Date Introduced: 26 May 1983
House: House of Representatives
Presented by: Hon. Ralph Willis, M.P., Minister Assisting the Prime Minister for Public Service Matters

**Short Digest of Bill**

**Purpose**

To amend the Ombudsman Act 1976, under which the office of Commonwealth Ombudsman is established, to legislatively establish the office of Defence Force Ombudsman, and to make other changes, largely following recommendations of the Administrative Review Council.

**Background**

The Bill differs slightly from the Ombudsman Amendment Bill 1982, introduced to the House of Representatives on 23 September 1982. Clause 12 of the Bill has been altered by the addition of paragraph (b). The paragraph amends subsection 9(3) of the Principal Act so that the Attorney-General's decision is to be exercised only in relation to disclosure "to the Ombudsman".

Paragraph 5(2)(f) of the Ombudsman Act prevents overlap of the Commonwealth Ombudsman's jurisdiction with that of the Defence Force Ombudsman. The latter office is not a statutory office, but has operated since 1975 by administrative arrangement, and was the recipient of specific appropriation from 1980-81. The volume of complaints handled by the Defence Force Ombudsman is in the vicinity of 250 per year. The ARC working party made no recommendation in this area, as the matter was understood to be already under consideration by the Government. (Report, para. 190). The placing of the office on a statutory basis would be accomplished by this Bill, vesting it in the Commonwealth Ombudsman for the time being. Disciplinary proceedings are to be excluded and Ombudsman review is intended to complement; and to occur following, internal redress procedures.
The territorial jurisdiction of the Commonwealth Ombudsman is to be clarified by the Bill, to extend to Christmas Island and the Cocos(Keeling) Islands, but remove references to powers in relation to the Northern Territory. Jurisdiction is further clarified by removing Royal Commissions from the Ombudsman's sphere. The unwitting removal of a body from the Ombudsman's jurisdiction because a judge sits on it in the capacity of a private citizen is corrected by a provision retaining within the Ombudsman's jurisdiction authorities to which a judge is appointed merely ad hoc without a statutory requirement for a judicial character to the authority.

Subsection 6(3) of the Principal Act gives the Ombudsman the discretion not to investigate a complaint where the complainant has unreasonably failed to exercise an existing right for judicial review. The exclusions caused by freedom of information legislation are partially avoided by section 57 of the Freedom of Information Act.

Various other amendments to be accomplished by the Bill emphasize the informal nature of the Ombudsman's investigations, where the prompt resolution of the complaint is paramount.

Challenges to the Ombudsman's jurisdiction to investigate have been partially alleviated by a new section facilitating determination of the question by the Federal Court. New section 11A(clause 15) gives the Federal Court of Australia jurisdiction to determine questions on application by the Ombudsman, or a principal officer of a Department or agency. A similar opportunity for informal judicial determination is provided by section 11 in relation to the substantive issue. Section 11 of the Act allows the AAT to give an advisory opinion on a question relating to the exercise of a power by an administrative agency.

The Ombudsman's 1980/81 Report included a transcript of an address by the Commonwealth Ombudsman to the Second International Ombudsmen's Conference in Israel. Reference was made to the scope for media publicity in some other countries, most notably Sweden. The power to make public announcements on specific investigations in the public interest is conferred by the new section 35A set out in clause 27 of the Bill. (1980/81 Report, Appendix, section 6).

A facility for report to Parliament on specific investigations, in addition to the annual report required by the principal Act, is contained in amendments to section 19 set out in clause 19 of the Bill.
Main Provisions

By clause 2, the Act will commence from Royal Assent. Certain provisions will come into force by proclamation. These include provisions establishing the Defence Force Ombudsman (clause 20) and Deputy Ombudsmen for the A.C.T. and Defence Force (clause 21). The number of Deputy Ombudsmen is increased from 2 to 3 by clause 6 of the Bill.

Jurisdictional amendments are contained in clause 4, amending the interpretation section of the Ombudsman Act 1976. Clause 7 amends section 5 dealing with the functions of the Ombudsman.

Clause 8 permits the Ombudsman not to investigate certain complaints where there has been a lapse of time or the complaint has not first been addressed to the authority involved.

The informal nature of the Ombudsman's investigations is indicated by the recognition of oral complaints and preliminary inquiries in clause 9. Clause 10 amends section 8 to permit a more flexible arrangement for fulfilling the requirement that the Ombudsman advise the authority that he is about to commence an investigation. Arrangements between the Ombudsman and administrative agencies or State Ombudsmen are facilitated by clause 11, adding a new section 8A to put such arrangements on a statutory basis and require that their terms be in writing and that the arrangement be subject to the regulations.

Clause 12 extends the Ombudsman's powers to obtain documents or information. Clause 13 extends section 10 so that when there has been unreasonable delay in making a decision by the decision maker, the Ombudsman may issue a certificate that there has been unreasonable delay. This is to be deemed to be a decision not to do something, so permitting appeal to the AAT to review the deemed decision.

Clause 15 inserts a new section 15A permitting a Federal Court ruling on the jurisdiction of the Ombudsman.

A new section 12 requiring the parties to be informed of the progress of investigation is substituted by clause 16. Power to inform other agencies is incorporated in the new section.

Special reports for presentation of Parliament in addition to annual reports are provided for by amendment to section 19 set out in clause 19 of the Bill.
The present Bill differs from the 1982 Bill in that clause 19 inserts in section 19 of the Principal Act additional subsections (6), (7), (7A) and (7B). These provisions allow an extension of time for presenting the Ombudsman's annual reports to Parliament and the A.C.T. House of Assembly.

A new part IIA (sections 19A to 19F) added by clause 20 establishes the office of Defence Force Ombudsman. A separate Ombudsman's office for defence matters has existed in Scandinavia and was adopted in Australia by Ministerial Directive in January 1975 establishing the office of Defence Force Ombudsman, under an executive director, to handle complaints of an administrative nature from individuals in the defence forces. A Deputy Ombudsman with specific responsibilities for the Defence Force and the Australian Capital Territory is provided for by clause 21.

Delegation is dealt with in a new section 34 substituted by clause 25, with confidentiality provisions set out in clause 26. The provision is most relevant where, as in Tasmania, functions of the Commonwealth Ombudsman are exercised by State Ombudsman staff.

For further information, if required, contact:

7 June 1983

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References
