OMBUDSMAN (MISCELLANEOUS AMENDMENTS) BILL 1983

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


Background

The operation of the Ombudsman Act 1976 has recently been reviewed by the Administrative Review Council. The Ombudsman Amendment Bill 1983 makes several changes to the Act, including establishment of the office of Defence Force Ombudsman for the investigation of complaints etc. arising in the defence forces (see Bills Digest 83/53).

Procedures for handling complaints in the Australian Federal Police force are amended by this Bill.

The Australian Federal Police was formed in 1979 by amalgamating the A.C.T. Police and the Commonwealth Police.

Complaints arising within the force are handled under a procedure set out in the Complaints (Australian Federal Police) Act, 1981. An Internal Investigation Division is established and provision is also made for investigation of complaints by the Commonwealth Ombudsman. The Act followed a study by the Law Reform Commission.[1]

Two other Acts are amended by the Bill. The Administrative Decisions (Judicial Review) Act 1977 is amended to state that rights of review conferred by it do not preclude investigations of the matter by the Ombudsman.

Changes to the Audit Act 1901 are consequent upon statutory creation of the office of Defence Force Ombudsman.
Main Provisions

Amendments to the Complaints (Australian Federal Police) Act 1981

Complaints against the Australian Federal Police may be investigated in one of three ways: (i) by the Internal Investigation Division, (ii) by a special investigation under Part IV of the Act, and (iii) by the Ombudsman acting under Division 2 of Part III (sections 25 to 34).

Complaints to the Ombudsman are extended by the Bill. Clause 10 permits complaints to be made orally, and adds new subsections 22(4), (4A), and (4B) permitting persons in custody to make a complaint. New section 24 allows for a preliminary enquiry to the Police Commissioner or other persons to determine whether a formal investigation is warranted. If it is commenced, new subsection 25(1A) facilitates administrative arrangements between the Ombudsman and the Police Commissioner for supply of information. These amendments give the Ombudsman greater discretion to carry out his functions under the Act.

Cooperative investigations between Commonwealth and State or Territory Ombudsmen are put on a statutory basis by new section 25A (clause 14). Confidentiality in such investigations is extended by amendments to section 41 (clause 24).

The Ombudsman's power to require production of documents and supply of information is enhanced by amendments to section 27 (clause 15) and may be enforced by an order of the Federal Court (clause 17).

Clause 16 removes the limitation that only "discretionary" powers can be the subject of an advisory opinion from the Administrative Appeals Tribunal.

Amendments to clauses 5 to 7 express the Ombudsman's territorial jurisdiction in more general terms. Sub-clause 9(a) indicates that actions of administrations in Cocos (Keeling) and Christmas Islands are within the Ombudsman's jurisdiction, and indicates more clearly that actions under Northern Territory or Norfolk Island enactments are not. Subclause 9(6) further defines State Ombudsmen to include the Northern Territory Ombudsman.
Amendments to the Administrative Decisions (Judicial Review) Act 1977

Section 10 of the Administrative Decisions (Judicial Review) Act 1977 is amended by clause 29 so that the rights of review it confers are not abrogated or affected by the more specific rights under the Complaints (Australian Federal Police) Act 1981.

Amendments of the Audit Act 1901

Amendments in Part IV of the Bill to the Audit Act 1901 would exclude the new office of Defence Force Ombudsman from the definition of "public authority" for purposes of Division 2 of part VI of that Act. This amendment would commence on the date fixed by Proclamation under the Ombudsman Amendment Bill 1983 for commencement of provisions creating the office.

For further information, if required, contact:

5 September 1983

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References
