



ANNO TRICESIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1986

No. 103 of 1986

An Act to amend the Ombudsman Act, 1972.

[Assented to 18 December 1986]

The Parliament of South Australia enacts as follows:

1. (1) This Act may be cited as the “Ombudsman Act Amendment Act, 1986”. Short title.

(2) The Ombudsman Act, 1972, is in this Act referred to as “the principal Act”.

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

3. Section 3 of the principal Act is amended by striking out the definition of “Authority” from subsection (1) and substituting the following definition: Amendment of s. 3— Interpretation.

“authority” means—

(a) a body created by an Act and constituted of—

(i) a person appointed by the Governor or a Minister of the Crown;

or

(ii) a number of members, some or all of whom are appointed by the Governor or a Minister of the Crown;

(b) the Council of The University of Adelaide;

or

(c) a body created under an Act and declared by proclamation to be an authority.

4. The principal Act is amended as indicated in the schedule.

Statute Law
Revision
amendments.

SCHEDULE

Section Amended	How Amended
Section 3 (1)— Definition of “administrative act”	Delete this definition and substitute: “act” includes— (a) an omission; (b) a decision, proposal or recommendation (including a recommendation made to a Minister of the Crown), and the circumstances surrounding an act: “administrative act” means an act relating to a matter of administration on the part of an agency to which this Act applies or a person engaged in the work of such an agency but does not include— (a) an act done in the discharge of a judicial authority or related to the execution of judicial process; or (b) an act done by a person in the capacity of legal adviser to the Crown: “agency to which this Act applies” means— (a) a department (but not including a department or part of a department declared by proclamation to be a department or part of a department to which this Act does not apply); (b) an authority (not including an authority declared by proclamation to be an authority to which this Act does not apply); or (c) a proclaimed council.
Definition of “Department”	Delete this definition and substitute: “department” means an administrative unit of the Public Service.
Definition of “investigation”	Delete “made, or as the case may be, to be made”.
Definition of “officer of the Ombudsman”	Delete this definition and substitute: “officer of the Ombudsman” means— (a) a person employed in the Public Service and assigned to work in the office of the Ombudsman; or (b) a person employed under section 12.
Definition of “principal officer”	Delete this definition and substitute: “principal officer” in relation to an agency to which this Act applies means— (a) where the agency is a department—the chief executive officer of the department; (b) where the agency is an Authority—the person who constitutes the Authority or, where the Authority is constituted of more than one person, the person who presides at meetings of the Authority; (c) where the agency is a proclaimed council—the mayor, chairman or other presiding officer of the council.
Definition of “responsible Minister”	Delete this definition and substitute: “responsible Minister” in relation to an agency to which this Act applies means— (a) where the agency is a department—the Minister responsible for that department;

SCHEDULE—continued

Section Amended	How Amended
	<p>(b) where the agency is an authority—the Minister responsible for the administration of the Act under which the authority is constituted;</p> <p>(c) where the agency is a proclaimed council—the Minister responsible for administering the Local Government Act, 1934.</p>
Definition of “the Ombudsman”	Delete this definition and substitute: “the Ombudsman” includes a person acting in the office of the Ombudsman.
Section 3 (2)	Delete this subsection and substitute: (2) For the purposes of this Act, a person engaged or employed in the administration of, or in the performance of functions in or on behalf of, an agency to which this Act applies is engaged in the work of that agency.
Section 3 (3)	Delete this subsection and substitute: (3) The Governor may, by proclamation— (a) declare a body created under an Act to be an authority; (b) declare an authority to be, or not to be, an authority to which this Act applies; (c) declare a department or part of a department to be a department or part of a department to which this Act does not apply; (d) declare a council to be a council to which this Act applies; (e) vary or revoke a proclamation previously made under this Act.
Section 4	Delete this section.
Section 4a	Delete this section.
Section 6 (1)	Delete this subsection and substitute: (1) The Governor may, by notice published in the <i>Gazette</i> , appoint a person to be the Ombudsman.
Section 6 (3)	Delete “shall, without further or other appropriation, be” and substitute “is, without further appropriation,”.
Section 7	Delete “the duties of his office” and substitute “official duties”.
Section 8 (1) (a)	Delete “the duties of his office” and substitute “official duties”.
Section 8 (1)	Delete “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” and substitute “all the powers, functions and duties of the Ombudsman”.
Section 8 (3)	Delete this subsection and substitute: (3) This section is, without further appropriation, sufficient authority for the payment of the salary and allowances of an acting Ombudsman out of the general revenue of the State.
Section 9 (1)	Delete this subsection and substitute: (1) The Ombudsman may, by instrument in writing, delegate powers or functions under this Act (except this power of delegation) to any person.
Section 10 (3)	Delete this subsection and substitute:

SCHEDULE—continued

Section Amended	How Amended
Section 10 (4)	<p>(3) The Governor may suspend the Ombudsman from office on the ground of incompetence or misbehaviour and, in that event—</p> <p>(a) a full statement of the reason for the suspension must 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 commencement of the next session of Parliament;</p> <p>and</p> <p>(b) if, at the expiration of one month from the date on which the statement was laid before Parliament, an address from both Houses of Parliament seeking the Ombudsman's removal has not been presented to the Governor, the Ombudsman must be restored to office.</p>
Section 11	<p>Delete this subsection and substitute:</p> <p>(4) The office of Ombudsman becomes vacant if the Ombudsman—</p> <p>(a) dies;</p> <p>(b) attains the age of 65 years;</p> <p>(c) resigns by written notice delivered to the Governor;</p> <p>(d) is removed from office by the Governor under subsection (2);</p> <p>(e) becomes bankrupt or applies as a debtor to take the benefit of the laws relating to bankruptcy;</p> <p>(f) is convicted of an indictable offence or sentenced to imprisonment for an offence;</p> <p>(g) becomes a member of the Parliament of this State or any other State of the Commonwealth or of the Commonwealth or becomes a member of a Legislative Assembly of a Territory of the Commonwealth;</p> <p>or</p> <p>(h) becomes, in the opinion of the Governor, mentally or physically incapable of carrying out satisfactorily the duties of office.</p>
Section 12	<p>Ombudsman is not a Public Service employee.</p> <p>Delete this section and substitute:</p> <p>11. (1) The Ombudsman is not a Public Service employee.</p> <p>(2) If an Ombudsman was, immediately before appointment as such, employed in the Public Service, the Ombudsman retains existing and accruing rights in respect of leave.</p> <p>Delete this section and substitute:</p> <p>12. (1) The Ombudsman's staff consists of—</p> <p>(a) Public Service employees assigned to work in the office of the Ombudsman;</p> <p>and</p> <p>(b) if appointments have been made under subsection (3)—the persons holding those appointments.</p> <p>(2) The Minister may, by notice in the <i>Gazette</i>—</p> <p>(a) exclude Public Service employees on the Ombudsman's staff from specified provisions of the Government Management and Employment Act, 1985;</p> <p>and</p>

SCHEDULE—continued

Section Amended	How Amended
	<p>(b) if the Minister thinks that certain provisions should apply to such employees instead of those from which they are excluded under paragraph (a)—determine that those provisions will so apply, and such a notice has effect in accordance with its terms.</p> <p>(3) The Ombudsman may, with the consent of the Minister, appoint staff for the purposes of this Act.</p> <p>(4) The terms and conditions of employment of a person appointed under subsection (3) will be determined by the Governor and such a person is not a Public Service employee.</p>
Section 13 (2)	Delete “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” and substitute “either on receipt of a complaint or on the Ombudsman’s own initiative and, where a complaint is made, the Ombudsman”.
Section 13 (3)	Delete “where in his opinion, in the circumstances of the case, it is not reasonable” and substitute “if of the opinion that it is not reasonable, in the circumstances of the case,”.
Section 13 (4)	Delete “shall be final or shall not be appealed against” and substitute “is final or not to be appealed against”.
Section 14	Delete this section.
Section 15 (1)	Delete “whether corporate or unincorporate”.
Section 15 (2)	Delete this subsection and substitute: (2) Where a person by whom a complaint in respect of an administrative act might have been made has died or is unable to make the complaint personally, the complaint may be made by a person who is, in the Ombudsman’s opinion, a suitable representative of that person.
Section 15	After subsection (3) insert subsection as follows: (3a) Except as provided by this section, a complaint must not be entertained by the Ombudsman unless made by a person or body of persons directly affected by the administrative act to which the complaint relates.
Section 15 (4)	Delete “the communication of any person” and substitute “communication”. Delete “the purpose of”.
Section 17 (1)	Delete this subsection and substitute: (1) The Ombudsman must not proceed with the investigation of a complaint if it appears that— (a) the person by or on whose behalf the complaint is made is an employee; and (b) the complaint relates to an administrative act done by another in the capacity of an employer of that person.
Section 17 (3)	Delete this subsection and substitute: (3) Where a complaint is made and the Ombudsman decides not to investigate the complaint, or to discontinue an investigation, the Ombudsman must inform the complainant of that decision and of the reasons for it.
Section 18 (1)	Delete “he should” and substitute “to”.

SCHEDULE—continued

Section Amended	How Amended
Section 18 (1a)	Delete this subsection and substitute: (1a) The Ombudsman must, before proceeding with a full investigation of an administrative act, inform the principal officer of the relevant agency of the decision to proceed with such an investigation.
Section 18 (3)	Delete this subsection and substitute: (3) The Ombudsman— (a) is not required to hold a hearing for the purposes of an investigation; (b) may obtain information from such persons and in such manner as the Ombudsman thinks fit; (c) may determine whether any person to whom an investigation relates may have legal or other representation.
Section 18 (4)	Delete this subsection and substitute: (4) Before making a report affecting an agency to which this Act applies the Ombudsman must allow the principal officer of the agency a reasonable opportunity to comment on the subject matter of the report.
Section 18 (5)	Delete this subsection and substitute: (5) The Ombudsman must report any evidence of breach of duty or misconduct on the part of a member, officer or employee of an agency to which this Act applies to the principal officer of the agency.
Section 18 (6)	Delete this subsection and substitute: (6) Subject to this Act, the procedure to be adopted in relation to an investigation shall be as determined by the Ombudsman.
Section 19	Delete “shall have and may exercise” and substitute “has”. Delete “shall apply and have effect, in all respects,” and substitute “applies”.
Section 19 (b)	Delete “under his hand and the public seal of the State” and substitute “under that Act”.
Section 20	Delete “, an Authority or proclaimed Council” and substitute “or an agency to which this Act applies”. Delete “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” and substitute “the Crown is not entitled, in relation to any such investigation, to privilege in respect of the production of documents or the giving of evidence”.
Section 23	Delete this section and substitute: 23. For the purposes of an investigation, the Ombudsman or a person authorized by the Ombudsman may enter and inspect any premises or place occupied by an agency to which this Act applies and anything in or on those premises or that place.
Section 24 (a)	Delete “(proof of which shall lie upon him)”. Delete “the powers and functions conferred on him” and substitute “powers or functions conferred”.
Section 24 (b)	Delete “(proof of which shall lie on him)”.
Section 24 (c)	Delete “any person in the exercise of his” and substitute “any other person acting in the exercise of”.

Entry and inspection.

SCHEDULE—*continued*

Section Amended	How Amended
Section 25 (2) (a)	Delete "Department, Authority or proclaimed Council" and substitute "agency".
Section 25 (2)	Delete "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 recommendation as he sees fit" and substitute "the Ombudsman must report that opinion and the reasons for it to the principal officer of the relevant agency and may make such recommendations as the Ombudsman thinks fit".
Section 25 (4)	Delete this subsection and substitute: (4) The principal officer of an agency in relation to which a recommendation is made under subsection (2) must, at the request of the Ombudsman, report to the Ombudsman within a time allowed in the request on what steps have been taken to give effect to the recommendation and, if no such steps have been taken, the reason for the inaction.
Sections 25 (5) and (6)	Delete these subsections and substitute: (5) If it appears to the Ombudsman that appropriate steps have not been taken to give effect to a recommendation made under this section, the Ombudsman may make a report on the matter (containing a copy of the earlier report and the recommendation) to the Premier. (6) Where the Ombudsman reports to the Premier under subsection (5), the Ombudsman may forward copies of the report 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.
Section 26	Delete this section and substitute: 26. If the Ombudsman considers it to be in the public interest or the interests of an agency to which this Act applies to do so, the Ombudsman may have a report on an investigation published in such manner as the Ombudsman thinks fit.
Section 27	Delete this section and substitute: 27. (1) The Ombudsman must inform a complainant of the result of an investigation made on the complaint. (2) If— (a) a complaint is investigated; (b) the Ombudsman makes a recommendation under this Act in relation to the subject matter of the complaint; and (c) the Ombudsman is of the opinion that reasonable steps have not been taken to implement the recommendation within a reasonable time, the Ombudsman must inform the complainant of that opinion and may make any further comments on the matter that appear appropriate in the circumstances.
Section 28	Delete this section and substitute: 28. Where— (a) an investigation has been commenced or is proposed under this Act; and (b) a question arises as to whether the Ombudsman has jurisdiction to conduct the investigation,

SCHEDULE—*continued*

Section Amended	How Amended
Section 29 (1)	<p>the Supreme Court may, on the application of the Ombudsman, an agency to which this Act applies or the principal officer of such an agency, determine the question and make any orders necessary to give effect to the determination.</p> <p>Delete this subsection and substitute:</p> <p>(1) The Ombudsman must in each year prepare a report on the work of the Ombudsman's office during the preceding year and send copies of the report to the President of the Legislative Council and the Speaker of the House of Assembly to be laid before their respective Houses at the earliest opportunity.</p>
Section 29 (2)	<p>Delete this subsection and substitute:</p> <p>(2) The Ombudsman must send a copy of each annual report to the Minister.</p>
Section 30 (1)	<p>Delete this subsection and substitute:</p> <p>(1) No liability attaches to the Ombudsman or any member of the Ombudsman's staff for any act or omission in good faith in the exercise or purported exercise of powers or functions under this Act.</p>
Section 30 (2)	<p>Delete this subsection and substitute:</p> <p>(2) Except for the purposes of an application under section 28, neither the Ombudsman nor any member of the Ombudsman's staff can be called to give evidence before any court in any judicial proceedings, on a matter coming to his or her notice in the course of exercising powers or functions under this Act.</p>

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

D. B. DUNSTAN, Governor