



ANNO VICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1972

No. 115 of 1972

An Act to provide for the appointment of an Ombudsman to investigate the exercise of the administrative powers of certain Departments of the public service and other authorities; to provide for the powers, functions and duties of the Ombudsman; and for other purposes.

[Assented to 23rd November, 1972]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PART I

PRELIMINARY

Short title.

1. This Act may be cited as the "Ombudsman Act, 1972".

Commencement.

2. This Act shall come into operation on a day to be fixed by proclamation.

Interpretation.

3. (1) In this Act, unless the contrary intention appears—

“administrative act” means any decision, act, omission, proposal or recommendation (including a recommendation made to a Minister of the Crown) relating to a matter of administration made or done by any Department, Authority or proclaimed Council or by any person engaged in the work of that Department, Authority or proclaimed Council,

and includes the circumstances surrounding that decision, act, omission, proposal or recommendation but does not include—

(a) any decision, act, omission, proposal or recommendation of a person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him, or any responsibilities which he has in connection with the execution of judicial process;

or

(b) any decision, act, omission, proposal or recommendation of any person acting as counsel or legal adviser to the Crown in his capacity as such:

“Authority” means a body, whether corporate or unincorporate created by an Act, in respect of which the Governor or a Minister of the Crown has the right to appoint the person or some or all of the persons constituting that body but does not include such a body that is for the time being declared by proclamation to be a body to which this Act does not apply:

“complainant” in relation to an investigation means the person or persons whose complaint gave rise to that investigation:

“complaint” in relation to an administrative act, means a complaint that gives rise or may give rise to an investigation into that administrative act:

“Council” means a council as defined for the purposes of the Local Government Act, 1934, as amended, and includes any body that is pursuant to an Act vested with the powers and functions of such a council:

“Department” means a Department, as defined for the purposes of the Public Service Act, 1967, as amended, specified in the schedule to this Act and includes a Department as so defined that is for the time being declared by a proclamation to be a Department for the purposes of this Act:

“investigation” means an investigation made, or as the case may be, to be made by the Ombudsman under this Act in relation to an administrative act:

“officer of the Ombudsman” means an officer or person appointed or employed under section 12 of this Act, for the time being in office or in that employment:

“principal officer” in relation to—

(a) a Department, means the person for the time being occupying the office of Permanent Head, as defined for the purposes of the Public Service Act, 1967, as amended, of that Department;

(b) an Authority, means the chairman or presiding member of that Authority;

and

(c) a proclaimed Council, means the Mayor or Chairman of that Council or the person in whom the powers and functions of the Mayor of that Council are vested by an Act:

“proclaimed Council” means a Council for the time being declared by proclamation to be a Council to which this Act applies:

“responsible Minister” in relation to—

(a) a Department, means the Minister for the time being responsible for that Department;

(b) an Authority, means the Minister for the time being administering the Act under which that Authority was constituted;

and

(c) a proclaimed Council, means the Minister for the time being administering the Local Government Act, 1934, as amended:

“the Ombudsman” means the Ombudsman appointed under section 6 of this Act and includes a person acting in the office of Ombudsman while so acting.

(2) For the purposes of this Act—

(a) every officer or person employed in a Department, the principal officer of the Department and every other person performing any duties or functions in or on behalf of that Department, shall be deemed to be engaged in the work of that Department;

(b) every member of an Authority, the principal officer of that Authority, every officer or person employed by that Authority and every other person performing any duties or functions in or on behalf of that Authority, shall be deemed to be engaged in the work of that Authority;

and

(c) every member of a proclaimed Council, the principal officer of that proclaimed Council, every officer or person employed by that proclaimed Council and every other person performing any duties or functions in or on behalf of that proclaimed Council, shall be deemed to be engaged in the work of that proclaimed Council.

PART IArrangement
of Act.

4. This Act is arranged as follows:—

PART I—PRELIMINARY

PART II—THE OMBUDSMAN

PART III—INVESTIGATIONS

PART IV—MISCELLANEOUS.

5. (1) This Act does not apply to or in relation to any Commission or tribunal for the time being declared by proclamation to be a Commission or tribunal to which this Act does not apply. Non-application of Act.

(2) This Act does not apply to or in relation to any member of the police force in his capacity as such a member.

PART II

PART II

THE OMBUDSMAN

6. (1) For the purposes of this Act, the Governor may, subject to this Act, by notice published in the *Gazette* appoint a person to be the Ombudsman. Appointment of Ombudsman.

(2) The terms and conditions of appointment and employment of the Ombudsman (including his salary and allowances) shall be as, from time to time, determined by the Governor and the salary and allowances of the Ombudsman shall not be reduced during his term of office to an amount less than the amount payable to him on his appointment.

(3) This section shall, without further or other appropriation, be sufficient authority for the payment of the salary and allowances of the Ombudsman out of the general revenue of the State.

7. The Ombudsman shall not, without the consent of the Minister, engage in any remunerative employment or undertaking outside the duties of his office. Ombudsman not to engage in any remunerative employment.

PART IIActing
Ombudsman.

8. (1) If for any reason—

(a) the Ombudsman is temporarily unable to perform the duties of his office;

or

(b) the office of the Ombudsman is temporarily vacant,

the Governor may, by notice published in the *Gazette*, appoint a person to act in the office of the Ombudsman and while so acting that person shall have and may exercise and perform all the powers, functions and duties of the Ombudsman under this Act in all respects as if he were the Ombudsman.

(2) Subject to this Act, the terms and conditions of appointment and employment (including the salary and allowances) of the person appointed under subsection (1) of this section shall be as determined, from time to time, by the Governor.

(3) This section shall, without further or other appropriation, be sufficient authority for the payment of the salary and allowances of the person, appointed under subsection (1) of this section, out of the general revenue of the State.

Delegation.

9. (1) The Ombudsman may, by instrument in writing, delegate all or any of his powers or functions (except this power of delegation) under this Act to any person and those powers or functions may be exercised or performed by that person accordingly.

(2) The Ombudsman may by instrument in writing revoke or vary any delegation given under subsection (1) of this section.

(3) The exercise or performance of any power or function by a delegate pursuant to subsection (1) of this section shall not affect the exercise or performance of that power or function by the Ombudsman.

Term of office
of the
Ombudsman
etc.

10. (1) The Ombudsman shall be appointed for a term expiring on the day on which he attains the age of sixty-five years.

(2) The Governor may remove the Ombudsman from office upon the presentation of an address from both Houses of Parliament praying for his removal.

(3) The Governor may at any time suspend the Ombudsman from office on the grounds of his incompetence or misbehaviour and—

(a) upon such suspension a full statement of the reason therefor shall be laid before both Houses of Parliament within seven days of the suspension if Parliament is then in session or, if not, within seven days of the next succeeding session of Parliament;

and

(b) if within one month of the statement being laid before Parliament, an address to the Governor praying for the removal of the Ombudsman from office has not been presented by both Houses of Parliament, he shall be restored to office but if both Houses of Parliament present such an address, the Governor may remove him from office.

(4) The office of the Ombudsman shall become vacant if—

(a) he dies;

(b) he resigns from office by written notice addressed to the Governor, or his term of office expires;

(c) he is removed from office by the Governor under subsection (2) or (3) of this section;

(d) he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors or compounds with his creditors for less than one hundred cents in the dollar;

(e) he is convicted of any indictable offence or is sentenced to imprisonment for any offence;

(f) he becomes a member of Parliament of the State, the Commonwealth or any other State of the Commonwealth;

or

(g) he becomes, in the opinion of the Governor, incapable by reason of mental or physical illness of further performing his functions and duties under this Act.

(5) Except as is provided by this section, the Ombudsman shall not be removed or suspended from office, nor shall the office of the Ombudsman become vacant.

11. (1) The Ombudsman shall not hold office under and subject to the Public Service Act, 1967, as amended.

Office of
Ombudsman.

(2) If a person appointed as the Ombudsman was, immediately before that appointment, an Officer within the meaning of the Public Service Act, 1967, as amended, the service of that person as Ombudsman shall for the purposes of determining his existing and accruing rights to recreation leave, long service leave and leave on account of illness or other pressing necessity be regarded as service under that Act.

PART II**Officers of the
Ombudsman.**

12. (1) The Governor may, subject to and in accordance with the Public Service Act, 1967, as amended, appoint such officers as he deems necessary for the purposes of this Act.

(2) Subject to this section any officer so appointed shall be subject to the provisions of the Public Service Act, 1967, as amended.

(3) The Minister may, from time to time, by notice published in the *Gazette* determine that the provisions of the Public Service Act, 1967, as amended, and the provisions of the regulations made thereunder specified in the notice shall not apply to or in relation to the officers referred to in subsection (1) of this section and determine what provisions, if any, shall apply to and in relation to those officers in lieu of those provisions and that notice shall apply and have effect as if it were enacted in this Act.

(4) Notwithstanding anything in subsection (1) of this section, the Ombudsman may, with the consent of the Minister, employ such persons as he considers necessary or desirable for the purposes of this Act.

(5) The terms and conditions of appointment and employment, including remuneration, of any person referred to in subsection (4) of this section shall be as determined from time to time by the Governor and the Public Service Act, 1967, as amended, shall not apply to and in relation to the appointment or employment of those persons.

PART III**PART III****INVESTIGATIONS****Matters subject
to investigation.**

13. (1) Subject to this Act, the Ombudsman may investigate any administrative act.

(2) The Ombudsman may make an investigation referred to in subsection (1) of this section either upon a complaint being made to him or on his own motion and where a complaint is made to him he may investigate any administrative act notwithstanding that, on the face of it, the complaint may not appear to relate to that administrative act.

(3) Subject to this subsection, the Ombudsman shall not investigate any administrative act where—

(a) the complainant is provided in relation to that administrative act with a right of appeal, reference or review to a court, tribunal, person or body under any enactment or by virtue of Her Majesty's prerogative;

or

(b) the complainant had a remedy by way of legal proceedings,

but, notwithstanding the foregoing, the Ombudsman may investigate any such administrative act where in his opinion, in the circumstances of the case, it is not reasonable to expect that the complainant should resort or should have resorted to that appeal, reference, review or remedy.

(4) The Ombudsman may investigate any administrative act, notwithstanding any enactment that provides that that administrative act shall be final or shall not be appealed against, challenged, reviewed, quashed or called into question.

14. (1) Where a course of conduct occurred before the commencement of this Act that would have constituted an administrative act had this Act been in operation at the time at which the course of conduct occurred, the Ombudsman may investigate that course of conduct and the circumstances surrounding it in all respects and to the same extent as if this Act had been in force at the time at which that course of conduct occurred and this Act shall apply and have effect accordingly.

Certain conduct may be investigated by the Ombudsman.

(2) Where a course of conduct occurred, whether before or after the commencement of this Act, that would have constituted an administrative act had this Act been in operation and had a proclamation referred to in the definition of "proclaimed Council" in subsection (1) of section 3 of this Act been made before that course of conduct occurred, the Ombudsman may investigate that course of conduct and the circumstances surrounding it in all respects and to the same extent as if this Act were in force and that proclamation had been made before that course of conduct occurred and this Act shall apply and have effect accordingly.

PART III

(3) Notwithstanding anything in subsections (1) or (2) of this section the Ombudsman shall not, after the expiration of the period of twelve months next following the commencement of this Act, entertain any complaint relating to a course of conduct that occurred before the commencement of this Act.

**Person who
may make
complaints.**

15. (1) A complaint in respect of an administrative act may be made by any person or body of persons whether corporate or unincorporate.

(2) Where a person by whom a complaint in respect of an administrative act might have been made has died or is for any reason unable to act for himself the complaint may be made on his behalf by any person who is, in the opinion of the Ombudsman, suitable to represent him or his interests but except as is provided by this section a complaint shall not be entertained by the Ombudsman unless it is made by a person or body of persons whether corporate or unincorporate directly affected by the administrative Act complained of.

(3) A complaint in respect of an administrative act that could, apart from this subsection, be made by a person or body of persons may, with the consent of that person or body, be made on behalf of that person or body by a member of either House of Parliament and with the consent of that person or body that member may act on behalf of that person or body in and in connection with all matters relating to the matter of complaint.

(4) Notwithstanding the provision of any enactment prohibiting or restricting, or authorizing the imposition of prohibitions or restrictions on, the communication of any person, a person having the care or custody of another person shall not refuse or fail to take all steps necessary to facilitate any communication by that other person necessary for or incidental to the purpose of a complaint under this Act and to ensure the privacy of that communication.

Penalty: Five hundred dollars.

**Time within
which
complaints
must be made.**

16. (1) Subject to this section a complaint under this Act shall not be entertained by the Ombudsman if it is made after twelve months from the day on which the complainant first had notice of the matters alleged in the complaint, but the Ombudsman may conduct an investigation into the matter of complaint where the complaint was made after that period if he considers that, in all the circumstances of the case, it is proper to do so.

(2) For the purposes of this section a complainant shall be deemed to have had notice of the matters alleged in the complaint at the time he might reasonably be expected to have had such notice.

17. (1) The Ombudsman shall not entertain a complaint or, having commenced to investigate a matter raised in a complaint, shall not continue the investigation if he is of the opinion that the complaint is, or is in substance, made by or on behalf of an employee, in his capacity as such an employee and that the complaint is, or is in substance, so made in relation to an administrative act alleged to have been done by or on behalf of the employer of that employee in his capacity as such an employer.

Certain complaints need not be entertained, etc.

(2) The Ombudsman may refuse to entertain a complaint, or, having commenced to investigate a matter raised in a complaint, may refuse to continue the investigation if he is of the opinion—

- (a) that the matter raised in the complaint is trivial;
- (b) that the complaint is frivolous or vexatious or is not made in good faith;
- (c) that the complainant or the person on whose behalf the complaint was made has not a sufficient personal interest in the matter raised in the complaint;

or

- (d) that having regard to all the circumstances of the case, the investigation, or the continuance of the investigation of the matter raised in the complaint, is unnecessary or unjustifiable.

(3) Where, under this Act, the Ombudsman is precluded from entertaining, or refuses to entertain, a complaint, or refuses to continue an investigation of any matter raised in a complaint he shall inform the complainant of his decision stating the reason therefor.

18. (1) Before commencing an investigation relating to an administrative act alleged to have been done by or on the part of a Department, Authority or proclaimed Council, the Ombudsman shall inform the principal officer thereof of his intention to conduct such an investigation.

Procedure on investigations.

(2) Every investigation under this Act shall be conducted in private.

(3) The Ombudsman is not required to hold any hearing for the purposes of an investigation under this Act and he may obtain information from such persons and in such manner as he thinks fit and may determine whether any person may be represented by counsel, solicitor or otherwise in the investigation.

(4) If at any time during the course of an investigation it appears to the Ombudsman that there may be grounds for making a report on that investigation that may affect any Department, Authority or proclaimed Council he shall before making that report afford the principal officer thereof an opportunity to comment on the subject matter of the investigation.

PART III

(5) If, during or after any investigation, the Ombudsman is of the opinion that there is any evidence of a breach of duty or misconduct on the part of any member, officer or employee of any Department, Authority or proclaimed Council he shall refer that matter to the principal officer thereof.

(6) Subject to this Act the Ombudsman may regulate his procedure in relation to an investigation in such manner as he sees fit.

Ombudsman to have powers of a Royal Commission.

19. For the purposes of an investigation the Ombudsman shall have and may exercise the powers of a commission as defined in the Royal Commissions Act, 1917, and that act shall apply and have effect, in all respects, as if—

(a) the Ombudsman were a commission as so defined;

and

(b) the subject matter of the investigation were set out in a commission of inquiry issued by the Governor under his hand and the public seal of the State.

No obligation on persons to maintain secrecy.

20. No obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to persons in the service of the Crown, an Authority or proclaimed Council, whether imposed by any enactment or by a rule of law applies to the disclosure of information for the purposes of an investigation by the Ombudsman and, except as is provided in this Act, the Crown shall not be entitled in relation to any such investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.

Protection for proceedings in Cabinet.

21. (1) No person shall be required or authorized by virtue of this Act—

(a) to furnish any information or answer any questions relating to the proceedings of the Cabinet or of any committee of the Cabinet;

or

(b) to produce or inspect so much of any document as relates to any such proceedings.

(2) For the purposes of this section a certificate issued under the hand of the Minister certifying that any information or question or any document or part of a document relates to the proceedings referred to in subsection (1) of this section is conclusive evidence of the fact so certified.

Secrecy.

22. (1) Information obtained by or on behalf of the Ombudsman in the course of or for the purpose of an investigation under this Act shall not be disclosed except—

(a) for the purposes of the investigation and of any report or recommendation to be made thereon under this Act;

or

(b) for the purposes of any proceedings under the Royal Commissions Act, 1917, or under this Act.

(2) A person shall not disclose any information referred to in subsection (1) of this section contrary to the provisions of that subsection.

Penalty: Five hundred dollars.

23. For the purposes of conducting an investigation under this Act, the Ombudsman or a person authorized by him may enter any premises or place used or occupied by a Department, Authority or proclaimed Council and inspect those premises or that place and any thing for the time being therein or thereon.

Entry on premises.

24. A person shall not—

Obstruction.

(a) without lawful excuse (proof of which shall lie upon him) obstruct, hinder or resist the Ombudsman or other person in the exercise or performance of the powers and functions conferred on him by or under this Act;

(b) without lawful excuse (proof of which shall lie upon him) fail or refuse to comply with any lawful requirement of the Ombudsman or any other person under this Act;

or

(c) wilfully make any statement that is false or untrue in a material particular to the Ombudsman or any person in the exercise of his powers under this Act.

Penalty: Five hundred dollars.

25. (1) This section applies to any investigation conducted by the Ombudsman as a result of which the Ombudsman is of the opinion that the administrative act to which the investigation relates—

Proceedings on the completion of an investigation.

(a) appears to have been made contrary to law;

(b) was unreasonable, unjust, oppressive or improperly discriminatory;

(c) was in accordance with a rule of law or a provision of an enactment or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory;

- (d) was done in the exercise of a power or discretion and was so done for an improper purpose or on irrelevant grounds or on the taking into account of irrelevant considerations;
- (e) was done in the exercise of a power or discretion and the reasons for the act were not but should have been given;
- (f) was based wholly or in part on a mistake of law or fact;
or
- (g) was wrong.

(2) In the case of an investigation to which this section applies in which the Ombudsman is of the opinion—

- (a) that the subject matter of the investigation should be referred back to the appropriate Department, Authority or proclaimed Council for further consideration;
- (b) that action can be, and should be, taken to rectify or mitigate or alter the effects of the administrative act to which the investigation related;
- (c) that the practice in accordance with which the administrative act was done should be varied;
- (d) that any law in accordance with which or on the basis of which the action was taken should be amended or repealed;
- (e) that the reason for any administrative act should be given;
or
- (f) that any other steps should be taken,

the Ombudsman shall report his opinion, and his reasons therefor, to the principal officer of the Department, Authority or proclaimed Council, and the Ombudsman may make such recommendations as he sees fit.

(3) The Ombudsman shall send a copy of any report or recommendation made under subsection (2) of this section to the responsible Minister.

(4) The Ombudsman may require the principal officer to whom he has made a report or recommendation under subsection (2) of this section to notify him within a time specified in the request of the steps that have been taken to give effect to the recommendation or if no such steps have been taken the reasons therefor.

(5) Where it appears to the Ombudsman that appropriate steps have not been taken within a reasonable time of his making a report under subsection (2) of this section to give effect to his recommendation the Ombudsman may if he thinks fit forward to the Premier a copy of the report, the recommendation and any requirement together with his comments thereon.

(6) Where a copy of the report, the recommendation, any requirement, and the comments of the Ombudsman thereon have been forwarded to the Premier pursuant to subsection (5) of this section, the Ombudsman may forward a copy of the report, the recommendation and any requirement together with his comments thereon to the Speaker of the House of Assembly and to the President of the Legislative Council with a request that the report, recommendation, requirement and comments be laid on the table of their respective Houses of Parliament.

26. Without limiting the generality of the powers elsewhere conferred, the Ombudsman may if he considers it in the public interest or in the interest of any Department, Authority or proclaimed Council publish in any manner in which he thinks fit any report of an investigation made by him whether or not the subject matter of the report has been dealt by him otherwise under this Act.

Additional powers of the Ombudsman.

27. (1) Where the Ombudsman conducts an investigation under this Act he shall inform the complainant, in such manner and at such time as he thinks proper of the result of the investigation and where the Ombudsman has made a recommendation under subsection (2) of section 25 of this Act and it appears to him that no steps which seem to him to be appropriate have been taken within a reasonable time of the making of that recommendation the Ombudsman shall inform the complainant of the recommendations making such comments thereon as he thinks proper.

Information to complainant on results of investigation.

28. (1) Where in the course of or in contemplation of an investigation under this Act, a question arises as to whether the Ombudsman has jurisdiction to conduct the investigation, the Ombudsman or a person, body, Department, Authority or proclaimed Council having an interest in the matter may apply to the Supreme Court for a determination of the question and on such an application the Court may make such order as it considers proper and the Ombudsman shall give effect to that order.

Applications to the Supreme Court.

(2) A reference in this section to a Department, Authority or proclaimed Council having an interest in the matter shall be read as including a reference to the principal officer of such a Department, Authority or proclaimed Council.

PART IV

PART IV

MISCELLANEOUS

Annual and
other reports to
Parliament.

29. Without limiting or restricting the powers otherwise conferred on the Ombudsman to cause a report to be laid before either House of Parliament, the Ombudsman shall, as soon as practicable after the thirtieth day of June in each year, forward to the Minister a report on the exercise of the functions of the Ombudsman during the period of twelve months immediately preceding that thirtieth day of June (except in the case of the thirtieth day of June next succeeding the commencement of this Act where the report shall relate to the period between that commencement and that thirtieth day of June) and the Minister shall cause every report of the Ombudsman made in accordance with this section to be laid before each House of Parliament within fourteen days of his receipt thereof if Parliament is then in session or if Parliament is not then in session within fourteen days of the commencement of the next session of Parliament.

Protection of
Ombudsman
and officers.

30. (1) No action, suit or proceeding shall be brought or maintained against the Ombudsman or any officer of the Ombudsman in respect of any act or thing done or omitted to be done in his respective capacity in the exercise or purported exercise in good faith of any power or function vested in him by or under this Act.

(2) Neither the Ombudsman nor any officer of the Ombudsman shall be called to give evidence before any court, or in any judicial proceedings, in respect of any matter coming to his knowledge in the exercise of his functions under this Act.

Summary
Proceedings.

31. Proceedings for offences against this Act shall be disposed of summarily.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

M. L. OLIPHANT, Governor

THE SCHEDULE

Agent-General in England Department
Agriculture Department
Agricultural College Department
Art Gallery Department
Attorney-General's Department
Auditor-General's Department
Botanic Garden Department
Chemistry Department
Chief Secretary's Department
Department for Community Welfare
Crown Law Department
Education Department
Electoral Department
Engineering and Water Supply Department
Department of Environment and Conservation
Department of Fisheries and Fauna Conservation
Government Printing Department
Government Reporting Department
Highways Department
Hospitals Department
Department of Labour and Industry
Department of Lands
Libraries Department
Local and District Criminal Courts Department
Department of Marine and Harbors
Mines Department
Minister of Agriculture Department
Minister of Education Department
Department of Minister of Roads and Transport and Minister of Local Government
Minister of Works Department
Motor Vehicles Department
Police Department
Department of the Premier and of Development
Prisons Department
Produce Department
Department of the Public Actuary
Public Buildings Department
Department of Public Health
Department of the Public Service Board
Public Trustee Department
Registrar-General's Department
State Supply Department
State Taxes Department
Superannuation Department
Supreme Court Department
Treasury Department
Valuation Department
Woods and Forests Department