

FUNCTIONS AND DECISION-MAKING POWERS OF THE OMBUDSMAN

The Commonwealth Ombudsman was established by the *Ombudsman Act 1976* (Ombudsman Act). The Act came into effect on 1 July 1977 and is administered by the Prime Minister. The Ombudsman is also the Defence Force Ombudsman, Immigration Ombudsman, Law Enforcement Ombudsman, Overseas Students Ombudsman, Postal Industry Ombudsman, Taxation Ombudsman, ACT Ombudsman and Norfolk Island Ombudsman.

Staff engaged in the work of the Commonwealth Ombudsman, and the work as ACT Ombudsman are located in the national office in Canberra. Other offices are located in Adelaide, Brisbane, Darwin, Melbourne, Perth and Sydney.

The Ombudsman and Deputy Ombudsman are statutory officers appointed under the Ombudsman Act. Staff are employed under the *Public Service Act 1999*.

Investigation of administrative actions

Following a complaint from a member of the public, or using 'own motion' powers under the Ombudsman Act, the Ombudsman may investigate the administrative actions of most Australian Government departments and agencies and private contractors delivering government services.

The Ombudsman cannot investigate:

- the actions of government ministers or decisions of a judicial nature
- most employment-related matters (although the Defence Force Ombudsman can investigate employment-related complaints from current or former members of the Australian Defence Force)
- the actions of some government business enterprises.

The Ombudsman can decide to not investigate complaints that are 'stale' or frivolous, where the complainant has not first sought redress from the agency, where some other form of review or appeal is more appropriate, or where it is considered an investigation would not be warranted in all the circumstances.

The Ombudsman may conduct a complaint investigation as considered appropriate. The powers of the Ombudsman are similar to those of a Royal Commission, and include compelling an agency to produce documents and examining witnesses under oath. Most investigations are conducted with minimal formality.

Ombudsman investigations are private and details are generally not revealed to people who are not legitimately concerned with the investigation. The Ombudsman's office is subject to the *Freedom of Information Act 1982* and the *Privacy Act 1988*.

Following an investigation, the Ombudsman is required to consider whether the actions of the department or agency were unreasonable, unlawful, improperly discriminatory or otherwise wrong.

When the Ombudsman concludes that an agency has erred, the Ombudsman may report that view to the agency and recommend whatever remedial action the Ombudsman thinks is appropriate. If the agency does not implement that action, the Ombudsman can report to the Prime Minister and to the Parliament. The Ombudsman must inform complainants of the action taken by the office in response to their complaints.

Defence Force Ombudsman

Section 19B of the Ombudsman Act provides that the Commonwealth Ombudsman shall be the Defence Force Ombudsman (DFO). The DFO can investigate complaints from current or former members of the Australian Defence Force about Defence Force employment matters. The DFO cannot investigate most actions connected with disciplinary proceedings or the grant or refusal of an honour or award to an individual. The DFO investigates complaints from serving members only after they have exhausted internal grievance mechanisms, unless there are exceptional circumstances. The DFO also investigates complaints from ex-service personnel or their families.

Taxation Ombudsman

Under s 4(3) of the Ombudsman Act, the Commonwealth Ombudsman may be designated as the Taxation Ombudsman when dealing with matters relating to the Australian Taxation Office.

Immigration Ombudsman

Under s 4(4) of the Ombudsman Act, the Commonwealth Ombudsman may be designated as the Immigration Ombudsman when dealing with matters relating to immigration, including immigration detention. The Ombudsman has a specific statutory role under s 486O of the *Migration Act 1958* of reporting to the Minister for Immigration concerning the circumstances of any person who has been in immigration detention for two years or more.

Law Enforcement Ombudsman

Under s 4(5) of the Ombudsman Act, the Commonwealth Ombudsman may be designated as the Law Enforcement Ombudsman when investigating complaints about the conduct and practices of the Australian Federal Police (AFP) and its members. There are special procedures applying to complaints about AFP officers contained in the *Australian Federal Police Act 1979* (AFP Act).

Complaints about the conduct of AFP officers are dealt with under the Ombudsman Act. In addition, under the AFP Act the Ombudsman is required to review the administration of the AFP's handling of complaints, through inspection of AFP records, at least annually. An aspect of this responsibility is to comment on the adequacy and comprehensiveness of the AFP's dealing with conduct and practices issues as well as its handling of inquiries ordered by the minister. The results of these reviews must be provided to the Parliament on an annual basis.

The Ombudsman's intercept and surveillance devices audit

Under the *Telecommunications (Interception and Access) Act 1979* and the *Surveillance Devices Act 2004*, the Ombudsman can inspect certain records of the AFP, Australian Crime Commission (ACC) and Australian Commission for Law Enforcement Integrity (ACLEI), and certain other agencies under specific circumstances, to ascertain whether the agencies have complied with specified record-keeping requirements of the Acts.

Audit of controlled operations

In accordance with the *Crimes Act 1914*, the Ombudsman is required to inspect and report on records of controlled operations conducted by the AFP, the ACC and ACLEI.

Postal Industry Ombudsman

Section 19L of the Ombudsman Act provides that the Commonwealth Ombudsman shall be the Postal Industry Ombudsman (PIO). The PIO deals with complaints about postal service delivery by Australia Post and those private sector postal operators that elect to be members of the Private Postal Officer scheme.

Overseas Students Ombudsman

Section 19ZI of the Ombudsman Act provides that the Commonwealth Ombudsman shall be the Overseas Students Ombudsman (OSO). The OSO deals with complaints by overseas students of private registered education providers. The OSO also gives private registered providers advice and training about best practice for handling complaints by overseas students.

Australian Capital Territory (ACT) Ombudsman

Under the *ACT Self-Government (Consequential Provisions) Act 1988* (Cth), the Commonwealth Ombudsman discharges the role of ACT Ombudsman. A services agreement between the Commonwealth Ombudsman and the ACT Government covers the discharge of this role. The work of the ACT Ombudsman is set out in a separate annual report made to the ACT Legislative Assembly under the *Ombudsman Act 1989* (ACT).

Under the *Crimes (Controlled Operations) Act 2008*, the ACT Ombudsman is required to inspect the records of ACT Policing at least once every 12 months to ascertain its compliance with the Act. The *Crimes (Surveillance Devices) Act 2010* (ACT) provides that the ACT Ombudsman may inspect the records of ACT Policing to determine the extent of its compliance with that Act.

Under the *Crimes (Assumed Identities) Act 2009* (ACT), the ACT Ombudsman may inspect records of a law enforcement agency to determine the extent of its compliance with the Act. The Ombudsman is also required to ensure that the Act Child Sex Offenders Register is accurately maintained by ACT Policing in accordance with Chapter 4 of the *Crimes (Child Sex Offenders) Act 2005*.

Under the *Public Interest Disclosure Act 1994* (ACT), the Ombudsman is a proper authority to receive and investigate public interest disclosures in relation to the actions of ACT Government agencies.

Section 55(2) of the *Freedom of Information Act 1989* (ACT) requires the ACT Ombudsman to report on complaints about the handling of Freedom of Information requests by ACT Government agencies.

Norfolk Island Ombudsman

Under s 4(6) of the Ombudsman Act, the Commonwealth Ombudsman may be designated as the Norfolk Island Ombudsman when dealing with matters relating to the Norfolk Island public service and 'prescribed authorities', as well as Australian Government agencies. Section 29 A of the *Ombudsman Act 2012* (Norfolk Island) prescribes for the making of arrangements relating to the functions of the Commonwealth Ombudsman.