



Changes to the ICAC and Ombudsman Acts

The *Independent Commissioner Against Corruption (Miscellaneous) Amendment Act 2016* came into operation on 16 December 2016, although the commencement of some of the provisions has been suspended until a subsequent proclamation or delayed until 1 April 2017.

The amending Act achieves a number of changes. Of relevance to this Office is that it has changed the way the Independent Commissioner Against Corruption (ICAC) refers to the Ombudsman matters raising a potential issue of misconduct or maladministration in public administration and changed how the Ombudsman must deal with a referral.

Firstly, section 24(2)(a) of the ICAC Act has been amended so that an ICAC referral to an inquiry agency (the Ombudsman being one of them) is no longer subject to ICAC's direction. This amendment will come into operation on 1 April 2017.

Secondly, the amending Act introduces a new section 14B to the *Ombudsman Act 1972* which requires the Ombudsman to deal with the ICAC referral as if a complaint had been made under the Ombudsman Act. The new section 14B(1) reads as follows:

14B—Referral of matter by OPI or ICAC

- (1) If a matter is referred to the Ombudsman under the ICAC Act, the matter—
 - (a) will be taken to relate to administrative acts for the purposes of this Act; and
 - (b) must be dealt with under this Act as if a complaint had been made under this Act and—
 - (i) if the matter was the subject of a complaint or report under the ICAC Act—as if the person who made the complaint or report under that Act was the complainant under this Act; or
 - (ii) if the matter was assessed under that Act after being identified by the Commissioner acting on the Commissioner's own initiative or by the Commissioner or the Office in the course of performing functions under any Act—as if the Commissioner was the complainant under this Act.

The effect of this new provision is that the Ombudsman is obliged to deal with the referral in the same way as a complaint directly received from a complainant under the Ombudsman Act and is able to exercise the same powers and discretions available to him under the Ombudsman Act in regard to it. It also means that if the matter is investigated, consideration will still be given as to whether the definitions of misconduct and maladministration under the ICAC Act have been met, but findings will be in accordance with the Ombudsman Act rather than the ICAC Act.

Thirdly, section 37 of the ICAC Act has been amended so that ICAC no longer needs to be satisfied that the inquiry agency has duly and properly taken action in relation to the referral. As a result, the Ombudsman will no longer seek ICAC's comment on investigation reports prior to finalising them.

These changes apply to all new referrals after 16 December 2016. The Ombudsman's handling of referrals received from ICAC prior to that date continue to be subject to ICAC's oversight.