

Ombudsman (Amendment) Bill

No.

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LEGISLATIVE ASSEMBLY

Read 1° 3 May 1989

(Brought in by Mr Cain and Mr Kennan)

A BILL

to amend the *Ombudsman Act* 1973 and the *Public Service Act* 1974
and for other purposes

Ombudsman (Amendment) Act 1989

The Parliament of Victoria enacts as follows:

Purposes

1. The purposes of this Act are—

- (a) to establish a fixed term of office for the Ombudsman; and
- 5 (b) to require that staff in the Ombudsman's office are appointed under the *Public Service Act* 1974; and
- (c) to give the Ombudsman the powers of a chief administrator in relation to those officers; and
- (d) to provide for enquiries; and
- 10 (e) to make other minor amendments to the *Ombudsman Act* 1973.

Commencement

2. This Act comes into operation on a day or days to be proclaimed.

Principal Act

15 3. In this Act, the *Ombudsman Act* 1973 is called the Principal Act.

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Definitions

4. In section 2 of the Principal Act—
- (a) for the definition of “**Government Department**” substitute—
“**Government Department**” includes an administrative unit specified in Column One of Schedule Two, Schedule Three or Schedule Three A to the *Public Service Act* 1974.”; and
 - (b) in the definition of “**Principal Officer**”, for paragraph (a) substitute—
“(a) in relation to a Government Department—the chief administrator of the Department under the *Public Service Act* 1974 or the person carrying out the duties of the chief administrator; and”.

Term of office of Ombudsman

5. In section 3 of the Principal Act, for sub-section (4) substitute—
“(4) Subject to this Act, the Ombudsman holds office for a term of 7 years, and is not eligible to be re-appointed.”.

New section 7 substituted

6. For section 7 of the Principal Act substitute—
- Officers of Ombudsman**
- “7. There may be appointed, subject to the *Public Service Act* 1974, any officers necessary to enable the functions of the Ombudsman and Deputy Ombudsman to be properly carried out.”.

Application of *Public Service Act* 1974

7. In section 8 of the Principal Act—
- (a) omit “or an officer of the Ombudsman” (wherever occurring); and
 - (b) omit “or such an officer” (wherever occurring).

Functions and jurisdiction

8. (1) In section 13 (1) of the Principal Act, before “investigate” insert “enquire into or”
- (2) In section 13 (3) of the Principal Act—
- (a) before “investigate” insert “enquire into or”; and
 - (b) after paragraph (b) insert—
“(ba) by the Director of Public Prosecutions;”; and
 - (c) after paragraph (c) insert—
“(ca) by the Electoral Commissioner;”.

(3) In section 13 (3A) of the Principal Act, before “investigation” insert “enquiry into or”

(4) In section 13 (8) of the Principal Act, before “investigation” insert “enquiry or”.

5 New Part IIIA inserted

9. After section 13 of the Principal Act insert—

“PART IIIA—ENQUIRIES”

Conducting of enquiries

10 “13A. (1) The Ombudsman may conduct an enquiry for the purpose of determining whether—

(a) an investigation under this Act should be conducted; or

(b) the matter may be resolved informally.

(2) The Ombudsman may conduct an enquiry either on his or her own motion or as a consequence of a complaint under section 14.

15 (3) The principal officer of a Government Department, Public Statutory Body or municipality must assist the Ombudsman in the conduct of an enquiry.”

Communication of information to complainant

“13B. Section 24 applies to—

20 (a) information obtained or received in the course or as a result of an enquiry under this Act; and

(b) the result of an enquiry under this Act and any recommendations made—

as if the enquiry were an investigation under this Act.”.

25 Confidentiality of information

10. (1) In section 20 (1) of the Principal Act—

(a) after “person” (where first occurring) insert “(other than the complainant)”; and

(b) after “course” insert “or as a result”; and

30 (c) for “an investigation” substitute “the exercise of the functions of the Ombudsman”; and

(d) in paragraph (a) (i)—

(i) for “investigation” substitute “exercise of the functions of the Ombudsman”; and

35 (ii) omit “thereon”; and

(e) in paragraph (a) (ii), after “against” insert “this Act or”.

- (2) After section 20 (2) of the Principal Act insert—
- “(3) Information obtained or received by a party from the Ombudsman in the course or as a result of the exercise of the functions of the Ombudsman under this Act is not admissible as evidence (if given by that party) in any legal proceedings other than proceedings in relation to an offence against this Act or section 19 of the *Evidence Act* 1958.”. 5

Communication of information

11. In section 20A of the Principal Act—
- (a) after “course” insert “or as a result”; and 10
- (b) for “an investigation” substitute “the exercise of the functions of the Ombudsman”.

Proceedings for offences

12. (1) After section 20 (3) of the Principal Act insert—
- “(4) Proceedings may only be instituted for an offence under sub-section (2)— 15
- (a) by the Ombudsman; or
- (b) by or with the consent of the Director of Public Prosecutions.”.
- (2) In section 22 of the Principal Act— 20
- (a) before “A” insert “(1)”; and
- (b) at the end of the section, insert—
- “(2) Proceedings may only be instituted for an offence under sub-section (1)—
- (a) by the Ombudsman; or 25
- (b) by or with the consent of the Director of Public Prosecutions.”.
- (3) After section 28 (2) of the Principal Act insert—
- “(2A) Proceedings may only be instituted for an offence under sub-section (2)— 30
- (a) by the Ombudsman; or
- (b) by or with the consent of the Director of Public Prosecutions.”.

Information for complainant

13. In section 24 of the Principal Act— 35
- (a) before “Where” insert “(1)”; and
- (b) after “investigation” (where first occurring) insert “or takes any other action”; and
- (c) after “investigation” (where secondly occurring) insert “or other action”; and 40

(d) at the end of the section insert—

“(2) The Ombudsman may disclose to a complainant any information that the Ombudsman thinks proper, in addition to any information disclosed under sub-section (1).”.

Transitional provisions

14. (1) The person occupying the office of Ombudsman immediately before the commencement of section 5 of this Act continues to hold that office on and from that commencement on the same terms and conditions as those on which the person held that office immediately before that commencement.

(2) A person who was, immediately before the commencement of section 6 of this Act, an officer of the Ombudsman must on that commencement be taken to have been appointed to an office in the public service on terms and conditions no less favourable than those on which he or she was appointed an officer of the Ombudsman and with the benefit of all rights accrued immediately before that commencement.

(3) Sections 20, 22 and 28 of the Principal Act as amended by section 12 of this Act apply only to proceedings instituted on or after the commencement of section 12 of this Act.

Statute law revision

15. (1) Section 1 (3) of the Principal Act is repealed.

(2) In Section 4 (1) of the Principal Act, for “unfitted” substitute “unfit”.

(3) In section 9 (2) of the Principal Act, for “Director of Finance” substitute “Director-General, Department of Management and Budget”.

Amendment of *Public Service Act 1974*

16. In Schedule Three A to the *Public Service Act 1974*—

(a) at the end of Column 1 insert “Office of the Ombudsman”; and

(b) at the end of Column 2 insert “Ombudsman”.

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Orders in
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