

Queensland



OMBUDSMAN ACT 2001

Act No. 73 of 2001

Queensland



OMBUDSMAN ACT 2001

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Queensland



Ombudsman Act 2001

Act No. 73 of 2001

An Act to establish an office of ombudsman for investigating administrative actions taken by, in or for certain agencies, and recommending to agencies ways of improving administrative processes, and for other purposes

[Assented to 13 November 2001]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Division 1—General

1 Short title

This Act may be cited as the *Ombudsman Act 2001*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Definitions

The dictionary in schedule 3 defines terms used in this Act.

4 Notes

A note in the text of this Act is part of the Act.

5 Objects of Act

The objects of this Act are—

- (a) to give people a timely, effective, independent and just way of having administrative actions of agencies investigated; and
- (b) to improve the quality of decision-making and administrative practice in agencies.

6 How objects are to be achieved

The objects of this Act are to be achieved by—

- (a) requiring an ombudsman to be appointed; and
- (b) authorising the ombudsman—

- (i) to investigate administrative actions of agencies; and
- (ii) to make recommendations to agencies, generally or in particular cases, about ways of improving the quality of decision-making and administrative practices.

Division 2—Key concepts

7 Meaning of “administrative action”

(1) An **“administrative action”** is any action about a matter of administration, and includes—

- (a) a decision and an act; and
- (b) a failure to make a decision or do an act, including a failure to provide a written statement of reasons for 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; and
- (e) an action taken because of a recommendation made to a Minister.

(2) However, an operational action of a police officer, an officer of the criminal justice commission or an officer of the crime commission is not an **“administrative action”**.

8 Meaning of “agency”

(1) An **“agency”** is any of the following entities—

- (a) a department;
- (b) a local government;
- (c) a public authority.

(2) An agency is taken to include an entity, other than an incorporated entity or an individual, established under an Act as a board, council, committee, subcommittee or other similar entity for helping, or for performing functions connected with, the agency.

(3) An individual is not an agency under this Act only because the individual holds—

- (a) an office the duties of which are performed as duties of employment as an officer of an agency; or
- (b) an office of member of an agency; or
- (c) an office established under an Act for the purposes of an agency.

9 Meaning of “public authority”

(1) A “**public authority**” is any of the following entities—

- (a) an entity, other than an individual, that is—
 - (i) established for a public purpose under an Act; or
 - (ii) established by government for a public purpose under an Act;
- (b) an entity created by the Governor in Council or a Minister;
- (c) an entity, other than an individual, declared under a regulation to be a public authority and—
 - (i) supported directly or indirectly by government funds or other help over which government is in a position to exercise control; or
 - (ii) established under an Act;
- (d) an individual holding an office established under an Act;
- (e) an individual holding an appointment—
 - (i) made by the Governor in Council or a Minister, other than under an Act; and
 - (ii) declared under a regulation to be a public authority.

(2) However, none of the following is a “**public authority**”—

- (a) a department or part of a department;
- (b) a local government or part of a local government;
- (c) a court, or the holder of a judicial office connected with a court, when acting judicially or when performing a function the court or office holder is authorised under an Act to perform;

- (d) a registry or other office of a court, or the staff of a registry or other office of a court in their official capacity, to the extent its or their functions relate to the court's judicial functions.

Note—

The entities mentioned in subsection (2)(a) and (b) are agencies under section 8(1).

10 What is included in meaning of administrative action of agency

An administrative action of an agency includes—

- (a) an administrative action taken by, in or for the agency; and
- (b) an administrative action taken by or for an officer of the agency; and
- (c) an administrative action taken for, or in the performance of functions conferred on, an agency, by an entity that is not an agency.

PART 2—THE OMBUDSMAN

11 Ombudsman

- (1) There is to be an ombudsman.
- (2) The ombudsman is an officer of the Parliament.

12 Functions of ombudsman

The functions of the ombudsman are—

- (a) to investigate administrative actions of agencies—
- (i) on reference from the Assembly or a statutory committee of the Assembly; or
- (ii) on complaint; or
- (iii) on the ombudsman's own initiative; and
- (b) to consider the administrative practices and procedures of an agency whose actions are being investigated and to make recommendations to the agency—

- (i) about appropriate ways of addressing the effects of inappropriate administrative actions; or
- (ii) for the improvement of the practices and procedures; and
- (c) to consider the administrative practices and procedures of agencies generally and to make recommendations or provide information or other help to the agencies for the improvement of the practices and procedures; and
- (d) the other functions conferred on the ombudsman under this or any other Act.

13 Ombudsman not subject to direction

Subject to any other Act or law, the ombudsman is not subject to direction by any person about—

- (a) the way the ombudsman performs the ombudsman's functions under this Act; or
- (b) the priority given to investigations.

PART 3—INVESTIGATION OF ADMINISTRATIVE ACTIONS OF AGENCIES

Division 1—Extent of jurisdiction

14 What ombudsman may investigate

(1) The ombudsman may investigate administrative actions of agencies.

(2) The ombudsman may investigate an administrative action despite a provision in any Act to the effect that the action is final or can not be appealed against, challenged, reviewed, quashed or called in question.

15 Liaison with complaints entity

The ombudsman may—

- (a) liaise with a complaints entity about the exercise by the ombudsman and the complaints entity of their respective functions for investigating administrative actions; and
- (b) enter into an arrangement with the complaints entity aimed at avoiding inappropriate duplication of investigative activity.

16 What ombudsman may not investigate

(1) The ombudsman must not question the merits of—

- (a) a decision, including a policy decision, made by a Minister or Cabinet; or
- (b) a decision that the ombudsman is satisfied has been taken for implementing a decision made by Cabinet.

(2) Also, the ombudsman must not investigate administrative action taken by—

- (a) a tribunal, or a member of a tribunal, in the performance of the tribunal's deliberative functions; or
- (b) a person acting as legal adviser to the State or as counsel for the State in any legal proceedings; or
- (c) a member of the police service, if the action may be, or has been, investigated under the *Criminal Justice Act 1989*; or
- (d) a police officer, if the officer is liable to disciplinary action, or has been disciplined, under the *Police Service Administration Act 1990*, part 7¹ because of the action; or
- (e) the auditor-general; or
- (f) a mediator at a mediation session under the *Dispute Resolution Centres Act 1990*; or
- (g) a person in a capacity as a conciliator under the *Health Rights Commission Act 1991*.²

1 *Police Service Administration Act 1990*, part 7 (Internal command and discipline)

2 Also, the *Government Owned Corporations Act 1993*, section 182 (Application of Ombudsman Act 2001) stops this Act from applying to a number of stated matters in relation to statutory GOCs, and the *Local Government Act 1993*, section 728 contains a similar provision for corporatised corporations under that Act. The *Government Owned Corporations Act 1993*, section 184 totally excludes this Act from application to company GOCs.

17 Application to Supreme Court

(1) This section applies if, in an investigation, a question arises about whether the ombudsman has jurisdiction to conduct the investigation.

(2) The ombudsman may apply to the Supreme Court to decide the question.

(3) The application must be heard in closed court.

Note—

This section does not stop applications being made under the *Judicial Review Act 1991* by entities whose actions are being investigated or by complainants.

Division 2—When administrative actions may be investigated

18 When ombudsman may investigate administrative action

(1) The ombudsman may investigate administrative action of an agency if—

- (a) a complaint is made about the administrative action; or
- (b) the ombudsman otherwise considers the administrative action should be investigated.

(2) The ombudsman must investigate a parliamentary reference of an administrative action of an agency.

19 Assembly may refer administrative action for investigation

(1) The Assembly or a statutory committee of the Assembly may refer to the ombudsman, for investigation and report, any administrative action of an agency the ombudsman may investigate that the Assembly or committee considers should be investigated by the ombudsman.

(2) The ombudsman must ensure the investigation is started as soon as possible after the reference is made.

Division 3—Complaints

20 Complaints

(1) Unless this section otherwise provides, a complaint about an administrative action of an agency—

- (a) may be made orally or in written form; and
- (b) may be made by any person, or by any body of persons, whether incorporated or not (“**complainant**”), apparently directly affected by the action; and
- (c) must be made within 1 year after the day the complainant first had notice of the action.

(2) For subsection (1)(c), a complainant is taken to have had notice of the action at the time the complainant might reasonably be expected to have had notice of the action.

(3) Despite subsection (1), the ombudsman may—

- (a) decline to investigate an oral complaint until the complaint is put in writing; or
- (b) accept a complaint made for a complainant by a person apparently representing the complainant; or
- (c) accept a complaint after the end of the period mentioned in subsection (1)(c) if the ombudsman considers it is proper to accept the complaint because special circumstances exist; or
- (d) accept a complaint even though the complaint may not on its face be against an administrative action or agency if the ombudsman considers there is a likelihood that the cause for complaint arose from an administrative action.

(4) The ombudsman may, if the ombudsman considers it necessary for achieving the objects of this Act for a particular complaint, give a person the help necessary to put the complaint in writing.

(5) However, if the person who could have made a complaint under this Act has died or the ombudsman considers the person can not, for any reason, act for himself or herself, the complaint may be made by an individual who is, in the ombudsman’s opinion, suitable to represent the person (also a “**complainant**”).

(6) Also, if a person making the complaint is in custody or detention, the person in charge of the place of custody or detention must ensure all necessary steps are taken to facilitate the making of the complaint.

Maximum penalty for subsection (6)—100 penalty units or 1 year's imprisonment.

21 Effect of restrictive provisions on complaints

If a provision, of an Act, prohibits or restricts, or authorises or requires the imposition of prohibitions or restrictions on, communication, the provision does not apply to a communication made for the purpose of making a complaint under this Act.

22 Preliminary inquiry

(1) For this division, the ombudsman may make reasonably necessary inquiries to decide whether a complaint should be investigated.

(2) The principal officer of the agency must give the ombudsman reasonable help in the conduct of a preliminary inquiry.

23 Refusal to investigate complaint

(1) The ombudsman may refuse to investigate a complaint or, having started to investigate a complaint, may refuse to continue the investigation if the ombudsman considers that—

- (a) the complaint is trivial; or
- (b) the complaint is frivolous or vexatious or is not made in good faith; or
- (c) the complainant does not have a sufficient direct interest in the action complained of; or
- (d) both of the following apply—
 - (i) the complainant has a right of appeal, reference or review, or another remedy, that the person has not exhausted;
 - (ii) it would be reasonable in the circumstances to require the person to exhaust the right or remedy before the ombudsman investigates, or continues to investigate, the complaint; or

- (e) both of the following apply—
 - (i) the complainant had a right of appeal, reference or review, or another remedy that is exhausted;
 - (ii) in the circumstances, the investigation, or the continuance of the investigation, of the action complained of is unnecessary or unjustifiable; or
- (f) in the circumstances, the investigation, or the continuance of the investigation, of the action complained of is unnecessary or unjustifiable.

(2) Also, the ombudsman need not investigate a complaint to the extent that the ombudsman is satisfied a complaints entity has investigated, or will investigate, the action complained of at a level at least substantially equivalent to the level at which the ombudsman would otherwise investigate the complaint.

(3) A right or remedy mentioned in subsection (1)(d)(i) or (e)(i) does not include a right under the *Judicial Review Act 1991* to make application to the Supreme Court.

(4) If the ombudsman—

- (a) can not investigate a complaint; or
- (b) refuses to investigate a complaint; or
- (c) refuses to continue an investigation of a complaint;

the ombudsman must inform the complainant, in writing, of the decision and the reasons for the decision as soon as reasonably practicable.

Division 4—Other provisions

24 Investigations generally

The ombudsman may conduct an investigation or part of an investigation—

- (a) informally; or
- (b) by exercising powers under part 4.³

3 Part 4 (Powers and procedures for investigations)

25 Procedure

(1) Unless this Act otherwise provides, the ombudsman may regulate the procedure on an investigation in the way the ombudsman considers appropriate.

(2) The ombudsman, when conducting an investigation—

- (a) must conduct the investigation in a way that maintains confidentiality; and
- (b) is not bound by the rules of evidence, but must comply with natural justice; and
- (c) is not required to hold a hearing for the investigation; and
- (d) may obtain information from the persons, and in the way, the ombudsman considers appropriate; and
- (e) may make the inquiries the ombudsman considers appropriate.

26 Consultation

(1) The ombudsman may, during or after an investigation, consult any Minister who is concerned in the action complained of.

(2) The ombudsman must consult with a Minister if—

- (a) either—
 - (i) the Minister asks to consult with the ombudsman about an investigation; or
 - (ii) an investigation relates to a recommendation made to the Minister; and
- (b) the ombudsman is considering making a report under section 50 about the investigation.⁴

(3) If, during an investigation, the ombudsman considers there may be grounds for making a report on the investigation that may affect or concern an agency, the ombudsman must, before making the report, give the principal officer of the agency an opportunity to comment on the matter under investigation.

4 Section 50 (Report and recommendation)

(4) In this section—

“**Minister**” includes a local government’s chairperson, mayor or president.

PART 4—POWERS AND PROCEDURES FOR INVESTIGATIONS

Division 1—Ombudsman’s powers for conducting investigations

27 Notice to principal officer

(1) If—

- (a) the ombudsman decides, or is required, to conduct an investigation into an administrative action of an agency; and
- (b) the ombudsman intends to exercise powers under this part;

the ombudsman must, before exercising the powers, give the principal officer of the agency a notice under subsection (2).

(2) The notice must—

- (a) inform the officer of the ombudsman’s intention to conduct the investigation; and
- (b) identify, to the extent reasonable in the circumstances, the administrative action the subject of the investigation; and
- (c) inform the officer in general terms of the powers the ombudsman may exercise under this part for investigations.

(3) On the giving of the notice, the ombudsman may exercise powers under this part for the investigation.

28 Requirement to give document or information

The ombudsman may by notice given to a person, require the person, within a stated reasonable time—

- (a) to give the ombudsman—
 - (i) an oral or written statement of information of a stated type relevant to the investigation; or

- (ii) a stated document or other stated thing relevant to the investigation, or a copy of a stated document; or
 - (iii) all documents of a stated type containing information relevant to the investigation, or copies of documents of the stated type; or
- (b) to create, and give the ombudsman, a document containing information reasonably required for the investigation.

29 Requirement to attend and to give document or information

(1) The ombudsman may by notice given to a person, require the person—

- (a) to attend before the ombudsman at a stated reasonable place and time; and
- (b) at the stated place and time, to do 1 or more of the following as stated in the notice—
 - (i) give the ombudsman information of a stated type relevant to the investigation;
 - (ii) answer questions relevant to the investigation the ombudsman reasonably requires to be answered;
 - (iii) give the ombudsman a stated document or other stated thing relevant to the investigation, or a copy of a stated document;
 - (iv) give the ombudsman all documents of a stated type containing information relevant to the investigation, or copies of documents of the stated type.

(2) If the person is a prisoner, the ombudsman may, by notice given to the chief executive (corrective services), direct that chief executive to produce the prisoner named in the notice at a stated time and place.

(3) A direction mentioned in subsection (2) is lawful authority to the chief executive (corrective services) for production of the prisoner as directed.

(4) The chief executive (corrective services) must comply with the direction served on the chief executive.

(5) A prisoner produced under this section remains in the custody of the chief executive (corrective services).

(6) In this section—

“**chief executive (corrective services)**” means the chief executive of the department that deals with matters under the *Corrective Services Act 2000*.

“**prisoner**” means a person in the custody of the chief executive (corrective services).

30 Compliance with investigation requirement

(1) A person who receives an investigation requirement must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(2) An excuse is a reasonable excuse for subsection (1) if—

- (a) within the time for compliance with the investigation requirement, the person gives the ombudsman a notice of the excuse in enough detail to allow the ombudsman to form an opinion on whether the excuse is reasonable; and
- (b) the ombudsman advises the person that, in the ombudsman’s opinion, the excuse is reasonable.

(3) Subsection (2) does not limit what is a reasonable excuse.

31 Power of court if non-compliance with investigation requirement

(1) This section applies if, without reasonable excuse, a person fails to comply with an investigation requirement.

(2) A Magistrates Court, at the request of the ombudsman, may issue a subpoena requiring the attendance of the person before the ombudsman.

(3) The *Uniform Civil Procedure Rules 1999*, other than rules 417, 418 and 420, apply to the subpoena.

Note—

See the *Uniform Civil Procedure Rules 1999*, chapter 11 (Evidence), part 4 (Subpoenas) and rules 417 (Order for cost of complying with subpoena), 418 (Cost of complying with subpoena if not a party) and 420 (Production by non-party).

(4) In this section—

“**subpoena**” means—

- (a) a subpoena for production; or

- (b) a subpoena to give evidence; or
- (c) a subpoena for production and to give evidence.

32 Custody of document given to ombudsman

(1) If a document or other thing is produced to the ombudsman under this division—

- (a) the ombudsman may keep the document or thing for a reasonable period for conducting the investigation; and
- (b) if it is a document, take extracts from it and make copies of it.

(2) While the ombudsman has possession of the document or other thing, the ombudsman must allow it to be inspected at any reasonable time by a person who would have the right to inspect it if it were not in the ombudsman's possession.

33 Way of giving information

(1) If a person is required to give information under this division, whether or not through answering questions, the ombudsman may—

- (a) require the information to be given on oath; and
- (b) administer the required oath.

(2) The oath to be taken by a person for this section is an oath that the information the person will give will be true.

(3) A person required to give information on oath must not refuse to be sworn.

Maximum penalty for subsection (3)—100 penalty units.

34 Investigation at agency premises

(1) The ombudsman may, on the giving of reasonable notice to the principal officer of an agency, and at a reasonable time—

- (a) enter and inspect a place occupied by the agency; and
- (b) take into the place the persons, equipment and materials the ombudsman reasonably requires for the investigation; and
- (c) take extracts from, or copy in any way, documents located at the place; and

- (d) require an officer of the agency at the place to give the ombudsman reasonable help in exercising the powers mentioned in paragraphs (a) to (c).

(2) A person given a requirement under subsection (1)(d) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty for subsection (2)—100 penalty units.

35 Expenses

(1) The ombudsman may pay the reasonable expenses incurred by a person in complying with a requirement of the ombudsman under this division or in otherwise helping the ombudsman in an investigation.

(2) In subsection (1)—

“**person**” does not include any of the following—

- (a) an agency;
- (b) an officer of an agency carrying out the officer’s duties with the agency;
- (c) if the investigation arose from a complaint—the complainant.

Division 2—Arrest warrants

36 Application for arrest warrant

(1) The ombudsman may apply to a magistrate for a warrant for the arrest of a person (“**arrest warrant**”) if—

- (a) the person has not complied with an investigation requirement given to the person under section 29(1)⁵ to attend before the ombudsman; and
- (b) the ombudsman has not given the person advice under section 30(2)⁶ to the effect that an excuse given by the person for not attending is, in the ombudsman’s opinion, a reasonable excuse; and

5 Section 29 (Requirement to attend to give document or information)

6 Section 30 (Compliance with investigation requirement)

- (c) the person has also not complied with a subpoena issued because of the failure to comply with the investigation requirement.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the ombudsman gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application to be given by statutory declaration.

37 Issue of arrest warrant

(1) The magistrate may issue an arrest warrant only if the magistrate is satisfied—

- (a) the person has refused to attend before the ombudsman under an investigation requirement or a subpoena; and
- (b) the warrant is necessary to ensure the person attends before the ombudsman.

(2) The warrant must state that a police officer may arrest the person named in the warrant and cause the person to attend before the ombudsman.⁷

Division 3—Contempt

38 Contempt of ombudsman

(1) A person is in contempt of the ombudsman if, in an investigation, the person—

- (a) insults or threatens—

⁷ For particular police powers relating to the arrest of a person, see the *Police Powers and Responsibilities Act 2000*, section 19 (General power to enter to arrest or detain someone or enforce warrant), section 376 (Power to use force against individuals), and for what happens if the person can not be taken before the ombudsman on the day of the arrest, section 226 (Duty of officer receiving custody of person arrested under warrant other than for offence).

- (i) the ombudsman; or
- (ii) a person who gives or is to give information or a document to the ombudsman; or
- (iii) a lawyer or other person helping a person who gives or is to give information or a document to the ombudsman; or
- (b) deliberately interrupts the ombudsman or otherwise behaves in a disruptive way before the ombudsman; or
- (c) creates or continues, or joins in creating or continuing, a disturbance in or near the place where the ombudsman is performing a function under this Act; or
- (d) obstructs or assaults a person who attends, or is to attend, before the ombudsman; or
- (e) by writing or speech uses false and defamatory words about the ombudsman; or
- (f) does anything, whether before the ombudsman or otherwise, that would be a contempt of court if the ombudsman were a judge acting judicially; or
- (g) publishes, or permits or allows to be published, information given to the ombudsman, or any contents of a document produced to the ombudsman, if the ombudsman has ordered that the information or contents must not be published.

(2) In this section—

“**ombudsman**” includes an officer of the ombudsman.

39 Punishment of contempt

(1) A person’s contempt of the ombudsman may be punished under this section.

(2) The ombudsman may certify the contempt in writing to the Supreme Court (the “**court**”).

(3) For subsection (2), it is enough for the ombudsman to be satisfied there is evidence of contempt.

(4) The court may issue a warrant directed to a police officer for the arrest of the person to be brought before the court to be dealt with according to law.

(5) The *Bail Act 1980* applies to the proceeding for the contempt started by the certification in the same way it applies to a charge of an offence.

(6) The court must inquire into the alleged contempt.

(7) The court must hear—

(a) witnesses and evidence that may be produced against or for the person whose contempt was certified; and

(b) any statement given by the person in defence.

(8) If the court is satisfied the person has committed the contempt, the court may punish the person as if the person had committed the contempt in a proceeding in the court for the enforcement of a non-money order.

(9) The *Uniform Civil Procedure Rules 1999*, so far as they relate to the enforcement of non-money orders, apply, with necessary changes, to the court's investigation, hearing and power to punish.

(10) The ombudsman's certificate of contempt is evidence of the matters stated in the certificate.

40 Conduct that is contempt and offence

(1) If conduct of an offender is both contempt of the ombudsman and an offence, the offender may be proceeded against for the contempt or for the offence, but the offender is not liable to be punished twice for the same conduct.

(2) In this section—

“**offender**” means a person guilty, or alleged to be guilty, of contempt of the ombudsman.

Division 4—Offences

41 False or misleading statement

(1) A person must not state anything to the ombudsman or an officer of the ombudsman the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

(2) It is enough for a complaint against a person for an offence against subsection (1) to state the statement made was, without specifying which, ‘false or misleading’.

42 False or misleading document

(1) A person must not give the ombudsman or an officer of the ombudsman a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) tells the ombudsman or officer, to the best of the person’s ability, how the information in the document is false or misleading; and
- (b) if the person, has, or can reasonably obtain, the correct information—gives the correct information.

(3) It is enough for a complaint against a person for an offence against subsection (1) to state the information in the document was, without specifying which, ‘false or misleading’.

43 Offence to assault or obstruct ombudsman or officer of ombudsman

(1) A person must not assault or obstruct the ombudsman or an officer of the ombudsman in the performance of duties under this Act.

Maximum penalty—40 penalty units or 6 months imprisonment.

(2) In this section—

“**assault**” has the meaning given by the Criminal Code, section 245.

“**obstruct**” includes hinder, resist and attempt to obstruct.

PART 5—OTHER PROVISIONS SUPPORTING PERFORMANCE OF OMBUDSMAN’S FUNCTIONS

44 Application of Criminal Code

(1) The Criminal Code, sections 120, 123, 123A, 124, 125, 126, 127, 128, 129 and 130 (“**identified provisions**”)⁸ apply, with necessary changes, to investigations under this Act.

(2) Without limiting subsection (1), for applying the identified provisions to an investigation—

- (a) the investigation is a judicial proceeding; and
- (b) the ombudsman is the holder of a judicial office; and
- (c) a reference to judicial capacity is a reference to capacity as ombudsman; and
- (d) a reference to the giving or withholding of testimony is a reference to the giving or withholding of information; and
- (e) a reference to a witness is a reference to a person from whom the ombudsman may obtain information; and
- (f) a reference to being required or used in evidence is a reference to being required or used for the obtaining of information; and
- (g) a reference to being summoned to attend as a witness is a reference to being asked or required to attend to give information; and
- (h) a reference to a tribunal is a reference to the ombudsman.

45 Information disclosure and privilege

(1) No obligation to maintain secrecy or other restriction on the disclosure of information obtained by or given to officers of an agency, whether imposed by any Act or by a rule of law, applies to the disclosure of

⁸ The Criminal Code, sections 120 (Judicial corruption), 123 (Perjury), 123A (Perjury—contradictory statements), 124 (Punishment of perjury), 125 (Evidence on charge of perjury), 126 (Fabricating evidence), 127 (Corruption of witnesses), 128 (Deceiving witnesses), 129 (Destroying evidence) and 130 (Preventing witnesses from attending)

information relevant to a preliminary inquiry or an investigation by the ombudsman.

(2) In a preliminary inquiry or an investigation, the State or an agency is not entitled to any privilege that would apply to the production of documents, or the giving of evidence, relevant to the investigation, in a legal proceeding.

(3) A person has, for the giving of information and the production of documents or other things relevant to a preliminary inquiry or an investigation, equivalent privileges to the privileges the person would have as a witness in proceedings in a court.

(4) Subsection (3) has effect subject to subsections (1) and (2) and part 4, division 1.⁹

46 Disclosure of certain matters not required

(1) This Act does not require or authorise a person—

- (a) to give any information or answer any question relating to proceedings of Cabinet or a committee of Cabinet; or
- (b) to produce or inspect a document to the extent it relates to proceedings mentioned in paragraph (a).

(2) For subsection (1), a certificate issued by the chief executive of a department administered by the Premier, with the Premier's approval, certifying that any information or question, or any document or part of a document, relates to any proceedings mentioned in subsection (1) is conclusive of the fact so certified.

(3) The ombudsman must not require—

- (a) any information or answer to be given; or
- (b) the production of any document or thing;

if the Attorney-General certifies, in writing, that the giving of the information, or the answering of the question, or the production of the document or thing might prejudice the security of the State or the investigation or detection of offences.

⁹ Part 4 (Powers and procedures for investigations), division 1 (Ombudsman's powers for conducting investigations)

47 Protection of person helping ombudsman

(1) This section applies if a person (“**relevant person**”) gives information or a document to the ombudsman for the purposes of a preliminary inquiry or an investigation.

(2) A person must not cause, threaten to cause, or attempt or conspire to cause or induce someone else to cause, detriment to the relevant person because, or substantially because, the relevant person gave the information or document to the ombudsman.

Maximum penalty—100 penalty units.

(3) In this section—

“**detriment**”, to a person, includes dismissal of the person from the person’s employment.

48 Inadmissibility of particular document given under investigation requirement

(1) This section applies if a person—

- (a) gives a document to the ombudsman under an investigation requirement; and
- (b) the document did not exist before the investigation requirement and was created only for the purposes of complying with the requirement.

(2) The document is not admissible in evidence against a person in civil or criminal proceedings.

(3) In this section—

“**civil or criminal proceedings**” does not include proceedings about the falsity of information or a document.

PART 6—REPORTS AND RECOMMENDATIONS

Division 1—Reports on particular investigations

49 Investigations to which div 1 applies

(1) This division applies to an investigation, other than an investigation started because of a parliamentary reference.

(2) However, this division applies to an investigation only if the ombudsman considers that the administrative action to which the investigation relates—

- (a) was 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 Act or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory in the particular circumstances; or
- (d) was taken—
 - (i) for an improper purpose; or
 - (ii) on irrelevant grounds; or
 - (iii) having regard to irrelevant considerations; or
- (e) was an action for which reasons should have been given, but were not given; or
- (f) was based wholly or partly on a mistake of law or fact; or
- (g) was wrong.

50 Report and recommendation

(1) If the ombudsman considers—

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

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

the ombudsman may give to the principal officer of the appropriate agency a report stating the action the ombudsman considers should be taken and the reasons the action should be taken, and making the recommendations the ombudsman considers appropriate.

(2) If, during or after the investigation, the ombudsman considers there is evidence of a breach of duty or misconduct on the part of an officer of an agency, the ombudsman—

- (a) must give a report about the breach of duty or misconduct to the agency's principal officer; and
- (b) may, if the ombudsman considers it appropriate in the circumstances, send a copy of the report to—
 - (i) the responsible Minister for the agency; and
 - (ii) if the agency is a local government, the local government's chairperson, mayor or president.

Note—

It is also the case that the *Criminal Justice Act 1989*, section 37(2)(a) (Referral of matter to section) requires the ombudsman to refer matters involving, or possibly involving, official misconduct under that Act to the complaints section established under that Act.

(3) If subsection (2) does not apply, the ombudsman may send a copy of the report to the responsible Minister.

(4) If the agency is a local government, the principal officer must give a copy of the report and any recommendations to all the members, however named, of the local government.

51 Action after report making recommendations

(1) This section applies if the ombudsman gives to the principal officer of an agency a report under section 50 that makes recommendations.

(2) The ombudsman may ask the agency's principal officer to notify the ombudsman within a stated time of—

- (a) the steps taken or proposed to be taken to give effect to the recommendations; or
- (b) if no steps, or only some steps, have been or are proposed to be taken to give effect to the recommendations, the reasons for not taking all the steps necessary to give effect to the recommendations.

(3) If—

- (a) it appears to the ombudsman that no steps the ombudsman considers appropriate have been taken within a reasonable time after giving the agency's principal officer the report; and
- (b) within that time, the ombudsman has considered any comments made by or for the principal officer; and
- (c) the ombudsman considers it appropriate;

the ombudsman may give the Premier a copy of the report and a copy of any comments made by the agency's principal officer.

(4) If the ombudsman gives the Premier a copy of a report (the “**original report**”) and a copy of any comments, the ombudsman may give the Speaker, for tabling in the Assembly, another report that deals, to the extent the ombudsman considers appropriate, with the original report and the comments.

Division 2—Other reports

52 Report to Assembly on ombudsman's initiative

If the ombudsman considers it appropriate, the ombudsman may give to the Speaker at any time, for tabling in the Assembly, a report on a matter arising out of the performance of the ombudsman's functions.

53 Report on parliamentary reference

If the ombudsman investigates administrative action because of a parliamentary reference, the ombudsman must give a report on the investigation to the Speaker for tabling in the Assembly.

54 Other reports on authority of speaker

The Speaker may, at the ombudsman's written request, authorise the ombudsman to publish, in the public interest or in the interests of any agency, organisation or person—

- (a) a report relating generally to the performance of the ombudsman's functions; or
- (b) a report relating to any particular case investigated by the ombudsman;

whether or not the matters to be dealt with in the report have been the subject of a report tabled in the Assembly under this Act.

Division 3—Miscellaneous**55 Report containing adverse comment**

(1) This section applies if the ombudsman proposes to make an adverse comment about a person in a report under this Act.

(2) The ombudsman must not make the proposed adverse comment unless, before the report is prepared, the ombudsman gives the person an opportunity to make submissions about the proposed adverse comment.

(3) If the person makes submissions and the ombudsman still proposes to make the adverse comment, the ombudsman must ensure the person's defence is fairly stated in the report.

56 Report not to disclose identities in particular circumstances

(1) This section applies if—

- (a) the ombudsman investigates a matter involving a person; and
- (b) under an Act, the identity of the person must not be disclosed.

(2) The ombudsman must not disclose the identity of the person, or information from which the person's identity could be deduced, in any report under section 51(4) or division 2.

57 Information to complainant on completion of investigation

If the ombudsman investigates administrative action because of a complaint, the ombudsman must, as soon as possible, inform the complainant, in the way the ombudsman considers appropriate, of the result of the investigation.

PART 7—PARTICULAR PROVISIONS ABOUT THE OMBUDSMAN*Division 1—Appointment***58 Appointment**

(1) The ombudsman is appointed by the Governor in Council.

(2) The ombudsman is appointed under this Act and not under the *Public Service Act 1996*.

59 Procedure before appointment

(1) A person may be appointed as ombudsman only if—

- (a) the Minister has placed press advertisements 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 ombudsman.

(2) Subsection (1)(a) and (b)(i) does not apply to the reappointment of a person as ombudsman.

60 Ineligibility for appointment

A person must not be appointed as ombudsman if the person has been, within the last 3 years—

- (a) a member of the Parliament of the State, another State or the Commonwealth; or
- (b) the holder of—
 - (i) the office of the chairperson, the mayor, the president, a councillor or a member of a local government; or
 - (ii) an office in another State equivalent to an office mentioned in subparagraph (i).

61 Term of appointment

(1) The ombudsman holds office for the term, of not more than 5 years, stated in the instrument of appointment and may be reappointed.

(2) However, a person must not be reappointed if the total of the person's terms of appointment would be more than 10 years.

62 Remuneration and conditions

(1) The ombudsman is to be paid remuneration and travelling and other allowances decided by the Governor in Council.

(2) The remuneration paid to the ombudsman must not be reduced during the ombudsman's term of office without the ombudsman's written consent.

(3) The ombudsman is entitled to the leave of absence decided by the Governor in Council.

63 Oath before performing duties

(1) Before performing the duties of office, the ombudsman must make an oath to the effect that he or she will faithfully and impartially perform the duties of the office.

(2) The oath must be administered by the Speaker.

64 Restriction on outside employment

(1) The ombudsman must not, without the Minister's prior approval in each particular case—

- (a) hold any office of profit other than that of ombudsman; or

- (b) engage in any remunerative employment or undertaking outside the duties of the office.

(2) Contravention of subsection (1) is misconduct under division 2.

65 Acting ombudsman

(1) The Governor in Council may appoint a person eligible for appointment as ombudsman to act as ombudsman—

- (a) during a vacancy in the office; or
- (b) during any period, or during all periods, when the ombudsman is absent from duty or from the State or is, for another reason, unable to perform the duties of the office.

(2) The acting ombudsman is appointed under this Act and not the *Public Service Act 1996*.

(3) The *Acts Interpretation Act 1954*, section 25(1)(b)(iv) and (v) does not apply to the office of acting ombudsman.¹⁰

Division 2—Ombudsman may be removed or suspended from office

66 Grounds for removal or suspension from office

The following are grounds for removal or suspension of the ombudsman from office—

- (a) proved incapacity, incompetence or misconduct;
- (b) conviction of an indictable offence.

67 Removal of ombudsman on address

(1) The Governor may, on an address from the Assembly, remove the ombudsman from office.

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

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

¹⁰ *Acts Interpretation Act 1954*, section 25 (Powers of appointment imply certain incidental powers)

- (a) the Premier has given the ombudsman a statement setting out the reasons for the motion; and
- (b) the statement and any written response by the ombudsman have been tabled in the 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 wholly of members of the political party or parties in government in the Assembly.

68 Suspension of ombudsman on address

(1) The Governor may, on an address from the Assembly, suspend the ombudsman from office.

(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 ombudsman a statement setting out the reasons for the motion; and
- (b) the statement and any written response by the ombudsman have been tabled in the 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 wholly of members of the political party or parties in government in the Assembly.

(4) The ombudsman is entitled to be paid salary and allowances for the period of the suspension only if—

- (a) the Assembly resolves that salary and allowances be paid for the period; or

- (b) the Assembly does not pass a resolution under paragraph (a) and the Governor in Council approves the payment of salary and allowances for the period.

69 Suspension of ombudsman if Assembly not sitting

(1) If the Assembly is not sitting, the Governor in Council may suspend the ombudsman from office.

(2) The Governor in Council may suspend the ombudsman only if—

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

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

(4) The suspension stops having effect—

- (a) at the end of 6 sitting days after the day the suspension begins; or
- (b) if the ombudsman is earlier suspended or removed from office on an address from the Assembly—at the earlier time.

(5) If the suspension stops having effect under subsection (4)(a), the ombudsman is entitled to be paid salary and allowances for the period of the suspension.

70 Acts Interpretation Act 1954

The *Acts Interpretation Act 1954*, section 25(1)(b)(i) to (iii) does not apply to the removal or suspension of the ombudsman.¹¹

11 *Acts Interpretation Act 1954*, section 25 (Powers of appointment imply certain incidental powers)

Division 3—Resignation and vacation of office**71 Resignation**

The ombudsman may, at any time, resign office as ombudsman by signed writing, addressed to the Governor.

72 Vacation of office

The ombudsman is taken to resign office as ombudsman on becoming a candidate for election to—

- (a) the Assembly, or the Parliament of another State or of the Commonwealth; or
- (b) the office of the chairperson, the mayor, the president, a councillor or a member of a local government; or
- (c) an office in another State equivalent to an office mentioned in paragraph (b).

PART 8—ADMINISTRATION***Division 1—Establishment and control of office*****73 Office of the Ombudsman**

(1) An office called the Office of the Ombudsman is established.

(2) The ombudsman office consists of the ombudsman and the officers of the ombudsman.

74 Control of office

The ombudsman controls the ombudsman office.

75 Officers not subject to outside direction

An officer of the ombudsman is not subject to direction by any person, other than from within the ombudsman office, about—

- (a) the way the ombudsman's powers for investigations are to be exercised; or
- (b) the priority given to investigations.

Division 2—Staff of the office**76 Officers**

(1) The ombudsman may employ the officers the ombudsman considers necessary for staffing the ombudsman office.

(2) Officers are appointed under this Act and not the *Public Service Act 1996*.

(3) Subject to this Act, the conditions of service of officers of the ombudsman are those decided by the Governor in Council.

77 Secondment as officer of ombudsman

(1) A public service officer may be seconded to the ombudsman office.

(2) While seconded under this section—

- (a) the person is taken to be an officer of the ombudsman; and
- (b) the *Public Service Act 1996* does not apply to the person.

78 Temporary and casual employees

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

(2) The ombudsman may decide the employee's terms of employment.

(3) However, subsection (2) has effect subject to any relevant industrial instrument within the meaning of the *Industrial Relations Act 1999*.

(4) Employees of the ombudsman are employed under this Act and not the *Public Service Act 1996*.

Division 3—Preservation of rights

79 Preservation of rights if public service officer appointed

(1) A public service officer who is appointed to an office under this Act is entitled to retain all existing and accruing rights as if service in that office were a continuation of service as a public service officer.

(2) If the person stops holding the office for a reason other than misconduct, the person is entitled to be employed as a public service officer.

(3) The person is to be employed on the classification level and remuneration that 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 continued in employment as a public service officer.

80 Preservation of rights if person becomes public service officer

(1) On the appointment of a person holding office under this Act as a public service officer, the person's service in the ombudsman office under this Act must be regarded as service as a public service officer

(2) Subsection (1) does not apply to the ombudsman or acting ombudsman if the person is guilty of misconduct in office as ombudsman or acting ombudsman.

81 Preservation of ombudsman's rights if not previously public service officer

(1) This section applies to a person who stops holding office as ombudsman, whether because of resignation or ending a term of appointment, if the person was not a public service officer but held another office under the State immediately before appointment as ombudsman.

(2) The person is entitled to be appointed to an office under the State with a classification and remuneration corresponding with or higher than that of the office the person held immediately before appointment as ombudsman and the person's service in the office of ombudsman under this Act must be regarded as service in an office under the State.

(3) Subsection (2) does not apply to the person if the person is guilty of misconduct in office as ombudsman.

(4) In this section—

“**ombudsman**” includes acting ombudsman.

82 Preservation of rights if public service officer seconded

(1) A public service officer seconded under section 77—

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

(2) On ending the secondment, the person’s employment on secondment as an officer of the ombudsman is taken to be employment of the same nature in the public service for working out the person’s rights as a public service officer.

(3) If the secondment ended for a reason other than misconduct, the person is entitled to be employed as a public service officer.

(4) The person is entitled to be employed on the same, or a higher, classification level and remuneration that 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.

Division 4—Strategic review

83 Strategic review of ombudsman office

(1) Strategic reviews of the ombudsman office are to be conducted under this division.

(2) A strategic review is to be conducted at least every 5 years, counting from when the report (the “**earlier report**”) for the most recent earlier strategic review was given to the Minister and the ombudsman under section 85(4),¹² up to when the reviewer is appointed under subsection (4) to undertake the latest strategic review.

¹² Section 85 (Report of strategic review)

(3) However, if the parliamentary committee reported to the Assembly about the earlier report, and the committee's report made recommendations to which a Minister was required to respond under the *Parliamentary Committees Act 1995*, section 24,¹³ the 5 years is counted from when the Minister's response was tabled under that section.

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

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

(6) Before a reviewer is appointed to conduct a strategic review, the Minister must consult with the parliamentary committee and the ombudsman about—

- (a) the appointment of the reviewer; and
- (b) the terms of reference for the review.

(7) The remuneration and other terms of appointment of the reviewer are as decided by the Governor in Council.

(8) In this section—

"strategic review" includes—

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

84 Conduct of strategic review

In conducting a strategic review—

- (a) the reviewer has the powers 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 reviewer as if the reviewer were an authorised auditor conducting an audit of an entity.

13 *Parliamentary Committees Act 1995*, section 24 (Ministerial response to committee reports)

85 Report of strategic review

(1) The reviewer for a strategic review must give a copy of the proposed report on the review to the Minister and the ombudsman.

(2) The ombudsman may, within 21 days after receiving the proposed report, give the reviewer written comments on anything in the proposed report.

(3) If the ombudsman comments under subsection (2), the reviewer must—

- (a) if the reviewer and ombudsman 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 reviewer and ombudsman can not agree about how to dispose of a comment—include the comment, in full, in the report.

(4) After complying with subsections (1) and (3), the reviewer must give the report (“**review report**”) to the Minister and the ombudsman.

(5) The review report must be the same as the proposed report given to them under subsection (1), apart from the changes made under subsection (3).

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

(7) For the *Parliamentary Committees Act 1995*, section 8(2),¹⁴ the report is referred to the parliamentary committee.

Division 5—Other matters

86 Delegation

The ombudsman may delegate the ombudsman’s powers under this Act, other than the power to make a report or recommendation, to an officer of the ombudsman.

14 *Parliamentary Committees Act 1995*, section 8 (Role of statutory committees)

87 Annual report

(1) For the application of Financial Administration Act, section 39¹⁵ to the office—

- (a) the appropriate Minister is the Minister for the time being administering this section; and
- (b) the Financial Administration Act, section 39(4)(c) may be ignored.

(2) When, under the Financial Administration Act, section 39(1), the ombudsman gives the appropriate Minister a written report and a copy of the report to the Treasurer, the ombudsman must also give a copy of the report to the Speaker and the parliamentary committee.

(3) Subsections (1) and (2) do not limit any other provision of this Act under which the ombudsman may make a report.

(4) In this section—

“Financial Administration Act” means the *Financial Administration and Audit Act 1977*.

88 Estimates

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

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

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

15 *Financial Administration and Audit Act 1977*, section 39 (Annual report by department and short form annual report)

PART 9—PARLIAMENTARY COMMITTEE

89 Functions

The parliamentary committee has the following functions under this Act—

- (a) to monitor and review the performance by the ombudsman of the ombudsman's functions under this Act;
- (b) to report to the Assembly on any matter concerning the ombudsman, the ombudsman's functions or the performance of the ombudsman's functions that the committee considers should be drawn to the Assembly's attention;
- (c) to examine each annual report tabled in the Assembly under this Act and, if appropriate, to comment on any aspect of the report;
- (d) to report to the Assembly any changes to the functions, structures and procedures of the office of ombudsman the committee considers desirable for the more effective operation of this Act;
- (e) the other functions conferred on the parliamentary committee by this Act.¹⁶

PART 10—MISCELLANEOUS

90 Right to interpreter or other help

(1) This section applies if the ombudsman considers a person (the “**relevant person**”) dealing with the ombudsman under this Act before or in an investigation is unable, because of inadequate knowledge of the English language or, for another reason, to understand English or speak English with reasonable fluency.

(2) The ombudsman must take all reasonable steps to ensure an interpreter or other suitable person is available to help the relevant person and the ombudsman communicate effectively.

¹⁶ The parliamentary committee also has functions under the *Parliamentary Committees Act 1995*, section 10.

91 Prohibiting publication of information

The ombudsman may, if the ombudsman considers it appropriate in a particular case, order that information given to the ombudsman in performing a function under this Act, or the contents of a document produced to the ombudsman in performing a function under this Act, must not be published.

92 Secrecy

(1) An officer of the ombudsman, an officer of an agency, or another person who obtains information in a preliminary inquiry or an investigation or the performance of another function of the ombudsman under this Act must not—

- (a) disclose the information other than as a part of—
 - (i) the performance of the function; or
 - (ii) formulating a report about the performance of the function; or
 - (iii) formulating a recommendation arising out of the performance of the function; or
 - (iv) proceedings for an offence under this Act alleged to have been committed in the performance of the function; or
- (b) use the information to benefit any person.

Maximum penalty—100 penalty units.

(2) In this section—

“officer of the ombudsman” includes the ombudsman.

93 Protection from liability

(1) An officer of the ombudsman does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to an officer of the ombudsman, the liability attaches instead to the State.

(3) In this section—

“officer of the ombudsman” includes the ombudsman.

94 Regulation-making power

The Governor in Council may make regulations under this Act.

PART 11—REPEAL AND AMENDMENT

95 Repeal of Parliamentary Commissioner Act 1974

The *Parliamentary Commissioner Act 1974* (1974 Act No. 19) is repealed.

96 Acts amended in sch 1

Schedule 1 amends the Acts it mentions.

PART 12—TRANSITIONAL PROVISIONS

97 Definitions for pt 12

In this part—

“parliamentary commissioner” means the Parliamentary Commissioner for Administrative Investigations under the repealed Act.

“repealed Act” means the repealed *Parliamentary Commissioner Act 1974*.

98 Continuation of appointments

(1) On the commencement of this section, a person holding a position or office under the repealed Act continues as the holder of the equivalent position or office under this Act.

(2) The person’s appointment to the position or office has continuing effect under this Act.

(3) If the appointment was for a term—

- (a) the appointment continues under this Act for the unexpired period of the term; and
- (b) for applying section 61(2)¹⁷ to the person who, immediately before the commencement of this section, was, under the repealed Act, the parliamentary commissioner, the term of appointment under that Act is taken to be a term of appointment as ombudsman under this Act.

99 Continuation of actions

On the commencement of this section, anything started but not completed under the repealed Act may be continued under this Act.

100 Investigation of certain administrative action

The ombudsman may perform functions under this Act in relation to administrative action taken before the commencement of this section as if the action had been taken after the commencement.

101 Strategic review

A report of a strategic review under section 32 of the repealed Act is taken to be an earlier report of a strategic review for section 83(2).¹⁸

102 Parliamentary Commissioner Act 1974 references

A reference in any Act or document to the *Parliamentary Commissioner Act 1974* may, if the context permits, be read as a reference to this Act.

103 Parliamentary commissioner and other references

A reference in any Act or document to the parliamentary commissioner or acting parliamentary commissioner may, if the context permits, be read as a reference to the ombudsman or acting ombudsman.

17 Section 61 (Term of appointment)

18 Section 83 (Strategic review of office)

PART 13—AMENDMENT OF FINANCIAL ADMINISTRATION AND AUDIT ACT 1977

104 Act amended in pt 13

This part amends the *Financial Administration and Audit Act 1977*.

105 Replacement of s 72 (Strategic review of audit office)

Section 72—

omit, insert—

‘Division 6—Strategic review

‘72 Strategic review of audit office

‘(1) Strategic reviews of the audit office are to be conducted under this division.

‘(2) A strategic review is to be conducted at least every 5 years, counting from when the report (the **“earlier report”**) for the most recent earlier strategic review was given to the Minister and the auditor-general under section 72B(4),¹⁹ up to when the reviewer is appointed under subsection (4) to undertake the latest strategic review.

‘(3) However, if the parliamentary committee reported to the Legislative Assembly about the earlier report, and the committee’s report made recommendations to which a Minister was required to respond under the *Parliamentary Committees Act 1995*, section 24,²⁰ the 5 years is counted from when the Minister’s response was tabled under that section.

‘(4) Each strategic review is to be undertaken by an appropriately qualified person (**“reviewer”**), appointed by the Governor in Council, who is to give a report on the review.

‘(5) The terms of reference for a strategic review are to be decided by the Governor in Council.

19 Section 72B (Report of strategic review)

20 *Parliamentary Committees Act 1995*, section 24 (Ministerial response to committee reports)

‘(6) Before a reviewer is appointed to conduct a strategic review, the Minister must consult with the parliamentary committee and the auditor-general about—

- (a) the appointment of the reviewer; and
- (b) the terms of reference for the review.

‘(7) The remuneration and other terms of appointment of the reviewer are as decided by the Governor in Council.

‘(8) In this section—

“**strategic review**” includes—

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

‘72A Conduct of strategic review

‘In conducting a strategic review—

- (a) the reviewer has the powers an authorised auditor has for an audit of an entity; and
- (b) this Act and other Acts apply to the reviewer as if the reviewer were an authorised auditor conducting an audit of an entity.

‘72B Report of strategic review

‘(1) The reviewer for a strategic review must give the copy of a proposed report on the strategic review to the Minister and the auditor-general.

‘(2) The auditor-general may, within 21 days after receiving the proposed report, give the reviewer written comments on anything in the proposed report.

‘(3) If the auditor-general comments under subsection (2), the reviewer must—

- (a) if the reviewer and auditor-general 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 reviewer and auditor-general can not agree about how to dispose of a comment—include the comment, in full, in the report.

‘(4) After complying with subsections (1) and (3), the reviewer must give the report (“**review report**”) to the Minister and the auditor-general.

‘(5) The review report must be the same as the proposed report given to them under subsection (1), apart from the changes made under subsection (3).

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

‘(7) For the *Parliamentary Committees Act 1995*, section 8(2),²¹ the report is referred to the parliamentary committee.’

106 Insertion of new pt 8, div 4

Part 8, after section 140—

insert—

‘Division 4—Transitional provision for Ombudsman Act 2001

‘141 Strategic review

‘(1) A report of a strategic review under former section 72 is taken to be an earlier report of a strategic review for new section 72(2).

‘(2) In this section—

“**former section 72**” means section 72 of this Act as in force immediately before the commencement of this section.

“**new section 72**” means section 72 as inserted by the *Ombudsman Act 2001*.’.

107 Amendment of sch 1 (Other accountable officers for certain bodies)

(1) Schedule 1, under the heading ‘Accountable officer’, ‘Parliamentary Commissioner for Administrative Investigations’—

²¹ *Parliamentary Committees Act 1995*, section 8 (Role of statutory committees)

omit, insert—

‘Ombudsman’.

(2) Schedule 1, under the heading ‘Body’, ‘Parliamentary Commissioner for Administrative Investigations’—

omit, insert—

‘Office of the Ombudsman’.

PART 14—AMENDMENT OF FREEDOM OF INFORMATION ACT 1992

108 Act amended in pt 14 and sch 2

This part and schedule 2 amend the *Freedom of Information Act 1992*.

109 Replacement of pt 5, div 2 (Staff of Information Commissioner)

Part 5, division 2—

omit, insert—

‘Division 2—Staff of Commissioner

‘70 Officers

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

‘(2) Officers of the commissioner are appointed under this Act and not under the *Public Service Act 1996*.

‘(3) The conditions of appointment of an officer of the commissioner are those decided by the Governor in Council.

‘70A Secondment

‘(1) A public service officer may be seconded as an officer of the commissioner.

‘(2) While seconded under this section—

- (a) the person is taken to be an officer of the commissioner; and
- (b) the *Public Service Act 1996* does not apply to the person.

‘70B Temporary and casual employees

‘(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) Subsection (2) has effect subject to any relevant industrial instrument within the meaning of the *Industrial Relations Act 1999*.

‘(4) Employees of the commissioner are employed under this Act and not the *Public Service Act 1996*.

‘70C Performance of functions by officers of ombudsman

‘(1) An officer of the ombudsman may perform duties as an equivalent officer of the commissioner—

- (a) if the ombudsman is the commissioner—in accordance with arrangements decided by the ombudsman; or
- (b) otherwise—in accordance with arrangements agreed between the ombudsman and the commissioner.

‘(2) In this section—

“officer of the ombudsman” means an officer of the ombudsman under the *Ombudsman Act 2001*.

‘Division 2A—Preservation of rights

‘70D Preservation of rights if public service officer appointed

‘(1) A public service officer who becomes an officer of the commissioner is entitled to retain all existing and accruing rights as if service as an officer of the commissioner were a continuation of service as a public service officer.

‘(2) If the person stops holding office for a reason other than misconduct, the person is entitled to be employed as a public service officer.

‘(3) The person is to be employed on the classification level and remuneration that 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 continued in employment as a public service officer.

‘70E Preservation of rights if person becomes public service officer

‘On the appointment of an officer of the commissioner as a public service officer, the person’s service as an officer of the commissioner must be regarded as service as a public service officer for working out the person’s rights as a public service officer.

‘70F Preservation of rights if public service officer seconded

‘(1) A public service officer seconded under section 70A—

- (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 positions, and be employed, in the public service as if the person were a public service officer.

‘(2) On ending the secondment, the person’s employment on secondment as an officer of the commissioner is taken to be employment of the same nature in the public service for working out the person’s rights as a public service officer.

‘(3) If the secondment is ended for a reason other than misconduct, the person is entitled to be employed as a public service officer.

‘(4) The person is entitled to be employed on the same, or a higher, classification level and remuneration that 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.’

110 Replacement of s 108A (Strategic review of commissioner)

(1) Section 108A—

omit, insert—

‘108A Strategic review of commissioner

‘(1) Strategic reviews of the commissioner are to be conducted under this section and sections 108AA and 108AB.

‘(2) A strategic review is to be conducted at least every 5 years, counting from when the report (the “**earlier report**”) for the most recent earlier strategic review was given to the Minister and the commissioner under section 108AB(4),²² up to when the reviewer is appointed under subsection (4) to undertake the latest review.

‘(3) However, if the parliamentary committee reported to the Legislative Assembly about the earlier report, and the committee’s report made recommendations to which a Minister was required to respond under the *Parliamentary Committees Act 1995*, section 24,²³ the 5 years is counted from when the Minister’s response was tabled under that section.

‘(4) Each strategic review is to be undertaken by an appropriately qualified person (“**reviewer**”), appointed by the Governor in Council, who is to give a report on the review.

‘(5) The terms of reference for a strategic review are to be decided by the Governor in Council.

‘(6) Before a reviewer is appointed to conduct a strategic review, the Minister must consult with the parliamentary committee and the commissioner about—

- (a) the appointment of the reviewer; and
- (b) the terms of reference for the review.

‘(7) The remuneration and other terms of appointment of the reviewer are as decided by the Governor in Council.

‘(8) 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.

22 Section 108AB (Report of strategic review)

23 *Parliamentary Committees Act 1995*, section 24 (Ministerial response to committee reports)

‘108AA Conduct of strategic review

‘In conducting a strategic review—

- (a) the reviewer has the powers 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 reviewer as if the reviewer were an authorised auditor conducting an audit of an entity.

‘108AB Report of strategic review

‘(1) The reviewer must give a copy of a proposed report on the strategic review to the Minister and the commissioner.

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

‘(3) If the commissioner comments under subsection (2), the reviewer must—

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

‘(4) After complying with subsections (1) and (3), the reviewer must give the report (“**review report**”) to the Minister and the commissioner.

‘(5) The review report must be the same as the proposed report given to them under subsection (1), apart from the changes made under subsection (3).

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

‘(7) For the *Parliamentary Committees Act 1995*, section 8(2),²⁴ the report is referred to the parliamentary committee.’.

24 *Parliamentary Committees Act 1995*, section 8 (Role of statutory committees)

111 Insertion of new pt 7

After part 6—

insert—

**‘PART 7—TRANSITIONAL PROVISION FOR
OMBUDSMAN ACT 2001**

‘110 Strategic review

‘(1) A report of a strategic review under former section 108A is taken to be an earlier report of a strategic review for section 108A(2).

‘(2) In this section—

“**former section 72**” means section 108A of this Act as in force immediately before the commencement of this section.

“**new section 72**” means section 108A of this Act as inserted by the *Ombudsman Act 2001*.’.

SCHEDULE 1

AMENDMENT OF OTHER ACTS

section 96

ACTS INTERPRETATION ACT 1954

1 Section 36—

insert—

‘**“ombudsman”** means the ombudsman under the *Ombudsman Act 2001*.’.

CHILD PROTECTION ACT 1999

1 Section 186(2)(b)—

omit, insert—

‘(b) to the ombudsman conducting an investigation under the *Ombudsman Act 2001*; or’.

COMMISSION FOR CHILDREN AND YOUNG PEOPLE ACT 2000

1 Schedule 4, definition “complaints agency”, paragraph (a)—

omit, insert—

‘(a) the ombudsman under the *Ombudsman Act 2001*.’.

SCHEDULE 1 (continued)

COOPERATIVES ACT 1997

- 1 Section 456(3)(d), ‘Parliamentary Commissioner Act 1974’—**
omit, insert—
‘Ombudsman Act 2001’.

CORRECTIVE SERVICES ACT 2000

- 1 Section 37(2)(c)—**
omit, insert—
‘(c) the ombudsman.’.
- 2 Section 100(2)(c)—**
omit, insert—
‘(c) the ombudsman; or’.
- 3 Section 130(2)(e)—**
omit, insert—
‘(c) the ombudsman; or’.
- 4 Section 197(4), ‘Parliamentary Commissioner Act 1974’—**
omit, insert—
‘Ombudsman Act 2001’.

SCHEDULE 1 (continued)

CRIMINAL JUSTICE ACT 1989**1 Section 37(2)(a)—***omit, insert—*

‘(a) the ombudsman;’.

2 Section 118U(5), definition “appropriate agency”, ‘the parliamentary commissioner for administrative investigations’—*omit, insert—*

‘the ombudsman’.

EVIDENCE ACT 1977**1 Schedule 1, items 2 and 7—***omit.***2 Schedule 1, items 3 to 6—***renumber* as items 2 to 5.**3 Schedule 1, items 8 to 14—***renumber* as items 6 to 12.**4 Schedule 1—***insert—*‘**13.** Ombudsman’.

SCHEDULE 1 (continued)

5 Schedule 1, items 15 to 17—

renumber as items 14 to 16.

GOVERNMENT OWNED CORPORATIONS ACT 1993**1 Section 182, heading, ‘Parliamentary Commissioner Act 1974’—**

omit, insert—

‘Ombudsman Act 2001’.

2 Section 182(1), ‘Parliamentary Commissioner Act 1974’—

omit, insert—

‘Ombudsman Act 2001’.

3 Section 184, heading, ‘Parliamentary Commissioner Act 1974’—

omit, insert—

‘Ombudsman Act 2001’.

4 Section 184, ‘Parliamentary Commissioner Act 1974’—

omit, insert—

‘Ombudsman Act 2001’.

5 Schedule 4, section 184, heading, ‘Parliamentary Commissioner Act 1974’—

omit, insert—

‘Ombudsman Act 2001’.

SCHEDULE 1 (continued)

- 6** Schedule 4, section 184, '*Parliamentary Commissioner Act 1974*'—
omit, insert—
'Ombudsman Act 2001'.

GRAIN INDUSTRY (RESTRUCTURING) ACT 1991

- 1** Section 6(1)(a)(ii), '*Parliamentary Commissioner Act 1974*'—
omit, insert—
'Ombudsman Act 2001'.

HEALTH RIGHTS COMMISSION ACT 1991

- 1** Section 27(b)(i)—
omit, insert—
(i) the ombudsman; and'.

JUDICIAL REVIEW ACT 1991

- 1** Section 17—
omit.

SCHEDULE 1 (continued)

LOCAL GOVERNMENT ACT 1993

- 1 Section 60X(1)(e), ‘Parliamentary Commissioner Act 1974’—**
omit, insert—
‘Ombudsman Act 2001’.

- 2 Section 728, heading, ‘Parliamentary Commissioner Act 1974’—**
omit, insert—
‘Ombudsman Act 2001’.

- 3 Section 728(1), ‘Parliamentary Commissioner Act 1974’—**
omit, insert—
‘Ombudsman Act 2001’.

MEAT INDUSTRY ACT 1993

- 1 Section 161, heading, ‘Parliamentary Commissioner Act 1974’—**
omit, insert—
‘Ombudsman Act 2001’.

- 2 Section 161(1), ‘Parliamentary Commissioner Act 1974’—**
omit, insert—
‘Ombudsman Act 2001’.

SCHEDULE 1 (continued)

PARLIAMENTARY COMMITTEES ACT 1995**1 Section 10(2)(c), from ‘Parliamentary’—**

omit, insert—

‘Ombudsman Act 2001, section 52.²⁵’.

PUBLIC SECTOR ETHICS ACT 1994**1 Schedule, definition “Parliamentary Commissioner”—**

omit.

QUEENSLAND COMPETITION AUTHORITY ACT 1997**1 Section 229(e)—**

omit, insert—

‘(e) an agency under the *Ombudsman Act 2001*.’.

RURAL ADJUSTMENT AUTHORITY ACT 1994**1 Section 40(d), ‘Parliamentary Commissioner Act 1974’—**

omit, insert—

‘Ombudsman Act 2001’.

²⁵ *Ombudsman Act 2001*, section 52 (Report to Assembly on ombudsman’s initiative)

SCHEDULE 1 (continued)

SUGAR INDUSTRY ACT 1999**1 Section 120(2)(a)(i)—**

omit, insert—

‘(i) the *Ombudsman Act 2001*; and’.

WHISTLEBLOWERS PROTECTION ACT 1994**1 Schedule 1, ‘office of the Parliamentary Commissioner for Administrative Investigations’—**

omit, insert—

‘Office of the Ombudsman’.

2 Schedule 1, ‘Parliamentary Commissioner for Administrative Investigations’—

omit, insert—

‘Ombudsman’.

WORKCOVER QUEENSLAND ACT 1996**1 Section 423(1)(b)—**

omit, insert—

‘(b) a public authority under the *Ombudsman Act 2001*.’.

SCHEDULE 2**MINOR AMENDMENTS OF FREEDOM OF
INFORMATION ACT 1992**

section 108

- 1 Section 7, definition “parliamentary commissioner”—**
omit.
- 2 Section 39, heading, ‘parliamentary commissioner’—**
omit, insert—
‘ombudsman’.
- 3 Section 39(1)(a)—**
omit, insert—
‘(a) an investigation by the ombudsman; or’.
- 4 Sections 61(2) and (5) and 108B(1)(a), ‘parliamentary commissioner’—**
omit, insert—
‘ombudsman’.
- 5 Section 107, heading, ‘Parliamentary Commissioner Act’—**
omit, insert—
‘Ombudsman Act’.
- 6 Section 107, ‘Parliamentary Commissioner Act 1974’—**
omit, insert—
‘Ombudsman Act 2001’.

SCHEDULE 2 (continued)

7 Section 108B(1), ‘Parliamentary Commissioner Act 1974, section 32’—*omit, insert—**‘Ombudsman Act 2001, section 83²⁶’.*

SCHEDULE 3

DICTIONARY

section 3

“administrative action” see section 7.²⁷

“agency” see section 8.²⁸

“appropriate agency”, for an investigation, means the agency by, in or for which the administrative action the subject of investigation was taken.

“Assembly” means the Legislative Assembly.

“complainant” means a person who is a complainant under section 20.

“complaint” means a complaint made under section 20.²⁹

“complaints entity” means an entity, other than the ombudsman, that, under an Act, has responsibility for the investigation or review of matters that may include administrative actions of agencies.

Examples of complaints entities—

- the Commissioner for Children and Young People under the *Commission for Children and Young People Act 2000*
- the Criminal Justice Commission under the *Criminal Justice Act 1989*
- the Anti-Discrimination Commissioner under the *Anti-Discrimination Act 1991*
- the Health Rights Commissioner under the *Health Rights Commission Act 1991*
- the Queensland Crime Commission under the *Crime Commission Act 1997*
- the adult guardian under the *Guardianship and Administration Act 2000*.

“conviction” includes a plea of guilty, or a finding of guilt by a court, even though a conviction is not recorded.

“investigation” means investigation under this Act.

27 Section 7 (Meaning of “administrative action”)

28 Section 8 (Meaning of “agency”)

29 Section 20 (Complaints)

SCHEDULE 3 (continued)

“investigation requirement” means a requirement made under section 28 or 29.³⁰

“notice” means written notice.

“officer”, of 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 ombudsman” means any of the following—

- (a) an officer employed under section 76;³¹
- (b) a public service officer seconded to the ombudsman office under section 77;³²
- (c) a temporary or casual employee under section 78.³³

“ombudsman office”, for part 8, division 1, means the Office of the Ombudsman.

“operational action”, for a police officer, a criminal justice commission officer or a crime commission officer, means any action taken in or for performing functions the officer has under powers conferred on the officer by any Act or law, including, for example—

- (a) enforcement powers;
- (b) investigation, information gathering, search and questioning powers;
- (c) arrest and custody powers;
- (d) powers for preserving public order and safety;
- (e) for a police officer, powers of a public official.

30 Section 28 (Requirement to give document or information) or 29 (Requirement to attend and to give document or information)

31 Section 76 (Officers)

32 Section 77 (Secondment as officer of ombudsman)

33 Section 78 (Temporary and casual employees)

SCHEDULE 3 (continued)

Example—

Powers a police officer or criminal justice commission officer has under the *Police Powers and Responsibilities Act 2000*.

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

“parliamentary reference”, of an administrative action of an agency, means a reference made under section 19.³⁴

“preliminary inquiry” means inquiries made under section 22(1).³⁵

“principal officer” means—

- (a) for a department—the chief executive of the department; or
- (b) for a local government—the chief executive officer, however named, of the local government; or
- (c) for an agency for which a regulation declares the holder of an office to be the principal officer—the holder of the office; or
- (d) for another agency—
 - (i) if it is an incorporated body with no members—the person who manages the body’s affairs; or
 - (ii) if it is a body (whether or not incorporated) constituted by 1 person—the person; or
 - (iii) if it is a body (whether or not incorporated) 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” see section 9.³⁶

“responsible Minister” means—

- (a) for a department—the Minister administering the department; or
- (b) for a local government—the Minister administering the *Local Government Act 1993*; or

34 Section 19 (Legislative Assembly may refer administrative action for investigation)

35 Section 22 (Preliminary inquiry)

36 Section 9 (Meaning of “public authority”)

SCHEDULE 3 (continued)

- (c) for an Aboriginal local government—the Minister administering the *Community Services (Aborigines) Act 1984*; or
- (d) for a Torres Strait Islander local government—the Minister administering the *Community Services (Torres Strait) Act 1984*; or
- (e) for an entity that is a public authority under section 9(1)(a)—the Minister administering the Act by or under which the public authority is established; or
- (f) for an entity that is a public authority under section 9(1)(d)—the Minister administering the Act by or under which the office mentioned in the provision is established; or
- (g) for another agency—the Minister declared under a regulation to be the responsible Minister for the agency.

“strategic review” means a strategic review conducted under section 83.³⁷