




Speaker

Mrs Vicki Dunne
Chair
Standing Committee on Public Accounts
Legislative Assembly for the ACT
Civic Square, London Circuit
CANBERRA ACT 2601

Dear Mrs Dunne 

Standing Committee on Public Accounts – Report on Annual Reports 2016 – 2017

Response to Recommendation 13 – Swearing in of the ACT Ombudsman

The Standing Committee on Public Accounts, (PAC) made the following recommendation:

Recommendation 13

12.38 The Committee recommends that the Speaker of the Legislative Assembly for the ACT swear in the ACT Ombudsman as soon as practicable after the publication of the present report.

I have sought advice about this recommendation and am informed that the Speaker's authority to undertake this action depends on whether the ACT Ombudsman has been appointed by the ACT.

Section 28 (3) of the *ACT Self-Government (Consequential Provisions) Act 1988* (Commonwealth) provides:

The person for the time being holding office as Ombudsman (in this section called the Ombudsman) under the Commonwealth Act shall be taken to be the ACT Ombudsman until the appointment of the ACT Ombudsman is made under the ACT law.

Since the commencement of self-government in 1989, the Commonwealth Ombudsman has undertaken the role of ACT Ombudsman. The ACT has yet to appoint an ombudsman under ACT law.

The *Ombudsman Act 1976* of the Commonwealth makes provision for the appointment of the Ombudsman by the Governor-General and his or her tenure of office, resignation and retirement provisions etc. There is no provision in that Act for the Ombudsman to be sworn in.

However, the *Ombudsman Act 1989* (the Act) of the Territory does make provision for the Ombudsman appointed under ACT Law to take an oath of office or make an affirmation of office prior to his or her appointment.

Section 22 of the Act provides, as mentioned above, that the Speaker may, on behalf of the Territory (and, for the first such appointment, with the consent of the Chief Minister), appoint a person who is not the Commonwealth Ombudsman as the Ombudsman.

However, the ACT is yet to make such appointment.

Because no appointment pursuant to section 22 of the *Ombudsman Act 1989* has been made, the circumstances have not arisen whereby the Ombudsman must make an oath or affirmation before the Speaker as set out in section 24A.

This was confirmed in a telephone conversations between an officer from the Clerk's Office and the Parliamentary Counsel, and between the Clerk and the Solicitor-General.

To put it another way, those provisions of the Act such as terms of appointment (s.24), disclosure of interest (s 24B), leave of absence (s 25) and retirement (s 27) as well as section 24A, depend on an ombudsman being appointed by the Speaker pursuant to section 23 of the Act.

It is also worth noting that section 25 of the *Oaths and Affirmations Act 1984* (Territory) provides that, unless a person is authorised to do so by or under a law in force in the Territory, it is an offence to administer an oath or affirmation to another person.

Yours sincerely

A handwritten signature in black ink, appearing to be 'J. Burch', written in a cursive style.

Ms Joy Burch, MLA

Speaker of the Legislative Assembly

29 March 2018