

Queensland



PARLIAMENTARY COMMISSIONER ACT 1974

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Information about this reprint

This Act is reprinted as at 4 February 2000. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprint[s] for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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ACT 1974**

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PARLIAMENTARY COMMISSIONER ACT 1974

[as amended by all amendments that commenced on or before 4 February 2000]

An Act to make provision for the appointment and functions of a parliamentary commissioner for administrative investigations for the investigation of administrative action taken by, in or on behalf of certain agencies, and for other purposes

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Parliamentary Commissioner Act 1974*.

Interpretation

4.(1) In this Act—

“**administrative action**” means any action relating to a matter of administration, and includes—

- (a) a decision and an act; and
- (b) the failure to make a decision or do an act (including the failure to provide a written statement of reasons in relation to a decision); and
- (c) the formulation of a proposal or intention; and
- (d) the making of a recommendation (including a recommendation made to a Minister).

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“agency” means—

- (a) a department; or
- (b) a local government; or
- (c) a public authority; or
- (d) a person or body declared by regulation to be an agency;

but does not include a person or body declared by regulation not to be an agency.

“appropriate agency”, in relation to an investigation, means the agency by, in or on behalf of which the administrative action that is the subject of investigation was taken.

“commissioner” means the Parliamentary Commissioner for Administrative Investigations.

“enactment” means an Act or subordinate legislation.

“function” includes a power.

“officer”, in relation to an agency, includes—

- (a) the agency’s principal officer; and
- (b) a member of the agency; and
- (c) a member of the agency’s staff; and
- (d) a person employed by or for the agency.

“officer of the commissioner” has the meaning given by section 10(1).

“parliamentary committee” means the Legal, Constitutional and Administrative Review Committee of the Legislative Assembly.

“person aggrieved”, in relation to a complaint, means the person or body of persons (whether incorporated or unincorporated) that appears from the complaint to be the person or body directly affected by the administrative action to which the complaint relates.

“principal officer” means—

- (a) in relation to a department—the chief executive of the department; or
- (b) in relation to a local government—the chairperson or mayor

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- (however described) of the local government; or
- (c) in relation to an agency for which a regulation declares an officer to be the principal officer—the holder of the office; or
 - (d) in relation to another agency—
 - (i) if it is an incorporated body that has no members—the person who manages the body’s affairs; or
 - (ii) if it is a body (whether or not incorporated) that is constituted by 1 person—the person; or
 - (iii) if it is a body (whether or not incorporated) that is constituted by 2 or more persons—the person who is entitled to preside at a meeting of the body at which the person is present.

“public authority” has the same meaning as in the *Freedom of Information Act 1992*.

“responsible Minister”—

- (a) in relation to a department, local government or public authority—has the same meaning as in the *Freedom of Information Act 1992*; or
- (b) in relation to any other agency—means the Minister declared by regulation to be the responsible Minister in relation to the agency.

“tribunal” includes the person constituting a tribunal consisting of a single person.

(2) In this Act, a reference to an agency includes a reference to a body that—

- (a) forms part of the agency; or
- (b) exists mainly for the purpose of enabling the agency to perform its functions.

PART 2—THE PARLIAMENTARY COMMISSIONER FOR ADMINISTRATIVE INVESTIGATIONS

Appointment etc. of commissioner

5.(1) For the purpose of conducting investigations in accordance with this Act there shall be appointed, as an officer of Parliament, a commissioner, to be known as the Parliamentary Commissioner for Administrative Investigations.

(2) The commissioner shall be appointed by the Governor in Council, and shall hold office in accordance with the provisions of this Act.

(3) The commissioner shall be appointed to hold office for a term not exceeding 5 years, but the commissioner may, at any time, by signed writing, addressed to the Governor in Council, resign, and on receipt of the resignation by the Governor in Council, the commissioner vacates office as commissioner.

(5) No person who is or has been within the preceding 3 years a member of the Parliament of this State or of the Commonwealth or any other State shall be appointed as commissioner, and if the commissioner is nominated for election for any House of any such Parliament the commissioner vacates office as commissioner.

(6) A person may be appointed as the commissioner only if—

- (a)** press advertisements have been placed nationally calling for applications from suitably qualified persons to be considered for appointment; and
- (b)** the Minister has consulted with the parliamentary committee about—
 - (i)** the process of selection for appointment; and
 - (ii)** the appointment of the person as commissioner.

(7) Subsection (6)(a) and (b)(i) does not apply to the reappointment of a person as commissioner.

(8) The commissioner shall not, without the prior approval of the Minister in each particular case hold any office of profit (other than office as commissioner) or engage in any remunerative employment or undertaking

outside the duties of the office, and if the commissioner contravenes this subsection the commissioner shall be regarded for the purposes of section 6, as being guilty of misconduct.

(9) The *Acts Interpretation Act 1954*, section 25(1)(b) does not apply to the office of commissioner.

Suspension and removal of the commissioner

6.(1) The Governor may, on an address from the Legislative Assembly, remove the commissioner from office—

- (a) on the ground of proved incapacity, incompetence or misconduct; or
- (b) if the commissioner is convicted of an indictable offence.

(2) The motion for the address may be moved only by the Premier.

(3) The Premier may move the motion only if—

- (a) the Premier has given the commissioner a statement setting out the reasons for the motion; and
- (b) the statement and any written response by the commissioner have been tabled in the Legislative Assembly; and
- (c) the Premier has consulted with the parliamentary committee about the motion; and
- (d) agreement to the motion has been obtained from—
 - (i) all members of the parliamentary committee; or
 - (ii) a majority of members of the parliamentary committee (other than a majority consisting solely of the members of the political party or parties in government in the Assembly).

(4) The Governor in Council may suspend the commissioner from office—

- (a) on the ground of incapacity, incompetence or misconduct; or
- (b) if the commissioner is convicted of an indictable offence.

(5) When the Legislative Assembly is in session, the Governor in Council may suspend the commissioner only on an address from the

Legislative Assembly.

(6) The motion for the address must comply with subsections (2) and (3).

(7) When the Legislative Assembly is not in session, the Governor in Council may suspend the commissioner only if—

- (a) the Premier has given the commissioner a statement setting out the reasons for the suspension; and
- (b) the Premier has considered any response by the commissioner to the statement.

(8) The Premier must table the statement and any written response by the commissioner in the Legislative Assembly within 3 sitting days after the day the suspension begins.

(9) A suspension made when the Legislative Assembly is not in session ceases to have effect—

- (a) subject to paragraph (b), at the end of 7 sitting days after the day the suspension begins; or
- (b) if the commissioner is earlier suspended or removed from office on an address from the Legislative Assembly—at that earlier time.

(10) If the suspension ceases to have effect under subsection (9)(a), the commissioner is entitled to be paid salary and allowances for the period of the suspension.

(11) Except as provided in subsection (10), the commissioner is entitled to be paid salary and allowances for the period of a suspension only if—

- (a) the Legislative Assembly resolves that salary and allowances be paid for the period; or
- (b) the Governor in Council approves the payment of salary and allowances for the period.

Remuneration and conditions of service of commissioner

7.(1) The commissioner shall be paid—

- (a) a salary at such rate as is fixed from time to time by the Governor

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in Council; and

- (b) such travelling and other allowances as are fixed from time to time by the Governor in Council.

(2) The rate of salary paid to the commissioner shall not, without the consent in writing of the commissioner, be reduced during the commissioner's term of office.

(3) The salary payable to the holder of the office of commissioner under this section shall be paid out of the consolidated fund which, to the necessary extent, is hereby appropriated accordingly.

(4) The commissioner is entitled to such leave of absence as the Governor in Council from time to time determines.

(5) The *Public Service Act 1996* does not apply to the office of commissioner.

(7) A person who is the commissioner may elect to be a contributor to a pension scheme determined by the Governor in Council.

(8) If an officer of the public service is appointed to the office of commissioner, the officer is entitled to retain all existing and accruing rights as if service in that office were a continuation of his or her service as an officer of the public service.

(9) Where a person ceases to hold the office of commissioner and becomes an officer of the public service his or her service in that office shall be regarded as service in a permanent capacity in the public service for the purpose of determining rights as an officer of the public service.

(10) Where the commissioner was, immediately before appointment as commissioner, the holder of an office under the Crown in the right of the State, the commissioner shall, if the commissioner resigns office as commissioner, or if the term of the commissioner's appointment or reappointment expires and is not renewed, be entitled unless the commissioner has been guilty of misconduct in office as commissioner to be appointed to some office under the Crown with a classification and salary corresponding with or higher than that of the office which the commissioner held immediately before appointment as commissioner as if service as commissioner had been service in that office and to be classified accordingly.

Acting parliamentary commissioner

8.(1) In the event of the absence from duty for any reason whatsoever of the commissioner or in the event of a vacancy in the office of commissioner the Governor in Council may appoint a person to act in the office of the commissioner during such absence from duty or until a new commissioner is appointed and the person so appointed shall be known as the acting Parliamentary Commissioner for Administrative Investigations.

(2) The *Public Service Act 1996* does not apply to the office of acting commissioner.

(3) Where the acting commissioner was, immediately before appointment as acting commissioner the holder of an office under the Crown in the right of the State, the acting commissioner shall, if the acting commissioner resigns office as acting commissioner, or if the term of the acting commissioner's appointment or reappointment expires and is not renewed, be entitled unless the acting commissioner has been guilty of misconduct in office as acting commissioner to be appointed to some office under the Crown with a classification and salary corresponding with or higher than that of the office which the acting commissioner held immediately before appointment as acting commissioner as if service as acting commissioner has been service in that office and to be classified accordingly.

(4) The acting commissioner shall not, without the approval of the Minister, engage in remunerative employment outside the duties of the office.

Oath of commissioner and acting commissioner

9.(1) Before entering upon the exercise of the duties of their respective offices the commissioner and the acting commissioner shall each take an oath or affirmation that he or she will faithfully and impartially perform the duties of the office, and that he or she will not, except in accordance with this Act, divulge any information received under this Act.

(2) The oath or affirmation shall be administered by the Speaker of the Legislative Assembly.

Officers of the commissioner

10.(1) The commissioner may employ the officers the commissioner considers necessary for this Act.

(2) The *Public Service Act 1996* does not apply to officers of the commissioner.

(3) Subject to this Act, the terms and conditions of service of officers of the commissioner shall be such as the Governor in Council determines.

(4) An officer of the commissioner shall, before the officer commences duties as such, take an oath or affirmation, to be administered by the commissioner or acting commissioner, that the officer will faithfully and impartially perform the duties of the office and that, except in accordance with this Act, the officer will not divulge any information received under this Act.

(5) An officer of the commissioner shall, for the purposes of the *Public Service Superannuation Act 1958* and the *State Service Superannuation Act 1972*¹, be deemed to be an officer within the meaning of those Acts.

Preservation of rights

10A.(1) If a person who is a public service officer becomes an officer of the commissioner, the person is entitled to the person's existing and accruing rights as if employment as an officer of the commissioner were a continuation of employment as a public service officer.

(2) If a person who is an officer of the commissioner becomes a public service officer, the person's employment as an officer of the commissioner is taken to be employment of a like nature in the public service for determining the person's rights as a public service officer.

(3) If a person who is an officer of the commissioner was, immediately before appointment as an officer of the commissioner, a public service officer, and the person ceases to be an officer of the commissioner for a reason other than misconduct, the person is entitled to be employed as a public service officer.

¹ Now see *Acts Interpretation Act 1954*, s 141 and *Superannuation and Other Legislation Amendment Act 1997*, s 39

- (4) The person is to be employed—
- (a) at the classification level at which the person would have been employed if the person had continued in employment as a public service officer; and
 - (b) on the remuneration to which the person would have been entitled if the person had continued in employment as a public service officer.

Secondment as officer of commissioner

10B.(1) A public service officer may, on the commissioner's recommendation, be seconded as an officer of the commissioner.

(2) A person seconded under this section is taken to be an officer of the commissioner for the period of the secondment.

(3) While a person is seconded under this section, the *Public Service Act 1996* does not apply to the person, but the person—

- (a) is entitled to the person's existing and accruing rights as if employment as an officer of the commissioner were a continuation of employment as a public service officer; and
- (b) may apply for and be employed in the public service as if the person were a public service officer.

(4) A person's employment on secondment as an officer of the commissioner is taken to be employment of a like nature in the public service for determining the person's rights as a public service employee.

(5) If the secondment of a person under this section ceases for a reason other than misconduct, the person is entitled to be employed as a public service officer.

(6) The person is entitled to be employed on the same, or a higher, classification level and salary as that which the public service commissioner or another entity prescribed under a regulation considers the person would have attained in the ordinary course of progression if the person had not been seconded.

Temporary and casual employees

10C.(1) The commissioner may employ the temporary and casual employees the commissioner considers necessary for this Act.

(2) The commissioner may decide the employees' terms of employment.

(3) However, subsection (2) has effect subject to any relevant award or industrial agreement.

(4) The *Public Service Act 1996* does not apply to an employee of the commissioner.

Delegation

11. The commissioner may delegate the commissioner's powers under this Act (other than the power to make a report or recommendation) to an officer of the commissioner.

Commissioner not subject to direction about investigations

11A. The commissioner is not subject to direction by any person about—

- (a) the way in which the commissioner's powers in relation to investigations are to be exercised; or
- (b) the priority given to investigations.

PART 3—JURISDICTION AND FUNCTIONS OF THE COMMISSIONER*Division 1—Extent of jurisdiction***Agencies subject to investigations**

12.(1) This Act applies to all agencies and their officers.

(2) This Act does not apply to a person who is a police officer in the person's capacity as a police officer.

(3) Administrative action by, in or on behalf of an officer of an agency is taken to be administrative action of the agency.

Matters subject to investigation

13.(1) Subject to this Act, the principal function of the commissioner shall be to investigate any administrative action taken by, in or on behalf of an agency.

(2) The power under this Act to investigate any recommendation made to a Minister includes a power to investigate any action taken as a consequence of that recommendation, but nothing in this Act authorises or requires the commissioner to question the merits of a decision made by a Minister or by Cabinet.

(3) Subject to subsection (4), the commissioner shall not conduct an investigation under this Act in respect of any of the following matters—

- (a) any administrative action in respect of which the person aggrieved has or had a right of appeal, reference, or review to or before a tribunal constituted under any enactment or by virtue of the royal prerogative;
- (b) any administrative action in respect of which the person aggrieved has or had a remedy by way of proceedings in a court of law.

(4) Notwithstanding anything in subsection (3), the commissioner may conduct any investigation notwithstanding that the person aggrieved has or had such a right or remedy as is referred to in that subsection if the commissioner considers that, in the particular circumstances—

- (a) it would not be reasonable to expect or to have expected the person aggrieved to resort to that right or remedy; or
- (b) the matter merits investigation in order to avoid injustice.

(5) Nothing in this Act shall authorise the commissioner to investigate any administrative action taken—

- (a) by a court of law or by a judge, magistrate, or member of any such court; or
- (b) by a tribunal, or any member thereof, in the exercise of judicial powers; or

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- (c) by a person acting as legal adviser to the Crown or as counsel for the Crown in any legal proceedings; or
- (d) by a person in the capacity as trustee under the *Trusts Act 1973*; or
- (e) by a master in equity, and a registrar within the meaning of the Rules of the Supreme Court and a registrar of a District Court or of a Magistrates Court; or
- (f) by the auditor-general; or
- (g) by a mediator at a mediation session under the *Dispute Resolution Centres Act 1990*; or
- (h) by a person in a capacity as a conciliator under the *Health Rights Commission Act 1991*.

(6) Nothing in this Act authorises or requires the commissioner to question the merits of a decision that the commissioner is satisfied has been taken in order to implement a determination made by the Cabinet.

(7) The powers of the commissioner under this Act may be exercised in relation to administrative action of an agency even though the action was taken on behalf of, or in the exercise of functions conferred on, an authority or body that is not an agency.

(8) However, the commissioner is not authorised or required to question the merits of a decision taken by an authority or body that is not an agency.

(9) If administrative action of an authority or body that is not an agency is taken under functions conferred on, or instructions given by, an agency, the action is taken, for the purposes of this Act, to be the action of the agency.

(10) The commissioner may investigate administrative action despite a provision in an enactment to the effect that action of that kind is final or must not be appealed against, challenged, reviewed, quashed or called in question.

(11) The commissioner may investigate administrative action taken before the commencement of this Act.

Division 2—Initiation of investigations**Investigations on reference by Parliament**

14.(1) The Legislative Assembly or a committee of that House may refer to the commissioner, for investigation and report, any matter within the commissioner's jurisdiction that that House or committee considers should be investigated by the commissioner.

(2) On any matter being referred to the commissioner under this section the commissioner shall, as soon as may be, carry out the investigation and submit a report thereon to the Speaker of the Legislative Assembly.

(3) Section 13(3) does not apply to any matter referred to the commissioner under this section, but where, in relation to any such matter, any person aggrieved thereby has or had such a right or remedy as is referred to in that subsection, the commissioner may refrain from commencing any investigation into that matter until the commissioner is satisfied that that right or remedy cannot or will not be exercised or sought or, if it has been exercised or sought, the proceedings thereon have been finally concluded or abandoned.

Initiation of investigations in other cases

15.(1) Without prejudice to the provisions of section 14 any investigation that the commissioner is authorised to conduct under this Act may be so conducted, either on his or her own motion or on a complaint made in accordance with section 16.

(2) An investigation may be commenced as a consequence of a complaint notwithstanding that the complaint may not on its face be against any such action as is referred to in section 13(1) if in the opinion of the commissioner there is a likelihood that the cause for complaint arose from such an action.

Complaints

16.(1) Except as otherwise provided in this section, a complaint under this Act shall be made in writing and may be made by any person, or by any body of persons, whether incorporated or not.

(2) Where the person by whom a complaint might have been made under this Act has died or is, in the opinion of the commissioner, for any reason unable to act for himself or herself, the complaint may be made by the person's personal representative or by a member of the person's family or other individual who is, in the opinion of the commissioner, suitable to represent the person, but except as otherwise provided in this subsection a complaint shall not be entertained under this Act if the complaint is not made by the person aggrieved.

(3) The provisions of any enactment prohibiting or restricting or authorising or requiring the imposition of prohibitions or restrictions on communication to any other person do not apply to any communication made for the purpose of making a complaint under this Act, and any person having the right to keep in custody, or to detain in any place, a person who desires to make a complaint under this Act shall take all steps necessary to facilitate the making of the complaint.

(4) Any person failing to comply with subsection (3) is guilty of an offence against this Act.

(5) Except where the commissioner is of opinion that special circumstances exist in the case in question and the commissioner considers it proper to entertain the complaint, a complaint shall not be entertained under this Act unless it is made not later than 12 months from the day on which the person aggrieved first had notice of the action against which complaint is made.

(6) 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 the complainant might reasonably be expected to have had such notice.

(7) Notwithstanding anything in subsection (5) a complaint in respect of any administrative action taken before the date of the coming into operation of this Act may be entertained if it is made within 6 months following that date but this subsection does not preclude the commissioner from entertaining a complaint made after the expiration of that period if the commissioner is of opinion that special circumstances exist in the case in question and the commissioner considers it proper to entertain the complaint.

Refusal to investigate complaints

17.(1) The commissioner may refuse to entertain a complaint, or, having commenced to investigate a matter raised in a complaint, may refuse to continue the investigation if the commissioner is of the opinion—

- (a) that the matter raised in the complaint is trivial; or
- (b) that the complaint is frivolous or vexatious or is not made in good faith; or
- (c) that the person aggrieved has not a sufficient direct 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) Where, under this Act, the commissioner is precluded from entertaining, or refuses to entertain, a complaint, or refuses to continue an investigation of any matter raised in a complaint, the commissioner shall inform the complainant of the decision stating the reason therefor.

Division 3—Conduct of investigations**Proceedings on investigations**

18.(1) Before commencing an investigation under this Act relating to an administrative action taken by, in or on behalf of an agency, the commissioner shall in writing inform the principal officer thereof of the intention to conduct the investigation.

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

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

(4) If, at any time during the course of an investigation, it appears to the commissioner that there may be grounds for making a report on that

investigation that may affect or concern an agency, the commissioner shall, before making that report, afford to the principal officer thereof an opportunity to comment on the subject matter of the investigation.

(5) The commissioner may, in the commissioner's discretion, at any time during or after an investigation, consult any Minister who is concerned in the subject matter of the investigation.

(6) In relation to any investigation, if a Minister so requests or the investigation relates to any recommendation made to a Minister, the commissioner shall consult that Minister before forming a final opinion on any of the matters referred to in section 24(1) or (2).

(7) If, during or after an investigation, the commissioner is of opinion that there is evidence of any breach of duty or misconduct on the part of an officer of an agency, the commissioner—

- (a) shall refer that matter to the principal officer of the agency; and
- (b) shall send a copy of the report to the responsible Minister if the commissioner is of opinion that in the circumstances of the case he or she ought so to do.

(8) Subject to this Act the commissioner may regulate the procedure on an investigation in such manner as the commissioner thinks fit.

Commissioner has power of royal commission and chairperson thereof—evidence etc.

19.(1) Where the commissioner has decided to conduct an investigation under this Act then subject to this Act for the purposes of the investigation—

- (a) the commissioner shall have and may exercise all the powers, rights and privileges that are specified in the *Commissions of Inquiry Act 1950*, as appertaining to a commission and the chairperson thereof within the meaning of those Acts; and
- (b) all the provisions of those Acts shall apply and have effect in all respects as if they were enacted in this Act and in terms made applicable to the commissioner, the investigation and the subject matter of the investigation as if the matter were one into which a commission constituted by the commissioner was appointed to

make an inquiry under those Acts.

(2) No obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to officers of an agency, 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 commissioner under this Act.

(3) The State or an agency is not entitled in relation to any investigation under this Act to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.

(4) Subject to subsections (2) and (3), in an investigation under this Act, every person shall have the same privileges in relation to the giving of evidence and the production of documents, papers and things that the person would have had as a witness in legal proceedings before a court.

Entry of premises

20.(1) For the purposes of conducting an investigation under this Act the commissioner, or an officer of the commissioner authorised by the commissioner, may at any time enter any premises occupied or used by an agency, and inspect those premises or anything for the time being therein.

(2) The powers conferred by this section to enter any premises occupied or used by an agency shall not be exercised unless at least 48 hours before the exercise of those powers notice in writing of the intention so to do has been given to the principal officer thereof.

Disclosure of certain matters not required

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

- (a) to furnish any information or answer any question relating to 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 by the chief executive of the department administered by the Premier, with the approval of the Premier, certifying that any information or question, or any document

or part of a document, relates to any such proceedings as are referred to in subsection (1) is conclusive of the fact so certified.

(3) The commissioner shall not require any information or answer to be given or, as the case may be, the production of any document or paper or thing where the Attorney-General certifies that the giving of the information or the answering of the question or the production of the document or paper or thing might prejudice the security of the State or the investigation or detection of offences.

Secrecy

22.(1) A person who obtains information in the course of, or for the purpose of, an investigation under this Act—

- (a) shall not disclose that information except—
 - (i) for the purposes of the investigation and of any report or recommendations to be made thereon or relating thereto under this Act; or
 - (ii) for the purposes of any proceedings for any perjury or any offence under the *Commissions of Inquiry Act 1950* or under this Act alleged to have been committed in any proceedings upon such an investigation; and
- (b) shall not take advantage of any knowledge from that information to benefit himself or herself or any other person.

(2) Any person who, in contravention of this section, discloses information or takes advantage of knowledge gained from information is guilty of an offence against this Act.

Obstruction

23. Any person who—

- (a) without lawful excuse (proof of which shall lie on the person) wilfully obstructs, hinders, or resists the commissioner or any other person in the exercise of powers under this Act; or
- (b) without lawful excuse (proof of which shall lie on the person) refuses or wilfully fails to comply with any lawful requirement of

the commissioner or any other person under this Act; or

- (c) wilfully makes any statement that is false or untrue to, or misleads, or attempts to mislead, the commissioner or any other person in the exercise of powers under this Act;

is guilty of an offence against this Act.

Division 4—Action on completion of investigations

Procedure on completion of investigation

24.(1) This section applies to any investigation conducted by the commissioner (not being an investigation conducted pursuant to section 14) as a result of which the commissioner is of the opinion that the administrative action to which the investigation relates—

- (a) appears to have been taken contrary to law; or
- (b) was unreasonable, unjust, oppressive, or improperly discriminatory; or
- (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; or
- (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 taking into account of irrelevant considerations; or
- (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; or
- (f) was based wholly or partly 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 commissioner is of the opinion—

- (a) that the subject matter should be referred to the appropriate agency for further consideration; or
- (b) that action can be, and should be, taken to rectify, or mitigate or

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- alter the effects of, the action to which the investigation relates; or
- (c) that any practice in accordance with which the action was taken should be varied; or
 - (d) that any law in accordance with which, or on the basis of which, the action was taken should be reconsidered; or
 - (e) that reasons should be given for the action; or
 - (f) that any other steps should be taken;

the commissioner shall report the opinion, and the reasons therefor, to the principal officer of the appropriate agency, and may make such recommendations as the commissioner thinks fit.

(3) Where the commissioner makes any report or recommendations to the principal officer of an agency under subsection (2) the commissioner shall send a copy thereof to the responsible Minister.

(4) Where under subsection (2) the commissioner makes recommendations to the principal officer of an agency the commissioner may request that officer to notify the commissioner within a specified time, of the steps that have been or are proposed to be taken to give effect to the recommendations, or, if no such steps have been, or are proposed to be taken, the reasons therefor.

(5) Where it appears to the commissioner that no steps that seem to be appropriate have been taken within a reasonable time of the making any report or recommendations under subsection (2), the commissioner, after considering the comments (if any) made by or on behalf of the principal officer to whom the report or recommendations were made, may, if the commissioner thinks fit, send to the Premier a copy of the report and the recommendations together with a copy of any such comments.

(6) Where a copy of any report, recommendations, or comments has been sent to the Premier under subsection (5), the commissioner may cause to be laid before the Legislative Assembly such report on the matters to which they relate as the commissioner thinks fit.

(7) The commissioner shall not in any report under this Act make any comment adverse to any person unless that person has been given an opportunity of being heard in the matter and the person's defence is fairly set forth in the report.

Information to complainant on investigation

25. Where the commissioner conducts an investigation on a complaint made under this Act the commissioner shall inform the complainant, in such manner and at such time as the commissioner thinks proper, of the result of the investigation.

Division 5—Annual report and other reports**Annual and other report to Parliament**

26. Without limiting the commissioner's right under any other provision of this Act to cause a report to be laid before the Legislative Assembly, the commissioner shall as soon as practicable after each 30 June in each year cause to be laid before the Legislative Assembly a report on the exercise of the commissioner's functions during the 12 months (or in the case of the first report, the lesser period) ending on that date and may if the commissioner thinks fit cause to be laid before the Legislative Assembly a report on any matter arising in connection with the exercise of the commissioner's functions.

Other reports on authority of speaker

27. The speaker may authorise the commissioner to publish, in the public interest or in the interests of any agency, organisation or person, reports relating generally to the exercise of the commissioner's functions or to any particular case investigated by the commissioner, whether or not the matters to be dealt with in any such report have been the subject of a report laid before the Legislative Assembly under this Act.

PART 4—MISCELLANEOUS**Application to Supreme Court**

28.(1) Where, in the course of an investigation under this Act, the question arises as to whether the commissioner has jurisdiction to conduct

the investigation, the commissioner, the complainant or the party the subject of the investigation, may make an application to a judge of the Supreme Court, for a determination of that question, and, on the application, the judge may make such order as the judge considers proper.

(2) An application to which subsection (1) relates shall be made as prescribed by rules of court or in so far as not so prescribed as a judge may direct and shall be heard in the judge's chambers.

(3) References in this section, in relation to an investigation into any administrative action taken by, in or on behalf of an agency, to the party the subject of the investigation shall be construed as references to the agency or the principal officer thereof.

Protection of commissioner and officers

29.(1) Neither the commissioner, the acting commissioner nor any of the officers of the commissioner 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 or she would have been liable apart from this section in respect of any act done or purporting to be done, in pursuance of this Act or of an authority given under this Act, unless the act was done in bad faith.

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

(3) Notwithstanding anything in subsections (1) and (2), no prerogative writ shall be issued restraining the commissioner or acting commissioner from carrying out, or compelling the commissioner or acting commissioner to carry out any investigation, and no proceedings shall be brought against the commissioner whereby the issue of such a writ is sought.

(4) Neither the commissioner, the acting commissioner nor any of the officers of the commissioner shall be called to give evidence or produce any document in any court, or in any judicial proceedings, in respect of any matter coming to his or her knowledge in the exercise of his or her functions under this Act.

Penalties and proceedings

30.(1) A person who is guilty of an offence under this Act shall be liable to a penalty of a fine of 100 penalty units or 12 months imprisonment.

(2) Proceedings for offences against this Act shall be heard and determined summarily.

Estimates

31.(1) The commissioner must prepare, for each financial year, estimates of proposed receipts and expenditure relating to the commissioner.

(2) The commissioner must give the estimates to the Minister responsible for the administration of the *Financial Administration and Audit Act 1977*, part 2.²

(3) The Minister mentioned in subsection (2) must consult with the parliamentary committee in developing the proposed budget of the commissioner for each financial year.

Strategic review of commissioner

32.(1) Strategic reviews of the commissioner are to be conducted under this section.

(2) A review is to be conducted at least every 5 years.

(3) Each review is to be undertaken by an appropriately qualified person, appointed by the Governor in Council, who is to give a report on the review.³

(4) The terms of reference for the review are to be decided by the Governor in Council.

(5) Before a person is appointed to conduct a review, the Minister must consult with the parliamentary committee and the commissioner about—

(a) the appointment of the person; and

² The *Financial Administration and Audit Act 1977*, part 2 deals with financial administration.

³ A review under this section may be combined with a review under the *Freedom of Information Act 1992*, section 108A: see section 108B of that Act.

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(b) the terms of reference for the review.

(6) The remuneration and other terms of appointment of a person appointed to conduct a review are as decided by the Governor in Council.

(7) In conducting the review—

(a) the person has the powers that an authorised auditor has under the *Financial Administration and Audit Act 1977* for an audit of an entity; and

(b) that Act and other Acts apply to the person as if the person were an authorised auditor conducting an audit of an entity.

(8) The person must give a copy of a proposed report on the review to the Minister and the commissioner.

(9) The commissioner may, within 21 days after receiving the proposed report, give the person written comments on anything in the proposed report.

(10) If the commissioner comments under subsection (9), the person must—

(a) if the person and commissioner can agree about how to dispose of a comment—incorporate into the report any agreed amendment necessary to dispose of the comment; or

(b) if the person and commissioner can not agree about how to dispose of a comment—include the comment, in full, in the report.

(11) After complying with subsections (8) and (10), the person must give the report to the Minister and the commissioner.

(12) The Minister must table the report in the Legislative Assembly within 3 sitting days after the Minister receives the report.

(13) For the *Parliamentary Committees Act 1995*, section 8(2), the report is referred to the parliamentary committee.

(14) In this section—

“strategic review” includes—

(a) a review of the commissioner’s functions; and

- (b) a review of the commissioner's performance of the functions to assess whether they are being performed economically, effectively and efficiently.

Regulation making power

33. The Governor in Council may make regulations under this Act.

ENDNOTES**1 Index to endnotes**

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 4 February 2000. Future amendments of the Parliamentary Commissioner Act 1974 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key**Key to abbreviations in list of legislation and annotations**

AIA	=	Acts Interpretation Act 1954	prev	=	previous
amd	=	amended	(prev)	=	previously
amdt	=	amendment	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
o in c	=	order in council	sch	=	schedule
om	=	omitted	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered

4 Table of earlier reprints**TABLE OF EARLIER REPRINTS**

Reprint No.	Amendments included	Reprint date
1	to Act No. 68 of 1992	23 April 1993
2	to Act No. 38 of 1995	29 January 1996
2A	to Act No. 37 of 1996	20 January 1997

5 Tables in earlier reprints**TABLES IN EARLIER REPRINTS**

Name of table	Reprint No.
Changed names and titles	2
Corrected minor errors	1
Obsolete and redundant provisions	2

6 List of legislation

Parliamentary Commissioner Act 1974 No. 19

date of assent 24 April 1974

commenced 1 July 1974 (proc pubd gaz 29 June 1974 p 1207)

as amended by—

Parliamentary Commissioner Act Amendment Act 1976 No. 7

date of assent 2 April 1976

commenced on date of assent

Public Service Management and Employment Act 1988 No. 52 s 44 sch 3

date of assent 12 May 1988

commenced 18 July 1988 (proc pubd gaz 16 July 1988 p 2876)

Dispute Resolution Centres Act 1990 No. 35 s 5.10

date of assent 15 June 1990

commenced on 1 July 1990 (see s 1.2(2))

Health Rights Commission Act 1991 No. 88 ss 1–2, 143

date of assent 11 December 1991

ss 1–2 commenced on date of assent

remaining provision commenced 1 July 1992 (1992 SL No. 98)

Judicial Review Act 1991 No. 100 ss 1–2, 60

date of assent 17 December 1991

ss 1–2 commenced on date of assent

remaining provision commenced 1 June 1992 (1992 SL No. 110)

Statute Law (Miscellaneous Provisions) Act (No. 2) 1992 No. 68 ss 1–3 sch 1

date of assent 7 December 1992

ss 1–2 commenced on date of assent

remaining provisions commenced 18 December 1992 (1992 SL No. 439)

Anti-Discrimination Amendment Act 1994 No. 29 ss 1–3 sch

date of assent 28 June 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1994 (see s 2)

Parliamentary Committees Act 1995 No. 38 ss 1, 35 sch 1

date of assent 15 September 1995

commenced on date of assent

Public Service Act 1996 No. 37 ss 1–2, 147 sch 2

date of assent 22 October 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

Parliamentary Commissioner and Freedom of Information Amendment Act 1999 No. 85 pts 1–2

date of assent 14 December 1999

commenced on date of assent

7 List of annotations

Long title amd 1992 No. 68 s 3 sch 1

Commencement

s 2 om R2 (see RA s 37)

Arrangement

s 3 om R1 (see RA s 36)

Interpretation

s 4 sub 1992 No. 68 s 3 sch 1
def “**administrative action**” amd 1991 No. 100 s 60
def “**parliamentary committee**” ins 1995 No. 38 s 35 sch 1

Appointment etc. of commissioner

s 5 amd 1976 No. 7 s 2; 1992 No. 68 s 3 sch 1; 1994 No. 29 s 3 sch; 1995 No. 38 s 35 sch 1

Suspension and removal of the commissioner

s 6 sub 1995 No. 38 s 35 sch 1

Remuneration and conditions of service of commissioner

s 7 amd 1992 No. 68 s 3 sch 1; 1994 No. 29 s 3 sch; 1996 No. 37 s 147 sch 2

Acting parliamentary commissioner

s 8 amd 1992 No. 68 s 3 sch 1; 1994 No. 29 s 3 sch; 1995 No. 38 s 35 sch 1; 1996 No. 37 s 147 sch 2

Officers of the commissioner

prov hdg amd 1996 No. 37 s 147 sch 2

s 10 amd 1992 No. 68 s 3 sch 1; 1994 No. 29 s 3 sch; 1995 No. 38 s 35 sch 1; 1996 No. 37 s 147 sch 2

Preservation of rights

s 10A ins 1996 No. 37 s 147 sch 2

Secondment as officer of commissioner

s 10B ins 1996 No. 37 s 147 sch 2

Temporary and casual employees

s 10C ins 1996 No. 37 s 147 sch 2

Delegation

s 11 sub 1992 No. 68 s 3 sch 1

Commissioner not subject to direction about investigations

s 11A ins 1995 No. 38 s 35 sch 1

Agencies subject to investigations

s 12 sub 1992 No. 68 s 3 sch 1

Matters subject to investigation

s 13 amd 1990 No. 35 s 5.10(1); 1991 No. 88 s 143; 1992 No. 68 s 3 sch 1

Proceedings on investigations

s 18 amd 1992 No. 68 s 3 sch 1

Commissioner has power of royal commission and chairperson thereof—evidence etc.

s 19 amd 1992 No. 68 s 3 sch 1

Entry of premises

s 20 amd 1992 No. 68 s 3 sch 1

Disclosure of certain matters not required

s 21 amd 1992 No. 68 s 3 sch 1

Procedure on completion of investigation

s 24 amd 1992 No. 68 s 3 sch 1

Other reports on authority of speaker

s 27 amd 1992 No. 68 s 3 sch 1

Application to Supreme Court

s 28 amd 1992 No. 68 s 3 sch 1

Penalties and proceedings

s 30 amd 1992 No. 68 s 3 sch 1

Estimates

s 31 sub 1995 No. 38 s 35 sch 1

Strategic review of commissioners 32 sub 1992 No. 68 s 3 sch 1; 1995 No. 38 s 35 sch 1
amd 1999 No. 85 s 3**Regulation making power**

s 33 ins 1995 No. 38 s 35 sch 1

SCHEDULEamd 1988 No. 52 s 44 sch 3
om 1992 No. 68 s 3 sch 1