
OMBUDSMAN ACT 1978

ABBREVIATIONS

- Cth—Commonwealth—*Ombudsman Act 1976.*
 WA—Western Australia—*Parliamentary Commissioner Act, 1971.*
 SA—South Australia—*Ombudsman Act, 1972.*
 Vic—Victoria—*Ombudsman Act 1973.*
 Q—Queensland—*Parliamentary Commissioner Act, 1974.*
 NSW—New South Wales—*Ombudsman Act, 1974.*

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OMBUDSMAN

No. 82 of 1978

AN ACT to make provision for the appointment and functions of an Ombudsman for the investigation of complaints with respect to administrative action taken by or on behalf of certain government departments and other authorities.

[31 January 1979]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART I

PRELIMINARY

1—This Act may be cited as the *Ombudsman Act 1978*.

Short title.

Commencement. **2**—(1) This section and section 1 shall commence on the date of assent to this Act.

(2) Except as provided in subsection (1), this Act shall commence on a date to be fixed by proclamation.

Interpretation.

Cth. ss. 3
(1), (5);
WA. s. 13;
SA. ss. 3
(1), 13;
Vic. ss. 2, 14;
Q. ss. 4, 12;
NSW. ss. 5
(1), 12.

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

“ administrative action ” has the meaning assigned to that expression by section 12;

“ aggrieved person ”, in relation to a complaint, means the person by whom or on whose behalf the complaint is brought and who appears from the complaint to be aggrieved by the action alleged in the complaint;

“ appropriate public authority ”, in relation to an investigation under this Act, means the public authority by or on behalf of which the action was taken that is the subject of the investigation;

“ Commonwealth jurisdiction ” means the Commonwealth or a State or a Territory of the Commonwealth;

“ complainant ”, in relation to a complaint, means the person making the complaint, whether on his own behalf or on behalf of some other person;

“ complaint ” means a complaint made under section 14;

“ functions ” includes duties, authorities, and powers;

“ government department ” means any department constituted under the *Public Service Act 1973*, or constituted by any other enactment as a department within the meaning of that Act;

“ officer of the Ombudsman ” means a person who is appointed and employed as such in accordance with section 9;

“ officer of the Public Service ” includes a person employed under the *Public Service Act 1973* as a temporary employee;

“ Ombudsman ”, except in relation to sections 5, 6 and 7 includes an officer of the Ombudsman for the time being appointed to act as Ombudsman in accordance with section 8;

“ permanent head ”, in relation to a government department, means the permanent head of the department for the purposes of the *Public Service Act 1973*;

“ principal officer ” means—

(a) in relation to a government department, the permanent head or, if there is no permanent head, the principal officer of the department; and

(b) in relation to any other public authority, the president, chairman, or other principal or presiding member of the authority or, if the authority comprises a single person, that person;

“ public authority ” means a government department or other authority to which this Act applies by virtue of section 4;

“ record ” includes any account, deed, writing, or document and any other record of information however compiled, recorded, or stored, whether in written or printed form or on microfilm or by electronic process or otherwise;

“ responsible Minister ”, in relation to action taken by any public authority, means the Minister charged with the administration of that authority or the enactment in relation to the functions conferred by or arising under which the action was taken;

“ tribunal ” includes the person constituting the tribunal where the tribunal comprises only one person.

(2) For the purposes of this Act—

(a) a reference to a public authority includes a reference to each of the members, officers, and employees of the authority;

(b) a reference to an officer of an authority includes a reference to an officer appointed by the authority under any Act; and

(c) a reference to a member of an authority includes a reference to the holder of an office created by any Act who, by virtue of his holding the office, is a member of the authority.

(3) For the purposes of this Act, but subject to subsection (4), the persons constituting the officers and employees of a government department are as follows:—

- (a) the permanent head of the department;
- (b) officers of the Public Service employed in the department;
- (c) officers appointed by the Governor under the provisions of any Act administered in that department; and
- (d) officers or employees appointed by the Minister administering the department or by the permanent head of the department, being either—
 - (i) officers or employees who are so appointed under any enactment; or
 - (ii) officers or employees whose remuneration as such is defrayed in whole or in part out of moneys provided by Parliament.

(4) A person who is a member of a board, committee, or similar body that is constituted by any enactment or by virtue of Her Majesty's prerogative, or of any tribunal so constituted, shall not, by reason of being such a member, be regarded as an officer of a government department for the purposes of this Act.

Application
of Act.

4—(1) This Act applies to the government departments and other authorities specified in Schedule 1.

(2) The Governor may, by order, amend Schedule 1—

- (a) by omitting the name of any government department or other authority specified in that Schedule;
- (b) by inserting the name of another department or authority; or
- (c) where the name of any such department or authority is changed, by omitting the name of that department or authority and substituting its new name.

(3) The provisions of section 47 (3), (3A), (4), (5), (6), and (7) of the *Acts Interpretation Act 1931* apply to an order made under subsection (2) in the same way as they apply to regulations.

PART II

THE OMBUDSMAN

5—(1) The Governor may appoint a person to be known as the Ombudsman.

Appointment,
&c. of
Ombudsman.

(2) Subject to this Part, the Ombudsman holds office for such term, not exceeding 5 years, as may be specified in his instrument of appointment and may from time to time be reappointed for a further term, not exceeding 5 years, as may be so specified.

Cth. ss. 4, 21,
22, 24, 25, 26;
WA. s. 5;
SA. ss. 6, 10,
Q. ss. 5, 7;
Vic. ss. 3, 5;
NSW. s. 6.

(3) A person who has attained the age of 65 years shall not be appointed as Ombudsman, and a person holding that office vacates that office on attaining that age.

(4) A person who is a member of a House of Parliament of the Commonwealth, or of a State or Territory of the Commonwealth, or a candidate for election as a member of any such House of Parliament, is disqualified from holding, or being appointed to, the office of Ombudsman, and a person holding that office vacates that office on becoming so disqualified.

(5) For the purpose of subsection (4), a person becomes a candidate for election as a member of a House of Parliament when he is nominated for that election in accordance with the law regulating the election.

(6) The Ombudsman may, by writing under his hand addressed to the Governor, apply to resign his office, and he vacates that office on the acceptance of the application by the Governor.

(7) The Ombudsman shall not, except in so far as he is authorized so to do by resolutions of both Houses of Parliament or as expressly authorized by this Act, hold any office of profit (other than his office as Ombudsman) or engage in any occupation for reward outside the duties of his office and, if the Ombudsman contravenes this subsection, he shall be regarded as being guilty of misconduct.

(8) The Ombudsman is entitled to such remuneration and expenses as the Governor determines, and holds office subject to such terms and conditions (if any) with respect to matters not provided in this Act as may be prescribed.

Removal or
suspension of
Ombudsman.
Cth. ss. 27,
28;
W.A. s. 6;
S.A. s. 10;
Q. s. 6;
Vic. ss. 3
(4), 4;
NSW s. 6
(3), (5).

6—(1) The Ombudsman may, at any time, be removed from his office by the Governor on addresses from both Houses of Parliament.

- (2) Where the Governor is satisfied that the Ombudsman—
- (a) is incapable of properly performing the duties of his office;
 - (b) has shown himself incompetent properly to perform, or has neglected, those duties;
 - (c) has become bankrupt, applied to take the benefit of any laws for the relief of bankrupt or insolvent debtors, or made an assignment of any part of his estate for their benefit;
 - (d) has been convicted in this State of a crime or an offence that is punishable by imprisonment for a term of 12 months or more, or has been convicted of a crime or an offence which would, if committed in this State, be a crime or an offence so punishable, or has been convicted, whether in this State or elsewhere, of a crime or offence for which he has been sentenced to imprisonment; or
 - (e) has been guilty of misconduct,

he may suspend the Ombudsman from his office.

(3) Where the Ombudsman has been suspended from his office under subsection (2), he shall be restored to office unless—

- (a) a statement of the grounds of his suspension is laid before each House of Parliament during the first 7 sitting days of that House following the suspension; and
- (b) each House of Parliament, during the session in which the statement is so laid, and within 30 sitting days of that statement being so laid, passes an address praying for his removal from his office.

Supplementary
provisions
as to
Ombudsman.

Cth. ss. 31, 32;
WA. s. 10;
SA. s. 12;
Vic. ss. 7, 8;
Q. ss. 7, 10;
NSW. s. 9.

7—(1) The *Public Service Act* 1973 does not apply to the office of Ombudsman.

(2) The Ombudsman shall, for the purposes of the *Superannuation Act* 1938, the *Retirement Benefits Act* 1970, and the *State Employees (Long-Service Leave) Act* 1950, be regarded as being employed by the State in a department of the services of the State.

(3) If an officer of the Public Service is appointed to the office of Ombudsman, he is entitled to retain all his existing and accruing rights as if his service in that office were a continuation of his service as an officer of the Public Service.

(4) Where a person ceases to hold the office of Ombudsman and becomes an officer of the Public Service, his service in that office shall be regarded as service in the Public Service for the purposes of determining his rights as an officer of the Public Service.

8—(1) Where the person holding office as Ombudsman—

Appointment of
Acting
Ombudsman.

- (a) is absent from his office through illness or any other cause;
- (b) is suspended from office or is otherwise incapable of performing the functions of his office; or
- (c) dies or otherwise vacates his office,

the Governor may appoint any officer of that Ombudsman to act as Ombudsman during that absence, suspension, or incapacity or, as the case may be, until the vacancy in his office is filled, and, while so acting, any officer so appointed shall have and perform the functions of the Ombudsman.

(2) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising an officer of the Ombudsman to act as Ombudsman, and all things done or omitted to be done by that officer shall be as valid, and have the same consequences, as if they had been done or omitted to be done by the Ombudsman.

9—(1) The Governor may, on the recommendation of the Ombudsman, appoint such officers as he considers necessary for the purpose of enabling the functions of the Ombudsman properly to be carried out.

Staff of the
Ombudsman.

(2) Subject to this Act, the terms and conditions of employment (including salaries, allowances, and leave) of the officers of the Ombudsman shall be such as are determined by the Governor from time to time.

(3) The *Public Service Act 1973* does not apply to the officers of the Ombudsman but those officers, for the purposes of the *Superannuation Act 1938*, the *Retirement Benefits Act 1970* and the *State Employees (Long-Service Leave) Act 1950* shall be regarded as being employed by the State in a department of the services of the State.

(4) If an officer of the Public Service is appointed as an officer of the Ombudsman, he is entitled to retain all his existing and accruing rights as if his service as an officer of the Ombudsman were a continuation of his service as an officer of the Public Service.

(5) Where a person ceases to be an officer of the Ombudsman and becomes an officer of the Public Service, his service as an officer of the Ombudsman shall be regarded as service in the Public Service for the purposes of determining his rights as an officer of the Public Service.

(6) Where a person appointed as an officer of the Ombudsman was immediately before his appointment an officer of the Public Service (not being a person employed in the Public Service as a temporary employee), sections 32 and 33 of the *Public Service Act* 1973 shall continue to apply in respect of that person as if his service as an officer of the Ombudsman were services as an officer within the meaning of that Act, and for the purpose of those sections he shall be deemed to be an officer within that meaning while he remains an officer of the Ombudsman.

(7) The provisions of section 5 (3), (4), (5), and (6) shall, with necessary modifications, apply to the office of officer of the Ombudsman in the same way as they apply to the office of Ombudsman.

Delegation of
functions of
Ombudsman.

Cth. s. 34;
WA. s. 11;
SA. s. 9;
Vic. s. 11;
Q. s. 11;
NSW. ss. 9, 10.

10—(1) The Ombudsman may, by instrument in writing, delegate to any person who is an officer of the Ombudsman the performance of any of the functions of the Ombudsman, except the power conferred on him by this subsection and the power under this Act to make any report or recommendation.

(2) A delegation under this section may be made to a specified person or to the holder for the time being of a specified office.

(3) The Minister, or the Ombudsman with the consent of the Minister, may, by instrument in writing, revoke or vary a delegation made under this section.

(4) A delegation under this section may be made subject to conditions and restrictions, and may be made generally or in relation to any particular case or class of cases.

(5) If the Ombudsman by whom a delegation is made dies, or ceases to hold, or is suspended from, office, that delegation shall be deemed to continue in force according to its tenor until it is revoked or varied under this section.

(6) An act done by a person in the performance of the functions delegated to him under this section has the same effect as if it were done by the Ombudsman.

(7) A delegation under this section does not prevent the Ombudsman from performing any of his functions.

11—The Ombudsman may, with the approval of the Minister, perform any functions conferred on him by or under the law of the Commonwealth. Exercise of Commonwealth jurisdiction.

PART III

JURISDICTION AND FUNCTIONS OF THE OMBUDSMAN

Division 1—Extent of jurisdiction

12—(1) Subject to this Act, the Ombudsman may investigate any administrative action taken by or on behalf of a public authority. Matters subject to investigation.

(2) A reference in this Act to taking action includes a reference to—

- (a) a failure or refusal to perform, or a delay in performing, an act;
- (b) the formulation of a proposal or an intention; and
- (c) the making of a recommendation (including a recommendation to a Minister),

Cth. ss. 3
(7), 5;
WA. ss. 13, 14;
SA. s. 3
(1), 13;
Vic. ss. 2, 13;
Q. ss. 4, 13;
NSW. ss. 5
(1), 12.

and, in this Act, administrative action means action taken in a matter of administration whether there was legal authority for that action or not.

(3) The Ombudsman shall not investigate any action of a kind specified in Schedule 2.

(4) The power of the Ombudsman to investigate an administrative action includes power to investigate all the circumstances surrounding that action.

(5) The Ombudsman is not, in the exercise of his powers under this Act, entitled to question the merits of—

- (a) any decision made by a Minister;
- (b) any decision made by a court or by a person as a member of a court; or
- (c) any decision made by an authority where the decision does not involve administrative action of a kind that the Ombudsman is authorized to investigate under this Act.

(6) Subsection (5) does not prevent the investigation of action pursuant to, or in consequence of, a decision referred to in that subsection.

Division 2—Initiation of investigations

Investigations—how commenced.
Cth. s. 5;
WA. s. 16;
Vic. s. 14;
Q. s. 15;
NSW. s. 12.

13—Where the Ombudsman is authorized by this Act to carry out an investigation, the investigation may be carried out on his own motion or on a complaint or reference made in accordance with this Division.

Complaints.
Cth. s. 7;
WA. s. 17;
SA. s. 15;
Vic. s. 14;
Q. s. 16;
NSW. s. 12.

14—(1) Subject to this section, a complaint may be made in writing to the Ombudsman by an individual or body (whether incorporated or not) aggrieved by an administrative action.

(2) Where an individual by whom a complaint might have been made has died or is for any reason unable to act for himself, the complaint may be made by his personal representative or by some person who, in the opinion of the Ombudsman, is suitable to represent him.

(3) Where a person wishes to make a complaint, that complaint may, with his consent, be made by a member of Parliament.

(4) Except as provided by this section, a complaint shall not be entertained under this Act unless it is made by the person personally aggrieved.

(5) Where a complaint is made to the Ombudsman that does not refer to an administrative action that he is authorized by this Act to investigate, he may nevertheless entertain the complaint if, in his opinion, it is likely that the cause of complaint arose from action of that kind.

Investigation on reference by Governor.

15—(1) The Governor may refer to the Ombudsman, for investigation and report, any matter within the jurisdiction of the Ombudsman that should, in the opinion of the Governor, be so investigated.

(2) As soon as practicable after any matter is referred to the Ombudsman under this section, he shall carry out the investigation and submit to the Governor a report on the matter.

(3) As soon as practicable after submitting a report to the Governor in accordance with subsection (2), the Ombudsman shall lay a copy of the report before each House of Parliament.

Investigation on reference by Parliament.
WA. s. 15;
Vic. s. 16;
Q. s. 14.

16—(1) Either House of Parliament, or any committee of either House, or a joint committee of both Houses of Parliament, may refer to the Ombudsman, for investigation and report, any matter within his jurisdiction that that House or committee considers should be investigated by him.

(2) As soon as practicable after any matter is referred to the Ombudsman under this section, he shall carry out the investigation and submit a report—

- (a) in the case of a matter referred by a joint committee of both Houses of Parliament, to the President of the Legislative Council and the Speaker;
- (b) in the case of a matter referred by the Legislative Council, or one of its committees, to the President of the Legislative Council; or
- (c) in the case of a matter referred by the House of Assembly, or one of its committees, to the Speaker.

17—Where any provision of an Act prohibits or restricts, or authorizes or requires the imposition of a prohibition or restriction on, the disclosure or communication of information, that provision does not apply to or in respect of the disclosure or communication of information in a manner that will prevent or restrict the making of a complaint to, or the carrying out of an investigation by, the Ombudsman.

Freedom of disclosure and communication to Ombudsman.
WA. s. 17 (3), (4);
SA. s. 15 (4);
Q. s. 16 (3), (4).

18—Where a person is detained in custody and informs the person in whose custody he is detained, or another person performing duties in connection with his detention, that he wishes to make a complaint to the Ombudsman, it is the duty of the person so informed—

Complaints by persons detained in custody.
Cth. s. 7 (2), (3);
WA. s. 17 (3), (4);
SA. s. 15 (4);
Vic. s. 28 (1);
Q. s. 16 (3), (4);
NSW. s. 12 (3).

- (a) to take all steps necessary to facilitate the making of the complaint, including the provision of an unsealed envelope; and
- (b) without delay, to send to the Ombudsman, unopened, the sealed envelope containing the complaint.

19—(1) Except pursuant to a complaint or reference under this Division, the Ombudsman shall not commence an investigation into any administrative action alleged to have been taken by or on behalf of a public authority where more than 2 years have elapsed since the action was alleged to have been taken.

Time limit on bringing complaints, &c.
Cth. s. 6;
WA. ss. 14 (8), 17 (5), (6);
SA. ss. 14 (3), 16 (1).
Vic. ss. 13 (8), 15;
Q. s. 16 (5), (6), (7);
NSW. s. 12

(2) Where, with respect to a complaint, the Ombudsman is satisfied that the action complained of was taken more than 2 years before the public authority in relation to which the complaint is made became subject to this Act, the Ombudsman shall not proceed, or proceed further, with the investigation of the complaint unless he is satisfied that there are substantial grounds why in the public interest the investigation should be carried out.

(3) Where, with respect to a complaint, the Ombudsman is satisfied that the aggrieved person became aware of the action complained of more than 2 years before the date on which the complaint was made, he shall not proceed, or proceed further, with the investigation of the complaint unless he is satisfied that there was reasonable excuse for the delay in bringing the complaint.

(4) Except as provided in this section, the Ombudsman is not precluded from investigating an administrative action by reason of its having been taken before the commencement of this Act.

(5) For the purposes of subsections (1) and (2), the period of 2 years referred to in those subsections does not commence in the case of a continuing administrative action until that action has ceased.

Position where
alternative
remedies are
available.

Cth. s. 6
(2)-(5);
WA. s. 14
(4), (5);
SA. s. 13 (3);
Vic. s. 13 (4);
Q. s. 13
(3), (4);
NSW. s. 13
(4) (b) (v).

20—(1) Where an aggrieved person has exercised, or exercises, a right to cause the action to which a complaint relates to be reviewed by a court or by a tribunal established under an Act, the Ombudsman shall not investigate, or continue to investigate, the action unless he is of the opinion that there are special reasons justifying its investigation or its further investigation.

(2) Where the Ombudsman is of the opinion that an aggrieved person has or had a right to have the action to which a complaint relates reviewed by a court or by a tribunal established under an Act, but has not exercised the right, the Ombudsman shall not investigate, or continue to investigate, the action unless he is of the opinion that, in all the circumstances of the case, the failure to exercise the right is not or was not unreasonable.

(3) Where, in respect of the action to which a complaint relates, the Ombudsman is of opinion that adequate provision is made under an administrative practice for the review of action of that kind, he may refuse to investigate the action, or investigate it further—

(a) if the action has been, is being, or is to be, reviewed in accordance with the practice at the request of the aggrieved person; or

- (b) if the Ombudsman is satisfied that the aggrieved person is entitled to have the action reviewed in accordance with that practice and it would be reasonable for the aggrieved person to have it so reviewed.

21—(1) 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—

Refusal to investigate complaints.
Cth. s. 6 (1);
WA. s. 18;
SA. s. 17;
Vic. s. 15;
Q. s. 17;
NSW. s. 13.

- (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 aggrieved person does not have a sufficient 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.

(2) The Ombudsman may make such inquiries as he considers necessary for the purpose of ascertaining whether, in any particular case, he should exercise any of the powers conferred by subsection (1).

22—(1) Where the Ombudsman is precluded by this Act 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 in writing of his decision.

Notice of refusal to investigate.

(2) Every such decision shall state the reasons on which it is based.

Division 3—Conduct of investigations

23—(1) Before commencing an investigation under this Act of an administrative action taken by or on behalf of a public authority, the Ombudsman shall notify his intention to carry out the investigation to—

Procedure on investigations.
Cth. s. 8;
WA. s. 19;
SA. s. 18;
Vic. s. 17;
Q. s. 18;
NSW. ss. 16, 17, 24, 25.

- (a) the principal officer of the authority;
(b) the responsible Minister; and
(c) if the investigation is being made as a result of a complaint, the complainant.

(2) Subsection (1) does not preclude the Ombudsman from making such inquiries as are referred to in section 21 (2) without notifying his intention as required by that subsection.

(3) An investigation by the Ombudsman under this Act shall be conducted in private.

(4) Except as provided in subsections (6) and (7), the Ombudsman is not required to hold a hearing for the purposes of an investigation, and he may obtain information from such persons and in such manner, and make such inquiries, as he thinks fit.

(5) The Ombudsman may determine—

- (a) whether any person may be represented, by counsel or otherwise, at an investigation; and
- (b) if the person is allowed to be represented, the conditions or restrictions subject to which the person may be represented.

(6) The Ombudsman shall not make a report on an investigation that contains adverse or derogatory comments on a person unless he has given the person an opportunity to appear before him and to make representations, either orally or in writing, in relation to the matter under investigation.

(7) The Ombudsman shall not make a report on an investigation that contains adverse or derogatory comments with respect to a public authority unless he has given the principal officer of the authority and the member, officer, or employee of the authority principally concerned in the taking of the administrative action to which the investigation relates an opportunity to appear before him and to make representations, either orally or in writing, in relation to the matter under investigation.

(8) If, during or after an investigation, the Ombudsman is of opinion that there is evidence of a breach of duty or misconduct on the part of any member, officer, or employee of a public authority, and that, in all the circumstances, the evidence is of sufficient force to justify his doing so, the Ombudsman shall bring the evidence—

- (a) if the member, officer, or employee is the principal officer of the authority, to the notice of the responsible Minister; and
- (b) in any other case, to the notice of the principal officer of the authority.

(9) The Ombudsman may, either before or after the completion of an investigation, discuss any matter that is relevant to the investigation with a Minister concerned with that matter.

(10) Subject to this Act, the Ombudsman may regulate his procedure on an investigation in such manner as he thinks fit.

24—(1) In relation to an investigation into a matter carried out by the Ombudsman under this Act, the provisions of Division II of Part II of the *Evidence Act* 1910 apply, subject to this Act, as if—

Evidence, &c.
Cth. s. 9;
WA. ss. 20, 22;
SA. ss. 19-21;
Vic. ss. 18, 19;
Q. ss. 19, 21;
NSW. ss. 18,
19, 22.

(a) the Ombudsman were a board of inquiry referred to in section 14 (1) (b) of that Act; and

(b) that matter were the matter into which that board was appointed to inquire by its instrument of appointment.

(2) The Crown shall not be entitled to prevent or obstruct records from being produced, or evidence from being given, for the purpose of an investigation under this Act notwithstanding that it would be so entitled if the investigation were a legal proceeding held before a court.

(3) A person is not excused from giving information, or producing a record or answering a question, when required to do so under this Act on the ground that to do so would disclose legal advice furnished to a government department or other authority to which this Act applies.

(4) Notwithstanding section 17 or anything in subsections (1) to (3), where the Attorney-General gives to the Ombudsman a document certifying that the disclosure of information concerning a specified matter (including the giving of information in answer to a question), or the disclosure of the contents of a specified record, would be contrary to the public interest because—

(a) the information or record is, or contains or relates to, a communication between a Minister of this State and a Minister of any other Commonwealth jurisdiction, being information or a record that would, if disclosed, prejudice relations between the Government of this State and that of that other jurisdiction;

(b) the information or record is, or contains or relates to, a deliberation or decision of the Cabinet or a committee of the Cabinet; or

(c) the information or record would, if disclosed, prejudice the taking of proceedings for a crime or other offence,

the Ombudsman is not entitled to require a person to give the information or to answer questions concerning the matter or, as the case may be, to produce that record to him.

Entry of premises.

Cth. s. 14;
WA. s. 21;
SA. s. 23;
Vic. s. 21;
Q. s. 20;
NSW. s. 20.

25—(1) For the purposes of carrying out an investigation under this Act, the Ombudsman or any officer of the Ombudsman may at any reasonable time enter any premises occupied or used by a public authority and inspect the premises or anything for the time being on or within them.

(2) The powers conferred by this section to enter premises occupied or used by a public authority shall not be exercised unless previous notice of the intention so to do has been given in writing to the principal officer of the authority.

Secrecy, &c.

Cth. s. 35;
WA. s. 23;
SA. s. 22;
Vic. s. 20;
Q. s. 22;
NSW. s. 34.

26—(1) Subject to this section, a person who is or has been Ombudsman or an officer of the Ombudsman shall not, either directly or indirectly, make a record of, or disclose to any person, any information acquired by him in his official capacity, being information that was disclosed or obtained under the provisions of this Act.

Penalty: \$1 000.

(2) Except as provided in subsection (3), subsection (1) does not prevent the making of a record or the disclosure of information where the making of the record or the disclosure—

- (a) was reasonably required for the proper discharge of the functions of the Ombudsman; or
- (b) was done with the approval—
 - (i) in the case of information given by an officer of a public authority, of the principal officer or responsible Minister;
 - (ii) in the case of information given by a member of a public authority, of the governing body of the authority or responsible Minister; or
 - (iii) in any other case, of the person by whom the information was given (but only if that person is entitled or authorized to give the information).

(3) Except as provided in subsection (4), subsection (1) does not prevent the Ombudsman from giving information relating to a matter arising wholly or partly under the law of another Commonwealth jurisdiction to a person exercising in that jurisdiction functions similar to those performed by the Ombudsman under this Act.

(4) Where the Attorney-General gives the Ombudsman a document certifying that the disclosure of the information described in the document would, for a reason specified in the document (being a reason referred to in any of the paragraphs in section 24 (4)), be contrary to the public interest, subsections (2) and (3) do not have the effect of permitting the disclosure of the information to a person other than the Ombudsman or an officer of the Ombudsman.

(5) A person who is or has been the Ombudsman or an officer of the Ombudsman may not, in proceedings before a court, or before a person authorized by law, or by consent of parties, to hear, receive, and examine evidence, be compelled to disclose information acquired by him in his capacity as Ombudsman or such an officer, being information that was disclosed or obtained under this Act.

(6) A person who, having as Ombudsman or an officer of the Ombudsman obtained or received any information in the course of, or for the purpose of, an investigation under this Act, takes advantage of knowledge obtained from that information to benefit himself or any other person is guilty of an offence.

(7) In this section—

- (a) a reference to information includes a reference to the contents of a record; and
- (b) a reference to the disclosure of information includes a reference to the delivery or giving to a person of that record or a copy of it or of any part of it.

27—Any person who—

- (a) without lawful justification or excuse, obstructs, hinders, or resists the Ombudsman, or any officer of the Ombudsman, in the performance of his functions under this Act;
- (b) without lawful justification or excuse, fails to comply with any lawful requirement made by the Ombudsman or an officer of the Ombudsman under this Act, or to carry out any duty imposed on him by this Act; or
- (c) gives information, or makes a statement, to the Ombudsman or an officer of the Ombudsman knowing it to be false or misleading as to a material particular,

is guilty of an offence.

Obstruction of
Ombudsman,
&c.
Cth. s. 36 (2);
WA. s. 36 (2);
SA. s. 24;
Vic. s. 22;
Q. s. 23;
NSW. s. 37.

Division 4—Action on investigations

Procedure on
completion of
investigation.

Ch. ss. 15,
16, 17;
WA. s. 25;
SA. s. 23;
Vic. s. 23;
Q. s. 24;
NSW. ss.
26, 27.

28—(1) Where, as a result of an investigation carried out under this Act, other than an investigation carried out pursuant to a reference made under section 15 or section 16, the Ombudsman is of the opinion that the action to which the investigation relates—

- (a) appears to have been taken 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 taken in the exercise of a power or discretion and was so taken for an improper purpose or on irrelevant grounds or on the basis of irrelevant considerations;
- (e) was a decision that was made in the exercise of a power or discretion and the reasons for the decision were not, but should have been, given;
- (f) was based wholly or partly on a mistake of law or fact; or
- (g) was wrong,

he shall take such action specified in subsection (2) as in the circumstances of the case he thinks fit.

(2) Where, in the case referred to in subsection (1), the Ombudsman is of the opinion—

- (a) that the subject matter of the investigation should be referred to the appropriate public authority for further consideration;
- (b) that action can be, and should be, taken to rectify, or mitigate or alter the effects of, the action to which the investigation relates;
- (c) that any practice in accordance with which the action was taken should be varied;
- (d) that any law in accordance with which, or on the basis of which, the action was taken should be reconsidered;
- (e) that reasons should be given for the action; or
- (f) that any other steps should be taken,

the Ombudsman shall report his opinion, and the reasons on which it is based, to the principal officer of the appropriate public authority, and may make such recommendation with respect to that return as he thinks fit.

(3) Where the Ombudsman makes a report or recommendation to the principal officer of a public authority under subsection (2), he shall send a copy of the report or recommendation to the responsible Minister.

(4) If under subsection (2) the Ombudsman makes a recommendation to the principal officer of an authority, he may request that officer to notify him, within a specified time, of the steps that have been or are proposed to be taken to give effect to the recommendation, or, if no such steps have been or are proposed to be taken, the reasons why they have not been taken or, as the case may be, are not proposed to be taken.

(5) Where it appears to the Ombudsman that no appropriate steps have been taken within a reasonable time after he has made a report or recommendation under subsection (2), he may, after considering the written comments (if any) made by or on behalf of the principal officer to whom the report or recommendation was made, send to the Premier a copy of the report or recommendation together with a copy of any such comments.

(6) Where a copy of any report, recommendation, or comments has been sent to the Premier under subsection (5), the Ombudsman may, if he thinks fit, lay before each House of Parliament a report on the matters to which the report, recommendation, or comments relate.

29—(1) Where the Ombudsman carries out an investigation on a complaint made under this Act, he shall inform the complainant, in such manner and at such time as he thinks appropriate, of the result of the investigation.

Information to complainant on investigation.
WA. s. 26;
SA. s. 27;
Vic. s. 24;
Q. s. 25;
NSW. ss. 26
(4), 29.

(2) Where the Ombudsman has made a recommendation under section 28 (2) and it appears to him that no appropriate steps have been taken within a reasonable time of the making of the recommendation, the Ombudsman shall inform the complainant of the recommendation and may make such comments on it as he thinks fit.

Division 5—Annual and other reports of the Ombudsman

30—Without limiting his right under any other provision of this Act to lay a report before either House of Parliament, the Ombudsman shall, as soon as practicable after the 30th June in each year, lay before each House of Parliament a report on the exercise of his functions during the period of 12 months ending on that date, and may, at any time, if he thinks fit, lay before each House of Parliament a report on any matter arising in connection with the performance of his functions.

Annual and other reports to Parliament.
Cth. s. 19;
WA. s. 27;
SA. s. 29;
Vic. s. 25;
Q. s. 26;
NSW. ss. 30, 31.

Special reports to public.

WA. s. 28;
Vic. s. 26;
Q. s. 27.

31—Whenever the Ombudsman is satisfied that it is desirable to do so in the public interest or in the interests of any public authority or person, he may cause to be published in such manner as he thinks fit a report relating generally to the performance of his functions or to any particular case investigated by him, whether the matters to be dealt with in the report have been the subject of a report laid before either House of Parliament under this Act or not.

PART IV

MISCELLANEOUS

Application to Supreme Court.

WA. s. 29;
SA. s. 28;
Vic. s. 27;
Q. s. 28.

32—(1) Where, in the course of, or in contemplation of, an investigation, the question arises as to whether the Ombudsman has jurisdiction to conduct the investigation, the Ombudsman or any interested party may apply to the Supreme Court for a determination of that question, and, on such an application being made, the Court may make such order as it considers appropriate.

(2) The following persons shall, in relation to any investigation, be regarded as the interested parties:—

- (a) the public authority by which the action the subject of the investigation is alleged to have been taken;
- (b) the principal officer of that authority;
- (c) the responsible Minister in relation to that authority;
- (d) the person who is alleged to have taken the action the subject of the investigation; and
- (e) if the investigation arises or is sought upon a complaint, the complainant.

Protection of Ombudsman, and officers.

Cth. s. 33;
WA. s. 30;
SA. s. 30;
Vic. s. 29;
Q. s. 29.

33—(1) Neither the Ombudsman nor any officer of the Ombudsman shall be liable, whether on the ground of want of jurisdiction or on any other ground, to any civil or criminal proceedings to which he would have been liable apart from this section in respect of any act purporting to be done or omitted under this Act unless the act was done or omitted in bad faith.

(2) No civil or criminal proceedings shall be brought against the Ombudsman or any officer of the Ombudsman in respect of an act or omission to act referred to in subsection (1) without the leave of the Supreme Court, and the Supreme Court shall not give leave under this subsection unless it is satisfied that there is substantial ground for the contention that the person to be proceeded against has acted or omitted to act in bad faith.

(3) No injunction or writ of mandamus shall be issued restraining the Ombudsman from carrying out, or compelling him to carry out, any investigation, and no proceedings shall be brought against the Ombudsman whereby an injunction or the issue of a writ of mandamus is sought.

34—A person who is guilty of an offence under this Act is liable ^{Penalties.} to a penalty of \$1 000.

35—The Governor may make regulations for the purposes of this ^{Regulations.} Act.

36—This Act expires at the expiration of the period of 5 years ^{Expiry of Act.} beginning on the date fixed by the proclamation under section 2 (2).

Section 4

SCHEDULE 1

GOVERNMENT DEPARTMENTS AND OTHER AUTHORITIES TO WHICH THIS ACT APPLIES

1. A government department, but excluding—
 - (a) that part of the Premier's Department that comprises the officers of His Excellency the Governor's establishment; and
 - (b) the Audit Department.
2. A local authority, being—
 - (a) the council of any city or other municipality or of any county; any committee of, or appointed by, any such council; or any joint committee of any two or more of any such councils;
 - (b) any controlling authority established under Division IV of Part XIX of the *Local Government Act 1962*; and
 - (c) any other body constituted under an enactment having power to levy, or cause to be levied, a rate on land.
3. Aboriginal Relics Advisory Council.
4. Adult Education Board.
5. Alcohol and Drug Dependency Board.
6. Apprenticeship Commission and committees constituted under section 10 or section 11 of the *Apprentices Act 1942*.
7. Beauty Point Advisory Committee.
8. Board of Management of the Agricultural Bank of Tasmania.
9. Boards constituted under the *Marketing of Primary Products Act 1945*.
10. Building Industry Contractors Registration Board.
11. Cinema Board.

12. Closer Settlement Board.
13. Commissioner for Town and Country Planning.
14. Consumer Affairs Council and the Products Safety Committee.
15. Council of Advanced Education and the Advisory bodies established under the *Advanced Education Act* 1968.
16. Education Department within the meaning of the *Education Act* 1932 and the following bodies constituted under that Act, namely:—
 - (a) Board of Technical Education;
 - (b) Bursaries Board;
 - (c) Schools Board of Tasmania;
 - (d) Teachers and Schools Registration Board;
 - (e) Boards of advice;
 - (f) Boards of management established under section 46H of that Act; and
 - (g) Councils and committees established under section 19K or section 19L of that Act.
17. Egg Marketing Board.
18. Environment Protection Advisory Council.
19. Farmers' Debt Adjustment Board.
20. Fisheries Development Authority.
21. Forestry Commission and the Private Forestry Council and any committees of that Council.
22. Guardianship Board.
23. Hairdressers' Advisory Board.
24. Hen Quota Review Committee.
25. Herd Improvement Board of Tasmania.
26. Hospital boards within the meaning of the *Hospitals Act* 1918.
27. Hydro-Electric Commission.
28. Industrial Safety, Health, and Welfare Board.
29. Inland Fisheries Commission.
30. Interim Ambulance Authority, the Ambulance Commission, and ambulance boards constituted under the *Ambulance Act* 1959.
31. Joint Tasman Bridge Restoration Commission.
32. Law Society in relation to its functions under the *Legal Assistance Act* 1962.
33. Lawrence Vale Advisory Committee.
34. Licensing Board of Tasmania and the Commissioner for Licensing.

35. Master Planning authorities established under the *Local Government Act 1962*.
36. Mental Health Services Commission and boards of management established under the *Mental Health Services Act 1967*.
37. Metropolitan Transport Trust.
38. Metropolitan Water Board.
39. Miners' Pensions Board.
40. National Parks and Wildlife Service.
41. Navigation and Survey Authority of Tasmania and marine boards constituted under the *Marine Act 1976*.
42. Nomenclature Board.
43. North West Regional Water Authority.
44. Parole Board.
45. Police force within the meaning of the *Police Regulation Act 1898*, including the Commissioner of Police and Deputy Commissioner of Police.
46. Police Provident Fund Board and any body established under regulations made under the *Police Regulation Act 1898*.
47. Poisons Advisory Committee.
48. Potato Industry Authority of Tasmania and the Potato Review Committee.
49. Public Service Board.
50. Radiation Advisory Council.
51. Restricted Publications Board.
52. Retirement Benefits Fund Board.
53. Rivers and Water Supply Commission and district advisory committees established under the *Water Act 1957*.
54. Rural Fires Board and the committees established and the rural fire brigades and groups of rural fire brigades registered, under the *Rural Fires Act 1967*.
55. Rural Reconstruction Board.
56. Soft Fruit Industry Board.
57. State Disaster Committee, the State Disaster Executive, and the Director of Emergency Services.
58. State Fire Authority, the Fire Brigades Commission of Tasmania, and fire brigade boards constituted under the *Fire Brigades Act 1945*.
59. Superannuation Fund Board.
60. Supply and Tender Board.
61. Tasmanian Apple and Pear Marketing Authority.
62. Tasmanian Arts Advisory Board.
63. Tasmanian Cancer Committee.
64. Tasmanian Dairy Industry Authority and the Dairy Industry Advisory Board.

65. Tasmanian Film Corporation.
 66. Tasmanian Government Insurance Board.
 67. Tasmanian Grain Elevators Board.
 68. Tasmanian Library Board.
 69. Tasmanian Racing and Gaming Commission and the Racing Trust.
 70. Tasmanian Trotting Control Board.
 71. Totalizator Agency Board.
 72. Tourism Advisory Committee.
 73. Transport Commission.
 74. Trustees of the Tasmanian Botanical Gardens.
 75. Trustees of the Tasmanian Museum.
 76. University of Tasmania.
 77. Workers' (Occupational Diseases) Relief Fund Board.
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Section 12

SCHEDULE 2

EXCLUDED ADMINISTRATIVE ACTION

1. Action taken for the purposes of the promotion of a Bill or its passage through Parliament, or the preparation or promulgation of a regulation, rule, or by-law.
2. Action taken by a person as legal adviser to, or counsel for, the Crown or an authority to which this Act applies.
3. Action taken by or on behalf of a government department or other authority with respect to proceedings before a court or a person authorized by law, or by consent of parties, to hear, receive, and examine evidence.
4. Action taken by the Public Service Board under Part V of the *Public Service Act 1973*.