



# Ombudsman Act 2001

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Queensland

# Ombudsman Act 2001

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# Ombudsman Act 2001

**An Act to establish an office of ombudsman for investigating administrative actions taken by, in or for certain agencies, and recommending to agencies ways of improving administrative processes, and for other purposes**

## **Part 1 Preliminary**

### **Division 1 General**

#### **1 Short title**

This Act may be cited as the *Ombudsman Act 2001*.

#### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

#### **3 Definitions**

The dictionary in schedule 3 defines terms used in this Act.

#### **4 Notes**

A note in the text of this Act is part of the Act.

#### **5 Objects of Act**

The objects of this Act are—

- (a) to give people a timely, effective, independent and just way of having administrative actions of agencies investigated; and
- (b) to improve the quality of decision-making and administrative practices and procedures in agencies.

## 6 How objects are to be achieved

The objects of this Act are to be achieved by—

- (a) requiring an ombudsman to be appointed; and
- (b) authorising the ombudsman—
  - (i) to investigate administrative actions of agencies; and
  - (ii) to make recommendations to agencies, generally or in particular cases, about ways of improving the quality of decision-making and administrative practices and procedures; and
  - (iii) to provide advice, training, information or other help to agencies, generally or in particular cases, about ways of improving the quality of decision-making and administrative practices and procedures.

## Division 2 Key concepts

### 7 Meaning of *administrative action*

- (1) An *administrative action* is any action about a matter of administration, and includes—
  - (a) a decision and an act; and
  - (b) a failure to make a decision or do an act, including a failure to provide a written statement of reasons for a decision; and
  - (c) the formulation of a proposal or intention; and

- (d) the making of a recommendation, including a recommendation made to a Minister; and
  - (e) an action taken because of a recommendation made to a Minister.
- (2) However, an operational action of a police officer or an officer of the Crime and Corruption Commission is not an *administrative action*.

## 8 Meaning of *agency*

- (1) An *agency* is any of the following entities—
- (a) a department;
  - (b) a local government;
  - (c) a public authority.
- (2) An agency is taken to include an entity, other than an incorporated entity or an individual, established under an Act as a board, council, committee, subcommittee or other similar entity for helping, or for performing functions connected with, the agency.
- (3) An individual is not an agency under this Act only because the individual holds—
- (a) an office the duties of which are performed as duties of employment as an officer of an agency; or
  - (b) an office of member of an agency; or
  - (c) an office established under an Act for the purposes of an agency.

## 9 Meaning of *public authority*

- (1) A *public authority* is any of the following entities—
- (a) an entity, other than an individual, that is—
    - (i) established for a public purpose under an Act; or

- (ii) established by government for a public purpose under an Act;
  - (b) an entity created by the Governor in Council or a Minister;
  - (c) an entity, other than an individual, declared under a regulation to be a public authority and—
    - (i) supported directly or indirectly by government funds or other help over which government is in a position to exercise control; or
    - (ii) established under an Act;
  - (d) an individual holding an office established under an Act;
  - (e) an individual holding an appointment—
    - (i) made by the Governor in Council or a Minister, other than under an Act; and
    - (ii) declared under a regulation to be a public authority.
- (2) However, none of the following is a **public authority**—
- (a) a department or part of a department;
  - (b) a local government or part of a local government;
  - (c) a court, or the holder of a judicial office connected with a court, when acting judicially or when performing a function the court or office holder is authorised under an Act to perform;
  - (d) a registry or other office of a court, or the staff of a registry or other office of a court in their official capacity, to the extent its or their functions relate to the court's judicial functions.

*Note—*

The entities mentioned in subsection (2)(a) and (b) are agencies under section 8(1).

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**10 What is included in meaning of administrative action of agency**

An administrative action of an agency includes—

- (a) an administrative action taken by, in or for the agency; and
- (b) an administrative action taken by or for an officer of the agency; and
- (c) an administrative action taken for, or in the performance of functions conferred on, an agency, by an entity that is not an agency.

## **Part 2 The ombudsman**

**11 Ombudsman**

- (1) There is to be an ombudsman.
- (2) The ombudsman is an officer of the Parliament.

**12 Functions of ombudsman**

The functions of the ombudsman are—

- (a) to investigate administrative actions of agencies—
  - (i) on reference from the Assembly or a statutory committee of the Assembly; or
  - (ii) on complaint; or
  - (iii) on the ombudsman's own initiative; and
- (b) to consider the administrative practices and procedures of an agency whose actions are being investigated and to make recommendations to the agency—
  - (i) about appropriate ways of addressing the effects of inappropriate administrative actions; or
  - (ii) for the improvement of the practices and procedures; and

- (c) to consider the administrative practices and procedures of agencies generally, and to make recommendations or provide advice, training, information or other help to the agencies about ways of improving the quality of administrative practices and procedures; and
- (d) to provide advice, training, information or other help to agencies, in particular cases, about ways of improving the quality of administrative practices and procedures; and
- (e) the other functions conferred on the ombudsman under this or any other Act.

### **13 Ombudsman not subject to direction**

Subject to any other Act or law, the ombudsman is not subject to direction by any person about—

- (a) the way the ombudsman performs the ombudsman's functions under this Act; or
- (b) the priority given to investigations.

## **Part 3 Investigation of administrative actions of agencies**

### **Division 1 Extent of jurisdiction**

#### **14 What ombudsman may investigate**

- (1) The ombudsman may investigate administrative actions of agencies.
- (2) The ombudsman may investigate an administrative action despite a provision in any Act to the effect that the action is final or can not be appealed against, challenged, reviewed, quashed or called in question.

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## 15 Liaison with complaints entity

The ombudsman may—

- (a) liaise with a complaints entity about the exercise by the ombudsman and the complaints entity of their respective functions for investigating administrative actions; and
- (b) enter into an arrangement with the complaints entity aimed at avoiding inappropriate duplication of investigative activity.

## 16 What ombudsman may not investigate

- (1) The ombudsman must not question the merits of—
  - (a) a decision, including a policy decision, made by a Minister or Cabinet; or
  - (b) a decision that the ombudsman is satisfied has been taken for implementing a decision made by Cabinet.
- (2) Also, the ombudsman must not investigate administrative action taken by—
  - (a) a tribunal, or a member of a tribunal, in the performance of the tribunal's deliberative functions; or
  - (b) a person acting as legal adviser to the State or as counsel for the State in any legal proceedings; or
  - (c) a member of the police service, if the action may be, or has been, investigated under the *Crime and Corruption Act 2001*; or
  - (d) a police officer, if the officer is liable to disciplinary action, or has been disciplined, under the *Police Service Administration Act 1990*, part 7 because of the action; or
  - (e) the auditor-general; or
  - (f) a mediator at a mediation session under the *Dispute Resolution Centres Act 1990*; or
  - (g) a person in a capacity as a conciliator under the *Health Rights Commission Act 1991*, the repealed *Health*

*Quality and Complaints Commission Act 2006* or the *Health Ombudsman Act 2013*; or

- (h) the information commissioner in the performance of the commissioner's functions under the *Right to Information Act 2009*, section 128, 129, 130 or 131.

## **17 Application to Supreme Court**

- (1) This section applies if, in an investigation, a question arises about whether the ombudsman has jurisdiction to conduct the investigation.
- (2) The ombudsman may apply to the Supreme Court to decide the question.
- (3) The application must be heard in closed court.

*Note—*

This section does not stop applications being made under the *Judicial Review Act 1991* by entities whose actions are being investigated or by complainants.

## **Division 2 When administrative actions may be investigated**

### **18 When ombudsman may investigate administrative action**

- (1) The ombudsman may investigate administrative action of an agency if—
  - (a) a complaint is made about the administrative action; or
  - (b) the ombudsman otherwise considers the administrative action should be investigated.
- (2) The ombudsman must investigate a parliamentary reference of an administrative action of an agency.



## 19 Assembly may refer administrative action for investigation

- (1) The Assembly or a statutory committee of the Assembly may refer to the ombudsman, for investigation and report, any administrative action of an agency the ombudsman may investigate that the Assembly or committee considers should be investigated by the ombudsman.
- (2) The ombudsman must ensure the investigation is started as soon as possible after the reference is made.

## Division 3 Complaints

### 20 Complaints

- (1) Unless this section otherwise provides, a complaint about an administrative action of an agency—
  - (a) may be made orally or in written form; and
  - (b) may be made by any person, or by any body of persons, whether incorporated or not (**complainant**), apparently directly affected by the action; and
  - (c) must be made within 1 year after the day the complainant first had notice of the action.
- (2) For subsection (1)(c), a complainant is taken to have had notice of the action at the time the complainant might reasonably be expected to have had notice of the action.
- (3) Despite subsection (1), the ombudsman may—
  - (a) decline to investigate an oral complaint until the complaint is put in writing; or
  - (b) accept a complaint made for a complainant by a person apparently representing the complainant; or
  - (c) accept a complaint after the end of the period mentioned in subsection (1)(c) if the ombudsman considers it is proper to accept the complaint because special circumstances exist; or

- (d) accept a complaint even though the complaint may not on its face be against an administrative action or agency if the ombudsman considers there is a likelihood that the cause for complaint arose from an administrative action.
- (4) The ombudsman may, if the ombudsman considers it necessary for achieving the objects of this Act for a particular complaint, give a person the help necessary to put the complaint in writing.
- (5) However, if the person who could have made a complaint under this Act has died or the ombudsman considers the person can not, for any reason, act for himself or herself, the complaint may be made by an individual who is, in the ombudsman's opinion, suitable to represent the person (also a *complainant*).
- (6) Also, if a person making the complaint is in custody or detention, the relevant custodian must ensure all necessary steps are taken to facilitate the making of the complaint.

Maximum penalty for subsection (6)—100 penalty units or 1 year's imprisonment.

- (7) In this section—

*relevant custodian* means—

- (a) if the person making the complaint is in the custody of the chief executive (corrective services)—the chief executive (corrective services); or
- (b) otherwise—the person in charge of the place of custody or detention.

## 21 Effect of restrictive provisions on complaints

If a provision, of an Act, prohibits or restricts, or authorises or requires the imposition of prohibitions or restrictions on, communication, the provision does not apply to a communication made for the purpose of making a complaint under this Act.

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## **22 Preliminary inquiry**

- (1) For this division, the ombudsman may make reasonably necessary inquiries to decide whether a complaint should be investigated.
- (2) The principal officer of the agency must give the ombudsman reasonable help in the conduct of a preliminary inquiry.

## **23 Refusal to investigate complaint**

- (1) The ombudsman may refuse to investigate a complaint or, having started to investigate a complaint, may refuse to continue the investigation if the ombudsman considers that—
  - (a) the complaint is trivial; or
  - (b) the complaint is frivolous or vexatious or is not made in good faith; or
  - (c) the complainant does not have a sufficient direct interest in the action complained of; or
  - (d) both of the following apply—
    - (i) the complainant has a right of appeal, reference or review, or another remedy, that the person has not exhausted;
    - (ii) it would be reasonable in the circumstances to require the person to exhaust the right or remedy before the ombudsman investigates, or continues to investigate, the complaint; or
  - (e) both of the following apply—
    - (i) the complainant had a right of appeal, reference or review, or another remedy that is exhausted;
    - (ii) in the circumstances, the investigation, or the continuance of the investigation, of the action complained of is unnecessary or unjustifiable; or
  - (f) in the circumstances, the investigation, or the continuance of the investigation, of the action complained of is unnecessary or unjustifiable.

- (2) Also, the ombudsman need not investigate a complaint to the extent that the ombudsman is satisfied a complaints entity has investigated, or will investigate, the action complained of at a level at least substantially equivalent to the level at which the ombudsman would otherwise investigate the complaint.
- (3) A right or remedy mentioned in subsection (1)(d)(i) or (e)(i) does not include a right under the *Judicial Review Act 1991* to make application to the Supreme Court.
- (4) If the ombudsman—
  - (a) can not investigate a complaint; or
  - (b) refuses to investigate a complaint; or
  - (c) refuses to continue an investigation of a complaint;the ombudsman must inform the complainant, in a way the ombudsman considers appropriate, of the decision and the reasons for the decision as soon as reasonably practicable.

## **Division 4            Other provisions**

### **24            Investigations generally**

- (1) The ombudsman may conduct an investigation or part of an investigation—
  - (a) informally; or
  - (b) by exercising powers under part 4.
- (2) If an investigation is being conducted informally under subsection (1)(a), the principal officer of the agency to which the investigation relates must give the ombudsman reasonable help in the conduct of the investigation.

### **25            Procedure**

- (1) Unless this Act otherwise provides, the ombudsman may regulate the procedure on an investigation in the way the ombudsman considers appropriate.

- 
- (2) The ombudsman, when conducting an investigation—
- (a) must conduct the investigation in a way that maintains confidentiality; and
  - (b) is not bound by the rules of evidence, but must comply with natural justice; and
  - (c) is not required to hold a hearing for the investigation; and
  - (d) may obtain information from the persons, and in the way, the ombudsman considers appropriate; and
  - (e) may make the inquiries the ombudsman considers appropriate.

## 26 Consultation

- (1) The ombudsman may, during or after an investigation, consult any Minister who is concerned in the action complained of.
- (2) The ombudsman must consult with a Minister if—
  - (a) either—
    - (i) the Minister asks to consult with the ombudsman about an investigation; or
    - (ii) an investigation relates to a recommendation made to the Minister; and
  - (b) the ombudsman is considering making a report under section 50 about the investigation.
- (3) If, during an investigation, the ombudsman considers there may be grounds for making a report on the investigation that may affect or concern an agency, the ombudsman must, before making the report, give the principal officer of the agency an opportunity to comment on the matter under investigation.
- (4) In this section—

*Minister* includes a local government’s chairperson, mayor or president.

## **Part 4 Powers and procedures for investigations**

### **Division 1 Ombudsman's powers for conducting investigations**

#### **27 Notice to principal officer**

- (1) If—
  - (a) the ombudsman decides, or is required, to conduct an investigation into an administrative action of an agency; and
  - (b) the ombudsman intends to exercise powers under this part;the ombudsman must, before exercising the powers, give the principal officer of the agency a notice under subsection (2).
- (2) The notice must—
  - (a) inform the officer of the ombudsman's intention to conduct the investigation; and
  - (b) identify, to the extent reasonable in the circumstances, the administrative action the subject of the investigation; and
  - (c) inform the officer in general terms of the powers the ombudsman may exercise under this part for investigations.
- (3) On the giving of the notice, the ombudsman may exercise powers under this part for the investigation.

#### **28 Requirement to give document or information**

The ombudsman may by notice given to a person, require the person, within a stated reasonable time—

- (a) to give the ombudsman—

- 
- (i) an oral or written statement of information of a stated type relevant to the investigation; or
  - (ii) a stated document or other stated thing relevant to the investigation, or a copy of a stated document; or
  - (iii) all documents of a stated type containing information relevant to the investigation, or copies of documents of the stated type; or
- (b) to create, and give the ombudsman, a document containing information reasonably required for the investigation.

## **29 Requirement to attend and to give document or information**

- (1) The ombudsman may by notice given to a person, require the person—
- (a) to attend before the ombudsman at a stated reasonable place and time; and
  - (b) at the stated place and time, to do 1 or more of the following as stated in the notice—
    - (i) give the ombudsman information of a stated type relevant to the investigation;
    - (ii) answer questions relevant to the investigation the ombudsman reasonably requires to be answered;
    - (iii) give the ombudsman a stated document or other stated thing relevant to the investigation, or a copy of a stated document;
    - (iv) give the ombudsman all documents of a stated type containing information relevant to the investigation, or copies of documents of the stated type.
- (2) If the person is a prisoner, the ombudsman may, by notice given to the chief executive (corrective services), direct that

chief executive to produce the prisoner named in the notice at a stated time and place.

- (3) A direction mentioned in subsection (2) is lawful authority to the chief executive (corrective services) for production of the prisoner as directed.
- (4) The chief executive (corrective services) must comply with the direction served on the chief executive.
- (5) A prisoner produced under this section remains in the custody of the chief executive (corrective services).
- (6) In this section—

*prisoner* means a person in the custody of the chief executive (corrective services).

### **30 Compliance with investigation requirement**

- (1) A person who receives an investigation requirement must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) An excuse is a reasonable excuse for subsection (1) if—
  - (a) within the time for compliance with the investigation requirement, the person gives the ombudsman a notice of the excuse in enough detail to allow the ombudsman to form an opinion on whether the excuse is reasonable; and
  - (b) the ombudsman advises the person that, in the ombudsman's opinion, the excuse is reasonable.
- (3) Subsection (2) does not limit what is a reasonable excuse.
- (4) It is not a reasonable excuse for subsection (1) that complying with the investigation requirement might tend to incriminate the person.



*Note—*

See section 48 for the restrictions on the admissibility in a proceeding of information given, or derived from information given, under subsection (1).

### **31 Power of court if noncompliance with investigation requirement**

- (1) This section applies if, without reasonable excuse, a person fails to comply with an investigation requirement.
- (2) A Magistrates Court, at the request of the ombudsman, may issue a subpoena requiring the attendance of the person before the ombudsman.
- (3) The *Uniform Civil Procedure Rules 1999*, other than rules 417, 418 and 420, apply to the subpoena.

*Note—*

See the *Uniform Civil Procedure Rules 1999*, chapter 11 (Evidence), part 4 (Subpoenas) and rules 417 (Order for cost of complying with subpoena), 418 (Cost of complying with subpoena if not a party) and 420 (Production by non-party).

- (4) In this section—

*subpoena* means—

- (a) a subpoena for production; or
- (b) a subpoena to give evidence; or
- (c) a subpoena for production and to give evidence.

### **32 Custody of document given to ombudsman**

- (1) If a document or other thing is produced to the ombudsman under this division—
  - (a) the ombudsman may keep the document or thing for a reasonable period for conducting the investigation; and
  - (b) if it is a document, take extracts from it and make copies of it.

- (2) While the ombudsman has possession of the document or other thing, the ombudsman must allow it to be inspected at any reasonable time by a person who would have the right to inspect it if it were not in the ombudsman's possession.

### **33 Way of giving information**

- (1) If a person is required to give information under this division, whether or not through answering questions, the ombudsman may—
  - (a) require the information to be given on oath; and
  - (b) administer the required oath.
- (2) The oath to be taken by a person for this section is an oath that the information the person will give will be true.
- (3) A person required to give information on oath must not refuse to be sworn.

Maximum penalty for subsection (3)—100 penalty units.

### **34 Investigation at agency premises**

- (1) The ombudsman may, on the giving of reasonable notice to the principal officer of an agency, and at a reasonable time—
  - (a) enter and inspect a place occupied by the agency; and
  - (b) take into the place the persons, equipment and materials the ombudsman reasonably requires for the investigation; and
  - (c) take extracts from, or copy in any way, documents located at the place; and
  - (d) require an officer of the agency at the place to give the ombudsman reasonable help in exercising the powers mentioned in paragraphs (a) to (c).
- (2) A person given a requirement under subsection (1)(d) must comply with the requirement unless the person has a reasonable excuse.

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Maximum penalty for subsection (2)—100 penalty units.

### 35 Expenses

- (1) The ombudsman may pay the reasonable expenses incurred by a person in complying with a requirement of the ombudsman under this division or in otherwise helping the ombudsman in an investigation.
- (2) In subsection (1)—  
*person* does not include any of the following—
  - (a) an agency;
  - (b) an officer of an agency carrying out the officer's duties with the agency;
  - (c) if the investigation arose from a complaint—the complainant.

## Division 2 Arrest warrants

### 36 Application for arrest warrant

- (1) The ombudsman may apply to a magistrate for a warrant for the arrest of a person (*arrest warrant*) if—
  - (a) the person has not complied with an investigation requirement given to the person under section 29(1) to attend before the ombudsman; and
  - (b) the ombudsman has not given the person advice under section 30(2) to the effect that an excuse given by the person for not attending is, in the ombudsman's opinion, a reasonable excuse; and
  - (c) the person has also not complied with a subpoena issued because of the failure to comply with the investigation requirement.
- (2) The application must be sworn and state the grounds on which the warrant is sought.

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- (3) The magistrate may refuse to consider the application until the ombudsman gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

### **37 Issue of arrest warrant**

- (1) The magistrate may issue an arrest warrant only if the magistrate is satisfied—
- (a) the person has refused to attend before the ombudsman under an investigation requirement or a subpoena; and
  - (b) the warrant is necessary to ensure the person attends before the ombudsman.
- (2) The warrant must state that a police officer may arrest the person named in the warrant and cause the person to attend before the ombudsman.

*Note—*

For particular police powers relating to the arrest of a person, see the *Police Powers and Responsibilities Act 2000*, sections 21 and 615. Also, for what happens if the person can not be taken before the ombudsman on the day of the arrest, see section 395 of that Act.

## **Division 3 Contempt**

### **38 Contempt of ombudsman**

- (1) A person is in contempt of the ombudsman if, in an investigation, the person—
- (a) insults or threatens—
    - (i) the ombudsman; or
    - (ii) a person who gives or is to give information or a document to the ombudsman; or

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- (iii) a lawyer or other person helping a person who gives or is to give information or a document to the ombudsman; or
  - (b) deliberately interrupts the ombudsman or otherwise behaves in a disruptive way before the ombudsman; or
  - (c) creates or continues, or joins in creating or continuing, a disturbance in or near the place where the ombudsman is performing a function under this Act; or
  - (d) obstructs or assaults a person who attends, or is to attend, before the ombudsman; or
  - (e) by writing or speech uses false and defamatory words about the ombudsman; or
  - (f) does anything, whether before the ombudsman or otherwise, that would be a contempt of court if the ombudsman were a judge acting judicially.
- (2) Also, if the ombudsman orders under section 91 that information or the contents of a document must not be published, a person is in contempt of the ombudsman if the person publishes, or permits or allows to be published, the information or the contents of the document.
- (3) In this section—  
*ombudsman* includes an officer of the ombudsman.

### **39 Punishment of contempt**

- (1) A person's contempt of the ombudsman may be punished under this section.
- (2) The ombudsman may certify the contempt in writing to the Supreme Court (the *court*).
- (3) For subsection (2), it is enough for the ombudsman to be satisfied there is evidence of contempt.
- (4) The court may issue a warrant directed to a police officer for the arrest of the person to be brought before the court to be dealt with according to law.

- (5) The *Bail Act 1980* applies to the proceeding for the contempt started by the certification in the same way it applies to a charge of an offence.
- (6) The court must inquire into the alleged contempt.
- (7) The court must hear—
  - (a) witnesses and evidence that may be produced against or for the person whose contempt was certified; and
  - (b) any statement given by the person in defence.
- (8) If the court is satisfied the person has committed the contempt, the court may punish the person as if the person had committed the contempt in a proceeding in the court for the enforcement of a non-money order.
- (9) The *Uniform Civil Procedure Rules 1999*, so far as they relate to the enforcement of non-money orders, apply, with necessary changes, to the court's investigation, hearing and power to punish.
- (10) The ombudsman's certificate of contempt is evidence of the matters stated in the certificate.

#### **40 Conduct that is contempt and offence**

- (1) If conduct of an offender is both contempt of the ombudsman and an offence, the offender may be proceeded against for the contempt or for the offence, but the offender is not liable to be punished twice for the same conduct.
- (2) In this section—

*offender* means a person guilty, or alleged to be guilty, of contempt of the ombudsman.

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## Division 4                      Offences

### 41            **False or misleading statement**

- (1) A person must not state anything to the ombudsman or an officer of the ombudsman the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) It is enough for a complaint against a person for an offence against subsection (1) to state the statement made was, without specifying which, ‘false or misleading’.

### 42            **False or misleading document**

- (1) A person must not give the ombudsman or an officer of the ombudsman a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply to a person if the person, when giving the document—
- (a) tells the ombudsman or officer, to the best of the person’s ability, how the information in the document is false or misleading; and
  - (b) if the person, has, or can reasonably obtain, the correct information—gives the correct information.
- (3) It is enough for a complaint against a person for an offence against subsection (1) to state the information in the document was, without specifying which, ‘false or misleading’.

### 43            **Offence to assault or obstruct ombudsman or officer of ombudsman**

- (1) A person must not assault or obstruct the ombudsman or an officer of the ombudsman in the performance of duties under this Act.

Maximum penalty—40 penalty units or 6 months imprisonment.

(2) In this section—

*assault* has the meaning given by the Criminal Code, section 245.

*obstruct* includes hinder, resist and attempt to obstruct.

## Part 5 Other provisions supporting performance of ombudsman's functions

### 44 Application of Criminal Code

- (1) The Criminal Code, sections 120, 123, 123A, 124, 125, 126, 127, 128, 129 and 130 (*identified provisions*) apply, with necessary changes, to investigations under this Act.
- (2) Without limiting subsection (1), for applying the identified provisions to an investigation—
  - (a) the investigation is a judicial proceeding; and
  - (b) the ombudsman is the holder of a judicial office; and
  - (c) a reference to judicial capacity is a reference to capacity as ombudsman; and
  - (d) a reference to the giving or withholding of testimony is a reference to the giving or withholding of information; and
  - (e) a reference to a witness is a reference to a person from whom the ombudsman may obtain information; and
  - (f) a reference to being required or used in evidence is a reference to being required or used for the obtaining of information; and
  - (g) a reference to being summoned to attend as a witness is a reference to being asked or required to attend to give information; and



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- (h) a reference to a tribunal is a reference to the ombudsman.

#### **45 Information disclosure and privilege**

- (1) No obligation to maintain secrecy or other restriction on the disclosure of information obtained by or given to officers of an agency, whether imposed by any Act or by a rule of law, applies to the disclosure of information relevant to a preliminary inquiry or an investigation by the ombudsman.
- (2) In a preliminary inquiry or an investigation, the State or an agency is not entitled to any privilege that would apply to the production of documents, or the giving of evidence, relevant to the investigation, in a legal proceeding.
- (3) A person has, for the giving of information and the production of documents or other things relevant to a preliminary inquiry or an investigation, equivalent privileges to the privileges the person would have as a witness in proceedings in a court.
- (4) Subsection (3) has effect subject to subsections (1) and (2) and part 4, division 1.

#### **46 Disclosure of certain matters not required**

- (1) This Act does not require or authorise a person—
  - (a) to give any information or answer any question relating to proceedings of Cabinet or a committee of Cabinet; or
  - (b) to produce or inspect a document to the extent it relates to proceedings mentioned in paragraph (a).
- (2) For subsection (1), a certificate issued by the chief executive of a department administered by the Premier, with the Premier's approval, certifying that any information or question, or any document or part of a document, relates to any proceedings mentioned in subsection (1) is conclusive of the fact so certified.
- (3) The ombudsman must not require—
  - (a) any information or answer to be given; or

(b) the production of any document or thing;

if the Attorney-General certifies, in writing, that the giving of the information, or the answering of the question, or the production of the document or thing might prejudice the security of the State or the investigation or detection of offences.

#### **47 Protection of person helping ombudsman**

(1) A person must not cause, or threaten, attempt or conspire to cause, detriment to another person because, or in the belief that, any person—

(a) has made, or may make, a complaint to the ombudsman;  
or

(b) has given, or may give, the ombudsman information or a document or other thing for the purposes of a preliminary inquiry or an investigation.

Maximum penalty—100 penalty units.

(2) An attempt to cause detriment includes an attempt to induce a person to cause detriment.

(3) In this section—

*detriment*, to a person, includes dismissal of the person from the person's employment.

#### **48 Inadmissibility of particular information in proceedings**

(1) This section applies if an individual gives information to the ombudsman under an investigation requirement.

(2) The following information is not admissible in any proceeding as evidence against the individual—

(a) the information given by the individual under the investigation requirement and the fact of that giving (*primary evidence*);

(b) any information obtained as a direct or indirect result of primary evidence (*derived evidence*).

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- (3) Subsection (2) does not prevent primary evidence or derived evidence being admitted in evidence in criminal proceedings about the falsity or misleading nature of the primary evidence.
  - (4) In this section—  
*information* includes a document.

## **Part 6 Reports and recommendations**

### **Division 1 Reports on particular investigations**

#### **49 Investigations to which div 1 applies**

- (1) This division applies to an investigation of an administrative action of an agency, other than an investigation started because of a parliamentary reference.
- (2) However, this division applies to an investigation only if the ombudsman considers that the administrative action to which the investigation relates—
  - (a) was taken contrary to law; or
  - (b) was unreasonable, unjust, oppressive, or improperly discriminatory; or
  - (c) was in accordance with a rule of law or a provision of an Act or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory in the particular circumstances; or
  - (d) was taken—
    - (i) for an improper purpose; or
    - (ii) on irrelevant grounds; or
    - (iii) having regard to irrelevant considerations; or
  - (e) was an action for which reasons should have been given, but were not given; or

- (f) was based wholly or partly on a mistake of law or fact;  
or
- (g) was wrong.

## **50 Report and recommendations**

- (1) This section applies if the ombudsman considers—
  - (a) the administrative action should be referred to the agency for further consideration; or
  - (b) action can be, and should be, taken to rectify, mitigate or change the effects of, the administrative action; or
  - (c) a practice under which the administrative action was taken should be changed; or
  - (d) any law under which, or on the basis of which, the administrative action was taken should be reconsidered;  
or
  - (e) reasons, or further reasons, should be given for the administrative action; or
  - (f) any other steps should be taken.
- (2) The ombudsman may—
  - (a) give the principal officer of the agency a report that—
    - (i) states the action the ombudsman considers should be taken; and
    - (ii) makes recommendations the ombudsman considers appropriate; and
  - (b) if the agency is a local government—direct the principal officer to table the report at a meeting of the local government; and
  - (c) if subsection (3) does not apply—give a copy of the report to the responsible Minister for the agency.
- (3) If, during or after the investigation, the ombudsman considers there is evidence of a breach of duty or misconduct on the part of an officer of the agency, the ombudsman—

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- (a) must give the principal officer of the agency a report that—
    - (i) states the nature of the breach of duty or misconduct; and
    - (ii) makes recommendations the ombudsman considers appropriate; and
  - (b) if the agency is a local government—may direct the principal officer to table the report at a meeting of the local government; and
  - (c) may, if the ombudsman considers it appropriate in the circumstances, give a copy of the report to—
    - (i) the responsible Minister for the agency; and
    - (ii) if the agency is a local government—the local government’s mayor.

*Note—*

The ombudsman must also, under the *Crime and Corruption Act 2001*, section 38, notify the Crime and Corruption Commission of any matters involving, or possibly involving, corrupt conduct under that Act.

- (4) If the principal officer of a local government is given a report under subsection (2)(a) or (3)(a), the principal officer must—
  - (a) give a copy of the report to all the members, however named, of the local government; and
  - (b) if the principal officer is given a direction under subsection (2)(b) or (3)(b) to table a copy of the report at a meeting of the local government—table the report as directed.

## **51 Action after report making recommendations**

- (1) This section applies if the ombudsman gives the principal officer of an agency a report under section 50 that makes recommendations.
- (2) The ombudsman may ask the principal officer of the agency to give the ombudsman, within a stated time, comments about—

- (a) the steps taken or proposed to be taken to give effect to the recommendations; or
  - (b) if no steps, or only some steps, have been or are proposed to be taken to give effect to the recommendations—the reasons for not taking steps, or all the steps, necessary to give effect to the recommendations.
- (3) The ombudsman may give the Premier a copy of the report and a copy of any comments made by or for the principal officer of the agency if—
- (a) it appears to the ombudsman that no steps the ombudsman considers appropriate have been taken within a reasonable time after giving the principal officer the report; and
  - (b) within that time, the ombudsman has considered any comments made by or for the principal officer; and
  - (c) the ombudsman considers it appropriate.
- (4) If the ombudsman gives the Premier a copy of a report (the *original report*) and a copy of any comments, the ombudsman may give the Speaker, for tabling in the Assembly, another report that deals, to the extent the ombudsman considers appropriate, with the original report and the comments.

## **Division 2            Other reports**

### **52        Report to Assembly on ombudsman’s initiative**

If the ombudsman considers it appropriate, the ombudsman may give to the Speaker at any time, for tabling in the Assembly, a report on a matter arising out of the performance of the ombudsman’s functions.

### **53        Report on parliamentary reference**

If the ombudsman investigates administrative action because of a parliamentary reference, the ombudsman must give a

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report on the investigation to the Speaker for tabling in the Assembly.

#### **54 Other reports on authority of speaker**

The Speaker may, at the ombudsman's written request, authorise the ombudsman to publish, in the public interest or in the interests of any agency, organisation or person—

- (a) a report relating generally to the performance of the ombudsman's functions; or
- (b) a report relating to any particular case investigated by the ombudsman;

whether or not the matters to be dealt with in the report have been the subject of a report tabled in the Assembly under this Act.

### **Division 3 Miscellaneous**

#### **55 Report containing adverse comment**

- (1) This section applies if the ombudsman proposes to make an adverse comment about a person in a report under this Act.
- (2) The ombudsman must not make the proposed adverse comment unless, before the report is prepared, the ombudsman gives the person an opportunity to make submissions about the proposed adverse comment.
- (3) If the person makes submissions and the ombudsman still proposes to make the adverse comment, the ombudsman must ensure the person's defence is fairly stated in the report.

#### **56 Report not to disclose identities in particular circumstances**

- (1) This section applies if—

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- (a) the ombudsman investigates a matter involving a person; and
  - (b) under an Act, the identity of the person must not be disclosed.
- (2) The ombudsman must not disclose the identity of the person, or information from which the person's identity could be deduced, in any report under section 51(4) or division 2.

## **57 Information to complainant on completion of investigation**

If the ombudsman investigates administrative action because of a complaint, the ombudsman must, as soon as possible, inform the complainant, in the way the ombudsman considers appropriate, of the result of the investigation.

### **57A Copy of report may be given to particular persons**

- (1) This section applies if a report prepared by the ombudsman under this part relates to the death of a person that—
- (a) was a reportable death under the *Coroners Act 2003*; or
  - (b) was the subject of an inquiry under the *Coroners Act 1958*.
- (2) The ombudsman may give a copy of the report—
- (a) to the State Coroner—
    - (i) for use by a coroner to help in an investigation under the *Coroners Act 2003* or an inquiry under the *Coroners Act 1958*; or
    - (ii) for use by the State Coroner in relation to the State Coroner's functions and powers under the *Coroners Act 2003*; or
  - (b) to the Attorney-General, for use by the Attorney-General for his or her functions and powers under the *Coroners Act 2003* or *Coroners Act 1958*; or



(c) to the Minister under the *Coroners Act 2003* or *Coroners Act 1958*, for use by that Minister for his or her functions and powers under that Act.

(3) This section applies despite any other provision of this Act.

(4) In this section—

*State Coroner* means the State Coroner under the *Coroners Act 2003*.

### **57B Particular reports may be given to chief executive (child safety)**

(1) If a report prepared by the ombudsman under this part relates to the death or serious physical injury of a child, the ombudsman may give a copy of the report to the chief executive (child safety).

(2) Subsection (1) applies despite any other provision of this Act.

(3) In this section—

*chief executive (child safety)* means the chief executive of the department in which the *Child Protection Act 1999* is administered.

*serious physical injury* see the *Child Protection Act 1999*, schedule 3.

## **Part 7 Particular provisions about the ombudsman and inspector of detention services**

### **Division 1 Appointment**

#### **58 Appointment as ombudsman and inspector of detention services**

(1) The ombudsman is appointed by the Governor in Council.

- (2) The ombudsman is also appointed by the Governor in Council to be the inspector of detention services.
- (3) The ombudsman and the inspector of detention services are appointed under this Act and not under the *Public Sector Act 2022*.
- (4) If a person stops holding office as the ombudsman, the person also stops holding office as the inspector of detention services.
- (5) If a person stops holding office as the inspector of detention services, the person also stops holding office as the ombudsman.

## **59 Procedure before appointment**

- (1) A person may be appointed as the ombudsman and the inspector of detention services only if—
  - (a) the Minister has placed press advertisements nationally calling for applications from suitably qualified persons to be considered for appointment; and
  - (b) the Minister has consulted with the parliamentary committee about—
    - (i) the process of selection for appointment; and
    - (ii) the appointment of the person as the ombudsman and the inspector of detention services.
- (2) Subsection (1)(a) and (b)(i) does not apply to the reappointment of a person as the ombudsman and the inspector of detention services.

## **60 Ineligibility for appointment**

A person must not be appointed as the ombudsman or the inspector of detention services if the person has been, within the last 3 years—

- (a) a member of the Parliament of the State, another State or the Commonwealth; or
- (b) the holder of—

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- (i) the office of the chairperson, the mayor, the president, a councillor or a member of a local government; or
  - (ii) an office in another State equivalent to an office mentioned in subparagraph (i).

## **61 Term of appointment**

- (1) The ombudsman holds office as ombudsman for the term, of no more than 5 years, stated in the instrument of appointment.
- (2) The ombudsman holds office as inspector of detention services for the term, of no more than 5 years, stated in the instrument of appointment.
- (3) A person may be reappointed as the ombudsman and the inspector of detention services.
- (4) However, a person must not be reappointed if the total of the person's terms of appointment as the ombudsman would be more than 10 years.

## **62 Remuneration and conditions**

- (1) The ombudsman, as the ombudsman and the inspector of detention services, is to be paid remuneration and travelling and other allowances decided by the Governor in Council.
- (2) The remuneration paid under subsection (1) must not be reduced during the ombudsman's term of office without the ombudsman's written consent.
- (3) The ombudsman, as the ombudsman and the inspector of detention services, is entitled to the leave of absence decided by the Governor in Council.

## **63 Oath before performing duties**

- (1) Before performing the duties of office as the ombudsman and the inspector of detention services, the ombudsman must

make an oath to the effect that he or she will faithfully and impartially perform the duties of each office.

- (2) The oath must be administered by the Speaker.

### **63A Declaration of interests**

- (1) This section applies to the ombudsman on appointment as the ombudsman or the inspector of detention services.

*Note—*

Appointment includes reappointment. See the *Acts Interpretation Act 1954*, schedule 1, definition *appoint*.

- (2) The ombudsman must, within 1 month, give the Speaker a statement setting out the information mentioned in subsection (3) in relation to—
  - (a) the interests of the ombudsman; and
  - (b) the interests of each person who is a related person in relation to the ombudsman.
- (3) The information to be set out in the statement is the information that would be required to be disclosed under the *Parliament of Queensland Act 2001*, section 69B if the ombudsman were a member of the Legislative Assembly.
- (4) Subsections (5) and (6) apply if, after the giving of the statement—
  - (a) there is a change in the interests mentioned in subsection (2); and
  - (b) the change is of a type that would have been required to be disclosed under the *Parliament of Queensland Act 2001*, section 69B if the ombudsman were a member of the Legislative Assembly.
- (5) The ombudsman must give the Speaker a revised statement.
- (6) The revised statement must—
  - (a) be given as soon as possible after the relevant facts about the change come to the ombudsman's knowledge; and

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- (b) comply with subsection (3).
- (7) The Speaker must, if asked, give a copy of the latest statement to—
- (a) the Minister; or
  - (b) the leader of a political party represented in the Legislative Assembly; or
  - (c) the Crime and Corruption Commission; or
  - (d) a member of the parliamentary committee; or
  - (e) the integrity commissioner.
- (8) The Speaker must, if asked, give a copy of the part of the latest statement that relates only to the ombudsman to another member of the Legislative Assembly.
- (9) A member of the Legislative Assembly may, by writing given to the Speaker, allege that the ombudsman has not complied with the requirements of this section.
- (10) A reference in this section to an interest is a reference to the matter within its ordinary meaning under the general law and the definition in the *Acts Interpretation Act 1954*, schedule 1 does not apply.
- (11) In this section—

***integrity commissioner*** means the Queensland Integrity Commissioner under the *Integrity Act 2009*.

***related person***, in relation to the ombudsman, means—

- (a) the ombudsman's spouse; or
- (b) a person who is totally or substantially dependent on the ombudsman and—
  - (i) the person is the ombudsman's child; or
  - (ii) the person's affairs are so closely connected with the ombudsman's affairs that a benefit derived by the person, or a substantial part of it, could pass to the ombudsman.

### **63B Conflicts of interest**

- (1) This section applies to the ombudsman in relation to the ombudsman's official responsibilities as the ombudsman and the inspector of detention services.
- (2) If the ombudsman has an interest that conflicts or may conflict with the discharge of the ombudsman's responsibilities, the ombudsman—
  - (a) must disclose the nature of the interest and conflict to the Speaker and parliamentary committee as soon as practicable after the relevant facts come to the ombudsman's knowledge; and
  - (b) must not take action or further action concerning a matter that is, or may be, affected by the conflict until the conflict or possible conflict is resolved.
- (3) If the conflict or possible conflict between an interest of the ombudsman and the ombudsman's responsibilities is resolved, the ombudsman must give to the Speaker and parliamentary committee a statement advising of the action the ombudsman took to resolve the conflict or possible conflict.
- (4) A reference in this section to an interest or to a conflict of interest is a reference to those matters within their ordinary meaning under the general law and, in relation to an interest, the definition in the *Acts Interpretation Act 1954*, schedule 1 does not apply.

### **64 Restriction on outside employment**

- (1) The ombudsman must not, without the Minister's prior approval in each particular case—
  - (a) hold any offices of profit other than those of the ombudsman and the inspector of detention services; or
  - (b) engage in any remunerative employment or undertaking outside the duties of each office.
- (2) Contravention of subsection (1) is misconduct under division 2.

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**65 Acting ombudsman and inspector of detention services**

- (1) The Governor in Council may appoint a person to act as the ombudsman and the inspector of detention services—
  - (a) during a vacancy as the ombudsman or inspector of detention services; or
  - (b) during any period when the ombudsman—
    - (i) is absent from duty as the ombudsman or inspector of detention services; or
    - (ii) is unable, for another reason, to perform the duties of the ombudsman or inspector of detention services.
- (2) The person appointed under subsection (1) to act as the ombudsman and the inspector of detention services must be eligible for appointment as the ombudsman and inspector of detention services.
- (3) The person appointed as the acting ombudsman and the acting inspector of detention services is appointed under this Act and not the *Public Sector Act 2022*.
- (4) The *Acts Interpretation Act 1954*, section 25(1)(b)(iv) and (v) does not apply to the offices of the acting ombudsman and the acting inspector of detention services.

**Division 2 Removal or suspension from office****66 Grounds for removal or suspension from office as the ombudsman and inspector of detention services**

The following are grounds for removal or suspension of the ombudsman from office as the ombudsman and inspector of detention services—

- (a) proved incapacity, incompetence or misconduct;
- (b) conviction of an indictable offence.

**67 Removal of ombudsman and inspector of detention services on address**

- (1) The Governor may, on an address from the Assembly, remove the ombudsman from office as the ombudsman and inspector of detention services.
- (2) The motion for the address may be moved only by the Premier.
- (3) The Premier may move the motion only if—
  - (a) the Premier has given the ombudsman a statement setting out the reasons for the motion; and
  - (b) the statement and any written response by the ombudsman have been tabled in the Assembly; and
  - (c) the Premier has consulted with the parliamentary committee about the motion; and
  - (d) agreement to the motion has been obtained from—
    - (i) all members of the parliamentary committee; or
    - (ii) a majority of members of the parliamentary committee, other than a majority consisting wholly of members of the political party or parties in government in the Assembly.

**68 Suspension of ombudsman and inspector of detention services on address**

- (1) The Governor may, on an address from the Assembly, suspend the ombudsman from office as the ombudsman and inspector of detention services.
- (2) The motion for the address may be moved only by the Premier.
- (3) The Premier may move the motion only if—
  - (a) the Premier has given the ombudsman a statement setting out the reasons for the motion; and
  - (b) the statement and any written response by the ombudsman have been tabled in the Assembly; and



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- (c) the Premier has consulted with the parliamentary committee about the motion; and
  - (d) agreement to the motion has been obtained from—
    - (i) all members of the parliamentary committee; or
    - (ii) a majority of members of the parliamentary committee, other than a majority consisting wholly of members of the political party or parties in government in the Assembly.
- (4) The ombudsman is entitled to be paid salary and allowances as the ombudsman and inspector of detention services for the period of the suspension only if—
- (a) the Assembly resolves that the salary and allowances be paid for the period; or
  - (b) the Assembly does not pass a resolution under paragraph (a) and the Governor in Council approves the payment of the salary and allowances for the period.

## **69 Suspension of ombudsman and inspector of detention services if Assembly not sitting**

- (1) If the Assembly is not sitting, the Governor in Council may suspend the ombudsman from office as the ombudsman and inspector of detention services.
- (2) The Governor in Council may suspend the ombudsman only if—
  - (a) the Premier has given the ombudsman a statement setting out the reasons for the suspension; and
  - (b) the Premier has considered any response by the ombudsman to the statement.
- (3) The Premier must table the statement and any written response by the ombudsman in the Assembly within 3 sitting days after the day the suspension begins.
- (4) The suspension stops having effect—

- (a) at the end of 6 sitting days after the day the suspension begins; or
  - (b) if the ombudsman is earlier removed or suspended from office on an address from the Assembly under section 67 or 68—at the earlier time.
- (5) If the suspension stops having effect under subsection (4)(a), the ombudsman is entitled to be paid salary and allowances as the ombudsman and inspector of detention services for the period of the suspension.

## **70 Acts Interpretation Act 1954**

The *Acts Interpretation Act 1954*, section 25(1)(b)(i) to (iii) does not apply to the removal or suspension of the ombudsman or the inspector of detention services.

## **Division 3 Resignation and vacation of office**

### **71 Resignation**

The ombudsman may, at any time, resign office as the ombudsman and the inspector of detention services by signed writing, addressed to the Governor.

### **72 Vacation of office**

The ombudsman is taken to resign office as the ombudsman and the inspector of detention services on becoming a candidate for election to—

- (a) the Parliament of another State or of the Commonwealth; or
- (b) the office of the chairperson, the mayor, the president, a councillor or a member of a local government; or
- (c) an office in another State equivalent to an office mentioned in paragraph (b).

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*Note—*

Under the *Parliament of Queensland Act 2001*, section 67(1), the person holding office as the ombudsman and the inspector of detention services must resign on being nominated under the *Electoral Act 1992*, section 84, as a candidate for election.

## **Part 8 Administration**

### **Division 1 Establishment and control of office**

#### **73 Office of the Ombudsman**

- (1) An office called the Office of the Ombudsman is established.
- (2) The ombudsman office consists of the ombudsman, the inspector of detention services and the officers of the ombudsman.
- (3) The functions of the ombudsman office are—
  - (a) to help the ombudsman perform the ombudsman's functions under this Act; and
  - (b) to help the inspector of detention services perform the inspector's functions under the *Inspector of Detention Services Act 2022*.

#### **74 Control of ombudsman office**

- (1) The ombudsman controls the ombudsman office.
- (2) Subsection (1) applies subject to the *Inspector of Detention Services Act 2022*, section 34.

#### **75 Officers not subject to outside direction**

- (1) An officer of the ombudsman is not subject to direction by any person, other than from within the ombudsman office, about—

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- (a) the way the ombudsman’s powers for investigations are to be exercised; or
  - (b) the priority given to investigations; or
  - (c) the way the powers of the inspector of detention services are to be exercised.
- (2) Subsection (1)(c) applies subject to the *Inspector of Detention Services Act 2022*, section 37.

**75A Ombudsman office not public sector entity**

The ombudsman office is prescribed not to be a public sector entity for the *Public Sector Act 2022*, section 8(2)(s).

**75B Ombudsman office to comply with obligations relating to equity, diversity, respect and inclusion**

The ombudsman office is prescribed for the *Public Sector Act 2022*, section 25, definition *prescribed entity*, paragraph (c).

**75C Application of provisions of Public Sector Act 2022**

- (1) A regulation may—
- (a) apply particular provisions of the *Public Sector Act 2022*, including, for example, particular directives made under the *Public Sector Act 2022*, to the ombudsman office, the ombudsman and officers of the ombudsman; and
  - (b) provide for the way in which the provisions mentioned in paragraph (a) are to apply, including, for example, that they apply with or without change.
- (2) Before recommending to the Governor in Council the making of a regulation under subsection (1), the Minister must consult with the ombudsman about the proposed regulation.
- (3) If a regulation is made under subsection (1)—

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- (a) the *Public Sector Act 2022* applies to the ombudsman office, the ombudsman and officers of the ombudsman only to the extent provided for under the regulation; and
  - (b) the *Public Sector Act 2022* applies in the way mentioned in paragraph (a) with necessary changes.
- (4) Also, a regulation may prescribe anything necessary or convenient to be prescribed—
- (a) to enable a regulation under subsection (1) to be made; or
  - (b) to carry out or give effect to a regulation made under subsection (1); or
  - (c) because of the making of a regulation under subsection (1), including, for example, the portability of employment rights and entitlements.

## **Division 2                    Staff of the office**

### **76            Officers**

- (1) The ombudsman may employ the officers the ombudsman considers necessary for staffing the ombudsman office.
- (2) Officers are appointed under this Act and not the *Public Sector Act 2022*.
- (3) Subject to this Act, the *Inspector of Detention Services Act 2022* and any relevant industrial instrument within the meaning of the *Industrial Relations Act 2016*, the conditions of service of officers of the ombudsman are those decided by the Governor in Council.

### **77            Secondment as officer of ombudsman**

- (1) A public service officer may be seconded to the ombudsman office.
- (2) While seconded under this section—

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- (a) the person is taken to be an officer of the ombudsman;  
and
- (b) the *Public Sector Act 2022* does not apply to the person.

## **78 Temporary and casual employees**

- (1) The ombudsman may employ the temporary and casual employees whom—
  - (a) the ombudsman considers are necessary for this Act;  
and
  - (b) the ombudsman as the inspector of detention services considers are necessary for the *Inspector of Detention Services Act 2022*.
- (2) The ombudsman may decide the terms of employment of an employee mentioned in subsection (1).
- (3) However, subsection (2) has effect subject to any relevant industrial instrument within the meaning of the *Industrial Relations Act 2016*.
- (4) Employees of the ombudsman are employed under this Act and not the *Public Sector Act 2022*.

## **78A Restriction on employment or secondment of person**

A person may not be employed under section 76 or 78, or seconded under section 77, unless the person has given the ombudsman written consent to obtain the information mentioned in section 78B(1)(a) and (b) in relation to the person's criminal history.

## **78B Criminal history report**

- (1) To decide if a person is suitable to be employed under section 76 or 78, or seconded under section 77, the ombudsman may ask the commissioner of the police service for—

- (a) a written report about the criminal history of the person; and
  - (b) a brief description of the circumstances of a conviction mentioned in the criminal history.
- (2) However, the ombudsman may make the request only if the person has given the ombudsman written consent for the request.
- (3) The commissioner of the police service must comply with the request.
- (4) However, the duty to comply applies only to information in the commissioner's possession or to which the commissioner has access.
- (5) Before using information obtained under subsection (1) to decide if the person should be employed or seconded, the ombudsman must—
- (a) disclose the information to the person; and
  - (b) allow the person a reasonable opportunity to make representations to the ombudsman about the information.

## **78C Confidentiality of criminal history information**

- (1) This section applies to a person who possesses criminal history information because the person is or was the ombudsman, the inspector of detention services or an officer of the ombudsman.
- (2) The person must not, directly or indirectly, disclose the criminal history information to another person unless the disclosure is permitted under subsection (3).

Maximum penalty—100 penalty units.

- (3) The person may disclose the criminal history information to another person—

- (a) to the extent necessary to perform the person's functions under this Act or the *Inspector of Detention Services Act 2022*; or
  - (b) if the disclosure is authorised under an Act; or
  - (c) if the disclosure is otherwise required or permitted by law; or
  - (d) if the person to whom the information relates consents to the disclosure; or
  - (e) if the disclosure is in a form that does not identify the person to whom the information relates; or
  - (f) if the information is, or has been, lawfully accessible to the public.
- (4) The person must ensure the criminal history information is destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested.
- (5) In this section—
- criminal history information* means a report or information given to the ombudsman under section 78B.

## Division 3                      Preservation of rights

### 79            Preservation of rights if public service officer appointed

- (1) A public service officer who is appointed, under this Act, to an office is entitled to retain all existing and accruing rights as if service in that office were a continuation of service as a public service officer.
- (2) If the person stops holding the office for a reason other than misconduct, the person is entitled to be employed as a public service officer.
- (3) The person is to be employed on the classification level and remuneration that the Public Sector Commissioner under the *Public Sector Act 2022* or another entity prescribed under a regulation considers the person would have attained in the



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ordinary course of progression if the person had continued in employment as a public service officer.

**80 Preservation of rights if person becomes public service officer**

- (1) On the appointment of a person holding office under this Act as a public service officer, the person's service in the ombudsman office must be regarded as service as a public service officer.
- (2) Subsection (1) does not apply to a person holding office as the ombudsman, inspector of detention services, acting ombudsman or acting inspector of detention services if the person is guilty of misconduct in the office.

**81 Preservation of ombudsman's rights if not previously public service officer**

- (1) This section applies to a person who stops holding office as the ombudsman and the inspector of detention services, whether because of resignation or ending a term of appointment, if the person was not a public service officer but held another office under the State immediately before appointment as ombudsman.
- (2) The person is entitled to be appointed to an office under the State with a classification and remuneration corresponding with or higher than that of the office the person held immediately before appointment as ombudsman and the person's service as the ombudsman and the inspector of detention services must be regarded as service in an office under the State.
- (3) Subsection (2) does not apply to the person if the person is guilty of misconduct in office as the ombudsman or the inspector of detention services.
- (4) In this section—  
*inspector of detention services* includes the acting inspector of detention services.

*ombudsman* includes the acting ombudsman.

## **82 Preservation of rights if public service officer seconded**

- (1) A public service officer seconded under section 77—
  - (a) is entitled to the person's existing and accruing rights as if employment as an officer of the ombudsman were a continuation of employment as a public service officer; and
  - (b) may apply for positions, and be employed, in the public service as if the person were a public service officer.
- (2) On ending the secondment, the person's employment on secondment as an officer of the ombudsman is taken to be employment of the same nature in the public service for working out the person's rights as a public service officer.
- (3) If the secondment ended for a reason other than misconduct, the person is entitled to be employed as a public service officer.
- (4) The person is entitled to be employed on the same, or a higher, classification level and remuneration that the Public Sector Commissioner under the *Public Sector Act 2022* or another entity prescribed under a regulation considers the person would have attained in the ordinary course of progression if the person had not been seconded.

## **Division 4 Strategic review**

### **83 Strategic review of ombudsman office**

- (1) Strategic reviews of the ombudsman office are to be conducted under this division.
- (2) A strategic review is to be conducted at least every 5 years, counting from when the report (the *earlier report*) for the most recent earlier strategic review was given to the Minister and the ombudsman under section 85(4), up to when the

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reviewer is appointed under subsection (4) to undertake the latest strategic review.

- (3) However, if the parliamentary committee reported to the Assembly about the earlier report, and the committee's report made recommendations to which a Minister was required to respond under the *Parliament of Queensland Act 2001*, section 107 the 5 years is counted from when the Minister's response was tabled under that section.
- (4) Each strategic review is to be undertaken by an appropriately qualified person (*reviewer*), appointed by the Governor in Council, who is to give a report on the review.
- (5) For subsection (4), a corporation is an appropriately qualified person if a director, employee or other staff member of the corporation is appropriately qualified to undertake the review.
- (6) The terms of reference for a strategic review are to be decided by the Governor in Council.
- (7) Before a reviewer is appointed to conduct a strategic review, the Minister must consult with the parliamentary committee and the ombudsman about—
  - (a) the appointment of the reviewer; and
  - (b) the terms of reference for the review.
- (8) The remuneration and other terms of appointment of the reviewer are as decided by the Governor in Council.
- (9) In this section—

*strategic review* includes—

  - (a) a review of the functions of the ombudsman and the inspector of detention services; and
  - (b) a review of the performance of the functions to assess whether they are being performed economically, effectively and efficiently.

## 84 Conduct of strategic review

In conducting a strategic review—

- (a) the reviewer has the powers an authorised auditor has under the *Auditor-General Act 2009* for an audit of an entity; and
- (b) that Act and other Acts apply to the reviewer as if the reviewer were an authorised auditor conducting an audit of an entity.

## **85 Report of strategic review**

- (1) The reviewer for a strategic review must give a copy of the proposed report on the review to the Minister and the ombudsman.
- (2) The ombudsman may, within 21 days after receiving the proposed report, give the reviewer written comments on anything in the proposed report.
- (3) If the ombudsman comments under subsection (2), the reviewer must—
  - (a) if the reviewer and ombudsman can agree about how to dispose of a comment—incorporate into the report any agreed amendment necessary to dispose of the comment; or
  - (b) if the reviewer and ombudsman can not agree about how to dispose of a comment—include the comment, in full, in the report.
- (4) After complying with subsections (1) and (3), the reviewer must give the report (***review report***) to the Minister and the ombudsman.
- (5) The review report must be the same as the proposed report given to them under subsection (1), apart from the changes made under subsection (3).
- (6) The Minister must table the review report in the Assembly within 3 sitting days after the Minister receives the report.
- (7) For the *Parliament of Queensland Act 2001*, section 92(2) the report is referred to the parliamentary committee.

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## Division 5                      Other matters

### 86            Delegation

- (1) The ombudsman may delegate the ombudsman's functions under this Act or the *Human Rights Act 2019*, section 66 to an appropriately qualified officer of the ombudsman.
- (2) However, the ombudsman may not delegate a function under this Act to an officer of the ombudsman if the ombudsman as the inspector of detention services has delegated a function to the officer under the *Inspector of Detention Services Act 2022*.
- (3) In this section—  
*functions* includes powers.

### 87            Annual report

- (1) For the application of the *Financial Accountability Act 2009*, section 63 to the office, the appropriate Minister is the Minister for the time being administering this section.
- (2) When, under the *Financial Accountability Act 2009*, section 63, the ombudsman gives the appropriate Minister a written report and a copy of the report to the Treasurer, the ombudsman must also give a copy of the report to the Speaker and the parliamentary committee.
- (3) Subsections (1) and (2) do not limit any other provision of this Act under which the ombudsman may make a report.

### 88            Estimates

- (1) The ombudsman must prepare, for each financial year, estimates of proposed receipts and expenditure relating to the ombudsman office.
- (2) The ombudsman must give the estimates to the Minister responsible for the administration of the *Financial Accountability Act 2009*.

- (3) The Minister mentioned in subsection (2) must consult with the parliamentary committee in developing the proposed budget of the ombudsman office for each financial year.

## Part 9 Parliamentary committee

### 89 Functions

The parliamentary committee has the following functions—

- (a) to monitor and review the performance by the ombudsman of the ombudsman’s functions under this Act;
- (b) to monitor and review the performance by the inspector of detention services of the inspector’s functions under the *Inspector of Detention Services Act 2022*;
- (c) to report to the Assembly on any matter the committee considers should be drawn to the Assembly’s attention relating to—
  - (i) the ombudsman; or
  - (ii) the functions, or the performance of the functions, of the ombudsman; or
  - (iii) the inspector of detention services; or
  - (iv) the functions, or the performance of the functions, of the inspector of detention services, including, in particular, the function of inspecting places of detention under the *Inspector of Detention Services Act 2022*, section 8(1)(c);
- (d) to examine each annual report tabled in the Assembly under this Act and any report tabled under the *Inspector of Detention Services Act 2022*, section 21(3) and, if appropriate, to comment on any aspect of the report;
- (e) to report to the Assembly any changes to the functions, structures and procedures of the ombudsman or the inspector of detention services that the committee

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considers desirable for the more effective operation of this Act or the *Inspector of Detention Services Act 2022*;

- (f) the other functions conferred on the parliamentary committee by this Act.

## Part 10                      Miscellaneous

### 90      **Right to interpreter or other help**

- (1) This section applies if the ombudsman considers a person (the *relevant person*) dealing with the ombudsman under this Act before or in an investigation is unable, because of inadequate knowledge of the English language or, for another reason, to understand English or speak English with reasonable fluency.
- (2) The ombudsman must take all reasonable steps to ensure an interpreter or other suitable person is available to help the relevant person and the ombudsman communicate effectively.

### 91      **Prohibiting publication of information**

The ombudsman may, if the ombudsman considers it appropriate in a particular case, order that the following must not be published—

- (a) information given to the ombudsman, or the contents of a document produced to the ombudsman, in performing a function under this Act;
- (b) information, or the contents of a document, given to an agency or a person by the ombudsman in performing a function under this Act.

*Note—*

See section 38(2) in relation to contempt of the ombudsman.

### 91A    **Disclosure of information**

- (1) An officer of the ombudsman may disclose information obtained in the performance of a function of the ombudsman,

including information obtained by way of a complaint, to an agency if—

- (a) the ombudsman considers the agency has a proper interest in the information for the performance of the agency's functions; or
  - (b) the disclosure is for the purpose of protecting the health, safety or security of a person or property.
- (2) Subsection (1) does not apply to information that an officer of the ombudsman can not make a record of, or wilfully disclose, under the *Crime and Corruption Act 2001*, section 213.
- (3) In this section—

**agency** includes each of the following—

- (a) an agency of the Commonwealth;
- (b) the ombudsman under the *Ombudsman Act 1976* (Cwlth);
- (c) an ombudsman under the law of another State.

**officer of the ombudsman** includes the ombudsman.

## 92 Secrecy

- (1) An officer of the ombudsman, an officer of an agency, or another person who obtains information in a preliminary inquiry or an investigation or the performance of another function of the ombudsman under this Act must not—
- (a) disclose the information other than as a part of—
    - (i) the performance of the function; or
    - (ii) formulating a report about the performance of the function; or
    - (iii) formulating a recommendation arising out of the performance of the function; or
    - (iv) proceedings for an offence under this Act alleged to have been committed in the performance of the function; or



- (v) if the information does not disclose the identity of a person, or information from which a person's identity could be deduced—
  - (A) providing information or other help to an agency for the improvement of its administrative practices and procedures; or
  - (B) undertaking research relevant to a function of the ombudsman under this Act; or
- (b) use the information to benefit any person.

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply to the disclosure of information under section 91A.
- (3) In this section—  
*officer of the ombudsman* includes the ombudsman.

## **92A Protection in particular proceedings**

- (1) A person who is, or was, an officer of the ombudsman may not be called to give evidence or produce a document in a proceeding in relation to a matter coming to the person's knowledge while performing functions under this Act or the *Inspector of Detention Services Act 2022*.
- (2) However, this section does not apply in relation to—
  - (a) a proceeding under section 17 or 39; or
  - (b) a proceeding for a relevant offence; or
  - (c) a proceeding against the ombudsman under the *Judicial Review Act 1991*.
- (3) In this section—  
*officer of the ombudsman* includes the ombudsman holding office as the ombudsman and the inspector of detention services.

*relevant offence* means—

- (a) an offence against this Act or the *Inspector of Detention Services Act 2022*; or
- (b) an offence against the Criminal Code, section 120, 123 or 126 to 130, as applied under section 44 of this Act.

### **93 Protection from liability**

- (1) An officer of the ombudsman does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

*Note—*

For protection from civil liability in relation to the ombudsman as the inspector of detention services, or another officer of the ombudsman performing a function under the *Inspector of Detention Services Act 2022*, see the *Public Sector Act 2022*, section 269.

- (2) If subsection (1) prevents a civil liability attaching to an officer of the ombudsman, the liability attaches instead to the State.
- (3) In this section—  
*officer of the ombudsman* includes the ombudsman.

### **94 Regulation-making power**

The Governor in Council may make regulations under this Act.

## **Part 11 Repeal and amendment**

### **95 Repeal of Parliamentary Commissioner Act 1974**

The *Parliamentary Commissioner Act 1974* (1974 Act No. 19) is repealed.

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## Part 12 Transitional provisions

### Division 1 Provisions for Act No. 73 of 2001

#### 97 Definitions for pt 12

In this part—

*parliamentary commissioner* means the Parliamentary Commissioner for Administrative Investigations under the repealed Act.

*repealed Act* means the repealed *Parliamentary Commissioner Act 1974*.

#### 98 Continuation of appointments

- (1) On the commencement of this section, a person holding a position or office under the repealed Act continues as the holder of the equivalent position or office under this Act.
- (2) The person's appointment to the position or office has continuing effect under this Act.
- (3) If the appointment was for a term—
  - (a) the appointment continues under this Act for the unexpired period of the term; and
  - (b) for applying section 61(2) to the person who, immediately before the commencement of this section, was, under the repealed Act, the parliamentary commissioner, the term of appointment under that Act is taken to be a term of appointment as ombudsman under this Act.

#### 99 Continuation of actions

On the commencement of this section, anything started but not completed under the repealed Act may be continued under this Act.

### **100 Investigation of certain administrative action**

The ombudsman may perform functions under this Act in relation to administrative action taken before the commencement of this section as if the action had been taken after the commencement.

### **101 Strategic review**

A report of a strategic review under section 32 of the repealed Act is taken to be an earlier report of a strategic review for section 83(2).

### **102 Parliamentary Commissioner Act 1974 references**

A reference in any Act or document to the *Parliamentary Commissioner Act 1974* may, if the context permits, be read as a reference to this Act.

### **103 Parliamentary commissioner and other references**

A reference in any Act or document to the parliamentary commissioner or acting parliamentary commissioner may, if the context permits, be read as a reference to the ombudsman or acting ombudsman.

## **Division 2 Provision for Integrity Reform (Miscellaneous Amendments) Act 2010**

### **104 Declaration of interests**

- (1) This section applies to the person who, immediately before the commencement of this section, was the ombudsman.
- (2) The person must comply with section 63A(2) within 1 month after the commencement of this section.

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## **Division 3                      Provisions for Child Protection Reform Amendment Act 2014**

### **105      Definitions for div 3**

In this division—

*CCYPCG Act* means the *Commissioner for Children and Young People and Child Guardian Act 2000* as in force before the commencement.

*commencement* means the time of commencement of the provision in which the term appears.

*former commissioner* means the Commissioner for Children and Young People and Child Guardian under the CCYPCG Act before the commencement.

### **106      Complaints made to former commissioner**

- (1) This section applies in relation to a complaint made to the former commissioner under the CCYPCG Act that, immediately before the commencement, had not been finally dealt with under that Act.
- (2) The ombudsman must deal with the complaint as if it had been made to the ombudsman under this Act.
- (3) Subsection (2) does not limit the way the ombudsman may deal with the complaint under section 23.

### **107      Complaints made in former commissioner's own name**

- (1) This section applies in relation to a complaint made by the former commissioner under the CCYPCG Act, section 59 that, immediately before the commencement, had not been finally dealt with under that Act.
- (2) The ombudsman may investigate the matter of the complaint under section 18(1)(b).

### **108 Complaints documents**

- (1) This section applies in relation to a complaint to which section 106 or 107 applies.
- (2) On the commencement, any documents and other information held by the former commissioner relating to the complaint become documents and other information held by the ombudsman under this Act.

### **109 Current requirements under CCYPCG Act, ch 4**

- (1) This section applies if the former commissioner made a requirement or request under the CCYPCG Act, chapter 4 that, immediately before the commencement, had not been complied with.
- (2) On the commencement, the requirement or request lapses.

### **110 Delegation of power to make a report or recommendation**

To remove any doubt, it is declared that, under section 86, the ombudsman may delegate the ombudsman's power to make a report or recommendation about a matter arising before the commencement.

## **Division 4 Provision for Court and Civil Legislation Amendment Act 2017**

### **111 Application of s 48**

- (1) Section 48, as inserted by the amendment Act, section 178, applies only in relation to information given under an investigation requirement made on or after the commencement.
- (2) Section 48, as in force from time to time before the commencement, continues to apply in relation to a document given under an investigation requirement made before the

commencement, as if the amendment Act, section 178 had not been enacted.

(3) In this section—

*amendment Act* means the *Court and Civil Legislation Amendment Act 2017*.

## **Division 5                    Provision for Inspector of Detention Services Act 2022**

### **112    Application of s 59**

Section 59 does not apply in relation to the appointment of the inspector of detention services that is in effect on the commencement.

## **Division 6                    Provision for Integrity and Other Legislation Amendment Act 2022**

### **113    Period for next strategic review of ombudsman office**

(1) The review period under section 83 as in force before the commencement continues to apply in relation to the next strategic review of the ombudsman office under part 8, division 4 after the commencement.

(2) In this section—

*review period* means the period within which a strategic review of the ombudsman office must be conducted under part 8, division 4.

## Schedule 3 Dictionary

### section 3

***administrative action*** see section 7.

***agency*** see section 8.

***appropriate agency***, for an investigation, means the agency by, in or for which the administrative action the subject of investigation was taken.

***Assembly*** means the Legislative Assembly.

***complainant*** means a person who is a complainant under section 20.

***complaint*** means a complaint made under section 20.

***complaints entity*** means—

- (a) an entity other than the ombudsman that, under an Act, has responsibility for the investigation or review of matters that may include administrative actions of agencies; or

*Examples of entities for paragraph (a)—*

- the Crime and Corruption Commission
  - the human rights commissioner under the *Anti-Discrimination Act 1991*
  - the health ombudsman under the *Health Ombudsman Act 2013*
  - the public guardian under the *Public Guardian Act 2014*
- (b) the ombudsman under the *Ombudsman Act 1976* (Cwlth); or
- (c) an ombudsman under the law of another State.

***conviction*** includes a plea of guilty, or a finding of guilt by a court, even though a conviction is not recorded.

***criminal history***, of a person, means the person's criminal history within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986*, and—



- 
- (a) despite section 6 of that Act, includes a conviction of the person to which the section applies; and
  - (b) despite section 5 of that Act, includes a charge made against the person for an offence.

***inspector of detention services*** means the inspector of detention services under the *Inspector of Detention Services Act 2022*.

***investigation*** means investigation under this Act.

***investigation requirement*** means a requirement made under section 28 or 29.

***notice*** means written notice.

***officer***, of an agency, includes—

- (a) the agency's principal officer; and
- (b) a member of the agency; and
- (c) a member of the agency's staff; and
- (d) a person employed by or for the agency.

***officer of the ombudsman*** means any of the following—

- (a) an officer employed under section 76;
- (b) a public service officer seconded to the ombudsman office under section 77;
- (c) a temporary or casual employee under section 78.

***ombudsman office***, for part 8, division 1, means the Office of the Ombudsman.

***operational action***, for a police officer or an officer of the Crime and Corruption Commission, means any action taken in or for performing functions the officer has under powers conferred on the officer by any Act or law, including, for example, the following—

- (a) enforcement powers;
- (b) investigation, information gathering, search and questioning powers;
- (c) arrest and custody powers;

- (d) powers for preserving public order and safety;
- (e) for a police officer, powers of a public official.

*Example—*

powers a police officer or an officer of the Crime and Corruption Commission has under the *Police Powers and Responsibilities Act 2000*

***parliamentary committee*** means—

- (a) if the Legislative Assembly resolves that a particular committee of the Assembly is to be the parliamentary committee under this Act—that committee; or
- (b) if paragraph (a) does not apply and the standing rules and orders state that the portfolio area of a portfolio committee includes the ombudsman—that committee; or
- (c) otherwise—the portfolio committee whose portfolio area includes the department, or the part of a department, in which this Act is administered.

***parliamentary reference***, of an administrative action of an agency, means a reference made under section 19.

***portfolio area*** see the *Parliament of Queensland Act 2001*, schedule.

***portfolio committee*** see the *Parliament of Queensland Act 2001*, schedule.

***preliminary inquiry*** means inquiries made under section 22(1).

***principal officer*** means—

- (a) for a department—the chief executive of the department; or
- (b) for a local government—the chief executive officer, however named, of the local government; or
- (c) for an agency for which a regulation declares the holder of an office to be the principal officer—the holder of the office; or
- (d) for another agency—

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- (i) if it is an incorporated body with no members—the person who manages the body’s affairs; or
  - (ii) if it is a body (whether or not incorporated) constituted by 1 person—the person; or
  - (iii) if it is a body (whether or not incorporated) constituted by 2 or more persons—the person who is entitled to preside at a meeting of the body at which the person is present.

***public authority*** see section 9.

***responsible Minister*** means—

- (a) for a department—the Minister administering the department; or
- (b) for a local government—the Minister administering the *Local Government Act 2009*; or
- (d) for an entity that is a public authority under section 9(1)(a)—the Minister administering the Act by or under which the public authority is established; or
- (e) for an entity that is a public authority under section 9(1)(d)—the Minister administering the Act by or under which the office mentioned in the provision is established; or
- (f) for another agency—the Minister declared under a regulation to be the responsible Minister for the agency.

***standing rules and orders*** see the *Parliament of Queensland Act 2001*, schedule.

***strategic review*** means a strategic review conducted under section 83.