

Queensland



ANNO VICESIMO TERTIO

ELIZABETHAE SECUNDAE REGINAE

No. 19 of 1974

**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 Government Departments and Authorities, and for other purposes.**

[ASSENTED TO 24TH APRIL, 1974]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

## PART I—PRELIMINARY

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

**2. Commencement.** This Act shall come into operation on a date to be fixed by Proclamation.

**3. Arrangement.** This Act is divided into Parts and Divisions as follows:—

PART I—PRELIMINARY (ss. 1–4);

PART II—THE PARLIAMENTARY COMMISSIONER FOR ADMINISTRATIVE INVESTIGATIONS (ss. 5–11);

PART III—JURISDICTION AND FUNCTIONS OF THE COMMISSIONER (ss. 12–27);

*Division I—Extent of Jurisdiction;*

*Division II—Initiation of Investigations;*

*Division III—Conduct of Investigations;*

*Division IV—Action on Completion of Investigations;*

*Division V—Annual and Other Reports of the Commissioner;*

PART IV—MISCELLANEOUS (ss. 28–32).

**4. Interpretation.** In this Act, unless the contrary intention appears—

“Acting Commissioner” means the Acting Parliamentary Commissioner for Administrative Investigations appointed under this Act;

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

(a) a decision and an act;

(b) the failure or refusal to take a decision or to perform an act;

(c) the formulation of a proposal or intention; and

(d) the making of a recommendation (including a recommendation made to a Minister);

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

“Authority” means—

(a) an Authority specified in the Schedule; and

(b) a corporation sole, or a body of persons whether corporate or unincorporate, (not being a corporation sole or body of persons specified in the Schedule) constituted or established under an Act for a public purpose in respect of which the Governor in Council or a Minister of the Crown has a right to appoint all or some of its members or, in the case of a corporation sole, the person constituting the corporation, but does not include any corporation sole or body of persons to which paragraph (b) relates that is for the time being declared by Order in Council to be an Authority to which this Act does not apply;

“Commissioner” means the Parliamentary Commissioner for Administrative Investigations appointed under this Act;

- “ Government Department ” means—
- (a) a Department of the Government of the State specified in the Schedule; and
  - (b) a Department of the Government of the State that is for the time being declared by Order in Council to be a Government Department for the purposes of this Act and a Government Department to which this Act applies;
- “ officer of the Commissioner ” has the meaning assigned to that expression in subsection (1) of section 10;
- “ officer of the Public Service ” means a person employed in the Public Service within the meaning of the *Public Service Act 1922-1973*;
- “ permanent head ”, in relation to a Government Department, means the permanent head thereof for the purposes of the *Public Service Act 1922-1973*;
- “ person aggrieved ”, in relation to a complaint under this Act, means the person or body of persons whether corporate or unincorporate who or which appears from the complaint to be the person or body directly affected by the action to which the complaint relates;
- “ principal officer ” means, in relation to—
- (a) a Government Department or similar organization, the permanent head or other principal officer thereof; and
  - (b) any Authority, the president, chairman, or other principal or presiding member thereof or, if the Authority is constituted by a single person, that person;
- “ responsible Minister ” means—
- (a) in relation to action taken by any Government Department or Authority, the Minister of the Crown for the time being charged with the administration of that department or the enactment in relation to the functions conferred by, or arising under, which the action was taken; and
  - (b) in relation to action taken by a local authority, the Minister of the Crown for the time being charged with the administration of the *Local Government Act 1936-1973*.
- “ tribunal ” includes the person constituting a tribunal consisting of one person.

## PART II—THE PARLIAMENTARY COMMISSIONER FOR ADMINISTRATIVE INVESTIGATIONS

**5. Appointment, etc., of Commissioner.** (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 five years, but he may, at any time, by writing under his hand, addressed to the Governor in Council, resign his office, and on receipt of his resignation by the Governor in Council, he vacates office as Commissioner.

(4) The Commissioner vacates his office on attaining the age of sixty-seven years.

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

(6) Subject to this Act, a person who is appointed a Commissioner shall, on the expiration of his term of office, be eligible for re-appointment.

(7) The Commissioner shall not, without the prior approval of the Premier in each particular case hold any office of profit (other than his office as Commissioner) or engage in any remunerative employment or undertaking outside the duties of his office, and if the Commissioner contravenes this subsection he shall be regarded for the purposes of section 6. as being guilty of misconduct.

(8) Section 25 of the *Acts Interpretation Act 1954-1971* does not apply to the office of Commissioner.

**6. Removal or suspension of Commissioner.** (1) The Commissioner may, at any time, be suspended or removed from his office by the Governor in Council on an address from the Legislative Assembly praying for his removal from his office.

(2) Where the Governor in Council is satisfied that the Commissioner—

- (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 applied to take, or has taken, advantage of any law relating to bankruptcy, or has compounded, or entered into any arrangement, with his creditors;
- (d) has been guilty of misconduct; or
- (e) whether in Queensland or elsewhere has been convicted of any indictable offence or has been sentenced to imprisonment for any offence.

he may suspend the Commissioner from his office.

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

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

(4) The office of the Commissioner shall become vacant if—

- (a) he dies;
- (b) he resigns from office by writing under his hand addressed to the Governor in Council and his resignation is received by the Governor in Council;

- (c) he is removed from office by the Governor in Council under subsection (1);
- (d) he is suspended from office under subsection (2) and is not restored to office; or
- (e) he nominates for election for any House of the Parliament of the State or of the Commonwealth or any other State of the Commonwealth.

**7. Remuneration and conditions of service of Commissioner.** (1) The Commissioner shall be paid—

- (a) a salary at such rate as is fixed from time to time by the Governor 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 his 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 Revenue 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* 1922–1973 does not apply to the office of Commissioner.

(6) The holder of the office of Commissioner who immediately before his appointment as such was an officer of the Public Service shall, if he, within three months after his appointment, so elects in writing addressed to the State Service Superannuation Board constituted for the purposes of the *Public Service Superannuation Act* 1958–1972 and the *State Service Superannuation Act* 1972, be deemed to be an officer within the meaning of those Acts.

(7) A person who is the Commissioner and who immediately before his appointment as the Commissioner was not an officer of the Public Service may elect to be a contributor to a pension scheme determined by the Governor in Council after consideration of a report by the Treasurer.

(8) If an officer of the Public Service is appointed to the office of Commissioner, 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.

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

(10) Where the Commissioner was, immediately before his appointment as Commissioner, the holder of an office under the Crown in the right of the State, he shall, if he resigns his office as Commissioner, or if the term of his appointment or re-appointment expires and is not renewed, be entitled unless he has been guilty of misconduct in his office as Commissioner or he has attained the age of sixty-five years to be appointed to some office under the Crown with a classification and salary

corresponding with or higher than that of the office which he held immediately before his appointment as Commissioner as if his service as Commissioner had been service in that office and to be classified accordingly.

**8. Acting Parliamentary Commissioner.** (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 Acting Commissioner appointed under this section, shall whilst acting in the office of the Commissioner, have all the powers and may exercise or perform any of the functions of the Commissioner, and anything done by the Acting Commissioner in so exercising or performing those powers and functions has the like effect as if it were done by the Commissioner.

(3) The Acting Commissioner is entitled to such leave of absence, such remuneration and such reasonable travelling and other allowances as the Governor in Council may determine and subsections (6) and (8) of section 7 shall with all necessary adaptations be applicable to the Acting Commissioner.

(4) The *Public Service Act 1922-1973* does not apply to the office of Acting Commissioner.

(5) Where the Acting Commissioner was, immediately before his appointment as Acting Commissioner the holder of an office under the Crown in the right of the State, he shall, if he resigns his office as Acting Commissioner, or if the term of his appointment or re-appointment expires and is not renewed, be entitled unless he has been guilty of misconduct in his office as Acting Commissioner or he has attained the age of sixty-five years to be appointed to some office under the Crown with a classification and salary corresponding with or higher than that of the office which he held immediately before his appointment as Acting Commissioner as if his service as Acting Commissioner has been service in that office and to be classified accordingly.

(6) The Acting Commissioner shall not, without the approval of the Premier, engage in remunerative employment outside the duties of his office.

**9. Oath of Commissioner and Acting Commissioner.** (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 will faithfully and impartially perform the duties of his office, and that he will not, except in accordance with this Act, divulge any information received by him under this Act.

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

**10. Staff of the Commissioner.** (1) The Governor in Council may, on the recommendation of the Commissioner, appoint such officers as he considers necessary for the purpose of enabling the functions of the Commissioner properly to be carried out and any officer so appointed is referred to in this Act as an officer of the Commissioner.

(2) The *Public Service Act 1922-1973* 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 he commences his duties as such, take an oath or affirmation, to be administered by the Commissioner or Acting Commissioner, that he will faithfully and impartially perform the duties of his office and that, except in accordance with this Act, he will not divulge any information received by him under this Act.

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

(6) An officer of the Commissioner shall not, without the approval of the Premier, engage in any remunerative employment outside his duties as such officer.

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

(8) Where a person ceases to be an officer of the Commissioner and becomes an officer of the Public Service his service as an officer of the Commissioner shall be regarded as service of a like nature in the Public Service for the purpose of determining his rights as an officer of the Public Service.

(9) Where an officer of the Commissioner was, immediately before his appointment as such an officer, the holder of an office under the Crown in the right of the State, he shall, if he ceases to be an officer of the Commissioner on any grounds other than misconduct, be entitled unless he has attained the age of sixty-five years, to be appointed to some office under the Crown with a classification and salary corresponding with or higher than that of the office which he held immediately before his appointment as an officer of the Commissioner as if his service as an officer of the Commissioner had been service in that office and to be classified accordingly.

(10) An officer of the Public Service may, on the recommendation of the Commissioner, be seconded for duty as an officer of the Commissioner for such period as is specified in the minute of secondment and during the period of secondment, the officer shall be deemed to be an officer of the Commissioner.

(11) The terms and conditions of service with the Commissioner of a person seconded under subsection (10) shall be such as the Governor in Council determines.

(12) During the period of secondment under subsection (10) the *Public Service Act 1922-1973* does not apply to the officer in question but during such period the officer—

- (a) shall retain any rights accrued or accruing under the said Act or under the *Public Service Superannuation Act 1958-1972* and the *State Service Superannuation Act 1972*;

- (b) shall continue to contribute to the fund established for the purpose of the said Superannuation Acts;
- (c) shall be entitled to receive any sick, recreation and extended leave entitlements held by him at the time of secondment and any payment prescribed in lieu of such leave and to apply for and be appointed to any office in the Public Service as if he were then an officer within the meaning of the *Public Service Act 1922-1973*,

and service of the officer during the secondment shall be regarded as service of a like nature in the Public Service for the purpose of determining his rights as an officer of the Public Service.

(13) Where the secondment of an officer under subsection (10) ceases on any grounds other than misconduct, the officer shall be entitled to be appointed to an office in the Public Service with a classification and salary corresponding with or higher than that which, in the opinion of the Public Service Board, the officer would have attained in the ordinary course of progression if he had not been so seconded.

**11. Delegation of function of Commissioner.** (1) The Commissioner or the Acting Commissioner may, by instrument in writing under his hand, delegate to any officer of the Commissioner the exercise of any of the powers or functions conferred on the Commissioner under this Act, except the powers conferred on him by this subsection and the power to make any report or recommendations under this Act.

(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 or to the holders of specified offices.

(3) Any delegation given under subsection (1) may by instrument in writing be revoked or varied at any time.

(4) The delegation of any powers or functions under subsection (1) shall not affect the exercise of those powers or functions by the Commissioner or the Acting Commissioner.

(5) A person to whom powers or functions have been delegated under subsection (1) may exercise or perform those powers and functions so long as the delegation thereof has not been revoked.

(6) Any act done by a person in the exercise of the powers or the performance of the functions delegated to him under subsection (1) has like effect as if it were done by the Commissioner.

### PART III—JURISDICTION AND FUNCTIONS OF THE COMMISSIONER

#### *Division I—Extent of Jurisdiction*

**12. Departments and authorities subject to investigations.** (1) Subject to this section, this Act applies to all Government Departments and Authorities.

(2) The Governor in Council may by Order in Council declare—

- (a) a Department of the Government of the State not specified in the Schedule to be a Government Department for the purposes of this Act and a Government Department to which this Act applies; and



- (b) a corporation sole or body of persons to which paragraph (b) of the definition of the term "Authority" relates (not being an Authority specified in the Schedule) to be an Authority to which this Act does not apply.

(3) This Act does not apply to or in relation to any Commission or tribunal for the time being declared by Order in Council to be a Commission or tribunal to which this Act does not apply.

(4) This Act does not apply to or in relation to any member of the police force in his capacity as such a member.

(5) For the purposes of this Act—

- (a) references to a Government Department or an Authority shall be construed as including references to the members, officers and employees thereof;
- (b) references to an officer of an Authority shall be construed as including references to an officer appointed by that Authority under any enactment;
- (c) references to a member of an Authority shall be construed as including references to the holder of any office created by an enactment, or in the Public Service, who by virtue of his holding that office is a member of that Authority; and
- (d) references to an administrative action taken by in or on behalf of a Government Department or an Authority shall be construed as including references to action taken by any officer, employee or member thereof in the exercise or performance of any power or function conferred on by him, or arising under, any enactment.

(6) For the purposes of this Act, but subject to subsection (7), the following persons shall be deemed to constitute the officers and employees of a Government Department, namely:—

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

(7) A member of a board, committee, or similar body constituted by any enactment or by virtue of Her Majesty's prerogative, of or any tribunal so constituted, shall not, in his capacity as such member, be regarded, for the purposes of this Act, as an officer or employee of a Government Department or an Authority but nothing in this subsection shall be read as excluding the application of this Act to any such board, committee or other similar body under the express provisions of any other provision of this Act or preclude any member thereof from being regarded as an officer or employee of a Government Department or an Authority in any other capacity.

**13. Matters subject to investigation.** (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 any Government Department or an Authority to which this Act applies.

(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 authorizes 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, that is to say:—

- (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 Her Majesty's prerogative; and
- (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 authorize 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;
- (b) by a tribunal, or any member thereof, in the exercise of judicial powers;
- (c) by a person acting as legal adviser to the Crown or as counsel for the Crown in any legal proceedings;
- (d) by a person in his capacity as trustee under the *Trusts Act 1973*;
- (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.

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

(7) The powers of the Commissioner under this Act in relation to any administrative action taken by a Government Department or an Authority to which this Act applies may be exercised notwithstanding that that action was taken on behalf of, or in the exercise of any functions conferred on, an authority or body to which this Act does not apply, but nothing in this Act authorizes or requires the Commissioner to question the merits of any decision made by the authority or body to which this Act does not apply.

(8) Where any administrative action is taken by an authority or body to which this Act does not apply under any powers or functions conferred on or instructions given to it by a Government Department or an Authority to which this Act applies the administrative action so taken shall, for the purposes of this Act, be deemed to be the administrative action of the Government Department or Authority to which this Act applies, and the powers of the Commissioner in respect of that action may be exercised accordingly.

(9) The powers of the Commissioner to investigate any administrative action may, if in all the circumstances he considers it proper so to do, be exercised in respect of an administrative action by a Government Department or an Authority to which this Act applies taken before the commencement of this Act.

(10) The powers conferred on the Commissioner by this Act to investigate any administrative action may be exercised notwithstanding any provision in any enactment to the effect that any such action shall be final or shall not be appealed against, challenged, reviewed, quashed or called in question.

#### *Division II—Initiation of Investigations*

**14. Investigations on reference by Parliament.** (1) The Legislative Assembly or a Committee of that House may refer to the Commissioner, for investigation and report, any matter within his jurisdiction that that House or Committee considers should be investigated by the Commissioner.

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

(3) Subsection (3) of section 13 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 he 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.

**15. Initiation of investigations in other cases.** (1) Without prejudice to the provisions of section 14 any investigation that the Commissioner is authorized to conduct under this Act may be so conducted, either on his 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 subsection (1) of section 13 if in the opinion of the Commissioner there is a likelihood that the cause for complaint arose from such an action.

**16. Complaints.** (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, the complaint may be made by his personal representative or by a member of his family or other individual who is, in the opinion of the Commissioner, suitable to represent him; 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 authorizing 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 he considers it proper to entertain the complaint, a complaint shall not be entertained under this Act unless it is made not later than twelve 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 he 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 six months following that date but this subsection does not preclude the Commissioner from entertaining a complaint made after the expiration of that period if he is of opinion that special circumstances exist in the case in question and he considers it proper to entertain the complaint.

**17. Refusal to investigate complaints.** (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 he is of the opinion—

- (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 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, he shall inform the complainant of his decision stating the reason therefor.

*Division III—Conduct of Investigations*

**18. Proceedings on investigations.** (1) Before commencing an investigation under this Act relating to an administrative action taken by, in or on behalf of a Government Department or an Authority he shall in writing inform the principal officer thereof of his 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 he may obtain information from such persons and in such manner, and make such inquiries, as he 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 any Government Department or Authority to which this Act applies he 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 his discretion, at any time during or after an investigation, consult any Minister of the Crown who is concerned in the subject matter of the investigation.

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

(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 any member, officer or employee of any Government Department or Authority to which this Act applies—

(a) he shall refer that matter to the principal officer of that Government Department or Authority; and

(b) he shall send a copy of the report to the responsible Minister if he is of opinion that in the circumstances of the case he ought so to do.

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

**19. Commissioner has power of Royal Commission and Chairman thereof. Evidence, etc.** (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 Acts 1950 to 1954*, as appertaining to a Commission and the Chairman 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 members, officers or employees of any Government Department or Authority to which this Act applies, 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 Crown or a Government Department or an Authority to which the Act applies 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 he would have had as a witness in legal proceedings before a court.

**20. Entry of premises.** (1) For the purposes of conducting an investigation under this Act the Commissioner, or an officer of the Commission authorized by him, may at any time enter any premises occupied or used by any Government Department or Authority to which this Act applies, 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 a Government Department or an Authority shall not be exercised unless at least forty-eight hours before the exercise of those powers notice in writing of the intention so to do has been given to the principal officer thereof.

**21. Disclosure of certain matters not required.** (1) No person shall be required or authorized 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 Under Secretary, Premier's Department, 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.

**22. Secrecy.** (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 Acts 1950 to 1954* 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 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.

**23. Obstruction.** Any person who—

- (a) without lawful excuse (proof of which shall lie on him) wilfully obstructs, hinders, or resists the Commissioner or any other person in the exercise of his powers under this Act;
  - (b) without lawful excuse (proof of which shall lie on him) 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 his powers under this Act,
- is guilty of an offence against this Act.

*Division IV—Action on Completion of Investigations*

**24. Procedure on completion of investigation.** (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;
  - (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 taking into account 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.
- (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 Government Department or 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 Commissioner shall report his opinion, and his reasons therefor, to the principal officer of the appropriate Government Department or Authority, and may make such recommendations as he thinks fit.

(3) Where the Commissioner makes any report or recommendations to the principal officer of a Government Department or Authority under subsection (2) he shall send a copy thereof to the responsible Minister.

(4) Where under subsection (2) the Commissioner makes recommendations to the principal officer of a Government Department or 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 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 him to be appropriate have been taken within a reasonable time of his 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 he 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 have 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 he 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 his defence is fairly set forth in the report.

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

#### *Division V—Annual Report and Other Reports*

**26. Annual and other report to Parliament.** Without limiting his 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 thirtieth day of June in each year cause to be laid before the Legislative Assembly a report on the exercise of his functions during the twelve months (or in the case of the first report, the lesser period) ending on that date and may if he thinks fit cause to be laid before the Legislative Assembly a report on any matter arising in connexion with the exercise of his functions.

**27. Other reports on authority of Speaker.** The Speaker may authorize the Commissioner to publish, in the public interest or in the interests of any Government Department, Authority, organization or person, reports relating generally to the exercise of his functions or to any particular case investigated by him, 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 IV—MISCELLANEOUS

**28. Application to Supreme Court.** (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 he 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 a Government Department or an Authority, to the party the subject of the investigation shall be construed as references to that Department or Authority or the principal officer thereof.

**29. Protection of Commissioner and Officers.** (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 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) of this section 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 the foregoing provisions of this section, no prerogative writ shall be issued restraining the Commissioner or Acting Commissioner from carrying out, or compelling him 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 knowledge in the exercise of his functions under this Act.

**30. Penalties and proceedings.** (1) A person who is guilty of an offence under this Act shall be liable to a penalty of one thousand dollars or imprisonment for twelve months, or to both such penalty and the imprisonment.

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

**31. Expenses of Act.** Except as otherwise expressly provided in this Act the expenses incurred in the administration of this Act shall be defrayed out of moneys to be provided by Parliament for that purpose.

**32. Orders in Council.** Section 28A of the *Acts Interpretation Act* 1954–1971 shall apply with respect to Orders in Council made for the purposes of this Act and, for the purposes of such application, the said

section shall be read as if references to "regulations" or a "regulation" were references to Orders in Council made for the purposes of this Act or, as the case may be, such an Order.

## THE SCHEDULE

[s. 12]

### PART I—GOVERNMENT DEPARTMENTS

Premier's Department  
 Treasury Department  
 Department of the Public Service Board  
 Department of the Co-ordinator-General  
 Department of Irrigation and Water Supply  
 Department of Harbours and Marine  
 Department of Aboriginal and Island Affairs  
 Department of Commercial and Industrial Development  
 Department of Industrial Affairs  
 Department of Education and Cultural Activities  
 Department of Health  
 Department of Justice and Attorney-General  
 Department of Lands and Forestry  
 Department of Forestry  
 Department of Local Government  
 Department of the Valuer-General  
 Department of Electricity Supply  
 Department of Mines  
 Department of Main Roads  
 Department of Primary Industries  
 Department of Tourism, Sport and Welfare Services  
 Department of Transport  
 Department of Works and Housing  
 The Police Department  
 Department of Railways

but excluding therefrom—

- (a) the officers of the establishment of the Governor; and
- (b) the Agent-General and officers employed in his office.

### PART II—AUTHORITIES

The Co-ordinator-General  
 The Public Service Board  
 The State Service Superannuation Board  
 The Commissioner of Irrigation and Water Supply  
 The University of Queensland  
 The James Cook University of North Queensland  
 The Griffiths University  
 The Colleges of Advanced Education established under the  
*Education Act 1964–1973*  
 The Commissioner of Main Roads  
 The Public Curator of Queensland  
 Land Administration Commission

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- The Conservator of Forests  
The Police Force within the meaning of the *Police Act* 1937–1973  
The Police Superannuation Board  
The Commissioner for Railways  
The State Government Insurance Office (Queensland)  
The State Electricity Commission of Queensland  
The Southern Electric Authority of Queensland  
The Northern Electric Authority of Queensland  
Regional Boards constituted under *The Regional Electric Authorities Acts* 1945 to 1962.  
Local Authorities, namely—  
    (a) Brisbane City Council as constituted under the *City of Brisbane Act* 1924–1973;  
    (b) any local authority within the meaning of the *Local Government Act* 1936–1973;  
    (c) any person deemed to be, or performing the functions of, a local authority under any enactment.  
The Corporation of the Agricultural Bank  
The Queensland Housing Commission