

South Australia



OMBUDSMAN (MISCELLANEOUS) AMENDMENT ACT 1996

No. 52 of 1996

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SCHEDULE

Schedule Inserted in Principal Act

SCHEDULE

The Parliamentary Committee



ANNO QUADRAGESIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1996

No. 52 of 1996

An Act to amend the Ombudsman Act 1972.

[Assented to 1 August 1996]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Ombudsman (Miscellaneous) Amendment Act 1996*.
- (2) The *Ombudsman Act 1972* is referred to in this Act as "the principal Act".

Commencement

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

Amendment of s. 3—Interpretation

3. Section 3 of the principal Act is amended—

- (a) by striking out from paragraph (c) of the definition of "agency to which this Act applies" in subsection (1) "proclaimed";
- (b) by inserting after paragraph (b) of the definition of "authority" in subsection (1) the following paragraph:

(ba) a health centre or hospital incorporated under the *South Australian Health Commission Act 1976*;;

- (c) by inserting after the definition of "authority" in subsection (1) the following definition:

"Committee" means the *Ombudsman Parliamentary Committee* established in the schedule;;

- (d) by striking out from paragraph (a) of the definition of "principal officer" in subsection (1) "officer";
- (e) by striking out from paragraph (c) of the definition of "principal officer" in subsection (1) "proclaimed";

- (f) by striking out from subsection (1) the definition of "proclaimed council";
- (g) by striking out from paragraph (c) of the definition of "responsible Minister" in subsection (1) "proclaimed";
- (h) by striking out paragraph (d) of subsection (3).

Amendment of s. 6—Appointment of Ombudsman**4. Section 6 of the principal Act is amended—**

- (a) by inserting in subsection (1) "on the recommendation of the Committee," after "Governor may,";
- (b) by inserting after subsection (1) the following subsection:

(1a) The Governor must not make an appointment under this section unless the Committee's recommendation has been approved by resolution of both Houses of Parliament.

Amendment of s. 8—Acting Ombudsman**5. Section 8 of the principal Act is amended by inserting after subsection (1) the following subsection:**

(1a) A person who is a Public Service employee may be appointed under this section to act in the office of the Ombudsman while remaining a Public Service employee for a term not exceeding three months and may, on the expiration of that term, be reappointed (provided that the terms of appointment do not exceed six months in aggregate in any period of 12 months).

Amendment of s. 12—Officers of the Ombudsman**6. Section 12 of the principal Act is amended by striking out from subsection (2)(a) "*Government Management and Employment Act, 1985*" and substituting "*Public Sector Management Act 1995*".****Insertion of s. 14****7. The following section is inserted after section 13 of the principal Act:****Parliament may refer matter for investigation**

14. (1) Subject to this section, either House of Parliament, or any committee of either of those Houses, or a joint committee of both Houses of Parliament, may refer to the Ombudsman, for investigation and report, any matter that is within the jurisdiction of the Ombudsman and which that House or committee considers should be investigated by the Ombudsman.

(2) The Ombudsman must carry out an investigation into any matter referred to him or her under this section and, following that investigation, must submit a report on the matter to—

- (a) if the matter was referred to the Ombudsman by the Legislative Council or a committee of the Legislative Council—the President of the Legislative Council;

- (b) if the matter was referred to the Ombudsman by the House of Assembly or a committee of the House of Assembly—the Speaker of the House of Assembly;
 - (c) if the matter was referred to the Ombudsman by a joint committee of both Houses of Parliament—the President of the Legislative Council and the Speaker of the House of Assembly.
- (3) If—
- (a) the person affected by an administrative act is provided in relation to that 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 person affected by an administrative act had a remedy by way of legal proceedings; or
 - (c) 12 months have elapsed since the person affected by an administrative act had notice of the administrative act,

the administrative act is not to be referred to the Ombudsman by a House of Parliament or committee under this section unless the House or committee resolves that, in all the circumstances of the case, the administrative act warrants investigation by the Ombudsman despite the availability of that appeal, reference, review or remedy or the passage of time since the person affected had notice of the administrative act.

Insertion of s. 17a

8. The following section is inserted after section 17 of the principal Act:

Conciliation

17a. (1) The Ombudsman may, at any time, decide to attempt to deal with a complaint by conciliation.

(2) The Ombudsman may, in attempting conciliation under this section, act personally or through some other person.

(3) The Ombudsman may, if satisfied that the subject of a complaint has been properly resolved by conciliation under this section, determine that the complaint should not be investigated or further investigated under this Act.

Insertion of s. 19a

9. The following section is inserted after section 19 of the principal Act:

Ombudsman may issue direction in relation to administrative act

19a. (1) The Ombudsman may, by notice in writing, direct an agency to which this Act applies to refrain from performing an administrative act specified in the notice for any period specified in the notice.

(2) A notice or notices issued under this section must not require an agency to refrain from performing an administrative act for more than 45 days in aggregate.

(3) The Ombudsman must not issue a notice under this section unless satisfied—

- (a) that the relevant administrative act is likely to prejudice—
 - (i) an investigation or proposed investigation; or
 - (ii) the effect or implementation of a recommendation that the Ombudsman might make as a result of an investigation or proposed investigation; and
- (b) that compliance with the notice by the agency would not result in the agency breaching a contract or other legal obligation or cause any third parties undue hardship; and
- (c) that issue of the notice is necessary to prevent serious hardship to a person.

(4) The Ombudsman may, at any time, revoke a notice under this section and must revoke a notice if satisfied that the notice should not have been issued because the circumstances did not fall properly within those described in subsection (3).

(5) If, following receipt of a notice under this section, the agency is of the opinion that, in the circumstances, failure to comply with the terms of the notice would be reasonable and justifiable, the agency may determine not to comply with the notice (in which case it must advise the Ombudsman of that determination, in writing, as soon as practicable).

(6) If an agency that has received a notice under this section fails to comply with the terms of the notice, the following provisions apply:

- (a) the principal officer of the agency must, at the request of the Ombudsman, report to the Ombudsman within the time allowed in the request on the reasons for the agency's failure to comply with the notice;
- (b) if, following receipt of the principal officer's report, the Ombudsman is of the opinion that the agency's failure to comply with the notice was unjustified or unreasonable, the Ombudsman may make a report on the matter to the Premier;
- (c) the Ombudsman may forward copies of any report to the Premier to the Speaker of the House of Assembly and the President of the Legislative Council with a request that they be laid before their respective Houses.

(7) A power or function of the Ombudsman under this section must not be delegated.

Amendment of s. 25—Proceedings on the completion of an investigation

10. Section 25 of the principal Act is amended by inserting after subsection (1) the following subsection:

- (1a) This section does not apply to an investigation conducted under section 14.

Amendment of s. 30—Immunity from liability

11. Section 30 of the principal Act is amended by inserting after subsection (2) the following subsection:

(3) In this section—

"member of the Ombudsman's staff" includes any person to whom powers or functions have been delegated under this Act.

Insertion of schedule

12. The schedule set out in the schedule of this Act is inserted after Part IV of the principal Act.

SCHEDULE
Schedule Inserted in Principal Act

SCHEDULE
The Parliamentary Committee

Establishment of Parliamentary Committee

1. (1) The *Ombudsman Parliamentary Committee* is established.

(2) The duties of the Committee are—

(a) to consider matters relating to the general operation of this Act; and

(b) to make recommendations in relation to the appointment of the Ombudsman; and

(c) to consider any other matter referred to the Committee by the Minister; and

(d) to provide, on or before 31 December in each year, an annual report to Parliament on the work of the Committee during the preceding financial year.

(3) In considering matters relating to the general operation of this Act, the Committee must not engage in a review of any particular decision of the Ombudsman.

(4) Matters disclosed to or considered by the Committee for the purposes of its making of a recommendation in relation to the appointment of the Ombudsman must not be made the subject of public disclosure or comment.

Membership of Committee

2. (1) The Committee consists of six members of whom—

(a) three must be members of the House of Assembly appointed by the House of Assembly (of whom at least one must be appointed from the group led by the Leader of the Opposition and at least one must be appointed from the group led by the Leader of the Government); and

(b) three must be members of the Legislative Council appointed by the Legislative Council (of whom at least one must be appointed from the group led by the Leader of the Opposition and at least one must be appointed from the group led by the Leader of the Government).

(2) The members of the Committee are not entitled to remuneration for their work as members of the Committee.

Term of office of members

3. A member of the Committee holds office until the first sitting day of the member's appointing House following the next general election of members of the House of Assembly and is eligible for reappointment on the expiration of that term.

Removal from and vacancies of office

4. (1) A person ceases to be a member of the Committee if the person—

(a) dies; or

(b) resigns from the Committee by notice in writing to—

(i) if the member was appointed by the House of Assembly—the Speaker of the House of Assembly; or

(ii) if the member was appointed by the Legislative Council—the President of the Legislative Council; or

(c) completes a term of office and is not reappointed; or

(d) ceases to be a member of his or her appointing House; or

(e) is removed from office by his or her appointing House.

(2) On the office of a member of the Committee becoming vacant the member's appointing House must, as soon as practicable, appoint one of its members to the Committee.

(3) An act or proceeding of the Committee is not invalid by reason of a vacancy in its membership.

Procedure

5. (1) The Committee must from time to time appoint as its presiding member a member of the Committee appointed by a House from the group led by the Leader of the Government.

(2) Four members constitute a quorum of the Committee.

(3) A decision carried by a majority of the votes of the members present at a meeting of the Committee is a decision of the Committee.

(4) The presiding member has, in addition to a deliberative vote, a casting vote in the event of an equality of votes.

(5) Subject to this schedule and any other Act, the Committee is to conduct its business—

(a) to the extent that Joint Standing Orders apply—in accordance with those orders; and

(b) otherwise in such manner as the Committee thinks fit.

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

E. J. NEAL Governor