

South Australia

## Ombudsman Act 1972

An Act to provide for the appointment of an Ombudsman to investigate the exercise of the administrative powers of certain agencies; to provide for the powers, functions and duties of the Ombudsman; and for other purposes.

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## Legislative history

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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 *Ombudsman Act 1972*.

#### 3—Interpretation

- (1) In this Act, unless the contrary intention appears—

*act* includes—

- (a) an omission;
- (b) a decision, proposal or recommendation (including a recommendation made to a Minister of the Crown),

and the circumstances surrounding an act;

*administrative act* means—

- (a) an act relating to a matter of administration on the part of an agency to which this Act applies or a person engaged in the work of such an agency; or
- (b) an act done in the performance of functions conferred under a contract for services with the Crown or an agency to which this Act applies,

but does not include—

- (c) an act done in the discharge of a judicial authority; or
- (d) an act done by a person in the capacity of legal adviser to the Crown or an agency to which this Act applies; or
- (e) an act of a class declared by the regulations not to be an administrative act for the purposes of this definition;

*administrative unit* means an administrative unit of the Public Service;

*agency to which this Act applies* means—

- (a) a person who holds an office established by an Act; or
- (b) an administrative unit; or
- (c) a council; or

- (ca) an assessment panel appointed or constituted under Part 6 Division 2 of the *Planning, Development and Infrastructure Act 2016*; or
- (d) an incorporated or unincorporated body—
  - (i) established or continued in existence for a public purpose by an Act; or
  - (ii) established or continued in existence for a public purpose under an Act (other than an Act providing for the incorporation of companies or associations, co-operatives, societies or other voluntary organisations); or
  - (iii) subject to control or direction by the Governor, a Minister of the Crown or other instrumentality or agency of the Crown or a council (whether or not the body is established or continued in existence by or under an Act); or
- (e) a person or body declared by the regulations to be an agency to which this Act applies,

but does not include the Independent Commissioner Against Corruption, the Office for Public Integrity or a person or body declared by the regulations to be an agency to which this Act does not apply;

**complainant** in relation to an investigation means the person or persons whose complaint gave rise to that investigation;

**complaint** in relation to an administrative act, means a complaint that gives rise or may give rise to an investigation into that administrative act;

**council** means a council within the meaning of the *Local Government Act 1999*;

**investigation** means an investigation by the Ombudsman under this Act in relation to an administrative act;

**officer of the Ombudsman** means—

- (a) a person employed in the Public Service and assigned to work in the office of the Ombudsman; or
- (b) a person employed under section 12;

**principal officer** in relation to an agency to which this Act applies means—

- (a) if the agency consists of a single person (including a corporation sole but not any other body corporate)—that person;
- (b) if the agency is a council—the principal member of the council;
- (c) if the agency consists of an unincorporated board or committee—the presiding officer;
- (d) in any other case—the chief executive officer of the agency or a person declared by the regulations to be the principal officer of the agency;

**responsible Minister** in relation to an agency to which this Act applies means—

- (a) if the agency is an administrative unit—the Minister responsible for that administrative unit;

- (b) if the agency is a council—the Minister responsible for the administration of the *Local Government Act 1999*;
- (c) if the agency is a body established by or under an Act—the Minister responsible for the administration of that Act;
- (d) in any other case—the Minister declared by the regulations to be the responsible Minister for the agency or, in the absence of such a declaration, the Minister responsible for the administration of this Act;

**Statutory Officers Committee** means the committee of that name established under the *Parliamentary Committees Act 1991*;

**the Ombudsman** includes a person acting in the office of the Ombudsman.

- (2) For the purposes of this Act—
  - (a) a person engaged or employed in the administration of, or in the performance of functions in or on behalf of, an agency to which this Act applies will be taken to be engaged in the work of that agency; and
  - (b) deputy sheriffs and sheriff's officers will be taken to be engaged in the work of the sheriff and the sheriff will be regarded as an employer in relation to deputy sheriffs and sheriff's officers.
- (3) The Governor may, by regulation—
  - (a) declare a person or body to be an agency to which this Act applies; or
  - (b) declare a person or body to be an agency to which this Act does not apply; or
  - (c) declare a person to be the principal officer of an agency to which this Act applies; or
  - (d) declare a Minister to be the responsible Minister for an agency to which this Act applies.
- (4) A regulation under subsection (3)(a) cannot take effect unless it has been laid before both Houses of Parliament and—
  - (a) no motion for disallowance of the regulation is moved within the time for such a motion; or
  - (b) every motion for disallowance of the regulation has been defeated or withdrawn, or has lapsed.
- (5) A regulation under subsection (3)(b) may declare part of an administrative unit to be part of an administrative unit to which this Act does not apply.

## 5—Non-application of Act

- (1) This Act does not apply to or in relation to any Commission or tribunal for the time being declared by proclamation to be a Commission or tribunal to which this Act does not apply.
- (2) This Act does not apply to or in relation to—
  - (a) any complaint to which the *Police (Complaints and Disciplinary Proceedings) Act 1985* applies; or

- (b) any matter to which that Act would apply if the matter were the subject of a complaint under that Act.
- (3) This Act does not apply to or in relation to—
  - (a) any complaint to which the *Judicial Conduct Commissioner Act 2015* applies; or
  - (b) any matter to which that Act would apply if the matter were the subject of a complaint under that Act.

## **Part 2—The Ombudsman**

### **6—Appointment of Ombudsman**

- (1) The Governor may, on a recommendation made by resolution of both Houses of Parliament, appoint a person to be the Ombudsman.
- (1a) On a vacancy occurring in the office of the Ombudsman, the matter of inquiring into and reporting on a suitable person for appointment to the vacant office is referred by force of this subsection to the Statutory Officers Committee.
- (2) The terms and conditions of appointment and employment (including salary and allowances) of the Ombudsman shall be as determined from time to time by the Governor.
- (3) This section is, without further appropriation, sufficient authority for the payment of the salary and allowances of the Ombudsman out of the General Revenue of the State.

### **7—Ombudsman not to engage in any remunerative employment**

The Ombudsman must not, without the consent of the Minister, engage in any remunerative employment or undertaking outside official duties.

### **8—Acting Ombudsman**

- (1) If for any reason—
  - (a) the Ombudsman is temporarily unable to perform official duties; or
  - (b) the office of the Ombudsman is temporarily vacant,the Governor may, by notice published in the Gazette, appoint a person to act in the office of the Ombudsman and a person so appointed has, while so acting, all the powers, functions and duties of the Ombudsman.
- (1a) A person who is a Public Service employee may be appointed under this section to act in the office of the Ombudsman while remaining a Public Service employee for a term not exceeding three months and may, on the expiration of that term, be reappointed (provided that the terms of appointment do not exceed six months in aggregate in any period of 12 months).
- (2) Subject to this Act, the terms and conditions of appointment and employment (including the salary and allowances) of the person appointed under subsection (1) shall be as determined, from time to time, by the Governor.
- (3) This section is, without further appropriation, sufficient authority for the payment of the salary and allowances of an acting Ombudsman out of the General Revenue of the State.

## 9—Delegation

- (1) The Ombudsman may, by instrument in writing, delegate powers or functions under this or any other Act (except this power of delegation) to any person.
- (2) The Ombudsman may by instrument in writing revoke or vary any delegation given under subsection (1).
- (3) The exercise or performance of any power or function by a delegate pursuant to subsection (1) does not affect the exercise or performance of that power or function by the Ombudsman.

## 10—Term of office of the Ombudsman etc

- (1) The Ombudsman shall be appointed for a term expiring on the day on which he or she attains the age of 65 years.
- (2) The Governor may remove the Ombudsman from office upon the presentation of an address from both Houses of Parliament seeking the Ombudsman's removal.
- (3) The Governor may suspend the 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 seven days of the suspension if Parliament is then in session or, if not, within seven days of the commencement of the next session of Parliament; and
  - (b) if, at the expiration of one month from the date on which the statement was laid before Parliament, an address from both Houses of Parliament seeking the Ombudsman's removal has not been presented to the Governor, the Ombudsman must be restored to office.
- (4) The office of Ombudsman becomes vacant if the Ombudsman—
  - (a) dies; or
  - (b) attains the age of 65 years; or
  - (c) resigns by written notice delivered to the Governor; or
  - (d) is removed from office by the Governor under subsection (2); 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.
- (5) Except as is provided by this section, the Ombudsman shall not be removed or suspended from office, nor shall the office of the Ombudsman become vacant.

## **11—Ombudsman is not a Public Service employee**

- (1) The Ombudsman is not a Public Service employee.
- (2) If an Ombudsman was, immediately before appointment as such, employed in the Public Service, the Ombudsman retains existing and accruing rights in respect of leave.

## **12—Officers of Ombudsman**

- (1) The Ombudsman's staff consists of—
  - (a) Public Service employees assigned to work in the office of the Ombudsman; and
  - (b) if appointments have been made under subsection (3)—the persons holding those appointments.
- (2) The Minister may, by notice in the Gazette—
  - (a) exclude Public Service employees on the Ombudsman's staff from specified provisions of the *Public Sector Act 2009*; and
  - (b) if the Minister thinks that certain provisions should apply to such employees instead of those from which they are excluded under paragraph (a)—determine that those provisions will so apply,and such a notice has effect in accordance with its terms.
- (2a) While a Public Service employee is assigned to work in the office of the Ombudsman, directions given to the employee by the Ombudsman prevail over directions given to the employee by the chief executive of the administrative unit of the Public Service in which the employee is employed to the extent of any inconsistency.
- (3) The 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 is not a Public Service employee.

## **Part 3—Investigations**

### **13—Matters subject to investigation**

- (1) Subject to this Act, the Ombudsman may investigate any administrative act.
- (2) The Ombudsman may make such an investigation either on receipt of a complaint or on the Ombudsman's own initiative and, where a complaint is made, the Ombudsman may investigate an administrative act notwithstanding that, on the face of it, the complaint may not appear to relate to that administrative act.
- (3) The Ombudsman must not investigate any administrative act where—
  - (a) the complainant is provided in relation to that administrative act with a right of appeal, reference or review to a court, tribunal, person or body under any enactment or by virtue of Her Majesty's prerogative; or
  - (b) the complainant had a remedy by way of legal proceedings,

unless the Ombudsman is of the opinion that it is not reasonable, in the circumstances of the case, to expect that the complainant should resort or should have resorted to that appeal, reference, review or remedy.

- (3a) The ability to lay a complaint for disciplinary action against a person is to be disregarded for the purposes of subsection (3).
- (3b) Despite subsection (3), the Ombudsman may investigate a prescribed child protection complaint.
- (3c) To avoid doubt, subsection (3b) applies whether the prescribed child protection complaint—
- (a) is made by the Commissioner for Children and Young People or the Guardian for Children and Young People under the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*; or
  - (b) is referred to the Ombudsman by the Commissioner under section 28A of the *Health and Community Services Complaints Act 2004*; or
  - (c) is made under this Act.
- (3d) Without limiting any other provision of this Act, the Ombudsman, in respect of an investigation under subsection (3b), has any additional powers that the Health and Community Services Complaints Commissioner would have under the *Health and Community Services Complaints Act 2004* if the Commissioner were investigating such a complaint under that Act.
- (3e) Without limiting any other provision of this Act, the Ombudsman must, in the course of an investigation under subsection (3b)—
- (a) have regard, and seek to give effect, to the Health and Community Services Rights Charter under the *Health and Community Services Complaints Act 2004*, as in force from time to time;
  - (b) where appropriate, have regard to any code of conduct prescribed under section 56A of the *Health and Community Services Complaints Act 2004*.
- (4) The Ombudsman may investigate any administrative act, notwithstanding any enactment that provides that that administrative act is final or not to be appealed against, challenged, reviewed, quashed or called into question.
- (5) A reference in this or any other provision of this Act to an administrative act will be taken to include a reference to the service, activity or omission to which a prescribed child protection complaint relates.
- (6) In this section—
- at risk** has the same meaning as in the *Children and Young People (Safety) Act 2016*;
- prescribed child protection complaint** has the same meaning as in section 28A of the *Health and Community Services Complaints Act 2004*.

#### **14—Parliament may refer matter for investigation**

- (1) Subject to this section, either House of Parliament, or any committee of either of those Houses, or a joint committee of both Houses of Parliament, may refer to the Ombudsman, for investigation and report, any matter that is within the jurisdiction of the Ombudsman and which that House or committee considers should be investigated by the Ombudsman.
- (2) The Ombudsman must carry out an investigation into any matter referred to him or her under this section and, following that investigation, must submit a report on the matter to—
  - (a) if the matter was referred to the Ombudsman by the Legislative Council or a committee of the Legislative Council—the President of the Legislative Council;
  - (b) if the matter was referred to the Ombudsman by the House of Assembly or a committee of the House of Assembly—the Speaker of the House of Assembly;
  - (c) if the matter was referred to the Ombudsman by a joint committee of both Houses of Parliament—the President of the Legislative Council and the Speaker of the House of Assembly.
- (3) If—
  - (a) the person affected by an administrative act is provided in relation to that act with a right of appeal, reference or review to a court, tribunal, person or body under any enactment or by virtue of Her Majesty's prerogative; or
  - (b) the person affected by an administrative act had a remedy by way of legal proceedings; or
  - (c) 12 months have elapsed since the person affected by an administrative act had notice of the administrative act,

the administrative act is not to be referred to the Ombudsman by a House of Parliament or committee under this section unless the House or committee resolves that, in all the circumstances of the case, the administrative act warrants investigation by the Ombudsman despite the availability of that appeal, reference, review or remedy or the passage of time since the person affected had notice of the administrative act.

#### **14A—Administrative audits**

- (1) If the Ombudsman considers it to be in the public interest to do so, the Ombudsman may conduct a review of the administrative practices and procedures of an agency to which this Act applies.
- (2) The provisions of this Act apply in relation to a review under subsection (1) as if it were an investigation of an administrative act under this Act, subject to such modifications as may be necessary, or as may be prescribed.

#### **14B—Referral of matter by OPI or ICAC**

- (1) If a matter is referred to the Ombudsman under the ICAC Act, the matter—
  - (a) will be taken to relate to administrative acts for the purposes of this Act; and

- (b) must be dealt with under this Act as if a complaint had been made under this Act and—
  - (i) if the matter was the subject of a complaint or report under the ICAC Act—as if the person who made the complaint or report under that Act was the complainant under this Act; or
  - (ii) if the matter was assessed under that Act after being identified by the Commissioner acting on the Commissioner's own initiative or by the Commissioner or the Office in the course of performing functions under any Act—as if the Commissioner was the complainant under this Act.

- (2) In this section—

**Commissioner** means the person holding or acting in the office of the Independent Commissioner Against Corruption under the ICAC Act;

**ICAC Act** means *Independent Commissioner Against Corruption Act 2012*;

**Office** means the Office for Public Integrity under the ICAC Act.

## 15—Persons who may make complaints

- (1) A complaint in respect of an administrative act may be made by any person or body of persons.
- (2) Where the person by whom a complaint in respect of an administrative act might have been made has died or is unable to make the complaint personally, the complaint may be made by a person who is, in the Ombudsman's opinion, a suitable representative of that person.
- (3) A complaint in respect of an administrative act that could, apart from this subsection, be made by a person or body of persons may, with the consent of that person or body, be made on behalf of that person or body by a member of either House of Parliament and with the consent of that person or body that member may act on behalf of that person or body in and in connection with all matters relating to the matter of complaint.
- (3a) Except as provided by this section, a complaint must not be entertained by the Ombudsman unless made by a person or body of persons directly affected by the administrative act to which the complaint relates.
- (3b) Subsection (3a) does not apply in relation to a complaint made by the Commissioner for Children and Young People or the Guardian for Children and Young People under the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*.
- (4) Notwithstanding any enactment prohibiting or restricting, or authorising the imposition of prohibitions or restrictions on, communication, a person having the care or custody of another person shall not refuse or fail to take all steps necessary to facilitate any communication by that other person necessary for or incidental to a complaint under this Act and to ensure the privacy of that communication.

Maximum penalty: \$2 000.

### **15A—Offence in relation to complaints**

A person who—

- (a) prevents another person from making a complaint under this Act; or
  - (b) hinders or obstructs another person in making a complaint under this Act,
- is guilty of an offence.

Maximum penalty: \$2 000.

### **16—Time within which complaints may be made**

- (1) Subject to this section a complaint under this Act must not be entertained by the Ombudsman if it is made after 12 months from the day on which the complainant first had notice of the matters alleged in the complaint unless the Ombudsman is of the opinion that, in all the circumstances of the case, it is proper to entertain the complaint.
- (2) For the purposes of this section a complainant will be presumed to have had notice of the matters alleged in the complaint at the time he or she might reasonably be expected to have had such notice.
- (3) This section does not apply in relation to a complaint made by the Commissioner for Children and Young People or the Guardian for Children and Young People under the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*.

### **17—Certain complaints need not be entertained etc**

- (1) The Ombudsman must not proceed with the investigation of a complaint if it appears that—
  - (a) the person by or on whose behalf the complaint is made is an employee; and
  - (b) the complaint relates to an administrative act done by another in the capacity of an employer of that person.
- (2) The Ombudsman may refuse to entertain a complaint, or, having commenced to investigate a matter raised in a complaint, may refuse to continue the investigation if of the opinion—
  - (a) that the matter raised in the complaint is trivial; or
  - (b) that the complaint is frivolous or vexatious or is not made in good faith; or
  - (c) that the complainant or the person on whose behalf the complaint was made has not a sufficient personal interest in the matter raised in the complaint; or
  - (d) that having regard to all the circumstances of the case, the investigation or the continuance of the investigation of the matter raised in the complaint, is unnecessary or unjustifiable.
- (3) Where a complaint is made and the Ombudsman decides not to investigate the complaint, or to discontinue an investigation, the Ombudsman must inform the complainant of that decision and of the reasons for it.

### **17A—Conciliation**

- (1) The Ombudsman may, at any time, decide to attempt to deal with a complaint by conciliation.

- (2) The Ombudsman may, in attempting conciliation under this section, act personally or through some other person.
- (3) The Ombudsman may, if satisfied that the subject of a complaint has been properly resolved by conciliation under this section, determine that the complaint should not be investigated or further investigated under this Act.

### **18—Procedure on investigations**

- (1) Notwithstanding any other provision of this Part, the Ombudsman may make a preliminary investigation of an administrative act to determine whether to proceed with a full investigation of that act.
  - (1a) The Ombudsman must, before proceeding with a full investigation of an administrative act, inform the principal officer of the relevant agency of the decision to proceed with such an investigation.
  - (2) Every investigation under this Act must be conducted in private.
  - (3) The Ombudsman—
    - (a) is not required to hold a hearing for the purposes of an investigation;
    - (b) may obtain information from such persons and in such manner as the Ombudsman thinks fit;
    - (c) may determine whether any person to whom an investigation relates may have legal or other representation.
  - (4) Before making a report affecting an agency to which this Act applies the Ombudsman must allow the principal officer of the agency a reasonable opportunity to comment on the subject matter of the report.
  - (5) The Ombudsman must report any evidence of breach of duty or misconduct on the part of a member, officer or employee of an agency to which this Act applies to the principal officer of the agency.
  - (6) Subject to this Act, the procedure to be adopted in relation to an investigation will be as determined by the Ombudsman.

### **19—Ombudsman to have powers of a Royal Commission**

For the purposes of an investigation the Ombudsman has the powers of a commission as defined in the *Royal Commissions Act 1917* and that Act applies as if—

- (a) the Ombudsman were a commission as so defined; and
- (b) the subject matter of the investigation were set out in a commission of inquiry issued by the Governor under that Act.

### **19A—Ombudsman may issue direction in relation to administrative act**

- (1) If the Ombudsman is of the opinion that an administrative act by an agency is—
  - (a) likely to prejudice an investigation or proposed investigation or the effect or implementation of a recommendation that the Ombudsman might make as a result of an investigation or proposed investigation; or
  - (b) likely to cause serious hardship to a person,

the Ombudsman may, by notice in writing, direct an agency to which this Act applies to refrain from performing the administrative act as specified in the notice for any period specified in the notice.

- (2) However—
  - (a) a notice must not be issued if compliance with the notice by the agency would result in the agency breaching a contract or other legal obligation or cause any third parties undue hardship; and
  - (b) a notice or notices issued under this section must not require an agency to refrain from performing an administrative act for more than 45 days in aggregate.
- (3) The Ombudsman may, at any time, revoke a notice and must do so if of the opinion that the notice should not have been issued.
- (5) If, following receipt of a notice under this section, the agency is of the opinion that, in the circumstances, failure to comply with the terms of the notice would be reasonable and justifiable, the agency may determine not to comply with the notice (in which case it must advise the Ombudsman of that determination, in writing, as soon as practicable).
- (6) If an agency that has received a notice under this section fails to comply with the terms of the notice, the following provisions apply:
  - (a) the principal officer of the agency must, at the request of the Ombudsman, report to the Ombudsman within the time allowed in the request on the reasons for the agency's failure to comply with the notice;
  - (b) if, following receipt of the principal officer's report, the Ombudsman is of the opinion that the agency's failure to comply with the notice was unjustified or unreasonable, the Ombudsman may make a report on the matter to the Premier;
  - (c) the Ombudsman may forward copies of any report to the Premier to the Speaker of the House of Assembly and the President of the Legislative Council with a request that they be laid before their respective Houses.
- (8) This section does not apply in relation to the sheriff.

## **20—No obligation on persons to maintain secrecy**

No obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to persons in the service of the Crown or an agency to which this Act applies, whether imposed by any enactment or by a rule of law applies to the disclosure of information for the purposes of an investigation by the Ombudsman and, except as is provided in this Act, the Crown or an agency to which this Act applies is not entitled, in relation to any such investigation, to privilege in respect of the production of documents or the giving of evidence.

## **21—Protection for proceedings in Cabinet**

- (1) No person shall be required or authorised by virtue of this Act—
  - (a) to furnish any information or answer any questions relating to the proceedings of the Cabinet or of any committee of the Cabinet; or

- (b) to produce or inspect so much of any document as relates to any such proceedings.
- (2) For the purposes of this section a certificate issued under the hand of the Minister certifying that any information or question or any document or part of a document relates to the proceedings referred to in subsection (1) is conclusive evidence of the fact so certified.

### **23—Entry and inspection**

For the purposes of an investigation, the Ombudsman or a person authorised by the Ombudsman may enter and inspect any premises or place occupied by an agency to which this Act applies and anything in or on those premises or that place.

### **24—Obstruction**

A person shall not—

- (a) without lawful excuse obstruct, hinder or resist the Ombudsman or other person in the exercise or performance of powers or functions conferred by or under this Act; or
- (b) without lawful excuse fail or refuse to comply with any lawful requirement of the Ombudsman or any other person under this Act; or
- (c) wilfully make any statement that is false or untrue in a material particular to the Ombudsman or any other person acting in the exercise of powers under this Act.

Maximum penalty: \$2 000.

### **25—Proceedings on the completion of an investigation**

- (1) This section applies to any investigation conducted by the Ombudsman as a result of which the Ombudsman is of the opinion that the administrative act to which the investigation relates—
  - (a) appears to have been made contrary to law; or
  - (b) was unreasonable, unjust, oppressive or improperly discriminatory; or
  - (c) was in accordance with a rule of law or a provision of an enactment or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory; or
  - (d) was done in the exercise of a power or discretion and was so done for an improper purpose or on irrelevant grounds or on the taking into account of irrelevant considerations; or
  - (e) was done in the exercise of a power or discretion and the reasons for the act were not but should have been given; or
  - (f) was based wholly or in part on a mistake of law or fact; or
  - (g) was wrong.
- (1a) This section does not apply to an investigation conducted under section 14.

- (2) In the case of an investigation to which this section applies in which the Ombudsman is of the opinion—
- (a) that the subject matter of the investigation should be referred back to the appropriate agency for further consideration; or
  - (b) that action can be, and should be, taken to rectify, or mitigate or alter the effects of, the administrative act to which the investigation related; or
  - (c) that the practice in accordance with which the administrative act was done should be varied; or
  - (d) that any law in accordance with which or on the basis of which the action was taken should be amended or repealed; or
  - (e) that the reason for any administrative act should be given; or
  - (f) that any other steps should be taken,

the Ombudsman must report that opinion and the reasons for it to the principal officer of the relevant agency and may make such recommendations as the Ombudsman thinks fit.

- (3) The Ombudsman must send a copy of any report or recommendation made under subsection (2) to the responsible Minister and, in the case of a report or recommendation relating to the sheriff, to the State Courts Administration Council.
- (4) The principal officer of an agency in relation to which a recommendation is made under subsection (2) must, at the request of the Ombudsman, report to the Ombudsman within a time allowed in the request on what steps have been taken to give effect to the recommendation and, if no such steps have been taken, the reason for the inaction.
- (5) If it appears to the Ombudsman that appropriate steps have not been taken to give effect to a recommendation made under this section, the Ombudsman may make a report on the matter (containing a copy of the earlier report and the recommendation) to the Premier.
- (6) Where the Ombudsman reports to the Premier under subsection (5), the Ombudsman may forward copies of the report to the Speaker of the House of Assembly and the President of the Legislative Council with a request that they be laid before their respective Houses.

## **26—Confidentiality, disclosure of information and publication of reports**

- (1) A person engaged or formerly engaged in the administration of this Act must not disclose information obtained in the course of the administration of this Act except—
- (a) for the purposes of the administration of this Act or proceedings under this Act or the *Royal Commissions Act 1917*; or
  - (b) for the purposes of the performance of official functions by an agency to which this Act applies, any agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth, or any other statutory authority or statutory office holder; or
  - (c) as authorised or required by the Ombudsman.

Maximum penalty: \$20 000.

- (2) The Ombudsman is only to authorise or require information to be disclosed if of the opinion that the disclosure is in the public interest (but a person to whom an authorisation or requirement is directed need not inquire into the basis of the authorisation or requirement).
- (3) The Ombudsman may, if of the opinion that it is in the public interest to do so, cause a report on an investigation, or a statement about an investigation, or a decision not to investigate or to discontinue an investigation, to be published in such manner as the Ombudsman thinks fit.
- (4) Information that has been disclosed under this section for a particular purpose must not be used for any other purpose by—
  - (a) the person to whom the information was disclosed; or
  - (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

Maximum penalty: \$20 000.

## **27—Report to complainant**

- (1) The Ombudsman must inform a complainant of the result of an investigation made on the complaint.
- (2) If—
  - (a) a complaint is investigated; and
  - (b) the Ombudsman makes a recommendation under this Act in relation to the subject matter of the complaint; and
  - (c) the Ombudsman is of the opinion that reasonable steps have not been taken to implement the recommendation within a reasonable time,

the Ombudsman must inform the complainant of that opinion and may make any further comments on the matter that appear appropriate in the circumstances.

## **28—Determination of the Ombudsman's jurisdiction**

Where—

- (a) an investigation has been commenced or is proposed under this Act; and
- (b) a question arises as to whether the Ombudsman has jurisdiction to conduct the investigation,

the Supreme Court may, on the application of the Ombudsman, an agency to which this Act applies or the principal officer of such an agency, determine the question and make any orders necessary to give effect to the determination.

## **Part 4—Miscellaneous**

### **29—Annual report**

- (1) The Ombudsman must in each year prepare a report on the work of the 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 Ombudsman must send a copy of each annual report to the Minister.

### **30—Immunity from liability**

- (1) No liability attaches to the Ombudsman or any member of the Ombudsman's staff for any act or omission in good faith in the exercise or purported exercise of powers or functions under this or any other Act.
- (2) Except for the purposes of an application under section 28, neither the Ombudsman nor any member of the Ombudsman's staff can be called to give evidence before any court in any judicial proceedings, on a matter coming to his or her notice in the course of exercising powers or functions under this or any other Act.
- (3) In this section—  
*member of the Ombudsman's staff* includes any person to whom powers or functions have been delegated under this Act.

### **32—Use of word "Ombudsman" by agencies to which Act applies in describing internal reviews prohibited**

An agency to which this Act applies must not use the word "Ombudsman" in describing a process or procedure by which the agency investigates and resolves complaints against the agency, or in describing a person responsible for carrying out such a process or procedure.

### **33—Regulations**

The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act and amendments

New entries appear in bold.

| Year | No  | Title   | Assent     | Commencement   |
|------|-----|---|------------|--|
| 1972 | 115 | <i>Ombudsman Act 1972</i>   | 23.11.1972 | 14.12.1972 ( <i>Gazette 14.12.1972 p2629</i> )               |
| 1974 | 14  | <i>Ombudsman Act Amendment Act 1974</i>   | 4.4.1974   | 4.4.1974   |
| 1984 | 5   | <i>Ombudsman Act Amendment Act 1984</i>   | 19.4.1984  | 19.4.1984  |
| 1985 | 24  | <i>Ombudsman Act Amendment Act 1985</i>   | 28.3.1985  | 1.9.1985 ( <i>Gazette 29.8.1985 p604</i> ): s 2              |
| 1985 | 59  | <i>Statutes Amendment (Remuneration) Act 1985</i>   | 30.5.1985  | 13.6.1985 ( <i>Gazette 13.6.1985 p2132</i> )                 |
| 1986 | 103 | <i>Ombudsman Act Amendment Act 1986</i>   | 18.12.1986 | 10.3.1987 ( <i>Gazette 5.2.1987 p248</i> )                   |
| 1988 | 56  | <i>Ombudsman Act Amendment Act 1988</i>   | 8.9.1988   | 8.9.1988   |
| 1990 | 18  | <i>Statutes Repeal and Amendment (Remuneration) Act 1990</i>                                  | 19.4.1990  | 19.4.1990 ( <i>Gazette 19.4.1990 p1136</i> )                 |
| 1996 | 52  | <i>Ombudsman (Miscellaneous) Amendment Act 1996</i>   | 1.8.1996   | 4.11.1996 ( <i>Gazette 24.10.1996 p1416</i> )                |
| 1997 | 22  | <i>Electoral (Miscellaneous) Amendment Act 1997</i>   | 27.3.1997  | 28.8.1997 ( <i>Gazette 28.8.1997 p456</i> )                  |
| 1999 | 88  | <i>Statutes Amendment (Universities) Act 1999</i>   | 2.12.1999  | Pt 3 (s 5)—23.12.1999 ( <i>Gazette 23.12.1999 p3670</i> )    |
| 2000 | 49  | <i>Statutes Amendment and Repeal (Security and Order at Courts and Other Places) Act 2000</i> | 20.7.2000  | Pt 4 (ss 18—22)—29.9.2000 ( <i>Gazette 28.9.2000 p2221</i> ) |
| 2002 | 36  | <i>Ombudsman (Honesty and Accountability in Government) Amendment Act 2002</i>                | 28.11.2002 | 1.7.2004 ( <i>Gazette 1.7.2004 p2399</i> )                   |
| 2006 | 15  | <i>Development (Panels) Amendment Act 2006</i>  | 29.6.2006  | Sch 1 (cl 2)—23.11.2006 ( <i>Gazette 23.11.2006 p4078</i> )  |

|             |          |   |                  |  |
|-------------|----------|---|------------------|--|
| 2009        | 84       | <i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>   | 10.12.2009       | Pt 102 (ss 248 & 249)—1.2.2010 ( <i>Gazette 28.1.2010 p320</i> ) |
| 2012        | 52       | <i>Independent Commissioner Against Corruption Act 2012</i>   | 6.12.2012        | Sch 3 (cll 48—55)—1.9.2013 ( <i>Gazette 23.5.2013 p2006</i> )    |
| 2015        | 34       | <i>Judicial Conduct Commissioner Act 2015</i>   | 5.11.2015        | Sch 1 (cl 16)—5.12.2016 ( <i>Gazette 29.11.2016 p4525</i> )      |
| 2016        | 48       | <i>Children and Young People (Oversight and Advocacy Bodies) Act 2016</i>   | 27.10.2016       | Sch 1 (cll 9—11)—18.12.2017 ( <i>Gazette 5.12.2017 p4840</i> )   |
| 2016        | 54       | <i>Independent Commissioner Against Corruption (Miscellaneous) Amendment Act 2016</i>   | 24.11.2016       | Sch 1 (cl 3)—16.12.2016 ( <i>Gazette 15.12.2016 p4988</i> )      |
| <b>2017</b> | <b>5</b> | <b><i>Statutes Amendment (Planning, Development and Infrastructure) Act 2017</i></b>  | <b>28.2.2017</b> | <b>Pt 22 (s 66)—1.7.2019 (<i>Gazette 27.6.2019 p2322</i>)</b>    |
| 2021        | 35       | <i>Children and Young People (Oversight and Advocacy Bodies) (Commissioner for Aboriginal Children and Young People) Amendment Act 2021</i> | 30.9.2021        | Sch 1 (cll 4 to 6)—uncommenced                                   |

### Provisions amended since 3 February 1976

- Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 7 of The Public General Acts of South Australia 1837-1975 at page 710.
- Certain textual alterations were made to this Act by the Commissioner of Statute Revision when preparing the reprint of the Act that incorporated all amendments in force as at 10 March 1987. A Schedule of these alterations was laid before Parliament on 31 March 1987.

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

| Provision           | How varied  | Commencement |
|---------------------|---|--------------|
| Long title          | amended by 36/2002 s 3  | 1.7.2004     |
| Pt 1                |   |              |
| <i>s 2</i>          | <i>deleted in pursuance of the Acts Republication Act 1967 as its function is now exhausted</i> |              |
| s 3                 |   |              |
| s 3(1)              |   |              |
| administrative act  | substituted by 103/1986 s 4 (Sch)   | 10.3.1987    |
|                     | amended by 49/2000 s 18(a)  | 29.9.2000    |
|                     | substituted by 36/2002 s 4(a)   | 1.7.2004     |
|                     | amended by 52/2012 Sch 3 cl 48(1)   | 1.9.2013     |
| administrative unit | inserted by 36/2002 s 4(a)  | 1.7.2004     |
|                     | amended by 84/2009 s 248  | 1.2.2010     |
| act                 | inserted by 103/1986 s 4 (Sch)  | 10.3.1987    |

|                                  |  |                   |
|----------------------------------|--|-------------------|
| agency to which this Act applies | inserted by 103/1986 s 4 (Sch)           | 10.3.1987         |
|                                  | amended by 52/1996 s 3(a)                | 4.11.1996         |
|                                  | substituted by 36/2002 s 4(a)            | 1.7.2004          |
|                                  | amended by 15/2006 Sch 1 cl 2            | 23.11.2006        |
|                                  | amended by 52/2012 Sch 3 cl 48(2), (3)   | 1.9.2013          |
|                                  | <b>amended by 5/2017 s 66</b>            | <b>1.7.2019</b>   |
| <i>authority</i>                 | <i>substituted by 103/1986 s 3</i>       | <i>10.3.1987</i>  |
|                                  | <i>amended by 52/1996 s 3(b)</i>         | <i>4.11.1996</i>  |
|                                  | <i>amended by 88/1999 s 5</i>            | <i>23.12.1989</i> |
|                                  | <i>amended by 49/2000 s 18(b)</i>        | <i>29.9.2000</i>  |
|                                  | <i>deleted by 36/2002 s 4(a)</i>         | <i>1.7.2004</i>   |
| <i>Committee</i>                 | <i>inserted by 52/1996 s 3(c)</i>        | <i>4.11.1996</i>  |
|                                  | <i>deleted by 22/1997 Sch 3 cl 2(a)</i>  | <i>28.8.1997</i>  |
| council                          | substituted by 36/2002 s 4(b)            | 1.7.2004          |
| <i>department</i>                | <i>substituted by 103/1986 s 4 (Sch)</i> | <i>10.3.1987</i>  |
|                                  | <i>deleted by 36/2002 s 4(b)</i>         | <i>1.7.2002</i>   |
| investigation                    | amended by 103/1986 s 4 (Sch)            | 10.3.1987         |
| officer of the Ombudsman         | substituted by 103/1986 s 4 (Sch)        | 10.3.1987         |
| principal officer                | substituted by 103/1986 s 4 (Sch)        | 10.3.1987         |
|                                  | amended by 52/1996 s 3(d), (e)           | 4.11.1996         |
|                                  | substituted by 36/2002 s 4(c)            | 1.7.2004          |
| <i>proclaimed council</i>        | <i>deleted by 52/1996 s 3(f)</i>         | <i>4.11.1996</i>  |
| responsible Minister             | substituted by 103/1986 s 4 (Sch)        | 10.3.1987         |
|                                  | amended by 52/1996 s 3(g)                | 4.11.1996         |
|                                  | substituted by 36/2002 s 4(c)            | 1.7.2004          |
| Statutory Officers Committee     | inserted by 36/2002 s 4(c)               | 1.7.2004          |
| Ombudsman                        | substituted by 103/1986 s 4 (Sch)        | 10.3.1987         |
| s 3(2)                           | substituted by 103/1986 s 4 (Sch)        | 10.3.1987         |
|                                  | substituted by 49/2000 s 18(c)           | 29.9.2000         |
| s 3(3)                           | substituted by 103/1986 s 4 (Sch)        | 10.3.1987         |
|                                  | (d) deleted by 52/1996 s 3(h)            | 4.11.1996         |
|                                  | substituted by 36/2002 s 4(d)            | 1.7. 2004         |
| s 3(4) and (5)                   | inserted by 36/2002 s 4(d)               | 1.7.2004          |
| <i>ss 4 and 4A</i>               | <i>deleted by 103/1986 s 4 (Sch)</i>     | <i>10.3.1987</i>  |
| s 5                              |  |                   |
| s 5(2)                           | substituted by 24/1985 s 3               | 1.9.1985          |
| s 5(3)                           | inserted by 34/2015 Sch 1 cl 16          | 5.12.2016         |
| Pt 2                             |  |                   |
| s 6                              |  |                   |

|                 |                                      |                  |
|-----------------|--------------------------------------|------------------|
| s 6(1)          | substituted by 103/1986 s 4 (Sch)    | 10.3.1987        |
|                 | amended by 52/1996 s 4(a)            | 4.11.1996        |
|                 | substituted by 22/1997 Sch 3 cl 2(b) | 28.8.1997        |
| s 6(1a)         | inserted by 52/1996 s 4(b)           | 4.11.1996        |
|                 | substituted by 22/1997 Sch 3 cl 2(b) | 28.8.1997        |
|                 | amended by 36/2002 s 5               | 1.7.2004         |
| s 6(2)          | substituted by 59/1985 s 13          | 13.6.1985        |
|                 | amended by 18/1990 s 17(a)           | 19.4.1990        |
| s 6(2a)         | <i>inserted by 59/1985 s 13</i>      | <i>13.6.1985</i> |
|                 | <i>deleted by 18/1990 s 17(b)</i>    | <i>19.4.1990</i> |
| s 6(3)          | amended by 103/1986 s 4 (Sch)        | 10.3.1987        |
| s 7             | amended by 103/1986 s 4 (Sch)        | 10.3.1987        |
| s 8             |                                      |                  |
| s 8(1)          | amended by 103/1986 s 4 (Sch)        | 10.3.1987        |
| s 8(1a)         | inserted by 52/1996 s 5              | 4.11.1996        |
| s 8(3)          | substituted by 103/1986 s 4 (Sch)    | 10.3.1987        |
| s 9             |                                      |                  |
| s 9(1)          | substituted by 103/1986 s 4 (Sch)    | 10.3.1987        |
|                 | amended by 49/2000 s 19              | 29.9.2000        |
| s 10            |                                      |                  |
| s 10(3) and (4) | substituted by 103/1986 s 4 (Sch)    | 10.3.1987        |
| s 11            | substituted by 103/1986 s 4 (Sch)    | 10.3.1987        |
| s 12            | substituted by 103/1986 s 4 (Sch)    | 10.3.1987        |
| s 12(2)         | amended by 52/1996 s 6               | 4.11.1996        |
|                 | amended by 84/2009 s 249             | 1.2.2009         |
| s 12(2a)        | inserted by 52/2012 Sch 3 cl 49      | 1.9.2013         |
| Pt 3            |                                      |                  |
| s 13            |                                      |                  |
| s 13(2) and (3) | amended by 103/1986 s 4 (Sch)        | 10.3.1987        |
| s 13(3a)        | inserted by 52/2012 Sch 3 cl 50      | 1.9.2013         |
| s 13(3b)—(3e)   | inserted by 48/2016 Sch 1 cl 9(1)    | 18.12.2017       |
| s 13(4)         | amended by 103/1986 s 4 (Sch)        | 10.3.1987        |
| s 13(5) and (6) | inserted by 48/2016 Sch 1 cl 9(2)    | 18.12.2017       |
| s 14            | deleted by 103/1986 s 4 (Sch)        | 10.3.1987        |
|                 | inserted by 52/1996 s 7              | 4.11.1996        |
| s 14A           | inserted by 36/2002 s 6              | 1.7.2004         |
| s 14B           | inserted by 54/2016 Sch 1 cl 3       | 16.12.2016       |
| s 15            |                                      |                  |
| s 15(1)         | amended by 103/1986 s 4 (Sch)        | 10.3.1987        |
| s 15(2)         | substituted by 103/1986 s 4 (Sch)    | 10.3.1987        |
| s 15(3a)        | inserted by 103/1986 s 4 (Sch)       | 10.3.1987        |
| s 15(3b)        | inserted by 48/2016 Sch 1 cl 10      | 18.12.2017       |
| s 15(4)         | amended by 103/1986 s 4 (Sch)        | 10.3.1987        |

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|  |  |                 |
|--|--|-----------------|
|  | amended by 56/1988 s 2                   | 8.9.1988        |
| s 15A                                      | inserted by 56/1988 s 3                  | 8.9.1988        |
| s 16                                       |  |                 |
| s 16(3)                                    | inserted by 48/2016 Sch 1 cl 11          | 18.12.2017      |
| s 17                                       |  |                 |
| s 17(1) and (3)                            | substituted by 103/1986 s 4 (Sch)        | 10.3.1987       |
| s 17A                                      | inserted by 52/1996 s 8                  | 4.11.1996       |
| s 18                                       |  |                 |
| s 18(1)                                    | substituted by 5/1984 s 2                | 19.4.1984       |
|  | amended by 103/1986 s 4 (Sch)            | 10.3.1987       |
| s 18(1a)                                   | inserted by 5/1984 s 2                   | 19.4.1984       |
|  | substituted by 103/1986 s 4 (Sch)        | 10.3.1987       |
| s 18(3)—(6)                                | substituted by 103/1986 s 4 (Sch)        | 10.3.1987       |
| s 19                                       | amended by 103/1986 s 4 (Sch)            | 10.3.1987       |
| s 19A                                      | inserted by 52/1996 s 9                  | 4.11.1996       |
| s 19A(1)—(3)                               | substituted by 52/2012 Sch 3 cl 51(1)    | 1.9.2013        |
| s 19A(4)                                   | <i>deleted by 52/2012 Sch 3 cl 51(1)</i> | <i>1.9.2013</i> |
| s 19A(7)                                   | <i>deleted by 52/2012 Sch 3 cl 51(2)</i> | <i>1.9.2013</i> |
| s 19A(8)                                   | inserted by 49/2000 s 20                 | 29.9.2000       |
| s 20                                       | amended by 103/1986 s 4 (Sch)            | 10.3.1987       |
|  | amended by 52/2012 Sch 3 cl 52           | 1.9.2013        |
| <i>s 22 before deletion<br/>by 52/2012</i> |  |                 |
| s 22(2)                                    | <i>amended by 56/1988 s 4</i>            | <i>8.9.1988</i> |
| s 22                                       | <i>deleted by 52/2012 Sch 3 cl 53</i>    | <i>1.9.2013</i> |
| s 23                                       | substituted by 103/1986 s 4 (Sch)        | 10.3.1987       |
| s 24                                       | amended by 103/1986 s 4 (Sch)            | 10.3.1987       |
|  | amended by 56/1988 s 5                   | 8.9.1988        |
| s 25                                       |  |                 |
| s 25(1a)                                   | inserted by 52/1996 s 10                 | 4.11.1996       |
| s 25(2)                                    | amended by 103/1986 s 4 (Sch)            | 10.3.1987       |
| s 25(3)                                    | amended by 49/2000 s 21                  | 29.9.2000       |
| s 25(4)—(6)                                | substituted by 103/1986 s 4 (Sch)        | 10.3.1987       |
| s 26                                       | substituted by 103/1986 s 4 (Sch)        | 10.3.1987       |
|  | substituted by 52/2012 Sch 3 cl 54       | 1.9.2013        |
| ss 27—30                                   | substituted by 103/1986 s 4 (Sch)        | 10.3.1987       |
| s 30                                       |  |                 |
| s 30(1)                                    | amended by 49/2000 s 22(a)               | 29.9.2000       |
| s 30(2)                                    | amended by 49/2000 s 22(b)               | 29.9.2000       |
| s 30(3)                                    | inserted by 52/1996 s 11                 | 4.11.1996       |
| s 31                                       | <i>substituted by 36/2002 s 7</i>        | <i>1.7.2004</i> |
|  | <i>deleted by 52/2012 Sch 3 cl 55</i>    | <i>1.9.2013</i> |
| ss 32 and 33                               | inserted by 36/2002 s 7                  | 1.7.2004        |

|            |   |                  |
|------------|---|------------------|
| <i>Sch</i> | <i>inserted by 52/1996 s 12 (Sch)</i>   | <i>4.11.1996</i> |
|            | <i>deleted by 22/1997 Sch 3 cl 2(c)</i> | <i>28.8.1997</i> |

## **Historical versions**

Reprint—10.3.1987

Reprint No 1—19.4.1990

Reprint No 2—4.11.1996

Reprint No 3—28.8.1997

Reprint No 4—23.12.1999

Reprint No 5—29.9.2000

1.7.2004

23.11.2006

1.2.2010

1.9.2013

5.12.2016

16.12.2016

18.12.2017