information to a person acting in an official capacity.

Fault elements:

The person knows:

- (a) the information is misleading; and
- (b) the other person is acting in an official capacity.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

- (2) A person must not give a document containing misleading information to a person acting in an official capacity.

Fault elements:

The person knows:

- (a) the document contains misleading information; and
- (b) the other person is acting in an official capacity.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

- (3) Subsection (2) does not apply if the person, when giving the document:

- (a) draws the misleading aspect of the document to the other person's attention; and
- (b) to the extent to which the defendant can reasonably do so – gives the other person the information necessary to correct the document.

- (4) In this section:

***misleading information*** means information that is misleading in a material particular because it:

- (a) does not include relevant information; or
- (b) includes misinformation.

## 124 Preventing or obstructing making of complaint

A person must not:

- (a) prevent someone from making a complaint; or
- (b) obstruct someone in making a complaint.

Fault element: Intention.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

## 125 Offence to commit act of reprisal

- (1) A person commits an **act of reprisal** against another if the person causes, or threaten to cause, harm to another for a prohibited reason, that is because:

- (a) the other person or a third person:
  - (i) has made or intends to make a complaint; or
  - (ii) has cooperated or intends to cooperate with a person acting in an official capacity under this Act; and
- (b) the person wants to obtain retribution for the complaint or cooperation or, in the case of intended complaint or cooperation, to discourage it.

*Examples of cooperation*

*Answering questions, producing documents or providing information in any other form.*

- (2) A person must not commit an act of reprisal against another.

Fault elements:

The person:

- (a) knows or believes a person has acted, or intends to act, as described in subsection (1)(a); and
- (b) intends to discourage, or obtain retribution for, that act or intended act.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

- (3) It is a defence to a charge of an offence against subsection (2) for the defendant to prove the prohibited reason was not a substantial reason for the conduct on which the charge is based.
- (4) A prosecution for an offence against subsection (2) must be started within 2 years after the offence is alleged to have been committed.

**126 Failure to comply with particular notices**

- (1) This section applies if the Ombudsman gives a person a notice under section 52 or 53.
- (2) The person must comply with the notice.

Fault element: Strict liability offence.

Maximum penalty: 100 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes a reasonable excuse under subsection (5).
- (4) It is not a reasonable excuse for the person to fail to comply with the notice on the ground that complying with it:
  - (a) would be contrary to the public interest or would contravene another Act; or
  - (b) would disclose legal advice given to a minister or the Police Force; or
  - (c) if the person is a police officer – might tend to show the officer has committed a breach of discipline.
- (5) However, it is a reasonable excuse for the person to refuse to comply with the notice if:
  - (a) the notice requires the person to give information or a document that is not relevant to the investigation to which the notice relates, including for example, disclosing legal advice that is not relevant to the investigation; or
  - (b) for an individual including a police officer – complying with the notice might tend to incriminate the individual.
- (6) If compliance with the notice would (apart from this subsection) be a contravention of another Act, the person is not liable to a penalty under the Act merely because the person complied with the notice.

**127 Refusal to take oath**

A person commits an offence if:

- (a) at the hearing for an investigation the Ombudsman requires a person to take an oath; and
- (b) the person refuses to comply with the requirement.

Fault element: Strict liability offence.

Maximum penalty: 100 penalty units.

**128 Failure to comply with requirement to help Ombudsman**

(1) This section applies to the following persons:

- (a) an officer of a public authority who is required under section 54(d) to give the Ombudsman help;
- (b) a police officer or public sector employee who is required under section 54(d) (as applied by section 89) to give the Ombudsman help.

(2) The person must comply with the requirement.

Fault element: Strict liability offence.

Maximum penalty: 100 penalty units.

(3) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes a reasonable excuse.

**129 Obstruction of persons acting in official capacity**

(1) A person must not obstruct another person acting in an official capacity.

Fault elements:

The person:

- (a) knows the other person is acting in an official capacity; and
- (b) intentionally obstructs the other person.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

### **Division 3 Legal proceedings for offences**

#### **130 Evidentiary certificates**

- (1) In a proceeding under this Act, a certificate purporting to be signed by the Ombudsman stating any of the following matters is evidence of the matter stated:
  - (a) on a date a person was given a notice under this Act;
  - (b) a document is a copy of, or part of, another document.
- (2) In subsection (1), a reference to a person or thing is a reference to a person or thing stated in the certificate.

### **Part 9 Administration**

#### **Division 1 Matters relating to Ombudsman and Ombudsman's Office**

##### **Subdivision 1 Appointment of Ombudsman and related matters**

#### **132 Ombudsman**

- (1) The Administrator must appoint a person to be the Ombudsman.
- (2) The appointment may be made only after receiving a recommendation of the Legislative Assembly.
- (3) The Minister must table a copy of the appointment in the Legislative Assembly within 6 sitting days after it is made.

#### **133 Ineligibility for appointment**

A person must not be appointed to be Ombudsman if the person has been, within the last 3 years:

- (a) a member of the Legislative Assembly or of the Parliament of the Commonwealth or a State or Territory; or
- (b) a member of a local government council or the holder of an equivalent office in the Commonwealth or a State or Territory.

#### **134 Term of appointment**

- (1) The appointment of a person to the office of Ombudsman is for 7 years.
- (2) However, the person is not eligible for re-appointment.

**135 Conditions of appointment**

- (1) The Ombudsman holds office on the conditions (including conditions about remuneration, expenses and allowances) determined by the Administrator from time to time.
- (2) However, the conditions must not be altered to the Ombudsman's detriment during his or her term of office.
- (3) The Minister must table a copy of a determination made under subsection (1) in the Legislative Assembly within 6 sitting days after it is made.

**136 Restriction on outside employment**

The Ombudsman must not, without the Minister's written consent, engage in any remunerative employment outside the duties of office.

**137 Leave of absence**

The Minister may grant the Ombudsman leave of absence on the conditions decided by the Minister.

**138 Resignation**

The Ombudsman may resign office by written notice given to the Administrator.

**139 Retirement**

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

**140 Termination of appointment by Administrator**

- (1) The Administrator must terminate the appointment of the Ombudsman if the Ombudsman:
  - (a) is found guilty of an indictable offence, whether in the Territory or elsewhere; or
  - (b) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
  - (c) engages in remunerative employment outside the duties of office without the Minister's approval.

- (2) The Minister must table a statement of the reasons for the termination in the Legislative Assembly within 6 sitting days after the termination.

**141 Termination of appointment by Legislative Assembly after suspension**

- (1) The Administrator may suspend the Ombudsman from duty for:
- (a) misbehaviour or misconduct; or
  - (b) physical or mental incapacity if the incapacity prevents the Ombudsman from performing the duties of office.
- (2) The Minister must immediately give the Ombudsman a statement of reasons for the suspension.
- (3) Within 6 sitting days after the suspension, the Minister must table in the Legislative Assembly the statement and any written response by the Ombudsman.
- (4) If, within 6 sitting days after the statement is presented, a resolution of the Legislative Assembly is passed by a two-thirds majority of all of the Assembly requiring the Administrator to terminate the Ombudsman's appointment, the Administrator must terminate the Ombudsman's appointment.
- (5) The Ombudsman must resume duties if:
- (a) the Minister does not present the statement under subsection (3); or
  - (b) the Legislative Assembly does not pass a resolution in accordance with subsection (4).
- (6) The Ombudsman is entitled to be paid remuneration and allowances during the period of suspension.

**142 Appointment ceases on becoming candidate for election**

The appointment of a person as the Ombudsman ceases on the person becoming a candidate for election as:

- (a) a member of the Legislative Assembly or of the Parliament of the Commonwealth or a State or Territory; or
- (b) a member of a local government council or an equivalent office in the Commonwealth or a State or Territory.

### **143 Acting Ombudsman**

- (1) The Minister may appoint a person to act in the office of the Ombudsman:
  - (a) during a vacancy, or all vacancies, in the office whether or not an appointment has previously been made to the office; or
  - (b) during any period, or all periods, when the Ombudsman is unable to perform the duties of the office.
- (2) However, a person must not act in the office for more than 3 months in any period of 12 months unless the appointment to act is made on the recommendation of the Legislative Assembly.
- (3) The conditions (including conditions about remuneration, expenses and allowances) of an appointment to act as Ombudsman must be decided by the Minister.

### **144 Oath before taking office**

- (1) Before exercising the powers or performing the functions of office, the Ombudsman must take an oath that he or she will faithfully, impartially and truly exercise the powers and perform the functions of Ombudsman according to law.
- (2) The oath must be administered by the Administrator.

## **Subdivision 2 Officers of Ombudsman's Office**

### **145 Status**

An officer of the Ombudsman's Office must be a public sector employee.

### **146 Officers not subject to outside direction**

An officer of the Ombudsman's Office is subject to direction only by the Ombudsman or another officer about the way the Ombudsman's powers or functions are exercised or performed in relation to complaints and investigations, including the priority given to investigations.

## **Subdivision 3 Miscellaneous matters**

### **147 Delegation**

The Ombudsman may, in writing, delegate to a person any of the Ombudsman's powers or functions under this or another Act other than a power under section 55 or 148.

**148 Arrangements with other jurisdictions**

- (1) The Ombudsman may make a written arrangement with the Ombudsman of the Commonwealth or a State, or 2 or more of them, in relation to the investigation by 1 or more of them of action that relates to a matter of administration mentioned in any of the following paragraphs:
  - (a) action taken by or for a public authority and action taken by or for a Commonwealth or State department or authority;
  - (b) action taken by or for an entity established or administered jointly by or for:
    - (i) the Territory and the Commonwealth; or
    - (ii) the Territory and 1 or more States; or
    - (iii) the Territory, the Commonwealth and 1 or more States;
  - (c) action taken by or for an entity mentioned in paragraph (b) and action taken by or for:
    - (i) a public authority; or
    - (ii) a Commonwealth or State department or authority.
- (2) For subsection (1), action taken by an entity includes action taken by the entity for another entity.
- (3) An arrangement made under subsection (1) may relate to particular actions, a series of related actions or classes of actions.
- (4) This section does not affect the powers and functions of the Ombudsman under another provision of this Act.
- (5) Subsection (1) does not empower:
  - (a) the Ombudsman to exercise a power or perform a function of the Ombudsman of the Commonwealth or a State except under an instrument of delegation given under a law of the Commonwealth or State; or
  - (b) the Ombudsman of the Commonwealth or a State to exercise a power or perform a function of the Ombudsman under this Act except under an instrument of delegation given under section 147.

## **149 Validity of acts and decisions**

Anything done by or in relation to a person purporting to act under an appointment as, or to act as, Ombudsman under section 132 or 143 is not invalid merely because:

- (a) the appointment was ineffective; or
- (b) the appointment had ceased to have effect; or
- (c) if the appointment is to act as Ombudsman – the occasion to act had not arisen or had ceased.

## **Division 2 Agreements for dealing with police complaints**

### **150 Ombudsman and Commissioner may make agreement**

- (1) The Ombudsman and Commissioner may make an agreement about dealing with police complaints (the ***police complaints agreement***).
- (2) The agreement may provide for the following matters:
  - (a) kinds of complaints for which the police complaints resolution process may be conducted;
  - (b) conduct of the process;
  - (c) report of the result of the process;
  - (d) kinds of complaints for which a Police Standards Command report under Part 7, Division 6, Subdivision 1 is required;
  - (e) other matters the Ombudsman and Commissioner consider appropriate for dealing with complaints mentioned in paragraphs (a) and (d).
- (3) Subsection (2) has effect subject to Part 7, Division 4, and Part 7, Division 6, Subdivision 1.

### **151 Tabling, publication and availability of agreement**

- (1) The Minister must table the police complaints agreement, and an agreement amending it, in the Legislative Assembly within 6 sitting days after the agreement is made.
- (2) In addition, as soon as practicable after the agreement is made, the Commissioner must publish the agreement in the *Police Gazette* published under section 165 of the *Police Administration Act*.

- (3) Also, the Ombudsman must publish the agreement as in force at the end of each financial year in the annual report for the year prepared for section 152.
- (4) The Ombudsman and Commissioner must make the agreement as in force from time to time available for public inspection free of charge.

### **Division 3      Annual and other public reports**

#### **152      Annual report**

The Ombudsman must, within 3 months after the end of each financial year, give the Minister a report on the performance of the Ombudsman's functions during the year.

#### **153      Report on Ombudsman's initiative to Minister**

The Ombudsman may give the Minister:

- (a) a report relating generally to the performance of the Ombudsman's functions; or
- (b) a report relating to a particular case investigated by the Ombudsman.

#### **154      Tabling of reports**

- (1) The Minister must table a copy of the annual report or other report prepared for section 152 or 153 in the Legislative Assembly within 6 sitting days after receiving it.
- (2) The responsible Minister must table a copy of the report prepared for section 55(5)(b), 63(4) or 104(3)(b) in the Legislative Assembly within 6 sitting days after receiving it.

#### **155      Report on parliamentary reference**

- (1) On completing an investigation of a matter on a parliamentary reference, the Ombudsman must give a report on the investigation to the Speaker for tabling in the Legislative Assembly.
- (2) The Speaker must table a copy of the report in the Legislative Assembly within 6 sitting days after receiving it.

**Part 10                    Miscellaneous matters****156                    Compliance with requirement as soon as practicable**

- (1) If a person is required under a provision of this Act to inform someone else about a matter or give a document to someone else, the person must comply with the requirement as soon as practicable in the circumstances.
- (2) Subsection (1) has effect subject to a contrary intention in the provision.

**157                    Compliance with requirement for informing complainant**

If:

- (a) this Act requires a person to inform a complainant about a matter or give a complainant a document; and
- (b) the complaint was not made by the person aggrieved by the administrative action or police conduct the subject of the complaint;

it is sufficient compliance with the requirement to inform the person who made the complaint.

**158                    Extension of period for compliance with notices**

If:

- (a) under a notice given by the Ombudsman under this Act, a person is required to do something within a stated period; and
- (b) before the end of the period, the person applies in writing to the Ombudsman to extend the period on the grounds stated in the application;

the Ombudsman may, by written notice given to the person, extend the period as the Ombudsman considers appropriate in the circumstances.

**159                    Protection from liability – complainants and informants**

- (1) A person is not liable in any civil proceeding in relation to:
  - (a) making a complaint; or
  - (b) giving information for:
    - (i) the making of preliminary inquiries; or

- (ii) the conciliation or mediation process; or
  - (iii) the police complaints resolution process; or
  - (iv) an investigation.
- (2) Subsection (1) does not apply if the complaint was made or the information is provided in bad faith.
- (3) A civil proceeding must not be brought against a person in relation to an act mentioned in subsection (1) without the leave of the Supreme Court.
- (4) The Court must not grant leave unless it is satisfied there is substantial ground for the contention the person acted in bad faith.

#### **160 Protection from liability – persons administering Act**

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function under this or another Act as any of the following:
- (a) an official;
  - (b) a conciliator or mediator acting under Part 6, Division 3 or Part 7, Division 3.
- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.
- (3) This section has effect subject to Part VIIA of the *Police Administration Act* to the extent the section relates to the civil liability of the Commissioner or a Police Standards Command member.
- (4) In this section:

**exercise**, of a power, includes the purported exercise of the power.

**official** means:

- (a) the Ombudsman; or
- (b) an officer of the Ombudsman's Office; or
- (c) a consultant or other person employed or engaged to act in an official capacity; or
- (d) the Commissioner or a Police Standards Command member.

**performance**, of a function, includes the purported performance of the function.

## 161 Regulations

- (1) The Administrator may make regulations under this Act.
- (2) The regulations may provide for any of the following:
  - (a) the payment of allowances and expenses to a person appearing before the Ombudsman for travelling and maintenance while absent from the person's usual place of residence;
  - (b) prescribing fees payable under this Act;
  - (c) for an offence against the regulations, prescribing a fine not exceeding 50 penalty units.

## Part 11 Repeals and transitional matters for Ombudsman Act 2009

### Division 1 Preliminary matters

#### 162 Definitions

In this Part:

**commencement date** means the date this Part commences.

**repealed Act** means the *Ombudsman (Northern Territory) Act* as in force immediately before the commencement date.

### Division 2 Repeals

#### 163 Repeal of Ombudsman legislation

The Acts specified in Schedule 1 are repealed.

### Division 3 Transitional matters

#### 164 Ombudsman continues in office

- (1) This section applies to the person holding office as the Ombudsman (the **former office**) under the repealed Act immediately before the commencement date.

- (2) The person holds office as the Ombudsman under this Act on the conditions on which the person held the former office until the end of the person's term of appointment to the former office as extended under subsection (3).
- (3) The person's term of appointment to the former office is extended to 7 years from the date of appointment.

**165      Actions before commencement date**

- (1) This Act applies to an administrative action of a public authority or conduct of a police officer before the commencement date.
- (2) However, if an inquiry or investigation is started under the repealed Act in relation to the administrative action or conduct but not completed on the commencement date, the inquiry or investigation must be completed under the repealed Act as if it had not been repealed.

## **Schedule 1 Repealed Acts**

section 163

<i>Ombudsman (Northern Territory) Ordinance 1977</i>	Ordinance No. 25 of 1978
<i>Ombudsman (Northern Territory) Ordinance 1978</i>	Ordinance No. 60 of 1978
<i>Ombudsman (Northern Territory) Amendment Act 1981</i>	Act No. 54 of 1981
<i>Ombudsman (Northern Territory) Amendment Act 1983</i>	Act No. 40 of 1983
<i>Ombudsman (Northern Territory) Amendment Act 1988</i>	Act No. 60 of 1988
<i>Ombudsman (Northern Territory) Amendment Act 1995</i>	Act No. 22 of 1995
<i>Ombudsman (Northern Territory) Amendment Act 1996</i>	Act No. 59 of 1996
<i>Ombudsman (Northern Territory) Amendment Act 2002</i>	Act No. 63 of 2002

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**ENDNOTES**
**1****KEY**

Key to abbreviations

**amd = amended**  
**app = appendix**  
**bl = by-law**  
**ch = Chapter**  
**cl = clause**  
**div = Division**  
**exp = expires/expired**  
**f = forms**  
**Gaz = Gazette**  
**hdg = heading**  
**ins = inserted**  
**lt = long title**  
**nc = not commenced**

**od = order**  
**om = omitted**  
**pt = Part**  
**r = regulation/rule**  
**rem = remainder**  
**renum = renumbered**  
**rep = repealed**  
**s = section**  
**sch = Schedule**  
**sdiv = Subdivision**  
**SL = Subordinate Legislation**  
**sub = substituted**

**2****LIST OF LEGISLATION*****Ombudsman Act 2009 (Act No. 5, 2009)***

Assent date 12 March 2009  
 Commenced 1 July 2009 (*Gaz G21*, 27 May 2009, p 5)

***Oaths, Affidavits and Declarations (Consequential Amendments) Act 2010 (Act No. 40, 2010)***

Assent date 18 November 2010  
 Commenced 1 March 2011 (s 2, s 2 *Oaths, Affidavits and Declarations Act 2010* (Act No. 39, 2010) and *Gaz G7*, 16 February 2011, p 4)

***Care and Protection of Children (Children's Commissioner) Amendment Act 2011 (Act No. 9, 2011)***

Assent date 18 April 2011  
 Commenced 1 July 2011 (*Gaz S32*, 20 June 2011)

***Children's Commissioner Act 2013 (Act No. 33, 2013)***

Assent date 18 December 2013  
 Commenced 1 January 2014 (*Gaz S72*, 23 December 2013)

***Power and Water Corporation Legislation Amendment Act 2014 (Act No.13, 2014)***

Assent date 13 May 2014  
 Commenced 29 May 2014 (*Gaz S29*, 29 May 2014, p 2)

***Local Government Amendment Act 2014 (Act No. 19, 2014)***

Assent date 2 June 2014  
 Commenced s 16: 1 July 2014; s 18: 1 December 2014; rem: 2 June 2014 (s 2)

***Correctional Services (Related and Consequential Amendments) Act 2014 (Act No. 27, 2014)***

Assent date 4 September 2014  
 Commenced 9 September 2014 (*Gaz S80*, 9 September 2014, p 2)

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***Territory Insurance Office (Sale) Act 2014 (Act No. 41, 2014)***

Assent date 28 November 2014  
 Commenced pt 6, divs 1 and 2: nc (exp without commencing);  
 pt 6, div 3: 00:01hrs 1 January 2015 (*Gaz S131*,  
 19 December 2014, p 8); rem: 28 November 2014 (s 2)

***Statute Law Amendment (Directors' Liability) Act 2015 (Act No. 26, 2015)***

Assent date 18 September 2015  
 Commenced 14 October 2015 (*Gaz G41*, 14 October 2015, p 3)

**3 LIST OF AMENDMENTS**

s 4 amd No. 19, 2014, s 26; No. 27, 2014, s 57  
 s 5 amd No. 13, 2014, s 32; No. 19, 2014, s 26  
 s 10 amd No. 9, 2011, s 26; No. 33, 2013, s 77  
 s 16 amd No. 27, 2014, s 57; No. 41, 2014, s 53  
 s 19 amd No. 9, 2011, s 26  
 s 32 amd No. 9, 2011, s 26; No. 33, 2013, s 78  
 s 50 amd No. 19, 2014, s 26  
 s 59 amd No. 19, 2014, s 26  
 s 63 amd No. 19, 2014, s 26  
 s 127 amd No. 40, 2010, s 118  
 s 131 rep No. 26, 2015, s 84  
 s 133 amd No. 19, 2014, s 26  
 s 142 amd No. 19, 2014, s 26  
 s 144 amd No. 40, 2010, s 118  
 pt 12 hdg exp No. 5, 2009, s 180  
 pt 12  
 div 1 hdg exp No. 5, 2009, s 180  
 ss 166 – 168 exp No. 5, 2009, s 180  
 pt 12  
 div 2 hdg exp No. 5, 2009, s 180  
 ss 169 – 174 exp No. 5, 2009, s 180  
 pt 12  
 div 3 hdg exp No. 5, 2009, s 180  
 ss 175 – 178 exp No. 5, 2009, s 180  
 pt 12  
 div 4 hdg exp No. 5, 2009, s 180  
 s 179 exp No. 5, 2009, s 180  
 pt 12  
 div 5 hdg exp No. 5, 2009, s 180  
 s 180 exp No. 5, 2009, s 180  
 sch 2 exp No. 5, 2009, s 180