



NORTHERN TERRITORY OF AUSTRALIA

No. 60 of 1988

AN ACT

to amend the Ombudsman (Northern Territory) Act

[Assented to 15 December 1988]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the Ombudsman (Northern Territory) Amendment Act 1988.

2. PRINCIPAL ACT

The Ombudsman (Northern Territory) Act is in this Act referred to as the Principal Act.

3. INTERPRETATION

Section 3 of the Principal Act is amended by adding at the end the following:

"(4) For the purpose of this Act, an action taken by an officer of a department or authority shall be deemed to be taken by the department or authority if the officer takes or purports to take the action -

(a) by virtue of his being an officer of the department or authority, whether or not -

(i) the action is taken for or in connection with or is incidental to the performance of the functions of the department or authority; or

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- (ii) the taking of the action is within the duties of the officer; or
- (b) in the exercise of a power or the performance of a function conferred on him by or under a law in force in the Territory."

4. MATTERS FOR INVESTIGATION

Section 14 of the Principal Act is amended -

- (a) by omitting from subsection (2) "written" wherever occurring;
- (b) by omitting subsection (3) and substituting the following:

"(3) As soon as practicable after a complaint about an action referred to in subsection (1)(b) is made to a member of the Police Force, that member shall refer the complaint to the Commissioner of Police who shall, as soon as practicable, refer it to the Ombudsman.";

- (c) by inserting after subsection (3A) the following:

"(3AA) Subject to subsection (4), if the Ombudsman and the Commissioner of Police have agreed on administrative arrangements relating to the manner in which complaints referred to the Ombudsman pursuant to subsection (3) may be dealt with, any complaint referred to the Ombudsman in pursuance of that subsection shall be dealt with in accordance with those arrangements.";

- (d) by omitting from subsection (4) "in pursuance of sub-section (3)" and substituting "in pursuance of this section"; and
- (e) by omitting from subsection (5) "any decision by the Administrator or a Minister" and substituting "any decision taken by the Administrator or personally by a minister".

5. OTHER INVESTIGATIONS

Section 16 of the Principal Act is amended by omitting subsection (2) and substituting the following:

"(2) An investigation of a complaint made under this Act relating to an action of a department or authority to which this Act applies may proceed, notwithstanding that the complaint may not on its face appear to be in respect of any administrative action taken by that department or authority, if, in the opinion of the Ombudsman, there is a likelihood that the cause for complaint arose from or as a result of such an administrative action."

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6. COMPLAINTS

Section 17 of the Principal Act is amended -

- (a) by omitting from subsection (2) "unless the Ombudsman otherwise directs" and substituting "if the Ombudsman so directs"; and
- (b) by adding at the end the following:

"(5) A person who is in custody, including on remand, is entitled -

- (a) on making a request to the person in whose custody he is detained or to any other person performing duties in connection with his detention to -
 - (i) be provided with facilities for preparing a complaint in writing under this Act for furnishing in writing to the Ombudsman and after the complaint has been made, any other relevant information and for enclosing the complaint or the other information (if any) in a sealed envelope; and
 - (ii) have sent to the Ombudsman, without undue delay, a sealed envelope delivered by him to any such person and addressed to the Ombudsman; and
- (b) to have delivered to him, without undue delay, any sealed envelope, addressed to him and sent by the Ombudsman, that comes into the possession or under the control of the person in whose custody he is detained or of any other person performing duties in connection with his detention.

"(6) Where a sealed envelope addressed to the Ombudsman is delivered by a person detained in custody to a person referred to in subsection (5) for sending to the Ombudsman, or a sealed envelope addressed to a person so detained and sent by the Ombudsman comes into the possession or under the control of a person referred to in that subsection neither the person in whose custody the first-mentioned person is detained nor any other person performing duties in connection with his detention is entitled to open the envelope or to inspect any document enclosed in the envelope.

"(7) For the purposes of subsections (5) and (6), the Ombudsman may make arrangements with the appropriate department or authority for the identification and delivery of sealed envelopes sent by the Ombudsman to persons detained in custody."

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7. NEW SECTION

The Principal Act is amended by inserting after section 17 the following:

"17A. PRELIMINARY AND MINOR INQUIRIES

"(1) Where a complaint has been made to the Ombudsman in respect of an action taken by, in or on behalf of a department or authority to which this Act applies, the Ombudsman may make inquiries of the department or the authority for the purposes of -

- (a) determining whether or not the Ombudsman is authorized to investigate the action; or
- (b) if the Ombudsman is authorized to investigate the action -
 - (i) determining whether or not the Ombudsman may, in his discretion, decide not to investigate the action; or
 - (ii) determining the complaint without the need for an investigation under the Act where the Ombudsman is of the opinion, having regard to the nature and seriousness of the complaint, that it may be resolved expeditiously.

"(2) An inquiry under subsection (1) is not an investigation for the purposes of section 19 of this Act."

8. DISCRETION NOT TO INVESTIGATE

Section 18 of the Principal Act is amended by inserting after subsection (1) the following:

"(1A) Where a person who makes a complaint to the Ombudsman under this Act relating to an action of a department or authority to which this Act applies -

- (a) has not complained to the department or authority in respect of the action, the Ombudsman may, in his discretion, decide not to investigate the action until the complainant has complained to the department or authority;
- (b) has complained to the department or authority in respect of the action, the Ombudsman may, in his discretion, decide not to investigate the action until the complainant informs the Ombudsman that no redress has been granted or that redress has been granted but the redress is not, in the opinion of the complainant, adequate; or

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- (c) has complained to the department or authority in respect of the action, informs the Ombudsman as provided by paragraph (b) that no redress, or no adequate redress, has been granted by the department or authority and the Ombudsman is of the opinion if -
- (i) no redress has been granted - that since the complainant complained to the department or authority, a reasonable period has elapsed in which redress could have been granted; or
 - (ii) redress has been granted - that the redress was not reasonably adequate,
- the Ombudsman shall, subject to this section, investigate the action."

9. **SECRECY**

Section 23 of the Principal Act is amended -

- (a) by omitting from subsection (1) "this Act" and substituting "this Act (other than an investigation of a complaint referred to the Ombudsman under section 14(3))"; and
- (b) by omitting subsection (1)(a)(iii)(A) and substituting the following:

"(A) a matter arising under a law of the Territory or of the Commonwealth or a State or another Territory of the Commonwealth;"
