

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

R. E. WARD,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 25 September, 1974.*

*The LEGISLATIVE COUNCIL has this day agreed to this Bill with
an Amendment.*

A. W. SAXON,
Clerk of the Parliaments.

*Legislative Council Chamber,
Sydney, 3 October, 1974.*

New South Wales



ANNO VICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. , 1974.

An Act to provide for the appointment of an Ombudsman;
to define his powers, authorities, duties and functions;
and for purposes connected therewith.

BE

Ombudsman.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Ombudsman Act, Short title. 1974".

2. (1) This Act, Part III excepted, commences on the date of assent to this Act. Commence-
ment.

(2) Part III commences on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3. This Act is divided as follows :—

Division
of Act.

PART I.—PRELIMINARY—ss. 1–5.

PART II.—THE OMBUDSMAN—ss. 6–11.

PART III.—INVESTIGATIONS—ss. 12–25.

PART IV.—REPORTS—ss. 26–31.

20 PART V.—GENERAL—ss. 32–40.

SCHEDULE.

4. This Act binds the Crown not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities. Act binds
Crown.

Ombudsman.

5. (1) In this Act, except in so far as the context or Interpretation.
subject-matter otherwise indicates or requires—

“appointed day” means the day appointed and notified
under section 2 (2);

5 “conduct” means—

- (a) any action or inaction relating to a matter of administration; and
- (b) any alleged action or inaction relating to a matter of administration;

10 “head” means—

- (a) in relation to a public authority who is a statutory employee in relation to an Act that constitutes a corporation sole—the corporation;
- 15 (b) in relation to a public authority who is a statutory employee in relation to an Act that constitutes a body of persons (incorporated or not) that executes that or any other Act—the person entitled to preside at a meeting of the body;
- 20 (c) in relation to a public authority who is not a person referred to in paragraph (a) or (b) but is—
 - 25 (i) an officer of the Public Service employed for the purposes of a Department of the Government; or
 - (ii) a person otherwise in the service of the Crown who is employed for those purposes—
- 30 the permanent head of that Department;
- (d) in relation to a public authority that is a corporation sole—the corporation;

(e)

Ombudsman.

- (e) in relation to a public authority that is a corporation aggregate or an unincorporated body—the person entitled to preside at meetings of the corporation or body;
- 5 (f) in any other case—the prescribed person;
- “person” includes an unincorporated body of persons;
- “public authority” means—
- (a) any person appointed to an office by the Governor;
- 10 (b) any statutory body representing the Crown;
- (c) any officer of the Public Service;
- (d) any person in the service of the Crown or of any statutory body representing the Crown;
- 15 (e) any person in relation to whom or to whose function an account is kept of administration or working expenses, where the account—
- (i) is part of the accounts prepared pursuant to the Audit Act, 1902;
- (ii) is required by or under any Act to be audited by the Auditor-General;
- 20 (iii) is an account with respect to which the Auditor-General has powers under any law;
- (iv) is an account with respect to which the Auditor-General may exercise powers under a law relating to the audit of accounts where requested to do so by a Minister of the Crown;
- 25
- (f) any person entitled to be reimbursed his expenses, from a fund of which an account mentioned in paragraph (e) is kept, of attending meetings or carrying out the business of any body constituted by an Act;
- 30

(g)

Ombudsman.

- (g) any holder of an office declared by the regulations to be an office of a public authority for the purposes of this Act; and
- 5 (h) any person acting for or on behalf of, or in the place of, or as deputy or delegate of, any person described in any of the foregoing paragraphs;

“regulations” means regulations made under this Act;

“responsible Minister” means—

- 10 (a) in relation to a public authority who is a statutory employee—the Minister of the Crown administering the Act in relation to which the public authority is a statutory employee;
- 15 (b) in relation to a public authority who is not a statutory employee but is—
- (i) an officer of the Public Service employed for the purposes of a Department of the Government; or
- 20 (ii) a person otherwise employed by the Crown for those purposes—
- the Minister of the Crown administering that Department;
- 25 (c) in relation to any other public authority—the Minister of the Crown who, in the opinion of the Ombudsman, is most nearly concerned with the conduct of the public authority;

“statutory employee” means, in relation to an Act—

- 30 (a) a person in the service of a corporation constituted by that Act, being, in the case of a corporation aggregate, a corporation of which one or more of the members is appointed by the Governor or a Minister;

(b)

Ombudsman.

- 5 (b) an officer of the Public Service employed in connection with the administration of that Act or a person otherwise in the service of the Crown who is employed in that connection.

(2) For the purposes of this Act, conduct of a public authority is wrong if it is—

- 10 (a) contrary to law;
- (b) unreasonable, unjust, oppressive or improperly discriminatory, whether or not it is in accordance with any law or established practice;
- (c) based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations;
- (d) based wholly or partly on a mistake of law or fact;
- 15 (e) conduct for which reasons should be given but are not given; or
- (f) otherwise wrong.

PART II.

THE OMBUDSMAN.

- 20 6. (1) The Governor may, on the recommendation of the Minister, appoint an Ombudsman on such terms and conditions as are specified in the instrument of appointment. ^{Office of Ombudsman.}

(2) Subject to this Act, the Ombudsman holds office for such period, not exceeding seven years, as is specified in the instrument of his appointment and is eligible for re-appointment.

25

(3)

Ombudsman.

(3) A person is not eligible for appointment as Ombudsman—

- 5 (a) if he is of or above the age of sixty-five years; or
(b) if he is a member of the Legislative Council or the Legislative Assembly or is a member of a House of Parliament of another State or of the Commonwealth.

(4) The Ombudsman vacates his office—

- 10 (a) on the day on which he attains the age of sixty-five years;
(b) if he engages in any paid employment outside the duties of his office;
15 (c) if he is nominated for election as a member of the Legislative Council or the Legislative Assembly or as a member of a House of Parliament of another State or of the Commonwealth; or
(d) if he resigns his office by writing under his hand addressed to the Governor and the Governor accepts the resignation.

20 (5) The Ombudsman may, at any time, be removed from his office by the Governor upon the address of both Houses of Parliament.

(6) The provisions of the Public Service Act, 1902, do not apply to the appointment of the Ombudsman and the
25 Ombudsman is not subject to those provisions.

7. (1) The Governor may, on the recommendation of the Minister, appoint an acting Ombudsman during the absence of the Ombudsman or during a vacancy in his office. ^{Acting Ombudsman.}

(2) An acting Ombudsman is entitled to such salary
30 and allowances as the Governor may from time to time determine.

(3)

Ombudsman.

(3) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising an acting Ombudsman to act as Ombudsman.

5 (4) This Act, section 6 (2) excepted, applies to and in respect of an acting Ombudsman as it applies to and in respect of the Ombudsman.

8. (1) The Governor may, on the recommendation of Deputy the Minister, appoint a Deputy Ombudsman.

10 (2) Sections 6 and 33 apply to and in respect of the Deputy Ombudsman as they apply to and in respect of the Ombudsman.

15 (3) The Deputy Ombudsman may, to the extent to which he is directed by the Ombudsman so to do, exercise or perform any power, authority, duty or function of the Ombudsman other than a power, authority, duty or function conferred or imposed by section 9, 10, 19 (2), 29 (b) and (c) or 30.

20 (4) Where a Deputy Ombudsman is appointed as acting Ombudsman he does not, on that account, cease to be Deputy Ombudsman.

9. The Ombudsman may, with the concurrence of the Minister, appoint an officer of the Ombudsman to be a special officer.

25 10. (1) Subject to subsection (2), the Ombudsman may delegate to a special officer of the Ombudsman the exercise or performance of any powers, authorities, duties or functions of the Ombudsman.

(2) The Ombudsman may not delegate the exercise or performance of—

30 (a) any power, authority or duty to make any report under this Act (other than a report under section 28);

(b)

Ombudsman.

(b) any power or authority conferred by section 9 or 19 (2); or

(c) the power and authority conferred by subsection (1).

5 (3) A delegation under this section may be made subject to conditions or limitations as to the exercise or performance of any of the powers, authorities, duties or functions delegated, or as to time or circumstances.

10 (4) A delegation under this section must be made by instrument in writing.

(5) An instrument of delegation must specify—

(a) the powers, authorities, duties or functions the exercise or performance of which is delegated; and

(b) any conditions or limitations on the delegation.

15 (6) The Ombudsman may revoke a delegation under this section at any time, whether made by him or not.

20 (7) A delegation under this section is not revoked by the happening of a vacancy in the office of Ombudsman or by an absence or disability of the Ombudsman, except to the extent that the instrument of delegation so provides.

(8) During a vacancy in the office of Ombudsman, if there is no acting Ombudsman, the Minister may revoke a delegation under this section.

25 (9) Notwithstanding any delegation made under this section, the Ombudsman may continue to exercise or perform all or any of the powers, authorities, duties or functions delegated.

Ombudsman.

- 11.** Any act or thing done, suffered or omitted—
- (a) pursuant to this Act by an acting Ombudsman or the Deputy Ombudsman; or
 - (b) pursuant to a delegation under section 10,
- 5 has the same force and effect as if done, suffered or omitted by the Ombudsman.
- Effect of certain acts, etc.

PART III.

INVESTIGATIONS.

- 12.** (1) Subject to this section, any person (including a public authority) may complain to the Ombudsman about the conduct of a public authority unless—
- (a) the conduct is of a class described in the Schedule;
 - (b) the conduct took place more than twelve months before the date of assent to this Act; or
 - 15 (c) the conduct took place during the period of twelve months that last preceded the date of assent to this Act and the complaint was made more than twelve months after the appointed day.
- (2) Where a person wishes to make a complaint
- 20 under subsection (1), the complaint may, with the consent of that person, be made on his behalf by a member of Parliament.
- (3) Where a person is detained by, or in the custody of, a public authority and informs the public authority or
- 25 another person having superintendence over him that he wishes to make a complaint to the Ombudsman, the public authority or other person so informed shall—
- (a) take all steps necessary to facilitate the making of the complaint; and
 - 30 (b) send immediately to the Ombudsman, unopened, any written matter addressed to the Ombudsman.

(4)

Ombudsman.

(4) A complaint under subsection (1), and a consent for the purposes of subsection (2), must be in writing.

5 (5) Where a member of Parliament acts for a person under subsection (2) he does not, except for the purposes of sections 15, 16, 26 (4) and 29, thereby become the complainant.

10 (6) Where a member of Parliament publishes to a person for whom he acts under subsection (2) any matter, or a copy of any matter, published to him by the Ombudsman, the publication has, for all purposes, the same effect as if it had been published to that person by the Ombudsman.

13. (1) Where it appears to the Ombudsman that any conduct of a public authority about which a complaint may be made under section 12 may be wrong, the Ombudsman may, whether or not any person has complained to him about the conduct, make the conduct the subject of an investigation under this Act. Decision
for investi-
gation.

20 (2) Subsection (1) has effect notwithstanding anything in any Act passed before the passing of this Act.

(3) The Ombudsman may discontinue an investigation.

25 (4) Where any person has complained to the Ombudsman under section 12 about the conduct of a public authority, the Ombudsman, in deciding whether to make that conduct the subject of an investigation under this Act or whether to discontinue an investigation commenced by him under this Act—

30 (a) may have regard to such matters as he thinks fit; and

(b)

Ombudsman.

(b) without limiting paragraph (a), may have regard to whether, in his opinion—

- (i) the complaint is frivolous, vexatious or not in good faith;
- 5 (ii) the subject-matter of the complaint is trivial;
- (iii) the subject-matter of the complaint relates to the discharge by a public authority of a function which is substantially a trading or commercial function;
- 10 (iv) the conduct complained of occurred at too remote a time to justify investigation;
- (v) in relation to the conduct complained of there is or was available to the complainant an alternative and satisfactory means of redress; or
- 15 (vi) the complainant has no interest or an insufficient interest in the conduct complained of.

14. (1) The Governor may, by proclamation published in the Gazette, amend the Schedule so as to add to it, or to omit from it, any class of conduct of a public authority. Amendment of Schedule.

(2) Where the Schedule is amended by adding to it any class of conduct of a public authority, and conduct the subject of an investigation by the Ombudsman is or includes 25 conduct of the added class, the Ombudsman shall discontinue the investigation in so far as it relates to conduct of the added class and shall not make any report concerning conduct of the added class.

(3) A proclamation under subsection (1)—

- 30 (a) takes effect from the date of the publication of the proclamation or a later date specified in the proclamation; and

(b)

Ombudsman.

(b) shall be laid before each House of Parliament within fourteen sitting days of that House after the date of proclamation.

(4) If either House of Parliament passes a resolution, of which notice has been given within fifteen sitting days of that House after a proclamation has been laid before it, disallowing the proclamation or any part thereof, the amendment of the Schedule made by the proclamation or part thereupon ceases to have effect.

(5) For the purposes of subsections (3) and (4) sitting days shall be counted, whether or not they occur during the same session.

(6) Where, by the operation of subsection (4), an amendment of the Schedule ceases to have effect, the Ombudsman may—

- (a) resume any investigation that he discontinued under subsection (2) by reason of the amendment; and
- (b) make a report concerning the conduct to which the resumed investigation relates.

15. Where—

(a) a complaint has been made to the Ombudsman about the conduct of a public authority; and

Reasons for refusal to investigate, etc.

(b) the Ombudsman—

- (i) refuses to investigate the conduct complained of; or
- (ii) discontinues an investigation of that conduct,

the Ombudsman shall inform the complainant in writing of his decision and the reasons for his decision.

Ombudsman.

16. (1) Upon the Ombudsman deciding to make the conduct of a public authority the subject of an investigation under this Act, he shall give notice of his decision—

Notice of investigation.

- (a) where there is a complainant, to him;
- 5 (b) to the head of the public authority and, if practicable, to the public authority; and
- (c) as prescribed.

(2) A notice under this section must be in writing, must describe the conduct the subject of the investigation and
10 must, so far as practicable, identify the public authority.

17. An investigation under this Act shall be made in the absence of the public.

18. (1) For the purposes of an investigation under this Act, the Ombudsman may require a public authority—

Public authority to give information, etc.

- 15 (a) to give him a statement of information;
- (b) to produce to him any document or other thing; or
- (c) to give him a copy of any document.

(2) A requirement under this section must be in writing, must specify or describe the information, document
20 or thing required, and must fix a time for compliance.

19. (1) In an investigation under this Act, the Ombudsman may make or hold inquiries.

(2) For the purposes of any inquiry under this section, the Ombudsman has the powers, authorities, protections
25 and immunities conferred on a commissioner by Division 1 of Part II of the Royal Commissions Act, 1923, and that Act

(section

Ombudsman.

(section 13 and Division 2 of Part II excepted) applies to any witness summoned by or appearing before the Ombudsman in the same way as it applies to a witness summoned by or appearing before a commissioner, but section 11 (2) of that
5 Act shall have effect subject to section 21 of this Act.

20. In an investigation under this Act, the Ombudsman may, at any time— Entry on premises, etc.

- (a) enter and inspect any premises occupied or used by a public authority as a public authority; and
- 10 (b) inspect any document or thing in or on the premises.

21. (1) Subsections (2) and (3) apply where, in an investigation under this Act, the Ombudsman requires any person— Limits on secrecy and privilege.

- 15 (a) to give any statement of information;
- (b) to produce any document or other thing;
- (c) to give a copy of any document; or
- (d) to answer any question.

(2) The person so required must comply with the
20 requirement notwithstanding—

- (a) any rule of law which in proceedings in a court of law might justify an objection to compliance with a like requirement on grounds of public interest;
- (b) any privilege of a public authority; or
- 25 (c) if the person so required is a public authority, any duty of secrecy or other restriction on disclosure applying to that public authority.

(3)

Ombudsman.

(3) Subject to subsection (2), the Ombudsman shall set aside the requirement if it appears to him that any person has a ground of privilege whereby, in proceedings in a court of law, he might resist a like requirement and it does not appear to the Ombudsman that that person consents to compliance with the requirement.

(4) Subsections (1), (2) and (3) apply to a requirement made under section 18 or made in an inquiry under section 19.

(5) The Ombudsman may exercise his powers under section 20 notwithstanding—

- (a) any rule of law which, in proceedings in a court of law, might justify an objection to an inspection of the premises or to production of the document or thing, as the case requires, on grounds of public interest;
- (b) any privilege of a public authority; or
- (c) any duty of secrecy or other restriction on disclosure applying to a public authority.

(6) Subject to subsection (5) the Ombudsman shall not exercise his powers under section 20 where it appears to the Ombudsman that any person has a ground of privilege whereby, in proceedings in a court of law, he might resist inspection of the premises or production of the document or thing, as the case requires, and it does not appear to the Ombudsman that that person consents to the inspection or production.

22. (1) This Act does not enable the Ombudsman—

- (a) to require any person—
 - (i) to give any statement of information;
 - (ii) to produce any document or other thing;

Cabinet
proceed-
ings.

(iii)

Ombudsman.

- (iii) to give a copy of any document; or
- (iv) to answer any question,
- which relates to confidential proceedings of cabinet or any committee of cabinet; or
- 5 (b) to inspect any document or thing which so relates.

(2) For the purposes of subsection (1), a certificate of the Permanent Head of the Premier's Department that any information, document, thing or question relates to confidential proceedings of cabinet or of a committee of cabinet is
10 conclusive that it does so relate.

23. In an investigation under this Act, the Ombudsman ^{Expert} may, with the consent of the Minister, engage the services of ^{assistance.} any person for the purpose of getting expert assistance.

24. (1) In an investigation under this Act, the Ombuds- ^{Persons to} man shall give an opportunity to make submissions on the ^{be heard.} conduct the subject of the investigation—

- (a) if practicable, to the public authority whose conduct it is; and
- (b) to any other person given notice under section 16.

20 (2) Where, in an investigation under this Act, the Ombudsman considers that there are grounds for adverse comment in respect of any person, the Ombudsman, before making any such comment in any report, shall, so far as practicable—

- 25 (a) inform that person of the substance of the grounds of the adverse comment; and
- (b) give him an opportunity to make submissions.

(3) Subsection (2) does not apply in relation to a report under section 28.

Ombudsman.

25. (1) In an investigation under this Act, the Ombudsman shall, on request by the responsible Minister, consult him on the conduct the subject of the investigation. Consultation with responsible Minister.

(2) Before publishing a report under section 26, the
5 Ombudsman—

- (a) shall inform the responsible Minister that he proposes to publish such a report; and
- (b) shall, on request by that Minister, consult him.

PART IV.

10 **REPORTS.**

26. (1) Where, in an investigation under this Act, the Ombudsman finds that the conduct the subject of the investigation, or any part of the conduct, is wrong, the Ombudsman shall make a report accordingly, giving his reasons. Conduct wrong.

15 (2) In a report under this section, the Ombudsman may recommend—

- (a) that the conduct be considered or reconsidered by the public authority whose conduct it is, or by any person in a position to supervise or direct the public authority in relation to the conduct, or to review, rectify, mitigate or change the conduct or its consequences;
- 20 (b) that action be taken to rectify, mitigate or change the conduct or its consequences;
- 25 (c) that reasons be given for the conduct;
- (d) that any law or practice relating to the conduct be changed; or
- (e) that any other step be taken.

(3)

Ombudsman.

(3) The Ombudsman shall give a report under this section—

- (a) to the responsible Minister;
- 5 (b) to the head of the authority whose conduct is the subject of the report; and
- (c) where the public authority is employed under the Public Service Act, 1902, to the Public Service Board.

(4) The Ombudsman may give a copy of a report 10 under this section—

- (a) where the investigation arises out of a complaint to the Ombudsman, to the complainant;
- (b) to the public authority to whose conduct the report relates.

15 (5) The person to whom a report is given under subsection (3) (b) may, and on request by the Ombudsman shall, notify the Ombudsman of any action taken or proposed in consequence of a report under this section.

20 **27.** Where the Ombudsman is not satisfied that sufficient steps have been taken in due time in consequence of a report under section 26, he may make a report to the Minister for presentation to Parliament. Default in consequent action.

28. Where the Ombudsman is of the opinion that a public authority is or may be guilty of misconduct in the course of his functions to such an extent as, in the opinion of the Ombudsman, may warrant dismissal, removal or punishment, the Ombudsman shall report his opinion— Serious misconduct.

- (a) to the responsible Minister;
- (b) to the head of the public authority; and

(c)

Ombudsman.

- (c) where the public authority is employed under the Public Service Act, 1902, to the Public Service Board,

giving his reasons.

- 5 **29.** Where the Ombudsman investigates the conduct of a public authority pursuant to a complaint made to him, the Ombudsman— Report to complainant.

- (a) may from time to time report to the complainant on the progress of the investigation;
- 10 (b) shall report to the complainant on the results of the investigation; and
- (c) may make such comments to the complainant on the investigation and its consequences as he thinks fit.

- 15 **30.** (1) The Ombudsman shall, as soon as practicable after the thirtieth day of June in each year, prepare and submit to the Minister a report of his work and activities for the twelve months preceding that date. Annual report.

- (2) The Minister shall lay that report or cause it to be laid before both Houses of Parliament as soon as practicable after the receipt by him of the report.
- 20

- 31.** (1) The Ombudsman may, at any time, make a special report to the Minister for presentation to Parliament on any matter arising in connection with the discharge of his functions. Special report to Parliament.
- 25

- (2) The Ombudsman may include in a report under subsection (1) or under section 27 a recommendation that the report be made public forthwith.

(3)

Ombudsman.

(3) Where a report under subsection (1) or under section 27 contains a recommendation by the Ombudsman that the report be made public forthwith the Minister may make it public before it is presented to Parliament.

5

PART V.

GENERAL.

32. (1) The Governor may appoint and employ, under Staff. and subject to the Public Service Act, 1902, such officers and employees as may be necessary to enable the Ombudsman to
10 exercise and perform his powers, authorities, duties and functions.

(2) The Ombudsman may, with the approval of the responsible Minister, make use of the services of any public authority.

15 33. (3) A person who is employed for the purposes of subsection (1), or whose services are made use of under subsection (2), is, while he is so employed, or while his services are so used, an officer of the Ombudsman.

20 33. (1) In this section "superannuation scheme" means Preservation of certain rights.
a scheme, fund or arrangement which is established by or under an Act and which provides for superannuation or retirement benefits.

(2) Subject to subsection (3) and to the terms of his appointment, where the Ombudsman was, immediately
25 before his appointment as Ombudsman, an officer of the Public Service or a contributor to a superannuation scheme, he—

(a) shall retain any rights accrued or accruing to him as such an officer or contributor;

(b)

Ombudsman.

- (b) may continue to contribute to any superannuation scheme to which he was a contributor immediately before his appointment as Ombudsman; and
 - 5 (c) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity under the superannuation scheme,
- as if he had continued to be such an officer or contributor during his service as Ombudsman and—
- 10 (d) his service as Ombudsman shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he continues to contribute or by which that entitlement is conferred;
 - 15 (e) he shall be deemed to be an officer or employee, and the Minister shall be deemed to be his employer, for the purposes of the superannuation scheme to which he is entitled to contribute under this subsection.

(3) Where, but for this subsection, the Ombudsman would be entitled under subsection (2) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under that scheme, he shall not be so entitled upon his becoming (whether upon his appointment as Ombudsman or at any later time while he holds office as Ombudsman) a contributor to any other superannuation scheme and the provisions of subsection (2) (e) cease to apply to or in respect of him and the Minister in any case where he becomes a contributor to another superannuation scheme.

(4) Subsection (3) does not prevent the payment to the Ombudsman upon his ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him had he ceased, by reason of resignation, to be an officer or employee for the purposes of that scheme.

(5)

Ombudsman.

(5) Subject to the terms of his appointment, where the Ombudsman was, immediately before his appointment as Ombudsman, an officer of the Public Service, he shall—

5 (a) if he ceases to hold office as Ombudsman otherwise than pursuant to section 6 (5); and

(b) if he is under the age of sixty years,
be appointed to some office in the Public Service not lower in classification and salary than that which he held immediately before his appointment as Ombudsman.

10 (6) The Ombudsman is not, in respect of the same period of service, entitled to claim a benefit under this Act and another Act.

15 **34.** The Ombudsman shall not, nor shall an officer of the Ombudsman, disclose any information obtained by him in the course of his office, unless the disclosure is made— Disclosure by Ombudsman or officer.

(a) where the information is obtained from a public authority, with the consent of the head of that authority or of the responsible Minister;

20 (b) where the information is obtained from any other person, with the consent of that person;

(c) for the purpose of any proceedings under section 37 or under Part III of the Royal Commissions Act, 1923; or

25 (d) for the purpose of discharging his functions under this Act.

Penalty : One thousand dollars.

35. (1) The Ombudsman shall not, nor shall an officer of the Ombudsman, be competent or compellable to give evidence in any legal proceedings in respect of any information obtained by him in the course of his office. Ombudsman or officer as witness.

Ombudsman.

(2) Subsection (1) does not apply to any legal proceedings under section 37 or under Part III of the Royal Commissions Act, 1923.

5 **36.** (1) Where, under section 18, a person is required to give a statement that tends to incriminate that person, neither the requirement nor the statement may be used in any proceedings against that person except proceedings under section 37 (1) (c). Incrimina-
tory
statement.

10 (2) Subsection (1) applies whether the person required to give a statement objects to giving it or not.

37. (1) A person shall not—

Offences.

- (a) without lawful excuse, wilfully obstruct, hinder or resist the Ombudsman or an officer of the Ombudsman in the exercise of his powers under this Act;
- 15 (b) without lawful excuse, refuse or wilfully fail to comply with any lawful requirement of the Ombudsman or an officer of the Ombudsman under this Act; or
- 20 (c) wilfully make any false statement to or mislead, or attempt to mislead, the Ombudsman or an officer of the Ombudsman in the exercise of his powers under this Act.

Penalty : One thousand dollars.

(2) A person shall not directly or indirectly—

- 25 (a) where he is not the Ombudsman—represent that he is the Ombudsman;
- (b) where he has not been appointed under section 7 as acting Ombudsman—represent that he has been so appointed;

(S)

(c)

Ombudsman.

- (c) where he is not the Deputy Ombudsman—represent that he is the Deputy Ombudsman;
- (d) where he is not a special officer of the Ombudsman—represent that he is a special officer of the Ombudsman;
- (e) where he is not an officer of the Ombudsman—represent that he is an officer of the Ombudsman; or
- (f) where he is not engaged in the administration or execution of this Act—represent that he is so engaged.

Penalty: One thousand dollars.

(3) For the purposes of subsection (2), a person represents that a state of affairs exists if he does or says anything, or causes, permits or suffers anything to be done or said, whereby it is represented, or whereby a belief may be induced, that the state of affairs exists.

38. A penalty imposed by this Act may be recovered in a summary manner before a Stipendiary Magistrate sitting in petty sessions alone. Proceedings for offences.

39. The Governor may make regulations under this Act for or with respect to prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for the purpose of carrying out or giving effect to this Act. Regulations.

40. The Defamation Act, 1974, is amended—

Amendment of Act No. 18, 1974.

- (a) by inserting after section 17 the following section :—

Sec. 17A.

17A. (1) There is a defence of absolute privilege for a publication to or by the Ombudsman, as Ombudsman, or to any officer of the Ombudsman, as such an officer. Matters arising under Ombudsman Act, 1974.

Ombudsman.

(2) Subsection (1) applies in relation to an acting Ombudsman, the Deputy Ombudsman and a special officer of the Ombudsman in the same way as it applies in relation to the Ombudsman.

5 (3) There is a defence of absolute privilege for a publication to a member of Parliament for the purposes of section 12 (2) of the Ombudsman Act, 1974.

10 (4) There is a defence of absolute privilege for the publication under section 31 (3) of the Ombudsman Act, 1974, of a report under that Act.

15 (5) There is a defence of absolute privilege for the publication, under the authority of the Minister for the time being administering the Ombudsman Act, 1974, of a copy of a report previously made public under section 31 (3) of that Act.

(b) (i) by omitting from clause 2 (8) of Schedule 2 Schedule 2.
the word "or";

20 (ii) by omitting from clause 2 (9) of Schedule 2 the word "office." and by inserting instead the following words and subclause :—
office; or

25 (10) proceedings of the Ombudsman, so far as those proceedings are included in a report previously made public under section 31 (3) of the Ombudsman Act, 1974.

SCHEDULE.

Ombudsman.

SCHEDULE.

Sec. 12.

EXCLUDED CONDUCT OF PUBLIC AUTHORITIES.

1. Conduct of—

- 5 (a) the Governor, whether acting with or without the advice of the Executive Council;
- (b) a Minister of the Crown, including a Minister of the Crown acting as a corporation sole, **but not so as to preclude conduct of a public authority relating to a recommendation made to a Minister of the Crown;**
- 10 (c) Parliament;
- (d) the Houses of Parliament;
- (e) a committee of either House, or both Houses, of Parliament;
- (f) either House of Parliament;
- 15 (g) a member of either House of Parliament, where acting as such;
- (h) an officer of Parliament or of either House of Parliament, where acting as such.

2. Conduct of a person or body before whom witnesses may be compelled to appear and give evidence, and persons associated with
20 such a person or body.

3. Conduct of a body of which one or more of the members is appointed by the Governor or a Minister of the Crown where—

- 25 (a) at least one member of the body may be appointed by virtue of his being a Judge of the Supreme Court of New South Wales, a member of the Industrial Commission of New South Wales or a Judge of the District Court of New South Wales; and
- 30 (b) such a person, if appointed as such a member, has a right or duty to preside at a meeting of the body at which he is present.

4. Conduct of a public authority relating to a Bill for an Act or the making of a rule, regulation or by-law.

5. Conduct of a public authority constituted pursuant to an arrangement between—

- 35 (a) the State of New South Wales and the Commonwealth;
- (b) the State of New South Wales and any other State;
- (c) the State of New South Wales, any other State and the Commonwealth.

Ombudsman.

6. Conduct of a public authority where acting as a legal adviser to a public authority or as legal representative of a public authority.
7. Conduct of the Attorney General, or of the Solicitor General, relating to the commencement, carrying on or termination of any proceedings before a court, including a coronial inquiry and committal proceedings before a magistrate.
8. Conduct of a public authority relating to the carrying on of any proceedings—
 - (a) before any court, including a coronial inquiry and committal proceedings before a magistrate; or
 - (b) before any other person or body before whom witnesses may be compelled to appear and give evidence.
9. Conduct of a public authority relating to an exercise of the prerogative of mercy.
10. Conduct of a public authority where acting as a commissioner under the Royal Commissions Act, 1923, or, by the authority of an Act, exercising the powers of such a commissioner.
11. Conduct of the Council of the City of Sydney and of the Sydney County Council and of the officers and employees of those councils.
12. Conduct of a public authority relating to—
 - (a) the appointment or employment of a person as an officer or employee; and
 - (b) matters affecting a person as an officer or employee.
13. Conduct of a member of the Police Force when acting as a constable.
14. Conduct of a public authority relating to the investment of any funds.
15. Conduct of a public authority relating to the payment of any money as an act of grace.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1974
[25c]

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

R. E. WARD,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 25 September, 1974.*

New South Wales



ANNO VICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. , 1974.

An Act to provide for the appointment of an Ombudsman;
to define his powers, authorities, duties and functions;
and for purposes connected therewith.

BE

Ombudsman.

BE it enacted by the Queen's Most Excellent Majesty, by
and with the advice and consent of the Legislative
Council and Legislative Assembly of New South Wales in
Parliament assembled, and by the authority of the same, as
5 follows :—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Ombudsman Act, Short title.
1974".

10 2. (1) This Act, Part III excepted, commences on the Commence-
date of assent to this Act. ment.

(2) Part III commences on such day as may be
appointed by the Governor in respect thereof and as may be
notified by proclamation published in the Gazette.

15 3. This Act is divided as follows :—

Division
of Act.

PART I.—PRELIMINARY—ss. 1–5.

PART II.—THE OMBUDSMAN—ss. 6–11.

PART III.—INVESTIGATIONS—ss. 12–25.

PART IV.—REPORTS—ss. 26–31.

20 PART V.—GENERAL—ss. 32–40.

SCHEDULE.

4. This Act binds the Crown not only in right of New Act binds
South Wales but also, so far as the legislative power of Crown.
Parliament permits, the Crown in all its other capacities.

Ombudsman.

5. (1) In this Act, except in so far as the context or Interpretation.
subject-matter otherwise indicates or requires—

“appointed day” means the day appointed and notified
under section 2 (2);

5 “conduct” means—

- (a) any action or inaction relating to a matter of administration; and
- (b) any alleged action or inaction relating to a matter of administration;

10 “head” means—

- (a) in relation to a public authority who is a statutory employee in relation to an Act that constitutes a corporation sole—the corporation;
- 15 (b) in relation to a public authority who is a statutory employee in relation to an Act that constitutes a body of persons (incorporated or not) that executes that or any other Act—the person entitled to preside at a meeting of the body;
- 20 (c) in relation to a public authority who is not a person referred to in paragraph (a) or (b) but is—
 - 25 (i) an officer of the Public Service employed for the purposes of a Department of the Government; or
 - (ii) a person otherwise in the service of the Crown who is employed for those purposes—
- 30 the permanent head of that Department;
- (d) in relation to a public authority that is a corporation sole—the corporation;

(e)

Ombudsman.

(e) in relation to a public authority that is a corporation aggregate or an unincorporated body—the person entitled to preside at meetings of the corporation or body;

5 (f) in any other case—the prescribed person;

“person” includes an unincorporated body of persons;

“public authority” means—

(a) any person appointed to an office by the Governor;

10 (b) any statutory body representing the Crown;

(c) any officer of the Public Service;

(d) any person in the service of the Crown or of any statutory body representing the Crown;

15 (e) any person in relation to whom or to whose function an account is kept of administration or working expenses, where the account—

(i) is part of the accounts prepared pursuant to the Audit Act, 1902;

20 (ii) is required by or under any Act to be audited by the Auditor-General;

(iii) is an account with respect to which the Auditor-General has powers under any law;

25 (iv) is an account with respect to which the Auditor-General may exercise powers under a law relating to the **audit of accounts** where requested to do so by a Minister of the Crown;

30 (f) any person entitled to be reimbursed his expenses, from a fund of which an account mentioned in paragraph (e) is kept, of attending meetings or carrying out the business of any body constituted by an Act;

(g)

Ombudsman.

- (g) any holder of an office declared by the regulations to be an office of a public authority for the purposes of this Act; and
- 5 (h) any person acting for or on behalf of, or in the place of, or as deputy or delegate of, any person described in any of the foregoing paragraphs;

“regulations” means regulations made under this Act;

“responsible Minister” means—

- 10 (a) in relation to a public authority who is a statutory employee—the Minister of the Crown administering the Act in relation to which the public authority is a statutory employee;
- 15 (b) in relation to a public authority who is not a statutory employee but is—
- (i) an officer of the Public Service employed for the purposes of a Department of the Government; or
- 20 (ii) a person otherwise employed by the Crown for those purposes—
- the Minister of the Crown administering that Department;
- 25 (c) in relation to any other public authority—the Minister of the Crown who, in the opinion of the Ombudsman, is most nearly concerned with the conduct of the public authority;

“statutory employee” means, in relation to an Act—

- 30 (a) a person in the service of a corporation constituted by that Act, being, in the case of a corporation aggregate, a corporation of which one or more of the members is appointed by the Governor or a Minister;

(b)

Ombudsman.

- 5 (b) an officer of the Public Service employed in connection with the administration of that Act or a person otherwise in the service of the Crown who is employed in that connection.

(2) For the purposes of this Act, conduct of a public authority is wrong if it is—

- 10 (a) contrary to law;
- (b) unreasonable, unjust, oppressive or improperly discriminatory, whether or not it is in accordance with any law or established practice;
- (c) based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations;
- (d) based wholly or partly on a mistake of law or fact;
- 15 (e) conduct for which reasons should be given but are not given; or
- (f) otherwise wrong.

PART II.

THE OMBUDSMAN.

- 20 6. (1) The Governor may, on the recommendation of the Minister, appoint an Ombudsman on such terms and conditions as are specified in the instrument of appointment. Office of
Ombuds-
man.

(2) Subject to this Act, the Ombudsman holds office for such period, not exceeding seven years, as is specified in the instrument of his appointment and is eligible for re-appointment.

25

(3)

Ombudsman.

(3) A person is not eligible for appointment as Ombudsman—

- (a) if he is of or above the age of sixty-five years; or
- 5 (b) if he is a member of the Legislative Council or the Legislative Assembly or is a member of a House of Parliament of another State or of the Commonwealth.

(4) The Ombudsman vacates his office—

- 10 (a) on the day on which he attains the age of sixty-five years;
- (b) if he engages in any paid employment outside the duties of his office;
- 15 (c) if he is nominated for election as a member of the Legislative Council or the Legislative Assembly or as a member of a House of Parliament of another State or of the Commonwealth; or
- (d) if he resigns his office by writing under his hand addressed to the Governor and the Governor accepts the resignation.

20 (5) The Ombudsman may, at any time, be removed from his office by the Governor upon the address of both Houses of Parliament.

(6) The provisions of the Public Service Act, 1902, do not apply to the appointment of the Ombudsman and the
25 Ombudsman is not subject to those provisions.

7. (1) The Governor may, on the recommendation of the Minister, appoint an acting Ombudsman during the absence of the Ombudsman or during a vacancy in his office. Acting
Ombuds-
man.

(2) An acting Ombudsman is entitled to such salary
30 and allowances as the Governor may from time to time determine.

(3)

Ombudsman.

(3) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising an acting Ombudsman to act as Ombudsman.

(4) This Act, section 6 (2) excepted, applies to and
5 in respect of an acting Ombudsman as it applies to and in respect of the Ombudsman.

8. (1) The Governor may, on the recommendation of Deputy
the Minister, appoint a Deputy Ombudsman. Ombudsman.

(2) Sections 6 and 33 apply to and in respect of the
10 Deputy Ombudsman as they apply to and in respect of the Ombudsman.

(3) The Deputy Ombudsman may, to the extent to which he is directed by the Ombudsman so to do, exercise or perform any power, authority, duty or function of the
15 Ombudsman other than a power, authority, duty or function conferred or imposed by section 9, 10, 19 (2), 29 (b) and (c) or 30.

(4) Where a Deputy Ombudsman is appointed as acting Ombudsman he does not, on that account, cease to be
20 Deputy Ombudsman.

9. The Ombudsman may, with the concurrence of the Special
Minister, appoint an officer of the Ombudsman to be a special officer. officer of the Ombudsman.

10. (1) Subject to subsection (2), the Ombudsman may Delegation.
25 delegate to a special officer of the Ombudsman the exercise or performance of any powers, authorities, duties or functions of the Ombudsman.

(2) The Ombudsman may not delegate the exercise or performance of—

30 (a) any power, authority or duty to make any report under this Act (other than a report under section 28);

(b)

Ombudsman.

- (b) any power or authority conferred by section 9 or 19 (2); or
 - (c) the power and authority conferred by subsection (1).
- 5 (3) A delegation under this section may be made subject to conditions or limitations as to the exercise or performance of any of the powers, authorities, duties or functions delegated, or as to time or circumstances.
- (4) A delegation under this section must be made
- 10 by instrument in writing.
- (5) An instrument of delegation must specify—
 - (a) the powers, authorities, duties or functions the exercise or performance of which is delegated; and
 - (b) any conditions or limitations on the delegation.
- 15 (6) The Ombudsman may revoke a delegation under this section at any time, whether made by him or not.
- (7) A delegation under this section is not revoked by the happening of a vacancy in the office of Ombudsman or by an absence or disability of the Ombudsman, except to
- 20 the extent that the instrument of delegation so provides.
- (8) During a vacancy in the office of Ombudsman, if there is no acting Ombudsman, the Minister may revoke a delegation under this section.
- (9) Notwithstanding any delegation made under this
- 25 section, the Ombudsman may continue to exercise or perform all or any of the powers, authorities, duties or functions delegated.

Ombudsman.

- 11.** Any act or thing done, suffered or omitted—
- (a) pursuant to this Act by an acting Ombudsman or the Deputy Ombudsman; or
- (b) pursuant to a delegation under section 10,
- 5** has the same force and effect as if done, suffered or omitted by the Ombudsman.
- Effect of certain acts, etc.

PART III.

INVESTIGATIONS.

- 12.** (1) Subject to this section, any person (including a public authority) may complain to the Ombudsman about the conduct of a public authority unless—
- (a) the conduct is of a class described in the Schedule;
- (b) the conduct took place more than twelve months before the date of assent to this Act; or
- 15** (c) the conduct took place during the period of twelve months that last preceded the date of assent to this Act and the complaint was made more than twelve months after the appointed day.
- (2) Where a person wishes to make a complaint
- 20** under subsection (1), the complaint may, with the consent of that person, be made on his behalf by a member of Parliament.
- (3) Where a person is detained by, or in the custody of, a public authority and informs the public authority or
- 25** another person having superintendence over him that he wishes to make a complaint to the Ombudsman, the public authority or other person so informed shall—
- (a) take all steps necessary to facilitate the making of the complaint; and
- 30** (b) send immediately to the Ombudsman, unopened, any written matter addressed to the Ombudsman.

(4)

Ombudsman.

(4) A complaint under subsection (1), and a consent for the purposes of subsection (2), must be in writing.

5 (5) Where a member of Parliament acts for a person under subsection (2) he does not, except for the purposes of sections 15, 16, 26 (4) and 29, thereby become the complainant.

(6) Where a member of Parliament publishes to a person for whom he acts under subsection (2) any matter, or
10 a copy of any matter, published to him by the Ombudsman, the publication has, for all purposes, the same effect as if it had been published to that person by the Ombudsman.

13. (1) Where it appears to the Ombudsman that any
conduct of a public authority about which a complaint may
15 be made under section 12 may be wrong, the Ombudsman may, whether or not any person has complained to him about the conduct, make the conduct the subject of an investigation under this Act. Decision for investigation.

(2) Subsection (1) has effect notwithstanding
20 anything in any Act passed before the passing of this Act.

(3) The Ombudsman may discontinue an investigation.

(4) Where any person has complained to the Ombudsman under section 12 about the conduct of a public
25 authority, the Ombudsman, in deciding whether to make that conduct the subject of an investigation under this Act or whether to discontinue an investigation commenced by him under this Act—

(a) may have regard to such matters as he thinks fit;
30 and

(b)

Ombudsman.

(b) without limiting paragraph (a), may have regard to whether, in his opinion—

- (i) the complaint is frivolous, vexatious or not in good faith;
- 5 (ii) the subject-matter of the complaint is trivial;
- (iii) the subject-matter of the complaint relates to the discharge by a public authority of a function which is substantially a trading or commercial function;
- 10 (iv) the conduct complained of occurred at too remote a time to justify investigation;
- (v) in relation to the conduct complained of there is or was available to the complainant an alternative and satisfactory means of redress; or
- 15 (vi) the complainant has no interest or an insufficient interest in the conduct complained of.

14. (1) The Governor may, by proclamation published ^{Amendment of Schedule.} in the Gazette, amend the Schedule so as to add to it, or to omit from it, any class of conduct of a public authority.

(2) Where the Schedule is amended by adding to it any class of conduct of a public authority, and conduct the subject of an investigation by the Ombudsman is or includes
 25 conduct of the added class, the Ombudsman shall discontinue the investigation in so far as it relates to conduct of the added class and shall not make any report concerning conduct of the added class.

(3) A proclamation under subsection (1)—

- 30 (a) takes effect from the date of the publication of the proclamation or a later date specified in the proclamation; and

(b)

Ombudsman.

(b) shall be laid before each House of Parliament within fourteen sitting days of that House after the date of proclamation.

(4) If either House of Parliament passes a resolution, of which notice has been given within fifteen sitting days of that House after a proclamation has been laid before it, disallowing the proclamation or any part thereof, the amendment of the Schedule made by the proclamation or part thereupon ceases to have effect.

(5) For the purposes of subsections (3) and (4) sitting days shall be counted, whether or not they occur during the same session.

(6) Where, by the operation of subsection (4), an amendment of the Schedule ceases to have effect, the Ombudsman may—

- (a) resume any investigation that he discontinued under subsection (2) by reason of the amendment; and
- (b) make a report concerning the conduct to which the resumed investigation relates.

15. Where—

(a) a complaint has been made to the Ombudsman about the conduct of a public authority; and

Reasons for refusal to investigate, etc.

(b) the Ombudsman—

- (i) refuses to investigate the conduct complained of; or
- (ii) discontinues an investigation of that conduct,

the Ombudsman shall inform the complainant in writing of his decision and the reasons for his decision.

16.

Ombudsman.

16. (1) Upon the Ombudsman deciding to make the conduct of a public authority the subject of an investigation under this Act, he shall give notice of his decision—

Notice of investigation.

- (a) where there is a complainant, to him;
- 5 (b) to the head of the public authority and, if practicable, to the public authority; and
- (c) as prescribed.

(2) A notice under this section must be in writing, must describe the conduct the subject of the investigation and
10 must, so far as practicable, identify the public authority.

17. An investigation under this Act shall be made in the absence of the public.

18. (1) For the purposes of an investigation under this Act, the Ombudsman may require a public authority—

Public authority to give information, etc.

- 15 (a) to give him a statement of information;
- (b) to produce to him any document or other thing; or
- (c) to give him a copy of any document.

(2) A requirement under this section must be in writing, must specify or describe the information, document
20 or thing required, and must fix a time for compliance.

19. (1) In an investigation under this Act, the Ombudsman may make or hold inquiries.

(2) For the purposes of any inquiry under this section, the Ombudsman has the powers, authorities, protections
25 and immunities conferred on a commissioner by Division 1 of Part II of the Royal Commissions Act, 1923, and that Act

(section

Ombudsman.

(section 13 and Division 2 of Part II excepted) applies to any witness summoned by or appearing before the Ombudsman in the same way as it applies to a witness summoned by or appearing before a commissioner, but section 11 (2) of that
5 Act shall have effect subject to section 21 of this Act.

20. In an investigation under this Act, the Ombudsman may, at any time— Entry on premises, etc.

- (a) enter and inspect any premises occupied or used by a public authority as a public authority; and
- 10 (b) inspect any document or thing in or on the premises.

21. (1) Subsections (2) and (3) apply where, in an investigation under this Act, the Ombudsman requires any person— Limits on secrecy and privilege.

- 15 (a) to give any statement of information;
- (b) to produce any document or other thing;
- (c) to give a copy of any document; or
- (d) to answer any question.

(2) The person so required must comply with the
20 requirement notwithstanding—

- (a) any rule of law which in proceedings in a court of law might justify an objection to compliance with a like requirement on grounds of public interest;
- (b) any privilege of a public authority; or
- 25 (c) if the person so required is a public authority, any duty of secrecy or other restriction on disclosure applying to that public authority.

(3)

Ombudsman.

(3) Subject to subsection (2), the Ombudsman shall set aside the requirement if it appears to him that any person has a ground of privilege whereby, in proceedings in a court of law, he might resist a like requirement and it does not appear to the Ombudsman that that person consents to compliance with the requirement.

(4) Subsections (1), (2) and (3) apply to a requirement made under section 18 or made in an inquiry under section 19.

(5) The Ombudsman may exercise his powers under section 20 notwithstanding—

- (a) any rule of law which, in proceedings in a court of law, might justify an objection to an inspection of the premises or to production of the document or thing, as the case requires, on grounds of public interest;
- (b) any privilege of a public authority; or
- (c) any duty of secrecy or other restriction on disclosure applying to a public authority.

(6) Subject to subsection (5) the Ombudsman shall not exercise his powers under section 20 where it appears to the Ombudsman that any person has a ground of privilege whereby, in proceedings in a court of law, he might resist inspection of the premises or production of the document or thing, as the case requires, and it does not appear to the Ombudsman that that person consents to the inspection or production.

22. (1) This Act does not enable the Ombudsman—

- (a) to require any person—
 - (i) to give any statement of information;
 - (ii) to produce any document or other thing;

Cabinet
proceed-
ings.

(iii)

Ombudsman.

- (iii) to give a copy of any document; or
- (iv) to answer any question,
- which relates to confidential proceedings of cabinet or any committee of cabinet; or
- 5 (b) to inspect any document or thing which so relates.

(2) For the purposes of subsection (1), a certificate of the Permanent Head of the Premier's Department that any information, document, thing or question relates to confidential proceedings of cabinet or of a committee of cabinet is
10 conclusive that it does so relate.

23. In an investigation under this Act, the Ombudsman ^{Expert} may, with the consent of the Minister, engage the services of ^{assistance.} any person for the purpose of getting expert assistance.

24. (1) In an investigation under this Act, the Ombuds- ^{Persons to} man shall give an opportunity to make submissions on the ^{be heard.} conduct the subject of the investigation—

- (a) if practicable, to the public authority whose conduct it is; and
- (b) to any other person given notice under section 16.

20 (2) Where, in an investigation under this Act, the Ombudsman considers that there are grounds for adverse comment in respect of any person, the Ombudsman, before making any such comment in any report, shall, so far as practicable—

- 25 (a) inform that person of the substance of the grounds of the adverse comment; and
- (b) give him an opportunity to make submissions.

(3) Subsection (2) does not apply in relation to a report under section 28.

Ombudsman.

25. (1) In an investigation under this Act, the Ombudsman shall, on request by the responsible Minister, consult him on the conduct the subject of the investigation. Consultation with responsible Minister.

- (2) Before publishing a report under section 26, the
5 Ombudsman—
- (a) shall inform the responsible Minister that he proposes to publish such a report; and
 - (b) shall, on request by that Minister, consult him.

PART IV.

10 **REPORTS.**

26. (1) Where, in an investigation under this Act, the Ombudsman finds that the conduct the subject of the investigation, or any part of the conduct, is wrong, the Ombudsman shall make a report accordingly, giving his reasons. Conduct wrong.

- 15 (2) In a report under this section, the Ombudsman may recommend—
- (a) that the conduct be considered or reconsidered by the public authority whose conduct it is, or by any person in a position to supervise or direct the public authority in relation to the conduct, or to review, rectify, mitigate or change the conduct or its consequences;
 - 20 (b) that action be taken to rectify, mitigate or change the conduct or its consequences;
 - 25 (c) that reasons be given for the conduct;
 - (d) that any law or practice relating to the conduct be changed; or
 - (e) that any other step be taken.

(3)

Ombudsman.

(3) The Ombudsman shall give a report under this section—

- (a) to the responsible Minister;
- (b) to the head of the authority whose conduct is the subject of the report; and
- (c) where the public authority is employed under the Public Service Act, 1902, to the Public Service Board.

(4) The Ombudsman may give a copy of a report under this section—

- (a) where the investigation arises out of a complaint to the Ombudsman, to the complainant;
- (b) to the public authority to whose conduct the report relates.

(5) The person to whom a report is given under subsection (3) (b) may, and on request by the Ombudsman shall, notify the Ombudsman of any action taken or proposed in consequence of a report under this section.

27. Where the Ombudsman is not satisfied that sufficient steps have been taken in due time in consequence of a report under section 26, he may make a report to the Minister for presentation to Parliament.

Default in consequent action.

28. Where the Ombudsman is of the opinion that a public authority is or may be guilty of misconduct in the course of his functions to such an extent as, in the opinion of the Ombudsman, may warrant dismissal, removal or punishment, the Ombudsman shall report his opinion—

Serious misconduct.

- (a) to the responsible Minister;
- (b) to the head of the public authority; and

(c)

Ombudsman.

- (c) where the public authority is employed under the Public Service Act, 1902, to the Public Service Board,

giving his reasons.

5 **29.** Where the Ombudsman investigates the conduct of a public authority pursuant to a complaint made to him, the Ombudsman—

- (a) may from time to time report to the complainant on the progress of the investigation;
- 10 (b) shall report to the complainant on the results of the investigation; and
- (c) may make such comments to the complainant on the investigation and its consequences as he thinks fit.

15 **30.** (1) The Ombudsman shall, as soon as practicable after the thirtieth day of June in each year, prepare and submit to the Minister a report of his work and activities for the twelve months preceding that date.

(2) The Minister shall lay that report or cause it to be laid before both Houses of Parliament as soon as practicable after the receipt by him of the report.

31. (1) The Ombudsman may, at any time, make a special report to the Minister for presentation to Parliament on any matter arising in connection with the discharge of his functions.

(2) The Ombudsman may include in a report under subsection (1) or under section 27 a recommendation that the report be made public forthwith.

(3)

Ombudsman.

(3) Where a report under subsection (1) or under section 27 contains a recommendation by the Ombudsman that the report be made public forthwith the Minister may make it public before it is presented to Parliament.

5

PART V.

GENERAL.

32. (1) The Governor may appoint and employ, under Staff. and subject to the Public Service Act, 1902, such officers and employees as may be necessary to enable the Ombudsman to
10 exercise and perform his powers, authorities, duties and functions.

(2) The Ombudsman may, with the approval of the responsible Minister, make use of the services of any public authority.

15 (3) A person who is employed for the purposes of subsection (1), or whose services are made use of under subsection (2), is, while he is so employed, or while his services are so used, an officer of the Ombudsman.

33. (1) In this section "superannuation scheme" means
20 a scheme, fund or arrangement which is established by or under an Act and which provides for superannuation or retirement benefits. Preservation of certain rights.

(2) Subject to subsection (3) and to the terms of his appointment, where the Ombudsman was, immediately
25 before his appointment as Ombudsman, an officer of the Public Service or a contributor to a superannuation scheme, he—

(a) shall retain any rights accrued or accruing to him as such an officer or contributor;

(b)

Ombudsman.

(b) may continue to contribute to any superannuation scheme to which he was a contributor immediately before his appointment as Ombudsman; and

5 (c) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity under the superannuation scheme,

as if he had continued to be such an officer or contributor during his service as Ombudsman and—

10 (d) his service as Ombudsman shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he continues to contribute or by which that entitlement is conferred;

15 (e) he shall be deemed to be an officer or employee, and the Minister shall be deemed to be his employer, for the purposes of the superannuation scheme to which he is entitled to contribute under this subsection.

(3) Where, but for this subsection, the Ombudsman
20 would be entitled under subsection (2) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under that scheme, he shall not be so entitled upon his becoming (whether upon his appointment as Ombudsman or at any later time while he holds office as Ombudsman) a
25 contributor to any other superannuation scheme and the provisions of subsection (2) (e) cease to apply to or in respect of him and the Minister in any case where he becomes a contributor to another superannuation scheme.

(4) Subsection (3) does not prevent the payment
30 to the Ombudsman upon his ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him had he ceased, by reason of resignation, to be an officer or employee for the purposes of that scheme.

(5)

Ombudsman.

(5) Subject to the terms of his appointment, where the Ombudsman was, immediately before his appointment as Ombudsman, an officer of the Public Service, he shall—

5 (a) if he ceases to hold office as Ombudsman otherwise than pursuant to section 6 (5); and

(b) if he is under the age of sixty years, be appointed to some office in the Public Service not lower in classification and salary than that which he held immediately before his appointment as Ombudsman.

10 (6) The Ombudsman is not, in respect of the same period of service, entitled to claim a benefit under this Act and another Act.

15 **34.** The Ombudsman shall not, nor shall an officer of the Ombudsman, disclose any information obtained by him in the course of his office, unless the disclosure is made— Disclosure by Ombudsman or officer.

(a) where the information is obtained from a public authority, with the consent of the head of that authority or of the responsible Minister;

20 (b) where the information is obtained from any other person, with the consent of that person;

(c) for the purpose of any proceedings under section 37 or under Part III of the Royal Commissions Act, 1923; or

25 (d) for the purpose of discharging his functions under this Act.

Penalty : One thousand dollars.

35. (1) The Ombudsman shall not, nor shall an officer of the Ombudsman, be competent or compellable to give evidence in any legal proceedings in respect of any information obtained by him in the course of his office. Ombudsman or officer as witness.

(2)

Ombudsman.

(2) Subsection (1) does not apply to any legal proceedings under section 37 or under Part III of the Royal Commissions Act, 1923.

5 36. (1) Where, under section 18, a person is required to give a statement that tends to incriminate that person, neither the requirement nor the statement may be used in any proceedings against that person except proceedings under section 37 (1) (c). Incrimina-
tory
statement.

(2) Subsection (1) applies whether the person
10 required to give a statement objects to giving it or not.

37. (1) A person shall not—

Offences.

- (a) without lawful excuse, wilfully obstruct, hinder or resist the Ombudsman or an officer of the Ombudsman in the exercise of his powers under this Act;
- 15 (b) without lawful excuse, refuse or wilfully fail to comply with any lawful requirement of the Ombudsman or an officer of the Ombudsman under this Act; or
- 20 (c) wilfully make any false statement to or mislead, or attempt to mislead, the Ombudsman or an officer of the Ombudsman in the exercise of his powers under this Act.

Penalty : One thousand dollars.

(2) A person shall not directly or indirectly—

- 25 (a) where he is not the Ombudsman—represent that he is the Ombudsman;
- (b) where he has not been appointed under section 7 as acting Ombudsman—represent that he has been so appointed;

(c)

Ombudsman.

- (c) where he is not the Deputy Ombudsman—represent that he is the Deputy Ombudsman;
- (d) where he is not a special officer of the Ombudsman—represent that he is a special officer of the Ombudsman;
- (e) where he is not an officer of the Ombudsman—represent that he is an officer of the Ombudsman; or
- (f) where he is not engaged in the administration or execution of this Act—represent that he is so engaged.

Penalty: One thousand dollars.

(3) For the purposes of subsection (2), a person represents that a state of affairs exists if he does or says anything, or causes, permits or suffers anything to be done or said, whereby it is represented, or whereby a belief may be induced, that the state of affairs exists.

38. A penalty imposed by this Act may be recovered in a summary manner before a Stipendiary Magistrate sitting in petty sessions alone.

39. The Governor may make regulations under this Act for or with respect to prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for the purpose of carrying out or giving effect to this Act.

40. The Defamation Act, 1974, is amended—

Amendment
of Act No.
18, 1974.

- (a) by inserting after section 17 the following section :—

17A. (1) There is a defence of absolute privilege for a publication to or by the Ombudsman, as Ombudsman, or to any officer of the Ombudsman, as such an officer.

Matters
arising
under
Ombudsman
Act, 1974.

Ombudsman.

(2) Subsection (1) applies in relation to an acting Ombudsman, the Deputy Ombudsman and a special officer of the Ombudsman in the same way as it applies in relation to the Ombudsman.

5 (3) There is a defence of absolute privilege for a publication to a member of Parliament for the purposes of section 12 (2) of the Ombudsman Act, 1974.

10 (4) There is a defence of absolute privilege for the publication under section 31 (3) of the Ombudsman Act, 1974, of a report under that Act.

15 (5) There is a defence of absolute privilege for the publication, under the authority of the Minister for the time being administering the Ombudsman Act, 1974, of a copy of a report previously made public under section 31 (3) of that Act.

(b) (i) by omitting from clause 2 (8) of Schedule 2 Schedule 2. the word "or";

20 (ii) by omitting from clause 2 (9) of Schedule 2 the word "office." and by inserting instead the following words and subclause :—

office; or

25 (10) proceedings of the Ombudsman, so far as those proceedings are included in a report previously made public under section 31 (3) of the Ombudsman Act, 1974.

SCHEDULE.

Ombudsman.

SCHEDULE.

Sec. 12.

EXCLUDED CONDUCT OF PUBLIC AUTHORITIES.

1. Conduct of—
 - 5 (a) the Governor, whether acting with or without the advice of the Executive Council;
 - (b) a Minister of the Crown, including a Minister of the Crown acting as a corporation sole;
 - (c) Parliament;
 - (d) the Houses of Parliament;
 - 10 (e) a committee of either House, or both Houses, of Parliament;
 - (f) either House of Parliament;
 - (g) a member of either House of Parliament, where acting as such;
 - 15 (h) an officer of Parliament or of either House of Parliament, where acting as such.
2. Conduct of a person or body before whom witnesses may be compelled to appear and give evidence, and persons associated with such a person or body.
3. Conduct of a body of which one or more of the members is
20 appointed by the Governor or a Minister of the Crown where—
 - (a) at least one member of the body may be appointed by virtue of his being a Judge of the Supreme Court of New South Wales, a member of the Industrial Commission of New South Wales or a Judge of the District Court of New South
25 Wales; and
 - (b) such a person, if appointed as such a member, has a right or duty to preside at a meeting of the body at which he is present.
4. Conduct of a public authority relating to a Bill for an Act or
30 the making of a rule, regulation or by-law.
5. Conduct of a public authority constituted pursuant to an arrangement between—
 - (a) the State of New South Wales and the Commonwealth;
 - (b) the State of New South Wales and any other State;
 - 35 (c) the State of New South Wales, any other State and the Commonwealth.
6. Conduct of a public authority where acting as a legal adviser to a public authority or as legal representative of a public authority.

Ombudsman.

7. Conduct of the Attorney General, or of the Solicitor General, relating to the commencement, carrying on or termination of any proceedings before a court, including a coronial inquiry and committal proceedings before a magistrate.
- 5 8. Conduct of a public authority relating to the carrying on of any proceedings—
- (a) before any court, including a coronial inquiry and committal proceedings before a magistrate; or
 - (b) before any other person or body before whom witnesses may be compelled to appear and give evidence.
- 10 9. Conduct of a public authority relating to an exercise of the prerogative of mercy.
10. Conduct of a public authority where acting as a commissioner under the Royal Commissions Act, 1923, or, by the authority of an
- 15 Act, exercising the powers of such a commissioner.
11. Conduct of the Council of the City of Sydney and of the Sydney County Council and of the officers and employees of those councils.
12. Conduct of a public authority relating to—
- (a) the appointment or employment of a person as an officer or
- 20 employee; and
- (b) matters affecting a person as an officer or employee.
13. Conduct of a member of the Police Force when acting as a constable.
14. Conduct of a public authority relating to the investment of any
- 25 funds.
15. Conduct of a public authority relating to the payment of any money as an act of grace.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1974
[25c]

No. , 1974.

A BILL

To provide for the appointment of an Ombudsman;
to define his powers, authorities, duties and functions;
and for purposes connected therewith.

[MR MADDISON—27 August, 1974.]

BE

Ombudsman.

BE it enacted by the Queen's Most Excellent Majesty, by
and with the advice and consent of the Legislative
Council and Legislative Assembly of New South Wales in
Parliament assembled, and by the authority of the same, as
5 follows :—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Ombudsman Act, Short title.
1974".

10 2. (1) This Act, Part III excepted, commences on the
date of assent to this Act. Commence-
ment.

(2) Part III commences on such day as may be
appointed by the Governor in respect thereof and as may be
notified by proclamation published in the Gazette.

15 3. This Act is divided as follows :—

Division
of Act.

PART I.—PRELIMINARY—ss. 1–5.

PART II.—THE OMBUDSMAN—ss. 6–11.

PART III.—INVESTIGATIONS—ss. 12–25.

PART IV.—REPORTS—ss. 26–31.

20 PART V.—GENERAL—ss. 32–40.

SCHEDULE.

4. This Act binds the Crown not only in right of New Act binds
South Wales but also, so far as the legislative power of Crown.
Parliament permits, the Crown in all its other capacities.

Ombudsman.

5. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires— Interpretation.

“appointed day” means the day appointed and notified under section 2 (2);

5 “conduct” means—

- (a) any action or inaction relating to a matter of administration; and
- (b) any alleged action or inaction relating to a matter of administration;

10 “head” means—

- (a) in relation to a public authority who is a statutory employee in relation to an Act that constitutes a corporation sole—the corporation;
- 15 (b) in relation to a public authority who is a statutory employee in relation to an Act that constitutes a body of persons (incorporated or not) that executes that or any other Act—the person entitled to preside at a meeting of the body;
- 20 (c) in relation to a public authority who is not a person referred to in paragraph (a) or (b) but is—
 - 25 (i) an officer of the Public Service employed for the purposes of a Department of the Government; or
 - (ii) a person otherwise in the service of the Crown who is employed for those purposes—
 - 30 the permanent head of that Department;
- (d) in relation to a public authority that is a corporation sole—the corporation;

(e)

Ombudsman.

(e) in relation to a public authority that is a corporation aggregate or an unincorporated body—the person entitled to preside at meetings of the corporation or body;

5 (f) in any other case—the prescribed person;

“person” includes an unincorporated body of persons;

“public authority” means—

(a) any person appointed to an office by the Governor;

10 (b) any statutory body representing the Crown;

(c) any officer of the Public Service;

(d) any person in the service of the Crown or of any statutory body representing the Crown;

15 (e) any person in relation to whom or to whose function an account is kept of administration or working expenses, where the account—

(i) is part of the accounts prepared pursuant to the Audit Act, 1902;

20 (ii) is required by or under any Act to be audited by the Auditor-General;

(iii) is an account with respect to which the Auditor-General has powers under any law;

25 (iv) is an account with respect to which the Auditor-General may exercise powers under a law relating to the audit of accounts where requested to do so by a Minister of the Crown;

30 (f) any person entitled to be reimbursed his expenses, from a fund of which an account mentioned in paragraph (e) is kept, of attending meetings or carrying out the business of any body constituted by an Act;

(g)

Ombudsman.

- (g) any holder of an office declared by the regulations to be an office of a public authority for the purposes of this Act; and
- 5 (h) any person acting for or on behalf of, or in the place of, or as deputy or delegate of, any person described in any of the foregoing paragraphs;

“regulations” means regulations made under this Act;

“responsible Minister” means—

- 10 (a) in relation to a public authority who is a statutory employee—the Minister of the Crown administering the Act in relation to which the public authority is a statutory employee;
- 15 (b) in relation to a public authority who is not a statutory employee but is—
 - (i) an officer of the Public Service employed for the purposes of a Department of the Government; or
 - 20 (ii) a person otherwise employed by the Crown for those purposes—
the Minister of the Crown administering that Department;
- 25 (c) in relation to any other public authority—the Minister of the Crown who, in the opinion of the Ombudsman, is most nearly concerned with the conduct of the public authority;

“statutory employee” means, in relation to an Act—

- 30 (a) a person in the service of a corporation constituted by that Act, being, in the case of a corporation aggregate, a corporation of which one or more of the members is appointed by the Governor or a Minister;

(b)

Ombudsman.

- 5 (b) an officer of the Public Service employed in connection with the administration of that Act or a person otherwise in the service of the Crown who is employed in that connection.

(2) For the purposes of this Act, conduct of a public authority is wrong if it is—

- 10 (a) contrary to law;
- (b) unreasonable, unjust, oppressive or improperly discriminatory, whether or not it is in accordance with any law or established practice;
- (c) based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations;
- (d) based wholly or partly on a mistake of law or fact;
- 15 (e) conduct for which reasons should be given but are not given; or
- (f) otherwise wrong.

PART II.

THE OMBUDSMAN.

- 20 6. (1) The Governor may, on the recommendation of the Minister, appoint an Ombudsman on such terms and conditions as are specified in the instrument of appointment. ^{Office of Ombudsman.}

(2) Subject to this Act, the Ombudsman holds office for such period, not exceeding seven years, as is specified in the instrument of his appointment and is eligible for re-appointment.

25

(3)

Ombudsman.

(3) A person is not eligible for appointment as Ombudsman—

- (a) if he is of or above the age of sixty-five years; or
- 5 (b) if he is a member of the Legislative Council or the Legislative Assembly or is a member of a House of Parliament of another State or of the Commonwealth.

(4) The Ombudsman vacates his office—

- 10 (a) on the day on which he attains the age of sixty-five years;
- (b) if he engages in any paid employment outside the duties of his office;
- 15 (c) if he is nominated for election as a member of the Legislative Council or the Legislative Assembly or as a member of a House of Parliament of another State or of the Commonwealth; or
- (d) if he resigns his office by writing under his hand addressed to the Governor and the Governor accepts the resignation.

20 (5) The Ombudsman may, at any time, be removed from his office by the Governor upon the address of both Houses of Parliament.

(6) The provisions of the Public Service Act, 1902, do not apply to the appointment of the Ombudsman and the
25 Ombudsman is not subject to those provisions.

7. (1) The Governor may, on the recommendation of the Minister, appoint an acting Ombudsman during the absence of the Ombudsman or during a vacancy in his office. ^{Acting Ombudsman.}

(2) An acting Ombudsman is entitled to such salary
30 and allowances as the Governor may from time to time determine.

(3)

Ombudsman.

(3) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising an acting Ombudsman to act as Ombudsman.

(4) This Act, section 6 (2) excepted, applies to and
5 in respect of an acting Ombudsman as it applies to and in respect of the Ombudsman.

8. (1) The Governor may, on the recommendation of Deputy
the Minister, appoint a Deputy Ombudsman. Ombudsman.

(2) Sections 6 and 33 apply to and in respect of the
10 Deputy Ombudsman as they apply to and in respect of the Ombudsman.

(3) The Deputy Ombudsman may, to the extent to which he is directed by the Ombudsman so to do, exercise or perform any power, authority, duty or function of the
15 Ombudsman other than a power, authority, duty or function conferred or imposed by section 9, 10, 19 (2), 29 (b) and (c) or 30.

(4) Where a Deputy Ombudsman is appointed as acting Ombudsman he does not, on that account, cease to be
20 Deputy Ombudsman.

9. The Ombudsman may, with the concurrence of the Special
Minister, appoint an officer of the Ombudsman to be a special officer. officer of the Ombudsman.

10. (1) Subject to subsection (2), the Ombudsman may Delegation.
25 delegate to a special officer of the Ombudsman the exercise or performance of any powers, authorities, duties or functions of the Ombudsman.

(2) The Ombudsman may not delegate the exercise or performance of—

30 (a) any power, authority or duty to make any report under this Act (other than a report under section 28);

(b)

Ombudsman.

- (b) any power or authority conferred by section 9 or 19 (2); or
- (c) the power and authority conferred by subsection (1).

5 (3) A delegation under this section may be made subject to conditions or limitations as to the exercise or performance of any of the powers, authorities, duties or functions delegated, or as to time or circumstances.

10 (4) A delegation under this section must be made by instrument in writing.

 (5) An instrument of delegation must specify—

- (a) the powers, authorities, duties or functions the exercise or performance of which is delegated; and
- (b) any conditions or limitations on the delegation.

15 (6) The Ombudsman may revoke a delegation under this section at any time, whether made by him or not.

20 (7) A delegation under this section is not revoked by the happening of a vacancy in the office of Ombudsman or by an absence or disability of the Ombudsman, except to the extent that the instrument of delegation so provides.

 (8) During a vacancy in the office of Ombudsman, if there is no acting Ombudsman, the Minister may revoke a delegation under this section.

25 (9) Notwithstanding any delegation made under this section, the Ombudsman may continue to exercise or perform all or any of the powers, authorities, duties or functions delegated.

Ombudsman.

- 11.** Any act or thing done, suffered or omitted—
- (a) pursuant to this Act by an acting Ombudsman or the Deputy Ombudsman; or
 - (b) pursuant to a delegation under section 10,
- 5** has the same force and effect as if done, suffered or omitted by the Ombudsman.
- Effect of certain acts, etc.

PART III.

INVESTIGATIONS.

- 12.** (1) Subject to this section, any person (including **Right to** a public authority) may complain to the Ombudsman about **complain.** the conduct of a public authority unless—
- (a) the conduct is of a class described in the Schedule;
 - (b) the conduct took place more than twelve months before the appointed day; or
 - 15** (c) the conduct took place during the period of twelve months that last preceded the appointed day and the complaint was made more than twelve months after the appointed day.
- 20** (2) Where a person wishes to make a complaint under subsection (1), the complaint may, with the consent of that person, be made on his behalf by a member of Parliament.
- 25** (3) Where a person is detained by, or in the custody of, a public authority and informs the public authority or another person having superintendence over him that he wishes to make a complaint to the Ombudsman, the public authority or other person so informed shall—
- (a) take all steps necessary to facilitate the making of the complaint; and
 - 30** (b) send immediately to the Ombudsman, unopened, any written matter addressed to the Ombudsman.

(4)

Ombudsman.

(4) A complaint under subsection (1), and a consent for the purposes of subsection (2), must be in writing.

5 (5) Where a member of Parliament acts for a person under subsection (2) he does not, except for the purposes of sections 15, 16, 26 (4) and 29, thereby become the complainant.

10 (6) Where a member of Parliament publishes to a person for whom he acts under subsection (2) any matter, or a copy of any matter, published to him by the Ombudsman, the publication has, for all purposes, the same effect as if it had been published to that person by the Ombudsman.

15 **13.** (1) Where it appears to the Ombudsman that any conduct of a public authority about which a complaint may be made under section 12 may be wrong, the Ombudsman may, whether or not any person has complained to him about the conduct, make the conduct the subject of an investigation under this Act. Decision for investigation.

20 (2) Subsection (1) has effect notwithstanding anything in any Act passed before the passing of this Act.

(3) The Ombudsman may discontinue an investigation.

25 (4) Where any person has complained to the Ombudsman under section 12 about the conduct of a public authority, the Ombudsman, in deciding whether to make that conduct the subject of an investigation under this Act or whether to discontinue an investigation commenced by him under this Act—

30 (a) may have regard to such matters as he thinks fit; and

(b)

Ombudsman.

- (b) without limiting paragraph (a), may have regard to whether, in his opinion—
- (i) the complaint is frivolous, vexatious or not in good faith;
 - 5 (ii) the subject-matter of the complaint is trivial;
 - (iii) the subject-matter of the complaint relates to the discharge by a public authority of a function which is substantially a trading or commercial function;
 - 10 (iv) the conduct complained of occurred at too remote a time to justify investigation;
 - (v) in relation to the conduct complained of there is or was available to the complainant an alternative and satisfactory means of redress; or
 - 15 (vi) the complainant has no interest or an insufficient interest in the conduct complained of.

14. (1) The Governor may, by proclamation published ^{Amendment of Schedule.} in the Gazette, amend the Schedule so as to add to it, or to omit from it, any class of conduct of a public authority.

(2) Where the Schedule is amended by adding to it any class of conduct of a public authority, and conduct the subject of an investigation by the Ombudsman is or includes
25 conduct of the added class, the Ombudsman shall discontinue the investigation in so far as it relates to conduct of the added class and shall not make any report concerning conduct of the added class.

(3) A proclamation under subsection (1)—
30 (a) takes effect from the date of the publication of the proclamation or a later date specified in the proclamation; and

(b)

Ombudsman.

(b) shall be laid before each House of Parliament within fourteen sitting days of that House after the date of proclamation.

(4) If either House of Parliament passes a resolution, of which notice has been given within fifteen sitting days of that House after a proclamation has been laid before it, disallowing the proclamation or any part thereof, the amendment of the Schedule made by the proclamation or part thereupon ceases to have effect.

(5) For the purposes of subsections (3) and (4) sitting days shall be counted, whether or not they occur during the same session.

(6) Where, by the operation of subsection (4), an amendment of the Schedule ceases to have effect, the Ombudsman may—

- (a) resume any investigation that he discontinued under subsection (2) by reason of the amendment; and
- (b) make a report concerning the conduct to which the resumed investigation relates.

15. Where—

(a) a complaint has been made to the Ombudsman about the conduct of a public authority; and

(b) the Ombudsman—

- (i) refuses to investigate the conduct complained of; or
- (ii) discontinues an investigation of that conduct,

the Ombudsman shall inform the complainant in writing of his decision and the reasons for his decision.

Reasons for refusal to investigate, etc.

Ombudsman.

16. (1) Upon the Ombudsman deciding to make the conduct of a public authority the subject of an investigation under this Act, he shall give notice of his decision— Notice of investigation.

- (a) where there is a complainant, to him ;
- 5 (b) to the head of the public authority and, if practicable, to the public authority ; and
- (c) as prescribed.

(2) A notice under this section must be in writing, must describe the conduct the subject of the investigation and 10 must, so far as practicable, identify the public authority.

17. An investigation under this Act shall be made in the Privacy. absence of the public.

18. (1) For the purposes of an investigation under this Act, the Ombudsman may require a public authority— Public authority to give information, etc.

- 15 (a) to give him a statement of information ;
- (b) to produce to him any document or other thing ; or
- (c) to give him a copy of any document.

(2) A requirement under this section must be in writing, must specify or describe the information, document 20 or thing required, and must fix a time for compliance.

19. (1) In an investigation under this Act, the Inquiries. Ombudsman may make or hold inquiries.

(2) For the purposes of any inquiry under this section, the Ombudsman has the powers, authorities, protections 25 and immunities conferred on a commissioner by Division 1 of Part II of the Royal Commissions Act, 1923, and that Act

(section

Ombudsman.

(section 13 and Division 2 of Part II excepted) applies to any witness summoned by or appearing before the Ombudsman in the same way as it applies to a witness summoned by or appearing before a commissioner, but section 11 (2) of that
5 Act shall have effect subject to section 21 of this Act.

20. In an investigation under this Act, the Ombudsman may, at any time— Entry on premises, etc.

- (a) enter and inspect any premises occupied or used by a public authority as a public authority; and
- 10 (b) inspect any document or thing in or on the premises.

21. (1) Subsections (2) and (3) apply where, in an investigation under this Act, the Ombudsman requires any person— Limits on secrecy and privilege.

- 15 (a) to give any statement of information;
- (b) to produce any document or other thing;
- (c) to give a copy of any document; or
- (d) to answer any question.

(2) The person so required must comply with the
20 requirement notwithstanding—

- (a) any rule of law which in proceedings in a court of law might justify an objection to compliance with a like requirement on grounds of public interest;
- (b) any privilege of a public authority; or
- 25 (c) if the person so required is a public authority, any duty of secrecy or other restriction on disclosure applying to that public authority.

(3)

Ombudsman.

(3) Subject to subsection (2), the Ombudsman shall set aside the requirement if it appears to him that any person has a ground of privilege whereby, in proceedings in a court of law, he might resist a like requirement and it does not appear to the Ombudsman that that person consents to compliance with the requirement.

(4) Subsections (1), (2) and (3) apply to a requirement made under section 18 or made in an inquiry under section 19.

(5) The Ombudsman may exercise his powers under section 20 notwithstanding—

- (a) any rule of law which, in proceedings in a court of law, might justify an objection to an inspection of the premises or to production of the document or thing, as the case requires, on grounds of public interest;
- (b) any privilege of a public authority; or
- (c) any duty of secrecy or other restriction on disclosure applying to a public authority.

(6) Subject to subsection (5) the Ombudsman shall not exercise his powers under section 20 where it appears to the Ombudsman that any person has a ground of privilege whereby, in proceedings in a court of law, he might resist inspection of the premises or production of the document or thing, as the case requires, and it does not appear to the Ombudsman that that person consents to the inspection or production.

22. (1) This Act does not enable the Ombudsman—

(a) to require any person—

- (i) to give any statement of information;
- (ii) to produce any document or other thing;

(iii)

Cabinet
proceed-
ings.

Ombudsman.

- (iii) to give a copy of any document; or
 - (iv) to answer any question,
- which relates to confidential proceedings of cabinet or any committee of cabinet; or
- 5 (b) to inspect any document or thing which so relates.

(2) For the purposes of subsection (1), a certificate of the Permanent Head of the Premier's Department that any information, document, thing or question relates to confidential proceedings of cabinet or of a committee of cabinet is

10 conclusive that it does so relate.

23. In an investigation under this Act, the Ombudsman may, with the consent of the Minister, engage the services of ^{Expert} assistance. any person for the purpose of getting expert assistance.

24. (1) In an investigation under this Act, the Ombuds- ^{Persons to} man shall give an opportunity to make submissions on the ^{be heard.} conduct the subject of the investigation—

15

- (a) if practicable, to the public authority whose conduct it is; and
- (b) to any other person given notice under section 16.

20 (2) Where, in an investigation under this Act, the Ombudsman considers that there are grounds for adverse comment in respect of any person, the Ombudsman, before making any such comment in any report, shall, so far as practicable—

- 25 (a) inform that person of the substance of the grounds of the adverse comment; and
- (b) give him an opportunity to make submissions.

(3) Subsection (2) does not apply in relation to a report under section 28.

Ombudsman.

25. (1) In an investigation under this Act, the Ombudsman shall, on request by the responsible Minister, consult him on the conduct the subject of the investigation. Consultation with responsible Minister.

(2) Before publishing a report under section 26, the Ombudsman—

- (a) shall inform the responsible Minister that he proposes to publish such a report; and
- (b) shall, on request by that Minister, consult him.

PART IV.

REPORTS.

26. (1) Where, in an investigation under this Act, the Ombudsman finds that the conduct the subject of the investigation, or any part of the conduct, is wrong, the Ombudsman shall make a report accordingly, giving his reasons. Conduct wrong.

(2) In a report under this section, the Ombudsman may recommend—

- (a) that the conduct be considered or reconsidered by the public authority whose conduct it is, or by any person in a position to supervise or direct the public authority in relation to the conduct, or to review, rectify, mitigate or change the conduct or its consequences;
- (b) that action be taken to rectify, mitigate or change the conduct or its consequences;
- (c) that reasons be given for the conduct;
- (d) that any law or practice relating to the conduct be changed; or
- (e) that any other step be taken.

(3)

Ombudsman.

(3) The Ombudsman shall give a report under this section—

- (a) to the responsible Minister;
- 5 (b) to the head of the authority whose conduct is the subject of the report; and
- (c) where the public authority is employed under the Public Service Act, 1902, to the Public Service Board.

(4) The Ombudsman may give a copy of a report 10 under this section—

- (a) where the investigation arises out of a complaint to the Ombudsman, to the complainant;
- (b) to the public authority to whose conduct the report relates.

15 (5) The person to whom a report is given under subsection (3) (b) may, and on request by the Ombudsman shall, notify the Ombudsman of any action taken or proposed in consequence of a report under this section.

20 **27.** Where the Ombudsman is not satisfied that sufficient steps have been taken in due time in consequence of a report under section 26, he may make a report to the Minister for presentation to Parliament. Default in consequent action.

25 **28.** Where the Ombudsman is of the opinion that a public authority is or may be guilty of misconduct in the course of his functions to such an extent as, in the opinion of the Ombudsman, may warrant dismissal, removal or punishment, the Ombudsman shall report his opinion— Serious misconduct.

- (a) to the responsible Minister;
- (b) to the head of the public authority; and

(c)

Ombudsman.

- (c) where the public authority is employed under the Public Service Act, 1902, to the Public Service Board,

giving his reasons.

- 5 **29.** Where the Ombudsman investigates the conduct of a public authority pursuant to a complaint made to him, the Ombudsman— Report to complainant.

(a) may from time to time report to the complainant on the progress of the investigation;

- 10 (b) shall report to the complainant on the results of the investigation; and

(c) may make such comments to the complainant on the investigation and its consequences as he thinks fit.

- 15 **30.** (1) The Ombudsman shall, as soon as practicable after the thirtieth day of June in each year, prepare and submit to the Minister a report of his work and activities for the twelve months preceding that date. Annual report.

(2) The Minister shall lay that report or cause it to be laid before both Houses of Parliament as soon as practicable after the receipt by him of the report.

- 25 **31.** (1) The Ombudsman may, at any time, make a special report to the Minister for presentation to Parliament on any matter arising in connection with the discharge of his functions. Special report to Parliament.

(2) The Ombudsman may include in a report under subsection (1) or under section 27 a recommendation that the report be made public forthwith.

(3)

Ombudsman.

(3) Where a report under subsection (1) or under section 27 contains a recommendation by the Ombudsman that the report be made public forthwith the Minister may make it public before it is presented to Parliament.

5

PART V.

GENERAL.

32. (1) The Governor may appoint and employ, under Staff. and subject to the Public Service Act, 1902, such officers and employees as may be necessary to enable the Ombudsman to
10 exercise and perform his powers, authorities, duties and functions.

(2) The Ombudsman may, with the approval of the responsible Minister, make use of the services of any public authority.

15 (3) A person who is employed for the purposes of subsection (1), or whose services are made use of under subsection (2), is, while he is so employed, or while his services are so used, an officer of the Ombudsman.

33. (1) In this section "superannuation scheme" means
25 a scheme, fund or arrangement which is established by or under an Act and which provides for superannuation or retirement benefits. Preservation of certain rights.

(2) Subject to subsection (3) and to the terms of his appointment, where the Ombudsman was, immediately
30 before his appointment as Ombudsman, an officer of the Public Service or a contributor to a superannuation scheme, he—

(a) shall retain any rights accrued or accruing to him as such an officer or contributor;

(b)

Ombudsman.

- (b) may continue to contribute to any superannuation scheme to which he was a contributor immediately before his appointment as Ombudsman; and
- 5 (c) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity under the superannuation scheme,
- as if he had continued to be such an officer or contributor during his service as Ombudsman and—
- 10 (d) his service as Ombudsman shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he continues to contribute or by which that entitlement is conferred;
- 15 (e) he shall be deemed to be an officer or employee, and the Minister shall be deemed to be his employer, for the purposes of the superannuation scheme to which he is entitled to contribute under this subsection.

(3) Where, but for this subsection, the Ombudsman 20 would be entitled under subsection (2) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under that scheme, he shall not be so entitled upon his becoming (whether upon his appointment as Ombudsman or at any later time while he holds office as Ombudsman) a 25 contributor to any other superannuation scheme and the provisions of subsection (2) (e) cease to apply to or in respect of him and the Minister in any case where he becomes a contributor to another superannuation scheme.

(4) Subsection (3) does not prevent the payment 30 to the Ombudsman upon his ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him had he ceased, by reason of resignation, to be an officer or employee for the purposes of that scheme.

(5)

Ombudsman.

(5) Subject to the terms of his appointment, where the Ombudsman was, immediately before his appointment as Ombudsman, an officer of the Public Service, he shall—

5 (a) if he ceases to hold office as Ombudsman otherwise than pursuant to section 6 (5); and

(b) if he is under the age of sixty years, be appointed to some office in the Public Service not lower in classification and salary than that which he held immediately before his appointment as Ombudsman.

10 (6) The Ombudsman is not, in respect of the same period of service, entitled to claim a benefit under this Act and another Act.

34. The Ombudsman shall not, nor shall an officer of the Ombudsman, disclose any information obtained by him 15 in the course of his office, unless the disclosure is made— Disclosure by Ombudsman or officer.

(a) where the information is obtained from a public authority, with the consent of the head of that authority or of the responsible Minister;

20 (b) where the information is obtained from any other person, with the consent of that person;

(c) for the purpose of any proceedings under section 37 or under Part III of the Royal Commissions Act, 1923; or

25 (d) for the purpose of discharging his functions under this Act.

Penalty : One thousand dollars.

35. (1) The Ombudsman shall not, nor shall an officer of the Ombudsman, be competent or compellable to give 30 evidence in any legal proceedings in respect of any information obtained by him in the course of his office. Ombudsman or officer as witness.

Ombudsman.

(2) Subsection (1) does not apply to any legal proceedings under section 37 or under Part III of the Royal Commissions Act, 1923.

5 **36.** (1) Where, under section 18, a person is required to give a statement that tends to incriminate that person, neither the requirement nor the statement may be used in any proceedings against that person except proceedings under section 37 (c). Incrimina-
tory
statement.

10 (2) Subsection (1) applies whether the person required to give a statement objects to giving it or not.

37. A person shall not—

Offences.

- (a) without lawful excuse, wilfully obstruct, hinder or resist the Ombudsman or an officer of the Ombudsman in the exercise of his powers under this Act;
- 15 (b) without lawful excuse, refuse or wilfully fail to comply with any lawful requirement of the Ombudsman or an officer of the Ombudsman under this Act; or
- 20 (c) wilfully make any false statement to or mislead, or attempt to mislead, the Ombudsman or an officer of the Ombudsman in the exercise of his powers under this Act.

Penalty : One thousand dollars.

38. A penalty imposed by this Act may be recovered in a summary manner before a Stipendiary Magistrate sitting in petty sessions alone. Proceed-
ings for
offences.

39.

Ombudsman.

39. The Governor may make regulations under this Act for or with respect to prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for the purpose of carrying out or giving effect to this Act.

Regulations.

40. The Defamation Act, 1974, is amended—

Amendment
of Act No.
18, 1974.

(a) by inserting after section 17 the following section :—

Sec. 17A.

17A. (1) There is a defence of absolute privilege for a publication to or by the Ombudsman, as Ombudsman, or to any officer of the Ombudsman, as such an officer.

Matters
arising
under
Ombudsman
Act, 1974.

(2) Subsection (1) applies in relation to an acting Ombudsman, the Deputy Ombudsman and a special officer of the Ombudsman in the same way as it applies in relation to the Ombudsman.

(3) There is a defence of absolute privilege for a publication to a member of Parliament for the purposes of section 12 (2) of the Ombudsman Act, 1974.

(4) There is a defence of absolute privilege for the publication under section 31 (3) of the Ombudsman Act, 1974, of a report under that Act.

(5) There is a defence of absolute privilege for the publication, under the authority of the Minister for the time being administering the Ombudsman Act, 1974, of a copy of a report previously made public under section 31 (3) of that Act.

Ombudsman.

(b) (i) by omitting from clause 2 (8) of Schedule 2 Schedule 2.
the word "or";

5 (ii) by omitting from clause 2 (9) of Schedule 2
the word "office." and by inserting instead the
following words and subclause :—
office; or

10 (10) proceedings of the Ombudsman, so far
as those proceedings are included in a
report previously made public under
section 31 (3) of the Ombudsman
Act, 1974.

Ombudsman.

SCHEDULE.

Sec. 12.

EXCLUDED CONDUCT OF PUBLIC AUTHORITIES.

1. Conduct of—
 - 5 (a) the Governor, whether acting with or without the advice of the Executive Council;
 - (b) a Minister of the Crown, including a Minister of the Crown acting as a corporation sole;
 - (c) Parliament;
 - (d) the Houses of Parliament;
 - 10 (e) a committee of either House, or both Houses, of Parliament;
 - (f) either House of Parliament;
 - (g) a member of either House of Parliament, where acting as such;
 - 15 (h) an officer of Parliament or of either House of Parliament, where acting as such.
2. Conduct of a person or body before whom witnesses may be compelled to appear and give evidence, and persons associated with such a person or body.
3. Conduct of a body of which one or more of the members is
20 appointed by the Governor or a Minister of the Crown where—
 - (a) at least one member of the body may be appointed by virtue of his being a Judge of the Supreme Court of New South Wales, a member of the Industrial Commission of New South Wales or a Judge of the District Court of New South
25 Wales; and
 - (b) such a person, if appointed as such a member, has a right or duty to preside at a meeting of the body at which he is present.
4. Conduct of a public authority relating to a Bill for an Act or
30 the making of a rule, regulation or by-law.
5. Conduct of a public authority constituted pursuant to an arrangement between—
 - (a) the State of New South Wales and the Commonwealth;
 - (b) the State of New South Wales and any other State;
 - 35 (c) the State of New South Wales, any other State and the Commonwealth.
6. Conduct of a public authority where acting as a legal adviser to a public authority or as legal representative of a public authority.

Ombudsman.

7. Conduct of the Attorney General, or of the Solicitor General, relating to the commencement, carrying on or termination of any proceedings before a court, including a coronial inquiry and committal proceedings before a magistrate.
- 5 8. Conduct of a public authority relating to the carrying on of any proceedings—
 - (a) before any court, including a coronial inquiry and committal proceedings before a magistrate; or
 - (b) before any other person or body before whom witnesses may be compelled to appear and give evidence.
- 10 9. Conduct of a public authority relating to an exercise of the prerogative of mercy.
10. Conduct of a public authority where acting as a commissioner under the Royal Commissions Act, 1912, or, by the authority of an Act, exercising the powers of such a commissioner.
- 15 11. Conduct of the Council of the City of Sydney and of the Sydney County Council and of the officers and employees of those councils.
12. Conduct of a public authority relating to—
 - (a) the appointment or employment of a person as an officer or employee; and
 - (b) matters affecting a person as an officer or employee.
- 20 13. Conduct of a member of the Police Force when acting as a constable.
14. Conduct of a public authority relating to the investment of any funds.
- 25 15. Conduct of a public authority relating to the payment of any money as an act of grace.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1974
[25c]

OMBUDSMAN BILL, 1974

EXPLANATORY NOTE

The objects of this Bill are—

- (a) to provide for the appointment of an Ombudsman and the establishment and staffing of his office;
- (b) to define “public authority” and to empower any person to complain to the Ombudsman about conduct (other than certain specified conduct) of a public authority relating to a matter of administration;
- (c) to enable a member of Parliament to act on behalf of a person who wishes to complain to the Ombudsman;
- (d) to authorise the Ombudsman, of his own motion or otherwise, to investigate conduct of a public authority that appears to him to be wrong, if the conduct is conduct about which a complaint may be made;
- (e) to specify certain of the procedures applicable to an investigation by the Ombudsman;
- (f) to confer certain powers on the Ombudsman, and to impose certain duties on public authorities, in relation to investigations;
- (g) to enable the Ombudsman to obtain the assistance of experts;
- (h) to provide for reports by the Ombudsman;
- (i) to impose certain obligations of secrecy on the Ombudsman when acting otherwise than for the purpose of discharging his statutory functions;
- (j) to provide for certain offences;
- (k) to protect the Ombudsman and certain other persons from actions for defamation in certain circumstances;
- (l) to make provisions consequential upon or ancillary to the foregoing.

PROOF

OMUDMAN 1941

1941-1942

PROOF

No. , 1974.

A BILL

To provide for the appointment of an Ombudsman;
to define his powers, authorities, duties and functions;
and for purposes connected therewith.

[MR MADDISON—27 August, 1974.]

BE

Ombudsman.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Ombudsman Act, Short title. 1974".

2. (1) This Act, Part III excepted, commences on the date of assent to this Act. Commence-
ment.

(2) Part III commences on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3. This Act is divided as follows :—

Division
of Act.

PART I.—PRELIMINARY—ss. 1–5.

PART II.—THE OMBUDSMAN—ss. 6–11.

PART III.—INVESTIGATIONS—ss. 12–25.

PART IV.—REPORTS—ss. 26–31.

20 PART V.—GENERAL—ss. 32–40.

SCHEDULE.

4. This Act binds the Crown not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities. Act binds
Crown.

Ombudsman.

5. (1) In this Act, except in so far as the context or Interpretation.
subject-matter otherwise indicates or requires—

“appointed day” means the day appointed and notified
under section 2 (2);

5 “conduct” means—

- (a) any action or inaction relating to a matter of administration; and
- (b) any alleged action or inaction relating to a matter of administration;

10 “head” means—

- (a) in relation to a public authority who is a statutory employee in relation to an Act that constitutes a corporation sole—the corporation;

- 15 (b) in relation to a public authority who is a statutory employee in relation to an Act that constitutes a body of persons (incorporated or not) that executes that or any other Act—the person entitled to preside at a meeting of the body;

- 20 (c) in relation to a public authority who is not a person referred to in paragraph (a) or (b) but is—

- 25 (i) an officer of the Public Service employed for the purposes of a Department of the Government; or
- (ii) a person otherwise in the service of the Crown who is employed for those purposes—

30 the permanent head of that Department;

- (d) in relation to a public authority that is a corporation sole—the corporation;

(e)

Ombudsman.

(e) in relation to a public authority that is a corporation aggregate or an unincorporated body—the person entitled to preside at meetings of the corporation or body;

5 (f) in any other case—the prescribed person;

“person” includes an unincorporated body of persons;

“public authority” means—

(a) any person appointed to an office by the Governor;

10 (b) any statutory body representing the Crown;

(c) any officer of the Public Service;

(d) any person in the service of the Crown or of any statutory body representing the Crown;

15 (e) any person in relation to whom or to whose function an account is kept of administration or working expenses, where the account—

(i) is part of the accounts prepared pursuant to the Audit Act, 1902;

20 (ii) is required by or under any Act to be audited by the Auditor-General;

(iii) is an account with respect to which the Auditor-General has powers under any law;

25 (iv) is an account with respect to which the Auditor-General may exercise powers under a law relating to the audit of accounts where requested to do so by a Minister of the Crown;

30 (f) any person entitled to be reimbursed his expenses, from a fund of which an account mentioned in paragraph (e) is kept, of attending meetings or carrying out the business of any body constituted by an Act;

(g)

Ombudsman.

- (g) any holder of an office declared by the regulations to be an office of a public authority for the purposes of this Act; and
- 5 (h) any person acting for or on behalf of, or in the place of, or as deputy or delegate of, any person described in any of the foregoing paragraphs;

“regulations” means regulations made under this Act;

“responsible Minister” means—

- 10 (a) in relation to a public authority who is a statutory employee—the Minister of the Crown administering the Act in relation to which the public authority is a statutory employee;
- 15 (b) in relation to a public authority who is not a statutory employee but is—
 - (i) an officer of the Public Service employed for the purposes of a Department of the Government; or
 - 20 (ii) a person otherwise employed by the Crown for those purposes—
the Minister of the Crown administering that Department;
- 25 (c) in relation to any other public authority—the Minister of the Crown who, in the opinion of the Ombudsman, is most nearly concerned with the conduct of the public authority;

“statutory employee” means, in relation to an Act—

- 30 (a) a person in the service of a corporation constituted by that Act, being, in the case of a corporation aggregate, a corporation of which one or more of the members is appointed by the Governor or a Minister;

(b)

Ombudsman.

- 5 (b) an officer of the Public Service employed in connection with the administration of that Act or a person otherwise in the service of the Crown who is employed in that connection.

(2) For the purposes of this Act, conduct of a public authority is wrong if it is—

- 10 (a) contrary to law;
- (b) unreasonable, unjust, oppressive or improperly discriminatory, whether or not it is in accordance with any law or established practice;
- (c) based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations;
- (d) based wholly or partly on a mistake of law or fact;
- 15 (e) conduct for which reasons should be given but are not given; or
- (f) otherwise wrong.

PART II.

THE OMBUDSMAN.

- 20 6. (1) The Governor may, on the recommendation of the Minister, appoint an Ombudsman on such terms and conditions as are specified in the instrument of appointment. Office of Ombudsman.

(2) Subject to this Act, the Ombudsman holds office for such period, not exceeding seven years, as is specified in the instrument of his appointment and is eligible for re-appointment.

25

(3)

Ombudsman.

(3) A person is not eligible for appointment as Ombudsman—

- (a) if he is of or above the age of sixty-five years; or
- 5 (b) if he is a member of the Legislative Council or the Legislative Assembly or is a member of a House of Parliament of another State or of the Commonwealth.

(4) The Ombudsman vacates his office—

- 10 (a) on the day on which he attains the age of sixty-five years;
- (b) if he engages in any paid employment outside the duties of his office;
- 15 (c) if he is nominated for election as a member of the Legislative Council or the Legislative Assembly or as a member of a House of Parliament of another State or of the Commonwealth; or
- (d) if he resigns his office by writing under his hand addressed to the Governor and the Governor accepts the resignation.

20 (5) The Ombudsman may, at any time, be removed from his office by the Governor upon the address of both Houses of Parliament.

(6) The provisions of the Public Service Act, 1902, do not apply to the appointment of the Ombudsman and the
25 Ombudsman is not subject to those provisions.

7. (1) The Governor may, on the recommendation of the Minister, appoint an acting Ombudsman during the absence of the Ombudsman or during a vacancy in his office. Acting
Ombuds-
man.

(2) An acting Ombudsman is entitled to such salary
30 and allowances as the Governor may from time to time determine.

(3)

Ombudsman.

(3) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising an acting Ombudsman to act as Ombudsman.

5 (4) This Act, section 6 (2) excepted, applies to and in respect of an acting Ombudsman as it applies to and in respect of the Ombudsman.

8. (1) The Governor may, on the recommendation of Deputy Ombudsman. the Minister, appoint a Deputy Ombudsman.

10 (2) Sections 6 and 33 apply to and in respect of the Deputy Ombudsman as they apply to and in respect of the Ombudsman.

(3) The Deputy Ombudsman may, to the extent to which he is directed by the Ombudsman so to do, exercise or perform any power, authority, duty or function of the 15 Ombudsman other than a power, authority, duty or function conferred or imposed by section 9, 10, 19 (2), 29 (b) and (c) or 30.

(4) Where a Deputy Ombudsman is appointed as acting Ombudsman he does not, on that account, cease to be 20 Deputy Ombudsman.

9. The Ombudsman may, with the concurrence of the Special Minister, appoint an officer of the Ombudsman to be a special officer. officer of the Ombudsman.

10. (1) Subject to subsection (2), the Ombudsman may Delegation. 25 delegate to a special officer of the Ombudsman the exercise or performance of any powers, authorities, duties or functions of the Ombudsman.

(2) The Ombudsman may not delegate the exercise or performance of—

30 (a) any power, authority or duty to make any report under this Act (other than a report under section 28);

(b)

Ombudsman.

- (b) any power or authority conferred by section 9 or 19 (2); or
 - (c) the power and authority conferred by subsection (1).
- 5 (3) A delegation under this section may be made subject to conditions or limitations as to the exercise or performance of any of the powers, authorities, duties or functions delegated, or as to time or circumstances.
- (4) A delegation under this section must be made
10 by instrument in writing.
- (5) An instrument of delegation must specify—
- (a) the powers, authorities, duties or functions the exercise or performance of which is delegated; and
 - (b) any conditions or limitations on the delegation.
- 15 (6) The Ombudsman may revoke a delegation under this section at any time, whether made by him or not.
- (7) A delegation under this section is not revoked by the happening of a vacancy in the office of Ombudsman or by an absence or disability of the Ombudsman, except to
20 the extent that the instrument of delegation so provides.
- (8) During a vacancy in the office of Ombudsman, if there is no acting Ombudsman, the Minister may revoke a delegation under this section.
- (9) Notwithstanding any delegation made under this
25 section, the Ombudsman may continue to exercise or perform all or any of the powers, authorities, duties or functions delegated.

Ombudsman.

- 11.** Any act or thing done, suffered or omitted—
- (a) pursuant to this Act by an acting Ombudsman or the Deputy Ombudsman; or
- (b) pursuant to a delegation under section 10,
- 5** has the same force and effect as if done, suffered or omitted by the Ombudsman.
- Effect of certain acts, etc.

PART III.

INVESTIGATIONS.

- 12.** (1) Subject to this section, any person (including a public authority) may complain to the Ombudsman about the conduct of a public authority unless—
- (a) the conduct is of a class described in the Schedule;
- (b) the conduct took place more than twelve months before the appointed day; or
- 15** (c) the conduct took place during the period of twelve months that last preceded the appointed day and the complaint was made more than twelve months after the appointed day.
- (2) Where a person wishes to make a complaint under subsection (1), the complaint may, with the consent of that person, be made on his behalf by a member of Parliament.
- (3) Where a person is detained by, or in the custody of, a public authority and informs the public authority or another person having superintendence over him that he wishes to make a complaint to the Ombudsman, the public authority or other person so informed shall—
- (a) take all steps necessary to facilitate the making of the complaint; and
- 25** (b) send immediately to the Ombudsman, unopened, any written matter addressed to the Ombudsman.
- 30**

(4)

Ombudsman.

(4) A complaint under subsection (1), and a consent for the purposes of subsection (2), must be in writing.

5 (5) Where a member of Parliament acts for a person under subsection (2) he does not, except for the purposes of sections 15, 16, 26 (4) and 29, thereby become the complainant.

10 (6) Where a member of Parliament publishes to a person for whom he acts under subsection (2) any matter, or a copy of any matter, published to him by the Ombudsman, the publication has, for all purposes, the same effect as if it had been published to that person by the Ombudsman.

13. (1) Where it appears to the Ombudsman that any conduct of a public authority about which a complaint may be made under section 12 may be wrong, the Ombudsman may, whether or not any person has complained to him about the conduct, make the conduct the subject of an investigation under this Act. Decision for investigation.

20 (2) Subsection (1) has effect notwithstanding anything in any Act passed before the passing of this Act.

(3) The Ombudsman may discontinue an investigation.

25 (4) Where any person has complained to the Ombudsman under section 12 about the conduct of a public authority, the Ombudsman, in deciding whether to make that conduct the subject of an investigation under this Act or whether to discontinue an investigation commenced by him under this Act—

30 (a) may have regard to such matters as he thinks fit; and

(b)

Ombudsman.

(b) without limiting paragraph (a), may have regard to whether, in his opinion—

- (i) the complaint is frivolous, vexatious or not in good faith;
- 5 (ii) the subject-matter of the complaint is trivial;
- (iii) the subject-matter of the complaint relates to the discharge by a public authority of a function which is substantially a trading or commercial function;
- 10 (iv) the conduct complained of occurred at too remote a time to justify investigation;
- (v) in relation to the conduct complained of there is or was available to the complainant an alternative and satisfactory means of redress; or
- 15 (vi) the complainant has no interest or an insufficient interest in the conduct complained of.

14. (1) The Governor may, by proclamation published ^{Amendment of Schedule.} in the Gazette, amend the Schedule so as to add to it, or to omit from it, any class of conduct of a public authority.

(2) Where the Schedule is amended by adding to it any class of conduct of a public authority, and conduct the subject of an investigation by the Ombudsman is or includes
25 conduct of the added class, the Ombudsman shall discontinue the investigation in so far as it relates to conduct of the added class and shall not make any report concerning conduct of the added class.

(3) A proclamation under subsection (1)—

- 30 (a) takes effect from the date of the publication of the proclamation or a later date specified in the proclamation; and

(b)

Ombudsman.

(b) shall be laid before each House of Parliament within fourteen sitting days of that House after the date of proclamation.

5 (4) If either House of Parliament passes a resolution, of which notice has been given within fifteen sitting days of that House after a proclamation has been laid before it, disallowing the proclamation or any part thereof, the amendment of the Schedule made by the proclamation or part thereupon ceases to have effect.

10 (5) For the purposes of subsections (3) and (4) sitting days shall be counted, whether or not they occur during the same session.

(6) Where, by the operation of subsection (4), an amendment of the Schedule ceases to have effect, the
15 Ombudsman may—

- (a) resume any investigation that he discontinued under subsection (2) by reason of the amendment; and
- (b) make a report concerning the conduct to which the resumed investigation relates.

20 **15. Where—**

(a) a complaint has been made to the Ombudsman about the conduct of a public authority; and

Reasons for refusal to investigate, etc.

(b) the Ombudsman—

- 25 (i) refuses to investigate the conduct complained of; or
- (ii) discontinues an investigation of that conduct,

the Ombudsman shall inform the complainant in writing of his decision and the reasons for his decision.

Ombudsman.

16. (1) Upon the Ombudsman deciding to make the conduct of a public authority the subject of an investigation under this Act, he shall give notice of his decision—

Notice of investigation.

- (a) where there is a complainant, to him;
- 5 (b) to the head of the public authority and, if practicable, to the public authority; and
- (c) as prescribed.

(2) A notice under this section must be in writing, must describe the conduct the subject of the investigation and

10 must, so far as practicable, identify the public authority.

17. An investigation under this Act shall be made in the absence of the public.

18. (1) For the purposes of an investigation under this Act, the Ombudsman may require a public authority—

Public authority to give information, etc.

- 15 (a) to give him a statement of information;
- (b) to produce to him any document or other thing; or
- (c) to give him a copy of any document.

(2) A requirement under this section must be in writing, must specify or describe the information, document

20 or thing required, and must fix a time for compliance.

19. (1) In an investigation under this Act, the Ombudsman may make or hold inquiries.

(2) For the purposes of any inquiry under this section, the Ombudsman has the powers, authorities, protections

25 and immunities conferred on a commissioner by Division 1 of Part II of the Royal Commissions Act, 1923, and that Act

(section

Ombudsman.

(section 13 and Division 2 of Part II excepted) applies to any witness summoned by or appearing before the Ombudsman in the same way as it applies to a witness summoned by or appearing before a commissioner, but section 11 (2) of that
5 Act shall have effect subject to section 21 of this Act.

20. In an investigation under this Act, the Ombudsman may, at any time— Entry on premises, etc.

- (a) enter and inspect any premises occupied or used by a public authority as a public authority; and
- 10 (b) inspect any document or thing in or on the premises.

21. (1) Subsections (2) and (3) apply where, in an investigation under this Act, the Ombudsman requires any person— Limits on secrecy and privilege.

- 15 (a) to give any statement of information;
- (b) to produce any document or other thing;
- (c) to give a copy of any document; or
- (d) to answer any question.

(2) The person so required must comply with the
20 requirement notwithstanding—

- (a) any rule of law which in proceedings in a court of law might justify an objection to compliance with a like requirement on grounds of public interest;
- (b) any privilege of a public authority; or
- 25 (c) if the person so required is a public authority, any duty of secrecy or other restriction on disclosure applying to that public authority.

(3)

Ombudsman.

(3) Subject to subsection (2), the Ombudsman shall set aside the requirement if it appears to him that any person has a ground of privilege whereby, in proceedings in a court of law, he might resist a like requirement and it does not
5 appear to the Ombudsman that that person consents to compliance with the requirement.

(4) Subsections (1), (2) and (3) apply to a requirement made under section 18 or made in an inquiry under section 19.

10 (5) The Ombudsman may exercise his powers under section 20 notwithstanding—

- (a) any rule of law which, in proceedings in a court of law, might justify an objection to an inspection of the premises or to production of the document or
15 thing, as the case requires, on grounds of public interest;
- (b) any privilege of a public authority; or
- (c) any duty of secrecy or other restriction on disclosure applying to a public authority.

20 (6) Subject to subsection (5) the Ombudsman shall not exercise his powers under section 20 where it appears to the Ombudsman that any person has a ground of privilege whereby, in proceedings in a court of law, he might resist inspection of the premises or production of the document or
25 thing, as the case requires, and it does not appear to the Ombudsman that that person consents to the inspection or production.

22. (1) This Act does not enable the Ombudsman—

- (a) to require any person—
 - 30 (i) to give any statement of information;
 - (ii) to produce any document or other thing;

Cabinet
proceed-
ings.

(iii)

Ombudsman.

- (iii) to give a copy of any document; or
- (iv) to answer any question,
- which relates to confidential proceedings of cabinet or any committee of cabinet; or
- 5 (b) to inspect any document or thing which so relates.

(2) For the purposes of subsection (1), a certificate of the Permanent Head of the Premier's Department that any information, document, thing or question relates to confidential proceedings of cabinet or of a committee of cabinet is
10 conclusive that it does so relate.

23. In an investigation under this Act, the Ombudsman ^{Expert} may, with the consent of the Minister, engage the services of ^{assistance.} any person for the purpose of getting expert assistance.

24. (1) In an investigation under this Act, the Ombuds- ^{Persons to} man shall give an opportunity to make submissions on the ^{be heard.} conduct the subject of the investigation—

- (a) if practicable, to the public authority whose conduct it is; and
- (b) to any other person given notice under section 16.

20 (2) Where, in an investigation under this Act, the Ombudsman considers that there are grounds for adverse comment in respect of any person, the Ombudsman, before making any such comment in any report, shall, so far as practicable—

- 25 (a) inform that person of the substance of the grounds of the adverse comment; and
- (b) give him an opportunity to make submissions.

(3) Subsection (2) does not apply in relation to a report under section 28.

Ombudsman.

25. (1) In an investigation under this Act, the Ombudsman shall, on request by the responsible Minister, consult him on the conduct the subject of the investigation. Consultation with responsible Minister.

(2) Before publishing a report under section 26, the
5 Ombudsman—

- (a) shall inform the responsible Minister that he proposes to publish such a report; and
- (b) shall, on request by that Minister, consult him.

PART IV.

REPORTS.

10

26. (1) Where, in an investigation under this Act, the Ombudsman finds that the conduct the subject of the investigation, or any part of the conduct, is wrong, the Ombudsman shall make a report accordingly, giving his reasons. Conduct wrong.

15 (2) In a report under this section, the Ombudsman may recommend—

- (a) that the conduct be considered or reconsidered by the public authority whose conduct it is, or by any person in a position to supervise or direct the public authority in relation to the conduct, or to review, rectify, mitigate or change the conduct or its consequences;
- (b) that action be taken to rectify, mitigate or change the conduct or its consequences;
- 20 (c) that reasons be given for the conduct;
- 25 (d) that any law or practice relating to the conduct be changed; or
- (e) that any other step be taken.

(3)

Ombudsman.

(3) The Ombudsman shall give a report under this section—

- (a) to the responsible Minister;
- 5 (b) to the head of the authority whose conduct is the subject of the report; and
- (c) where the public authority is employed under the Public Service Act, 1902, to the Public Service Board.

(4) The Ombudsman may give a copy of a report 10 under this section—

- (a) where the investigation arises out of a complaint to the Ombudsman, to the complainant;
- (b) to the public authority to whose conduct the report relates.

15 (5) The person to whom a report is given under subsection (3) (b) may, and on request by the Ombudsman shall, notify the Ombudsman of any action taken or proposed in consequence of a report under this section.

27. Where the Ombudsman is not satisfied that sufficient 20 steps have been taken in due time in consequence of a report under section 26, he may make a report to the Minister for presentation to Parliament. Default in consequent action.

28. Where the Ombudsman is of the opinion that a public 25 authority is or may be guilty of misconduct in the course of his functions to such an extent as, in the opinion of the Ombudsman, may warrant dismissal, removal or punishment, the Ombudsman shall report his opinion— Serious misconduct.

- (a) to the responsible Minister;
- (b) to the head of the public authority; and

(c)

Ombudsman.

(c) where the public authority is employed under the Public Service Act, 1902, to the Public Service Board,

giving his reasons.

5 **29.** Where the Ombudsman investigates the conduct of a public authority pursuant to a complaint made to him, the Ombudsman—

(a) may from time to time report to the complainant on the progress of the investigation;

10 (b) shall report to the complainant on the results of the investigation; and

(c) may make such comments to the complainant on the investigation and its consequences as he thinks fit.

15 **30.** (1) The Ombudsman shall, as soon as practicable after the thirtieth day of June in each year, prepare and submit to the Minister a report of his work and activities for the twelve months preceding that date.

(2) The Minister shall lay that report or cause it to be laid before both Houses of Parliament as soon as practicable after the receipt by him of the report.

25 **31.** (1) The Ombudsman may, at any time, make a special report to the Minister for presentation to Parliament on any matter arising in connection with the discharge of his functions.

(2) The Ombudsman may include in a report under subsection (1) or under section 27 a recommendation that the report be made public forthwith.

(3)

Ombudsman.

(3) Where a report under subsection (1) or under section 27 contains a recommendation by the Ombudsman that the report be made public forthwith the Minister may make it public before it is presented to Parliament.

5

PART V.

GENERAL.

32. (1) The Governor may appoint and employ, under Staff. and subject to the Public Service Act, 1902, such officers and employees as may be necessary to enable the Ombudsman to
10 exercise and perform his powers, authorities, duties and functions.

(2) The Ombudsman may, with the approval of the responsible Minister, make use of the services of any public authority.

15 (3) A person who is employed for the purposes of subsection (1), or whose services are made use of under subsection (2), is, while he is so employed, or while his services are so used, an officer of the Ombudsman.

25 33. (1) In this section "superannuation scheme" means ^{Preservation of certain rights.} a scheme, fund or arrangement which is established by or under an Act and which provides for superannuation or retirement benefits.

(2) Subject to subsection (3) and to the terms of his appointment, where the Ombudsman was, immediately
30 before his appointment as Ombudsman, an officer of the Public Service or a contributor to a superannuation scheme, he—

(a) shall retain any rights accrued or accruing to him as such an officer or contributor;

(b)

Ombudsman.

- (b) may continue to contribute to any superannuation scheme to which he was a contributor immediately before his appointment as Ombudsman; and
- (c) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity under the superannuation scheme,
as if he had continued to be such an officer or contributor during his service as Ombudsman and—
- (d) his service as Ombudsman shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he continues to contribute or by which that entitlement is conferred;
- (e) he shall be deemed to be an officer or employee, and the Minister shall be deemed to be his employer, for the purposes of the superannuation scheme to which he is entitled to contribute under this subsection.

(3) Where, but for this subsection, the Ombudsman would be entitled under subsection (2) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under that scheme, he shall not be so entitled upon his becoming (whether upon his appointment as Ombudsman or at any later time while he holds office as Ombudsman) a contributor to any other superannuation scheme and the provisions of subsection (2) (e) cease to apply to or in respect of him and the Minister in any case where he becomes a contributor to another superannuation scheme.

(4) Subsection (3) does not prevent the payment to the Ombudsman upon his ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him had he ceased, by reason of resignation, to be an officer or employee for the purposes of that scheme.

(5)

Ombudsman.

(5) Subject to the terms of his appointment, where the Ombudsman was, immediately before his appointment as Ombudsman, an officer of the Public Service, he shall—

5 (a) if he ceases to hold office as Ombudsman otherwise than pursuant to section 6 (5) ; and

(b) if he is under the age of sixty years,
be appointed to some office in the Public Service not lower in classification and salary than that which he held immediately before his appointment as Ombudsman.

10 (6) The Ombudsman is not, in respect of the same period of service, entitled to claim a benefit under this Act and another Act.

15 **34.** The Ombudsman shall not, nor shall an officer of the Ombudsman, disclose any information obtained by him in the course of his office, unless the disclosure is made— Disclosure by Ombudsman or officer.

(a) where the information is obtained from a public authority, with the consent of the head of that authority or of the responsible Minister;

20 (b) where the information is obtained from any other person, with the consent of that person;

(c) for the purpose of any proceedings under section 37 or under Part III of the Royal Commissions Act, 1923 ; or

25 (d) for the purpose of discharging his functions under this Act.

Penalty : One thousand dollars.

35. (1) The Ombudsman shall not, nor shall an officer of the Ombudsman, be competent or compellable to give evidence in any legal proceedings in respect of any information obtained by him in the course of his office. Ombudsman or officer as witness.

Ombudsman.

(2) Subsection (1) does not apply to any legal proceedings under section 37 or under Part III of the Royal Commissions Act, 1923.

5 **36.** (1) Where, under section 18, a person is required to give a statement that tends to incriminate that person, neither the requirement nor the statement may be used in any proceedings against that person except proceedings under section 37 (c). Incrimina-
tory
statement.

10 (2) Subsection (1) applies whether the person required to give a statement objects to giving it or not.

37. A person shall not—

Offences.

- (a) without lawful excuse, wilfully obstruct, hinder or resist the Ombudsman or an officer of the Ombudsman in the exercise of his powers under this Act;
- 15 (b) without lawful excuse, refuse or wilfully fail to comply with any lawful requirement of the Ombudsman or an officer of the Ombudsman under this Act; or
- 20 (c) wilfully make any false statement to or mislead, or attempt to mislead, the Ombudsman or an officer of the Ombudsman in the exercise of his powers under this Act.

Penalty : One thousand dollars.

38. A penalty imposed by this Act may be recovered in a summary manner before a Stipendiary Magistrate sitting in petty sessions alone. Proceed-
ings for
offences.

39.

Ombudsman.

39. The Governor may make regulations under this Act for or with respect to prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for the purpose of
5 carrying out or giving effect to this Act.

Regula-
tions.

40. The Defamation Act, 1974, is amended—

Amendment
of Act No.
18, 1974.

(a) by inserting after section 17 the following
section : —

Sec. 17A.

10 17A. (1) There is a defence of absolute privilege
for a publication to or by the Ombudsman, as
Ombudsman, or to any officer of the Ombudsman,
as such an officer.

Matters
arising
under
Ombudsman
Act, 1974.

15 (2) Subsection (1) applies in relation to
an acting Ombudsman, the Deputy Ombudsman
and a special officer of the Ombudsman in the same
way as it applies in relation to the Ombudsman.

20 (3) There is a defence of absolute privilege
for a publication to a member of Parliament for
the purposes of section 12 (2) of the Ombudsman
Act, 1974.

(4) There is a defence of absolute privilege
for the publication under section 31 (3) of the
Ombudsman Act, 1974, of a report under that Act.

25 (5) There is a defence of absolute privilege
for the publication, under the authority of the
Minister for the time being administering the
Ombudsman Act, 1974, of a copy of a report
previously made public under section 31 (3) of
that Act.

Ombudsman.

- (b) (i) by omitting from clause 2 (8) of Schedule 2 Schedule 2.
the word "or";
- (ii) by omitting from clause 2 (9) of Schedule 2
the word "office." and by inserting instead the
following words and subclause :—
office; or
- (10) proceedings of the Ombudsman, so far
as those proceedings are included in a
report previously made public under
section 31 (3) of the Ombudsman
Act, 1974.

SCHEDULE.

Ombudsman.

SCHEDULE.

Sec. 12.

EXCLUDED CONDUCT OF PUBLIC AUTHORITIES.

1. Conduct of—

- 5 (a) the Governor, whether acting with or without the advice of the Executive Council;
- (b) a Minister of the Crown, including a Minister of the Crown acting as a corporation sole;
- (c) Parliament;
- (d) the Houses of Parliament;
- 10 (e) a committee of either House, or both Houses, of Parliament;
- (f) either House of Parliament;
- (g) a member of either House of Parliament, where acting as such;
- 15 (h) an officer of Parliament or of either House of Parliament, where acting as such.

2. Conduct of a person or body before whom witnesses may be compelled to appear and give evidence, and persons associated with such a person or body.

3. Conduct of a body of which one or more of the members is appointed by the Governor or a Minister of the Crown where—

- 20 (a) at least one member of the body may be appointed by virtue of his being a Judge of the Supreme Court of New South Wales, a member of the Industrial Commission of New South Wales or a Judge of the District Court of New South Wales; and
- 25 (b) such a person, if appointed as such a member, has a right or duty to preside at a meeting of the body at which he is present.

4. Conduct of a public authority relating to a Bill for an Act or the making of a rule, regulation or by-law.

5. Conduct of a public authority constituted pursuant to an arrangement between—

- (a) the State of New South Wales and the Commonwealth;
- (b) the State of New South Wales and any other State;
- 35 (c) the State of New South Wales, any other State and the Commonwealth.

6. Conduct of a public authority where acting as a legal adviser to a public authority or as legal representative of a public authority.

7.

Ombudsman.

7. Conduct of the Attorney General, or of the Solicitor General, relating to the commencement, carrying on or termination of any proceedings before a court, including a coronial inquiry and committal proceedings before a magistrate.
- 5 8. Conduct of a public authority relating to the carrying on of any proceedings—
- (a) before any court, including a coronial inquiry and committal proceedings before a magistrate; or
 - (b) before any other person or body before whom witnesses
- 10 may be compelled to appear and give evidence.
9. Conduct of a public authority relating to an exercise of the prerogative of mercy.
10. Conduct of a public authority where acting as a commissioner under the Royal Commissions Act, 1912, or, by the authority of an
- 15 Act, exercising the powers of such a commissioner.
11. Conduct of the Council of the City of Sydney and of the Sydney County Council and of the officers and employees of those councils.
12. Conduct of a public authority relating to—
- (a) the appointment or employment of a person as an officer or
- 20 employee; and
- (b) matters affecting a person as an officer or employee.
13. Conduct of a member of the Police Force when acting as a constable.
14. Conduct of a public authority relating to the investment of any
- 25 funds.
15. Conduct of a public authority relating to the payment of any money as an act of grace.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1974

New South Wales



ANNO VICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 68, 1974.

An Act to provide for the appointment of an Ombudsman;
to define his powers, authorities, duties and functions;
and for purposes connected therewith. [Assented to, 18th
October, 1974.]

BE

Ombudsman.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the **same**, as follows :—

PART I.

PRELIMINARY.

Short title. **1.** This Act may be cited as the "Ombudsman Act, 1974".

Commence- **2.** (1) This Act, Part III excepted, commences on the
ment. date of assent to this Act.

(2) Part III commences on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Division
of Act.

3. This Act is divided as follows :—

PART I.—PRELIMINARY—ss. 1–5.

PART II.—THE OMBUDSMAN—ss. 6–11.

PART III.—INVESTIGATIONS—ss. 12–25.

PART IV.—REPORTS—ss. 26–31.

PART V.—GENERAL—ss. 32–40.

SCHEDULE.

Act binds
Crown.

4. This Act binds the Crown not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Ombudsman.

5. (1) In this Act, except in so far as the context or Interpretation.
subject-matter otherwise indicates or requires—

“appointed day” means the day appointed and notified
under section 2 (2);

“conduct” means—

- (a) any action or inaction relating to a matter of administration; and
- (b) any alleged action or inaction relating to a matter of administration;

“head” means—

- (a) in relation to a public authority who is a statutory employee in relation to an Act that constitutes a corporation sole—the corporation;
- (b) in relation to a public authority who is a statutory employee in relation to an Act that constitutes a body of persons (incorporated or not) that executes that or any other Act—the person entitled to preside at a meeting of the body;
- (c) in relation to a public authority who is not a person referred to in paragraph (a) or (b) but is—
 - (i) an officer of the Public Service employed for the purposes of a Department of the Government; or
 - (ii) a person otherwise in the service of the Crown who is employed for those purposes—
 the permanent head of that Department;
- (d) in relation to a public authority that is a corporation sole—the corporation;

(e)

Ombudsman.

(e) in relation to a public authority that is a corporation aggregate or an unincorporated body—the person entitled to preside at meetings of the corporation or body;

(f) in any other case—the prescribed person;

“person” includes an unincorporated body of persons;

“public authority” means—

(a) any person appointed to an office by the Governor;

(b) any statutory body representing the Crown;

(c) any officer of the Public Service;

(d) any person in the service of the Crown or of any statutory body representing the Crown;

(e) any person in relation to whom or to whose function an account is kept of administration or working expenses, where the account—

(i) is part of the accounts prepared pursuant to the Audit Act, 1902;

(ii) is required by or under any Act to be audited by the Auditor-General;

(iii) is an account with respect to which the Auditor-General has powers under any law;

(iv) is an account with respect to which the Auditor-General may exercise powers under a law relating to the audit of accounts where requested to do so by a Minister of the Crown;

(f) any person entitled to be reimbursed his expenses, from a fund of which an account mentioned in paragraph (e) is kept, of attending meetings or carrying out the business of any body constituted by an Act;

(g)

Ombudsman.

- (g) any holder of an office declared by the regulations to be an office of a public authority for the purposes of this Act; and
- (h) any person acting for or on behalf of, or in the place of, or as deputy or delegate of, any person described in any of the foregoing paragraphs;

“regulations” means regulations made under this Act;

“responsible Minister” means—

- (a) in relation to a public authority who is a statutory employee—the Minister of the Crown administering the Act in relation to which the public authority is a statutory employee;
- (b) in relation to a public authority who is not a statutory employee but is—
 - (i) an officer of the Public Service employed for the purposes of a Department of the Government; or
 - (ii) a person otherwise employed by the Crown for those purposes—
the Minister of the Crown administering that Department;
- (c) in relation to any other public authority—the Minister of the Crown who, in the opinion of the Ombudsman, is most nearly concerned with the conduct of the public authority;

“statutory employee” means, in relation to an Act—

- (a) a person in the service of a corporation constituted by that Act, being, in the case of a corporation aggregate, a corporation of which one or more of the members is appointed by the Governor or a Minister;

(b)

Ombudsman.

(b) an officer of the Public Service employed in connection with the administration of that Act or a person otherwise in the service of the Crown who is employed in that connection.

(2) For the purposes of this Act, conduct of a public authority is wrong if it is—

- (a) contrary to law;
- (b) unreasonable, unjust, oppressive or improperly discriminatory, whether or not it is in accordance with any law or established practice;
- (c) based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations;
- (d) based wholly or partly on a mistake of law or fact;
- (e) conduct for which reasons should be given but are not given; or
- (f) otherwise wrong.

PART II.

THE OMBUDSMAN.

Office of
Ombuds-
man.

6. (1) The Governor may, on the recommendation of the Minister, appoint an Ombudsman on such terms and conditions as are specified in the instrument of appointment.

(2) Subject to this Act, the Ombudsman holds office for such period, not exceeding seven years, as is specified in the instrument of his appointment and is eligible for re-appointment.

(3)

Ombudsman.

(3) A person is not eligible for appointment as Ombudsman—

- (a) if he is of or above the age of sixty-five years; or
- (b) if he is a member of the Legislative Council or the Legislative Assembly or is a member of a House of Parliament of another State or of the Commonwealth.

(4) The Ombudsman vacates his office—

- (a) on the day on which he attains the age of sixty-five years;
- (b) if he engages in any paid employment outside the duties of his office;
- (c) if he is nominated for election as a member of the Legislative Council or the Legislative Assembly or as a member of a House of Parliament of another State or of the Commonwealth; or
- (d) if he resigns his office by writing under his hand addressed to the Governor and the Governor accepts the resignation.

(5) The Ombudsman may, at any time, be removed from his office by the Governor upon the address of both Houses of Parliament.

(6) The provisions of the Public Service Act, 1902, do not apply to the appointment of the Ombudsman and the Ombudsman is not subject to those provisions.

7. (1) The Governor may, on the recommendation of the Minister, appoint an acting Ombudsman during the absence of the Ombudsman or during a vacancy in his office. Acting
Ombuds-
man.

(2) An acting Ombudsman is entitled to such salary and allowances as the Governor may from time to time determine.

(3)

Ombudsman.

(3) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising an acting Ombudsman to act as Ombudsman.

(4) This Act, section 6 (2) excepted, applies to and in respect of an acting Ombudsman as it applies to and in respect of the Ombudsman.

Deputy
Ombuds-
man.

8. (1) The Governor may, on the recommendation of the Minister, appoint a Deputy Ombudsman.

(2) Sections 6 and 33 apply to and in respect of the Deputy Ombudsman as they apply to and in respect of the Ombudsman.

(3) The Deputy Ombudsman may, to the extent to which he is directed by the Ombudsman so to do, exercise or perform any power, authority, duty or function of the Ombudsman other than a power, authority, duty or function conferred or imposed by section 9, 10, 19 (2), 29 (b) and (c) or 30.

(4) Where a Deputy Ombudsman is appointed as acting Ombudsman he does not, on that account, cease to be Deputy Ombudsman.

Special
officer.

9. The Ombudsman may, with the concurrence of the Minister, appoint an officer of the Ombudsman to be a special officer of the Ombudsman.

Delegation.

10. (1) Subject to subsection (2), the Ombudsman may delegate to a special officer of the Ombudsman the exercise or performance of any powers, authorities, duties or functions of the Ombudsman.

(2) The Ombudsman may not delegate the exercise or performance of—

(a) any power, authority or duty to make any report under this Act (other than a report under section 28);

(b)

Ombudsman.

- (b) any power or authority conferred by section 9 or 19 (2); or
- (c) the power and authority conferred by subsection (1).

(3) A delegation under this section may be made subject to conditions or limitations as to the exercise or performance of any of the powers, authorities, duties or functions delegated, or as to time or circumstances.

(4) A delegation under this section must be made by instrument in writing.

(5) An instrument of delegation must specify—

- (a) the powers, authorities, duties or functions the exercise or performance of which is delegated; and
- (b) any conditions or limitations on the delegation.

(6) The Ombudsman may revoke a delegation under this section at any time, whether made by him or not.

(7) A delegation under this section is not revoked by the happening of a vacancy in the office of Ombudsman or by an absence or disability of the Ombudsman, except to the extent that the instrument of delegation so provides.

(8) During a vacancy in the office of Ombudsman, if there is no acting Ombudsman, the Minister may revoke a delegation under this section.

(9) Notwithstanding any delegation made under this section, the Ombudsman may continue to exercise or perform all or any of the powers, authorities, duties or functions delegated.

Ombudsman.

Effect of
certain
acts, etc.

11. Any act or thing done, suffered or omitted—

(a) pursuant to this Act by an acting Ombudsman or the Deputy Ombudsman; or

(b) pursuant to a delegation under section 10,

has the same force and effect as if done, suffered or omitted by the Ombudsman.

PART III.

INVESTIGATIONS.

Right to
complain.

12. (1) Subject to this section, any person (including a public authority) may complain to the Ombudsman about the conduct of a public authority unless—

(a) the conduct is of a class described in the Schedule;

(b) the conduct took place more than twelve months before the date of assent to this Act; or

(c) the conduct took place during the period of twelve months that last preceded the date of assent to this Act and the complaint was made more than twelve months after the appointed day.

(2) Where a person wishes to make a complaint under subsection (1), the complaint may, with the consent of that person, be made on his behalf by a member of Parliament.

(3) Where a person is detained by, or in the custody of, a public authority and informs the public authority or another person having superintendence over him that he wishes to make a complaint to the Ombudsman, the public authority or other person so informed shall—

(a) take all steps necessary to facilitate the making of the complaint; and

(b) send immediately to the Ombudsman, unopened, any written matter addressed to the Ombudsman.

(4)

Ombudsman.

(4) A complaint under subsection (1), and a consent for the purposes of subsection (2), must be in writing.

(5) Where a member of Parliament acts for a person under subsection (2) he does not, except for the purposes of sections 15, 16, 26 (4) and 29, thereby become the complainant.

(6) Where a member of Parliament publishes to a person for whom he acts under subsection (2) any matter, or a copy of any matter, published to him by the Ombudsman, the publication has, for all purposes, the same effect as if it had been published to that person by the Ombudsman.

13. (1) Where it appears to the Ombudsman that any conduct of a public authority about which a complaint may be made under section 12 may be wrong, the Ombudsman may, whether or not any person has complained to him about the conduct, make the conduct the subject of an investigation under this Act. Decision for investigation.

(2) Subsection (1) has effect notwithstanding anything in any Act passed before the passing of this Act.

(3) The Ombudsman may discontinue an investigation.

(4) Where any person has complained to the Ombudsman under section 12 about the conduct of a public authority, the Ombudsman, in deciding whether to make that conduct the subject of an investigation under this Act or whether to discontinue an investigation commenced by him under this Act—

(a) may have regard to such matters as he thinks fit; and

(b)

Ombudsman.

- (b) without limiting paragraph (a), may have regard to whether, in his opinion—
- (i) the complaint is frivolous, vexatious or not in good faith;
 - (ii) the subject-matter of the complaint is trivial;
 - (iii) the subject-matter of the complaint relates to the discharge by a public authority of a function which is substantially a trading or commercial function;
 - (iv) the conduct complained of occurred at too remote a time to justify investigation;
 - (v) in relation to the conduct complained of there is or was available to the complainant an alternative and satisfactory means of redress; or
 - (vi) the complainant has no interest or an insufficient interest in the conduct complained of.

Amendment
of Schedule.

14. (1) The Governor may, by proclamation published in the Gazette, amend the Schedule so as to add to it, or to omit from it, any class of conduct of a public authority.

(2) Where the Schedule is amended by adding to it any class of conduct of a public authority, and conduct the subject of an investigation by the Ombudsman is or includes conduct of the added class, the Ombudsman shall discontinue the investigation in so far as it relates to conduct of the added class and shall not make any report concerning conduct of the added class.

(3) A proclamation under subsection (1)—

- (a) takes effect from the date of the publication of the proclamation or a later date specified in the proclamation; and

(b)

Ombudsman.

- (b) shall be laid before each House of Parliament within fourteen sitting days of that House after the date of proclamation.

(4) If either House of Parliament passes a resolution, of which notice has been given within fifteen sitting days of that House after a proclamation has been laid before it, disallowing the proclamation or any part thereof, the amendment of the Schedule made by the proclamation or part thereupon ceases to have effect.

(5) For the purposes of subsections (3) and (4) sitting days shall be counted, whether or not they occur during the same session.

(6) Where, by the operation of subsection (4), an amendment of the Schedule ceases to have effect, the Ombudsman may—

- (a) resume any investigation that he discontinued under subsection (2) by reason of the amendment; and
- (b) make a report concerning the conduct to which the resumed investigation relates.

15. Where—

- (a) a complaint has been made to the Ombudsman about the conduct of a public authority; and
- (b) the Ombudsman—
 - (i) refuses to investigate the conduct complained of; or
 - (ii) discontinues an investigation of that conduct,

Reasons for refusal to investigate, etc.

the Ombudsman shall inform the complainant in writing of his decision and the reasons for his decision.

Ombudsman.

Notice of
investi-
gation.

16. (1) Upon the Ombudsman deciding to make the conduct of a public authority the subject of an investigation under this Act, he shall give notice of his decision—

- (a) where there is a complainant, to him;
- (b) to the head of the public authority and, if practicable, to the public authority; and
- (c) as prescribed.

(2) A notice under this section must be in writing, must describe the conduct the subject of the investigation and must, so far as practicable, identify the public authority.

Privacy.

17. An investigation under this Act shall be made in the absence of the public.

Public
authority
to give
informa-
tion, etc.

18. (1) For the purposes of an investigation under this Act, the Ombudsman may require a public authority—

- (a) to give him a statement of information;
- (b) to produce to him any document or other thing; or
- (c) to give him a copy of any document.

(2) A requirement under this section must be in writing, must specify or describe the information, document or thing required, and must fix a time for compliance.

Inquiries.

19. (1) In an investigation under this Act, the Ombudsman may make or hold inquiries.

(2) For the purposes of any inquiry under this section, the Ombudsman has the powers, authorities, protections and immunities conferred on a commissioner by Division 1 of Part II of the Royal Commissions Act, 1923, and that Act

(section

Ombudsman.

(section 13 and Division 2 of Part II excepted) applies to any witness summoned by or appearing before the Ombudsman in the same way as it applies to a witness summoned by or appearing before a commissioner, but section 11 (2) of that Act shall have effect subject to section 21 of this Act.

20. In an investigation under this Act, the Ombudsman may, at any time— Entry on premises, etc.

- (a) enter and inspect any premises occupied or used by a public authority as a public authority; and
- (b) inspect any document or thing in or on the premises.

21. (1) Subsections (2) and (3) apply where, in an investigation under this Act, the Ombudsman requires any person— Limits on secrecy and privilege.

- (a) to give any statement of information;
- (b) to produce any document or other thing;
- (c) to give a copy of any document; or
- (d) to answer any question.

(2) The person so required must comply with the requirement notwithstanding—

- (a) any rule of law which in proceedings in a court of law might justify an objection to compliance with a like requirement on grounds of public interest;
- (b) any privilege of a public authority; or
- (c) if the person so required is a public authority, any duty of secrecy or other restriction on disclosure applying to that public authority.

Ombudsman.

(3) Subject to subsection (2), the Ombudsman shall set aside the requirement if it appears to him that any person has a ground of privilege whereby, in proceedings in a court of law, he might resist a like requirement and it does not appear to the Ombudsman that that person consents to compliance with the requirement.

(4) Subsections (1), (2) and (3) apply to a requirement made under section 18 or made in an inquiry under section 19.

(5) The Ombudsman may exercise his powers under section 20 notwithstanding—

- (a) any rule of law which, in proceedings in a court of law, might justify an objection to an inspection of the premises or to production of the document or thing, as the case requires, on grounds of public interest;
- (b) any privilege of a public authority; or
- (c) any duty of secrecy or other restriction on disclosure applying to a public authority.

(6) Subject to subsection (5) the Ombudsman shall not exercise his powers under section 20 where it appears to the Ombudsman that any person has a ground of privilege whereby, in proceedings in a court of law, he might resist inspection of the premises or production of the document or thing, as the case requires, and it does not appear to the Ombudsman that that person consents to the inspection or production.

22. (1) This Act does not enable the Ombudsman—

- (a) to require any person—
 - (i) to give any statement of information;
 - (ii) to produce any document or other thing;

(iii)

Ombudsman.

- (iii) to give a copy of any document; or
- (iv) to answer any question,
which relates to confidential proceedings of cabinet
or any committee of cabinet; or
- (b) to inspect any document or thing which so relates.

(2) For the purposes of subsection (1), a certificate of the Permanent Head of the Premier's Department that any information, document, thing or question relates to confidential proceedings of cabinet or of a committee of cabinet is conclusive that it does so relate.

23. In an investigation under this Act, the Ombudsman ^{Expert} may, with the consent of the Minister, engage the services of ^{assistance.} any person for the purpose of getting expert assistance.

24. (1) In an investigation under this Act, the Ombuds- ^{Persons to} man shall give an opportunity to make submissions on the ^{be heard.} conduct the subject of the investigation—

- (a) if practicable, to the public authority whose conduct it is; and
- (b) to any other person given notice under section 16.

(2) Where, in an investigation under this Act, the Ombudsman considers that there are grounds for adverse comment in respect of any person, the Ombudsman, before making any such comment in any report, shall, so far as practicable—

- (a) inform that person of the substance of the grounds of the adverse comment; and
- (b) give him an opportunity to make submissions.

(3) Subsection (2) does not apply in relation to a report under section 28.

Ombudsman.

Consulta-
tion with
responsible
Minister.

25. (1) In an investigation under this Act, the Ombudsman shall, on request by the responsible Minister, consult him on the conduct the subject of the investigation.

(2) Before publishing a report under section 26, the Ombudsman—

- (a) shall inform the responsible Minister that he proposes to publish such a report; and
 - (b) shall, on request by that Minister, consult him.
-

PART IV.

REPORTS.

Conduct
wrong.

26. (1) Where, in an investigation under this Act, the Ombudsman finds that the conduct the subject of the investigation, or any part of the conduct, is wrong, the Ombudsman shall make a report accordingly, giving his reasons.

(2) In a report under this section, the Ombudsman may recommend—

- (a) that the conduct be considered or reconsidered by the public authority whose conduct it is, or by any person in a position to supervise or direct the public authority in relation to the conduct, or to review, rectify, mitigate or change the conduct or its consequences;
- (b) that action be taken to rectify, mitigate or change the conduct or its consequences;
- (c) that reasons be given for the conduct;
- (d) that any law or practice relating to the conduct be changed; or
- (e) that any other step be taken.

(3)

Ombudsman.

(3) The Ombudsman shall give a report under this section—

- (a) to the responsible Minister;
- (b) to the head of the authority whose conduct is the subject of the report; and
- (c) where the public authority is employed under the Public Service Act, 1902, to the Public Service Board.

(4) The Ombudsman may give a copy of a report under this section—

- (a) where the investigation arises out of a complaint to the Ombudsman, to the complainant;
- (b) to the public authority to whose conduct the report relates.

(5) The person to whom a report is given under subsection (3) (b) may, and on request by the Ombudsman shall, notify the Ombudsman of any action taken or proposed in consequence of a report under this section.

27. Where the Ombudsman is not satisfied that sufficient steps have been taken in due time in consequence of a report under section 26, he may make a report to the Minister for presentation to Parliament. Default in consequent action.

28. Where the Ombudsman is of the opinion that a public authority is or may be guilty of misconduct in the course of his functions to such an extent as, in the opinion of the Ombudsman, may warrant dismissal, removal or punishment, the Ombudsman shall report his opinion— Serious misconduct.

- (a) to the responsible Minister;
- (b) to the head of the public authority; and

(c)

Ombudsman.

- (c) where the public authority is employed under the Public Service Act, 1902, to the Public Service Board,

giving his reasons.

Report to
complainant.

29. Where the Ombudsman investigates the conduct of a public authority pursuant to a complaint made to him, the Ombudsman—

- (a) may from time to time report to the complainant on the progress of the investigation;
- (b) shall report to the complainant on the results of the investigation; and
- (c) may make such comments to the complainant on the investigation and its consequences as he thinks fit.

Annual
report.

30. (1) The Ombudsman shall, as soon as practicable after the thirtieth day of June in each year, prepare and submit to the Minister a report of his work and activities for the twelve months preceding that date.

(2) The Minister shall lay that report or cause it to be laid before both Houses of Parliament as soon as practicable after the receipt by him of the report.

Special
report to
Parliament.

31. (1) The Ombudsman may, at any time, make a special report to the Minister for presentation to Parliament on any matter arising in connection with the discharge of his functions.

(2) The Ombudsman may include in a report under subsection (1) or under section 27 a recommendation that the report be made public forthwith.

Ombudsman.

(3) Where a report under subsection (1) or under section 27 contains a recommendation by the Ombudsman that the report be made public forthwith the Minister may make it public before it is presented to Parliament.

PART V.

GENERAL.

32. (1) The Governor may appoint and employ, under Staff. and subject to the Public Service Act, 1902, such officers and employees as may be necessary to enable the Ombudsman to exercise and perform his powers, authorities, duties and functions.

(2) The Ombudsman may, with the approval of the responsible Minister, make use of the services of any public authority.

(3) A person who is employed for the purposes of subsection (1), or whose services are made use of under subsection (2), is, while he is so employed, or while his services are so used, an officer of the Ombudsman.

33. (1) In this section "superannuation scheme" means Preservation of certain rights. a scheme, fund or arrangement which is established by or under an Act and which provides for superannuation or retirement benefits.

(2) Subject to subsection (3) and to the terms of his appointment, where the Ombudsman was, immediately before his appointment as Ombudsman, an officer of the Public Service or a contributor to a superannuation scheme, he—

(a) shall retain any rights accrued or accruing to him as such an officer or contributor;

(b)

Ombudsman.

- (b) may continue to contribute to any superannuation scheme to which he was a contributor immediately before his appointment as Ombudsman; and
- (c) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity under the superannuation scheme,

as if he had continued to be such an officer or contributor during his service as Ombudsman and—

- (d) his service as Ombudsman shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he continues to contribute or by which that entitlement is conferred;
- (e) he shall be deemed to be an officer or employee, and the Minister shall be deemed to be his employer, for the purposes of the superannuation scheme to which he is entitled to contribute under this subsection.

(3) Where, but for this subsection, the Ombudsman would be entitled under subsection (2) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under that scheme, he shall not be so entitled upon his becoming (whether upon his appointment as Ombudsman or at any later time while he holds office as Ombudsman) a contributor to any other superannuation scheme and the provisions of subsection (2) (e) cease to apply to or in respect of him and the Minister in any case where he becomes a contributor to another superannuation scheme.

(4) Subsection (3) does not prevent the payment to the Ombudsman upon his ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him had he ceased, by reason of resignation, to be an officer or employee for the purposes of that scheme.

(5)

Ombudsman.

(5) Subject to the terms of his appointment, where the Ombudsman was, immediately before his appointment as Ombudsman, an officer of the Public Service, he shall—

(a) if he ceases to hold office as Ombudsman otherwise than pursuant to section 6 (5); and

(b) if he is under the age of sixty years,

be appointed to some office in the Public Service not lower in classification and salary than that which he held immediately before his appointment as Ombudsman.

(6) The Ombudsman is not, in respect of the same period of service, entitled to claim a benefit under this Act and another Act.

34. The Ombudsman shall not, nor shall an officer of the Ombudsman, disclose any information obtained by him in the course of his office, unless the disclosure is made— Disclosure by Ombudsman or officer.

(a) where the information is obtained from a public authority, with the consent of the head of that authority or of the responsible Minister;

(b) where the information is obtained from any other person, with the consent of that person;

(c) for the purpose of any proceedings under section 37 or under Part III of the Royal Commissions Act, 1923; or

(d) for the purpose of discharging his functions under this Act.

Penalty : One thousand dollars.

35. (1) The Ombudsman shall not, nor shall an officer of the Ombudsman, be competent or compellable to give evidence in any legal proceedings in respect of any information obtained by him in the course of his office. Ombudsman or officer as witness.

(2)

Ombudsman.

(2) Subsection (1) does not apply to any legal proceedings under section 37 or under Part III of the Royal Commissions Act, 1923.

Incrimina-
tory
statement.

36. (1) Where, under section 18, a person is required to give a statement that tends to incriminate that person, neither the requirement nor the statement may be used in any proceedings against that person except proceedings under section 37 (1) (c).

(2) Subsection (1) applies whether the person required to give a statement objects to giving it or not.

Offences.

37. (1) A person shall not—

- (a) without lawful excuse, wilfully obstruct, hinder or resist the Ombudsman or an officer of the Ombudsman in the exercise of his powers under this Act;
- (b) without lawful excuse, refuse or wilfully fail to comply with any lawful requirement of the Ombudsman or an officer of the Ombudsman under this Act; or
- (c) wilfully make any false statement to or mislead, or attempt to mislead, the Ombudsman or an officer of the Ombudsman in the exercise of his powers under this Act.

Penalty : One thousand dollars.

(2) A person shall not directly or indirectly—

- (a) where he is not the Ombudsman—represent that he is the Ombudsman;
- (b) where he has not been appointed under section 7 as acting Ombudsman—represent that he has been so appointed;

(c)

Ombudsman.

- (c) where he is not the Deputy Ombudsman—represent that he is the Deputy Ombudsman;
- (d) where he is not a special officer of the Ombudsman—represent that he is a special officer of the Ombudsman;
- (e) where he is not an officer of the Ombudsman—represent that he is an officer of the Ombudsman; or
- (f) where he is not engaged in the administration or execution of this Act—represent that he is so engaged.

Penalty: One thousand dollars.

(3) For the purposes of subsection (2), a person represents that a state of affairs exists if he does or says anything, or causes, permits or suffers anything to be done or said, whereby it is represented, or whereby a belief may be induced, that the state of affairs exists.

38. A penalty imposed by this Act may be recovered in a summary manner before a Stipendiary Magistrate sitting in petty sessions alone. Proceedings for offences.

39. The Governor may make regulations under this Act for or with respect to prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for the purpose of carrying out or giving effect to this Act. Regulations.

40. The Defamation Act, 1974, is amended—

Amendment
of Act No.
18, 1974.

- (a) by inserting after section 17 the following section :— Sec. 17A.

17A. (1) There is a defence of absolute privilege for a publication to or by the Ombudsman, as Ombudsman, or to any officer of the Ombudsman, as such an officer. Matters arising under Ombudsman Act, 1974.

Ombudsman.

(2) Subsection (1) applies in relation to an acting Ombudsman, the Deputy Ombudsman and a special officer of the Ombudsman in the same way as it applies in relation to the Ombudsman.

(3) There is a defence of absolute privilege for a publication to a member of Parliament for the purposes of section 12 (2) of the Ombudsman Act, 1974.

(4) There is a defence of absolute privilege for the publication under section 31 (3) of the Ombudsman Act, 1974, of a report under that Act.

(5) There is a defence of absolute privilege for the publication, under the authority of the Minister for the time being administering the Ombudsman Act, 1974, of a copy of a report previously made public under section 31 (3) of that Act.

Schedule 2.

- (b) (i) by omitting from clause 2 (8) of Schedule 2 the word "or";
- (ii) by omitting from clause 2 (9) of Schedule 2 the word "office." and by inserting instead the following words and subclause :—
- office; or
- (10) proceedings of the Ombudsman, so far as those proceedings are included in a report previously made public under section 31 (3) of the Ombudsman Act, 1974.

SCHEDULE.

Ombudsman.

SCHEDULE.

Sec. 12.

EXCLUDED CONDUCT OF PUBLIC AUTHORITIES.

1. Conduct of—

- (a) the Governor, whether acting with or without the advice of the Executive Council;
- (b) a Minister of the Crown, including a Minister of the Crown acting as a corporation sole, but not so as to preclude conduct of a public authority relating to a recommendation made to a Minister of the Crown;
- (c) Parliament;
- (d) the Houses of Parliament;
- (e) a committee of either House, or both Houses, of Parliament;
- (f) either House of Parliament;
- (g) a member of either House of Parliament, where acting as such;
- (h) an officer of Parliament or of either House of Parliament, where acting as such.

2. Conduct of a person or body before whom witnesses may be compelled to appear and give evidence, and persons associated with such a person or body.

3. Conduct of a body of which one or more of the members is appointed by the Governor or a Minister of the Crown where—

- (a) at least one member of the body may be appointed by virtue of his being a Judge of the Supreme Court of New South Wales, a member of the Industrial Commission of New South Wales or a Judge of the District Court of New South Wales; and
- (b) such a person, if appointed as such a member, has a right or duty to preside at a meeting of the body at which he is present.

4. Conduct of a public authority relating to a Bill for an Act or the making of a rule, regulation or by-law.

5. Conduct of a public authority constituted pursuant to an arrangement between—

- (a) the State of New South Wales and the Commonwealth;
- (b) the State of New South Wales and any other State;
- (c) the State of New South Wales, any other State and the Commonwealth.

Ombudsman.

6. Conduct of a public authority where acting as a legal adviser to a public authority or as legal representative of a public authority.

7. Conduct of the Attorney General, or of the Solicitor General, relating to the commencement, carrying on or termination of any proceedings before a court, including a coronial inquiry and committal proceedings before a magistrate.

8. Conduct of a public authority relating to the carrying on of any proceedings—

- (a) before any court, including a coronial inquiry and committal proceedings before a magistrate; or
- (b) before any other person or body before whom witnesses may be compelled to appear and give evidence.

9. Conduct of a public authority relating to an exercise of the prerogative of mercy.

10. Conduct of a public authority where acting as a commissioner under the Royal Commissions Act, 1923, or, by the authority of an Act, exercising the powers of such a commissioner.

11. Conduct of the Council of the City of Sydney and of the Sydney County Council and of the officers and employees of those councils.

12. Conduct of a public authority relating to—

- (a) the appointment or employment of a person as an officer or employee; and
- (b) matters affecting a person as an officer or employee.

13. Conduct of a member of the Police Force when acting as a constable.

14. Conduct of a public authority relating to the investment of any funds.

15. Conduct of a public authority relating to the payment of any money as an act of grace.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1974

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

R. E. WARD,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 9 October, 1974.*

New South Wales



ANNO VICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 68, 1974.

An Act to provide for the appointment of an Ombudsman;
to define his powers, authorities, duties and functions;
and for purposes connected therewith. [Assented to, 18th
October, 1974.]

BE

*I have examined this Bill, and find it to correspond in all respects
with the Bill as finally passed by both Houses.*

J. H. BROWN,
Chairman of Committees of the Legislative Assembly.

Ombudsman.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.**PRELIMINARY.**

Short title. **1.** This Act may be cited as the "Ombudsman Act, 1974".

Commence- **2.** (1) This Act, Part III excepted, commences on the
ment. date of assent to this Act.

(2) Part III commences on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Division **3.** This Act is divided as follows :—
of Act.

PART I.—PRELIMINARY—ss. 1–5.

PART II.—THE OMBUDSMAN—ss. 6–11.

PART III.—INVESTIGATIONS—ss. 12–25.

PART IV.—REPORTS—ss. 26–31.

PART V.—GENERAL—ss. 32–40.

SCHEDULE.

Act binds **4.** This Act binds the Crown not only in right of New
Crown. South Wales but also, so far as the legislative power of
Parliament permits, the Crown in all its other capacities.

Ombudsman.

5. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires— Interpre-
tation.

“appointed day” means the day appointed and notified under section 2 (2);

“conduct” means—

- (a) any action or inaction relating to a matter of administration; and
- (b) any alleged action or inaction relating to a matter of administration;

“head” means—

- (a) in relation to a public authority who is a statutory employee in relation to an Act that constitutes a corporation sole—the corporation;
- (b) in relation to a public authority who is a statutory employee in relation to an Act that constitutes a body of persons (incorporated or not) that executes that or any other Act—the person entitled to preside at a meeting of the body;
- (c) in relation to a public authority who is not a person referred to in paragraph (a) or (b) but is—
 - (i) an officer of the Public Service employed for the purposes of a Department of the Government; or
 - (ii) a person otherwise in the service of the Crown who is employed for those purposes—
the permanent head of that Department;
- (d) in relation to a public authority that is a corporation sole—the corporation;

(e)

Ombudsman.

(e) in relation to a public authority that is a corporation aggregate or an unincorporated body—the person entitled to preside at meetings of the corporation or body;

(f) in any other case—the prescribed person;

“person” includes an unincorporated body of persons;

“public authority” means—

(a) any person appointed to an office by the Governor;

(b) any statutory body representing the Crown;

(c) any officer of the Public Service;

(d) any person in the service of the Crown or of any statutory body representing the Crown;

(e) any person in relation to whom or to whose function an account is kept of administration or working expenses, where the account—

(i) is part of the accounts prepared pursuant to the Audit Act, 1902;

(ii) is required by or under any Act to be audited by the Auditor-General;

(iii) is an account with respect to which the Auditor-General has powers under any law;

(iv) is an account with respect to which the Auditor-General may exercise powers under a law relating to the audit of accounts where requested to do so by a Minister of the Crown;

(f) any person entitled to be reimbursed his expenses, from a fund of which an account mentioned in paragraph (e) is kept, of attending meetings or carrying out the business of any body constituted by an Act;

(g)

Ombudsman.

- (g) any holder of an office declared by the regulations to be an office of a public authority for the purposes of this Act; and
- (h) any person acting for or on behalf of, or in the place of, or as deputy or delegate of, any person described in any of the foregoing paragraphs;

“regulations” means regulations made under this Act;

“responsible Minister” means—

- (a) in relation to a public authority who is a statutory employee—the Minister of the Crown administering the Act in relation to which the public authority is a statutory employee;
- (b) in relation to a public authority who is not a statutory employee but is—
 - (i) an officer of the Public Service employed for the purposes of a Department of the Government; or
 - (ii) a person otherwise employed by the Crown for those purposes—the Minister of the Crown administering that Department;
- (c) in relation to any other public authority—the Minister of the Crown who, in the opinion of the Ombudsman, is most nearly concerned with the conduct of the public authority;

“statutory employee” means, in relation to an Act—

- (a) a person in the service of a corporation constituted by that Act, being, in the case of a corporation aggregate, a corporation of which one or more of the members is appointed by the Governor or a Minister;
- (b)

Ombudsman.

- (b) an officer of the Public Service employed in connection with the administration of that Act or a person otherwise in the service of the Crown who is employed in that connection.

(2) For the purposes of this Act, conduct of a public authority is wrong if it is—

- (a) contrary to law;
- (b) unreasonable, unjust, oppressive or improperly discriminatory, whether or not it is in accordance with any law or established practice;
- (c) based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations;
- (d) based wholly or partly on a mistake of law or fact;
- (e) conduct for which reasons should be given but are not given; or
- (f) otherwise wrong.

PART II.

THE OMBUDSMAN.

Office of
Ombuds-
man.

6. (1) The Governor may, on the recommendation of the Minister, appoint an Ombudsman on such terms and conditions as are specified in the instrument of appointment.

(2) Subject to this Act, the Ombudsman holds office for such period, not exceeding seven years, as is specified in the instrument of his appointment and is eligible for re-appointment.

(3)

Ombudsman.

(3) A person is not eligible for appointment as Ombudsman—

- (a) if he is of or above the age of sixty-five years; or
- (b) if he is a member of the Legislative Council or the Legislative Assembly or is a member of a House of Parliament of another State or of the Commonwealth.

(4) The Ombudsman vacates his office—

- (a) on the day on which he attains the age of sixty-five years;
- (b) if he engages in any paid employment outside the duties of his office;
- (c) if he is nominated for election as a member of the Legislative Council or the Legislative Assembly or as a member of a House of Parliament of another State or of the Commonwealth; or
- (d) if he resigns his office by writing under his hand addressed to the Governor and the Governor accepts the resignation.

(5) The Ombudsman may, at any time, be removed from his office by the Governor upon the address of both Houses of Parliament.

(6) The provisions of the Public Service Act, 1902, do not apply to the appointment of the Ombudsman and the Ombudsman is not subject to those provisions.

7. (1) The Governor may, on the recommendation of the Minister, appoint an acting Ombudsman during the absence of the Ombudsman or during a vacancy in his office. Acting
Ombuds-
man.

(2) An acting Ombudsman is entitled to such salary and allowances as the Governor may from time to time determine.

(3)

Ombudsman.

(3) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising an acting Ombudsman to act as Ombudsman.

(4) This Act, section 6 (2) excepted, applies to and in respect of an acting Ombudsman as it applies to and in respect of the Ombudsman.

**Deputy
Ombuds-
man.**

8. (1) The Governor may, on the recommendation of the Minister, appoint a Deputy Ombudsman.

(2) Sections 6 and 33 apply to and in respect of the Deputy Ombudsman as they apply to and in respect of the Ombudsman.

(3) The Deputy Ombudsman may, to the extent to which he is directed by the Ombudsman so to do, exercise or perform any power, authority, duty or function of the Ombudsman other than a power, authority, duty or function conferred or imposed by section 9, 10, 19 (2), 29 (b) and (c) or 30.

(4) Where a Deputy Ombudsman is appointed as acting Ombudsman he does not, on that account, cease to be Deputy Ombudsman.

**Special
officer.**

9. The Ombudsman may, with the concurrence of the Minister, appoint an officer of the Ombudsman to be a special officer of the Ombudsman.

Delegation.

10. (1) Subject to subsection (2), the Ombudsman may delegate to a special officer of the Ombudsman the exercise or performance of any powers, authorities, duties or functions of the Ombudsman.

(2) The Ombudsman may not delegate the exercise or performance of—

(a) any power, authority or duty to make any report under this Act (other than a report under section 28);

(b)

Ombudsman.

- (b) any power or authority conferred by section 9 or 19 (2); or
- (c) the power and authority conferred by subsection (1).

(3) A delegation under this section may be made subject to conditions or limitations as to the exercise or performance of any of the powers, authorities, duties or functions delegated, or as to time or circumstances.

(4) A delegation under this section must be made by instrument in writing.

(5) An instrument of delegation must specify—

- (a) the powers, authorities, duties or functions the exercise or performance of which is delegated; and
- (b) any conditions or limitations on the delegation.

(6) The Ombudsman may revoke a delegation under this section at any time, whether made by him or not.

(7) A delegation under this section is not revoked by the happening of a vacancy in the office of Ombudsman or by an absence or disability of the Ombudsman, except to the extent that the instrument of delegation so provides.

(8) During a vacancy in the office of Ombudsman, if there is no acting Ombudsman, the Minister may revoke a delegation under this section.

(9) Notwithstanding any delegation made under this section, the Ombudsman may continue to exercise or perform all or any of the powers, authorities, duties or functions delegated.

Ombudsman.

Effect of
certain
acts, etc.

- 11.** Any act or thing done, suffered or omitted—
- (a) pursuant to this Act by an acting Ombudsman or the Deputy Ombudsman; or
 - (b) pursuant to a delegation under section 10,
- has the same force and effect as if done, suffered or omitted by the Ombudsman.
-

PART III.

INVESTIGATIONS.

Right to
complain.

- 12.** (1) Subject to this section, any person (including a public authority) may complain to the Ombudsman about the conduct of a public authority unless—

- (a) the conduct is of a class described in the Schedule;
- (b) the conduct took place more than twelve months before the date of assent to this Act; or
- (c) the conduct took place during the period of twelve months that last preceded the date of assent to this Act and the complaint was made more than twelve months after the appointed day.

(2) Where a person wishes to make a complaint under subsection (1), the complaint may, with the consent of that person, be made on his behalf by a member of Parliament.

(3) Where a person is detained by, or in the custody of, a public authority and informs the public authority or another person having superintendence over him that he wishes to make a complaint to the Ombudsman, the public authority or other person so informed shall—

- (a) take all steps necessary to facilitate the making of the complaint; and
- (b) send immediately to the Ombudsman, unopened, any written matter addressed to the Ombudsman.

(4)

Ombudsman.

(4) A complaint under subsection (1), and a consent for the purposes of subsection (2), must be in writing.

(5) Where a member of Parliament acts for a person under subsection (2) he does not, except for the purposes of sections 15, 16, 26 (4) and 29, thereby become the complainant.

(6) Where a member of Parliament publishes to a person for whom he acts under subsection (2) any matter, or a copy of any matter, published to him by the Ombudsman, the publication has, for all purposes, the same effect as if it had been published to that person by the Ombudsman.

13. (1) Where it appears to the Ombudsman that any conduct of a public authority about which a complaint may be made under section 12 may be wrong, the Ombudsman may, whether or not any person has complained to him about the conduct, make the conduct the subject of an investigation under this Act. Decision
for investi-
gation.

(2) Subsection (1) has effect notwithstanding anything in any Act passed before the passing of this Act.

(3) The Ombudsman may discontinue an investigation.

(4) Where any person has complained to the Ombudsman under section 12 about the conduct of a public authority, the Ombudsman, in deciding whether to make that conduct the subject of an investigation under this Act or whether to discontinue an investigation commenced by him under this Act—

(a) may have regard to such matters as he thinks fit;
and

(b)

Ombudsman.

- (b) without limiting paragraph (a), may have regard to whether, in his opinion—
- (i) the complaint is frivolous, vexatious or not in good faith;
 - (ii) the subject-matter of the complaint is trivial;
 - (iii) the subject-matter of the complaint relates to the discharge by a public authority of a function which is substantially a trading or commercial function;
 - (iv) the conduct complained of occurred at too remote a time to justify investigation;
 - (v) in relation to the conduct complained of there is or was available to the complainant an alternative and satisfactory means of redress; or
 - (vi) the complainant has no interest or an insufficient interest in the conduct complained of.

Amendment
of Schedule.

14. (1) The Governor may, by proclamation published in the Gazette, amend the Schedule so as to add to it, or to omit from it, any class of conduct of a public authority.

(2) Where the Schedule is amended by adding to it any class of conduct of a public authority, and conduct the subject of an investigation by the Ombudsman is or includes conduct of the added class, the Ombudsman shall discontinue the investigation in so far as it relates to conduct of the added class and shall not make any report concerning conduct of the added class.

(3) A proclamation under subsection (1)—

- (a) takes effect from the date of the publication of the proclamation or a later date specified in the proclamation; and

(b)

Ombudsman.

- (b) shall be laid before each House of Parliament within fourteen sitting days of that House after the date of proclamation.

(4) If either House of Parliament passes a resolution, of which notice has been given within fifteen sitting days of that House after a proclamation has been laid before it, disallowing the proclamation or any part thereof, the amendment of the Schedule made by the proclamation or part thereupon ceases to have effect.

(5) For the purposes of subsections (3) and (4) sitting days shall be counted, whether or not they occur during the same session.

(6) Where, by the operation of subsection (4), an amendment of the Schedule ceases to have effect, the Ombudsman may—

- (a) resume any investigation that he discontinued under subsection (2) by reason of the amendment; and
- (b) make a report concerning the conduct to which the resumed investigation relates.

15. Where—

- (a) a complaint has been made to the Ombudsman about the conduct of a public authority; and
- (b) the Ombudsman—
 - (i) refuses to investigate the conduct complained of; or
 - (ii) discontinues an investigation of that conduct,

Reasons for refusal to investigate, etc.

the Ombudsman shall inform the complainant in writing of his decision and the reasons for his decision.

Ombudsman.

Notice of
investi-
gation.

16. (1) Upon the Ombudsman deciding to make the conduct of a public authority the subject of an investigation under this Act, he shall give notice of his decision—

- (a) where there is a complainant, to him;
- (b) to the head of the public authority and, if practicable, to the public authority; and
- (c) as prescribed.

(2) A notice under this section must be in writing, must describe the conduct the subject of the investigation and must, so far as practicable, identify the public authority.

Privacy.

17. An investigation under this Act shall be made in the absence of the public.

Public
authority
to give
informa-
tion, etc.

18. (1) For the purposes of an investigation under this Act, the Ombudsman may require a public authority—

- (a) to give him a statement of information;
- (b) to produce to him any document or other thing; or
- (c) to give him a copy of any document.

(2) A requirement under this section must be in writing, must specify or describe the information, document or thing required, and must fix a time for compliance.

Inquiries.

19. (1) In an investigation under this Act, the Ombudsman may make or hold inquiries.

(2) For the purposes of any inquiry under this section, the Ombudsman has the powers, authorities, protections and immunities conferred on a commissioner by Division 1 of Part II of the Royal Commissions Act, 1923, and that Act

(section

Ombudsman.

(section 13 and Division 2 of Part II excepted) applies to any witness summoned by or appearing before the Ombudsman in the same way as it applies to a witness summoned by or appearing before a commissioner, but section 11 (2) of that Act shall have effect subject to section 21 of this Act.

20. In an investigation under this Act, the Ombudsman may, at any time—

Entry on premises, etc.

- (a) enter and inspect any premises occupied or used by a public authority as a public authority; and
- (b) inspect any document or thing in or on the premises.

21. (1) Subsections (2) and (3) apply where, in an investigation under this Act, the Ombudsman requires any person—

Limits on secrecy and privilege.

- (a) to give any statement of information;
- (b) to produce any document or other thing;
- (c) to give a copy of any document; or
- (d) to answer any question.

(2) The person so required must comply with the requirement notwithstanding—

- (a) any rule of law which in proceedings in a court of law might justify an objection to compliance with a like requirement on grounds of public interest;
- (b) any privilege of a public authority; or
- (c) if the person so required is a public authority, any duty of secrecy or other restriction on disclosure applying to that public authority.

(3)

Ombudsman.

(3) Subject to subsection (2), the Ombudsman shall set aside the requirement if it appears to him that any person has a ground of privilege whereby, in proceedings in a court of law, he might resist a like requirement and it does not appear to the Ombudsman that that person consents to compliance with the requirement.

(4) Subsections (1), (2) and (3) apply to a requirement made under section 18 or made in an inquiry under section 19.

(5) The Ombudsman may exercise his powers under section 20 notwithstanding—

- (a) any rule of law which, in proceedings in a court of law, might justify an objection to an inspection of the premises or to production of the document or thing, as the case requires, on grounds of public interest;
- (b) any privilege of a public authority; or
- (c) any duty of secrecy or other restriction on disclosure applying to a public authority.

(6) Subject to subsection (5) the Ombudsman shall not exercise his powers under section 20 where it appears to the Ombudsman that any person has a ground of privilege whereby, in proceedings in a court of law, he might resist inspection of the premises or production of the document or thing, as the case requires, and it does not appear to the Ombudsman that that person consents to the inspection or production.

Cabinet
proceed-
ings.

22. (1) This Act does not enable the Ombudsman—

- (a) to require any person—
 - (i) to give any statement of information;
 - (ii) to produce any document or other thing;
 - (iii)

Ombudsman.

- (iii) to give a copy of any document; or
- (iv) to answer any question,
which relates to confidential proceedings of cabinet
or any committee of cabinet; or
- (b) to inspect any document or thing which so relates.

(2) For the purposes of subsection (1), a certificate of the Permanent Head of the Premier's Department that any information, document, thing or question relates to confidential proceedings of cabinet or of a committee of cabinet is conclusive that it does so relate.

23. In an investigation under this Act, the Ombudsman ^{Expert} may, with the consent of the Minister, engage the services of ^{assistance.} any person for the purpose of getting expert assistance.

24. (1) In an investigation under this Act, the Ombudsman ^{Persons to} shall give an opportunity to make submissions on the ^{be heard.} conduct the subject of the investigation—

- (a) if practicable, to the public authority whose conduct it is; and
- (b) to any other person given notice under section 16.

(2) Where, in an investigation under this Act, the Ombudsman considers that there are grounds for adverse comment in respect of any person, the Ombudsman, before making any such comment in any report, shall, so far as practicable—

- (a) inform that person of the substance of the grounds of the adverse comment; and
- (b) give him an opportunity to make submissions.

(3) Subsection (2) does not apply in relation to a report under section 28.

Ombudsman.

Consulta-
tion with
responsible
Minister.

25. (1) In an investigation under this Act, the Ombudsman shall, on request by the responsible Minister, consult him on the conduct the subject of the investigation.

(2) Before publishing a report under section 26, the Ombudsman—

- (a) shall inform the responsible Minister that he proposes to publish such a report; and
- (b) shall, on request by that Minister, consult him.

PART IV.**REPORTS.**

Conduct
wrong.

26. (1) Where, in an investigation under this Act, the Ombudsman finds that the conduct the subject of the investigation, or any part of the conduct, is wrong, the Ombudsman shall make a report accordingly, giving his reasons.

(2) In a report under this section, the Ombudsman may recommend—

- (a) that the conduct be considered or reconsidered by the public authority whose conduct it is, or by any person in a position to supervise or direct the public authority in relation to the conduct, or to review, rectify, mitigate or change the conduct or its consequences;
- (b) that action be taken to rectify, mitigate or change the conduct or its consequences;
- (c) that reasons be given for the conduct;
- (d) that any law or practice relating to the conduct be changed; or
- (e) that any other step be taken.

(3)

Ombudsman.

(3) The Ombudsman shall give a report under this section—

- (a) to the responsible Minister;
- (b) to the head of the authority whose conduct is the subject of the report; and
- (c) where the public authority is employed under the Public Service Act, 1902, to the Public Service Board.

(4) The Ombudsman may give a copy of a report under this section—

- (a) where the investigation arises out of a complaint to the Ombudsman, to the complainant;
- (b) to the public authority to whose conduct the report relates.

(5) The person to whom a report is given under subsection (3) (b) may, and on request by the Ombudsman shall, notify the Ombudsman of any action taken or proposed in consequence of a report under this section.

27. Where the Ombudsman is not satisfied that sufficient steps have been taken in due time in consequence of a report under section 26, he may make a report to the Minister for presentation to Parliament. Default in consequent action.

28. Where the Ombudsman is of the opinion that a public authority is or may be guilty of misconduct in the course of his functions to such an extent as, in the opinion of the Ombudsman, may warrant dismissal, removal or punishment, the Ombudsman shall report his opinion— Serious misconduct.

- (a) to the responsible Minister;
- (b) to the head of the public authority; and

(c)

Ombudsman.

- (c) where the public authority is employed under the Public Service Act, 1902, to the Public Service Board,

giving his reasons.

Report to
complainant.

29. Where the Ombudsman investigates the conduct of a public authority pursuant to a complaint made to him, the Ombudsman—

- (a) may from time to time report to the complainant on the progress of the investigation;
- (b) shall report to the complainant on the results of the investigation; and
- (c) may make such comments to the complainant on the investigation and its consequences as he thinks fit.

Annual
report.

30. (1) The Ombudsman shall, as soon as practicable after the thirtieth day of June in each year, prepare and submit to the Minister a report of his work and activities for the twelve months preceding that date.

(2) The Minister shall lay that report or cause it to be laid before both Houses of Parliament as soon as practicable after the receipt by him of the report.

Special
report to
Parliament.

31. (1) The Ombudsman may, at any time, make a special report to the Minister for presentation to Parliament on any matter arising in connection with the discharge of his functions.

(2) The Ombudsman may include in a report under subsection (1) or under section 27 a recommendation that the report be made public forthwith.

(3)

Ombudsman.

(3) Where a report under subsection (1) or under section 27 contains a recommendation by the Ombudsman that the report be made public forthwith the Minister may make it public before it is presented to Parliament.

PART V.

GENERAL.

32. (1) The Governor may appoint and employ, under Staff, and subject to the Public Service Act, 1902, such officers and employees as may be necessary to enable the Ombudsman to exercise and perform his powers, authorities, duties and functions.

(2) The Ombudsman may, with the approval of the responsible Minister, make use of the services of any public authority.

(3) A person who is employed for the purposes of subsection (1), or whose services are made use of under subsection (2), is, while he is so employed, or while his services are so used, an officer of the Ombudsman.

33. (1) In this section "superannuation scheme" means a scheme, fund or arrangement which is established by or under an Act and which provides for superannuation or retirement benefits. Preservation of certain rights.

(2) Subject to subsection (3) and to the terms of his appointment, where the Ombudsman was, immediately before his appointment as Ombudsman, an officer of the Public Service or a contributor to a superannuation scheme, he—

(a) shall retain any rights accrued or accruing to him as such an officer or contributor;

(b)

Ombudsman.

- (b) may continue to contribute to any superannuation scheme to which he was a contributor immediately before his appointment as Ombudsman; and
- (c) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity under the superannuation scheme,

as if he had continued to be such an officer or contributor during his service as Ombudsman and—

- (d) his service as Ombudsman shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he continues to contribute or by which that entitlement is conferred;
- (e) he shall be deemed to be an officer or employee, and the Minister shall be deemed to be his employer, for the purposes of the superannuation scheme to which he is entitled to contribute under this subsection.

(3) Where, but for this subsection, the Ombudsman would be entitled under subsection (2) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under that scheme, he shall not be so entitled upon his becoming (whether upon his appointment as Ombudsman or at any later time while he holds office as Ombudsman) a contributor to any other superannuation scheme and the provisions of subsection (2) (e) cease to apply to or in respect of him and the Minister in any case where he becomes a contributor to another superannuation scheme.

(4) Subsection (3) does not prevent the payment to the Ombudsman upon his ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him had he ceased, by reason of resignation, to be an officer or employee for the purposes of that scheme.

(5)

Ombudsman.

(5) Subject to the terms of his appointment, where the Ombudsman was, immediately before his appointment as Ombudsman, an officer of the Public Service, he shall—

(a) if he ceases to hold office as Ombudsman otherwise than pursuant to section 6 (5); and

(b) if he is under the age of sixty years,
be appointed to some office in the Public Service not lower in classification and salary than that which he held immediately before his appointment as Ombudsman.

(6) The Ombudsman is not, in respect of the same period of service, entitled to claim a benefit under this Act and another Act.

34. The Ombudsman shall not, nor shall an officer of the Ombudsman, disclose any information obtained by him in the course of his office, unless the disclosure is made— Disclosure by Ombudsman or officer.

(a) where the information is obtained from a public authority, with the consent of the head of that authority or of the responsible Minister;

(b) where the information is obtained from any other person, with the consent of that person;

(c) for the purpose of any proceedings under section 37 or under Part III of the Royal Commissions Act, 1923; or

(d) for the purpose of discharging his functions under this Act.

Penalty : One thousand dollars.

35. (1) The Ombudsman shall not, nor shall an officer of the Ombudsman, be competent or compellable to give evidence in any legal proceedings in respect of any information obtained by him in the course of his office. Ombudsman or officer as witness.

(2)

Ombudsman.

(2) Subsection (1) does not apply to any legal proceedings under section 37 or under Part III of the Royal Commissions Act, 1923.

Incrimina-
tory
statement.

36. (1) Where, under section 18, a person is required to give a statement that tends to incriminate that person, neither the requirement nor the statement may be used in any proceedings against that person except proceedings under section 37 (1) (c).

(2) Subsection (1) applies whether the person required to give a statement objects to giving it or not.

Offences.

37. (1) A person shall not—

- (a) without lawful excuse, wilfully obstruct, hinder or resist the Ombudsman or an officer of the Ombudsman in the exercise of his powers under this Act;
- (b) without lawful excuse, refuse or wilfully fail to comply with any lawful requirement of the Ombudsman or an officer of the Ombudsman under this Act; or
- (c) wilfully make any false statement to or mislead, or attempt to mislead, the Ombudsman or an officer of the Ombudsman in the exercise of his powers under this Act.

Penalty : One thousand dollars.

(2) A person shall not directly or indirectly—

- (a) where he is not the Ombudsman—represent that he is the Ombudsman;
- (b) where he has not been appointed under section 7 as acting Ombudsman—represent that he has been so appointed;

(c)

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- (c) where he is not the Deputy Ombudsman—represent that he is the Deputy Ombudsman;
- (d) where he is not a special officer of the Ombudsman—represent that he is a special officer of the Ombudsman;
- (e) where he is not an officer of the Ombudsman—represent that he is an officer of the Ombudsman; or
- (f) where he is not engaged in the administration or execution of this Act—represent that he is so engaged.

Penalty: One thousand dollars.

(3) For the purposes of subsection (2), a person represents that a state of affairs exists if he does or says anything, or causes, permits or suffers anything to be done or said, whereby it is represented, or whereby a belief may be induced, that the state of affairs exists.

38. A penalty imposed by this Act may be recovered in a summary manner before a Stipendiary Magistrate sitting in petty sessions alone. Proceedings for offences.

39. The Governor may make regulations under this Act for or with respect to prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for the purpose of carrying out or giving effect to this Act. Regulations.

40. The Defamation Act, 1974, is amended—

Amendment of Act No. 18, 1974.

- (a) by inserting after section 17 the following section :— Sec. 17A.

17A. (1) There is a defence of absolute privilege for a publication to or by the Ombudsman, as Ombudsman, or to any officer of the Ombudsman, as such an officer. Matters arising under Ombudsman Act, 1974.

(2)

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(2) Subsection (1) applies in relation to an acting Ombudsman, the Deputy Ombudsman and a special officer of the Ombudsman in the same way as it applies in relation to the Ombudsman.

(3) There is a defence of absolute privilege for a publication to a member of Parliament for the purposes of section 12 (2) of the Ombudsman Act, 1974.

(4) There is a defence of absolute privilege for the publication under section 31 (3) of the Ombudsman Act, 1974, of a report under that Act.

(5) There is a defence of absolute privilege for the publication, under the authority of the Minister for the time being administering the Ombudsman Act, 1974, of a copy of a report previously made public under section 31 (3) of that Act.

Schedule 2.

(b) (i) by omitting from clause 2 (8) of Schedule 2 the word "or";

(ii) by omitting from clause 2 (9) of Schedule 2 the word "office." and by inserting instead the following words and subclause :—

office; or

(10) proceedings of the Ombudsman, so far as those proceedings are included in a report previously made public under section 31 (3) of the Ombudsman Act, 1974.

SCHEDULE.

Ombudsman.

SCHEDULE.

Sec. 12.

EXCLUDED CONDUCT OF PUBLIC AUTHORITIES.

1. Conduct of—

- (a) the Governor, whether acting with or without the advice of the Executive Council;
- (b) a Minister of the Crown, including a Minister of the Crown acting as a corporation sole, but not so as to preclude conduct of a public authority relating to a recommendation made to a Minister of the Crown;
- (c) Parliament;
- (d) the Houses of Parliament;
- (e) a committee of either House, or both Houses, of Parliament;
- (f) either House of Parliament;
- (g) a member of either House of Parliament, where acting as such;
- (h) an officer of Parliament or of either House of Parliament, where acting as such.

2. Conduct of a person or body before whom witnesses may be compelled to appear and give evidence, and persons associated with such a person or body.

3. Conduct of a body of which one or more of the members is appointed by the Governor or a Minister of the Crown where—

- (a) at least one member of the body may be appointed by virtue of his being a Judge of the Supreme Court of New South Wales, a member of the Industrial Commission of New South Wales or a Judge of the District Court of New South Wales; and
- (b) such a person, if appointed as such a member, has a right or duty to preside at a meeting of the body at which he is present.

4. Conduct of a public authority relating to a Bill for an Act or the making of a rule, regulation or by-law.

5. Conduct of a public authority constituted pursuant to an arrangement between—

- (a) the State of New South Wales and the Commonwealth;
- (b) the State of New South Wales and any other State;
- (c) the State of New South Wales, any other State and the Commonwealth.

6.

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6. Conduct of a public authority where acting as a legal adviser to a public authority or as legal representative of a public authority.

7. Conduct of the Attorney General, or of the Solicitor General, relating to the commencement, carrying on or termination of any proceedings before a court, including a coronial inquiry and committal proceedings before a magistrate.

8. Conduct of a public authority relating to the carrying on of any proceedings—

(a) before any court, including a coronial inquiry and committal proceedings before a magistrate; or

(b) before any other person or body before whom witnesses may be compelled to appear and give evidence.

9. Conduct of a public authority relating to an exercise of the prerogative of mercy.

10. Conduct of a public authority where acting as a commissioner under the Royal Commissions Act, 1923, or, by the authority of an Act, exercising the powers of such a commissioner.

11. Conduct of the Council of the City of Sydney and of the Sydney County Council and of the officers and employees of those councils.

12. Conduct of a public authority relating to—

(a) the appointment or employment of a person as an officer or employee; and

(b) matters affecting a person as an officer or employee.

13. Conduct of a member of the Police Force when acting as a constable.

14. Conduct of a public authority relating to the investment of any funds.

15. Conduct of a public authority relating to the payment of any money as an act of grace.

In the name and on behalf of Her Majesty I assent to this Act.

A. R. CUTLER,
Governor.

Government House,
Sydney, 18th October, 1974.

OMBUDSMAN BILL

*Schedule of the Amendment referred to in Legislative Council's
Message of 3rd October, 1974*

- No. 1.—Page 27, Schedule, line 7. *After “sole” insert “, but not so as to preclude conduct of a public authority relating to a recommendation made to a Minister of the Crown”*

