

South Australia

Education Ombudsman Bill 2005

A BILL FOR

An Act to provide for the making and resolution of complaints against education service providers; to make provision in respect of the rights and responsibilities of people involved in the education system; and for other purposes.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Education Ombudsman Act 2005*.

2—Commencement

5 This Act will come into operation on a day to be fixed by proclamation.

3—Objects

The objects of this Act are—

- 10
- 15
- (a) to improve the quality of education in South Australia through the provision of a fair and independent means for the assessment, conciliation, investigation and resolution of complaints; and
 - (b) to provide effective alternative dispute resolution mechanisms for people involved in the education system to resolve complaints; and
 - (c) to promote the development and application of principles and practices of the highest standard in the handling of complaints concerning the provision of education services; and
 - (d) to provide a scheme that can be used to monitor trends in complaints concerning the provision of education services; and
 - (e) to identify, investigate and report on systemic issues concerning the delivery of education services.

4—Interpretation

In this Act, unless the contrary intention appears—

Charter means the Education Services Rights Charter under Part 3;

child means a person under the age of 18 years;

5 **complainant** means a person who makes a complaint and includes a person on whose behalf a complaint is made;

complaint means a complaint under this Act;

conciliator means a conciliator appointed under this Act;

confidential information includes—

- 10 (a) information about the identity, occupation or whereabouts of a complainant, education service user or education service provider involved in a complaint, investigation or inquiry under this Act;
- (b) information disclosed by a complainant, education service user or education service provider for the purposes of any complaint, investigation or inquiry
- 15 under this Act;
- (c) personal information about a complainant, education service user or education service provider under this Act;
- (d) information the release of which would cause personal distress to a person;
- 20 (e) information provided on a confidential basis or otherwise affected by a requirement as to confidentiality;

Council means the Education Services Advisory Council established under Part 7;

Department means the department of the Minister to whom the administration of this Act has been committed;

25 **Education Ombudsman** means the Education Ombudsman appointed under Part 2 (and includes a person acting in that office from time to time);

education service means a service consisting of the provision of educational programs for the purposes of—

- (a) pre-school education; or
- (b) primary or secondary education;

30 **education service provider** means a person or body who or which provides an education service;

parent of a child includes—

- (a) a person who has legal custody or guardianship of the child; and
- (b) a person standing *in loco parentis* in relation to the child;

35 **pre-school education** has the same meaning as in the *Education Act 1972*;

professional mentor means a professional mentor appointed under Part 2;

service recipient means a person (of any age)—

- (a) who is receiving an education service; or

- (b) who is seeking to receive an education service or, in the case of a child, for whom the provision of an education service is being sought;

State Ombudsman means the Ombudsman under the *Ombudsman Act 1972*;

volunteer means a person who receives no remuneration for acting in a particular capacity (being a capacity associated with the provision of an education service).

5—Application of Act

This Act does not apply in respect of any class of service excluded from the ambit of this Act by the regulations.

Part 2—Education Ombudsman

Division 1—Appointment and conditions of office

6—Appointment

- (1) There is to be an *Education Ombudsman*.
(2) The Education Ombudsman is appointed by the Governor.

7—Term of office and conditions of appointment

- (1) The Education Ombudsman is appointed on conditions determined by the Governor and for a term, not exceeding 7 years, specified in the instrument of appointment.
- (2) An appointment may be renewed but a person must not hold office as Education Ombudsman for more than 2 consecutive terms.
- (3) The Governor may remove the Education Ombudsman from office on the presentation of an address from both Houses of Parliament seeking the Education Ombudsman's removal.
- (4) The Governor may suspend the Education Ombudsman from office on the ground of incompetence or misbehaviour and, in that event—
- (a) a full statement of the reason for the suspension must be laid before both Houses of Parliament within 3 sitting days of the suspension; and
- (b) if, at the expiration of 1 month from the date on which the statement was laid before Parliament, an address from both Houses of Parliament seeking the Education Ombudsman's removal has not been presented to the Governor, the Education Ombudsman must be restored to office.
- (5) The office of Education Ombudsman becomes vacant if the Education Ombudsman—
- (a) dies; or
- (b) resigns by written notice given to the Minister; or
- (c) completes a term of office and is not reappointed; or
- (d) is removed from office by the Governor under subsection (3); or
- (e) becomes bankrupt or applies as a debtor to take the benefit of the laws relating to bankruptcy; or

- (f) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
- (g) becomes a member of the Parliament of this State or any other State of the Commonwealth or of the Commonwealth or becomes a member of a Legislative Assembly of a Territory of the Commonwealth; or
- (h) becomes, in the opinion of the Governor, mentally or physically incapable of carrying out satisfactorily the duties of office.
- (6) Except as is provided by this section, the Education Ombudsman may not be removed or suspended from office, nor will the office of the Education Ombudsman become vacant.

8—Remuneration

The Education Ombudsman is entitled to remuneration, allowances and expenses determined by the Governor.

9—Temporary appointments

The Minister may appoint a person (who may but need not be an employee in the Public Service) to act as the Education Ombudsman—

- (a) during a vacancy in the office of Education Ombudsman; or
- (b) when the Education Ombudsman is absent from, or unable to discharge, official duties; or
- (c) if the Education Ombudsman is suspended from office under this Act.

Division 2—Functions and powers

10—Functions

The Education Ombudsman has the following functions:

- (a) to prepare and regularly review the Charter of Education Services Rights under Part 3; and
- (b) to identify and review issues arising out of complaints and to make recommendations for improving education services and preserving and increasing the rights of people who use those services; and
- (c) to review and identify the causes of complaints and to—
- (i) recommend ways to remove, resolve or minimise those causes; and
- (ii) detect and review trends in the delivery of education services; and
- (d) to provide information, education and advice in relation to—
- (i) the Charter; and
- (ii) education service rights and responsibilities; and
- (iii) procedures for resolving complaints; and
- (iv) other matters (if any) determined to be appropriate by the Education Ombudsman; and
- (e) to receive, assess and resolve complaints; and

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Part 2—Education Ombudsman

Division 2—Functions and powers

- (f) to encourage and assist education service users to resolve complaints directly with education service providers; and
- (g) to assist education service providers to develop or improve procedures to resolve complaints; and
- 5 (h) to inquire into and report on any matter relating to education services on the Education Ombudsman's own motion or at the request of the Minister; and
- (i) to advise, and report to, the Minister on any matter relating to education services or the administration or operation of this Act; and
- (j) to maintain links with—
- 10 (i) education service providers; and
- (ii) organisations that have an interest in the provision of education services; and
- (iii) organisations that represent the interests of the users of education services; and
- 15 (k) to consult and cooperate with other agencies and authorities that are involved in protecting the interests and rights of members of the community in the area of the provision of education services, including—
- (i) the State Ombudsman; and
- 20 (ii) the Equal Opportunity Commissioner (under the *Equal Opportunity Act 1984*); and
- (iii) the Human Rights and Equal Opportunity Commission (under the *Human Rights and Equal Opportunity Commission Act 1986* of the Commonwealth); and
- 25 (l) to perform other functions conferred on the Education Ombudsman by or under this or any other Act.

11—Powers

The Education Ombudsman has the powers necessary or expedient for, or incidental to, the performance of the Education Ombudsman's functions.

12—Independence

- 30 (1) In performing and exercising his or her functions and powers under this Act, the Education Ombudsman must act independently, impartially and in the public interest.
- (2) The Minister cannot control how the Education Ombudsman is to exercise the Education Ombudsman's statutory functions and powers¹.

Note—

- 35 1 This provision does not derogate from any express power of the Minister under this Act.

Division 3—Committees

13—Committees

- 5 (1) The Education Ombudsman may establish such committees as the Education Ombudsman considers appropriate to assist the Education Ombudsman in the performance of the Education Ombudsman's functions under this Act.
- (2) The membership and functions of a committee will be determined by the Education Ombudsman.
- 10 (3) A member of a committee is entitled to any remuneration, allowances or expenses determined or approved by the Minister after consultation with the Education Ombudsman.
- (4) The procedures to be observed by a committee will be—
- (a) as determined by the Education Ombudsman; or
 - (b) insofar as a determination is not made under paragraph (a)—as determined by the committee.

15 Division 4—Appointment of conciliators and professional mentors

14—Appointment of conciliators and professional mentors

- 20 (1) The Education Ombudsman may appoint suitable persons as conciliators or professional mentors for the purposes of this Act.
- (2) An appointment will be made for a term, not exceeding 3 years, determined by the Education Ombudsman and on conditions determined or approved by the Minister.
- (3) The conditions under subsection (2) may include conditions as to the remuneration, allowances or expenses to be paid to the relevant person.
- (4) An appointment may be renewed from time to time.
- 25 (5) Nothing in this section prevents the Education Ombudsman, or a member of the Education Ombudsman's staff, acting as a conciliator under this Act.

Division 5—Other matters

15—Staff

- 30 (1) The Education Ombudsman's staff consists of—
- (a) Public Service employees assigned to work in the office of the Education Ombudsman under this Act; and
 - (b) any person appointed under subsection (3).
- (2) The Minister may, by notice in the Gazette—
- (a) exclude Public Service employees who are members of the Education Ombudsman's staff from specified provisions of the *Public Sector Management Act 1995*; and
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- (b) if the Minister thinks that certain provisions should apply to such employees instead of those excluded under paragraph (a)—determine that those provisions will apply,

and such a notice will have effect according to its terms.

- 5 (3) The Education Ombudsman may, with the consent of the Minister, appoint staff for the purposes of this Act.
- (4) The terms and conditions of employment of a person appointed under subsection (3) will be determined by the Governor and such a person will not be a Public Service employee.
- 10 (5) The Education Ombudsman may, by agreement with the Minister responsible for an administrative unit of the Public Service, make use of the services of the staff, equipment or facilities of that administrative unit.

16—Budget

- 15 The Education Ombudsman's proposed budget for a particular financial year is to be submitted for examination by the Economic and Finance Committee of the Parliament by the end of the preceding calendar year.

17—Annual report

- 20 (1) The Education Ombudsman must in each year prepare a report on the work of the Education Ombudsman's office during the preceding year and send copies of the report to the President of the Legislative Council and the Speaker of the House of Assembly to be laid before their respective Houses at the earliest opportunity.
- (2) The Education Ombudsman must send a copy of each annual report to the Minister.

18—Other reports

- 25 (1) The Education Ombudsman may, at any time, prepare a report to the Minister on any matter arising out of the exercise of the Education Ombudsman's functions under this Act.
- (2) Subject to subsection (3), the Minister must, within 2 weeks after receiving a report under this section, have copies of the report laid before both Houses of Parliament.
- 30 (3) If the Minister cannot comply with subsection (2) because Parliament is not sitting, the Minister must deliver copies of the report to the President and the Speaker and the President and the Speaker must then—
- (a) immediately cause the report to be published; and
- (b) lay the report before their respective Houses at the earliest opportunity.
- 35 (4) A report will, when published under subsection (3)(a), be taken for the purposes of any other Act or law to be a report of the Parliament published under the authority of the Legislative Council and the House of Assembly.

19—Immunity

- 40 (1) The Education Ombudsman, a member of a committee appointed under this Part, a conciliator or a professional mentor incurs no civil liability for an honest act or omission in the performance or exercise, or purported performance or exercise, of a function or power under this Act.

- (2) The immunity under subsection (1) does not extend to culpable negligence.
- (3) A civil liability that would, but for this section, attach to a person attaches instead to the Crown.

Part 3—Charter of Education Services Rights

5 20—Development of Charter

- (1) The Education Ombudsman must develop a draft *Charter of Education Services Rights*.
- (2) The draft must be presented to the Minister within 12 months after the commencement of this Part or within such longer period as the Minister may allow.
- 10 (3) The Education Ombudsman must report to the Minister on the development of the draft at intervals of not more than 4 months until the draft is presented to the Minister under subsection (2).

21—Review of Charter

The Education Ombudsman—

- 15 (a) may at any time review the Charter; and
- (b) if the Minister so directs, must review the Charter.

22—Consultation

20 In developing or reviewing the Charter, the Education Ombudsman must invite submissions from, and consult with, to such extent as may be reasonable, interested persons with a view to obtaining a wide range of views in relation to the matters under consideration.

23—Content of Charter

25 In developing or reviewing the Charter, the Education Ombudsman may have regard to any matter considered relevant to the provision or use of education services and must have regard to the following principles:

- (a) that people who access education services should be able to receive an education—
 - (i) that is provided in an environment protective of their safety, health and welfare; and
 - 30 (ii) that recognises their diverse capabilities, backgrounds, circumstances and characteristics; and
 - (iii) that is directed towards fulfilling their individual potentials and that is directed towards equipping them with the necessary skills for continuing learning and development and effective participation in society; and
 - 35 (iv) that is focussed on providing stated or projected goals or outcomes;
- (b) that parents of children within the education system should—
 - (i) be given a reasonable opportunity to participate in supporting the education of their children; and

(ii) be provided with a reasonable amount of information about the education programs that are available to their children, and about the progress of their children within the education system; and

(iii) be able to gain reasonable access to the people who are providing education programs to their children;

(c) that education programs should be delivered by appropriately trained people who view the interests of service recipients as paramount;

(d) that education service providers should act openly and cooperatively with those persons who have an interest in the delivery of those services.

24—Approval of Charter

(1) The Minister may, on the receipt of a draft Charter or a variation of the Charter from the Education Ombudsman—

(a) approve the Charter or the variation; or

(b) require an alteration to the Charter or the variation, after consultation with the Education Ombudsman, and then approve the Charter or variation as altered.

(2) The Minister must then cause a copy of the Charter or variation (as the case may be) to be laid before both Houses of Parliament.

(3) The Charter or the variation will not come into operation—

(a) until 14 sitting days of each House of Parliament have elapsed after a copy of the Charter or the variation is laid before each House; and

(b) if, within those 14 sitting days, a motion for disallowance or amendment of the Charter or the variation is moved in either House, unless or until—

(i) in the case of a motion for disallowance—the motion is defeated or withdrawn, or lapses; or

(ii) in the case of a motion for amendment—the amendment is made in accordance with subsection (4) or the motion is defeated or withdrawn, or lapses.

(4) If a motion for amendment is moved under subsection (3)(b), the Minister may withdraw the Charter or the variation, make the relevant amendment, and then lay the amended Charter or variation before both Houses of Parliament.

Part 4—Complaints

Division 1—Making a complaint

25—Who may complain

A complaint about an education service used, received by or sought by a person may be made to the Education Ombudsman by—

(a) unless the person is under the age of 16 years—the person himself or herself; or

(b) if the person is under the age of 16 years—a parent of the person; or

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- (c) if the person has attained the age of 16 years—a person appointed by him or her to make the complaint on his or her behalf; or
- (d) a Member of Parliament; or
- (e) if the person has died—a person who can demonstrate to the Education Ombudsman that he or she had an enduring relationship with the deceased person, or a personal representative of the deceased person; or
- (f) the Minister; or
- (g) the Chief Executive of the Department; or
- 10 (h) any other person, or any body, approved by the Education Ombudsman to act on his or her behalf.

26—Grounds on which a complaint may be made

- (1) A complaint may be made (and may only be made under this Act) on one or more of the following grounds:
- 15 (a) that an education service provider has acted unreasonably by not providing an education service, or by discontinuing (or proposing to discontinue) an education service provided to a particular person;
- (b) that an education service provider has acted unreasonably in the manner of providing an education service;
- 20 (c) that an education service provider has failed to treat an education service user in an appropriate professional manner;
- (d) that an education service provider has acted unreasonably by denying an education service user access to, or restricting the user's reasonable access to, records relating to the user that were in the service provider's possession;
- 25 (e) that an education service provider has acted unreasonably by not taking proper action in relation to a complaint made to him or her by the user about a service provider's action of a kind referred to in this section;
- (f) that an education service provider has acted in any other manner that is inconsistent with the Charter;
- 30 (g) that an education service provider has acted in any other manner that did not conform with the generally accepted standard of service delivery expected of a provider of the kind of service to which the complaint relates.
- (2) Nothing in subsection (1) requires an education service provider to act, or to provide advice or information with respect to a matter, outside the field of expertise associated with the provider's experience.
- 35 (3) For the purposes of subsection (1), information appropriately provided to a person lawfully acting on behalf of an education service user at the time the information is provided will be taken to have been appropriately provided to the education service user.

- 5 (4) If a complaint relates to an act or omission of a volunteer while working for another person or body, the complaint will be taken to be a complaint against the other person or body (as the case may be) and the volunteer cannot be required to participate in any proceedings under this Act and in particular cannot be the subject of the exercise of any power under Part 6 Division 2.

27—Form of complaint

- 10 (1) A complaint is to be made in a manner approved or determined by the Education Ombudsman.
- (2) A person must, in making a complaint, disclose to the Education Ombudsman, to the best of the person's abilities, all grounds of complaint on which he or she intends to rely.

28—Time within which a complaint may be made

- 15 (1) Subject to subsection (2), a complaint must be made within 2 years from the day on which the complainant first had notice of the circumstances giving rise to the complaint.
- (2) The Education Ombudsman may extend the period under subsection (1) in a particular case if satisfied that it is appropriate to do so after taking into account—
- (a) whether a proper investigation of the complaint should still be possible; and
 - (b) whether the complaint should still be amenable to resolution under the provisions of this Act; and
 - (c) whether it would be in the public interest to entertain the complaint; and
 - (d) any other matter considered relevant by the Education Ombudsman.
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- (3) For the purposes of subsection (1), a complainant will be presumed to have notice of the circumstances giving rise to the complaint at the time he or she might reasonably be expected to have had such notice.
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29—Further information may be required

- (1) The Education Ombudsman may, at any time, require a complainant—
- (a) to provide further information or documents;
 - (b) to verify all or any part of the complaint by statutory declaration.
- 30 (2) When making a requirement under subsection (1), the Education Ombudsman must specify a reasonable period within which the requirement is to be satisfied.
- (3) The Education Ombudsman may extend the period specified under subsection (2) (whether before or after its expiry).

Division 2—Assessment

30—Assessment

- 5 (1) The Education Ombudsman must assess a complaint and make a determination in accordance with this section within 45 days after receiving it (or within such longer period as may be necessary in view of any delays that have occurred while the Education Ombudsman or another person takes steps required by or under this Act, or while the Education Ombudsman is undertaking a preliminary inquiry under section 31).
- 10 (2) Subject to this Act, the Education Ombudsman may—
- (a) refer the complaint to a conciliator under Part 5; or
 - (b) investigate the complaint under Part 6; or
 - 15 (c) if of the opinion that the complaint relates to a matter that falls within the functions conferred on another person or body and that it is appropriate in the circumstances to make a referral under this provision, refer the complaint to the other person or body; or
 - (d) determine to take no further action on the complaint.
- (3) The Education Ombudsman must not refer a complaint to a conciliator if the complaint appears to the Education Ombudsman to indicate—
- 20 (a) the existence of a significant issue of public interest or importance; or
 - (b) a significant question as to the practice of an education service provider.
- (4) A complaint should not proceed under this Act if it appears to the Education Ombudsman that the complainant has failed, without good reason, to take reasonable steps to resolve the matter with the relevant education service provider before making the complaint.
- 25 (5) Within 14 days after making a determination under subsection (1), the Education Ombudsman must provide written notice of the determination—
- (a) to the complainant; and
 - (b) except where the Education Ombudsman has determined to dismiss the complaint, to the education service provider.
- 30 (6) In subsection (1), *complaint* includes a complaint that has been referred, or referred back to the Education Ombudsman, by the State Ombudsman or other person or body referred to in subsection (2).

31—Preliminary inquiries

- 35 (1) The Education Ombudsman may, in such manner as the Education Ombudsman thinks fit, undertake a preliminary inquiry in connection with making a determination under section 30.
- (2) For the purposes of an inquiry, the Education Ombudsman may require an education service provider to provide information, or any response or explanation, about any matter relevant to the inquiry.

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Part 4—Complaints

Division 2—Assessment

- (3) The Education Ombudsman must specify a reasonable period within which an education service provider is to comply with a requirement under subsection (2).
- (4) The Education Ombudsman may extend the period specified under subsection (3) (whether before or after its expiry).
- 5 (5) An education service provider must comply with a requirement under subsection (2).
Maximum penalty: \$10 000.
- (6) However, a person is not obliged to comply with a requirement under subsection (2) if to do so might tend to incriminate the person or make the person liable to a criminal penalty.
- 10 (7) During the conduct of a preliminary inquiry, the Education Ombudsman may assist the parties towards resolution of the complaint through informal mediation.
- (8) Informal mediation should not occur if the complaint appears to the Education Ombudsman to indicate—
- (a) the existence of a significant issue of public interest or importance; or
- 15 (b) a significant question as to the practice of an education service provider.
- (9) Informal mediation will occur in such manner, and subject to such conditions, as the Education Ombudsman thinks fit.
- (10) Anything said or done during an informal mediation, other than something that reveals a significant issue of public interest or importance, is not to be disclosed in any other proceedings (whether under this or any other Act or law) except by consent of the parties.
- 20 (11) An informal mediation must be brought to an end—
- (a) if the informal mediation reveals, in the opinion of the Education Ombudsman—
- 25 (i) a significant issue of public interest or importance; or
- (ii) a significant question as to the practice of an education service provider; or
- (b) at the request of a party to the informal mediation.
- (12) The Education Ombudsman may bring an informal mediation to an end at any time.
- 30 (13) For the purposes of conducting any inquiry or informal mediation under this section, the Education Ombudsman may obtain the assistance of a professional mentor.
- (14) The Education Ombudsman may discuss any matter relevant to making a determination under section 30 or with respect to the operation of this section with a professional mentor.

35 **32—Provision of documents etc on referral of complaint**

- (1) If the Education Ombudsman has referred a complaint to another person or body under this Division, the Education Ombudsman may give to the other person or body all documents and information in the possession of the Education Ombudsman that relate to the complaint.

- (2) The Education Ombudsman may—
- (a) make and retain a record of information referred to in subsection (1); and
 - (b) make copies of, or take extracts from, a document referred to in subsection (1) and retain those copies or extracts.

5 **33—Splitting or joining of complaints**

- (1) If it is administratively or otherwise appropriate to do so, the Education Ombudsman may determine that a complaint that—
- (a) deals with more than one subject matter; or
 - (b) deals with more than one set of circumstances; or
 - 10 (c) makes allegations against more than one education service provider; or
 - (d) makes more than one allegation against an education service provider; or
 - (e) for any other reason is susceptible to being dealt with in separate parts,
- be treated as 2 or more complaints for the purposes of this Act.
- (2) If it is administratively or otherwise appropriate to do so, the Education Ombudsman
- 15 may determine that 2 or more complaints that—
- (a) deal with the same subject matter; or
 - (b) deal with the same set of circumstances; or
 - (c) make allegations against the same education service provider; or
 - (d) for any other reasons are susceptible to amalgamation,
- 20 be treated as 1 complaint for the purposes of this Act.
- (3) The Education Ombudsman may give such directions or make such incidental determinations as the Education Ombudsman thinks necessary or convenient in view of a determination under subsection (1) or (2).
- (4) A determination or direction of the Education Ombudsman will have effect according
- 25 to its terms.
- (5) The Education Ombudsman must not make a determination under subsection (1) or (2) if it appears to the Education Ombudsman that any attempt at resolution or conciliation is likely to be prejudiced by the making of the determination.

Division 3—No further action on complaint

30 **34—No further action on complaint**

- (1) The Education Ombudsman may at any stage of proceedings under this Act determine to take no further action on a complaint, or to suspend action on a complaint, if the Education Ombudsman considers or is satisfied that—
- (a) the complainant is not entitled to make the complaint under this Act; or
 - 35 (b) the complaint does not disclose a ground of complaint under this Act; or
 - (c) the matter should be determined by way of legal proceedings; or

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Part 4—Complaints

Division 3—No further action on complaint

- (d) proceedings that relate to the subject matter of the complaint have been commenced before a tribunal, authority or other person or body; or
- (e) the complainant has been given reasonable explanations or information and there would be no benefit in further entertaining the complaint; or
- 5 (f) the complainant is seeking to act on a ground that should have been disclosed by the complainant at an earlier time in accordance with the requirements of section 27(2); or
- (g) the complaint lacks substance, is unnecessary or unjustifiable, or is frivolous, vexatious or not made in good faith; or
- 10 (h) the complainant has failed, without good reason, to comply with a requirement under this Act within a reasonable time, or to take a reasonable step in connection with making the complaint or proceeding with the complaint under this Act; or
- (i) the commencement or continuance of proceedings on the complaint would otherwise be an abuse of the processes under this Act; or
- 15 (j) the complaint has been resolved or abandoned; or
- (k) there is some other reasonable cause that justifies the discontinuance or suspension of proceedings under this Act,
- (and such a determination will have effect according to its terms).
- 20 (2) The Education Ombudsman must take no further action on a complaint if the Education Ombudsman is satisfied that all issues arising out of the subject matter of the complaint have been adjudicated by a court, tribunal, authority or other person or body acting under a law of the State, another State, a Territory or the Commonwealth.
- (3) The Education Ombudsman must suspend action on a complaint if the Education Ombudsman is satisfied that proceedings that relate to the subject matter of the complaint have been commenced before the court.
- 25 (4) The Education Ombudsman must, in a case where subsection (1), (2) or (3) applies, give written notice relating to the matter—
- (a) to the complainant; and
- 30 (b) except where notice of the complaint has not been given to the education service provider, to the education service provider.
- (5) The Education Ombudsman may recommence action on a suspended complaint for any reasonable cause by giving written notice—
- (a) to the complainant; and
- 35 (b) to the education service provider.

Division 4—Miscellaneous

35—Withdrawal of complaint

- (1) A complainant may withdraw a complaint at any time by written notice to the Education Ombudsman.

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- (2) If a complaint is withdrawn—
- (a) any investigation under this Act in relation to the matter will cease unless the Education Ombudsman has determined to conduct or continue an investigation under section 44(1)(c); and
 - (b) the Education Ombudsman must—
 - (i) if the education service provider has been notified of the receipt of the complaint—notify that provider of the withdrawal within 14 days; and
 - (ii) if the Education Ombudsman has determined to conduct or continue an investigation under section 44(1)(c)—advise the education service provider about the effect of the determination despite the withdrawal of the complaint.
- (3) If the Education Ombudsman has referred a complaint to another person or body under this Act, the withdrawal of that complaint under subsection (1) does not affect the performance and exercise by the person or body of his, her or its functions and powers in respect of the matters raised by or in the complaint.

Part 5—Conciliation of complaints

36—Function of conciliator

- (1) The function of a conciliator is to encourage the settlement of a complaint by—
- (a) arranging discussions or negotiations between the complainant and the education service provider;
 - (b) assisting in the conduct of those discussions or negotiations;
 - (c) assisting the complainant and the education service provider to reach agreement;
 - (d) assisting in the resolution of the complaint in any other way.
- (2) A conciliator may, if the conciliator thinks it appropriate to do so, undertake a conciliation without bringing the parties together.

37—Public interest

- (1) Before the conciliation of a complaint begins, the Education Ombudsman must identify and inform the conciliator about any issue raised by the complaint that the Education Ombudsman considers involves the public interest.
- (2) At the start of the conciliation, the conciliator must draw any issues involving the public interest of which he or she has been informed under subsection (1) to the attention of the complainant and the education service provider.
- (3) In the course of the conciliation, the conciliator must (at an appropriate time) draw to the attention of the parties any issues involving the public interest that the conciliator considers are raised by the complaint.
- (4) The conciliator must report to the Education Ombudsman any issue involving the public interest that the conciliator considers is raised by the complaint (other than an issue identified under subsection (1)).

- (5) The Education Ombudsman may, with respect to any issue that the Education Ombudsman considers involves the public interest, consult with any other person or body despite the fact that a conciliation may be proceeding.

38—Assistance at conciliation

- 5 (1) A party to a conciliation may be assisted by another person.
- (2) However, a party cannot be assisted by a particular person if the conciliator has directed that that person not be allowed to act in the particular matter.
- (3) A party in a conciliation process may not be represented by another person except
10 where the Education Ombudsman is satisfied that such representation is likely to assist substantially in resolving the complaint.

39—Reports from conciliator

- (1) Without limiting subsection (2), a conciliator must provide to the Education Ombudsman a written report of the progress of a conciliation when requested to do so by the Education Ombudsman.
- 15 (2) A conciliator must provide to the Education Ombudsman a written report of the results of a conciliation when the conciliator is satisfied—
- (a) that the complainant and the education service provider have reached agreement on all issues raised by a complaint on which the conciliator considers agreement to be possible; or
- 20 (b) that an agreement between the complainant and education service provider is not possible, or is not possible to reach within a reasonable period of time.

40—Conciliation may be brought to an end

- (1) A conciliator may end a conciliation for any reasonable cause at any reasonable time.
- 25 (2) A conciliation must be brought to an end at the direction of the Education Ombudsman.
- (3) A conciliation must be brought to an end if the conciliation reveals, in the opinion of the conciliator or the Education Ombudsman—
- (a) the existence of a significant issue of public interest or importance; or
- (b) a significant question as to the practice of an education service provider.
- 30 (4) A conciliation must be brought to an end at the request of a party to the conciliation.
- (5) If a conciliation is brought to an end without resolution of all relevant matters, the Education Ombudsman may—
- 35 (a) refer the complaint to another conciliator; or
- (b) investigate the complaint under Part 6; or
- (c) refer the complaint to another person or body; or
- (d) decide to take no further action on the complaint.

41—Privilege and confidentiality

(1) Anything said or done during conciliation under this Part, other than something that reveals a significant issue of public safety, interest or importance, is not to be disclosed in any other proceedings (whether under this or any other Act or law) except by consent of all parties to the conciliation.

(2) Except where a disclosure is authorised under this Part, a conciliator must not disclose information gained during conciliation—

(a) in any further conciliation; or

(b) to any person appointed, employed or engaged for the purposes of this Act.

Maximum penalty: \$5 000.

42—Professional mentor

(1) The Education Ombudsman may appoint a professional mentor to be available to advise a conciliator in the performance of his or her functions.

(2) A conciliator may discuss any matter arising in relation to the performance of his or her functions with a professional mentor.

(3) A professional mentor must not disclose to a third person (other than the Education Ombudsman) information that was gained by a conciliator during conciliation and communicated by the conciliator to the professional mentor.

Maximum penalty: \$5 000.

43—Enforceable agreements

(1) Any agreement reached between a complainant and an education service provider in the course of the conciliation process may be made in a binding form.

(2) However, an agreement is not binding unless it is—

(a) in writing; and

(b) entered into within 14 days after the verbal agreement is reached in the course of the conciliation.

(3) Subsection (1) does not affect the effectiveness of any agreement reached outside the conciliation process.

(4) A conciliator must not be a party to any agreement between a complainant and an education service provider relating to a matter that has been dealt with in a process of conciliation.

Part 6—Investigations

Division 1—Application of Part

44—Matters that may be investigated

(1) The Education Ombudsman may investigate—

(a) any matter specified in a written direction given by the Minister; and

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Division 1—Application of Part

- (b) a complaint that the Education Ombudsman has determined to investigate under this Act; and
- (c) an issue or question arising from a complaint if it appears to the Education Ombudsman—
 - (i) to be a significant issue of public interest or importance; or
 - (ii) to be a significant question as to the practice of an education service provider; and
- (d) on his or her own motion, any other matter relating to the provision of education services in South Australia.

- (2) An investigation under subsection (1)(c) may be carried out whether or not—
 - (a) the process of assessment of the relevant complaint has been completed; or
 - (b) any process of conciliation of the relevant complaint has been completed; or
 - (c) the relevant complaint has been withdrawn; or
 - (d) the Education Ombudsman has decided not to take action (or further action) on the relevant complaint.
- (3) Despite subsection (2), an investigation referred to in subsection (1)(c) should not be carried out to the extent that it interferes with a process of conciliation.
- (4) The Education Ombudsman is not required to cease an investigation referred to in subsection (1)(b) or (c) only because the relevant complaint has been resolved.
- (5) Without limiting the operation of a preceding subsection, an investigation under subsection (1)(c) may be carried out on the basis of fresh evidence that comes to the attention of the Education Ombudsman following the completion of a particular investigation.

45—Limitation of powers

The powers conferred by this Part may be exercised only for purposes of an investigation.

Division 2—Conduct of investigations

46—Conduct of investigation

- (1) An investigation is to be conducted in such manner as the Education Ombudsman considers appropriate.
- (2) The Education Ombudsman may, in conducting an investigation under this Part, obtain expert advice, or any other advice or support, in order to assist the Education Ombudsman in the investigation.
- (3) The Education Ombudsman may, at any time, decide to attempt to deal with a complaint by conciliation.
- (4) The Education Ombudsman may, in attempting conciliation under subsection (3), act personally or through a member of his or her staff.

- (5) The Education Ombudsman may, if satisfied that the subject of a complaint has been properly resolved by conciliation under subsection (3), determine that the complaint should not be further investigated under this Part.
- 5 (6) Anything said or done during conciliation under subsection (3), other than something that reveals a significant issue of public interest or importance, is not to be disclosed in any other proceedings (whether under this or any other Act or law) except by consent of all parties to the conciliation.

47—Representation

- 10 (1) Subject to subsection (2), a person required to appear or to produce documents under this Part may be assisted or represented by another person.
- (2) The Education Ombudsman may determine whether any person involved in proceedings under this Part may have legal or other representation during the conduct of an investigation or proceedings relating to an investigation.
- 15 (3) The Education Ombudsman must, in making any determination under subsection (2), to such extent as is reasonably practicable, have regard to the need to ensure that representation is balanced between the parties and that any determination is fair to all persons who are involved in proceedings under this Part.

48—Use and obtaining of information

- 20 (1) If the Education Ombudsman has obtained a document or information under or in connection with the operation of this Act, the Education Ombudsman may use that document or information for the purposes of this Part.
- (2) If the Education Ombudsman has reason to believe that a person is capable of providing information or producing a document relevant to an investigation, the Education Ombudsman may, by notice in writing provided to the person, require the person to do one or more of the following:
- 25 (a) to provide that information to the Education Ombudsman in writing signed by that person or, in the case of a body corporate, by an officer of the body corporate;
- (b) to produce that document to the Education Ombudsman;
- 30 (c) to attend before a person specified in the notice and answer questions or produce documents relevant to the investigation.
- (3) A notice under subsection (2) is to specify the period within which, or the time, day and place at which, the person is required to provide the information or document, or to attend.
- 35 (4) A notice under subsection (2) must provide a period of time for compliance with a requirement under that subsection that has been determined by the Education Ombudsman to be reasonable in the circumstances.
- (5) A person must comply with a requirement under subsection (2).
Maximum penalty: \$5 000.
- 40 (6) If a document is produced in accordance with a requirement under this section, the Education Ombudsman or other appropriate person may take possession of, make copies of, or take extracts from, the document.

49—Power to examine witnesses etc

(1) The Education Ombudsman, or a person who is to receive information under section 48(2), may administer an oath or affirmation to a person required to attend before him or her under this Part and may examine the person on oath or affirmation.

5 (2) The Education Ombudsman may require a person to verify by statutory declaration—
(a) any information or document produced under this Part; or
(b) a statement that the person has no relevant information or documents or no further relevant information or documents.

(3) A person must comply with a requirement under subsection (2).

10 Maximum penalty: \$5 000.

50—Search powers and warrants

(1) On the application of the Education Ombudsman, a magistrate may issue a warrant if the magistrate is satisfied that there are reasonable grounds—

- 15 (a) for believing that entry and inspection of premises are necessary to enable the Education Ombudsman to carry out an investigation under this Part; or
(b) for suspecting that there may be on premises a document or other thing relevant to a matter the Education Ombudsman is investigating under this Part.

20 (2) A warrant authorises a person named in the warrant, and any person assisting that person, with such force as is necessary—

- 25 (a) to enter and remain in the premises specified in the warrant; and
(b) to search those premises and any person or thing in those premises; and
(c) to break open and search anything in those premises in which any document or other thing relevant to the investigation may be contained; and
(d) to take photographs; and
(e) to seize and remove anything in those premises which that person has reasonable grounds for believing is relevant to the investigation; and
(f) to examine, seize and remove, make copies of, or take extracts from, any document in those premises which that person has reasonable grounds for
30 believing is relevant to the investigation; and
(g) to require an education service provider or any other person employed in those premises to provide information by answering questions which that person considers relevant to the investigation.

(3) A warrant must—

- 35 (a) be in a prescribed form; and
(b) specify the premises in respect of which it is made.

(4) A warrant has effect for a period of 30 days after the day on which it is issued.

51—Reimbursement of expenses

A person required to attend before the Education Ombudsman or another person under this Part is entitled to be paid the expenses and allowances that the Education Ombudsman may allow.

52—Reference to another authority for investigation

- (1) If the Education Ombudsman considers that a matter raised by, or during the course of, an investigation should be investigated by the State Ombudsman or another person or body that has functions under any law of South Australia, another State, a Territory or the Commonwealth, the Education Ombudsman may refer the matter to the State Ombudsman or other person or body (as the case requires) for investigation.
- (2) The Education Ombudsman's powers to investigate a matter are not affected by the matter having been referred for investigation under subsection (1).

53—Possession of document or other seized item

- (1) If the Education Ombudsman or another person has taken possession of or seized a document or other thing under this Part, the Education Ombudsman may retain possession of the document or other thing for such period as may be necessary for the purposes of an investigation.
- (2) If the Education Ombudsman or another person has taken possession of a document, the Education Ombudsman must—
 - (a) provide the person from whom it was taken with a copy of the document as soon as practicable after it was taken; and
 - (b) allow a person who would be entitled to inspect the document if it were not in the possession of the Education Ombudsman to inspect, make a copy of, or take an extract from, it at any reasonable time.

Division 3—Privilege

54—Privilege

- (1) A person is not obliged to answer a question or to provide or produce, or provide a copy of, any information or document under this Part if to do so might tend to incriminate the person or make the person liable to a criminal penalty.
- (2) A person is not obliged to provide information that is privileged on the ground of legal professional privilege.

Division 4—Action on investigation

55—Reports

- (1) The Education Ombudsman—
 - (a) may prepare a report of his or her findings and conclusions at any time during an investigation; and
 - (b) must prepare such a report at the conclusion of an investigation.
- (2) The Education Ombudsman may provide copies of a report to such persons as the Education Ombudsman thinks fit.

- (3) A report may contain information, comments, opinions and recommendations for action.
- (4) No action lies against the Education Ombudsman in respect of the contents of a report under this section.

5 **56—Notice of action to providers**

- (1) If, after investigating a complaint, the Education Ombudsman decides that the complaint is justified but appears to be incapable of being resolved, the Education Ombudsman may—
 - 10 (a) provide to the education service provider a notice of recommended action; and
 - (b) advise the complainant of the provision of the notice.
- (2) A notice must set out—
 - 15 (a) the particulars of the complaint; and
 - (b) the reasons for making the decision referred to in subsection (1); and
 - (c) any action that the Education Ombudsman considers the education service provider should take in order to remedy each unresolved grievance disclosed by the complaint.
- (3) The Education Ombudsman must then allow the service provider at least 28 days to make representations in relation to the matter.
- 20 (4) A service provider may, in making representations under subsection (3), advise the Education Ombudsman of what action (if any) the service provider has taken, or intends to take, in response to the matters raised in the notice.
- (5) After receipt of representations under subsection (3), or after the expiration of the period allowed under that subsection, the Education Ombudsman may publish a report or reports in relation to the matter in such manner as the Education Ombudsman thinks fit.
- 25 (6) The Education Ombudsman must, before publishing a report under subsection (5), provide a copy of the report to the relevant education service provider and then allow the service provider at least 14 days to make representations in relation to the content of the report.
- 30 (7) A report under this section may include such material, comments, commentary, opinions or recommendations as the Education Ombudsman considers appropriate.
- (8) The Education Ombudsman may provide copies of a report to such persons as the Education Ombudsman thinks fit.
- 35 (9) The Education Ombudsman must provide a copy of a report to any complainant and service provider that has been a party to the relevant proceedings.
- (10) No action lies against the Education Ombudsman in respect of the contents of any document published by the Education Ombudsman under this section.

57—Right of appeal

- 5 (1) An education service provider who is named in a report published by the Education Ombudsman under this Division may appeal to the Administrative and Disciplinary Division of the District Court (*the Court*) against any aspect of the procedures of the Education Ombudsman relating to the preparation of that report that is not procedurally fair.
- (2) An appeal must be made within 14 days after the service provider receives a copy of the relevant report from the Education Ombudsman.
- 10 (3) The Court may, on an appeal—
- (a) determine that the report should stand; or
 - (b) remit the matter to the Education Ombudsman for further consideration in accordance with any directions of the Court; or
 - (c) direct the Education Ombudsman to take steps specified by the Court (which may include the publication of a new or revised report or other statements or materials).
- 15

Part 7—Education Services Advisory Council

58—Establishment of Council

- (1) The *Education Services Advisory Council* is established.
- (2) The Council will consist of the following members appointed by the Minister:
- 20 (a) a presiding member; and
- (b) 2 persons who, in the opinion of the Minister, are qualified, by reason of their experience and expertise, to represent the interests of users of pre-schools; and
- 25 (c) 1 person who, in the opinion of the Minister, is qualified, by reason of his or her experience and expertise, to represent the interests of users of primary schools; and
- (d) 1 person who, in the opinion of the Minister, is qualified, by reason of his or her experience and expertise, to represent the interests of users of secondary schools; and
- 30 (e) 2 persons who, in the opinion of the Minister, are qualified, by reason of their experience and expertise, to represent the interests of users of non-government schools; and
- (f) 3 persons who, in the opinion of the Minister, are qualified, by reason of their experience and expertise, to represent the interests of the public.
- 35 (3) The Minister may appoint a suitable person to be the deputy of a member of the Council during any period of absence of the member (and a reference in this Act to a member of the Council will be taken to include a reference to a deputy while acting as a member of the Council).

59—Conditions of membership

- (1) A member of the Council will be appointed on conditions determined by the Minister and for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of office, is eligible for reappointment.
- 5 (2) The Minister may remove a member of the Council from office—
- (a) for breach of, or non-compliance with, a condition of appointment; or
 - (b) for misconduct; or
 - (c) for failure or incapacity to carry out duties satisfactorily.
- (3) The office of a member of the Council becomes vacant if the member—
- 10 (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns by written notice to the Minister; or
- (d) is removed from office under subsection (2).
- (4) A member of the Council is entitled to allowances and expenses determined by the
- 15 Minister.

60—Functions of Council

- (1) The functions of the Council are—
- (a) to advise the Minister and the Education Ombudsman in relation to the redress of grievances relating to education services or their provision; and
- 20 (b) to advise the Minister on—
- (i) the means of educating and informing users, providers and the public on the availability of means for making complaints or expressing grievances in relation to education services or their provision; and
 - (ii) the operation of this Act; and
 - 25 (iii) any other matter on which the Minister requests the advice of the Council; and
- (c) to refer to the Education Ombudsman any matter that may properly be dealt with or considered by the Education Ombudsman under this Act and that, in the view of the Council, should be so referred.
- 30 (2) Subsection (1) does not authorise the Council—
- (a) to investigate a complaint; or
 - (b) to review a decision of the Education Ombudsman to investigate, not to investigate, or to discontinue investigation of a particular complaint; or
 - 35 (c) to review a finding, recommendation or other decision of the Education Ombudsman, or of any other person, in relation to a particular investigation or complaint.

61—Procedure at meetings

- (1) The presiding member will preside at a meeting of the Council or, in the absence of that member, a member chosen by those present will preside.
- 5 (2) A majority of the members of the Council constitute a quorum of the Council (and no business may be transacted at a meeting unless a quorum is present).
- (3) Each member present at a meeting of the Council has 1 vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting has a second, or casting, vote.
- (4) The Council must have accurate minutes kept of its proceedings.
- 10 (5) Subject to this Act, the Council may determine its own procedures.

62—Disclosure of interest

- (1) A member of the Council who has a direct or indirect personal or pecuniary interest in a matter under consideration by the Council—
 - 15 (a) must, as soon as he or she becomes aware of his or her interest, disclose the nature and extent of the interest to the Council; and
 - (b) must not take part in any deliberations or decision of the Council on the matter and must be absent from the room when any deliberations are taking place or decision is being made.

Maximum penalty: \$5 000.

- 20 (2) A disclosure under this section must be recorded in the minutes of the Council.

Part 8—Miscellaneous

63—Delegation

- 25 (1) The Minister or the Education Ombudsman may delegate a power or function vested in or conferred on the Minister or the Education Ombudsman (as the case may be) under this Act—
 - (a) to a particular person or body; or
 - (b) to the person for the time being occupying a particular office or position.
- (2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.
- 30 (3) A delegation—
 - (a) may be absolute or conditional; and
 - (b) does not derogate from the power of the delegator to act in a matter; and
 - (c) is revocable at will by the delegator.
- 35 (4) In any legal proceedings an apparently genuine certificate, purportedly signed by the Minister or the Education Ombudsman, containing particulars of a delegation under this section, will, in the absence of proof to the contrary, be accepted as proof that the delegation was made in accordance with the particulars.

64—Adverse comments in reports

- (1) The Education Ombudsman must not include in a report under this Act a comment adverse to a person or body identifiable from the report except where the person or body has been given a reasonable opportunity—
- 5 (a) to make a submission to the Education Ombudsman in relation to the proposed comment; and
- (b) to provide to the Education Ombudsman a written statement in relation to it.
- (2) If a person or body referred to in subsection (1) so requests, the Education Ombudsman must include in the report the statement given under subsection (1)(b) or a fair summary of it.
- 10
- (3) The Education Ombudsman is not required to provide to a person or body the opportunity referred to in subsection (1) if the Education Ombudsman believes, on reasonable grounds, that awareness of the proposed comment by any person would directly or indirectly—
- 15 (a) result in a person receiving an education service of a lower standard than would otherwise have been provided; or
- (b) prejudice the fair assessment of a complaint or an investigation under this Act.

65—Protection of identity of service user or complainant from service provider

20 Despite any other provision of this Act, the Education Ombudsman may determine not to disclose to an education service provider information that would enable an education service user or a complainant to be identified if the Education Ombudsman believes, on reasonable grounds, that the disclosure would, directly or indirectly—

- 25 (a) result in a person receiving an education service of lower standard than would otherwise have been provided; or
- (b) prejudice the fair assessment of a complaint or an investigation under this Act.

66—Preservation of confidentiality

- 30 (1) A person must not record, disclose or use confidential information gained by the person through involvement in the administration of this Act, unless the person does so—
- (a) when necessary for the purposes of this Act; or
- (b) when expressly authorised or required under this or another Act; or
- (c) when expressly authorised, in writing, by the person to whom it relates; or
- 35 (d) when required to do so by a court or tribunal constituted by law; or
- (e) when expressly authorised or required under the regulations.

Maximum penalty: \$5 000.

- (2) For the purposes of this section, the following persons are involved in the administration of this Act:

- 40 (a) the Education Ombudsman;

- (b) a conciliator;
- (c) a professional mentor;
- (d) another staff member;
- (e) a member of the Council;
- (f) a member of a committee established under this Act.

- 5
- (3) This section does not apply to the recording, disclosure or use of statistical or other information that could not reasonably be expected to lead to the identification of a person.

67—Offence relating to intimidation

10 A person must not persuade or attempt to persuade by threat or intimidation another person—

- (a) to refrain from making a complaint under this Act; or
- (b) to withdraw a complaint under this Act; or
- (c) to fail to co-operate with the Education Ombudsman or another person who is performing or exercising a function or power under this Act; or
- (d) to fail to provide information or a document to the Education Ombudsman or any other person who is performing or exercising a function or power under this Act; or
- (e) to provide information or a document that is false or misleading in a material particular, or to provide information or a document in a manner that will make the information or document false or misleading in a material particular, to the Education Ombudsman or another person performing or exercising a function or power under this Act.

20 Maximum penalty: \$10 000.

68—Offence relating to reprisals

- 25 (1) A person must not treat another person unfavourably on the ground that a person—

- (a) has made a complaint under this Act; or
- (b) has co-operated with the Education Ombudsman or any other person who performs or exercises a function or power under this Act; or
- (c) has provided information or documents to the Education Ombudsman or any other person who performs or exercises a function or power under this Act,

30 or on the ground that he or she knows that a person intends to do any of these things, or suspects that a person has done, or intends to do, any of these things.

Maximum penalty: \$10 000.

- 35 (2) It is sufficient for a contravention of subsection (1) if the ground specified in subsection (1) is a significant factor in inducing the person to take the particular action against the other person.

- (3) Unfavourable treatment on the ground that a person—

- (a) has made a false allegation; or

- (b) has not acted in good faith,
does not constitute a contravention of subsection (1).

69—Offences relating to obstruction etc

5 A person must not, without reasonable excuse, obstruct, hinder, resist or improperly influence, or attempt to obstruct, hinder, resist or improperly influence, the Education Ombudsman or any other person in the performance or exercise of a function or power under this Act.

Maximum penalty: \$10 000.

70—Offences relating to the provision of information

10 A person must not—

- (a) provide to the Education Ombudsman or any other person who is performing or exercising a function or power under this Act information that the person knows is false or misleading in a material particular; or
- 15 (b) refuse or fail to include in information provided to a person who is performing or exercising a function or power under this Act other information without which the information provided is, to the knowledge of the person, false or misleading in a material particular.

Maximum penalty: \$10 000.

71—Protection from civil actions

- 20 (1) A person is not liable in respect of loss, damage or injury of any kind suffered by another person as a result of any of the following done in good faith:

- (a) the making of a complaint;
- (b) the making of a statement, the provision of any information whether by answering a question or otherwise or the provision of any document for the
- 25 purposes of this Act to the Education Ombudsman, a conciliator or another person authorised to receive the statement, information or document;
- (c) the making of a report under this Act;
- (d) the provision of a copy of a report to a person to whom it may be provided under this Act;
- 30 (e) the doing, or omission, of anything in the performance or exercise of a function or power under this Act.

- (2) A person who does anything in accordance with this Act, or as required by or under this Act, cannot, by so doing, be held to have breached any code of professional etiquette or ethics, or to have departed from any acceptable form of professional
- 35 conduct.

72—Informality of procedures

- (1) In performing functions and exercising powers under this Act, the Education Ombudsman must have regard to the rules of natural justice.

- (2) Subject to subsection (1), the Education Ombudsman—
- (a) must proceed with as little formality and technicality and with as much expedition as the requirements of this or any other Act and a proper consideration of the matter permit; and
 - (b) is not bound by rules of evidence but may inform himself or herself of any matter in any manner that he or she considers appropriate.

73—Determining reasonableness of education service provider's actions

- (1) In determining whether an education service provider has acted reasonably, the Education Ombudsman must have regard to—

- (a) the Charter; and
- (b) the principles specified in section 23; and
- (c) the generally accepted standard of education service delivery expected of a provider of that kind,

and may have regard to any other matter or information the Education Ombudsman considers relevant.

- (2) The Education Ombudsman must, in making a decision on a complaint under this Act, take into account the level of resources reasonably available to the education service provider.

74—Interaction with *Ombudsman Act 1972*

Despite any other provision of this Act or the *Ombudsman Act 1972*—

- (a) a matter that may be (or has been) the subject of a complaint under this Act, being an administrative act of an agency to which that Act applies, may be referred to the State Ombudsman under section 14 of that Act on the basis that the relevant House of Parliament or committee considers that the matter involves a significant issue of public interest or importance; and
- (b) a matter that may be (or has been) the subject of a complaint under this Act, being an administrative act of an agency to which that Act applies, may be referred to the State Ombudsman under section 15(3) of that Act and the State Ombudsman may proceed to deal with the matter if the State Ombudsman considers that the matter may involve a significant issue of public interest or importance; and
- (c) the State Ombudsman may conduct an investigation of an act of the Education Ombudsman under that Act even if the matter involves an education service provider that is not an agency to which that Act applies (and may, in conducting the investigation, look at the substance of the original complaint, and consider or review any other matter that may be relevant to the investigation, even if the subject matter of the original complaint did not involve an administrative act within the meaning of that Act but may not make a determination or recommendation concerning the substance of the original complaint to the extent that that matter did not involve an administrative act of an agency to which that Act applies except to set aside (if the State Ombudsman thinks fit) a determination or recommendation of the Education Ombudsman at the first instance).

75—Regulations

- (1) The Governor may make regulations as contemplated by this Act, or as necessary or expedient for the purposes of this Act.
- (2) The regulations may—
- 5 (a) provide for the form and service of documents under this Act; and
- (b) provide for the provision of statistical or other data or information to the Education Ombudsman; and
- (c) refer to or incorporate, wholly or partially and with or without modification, a code, standard or other document prepared or published by a prescribed body, either as in force at the time the regulations are made or as in force from time to time; and
- 10 (d) be of general or limited application; and
- (e) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
- 15 (f) provide that a specified provision of this Act does not apply, or applies with prescribed variations, in any circumstance or situation (or circumstance or situation of a prescribed class) specified by the regulations, subject to any condition to which the regulations are expressed to be subject; and
- (g) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, the Education Ombudsman or another prescribed authority; and
- 20 (h) impose penalties, not exceeding \$5 000, for a contravention of, or failure to comply with, a regulation.

76—Review of Act

- 25 (1) The Minister must, as soon as practicable after the third anniversary of the commencement of this Act, appoint a person to prepare a report on—
- (a) the operation of this Act over its first 3 years and the extent to which the objects of this Act have been attained; and
- (b) other matters determined by the Minister to be relevant to a review of this Act.
- 30 (2) The person must report to the Minister within 6 months after his or her appointment.
- (3) The Minister must, within 12 sitting days after receiving the report under this section, have copies of the report laid before both Houses of Parliament.

77—Transitional provisions

- 35 (1) A complaint may be made and dealt with under this Act even though the circumstances that give rise to the complaint occurred before the commencement of this Act if the complainant became aware of those circumstances not earlier than 2 years before the commencement of this Act.

- (2) The State Ombudsman may, if the State Ombudsman thinks fit and with the agreement of the Education Ombudsman, transfer to the Education Ombudsman the conduct of an investigation of a complaint made to the State Ombudsman before the commencement of this Act.
- 5 (3) The Education Ombudsman may adopt any findings or determinations of the State Ombudsman that may be relevant to an investigation transferred under subsection (2).
- (4) The consent of the complainant is not required before an investigation may be transferred to the Education Ombudsman under subsection (2).
- (5) The regulations may make other provisions of a saving or transitional nature.