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THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

OMBUDSMAN AMENDMENT BILL 1982

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister Assisting the Prime Minister).

OUTLINE

The Ombudsman Amendment Bill 1982, which amends the Ombudsman Act 1976, has two main purposes:

- (1) to create and vest in the Commonwealth Ombudsman a statutory office of Defence Force Ombudsman - with much the same powers as the Commonwealth Ombudsman, but with jurisdiction to investigate actions arising out of service in the Defence Force - and to establish an office of Deputy Ombudsman (Defence Force); and
- (2) to make various other amendments to the Ombudsman Act in the light of experience and review by the Administrative Review Council including to:
 - . provide a statutory basis for the Ombudsman's practice of resolving most complaints with a minimum of formality and resources;
 - . furnish the Ombudsman with additional discretion in taking action after an investigation, and clarify that he may publish information on a current investigation in some circumstances;
 - . further facilitate co-operative investigatory activities involving the Commonwealth Ombudsman and other Australian Ombudsmen;
 - . provide for determination by the Federal Court of issues arising concerning the Ombudsman's jurisdiction; and
 - . clarify that the Ombudsman may investigate official actions preceding and succeeding Ministers' actions, and may make informal inquiries to establish his jurisdiction.

NOTES ON CLAUSES

Clauses 1 and 2

1. The first two clauses of the Bill provide for the short title and commencement of the legislation. The provisions of the Bill, other than those that relate to the Defence Force Ombudsman (DFO), will come into effect on the day it receives Royal Assent. Those provisions relating to the DFO will come into effect on a day to be fixed by proclamation. This is to provide time for an additional Deputy Ombudsman to be appointed on whom most of the functions of the DFO will devolve, and to enable other necessary preparatory arrangements to be made.

Clause 3 - Amendment of long title

2. The long title is amended to reflect that the Act will now provide for the appointment of, and define the functions and powers of, a Defence Force Ombudsman in addition to a Commonwealth Ombudsman.

Clause 4 - Interpretation

3. Significant amendments to the definitions of words and expressions used for the purposes of the legislation as set out in section 3 of the Principal Act are detailed below.

Sub-clause 4(1)

4. The Bill amends the Principal Act to provide that it shall apply both within and outside Australia and extend to external territories (see also clause 5, para 12 below). To effect this intention the Act is amended to extend the Ombudsman's jurisdiction to actions taken by both Commonwealth

and Territory administrations in Cocos (Keeling) Islands and Christmas Island. However, in view of the degree of self-government that has been granted to Norfolk Island, the Ombudsman's jurisdiction will not extend to that Territory's executive government. The Act is also being amended to delete references to the Ombudsman's powers in relation to the Northern Territory. Transitional arrangements in relation to the Ombudsman's jurisdiction in the Northern Territory have been operating since the Northern Territory (Self-Government) Act 1978 came into effect. Paragraphs (b), (c), (d), (f) (in part), (g), (h) and (j) of this sub-clause are amendments consequential on the considerations dealt with above (cf. also clause 7(b) and (c)).

5. Paragraph (e) amends the definition of prescribed authority so that the ad hoc appointment of a judge to an authority (where legislation does not provide for such an appointment), does not result in the authority being automatically excluded from the Ombudsman's jurisdiction.

6. Paragraph (f) also excludes Royal Commissions from the Ombudsman's jurisdiction.

7. Paragraph (k) substitutes a new sub-section 3(4) to enable the Ombudsman to take up with the relevant Department a complaint about the actions of a person appointed, to perform a function for that Department or its Minister. This will make clear that, for example, the actions of advisory bodies that are made up of people who are not officers of Departments or prescribed authorities are reviewable by the Ombudsman. The clause provides in a new sub-section 3(4A), however, that where persons are appointed to perform such functions otherwise than

under an enactment the regulations can specify exceptions where necessary.

8. Paragraph (m) provides in a new sub-section 3(5A) that when departmental officers are performing functions directly related to the duties of a statutory officer deemed by regulation not to be a prescribed authority, they too can be excluded from the Ombudsman's jurisdiction by regulation. For example, the staff of the Auditor-General, who is himself excluded from the Ombudsman's jurisdiction, are at present taken to be officers of the Department of the Prime Minister and Cabinet. The new sub-section recognises that a proper extension of the exclusion of a statutory office holder from the Ombudsman's jurisdiction is that his staff could similarly be excluded.

9. Paragraph (n) makes it clear that the 'taking of action' as defined by sub-section 3(7) includes the 'formulation of a proposal'.

10. Paragraph (n) also provides in a new sub-section 3(7A) that a reference to an 'Ombudsman of a State' means 'Ombudsman' as a generic term to include the 'Parliamentary Commissioner for Administrative Investigations' in Queensland and Western Australia. A new sub-section 3(7B) provides that a reference to an 'Ombudsman of a State' includes a reference to the Northern Territory Ombudsman. Similarly a reference to a law of a 'State' in this context includes a reference to an enactment of the Northern Territory.

Sub-Clause 4(2)

11. This sub-clause provides definitions for a number of words and expressions for the purpose of the legislation as it

is extended to provide for a DFO. These definitions are explained in the context of clause 20 which establishes the DFO function (see paras 47 and 52 below).

Clause 5 - Application of Act

12. This clause inserts a new section 3A which makes explicit that the jurisdiction of the Ombudsman extends over administrative actions taken by Commonwealth officials and Departments or prescribed authorities both within and outside Australia and the external territories.

Clause 6 - Establishment of offices of Ombudsman and Deputy Ombudsman

13. This clause amends section 4 to provide for an additional Deputy Ombudsman to assist with matters arising under the new DFO function. (see parag 45 below).

Clause 7 - Functions of Ombudsman

14. Sub-clause (a) provides for the deletion of the word 'other' from the description of the functions of the Ombudsman contained in paragraph 5 (i)(b) of the Principal Act, to clarify that the Ombudsman may investigate any action of his own motion.

15. Sub-clause (b) and (c) are consequential on the Act applying both within and outside Australia and extend to external territories, but not to the executive government of the Northern Territory or Norfolk Island.

16. Sub-clause (e) deletes paragraph 5(2)(f) which excluded the Ombudsman from investigating 'action that the Defence Force Ombudsman is authorised to investigate'. This provision will be made redundant with establishment of a statutory Defence Force Ombudsman and vesting that office in

the Commonwealth Ombudsman under this Act.

17. Sub-clause (f) amplifies sub-section 5 (3) to put beyond doubt that action taken by a delegate of a Minister is not excluded from the Ombudsman's jurisdiction.

18. Sub-clause (f) also inserts a new sub-section 5 (3A) which clarifies that the Ombudsman's exclusion from investigating the actions of Ministers (at paragraph 5(2)(a) of the Principal Act) does not exclude him from investigating the actions by departments and authorities which lead up to or follow a Minister's personal involvement. For example, it removes any doubt that departmental advice to a Minister is reviewable or that action taken by a Department to give effect to a decision taken personally by a Minister is also reviewable.

Clause 8 - Discretion not to investigate certain complaints

19. This clause amends section 6 to provide the Ombudsman with greater flexibility in exercising his discretion whether to investigate complaints formally so that he can respond to complaints in the most appropriate and effective fashion. The conditions in which the Ombudsman might apply his discretion have been simplified by amendments to sub-section 6(1), and sub-section 6(3) has been amended to provide that the Ombudsman may decline to investigate, or to investigate further, where he is of the opinion that the complainant should avail (or should have availed) himself of a remedy provided by a court or tribunal.

20. The clause also creates new sub-sections 6(1A), 6(1B) and 6(1C) which enable the Ombudsman to decline to investigate

an action where the complainant has not sought redress previously from the Department or prescribed authority concerned. Where, however, the complainant informs the Ombudsman that he has sought redress from the Department or prescribed authority concerned and no redress or no adequate redress has been granted, the Ombudsman shall investigate the complaint if he is of the opinion that the redress is inadequate or, where no redress has been granted, sufficient time has elapsed in which redress could have been forthcoming.

Clause 9 - Complaints and Preliminary Inquiries

21. Clause 9 in conjunction with clause 10 effects a number of amendments to provide for greater flexibility and informality in both the making of complaints and in their investigation. This will provide legislative backing for the Ombudsman's administrative practice whereby the majority of complaints are resolved through informal contact with Departments and prescribed authorities.

22. Clause 9 provides a new section 7 to permit that a complaint to the Ombudsman may be made orally, and not just in writing. The Ombudsman may, however, put an oral complaint into writing or require the complainant to do so. Clause 10 requires that if the Ombudsman wishes to pursue an investigation in the formal manner provided in section 8 (with its attendant investigatory powers under sub-section 8(5)) and section 9) the complaint must be put into writing.

23. Clause 9 also makes it easier for a person in custody to complain to the Ombudsman and protects the confidentiality of communications between such a complainant and the Ombudsman. (The current provisions allow a complaint to be made

confidentially to the Ombudsman but does not protect further communications between the complainant and the Ombudsman). The new provisions also enable the Ombudsman to make arrangements with the appropriate authority of a State or Territory for the delivery of confidential communications from the Ombudsman to persons in state or territory custodial institutions. This formalises, on the Commonwealth's part, the existing practice.

Preliminary Inquiries

24. New section 7A will clarify that the Ombudsman may make 'preliminary inquiries' of a principal officer of a Department or prescribed authority or designated contact officers for the purpose of determining whether he has the authority to investigate a particular complaint. The new section also recognises that the formal procedures set out for investigations in the existing section 8 may be unnecessary for many complaints, and makes it clear that the Ombudsman may make preliminary inquiries to determine whether formal investigation is necessary or whether a complaint might be resolved by informal contact at a preliminary stage. Thus the extent of investigation required may be better matched to the nature of the complaint, with the least possible demand on all parties' resources.

Clause 10 - Investigations

25. The existing provisions in sub-section 8(1) require that the Ombudsman, before commencing an investigation, inform the responsible Minister and the principal officer of the Department or prescribed authority concerned. The new sub-sections 8(1) and 8(1A) provided in clause 10(a) enable the principal officer of a Department or prescribed authority to

make arrangements with the Ombudsman about how and when the Ombudsman will give this advice.

26. The clause requires in a new sub-section 8(7A) that the Ombudsman, before invoking his power to require a person to appear before him and make submissions (under sub-section 8(5)) or to furnish information or documents (under sub-section 9(4)), should formalise his investigations, if he has not already done so, by informing the responsible Minister and putting the complaint into writing. This does not alter the provision (in sub-section 8(8) of the Principal Act) allowing the Ombudsman to discuss investigations with responsible Ministers at any time.

Clause 11 - Investigations by Commonwealth and State

Ombudsmen

27. This clause proposes, in a new section 8A, a statutory basis for the Commonwealth Ombudsman to make arrangements with his State and Northern Territory counterparts for investigations where both Commonwealth and State responsibilities are involved. (cf. also new section 34 provided by clause 25, which enables the Ombudsman to accept delegations from State Ombudsmen, in addition to his current power to delegate to them).

28. The Commonwealth Ombudsman may arrange with his counterparts to revoke or vary such arrangements. The arrangements themselves, or their revocation or variation, must be in writing. The section provides that, where necessary, regulations may be made relating to the Commonwealth Ombudsman's participation in investigations pursuant to a co-operative arrangement. Any such regulation would be prepared

in consultation with the State or Territory governments concerned.

Clause 12 - Power to obtain information and documents

29. Sub-clause (a) provides, in new sub-sections 9(1), 9(1A) and 9(2), for an expansion of the provisions which enable the Ombudsman to require persons to testify: he will be allowed to specify the time and place information is to be made available to him and he will also be allowed to make full use of documents and records provided to him. While documents or records are in the Ombudsman's possession, however, those people who would normally have access to them are to be allowed to examine them at any reasonable time.

30. This sub-clause also removes the stipulation that the Ombudsman must seek Ministerial approval before he can call any person (other than the complainant, a person who requested the complainant to make the complaint or an officer of a Department or prescribed authority) who he believes able to provide information relevant to an investigation.

31. Sub-section 9(3) of the Principal Act provides that the Attorney-General may issue a certificate stopping the Ombudsman from seeking restricted kinds of information whose disclosure would be contrary to the public interest. Sub-clause (b) amends paragraph 9(3)(d), to include among these information that would involve the disclosure of deliberations of the Executive Council.

32. Sub-clause (c) amplifies sub-section 9(4) so that any information provided by people called before the Ombudsman is not admissible in evidence against them except in proceedings under section 36 or an application under new sub-section 11A(2)

Clause 13 - Unreasonable delay in exercising power

33. Section 10 of the Principal Act enables the Ombudsman to certify that there has been unreasonable delay in the taking of a decision which is reviewable by the Administrative Appeals Tribunal. Such a certificate, once issued, has the effect that the decisionmaker is deemed to have taken a decision not to do something with the right to appeal accruing accordingly to the complainant. Clause 13 extends section 10 to allow the Ombudsman to issue similar certificates where there is a right of review by other tribunals which are prescribed by regulation. New sub-section 10(1A) makes it clear that the Ombudsman can issue certificates where the 'decision' is on internal review.

Clause 14 - Reference of question to the Administrative Appeals Tribunal (AAT)

34. Existing section 11 of the Principal Act provides that the Ombudsman may recommend to the principal officer of a Department or prescribed authority that, where there has been a complaint, questions about the taking of action under a 'discretionary' power may be referred to the AAT for an advisory opinion. Clause 14 expands this section to enable the Ombudsman to recommend that these questions should be put to the AAT whether or not a complaint has been made about the action and whether or not that action was taken under a 'discretionary' power.

Clause 15 - Powers of Federal Court of Australia

35. The clause provides a new section 11A which creates a procedure whereby the Ombudsman or the principal officer of a Department or prescribed authority can refer to the Federal

Court of Australia issues concerning the Ombudsman's functions or powers. The clause further provides that the Ombudsman may apply for a Federal Court order where a person fails to comply with a notice issued by the Ombudsman requiring him to furnish information, to produce documents or records or to attend before him.

36. The clause provides in new 11A(5) that, before court action is initiated by either the Ombudsman or the principal officer, relevant Ministers must be informed of the reasons for the intended action. This is to ensure that all opportunities for settling the matter by agreement have been explored.

Clause 16 - Complainant and Department, etc., to be informed.

37. This clause extends the existing provisions in section 12 which deal with the manner in which the Ombudsman is to inform the complainant and the Department or prescribed authority of the outcome of an investigation of, or a decision not to investigate a complaint or to investigate it further.

38. Where the Ombudsman does not investigate or complete investigation of a complaint he is required as soon as practicable to inform the complainant of his decision and provide reasons for it. The Ombudsman may, however, make arrangements with Departments or prescribed authorities about how and when such information will be provided for specified kinds of complaint. These arrangements might take account of the large number of complaints resolved informally. (see para 24 above)

39. The clause also provides the Ombudsman in a new sub-section 12(4) with a discretion to direct to any Department or prescribed authority any 'comments or suggestions' that

arise out of his investigations. The discretion is quite different from the Ombudsman's formal powers under section 15 to report adversely where he finds defective administration, and recognises the role the Ombudsman has to play in the general promotion of fair and efficient administration. It would enable him, for example, to direct to the attention of an agency such as the Auditor-General or the Public Service Board trends or patterns which have emerged in his investigations. The discretion can also be applied where the Ombudsman determines that, having made a report under section 15 on a particular investigation to the Department concerned, another agency might benefit from comments or suggestions on matters that have been brought to light by that investigation.

40. This clause, in an amended paragraph 12(5)(b), also allows the Ombudsman to give a complainant a copy of any recommendations he has made.

Clause 17 - Reports by Ombudsman

41. This clause makes it clear that a failure to take relevant considerations into account in reaching a decision is a ground of defective administration. This provision brings the Principal Act into line with the Administrative Decisions (Judicial Review) Act (paragraphs 5(2)(b) and 6(2)(b)).

Clause 18 - Repeal of Section 18.

42. This clause repeals section 18 of the Act which deals with the Ombudsman's reports relating to the Northern Territory. The provision of these reports is unnecessary because the actions of the Northern Territory administration are now outside the Ombudsman's jurisdiction.

Clause 19 - Annual report and additional reports to Parliament

43. This clause amends section 19 which sets out the Ombudsman's duties and powers in respect to annual and additional reports to Parliament. The clause provides that the annual report may have included in it a report of the Ombudsman's operations concerning action taken by officers under Australian Capital Territory (ACT) legislation and that the Ombudsman will be understood to have made a report to the ACT House of Assembly when this part of the report is submitted to the Minister for the Capital Territory for presentation to that House.

44. The section is also amended to provide that the Ombudsman may submit special reports to the Minister. The power to make special reports will allow the Ombudsman to inform the Parliament about any major investigations with wide implications and about developments in the Ombudsman's role which should be drawn to attention without delay. Such 'additional reports' are not to alter the pattern of reporting on particular investigations as laid down in sections 15, 16 and 17 of the Principal Act. The 'additional reports' will, similarly to reports under section 15, 16 and 17, be subject to the 'natural justice' requirements provided in sub-section 8(5) before any criticism of a Department prescribed authority or person can be made expressly or implicitly in them.

Clause 20 - Establishment, functions, powers and duties of the Defence Force Ombudsman (DFO)

45. This clause inserts a new Part IIA which establishes a specially identified office of Defence Force Ombudsman (DFO) to be exercised by the Commonwealth Ombudsman or a person

acting in that office by virtue of an appointment under section 29. The Bill provides for an additional Deputy Ombudsman to be appointed by the Governor-General and for the Minister to designate a Deputy as the Deputy Ombudsman (Defence Force) (cf. clauses 6 and 21). It is intended that most of the functions and powers of the DFO will be delegated to this Deputy, thus ensuring that the role of DFO is identifiable and distinct while still maintaining its place as a complement to the wider role of the Commonwealth Ombudsman.

46. The establishment of a statutory office of DFO will provide a means for the independent review of grievances stemming from defence employment. Creation of the office recognises the extent to which service in the Defence Force influences its members' lives. The DFO's role is not significantly different in kind, however, from the role of the Commonwealth Ombudsman i.e. that of providing a means by which individuals can have investigated administrative actions affecting them. Proposed section 19D recognises that complaints directed to either the Commonwealth Ombudsman or to the DFO may in fact be more appropriately handled within the functions of the other Office.

Proposed Section 19A - Interpretation

47. This section provides that a reference in the new Part to the 'relevant law' is a reference to the Defence Act 1903, the Naval Defence Act 1910 and the Air Force Act 1923, as appropriate. Sub-clause 4(2) also includes the following relevant interpretative provisions:

Sub-section 3(1) will be amended to provide that
'Deputy Ombudsman (Defence Force)' means the Deputy
designated by the Minister in accordance with

sub-section 23(1) as the Deputy Ombudsman (Defence Force).

- . Proposed sub-section 3(6A) provides that action will be deemed to have been taken by a member of the Defence Force if he takes or purports to take it by virtue of his being a member of the Defence Force. Such an action may arise from his duties as a member of the Defence Force or be incidental to them. (This formulation follows that provided in sub-sections 3(5) and 3(6) of the Principal Act in relation to officers of Departments or prescribed authorities).
- . Proposed sub-section 3(6C) provides that a reference to a 'member' of the Defence Force may include a person (including a deceased person) who was at any time a member of the Defence Force.
- . Proposed sub-sections 3(11) and (12) deem the Defence Force to be a prescribed authority for the purposes of the Act and in consequence references to officers of a prescribed authority constitute references to members of the Defence Force; the Chief of Defence Force Staff is specified to be its 'principal officer'; and the Minister for Defence is the 'responsible Minister' for the Defence Force. Since some complaints will involve actions of both Defence Force members and officers of the Department of Defence, proposed sub-section 3(13) will enable arrangements to be made between the DFO, the Chief of Defence Force Staff and the

principal officer of the Department of Defence for convenient processing of such complaints.

Proposed section 19B - Establishment of Office of Defence Force Ombudsman

48. This section establishes the office of Defence Force Ombudsman to be held by the Commonwealth Ombudsman or a person acting in that position.

Proposed section 19C - Functions of Defence Force Ombudsman

49. This section sets out the functions of the DFO and follows section 5 of the Principal Act which in turn sets out the functions of the Commonwealth Ombudsman. The features of this section specific to the DFO are discussed below.

50. The DFO will investigate administrative actions concerning matters related to or arising in consequence of a person's service in the Defence Force. This includes (as provided in 19C(4)) payment of an allowance or pension to, or a benefit for, a member or dependant of a member of the Defence Force. A dependant of a Defence Force member is defined, by 19C(8), to include a person who is (or claims to be) a dependant of a member or claims to have been a dependant of a deceased member of the Defence Force.

51. The DFO is empowered to investigate action taken either before or after the commencement of this part of the Act. On commencement of this Part the

activities of the interim office of Defence Force Ombudsman (which has operated on an administrative basis in the Department of Defence since 1975) will be discontinued and outstanding complaints will be transferred to the statutory DFO. Complaints being investigated by the Commonwealth Ombudsman at the time of the commencement of this Part may be handled by him as DFO, if in his opinion that is more appropriate.

52. While there are limits to the Commonwealth Ombudsman's jurisdiction as outlined in sub-section 5(2) of the Principal Act, and which are mirrored in new sub-section 19C(5), in this sub-section certain other actions are also defined as specifically outside the DFO's jurisdiction. These are listed below:

- . 19C (5)(d) excludes the DFO from investigating action related to disciplinary proceedings instituted against a member of the Defence Force. This exception does not prevent the DFO examining actions that relate to matters peripheral to such proceedings e.g. the conditions in military detention centres.
- . 19C(5)(e) provides that the DFO cannot investigate actions taken in connection with the granting or refusal of honours or awards, except awards for particular service (e.g. campaign medals).

Sub-sections 19C(6) and 19C(7) also clarify the extent of the DFO's exclusion from Ministers' actions. (see paras 17 and 18 above).

Clause 4(2)(b) provides in new section 3(6B) that the Ombudsman may not investigate action concerning the appointment of a Chief of Defence Force Staff, Naval Staff, General Staff, or the Air Staff.

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

53. This section provides that a complaint to either the Commonwealth Ombudsman or to the DFO may, if it seems more appropriate, be handled in either capacity.

Proposed section 19E - Discretion with respect to certain complaints.

54. This section provides that the DFO shall not usually investigate a complaint by a serving member of the Defence Force unless the member first seeks redress through the internal redress of wrongs procedure and a period of twenty-eight (28) days elapses. The DFO may, in his discretion, still investigate without these conditions being met if he considers he is justified in doing so by special circumstances. Where redress has been granted the DFO may still investigate the action if that redress is not, in the opinion of the complainant and the DFO, reasonably adequate. The Ombudsman may, of course, continue to investigate a matter of his own motion where a complainant is satisfied with the redress granted. The section recognises the value of established procedures for redress and the need to respect the right of senior officers to be apprised of,

and be given first opportunity to remedy, the grievances of those under their command (cf. section 6 which outlines the discretions of the Commonwealth Ombudsman in this regard).

Proposed Section 19F - Application of provisions of Act to Defence Force Ombudsman

55. This section provides that, with the exception of certain specified sections, references to the Ombudsman in the Act are to be read as including the DFO. Most of the exceptions are of sections that have been incorporated with specific reference to the DFO in Part IIA. Other sections are excepted because they relate to appointments and staffing and are administrative rather than functional. Sub-section 6(1A), however, (see para 19) is not to apply to the DFO, as a different relationship between the DFO and the internal redress of wrongs system is envisaged under proposed section 19E (see para 53).

Clause 21 - Deputy Ombudsman

56. Sub-clause (a) amends section 23 of the Principal Act to allow the Minister to designate a Deputy Ombudsman as Deputy Ombudsman (Defence Force).

57. Sub-clause (b) amends sub-section 23(2) to make it clear that, should a Deputy Ombudsman for the ACT be designated, he would have jurisdiction over action taken by Departments or prescribed authorities in connection with the internal administration of the ACT. This removes any ambiguity in the existing wording.

Clause 22 - Absence of leave

58. This clause amends section 28 with the effect that the Ombudsman and Deputy Ombudsman may take leave for up to 14 days without the necessity for Ministerial approval. This will allow for short-leave arrangements to be made within the Ombudsman's office.

Clause 23 - Acting appointments

59. This clause provides a new section 29 to allow for a simpler procedure for acting appointments in the statutory offices under by the Act. Under this new section, the Governor-General could provide in an instrument of appointment for standing arrangements whereby specified persons are to act in statutory offices whenever they are vacant.

Clause 24 - Ombudsman not to be sued

60. This clause makes clear that, as with the Ombudsman, a delegate of the Ombudsman is protected from any action, suit or proceeding which arises out of any action taken in good faith in the exercise, or purported exercise, of the powers or authority conferred by the Principal Act.

Clause 25 - Delegation

61. This clause amends section 34, which sets out the Ombudsman's powers of delegation, to allow that the Ombudsman may also delegate to a person his powers as DFO (except his reporting powers under sections 15, 16, 17, and 19.) With Ministerial approval the Ombudsman may also accept delegations made under State laws from his State counterparts. This amendment will facilitate

co-operation between State and Commonwealth Ombudsmen (cf. new section 8A; paras 26 and 27 above). The Ombudsman may delegate any powers he exercises by virtue of a delegation from a State counterpart if that is consistent with the State law under which he received the delegation.

Clause 26 - Officers to observe confidentiality

62. This clause amends the provision protecting confidentiality to take account of the need to protect information which may be passed between the Commonwealth and State Ombudsmen. This clause acknowledges that adequate assurance of confidentiality is a necessary condition of co-operation between Ombudsmen.

63. Information gained from a State Ombudsman or by the Commonwealth Ombudsman acting under a delegation from a State Ombudsman will be specifically subjected to the same confidentiality provisions as for information obtained by the Commonwealth Ombudsman. The Ombudsman may, in turn, furnish to his State counterparts any information, document or extract or copy of a document relevant to an investigation being carried out under the new co-operative arrangements or to a matter arising under a State law. The Ombudsman must, however, be satisfied that the State's laws ensure their confidentiality in a manner similar to the Principal Act.

Clause 27 - Disclosure of information by Ombudsman

64. This clause creates a new section 35A which provides that the Ombudsman has the discretion,

exercisable in the interest of any person or agency or otherwise in the public interest, to disclose information or make statements either on the general operation of his office or, subject to certain conditions detailed below, about particular investigations. This new section would, for example, allow the Ombudsman to set the record straight in answer to uninformed public comment. The section is not intended however, to alter the essentially private nature of investigations. Such a statement is not to:

- . hinder the proper completion of investigations, or pre-empt the reports that follow them.
- . set out opinions that are, either expressly or implicitly, critical of a Department or prescribed authority or person unless all the persons concerned have been given an opportunity to make submissions on that investigation as provided under sub-section 8(5) of the Principal Act.
- . identify unreasonably a complainant.

Clause 28 - Offences

65. This clause amends section 36 to provide that a person shall not fail or refuse to comply with a request made by the Ombudsman unless he has a reasonable excuse. The requirement of a 'reasonable' excuse replaces the earlier criterion of 'lawful' excuse.

The substitution recognises that an excuse that is provided in law may not in all the circumstances be reasonable and brings this provision into line with

the parallel provision in the Complaints
(Australian Federal Police) Act 1981.

Clause 29 - Protection from civil actions

66. This clause amends section 37 to make it clear that civil actions (for example defamation proceedings) cannot be taken against a person where it is alleged that that person in making a complaint to the Ombudsman or making a statement, furnishing a document or information to an officer of the Ombudsman's office in good faith (whether or not that statement, document or information was required by that officer under the Act), causes loss, damage or injury of any kind to another person.

Clause 30 - Transitional

67. This clause provides transitional arrangements to facilitate the introduction of the new DFO jurisdiction and the other amendments in this Bill:

- where complaints have been received prior to the commencement day of the new provisions but their investigation has not then begun, they will be treated as if they had been made under the provisions of the amended Act. However, the Ombudsman will be able to complete investigations under the provisions applying at the time that an investigation was initiated, whether or not he completes the investigation before the commencement day of the new provisions.
- the Ombudsman may decide that a complaint made to

him in his capacity as Commonwealth Ombudsman

before the commencement day would be more

appropriately handled by him as DFO. Such

complaints will be handled as if they had

originally been made to him as DFO.

the DFO will be able to complete investigation of

complaints which were made to the interim office of

DFO (see para 49) and to be given all information

relevant to such complaints and investigations held

by this interim office.

