

Authorised Version No. 085

Ombudsman Act 1973

No. 8414 of 1973

Authorised Version incorporating amendments as at
22 June 2011

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Authorised Version No. 085

Ombudsman Act 1973

No. 8414 of 1973

Authorised Version incorporating amendments as at
22 June 2011

An Act to provide for the Appointment in Victoria of an
Ombudsman with Power to investigate Administrative Actions
taken by or on behalf of Government Departments and other
Authorities, and for other purposes.

**BE IT ENACTED by the Queen's Most Excellent Majesty by
and with the advice and consent of the Legislative Council
and the Legislative Assembly of Victoria in this present
Parliament assembled and by the authority of the same as
follows (that is to say):**

1 Short title and commencement

- (1) This Act may be cited as the **Ombudsman Act
1973**.
- (2) This Act shall come into operation on a day to be
fixed by proclamation of the Governor in Council
published in the Government Gazette.

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**S. 1(3)
repealed by
No. 15/1989
s. 28(1).**

PART I—INTERPRETATION

2 Definitions

In this Act unless inconsistent with the context or subject-matter—

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

- (a) a decision and an act;
- (b) the refusal or failure to take a decision or to perform an act;
- (c) the formulation of a proposal or intention; and
- (d) the making of a recommendation (including a recommendation made to a Minister);

authority includes Government Department and Public Statutory Body and municipal council;

complainant means a person who makes a complaint;

complaint means a complaint to the Ombudsman in respect of an administrative action;

* * * * *

S. 2 def. of *authority* amended by Nos 8884 s. 2(a), 12/1989 s. 4(1)(Sch. 2 item 86.1).

S. 2 def. of *Deputy Ombudsman* inserted by No. 14/1988 s. 4, repealed by No. 32/2004 s. 3(a).

Government Department includes a department within the meaning of the **Public Administration Act 2004** and an office specified in section 16(1) of that Act;

S. 2 def. of *Government Department* amended by No. 9059 s. 2(1)(Sch. items 28–30), substituted by Nos 62/1989 s. 4(a), 46/1998 s. 7(Sch. 1), amended by No. 108/2004 s. 117(1) (Sch. 3 item 144.1).

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S. 2 def. of *Mayor* inserted by No. 8884 s. 2(b), repealed by No. 12/1989 s. 4(1)(Sch. 2 item 86.2).

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S. 2 def. of *municipality* inserted by No. 8884 s. 2(b), repealed by No. 12/1989 s. 4(1)(Sch. 2 item 86.3).

* * * * *

S. 2 def. of *Police Ombudsman* inserted by No. 32/2004 s. 3(b), repealed by No. 63/2004 s. 7(a).

S. 2 def. of
*principal
officer*
amended by
Nos 8884
s. 2(c),
12/1989
s. 4(1)(Sch. 2
item 86.4),
62/1989
s. 4(b),
125/1993
s. 20(9),
46/1998
s. 7(Sch. 1),
102/1998 s. 34,
108/2004
s. 117(1)
(Sch. 3
item 144.2).

principal officer means—

- (a) in relation to a Government Department—the Department Head of the Department within the meaning of the **Public Administration Act 2004** or the person carrying out the duties of the Department Head; and
- (b) in relation to a Public Statutory Body—the chairman or presiding member of that body; and
- (c) in relation to a municipal council the Chief Executive Officer of the municipal council; and
- (d) in relation to the police force—the Chief Commissioner of Police;

S. 2 def. of
*Public
Statutory
Body*
amended by
No. 15/1998
s. 10(1)(a).

Public Statutory Body means a body of persons, whether corporate or unincorporate, constituted or established under an Act for a public purpose, in respect of which the Governor in Council or a Minister has a right to appoint all or some of its members and includes State Trustees.

S. 2 def. of
State Trustees
inserted by
No. 15/1998
s. 10(1)(b).

State Trustees means the company described as State Trustees in the **State Trustees (State Owned Company) Act 1994** while that company is a company a majority of shares in which is held by or on behalf of the State.

PART II—THE OMBUDSMAN

3 Appointment of Ombudsman

- (1) There shall be appointed a Commissioner for Administrative Investigations, to be called the Ombudsman.
- (2) The Ombudsman shall be appointed by the Governor in Council and shall hold office in accordance with this Act.
- (3) The Ombudsman shall not be a Member of Parliament of Victoria or of the Commonwealth or any other State.
- (4) Subject to this Act, the Ombudsman holds office for a term of 10 years, and is not eligible to be re-appointed.
- (5) The Ombudsman shall cease to hold his office—
 - (a) if he resigns in writing under his hand and his resignation is accepted by the Governor in Council;
 - (b) if he is removed from office upon the presentation of an address of both Houses of Parliament praying for his removal from office;
 - (c) if he is suspended from office under section 4 and is not restored to office; or
 - (d) if he nominates for election for either House of Parliament of Victoria or of the Commonwealth or any other State.

S. 3(4)
substituted by
No. 62/1989
s. 5.

S. 4(1)
amended by
No. 62/1989
s. 15(2).

4 Suspension of Ombudsman

- (1) The Governor in Council may at any time when Parliament is not in session suspend the Ombudsman from office on the ground of disability, bankruptcy, neglect of duty or misconduct or on any other ground which in the opinion of the Governor in Council makes him unfit to be the Ombudsman.
- (2) The Ombudsman so suspended shall be restored to office unless—
 - (a) a statement setting out the grounds of suspension is laid before each House of Parliament during the first seven sitting days of that House following the suspension; and
 - (b) each House of Parliament within 20 sitting days of the statement being so laid passes an address praying for his removal from office.

5 Salary, allowances and leave of absence

- (1) The Ombudsman shall be paid—
 - (a) a salary at such rate as is fixed from time to time by the Governor in Council; and
 - (b) such travelling and other allowances as are fixed from time to time by the Governor in Council.
- (2) The rate of salary paid to the Ombudsman shall not be reduced during his term of office without his consent in writing.
- (3) The Ombudsman shall be entitled to such leave of absence as the Governor in Council from time to time determines.

- (4) The salary and allowances payable to the Ombudsman shall be paid out of the Consolidated Fund, which to the necessary extent is appropriated accordingly.

6 Acting Ombudsman

- (1) The Governor in Council may appoint an Acting Commissioner of Administrative Investigations, to be called the Acting Ombudsman during the temporary absence or the suspension or during any vacancy in the office of the Ombudsman, and may at any time revoke such appointment.
- (2) The Acting Ombudsman shall, while so acting, have all the powers and may exercise any of the functions of the Ombudsman as if he were the Ombudsman.

S. 6(1)
amended by
No. 24/1996
s. 30(1).

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S. 6A
inserted by
No. 14/1988
s. 5,
substituted by
No. 32/2004
s. 4,
amended by
No. 56/2004
s. 76(1),
repealed by
No. 63/2004
s. 7(b).

* * * * *

S. 6B
inserted by
No. 14/1988
s. 5,
substituted by
No. 32/2004
s. 4,
repealed by
No. 63/2004
s. 7(b).

Ombudsman Act 1973
No. 8414 of 1973
Part II—The Ombudsman

s. 7

S. 6C inserted by No. 14/1988 s. 5, amended by No. 24/1996 s. 30(2)(3), repealed by No. 32/2004 s. 5(1)(a).	*	*	*	*	*
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S. 6D inserted by No. 14/1988 s. 5, amended by No. 46/1998 s. 7(Sch. 1), repealed by No. 32/2004 s. 5(1)(a).	*	*	*	*	*
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S. 6E inserted by No. 14/1988 s. 5, repealed by No. 32/2004 s. 5(1)(a).	*	*	*	*	*
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S. 6F inserted by No. 24/1996 s. 31, repealed by No. 32/2004 s. 5(1)(a).	*	*	*	*	*
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S. 7
amended by
No. 14/1988
s. 6(1),
substituted by
Nos 62/1989
s. 6, 46/1998
s. 7(Sch. 1),
amended by
Nos 32/2004
s. 5(1)(b),
63/2004
s. 7(c),
108/2004
s. 117(1)
(Sch. 3
item 144.3).

7 Staff

Any employees that are necessary to enable the functions of the Ombudsman to be properly carried out may be employed under the **Public Administration Act 2004**.

8 Application of Public Administration Act 2004

S. 8 (Heading)
inserted by
No. 108/2004
s. 117(1)
(Sch. 3
item 144.4)

(1) A person who is the Ombudsman or Acting Ombudsman is not, in respect of the office of Ombudsman or Acting Ombudsman, subject to the **Public Administration Act 2004**.

S. 8(1)
amended by
Nos 9059
s. 2(1)(Sch.
item 31),
14/1988 s. 7,
62/1989
s. 7(a)(b),
46/1998
s. 7(Sch. 1),
substituted by
No. 32/2004
s. 5(2),
amended by
Nos 63/2004
s. 7(d),
108/2004
s. 117(1)
(Sch. 3
item 144.5).

(2) A person who is the Ombudsman or Acting Ombudsman and who, immediately before his or her appointment as such was an employee in the public service—

S. 8(2)
amended by
Nos 9059
s. 2(1)(Sch.
item 32),
14/1988 s. 7,
62/1989
s. 7(a)(b),
substituted by
No. 46/1998
s. 7(Sch. 1),
amended by
No. 32/2004
s. 5(3)(a).

(a) is eligible to be employed in the public service at the termination of his or her office as the Ombudsman or Acting Ombudsman with a classification and emolument corresponding with or higher than that which he or she last held or received in the public service immediately before his or her appointment as the Ombudsman or Acting Ombudsman as if his or her service as the

S. 8(2)(a)
amended by
No. 32/2004
s. 5(3)(a).

s. 9

Ombudsman or Acting Ombudsman had been service in the public service; and

S. 8(2)(b)
amended by
No. 32/2004
s. 5(3)(a).

- (b) for the purposes of long service leave, is to be taken to continue to be an employee in the public service while he or she was Ombudsman or Acting Ombudsman.

9 Superannuation

S. 9(1)
amended by
Nos 14/1988
s. 8, 50/1988
s. 93(2)(Sch. 2
Pt 2 item 42),
46/1998
s. 7(Sch. 1),
32/2004
s. 5(3)(b)(i)(ii).

- (1) A person who is the Ombudsman or Acting Ombudsman or an employee of the Ombudsman and who immediately before his or her appointment as such was an officer within the meaning of the **State Superannuation Act 1988** or of any corresponding previous enactment shall, subject to that Act, continue during his or her term of office as the Ombudsman or Acting Ombudsman or an employee of the Ombudsman to be an officer within the meaning of that Act.

S. 9(2)
amended by
Nos 62/1989
s. 15(3),
100/1995
s. 32(Sch. 2
item 4),
46/1998
s. 7(Sch. 1).

- (2) A person who is the Ombudsman and who immediately before his appointment as the Ombudsman was not an employee in the public service may elect to be a contributor to a pension scheme determined by the Governor in Council after consideration of a report by the Secretary to the Department of Treasury and Finance.

10 Oath or affirmation

S. 10
amended by
Nos 14/1988
s. 9, 15/1989
s. 24,
substituted by
No. 32/2004
s. 6.

S. 10(1)
amended by
No. 63/2004
s. 7(e)(i).

- (1) Before the Ombudsman or Acting Ombudsman performs any of the duties of office of Ombudsman, he or she must take an oath or make an affirmation that he or she—

S. 10(1)(a)
amended by
No. 63/2004
s. 7(e)(ii).

- (a) will faithfully and impartially perform the duties of office of Ombudsman; and

-
- (b) will not divulge, except according to law, any information received in the performance of those duties.
 - (2) Before an officer of the Ombudsman performs any of the duties of office, he or she must take an oath or make an affirmation that he or she—
 - (a) will faithfully and impartially perform his or her duties of office; and
 - (b) will not divulge, except according to law, any information received in the performance of those duties.
 - (3) The oath or affirmation is to be administered by—
 - (a) the Speaker of the Legislative Assembly, in the case of the Ombudsman or Acting Ombudsman;
 - (b) the Ombudsman or Acting Ombudsman, in the case of an officer of the Ombudsman.

11 Delegation

- (1) The Ombudsman or the Acting Ombudsman may, by instrument in writing, delegate all or any of the powers or functions of the Ombudsman (except this power of delegation) under this or any other Act to any person, and may in like manner revoke or vary such delegation.
- (2) A person to whom any such powers or functions have been delegated may exercise or perform those powers and functions so long as they are not revoked.
- (3) The delegation of any powers or functions shall not affect the exercise of those powers or functions by the Ombudsman or, where applicable, by the Acting Ombudsman.

S. 11(1)
amended by
No. 80/2006
s. 20.

Ombudsman Act 1973
No. 8414 of 1973
Part II—The Ombudsman

s. 12

S. 11(4)
inserted by
No. 14/1988
s. 10,
amended by
No. 32/2004
s. 7(1),
repealed by
No. 63/2004
s. 7(f).

* * * * *

S. 12
amended by
No. 32/2004
s. 7(2) (ILA
s. 39B(1)).

12 Ombudsman not to engage in other remunerative employment

- (1) The Ombudsman, the Acting Ombudsman and every officer of the Ombudsman shall not, without the consent of the Governor in Council, engage in any remunerative employment outside the duties of his office or his duties as such officer.

S. 12(2)
inserted by
No. 32/2004
s. 7(2),
amended by
No. 63/2004
s. 7(g),
repealed by
No. 34/2008
s. 143(Sch. 2
item 9).

* * * * *

**PART III—FUNCTIONS AND JURISDICTION OF THE
OMBUDSMAN**

13 Functions and jurisdiction

- (1) The principal function of the Ombudsman shall be to enquire into or investigate any administrative action taken in any Government Department or Public Statutory Body to which this Act applies or by any member of staff of a municipal council.
- (1A) The functions of the Ombudsman under subsection (1) include the power to enquire into or investigate whether any administrative action is incompatible with a human right set out in the Charter of Human Rights and Responsibilities.
- (2) Subject to this section this Act applies to all Government Departments and Public Statutory Bodies except those or the branches of those mentioned in the Schedule and to members of staff of all municipal councils.
- (2AAA) The Ombudsman is also to monitor compliance with Part 2A of the **Prevention of Cruelty to Animals Act 1986** by officers of the Royal Society for the Prevention of Cruelty to Animals who are approved as general inspectors under section 18(1)(b)(ii) of that Act.
- (2AA) The Ombudsman is also to monitor compliance by members of the police force with Division 3 of Part 4 of the **Melbourne City Link Act 1995**.
- S. 13(1) amended by Nos 8884 s. 3(a), 12/1989 s. 4(1)(Sch. 2 item 86.5), 62/1989 s. 8(1).
- S. 13(1A) inserted by No. 43/2006 s. 47(Sch. item 2).
- S. 13(2) amended by Nos 8884 s. 3(b), 12/1989 s. 4(1)(Sch. 2 item 86.6) (as amended by No. 13/1990 s. 38(2)(l)).
- S. 13(2AAA) inserted by No. 103/2003 s. 30(1), amended by No. 29/2011 s. 3(Sch. 1 item 64).
- S. 13(2AA) inserted by No. 102/1998 s. 35(1).

s. 13

S. 13(2AB)
inserted by
No. 102/1998
s. 35(1).

(2AB) The Ombudsman must review the records of the police force at least twice during each financial year to monitor compliance by members of the force with Division 3 of Part 4 of the **Melbourne City Link Act 1995**.

S. 13(2AC)
inserted by
No. 103/2003
s. 30(2),
amended by
No. 65/2007
s. 111.

(2AC) The Ombudsman is also to monitor compliance with the **Domestic Animals Act 1994** by persons appointed as authorised officers under section 71A(1) or 72A(1) of that Act.

S. 13(2A)
inserted by
No. 15/1998
s. 10(2).

(2A) Despite subsection (3)(c), the Ombudsman may, subject to this Act, enquire into or investigate any administrative action taken by State Trustees.

S. 13(3)
amended by
No. 62/1989
s. 8(2)(a).

(3) Nothing in this Act shall authorize the Ombudsman to enquire into or investigate any administrative action taken—

(a) by a court of law or by a Judge or a magistrate;

S. 13(3)(aa)
inserted by
No. 8651
s. 2(a),
amended by
Nos 35/1996
s. 453(Sch. 1
item 62.1),
18/2005
s. 18(Sch. 1
item 73.1).

(aa) by a board tribunal commission or other body presided over by a Judge magistrate or Australian lawyer (within the meaning of the **Legal Profession Act 2004**) presiding as such by virtue of a statutory requirement and appointment;

S. 13(3)(b)
amended by
No. 8651
s. 2(b).

(b) by a person acting as legal adviser to the Crown or as counsel for the Crown in any proceedings;

S. 13(3)(ba)
inserted by
No. 62/1989
s. 8(2)(b).

(ba) by the Director of Public Prosecutions;

(c) by a person in his capacity as trustee under the **Trustee Act 1958**;

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- | | |
|---|---|
| (ca) by the Victorian Electoral Commission established under section 6 of the Electoral Act 2002 ; | S. 13(3)(ca) inserted by No. 62/1989 s. 8(2)(c), substituted by No. 23/2002 s. 201. |
| (d) by the Auditor-General or an authorised person within the meaning of the Audit Act 1994 ; or | S. 13(3)(d) amended by Nos 9059 s. 2(1)(Sch. item 33), 93/1997 s. 26(1). |
| (da) by Audit Victoria; | S. 13(3)(da) inserted by No. 93/1997 s. 26(2). |
| (e) by a municipal council or a councillor of a municipal council acting as such. | S. 13(3)(e) inserted by No. 8884 s. 3(c), amended by No. 12/1989 s. 4(1)(Sch. 2 item 86.7). |
| (3AA) To avoid doubt, section 13(3)(aa) does not apply and is taken never to have applied to the Director, Police Integrity or the Office of Police Integrity. | S. 13(3AA) inserted by No. 27/2009 s. 16(1). |
| (3A) Nothing in this Act authorises any enquiry into or investigation of any administrative action taken by a member of the police force of Victoria otherwise than— | S. 13(3A) inserted by No. 14/1988 s. 11, amended by Nos 15/1989 s. 25(a)(b), 62/1989 s. 8(3). |
| (a) in accordance with Part IVA of the Police Regulation Act 1958 ; or | |
| (b) on a complaint made by a member of the police force in respect of his or her terms and conditions of employment (including matters relating to appointments, promotions, removals, pay, discipline and superannuation, and other personnel matters); or | S. 13(3A)(b) inserted by No. 15/1989 s. 25(b), amended by No. 102/1998 s. 35(2). |

s. 13

S. 13(3A)(ba)
inserted by
No. 27/2009
s. 16(2).

(ba) in respect of an administrative action taken by that member in the course of the secondment of that member to the Office of Police Integrity; or

S. 13(3A)(c)
inserted by
No. 102/1998
s. 35(2).

(c) for the purpose of—

S. 13(3A)(c)(i)
amended by
Nos 56/2004
s. 76(2),
79/2004
s. 71(a).

(i) carrying out a function under subsection (2AA) or (2AB); or

(ii) investigating the disclosure or use by a member of the police force of restricted tolling information within the meaning of the **Melbourne City Link Act 1995**.

(4) The Ombudsman shall not conduct an investigation in respect of any matter where it appears to him that—

(a) the aggrieved person has or had a right of appeal reference or review to or before a tribunal constituted by or under any enactment or by virtue of Her Majesty's prerogative; or

(b) the aggrieved person has or had a remedy by way of proceedings in a court of law—

unless the Ombudsman considers that in the particular circumstances—

(c) it would not be reasonable to expect or to have expected the aggrieved person to resort to that right or remedy; or

(d) the matter merits investigation in order to avoid injustice.

-
- (5) The Ombudsman shall not investigate any matter with respect to persons who are or were in service under an authority so far as the matter relates to terms and conditions of employment (including matters relating to appointments promotions removals pay discipline and superannuation, and other personnel matters) unless the Ombudsman considers that the matter merits investigation in order to avoid injustice.
- (6) The powers of the Ombudsman in relation to any administrative action taken by an authority to which this Act applies may be exercised notwithstanding that the action was taken on behalf of, or in the exercise of any function conferred on, an authority or a body to which this Act does not apply, but nothing in this Act shall authorize or require the Ombudsman to question the merits of any decision made by the authority or body to which this Act does not apply.
- (7) Where any administrative action is taken by an authority or body to which this Act does not apply under any powers or functions conferred on or instructions given to it by an authority to which this Act applies, the administrative action so taken shall, for the purposes of this Act, be deemed to be the administrative action of the authority to which this Act applies, and the powers of the Ombudsman in respect of that action may be exercised accordingly.
- (8) The Ombudsman may conduct an enquiry or investigation in respect of an administrative action taken by an authority to which this Act applies before the coming into operation of this Act, if in all the circumstances the Ombudsman considers it proper so to do.

S. 13(8)
amended by
No. 62/1989
s. 8(4).

PART IIIA—ENQUIRIES

Pt 3A
(Heading and
ss 13A, 13B)
inserted by
No. 62/1989
s. 9.

13A Conducting of enquiries

S. 13A
inserted by
No. 62/1989
s. 9.

- (1) The Ombudsman may conduct an enquiry for the purpose of determining whether—
 - (a) an investigation under this Act should be conducted; or
 - (b) the matter may be resolved informally.
- (2) The Ombudsman may conduct an enquiry either on his or her own motion or as a consequence of a complaint under section 14.
- (3) The principal officer of a Government Department, Public Statutory Body or municipality must assist the Ombudsman in the conduct of an enquiry.

13B Communication of information to complainant

S. 13B
inserted by
No. 62/1989
s. 9.

Section 24 applies to—

- (a) information obtained or received in the course or as a result of an enquiry under this Act; and
- (b) the result of an enquiry under this Act and any recommendations made—

as if the enquiry were an investigation under this Act.

PART IV—INVESTIGATIONS

Division 1—Complaints generally

14 Conducting of investigations

- (1) The Ombudsman may conduct an investigation under this Act either on his own motion or as a consequence of a complaint.
- (2) A complaint—
 - (a) may be made by a person or by a body of persons, whether corporate or unincorporate; and
 - (b) shall be made in writing.
- (3) Subject to subsection (4) the Ombudsman shall not entertain a complaint if the complainant is not affected by the administrative action which is the subject of the complaint.
- (4) The Ombudsman shall not refuse to entertain a complaint on the grounds mentioned in subsection (3)—
 - (a) if the complainant is a Member of Parliament acting on behalf of the aggrieved person;
 - (b) if the complainant is a person who is considered suitable by the Ombudsman to represent the interests of an aggrieved person who has died or who in the opinion of the Ombudsman is unable to act for himself; or
 - (c) if, having regard to all the circumstances, the Ombudsman considers it proper to entertain the complaint.

- (5) The Ombudsman may entertain a complaint even if on the face of it the complainant does not refer to an administrative action by an authority to which this Act applies if in his opinion there is a likelihood that the cause for complaint arose from such an action.

15 Ombudsman may refuse to investigate complaints in certain circumstances

The Ombudsman may in his discretion decide not to entertain a complaint—

- (a) where in his opinion—
- (i) the subject-matter of the complaint is trivial; or
 - (ii) the complaint is frivolous or vexatious or is not made in good faith; or
- (b) where the complainant had had knowledge for more than twelve months of the administrative action complained about, and fails to give a satisfactory explanation for the delay in making the complaint.

S. 15A
inserted by
No. 98/2000
s. 79.

15A Referral of complaint

If the complaint could be made the subject of an application under the **Information Privacy Act 2000**, the Ombudsman may refer the complaint to the Privacy Commissioner and notify the complainant and the respondent in writing of the referral.

S. 15B
inserted by
No. 2/2001
s. 113.

15B Referral of complaint (health records)

If the complaint could be made the subject of an application under the **Health Records Act 2001**, the Ombudsman may refer the complaint to the Health Services Commissioner and notify the complainant and the respondent in writing of the referral.

Division 2—Parliamentary complaints

16 Investigations referred by Parliament

(1) At any time—

- (a) the Legislative Council or a committee of the Legislative Council;
- (b) the Legislative Assembly or a committee of the Legislative Assembly; or
- (c) a joint committee of both Houses of Parliament—

may refer to the Ombudsman for investigation and report any matter, other than a matter concerning a judicial proceeding, which that House or committee considers should be investigated by him.

(2) Where a matter is referred to him pursuant to subsection (1), the Ombudsman shall, notwithstanding anything to the contrary in this Act, forthwith investigate that matter and report thereon.

(3) The Ombudsman shall send his report—

- (a) where the matter is referred by the Legislative Council or a committee of the Legislative Council—to the President of the Legislative Council;
- (b) where the matter is referred by the Legislative Assembly or a committee of the Legislative Assembly—to the Speaker of the Legislative Assembly;
- (c) where the matter is referred by a joint committee of both Houses of Parliament—to the President of the Legislative Council and to the Speaker of the Legislative Assembly.

Division 3—Conduct of investigations

17 Procedure relating to investigations

S. 17(1)
substituted by
No. 8884
s. 4(a).

(1) Before conducting an investigation under this Act the Ombudsman shall in writing inform—

(a) the principal officer of the relevant authority and the responsible Minister; and

S. 17(1)(aa)
inserted by
No. 103/2003
s. 30(3).

(aa) where the complaint relates to an administrative action taken by an officer of the Royal Society for the Prevention of Cruelty to Animals, the Chief Executive Officer of the Royal Society for the Prevention of Cruelty to Animals; and

S. 17(1)(b)
amended by
Nos 12/1989
s. 4(1)(Sch. 2
item 86.8),
103/2003
s. 30(4)(a).

(b) where the complaint relates to an administrative action taken by a member of the staff, the mayor of a municipal council; and

S. 17(1)(c)
inserted by
No. 103/2003
s. 30(4)(b),
amended by
No. 65/2007
s. 112.

(c) where the complaint relates to an administrative action taken by a person appointed as an authorised officer under section 71A(1) of the **Domestic Animals Act 1994**, the Minister administering that Act; and

S. 17(1)(d)
inserted by
No. 103/2003
s. 30(4)(b),
amended by
No. 65/2007
s. 112.

(d) where the complaint relates to an administrative action taken by a person appointed as an authorised officer under section 72A(1) of the **Domestic Animals Act 1994**, the mayor of the relevant municipal council—

of his intention to conduct the investigation.

(2) Every investigation under this Act shall be conducted in private.

- (3) Subject to any Rules of Parliament under this Act the Ombudsman is not required to hold any hearing for the purposes of an investigation, and he may obtain information from such persons and in such manner as he thinks fit and may determine whether any person may be represented by an Australian lawyer (within the meaning of the **Legal Profession Act 2004**) or otherwise in the investigation.
- (4) If at any time during the course of an investigation it appears to the Ombudsman that there may be grounds for making a report adverse to an authority to which this Act applies, he shall, before making the report, give the principal officer thereof the opportunity to comment on the subject-matter of the investigation.
- (5) The Ombudsman may at any time during or after an investigation consult a Minister who is concerned in the subject-matter of an investigation, and if a Minister so requests or the investigation relates to a recommendation made to a Minister, shall consult the Minister before forming a final opinion adverse to the administrative action concerned.
- (5A) Where an investigation concerns an administrative action taken by a member of the staff of a municipal council, then the Ombudsman—
- (a) may at any time during or after the investigation consult the mayor of the municipal council; and
- S. 17(3) amended by Nos 35/1996 s. 453(Sch. 1 item 62.2), 18/2005 s. 18(Sch. 1 item 73.2).
- S. 17(5A) inserted by No. 8884 s. 4(b), amended by No. 12/1989 s. 4(1)(Sch. 2 items 86.9, 86.10) (as amended by No. 13/1990 s. 38(2)(m)).
- S. 17(5A)(a) amended by No. 12/1989 s. 4(1)(Sch. 2 item 86.10).

S. 17(5A)(b)
amended by
No. 12/1989
s. 4(1)(Sch. 2
item 86.11).

(b) shall, if the mayor so requests or the investigation relates to a recommendation made to the municipal council, consult the mayor before forming an opinion adverse to the administrative action concerned.

S. 17(6)
amended by
Nos 8884
s. 4(c)(i),
12/1989
s. 4(1)(Sch. 2
item 86.12).

(6) If during or after an investigation the Ombudsman is of the opinion that there is evidence of a breach of duty or misconduct on the part of a member (other than a councillor of a municipal council) officer or employé of an authority to which this Act applies—

(a) he shall report that matter to the principal officer of that authority; and

(b) he shall send a copy of the report to the responsible Minister, and where the authority is a municipal council, to the mayor of the municipal council.

S. 17(6)(b)
amended by
Nos 8884
s. 4(c)(ii),
12/1989
s. 4(1)(Sch. 2
item 86.12).

(7) Subject to this Act and any Rules of Parliament made under this Act the Ombudsman may regulate his procedures on an investigation in such manner as he thinks fit.

18 Evidence

S. 18(1)
amended by
Nos 15/1989
s. 28(2),
69/2009
s. 54(Sch. Pt 2
item 37).

(1) The provisions of sections 17, 18, 19, 20 and 20A of the **Evidence (Miscellaneous Provisions) Act 1958** shall apply to and in relation to any investigation which the Ombudsman is authorized to conduct under this Act as if he were the sole Commissioner issued with a commission by the Governor in Council.

(2) For the purpose of any such investigation the Ombudsman may take a statutory declaration from any witness or other person.

- (3) 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 authority, where imposed by any enactment or any rule of law, shall apply to the disclosure of information for the purposes of an investigation under this Act.
- (4) The Crown shall not, in relation to an investigation under this Act, be entitled to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.
- (5) Subject to subsections (3) and (4) a person shall not be compelled for the purposes of an investigation under this Act to produce any document or give any evidence which he could not be compelled to produce or give in proceedings before a court.

S. 18(3)
amended by
No. 8884 s. 5.

19 Deliberations of Ministers and Parliamentary committees not to be disclosed

- (1) A person shall not be required or authorized by virtue of this Act—
- (a) to furnish any information or answer any question; or
- (b) to produce or inspect so much of any document—

which relates to the deliberations of Ministers or any committee consisting of Members of Parliament where the committee is formed for the purpose of advising the Ministers in respect of their deliberations.

- (2) A certificate issued by the Attorney-General certifying that any information or question or any document or part of a document relates to the deliberations of Ministers or of a committee referred to in subsection (1) shall be conclusive of the fact so certified.

20 Person obtaining information shall not disclose or take advantage of it

S. 20(1)
amended by
No. 62/1989
s. 10(1)(a)–(c).

- (1) A person (other than the complainant) who obtains or receives information in the course or as a result of the exercise of the functions of the Ombudsman under this Act—

(a) shall not disclose that information except—

S. 20(1)(a)(i)
amended by
No. 62/1989
s. 10(1)(d)(i)(ii).

- (i) for the purposes of the exercise of the functions of the Ombudsman and of any report or recommendation to be made under this Act; or

S. 20(1)(a)(ii)
amended by
Nos 9256
s. 2(a),
62/1989
s. 10(1)(e),
69/2009
s. 54(Sch. Pt 2
item 37).

- (ii) for the purposes of any proceedings in relation to an offence against this Act or section 19 of the **Evidence (Miscellaneous Provisions) Act 1958**; or

S. 20(1)(a)(iii)
inserted by
No. 9256
s. 2(b).

- (iii) for the purposes of any communication authorized under section 20A of this Act; and

(b) shall not take advantage of any knowledge gained from that information to benefit himself or any other person.

- (2) A person who in contravention of this section discloses information or takes advantage of knowledge gained from information shall be guilty of an offence against this Act.

(3) Information obtained or received by a party from the Ombudsman in the course or as a result of the exercise of the functions of the Ombudsman under this Act is not admissible as evidence (if given by that party) in any legal proceedings other than proceedings in relation to an offence against this Act or section 19 of the **Evidence (Miscellaneous Provisions) Act 1958**.

S. 20(3)
inserted by
No. 62/1989
s. 10(2),
amended by
69/2009
s. 54(Sch. Pt 2
item 37).

(4) Proceedings may only be instituted for an offence under subsection (2)—

S. 20(4)
inserted by
No. 62/1989
s. 12(1).

(a) by the Ombudsman; or

(b) by or with the consent of the Director of Public Prosecutions.

20A Communication of information to Commonwealth and State Ombudsmen

S. 20A
inserted by
No. 9256 s. 3,
amended by
No. 62/1989
s. 11(a)(b).

The Ombudsman or the Acting Ombudsman may communicate—

(a) to the Commonwealth Ombudsman or a Deputy Commonwealth Ombudsman appointed under any law of the Commonwealth relating to an Ombudsman; or

(b) to an Ombudsman Acting Ombudsman or Deputy Ombudsman of any State or Territory of the Commonwealth administering any law of that State or Territory relating to an Ombudsman—

any information obtained or received in the course or as a result of the exercise of the functions of the Ombudsman under this Act being information relating to a matter arising under an Act of the Commonwealth or of any State or Territory of the Commonwealth other than Victoria or arising out of a joint undertaking between Victoria and the Commonwealth of Australia or between Victoria

s. 20B

and another State or Territory of the
Commonwealth.

S. 20B
inserted by
No. 98/2000
s. 80.

**20B Communication of information to the Privacy
Commissioner**

The Ombudsman or the Acting Ombudsman may communicate to the Privacy Commissioner appointed under the **Information Privacy Act 2000** any information obtained or received in the course or as a result of the exercise of the functions of the Ombudsman under this Act, being information relevant to the performance of functions or duties by the Privacy Commissioner.

S. 20C
inserted by
No. 2/2001
s. 114.

**20C Communication of information to the Health
Services Commissioner**

The Ombudsman or the Acting Ombudsman may communicate to the Health Services Commissioner appointed under the **Health Services (Conciliation and Review) Act 1987** any information obtained or received in the course or as a result of the exercise of the functions of the Ombudsman under this Act, being information relating to a complaint referred to the Health Services Commissioner under section 15B.

21 Entry of premises

For the purposes of conducting an investigation under this Act the Ombudsman or an officer of the Ombudsman authorized by him in that behalf may at any reasonable time enter any premises occupied or used by an authority to which this Act applies, and inspect those premises or anything for the time being therein or thereon.

22 Obstruction

- (1) A person who—
- (a) without lawful excuse (proof of which shall lie upon him) wilfully obstructs hinders or resists the Ombudsman or any other person in the exercise of his powers under this Act;
 - (b) without lawful excuse (proof of which shall lie upon him) refuses to or wilfully fails to comply with any lawful requirement of the Ombudsman or any other person under this Act; or
 - (c) wilfully makes a statement he knows to be false or to be misleading in a material particular or misleads or attempts to mislead the Ombudsman or any other person in the exercise of his powers under this Act—

shall be guilty of an offence against this Act.

- (2) Proceedings may only be instituted for an offence under subsection (1)—
- (a) by the Ombudsman; or
 - (b) by or with the consent of the Director of Public Prosecutions.

S. 22
amended by
No. 62/1989
s. 12(2)(a)(b).

S. 22(2)
inserted by
No. 62/1989
s. 12(2)(b).

Division 3A—Investigations under Melbourne City Link Act 1995

Pt 4 Div. 3A
(Heading and
ss 22A–22C)
inserted by
No. 102/1998
s. 36.

22A Definitions

In this Division *relevant agency* and *restricted tolling information* have the same meanings as they have in Division 3 of Part 4 of the **Melbourne City Link Act 1995**.

S. 22A
inserted by
No. 102/1998
s. 36.

s. 22B
inserted by
No. 102/1998
s. 36.

22B Powers in relation to toll reviews and investigations

- (1) The Ombudsman or an employee referred to in section 7 authorised by the Ombudsman in that behalf may—
 - (a) enter at any time any premises occupied by the police force at which the Ombudsman reasonably believes there are police records that contain, or relate to, restricted tolling information; and
 - (b) enter the offices of a relevant agency (except premises occupied by the police force) during ordinary business hours to inspect or copy any records that contain, or relate to, restricted tolling information that relates, or that may relate, to any investigation or review being, or about to be, carried out under this Act; and
 - (c) inspect or copy any record or information found at any place entered under paragraph (a) or (b);
 - (d) report the results of any inspections carried out under this section to the Minister; and
 - (e) do anything that it is necessary or convenient to do to enable an inspection to be carried out under this section.
- (2) The Ombudsman may only exercise a power of entry under this section after she or he notifies the following of the intended entry—
 - (a) in the case of an entry onto any premises occupied by the police force, the Chief Commissioner of Police;
 - (b) in the case of an entry onto the offices of a relevant agency, the chief executive officer (by whatever name called) of the relevant agency.

22C Police must provide reasonable assistance

The Chief Commissioner of Police must ensure that members of the police force give the Ombudsman any assistance the Ombudsman reasonably requires to enable the Ombudsman to exercise the Ombudsman's functions in relation to Division 3 of Part 4 of the **Melbourne City Link Act 1995**.

S. 22C
inserted by
No. 102/1998
s. 36.

* * * * *

Pt 4 Div. 3B
(Heading and
ss 22D, 22E)
inserted by
No. 56/2004
s. 77,
repealed by
No. 79/2004
s. 71(b).

Division 4—Action on completion of investigations

23 Procedure on completion of investigation

- (1) Where as a result of an investigation conducted under this Act (other than an investigation conducted under Division 2) the Ombudsman is of the opinion that the administrative action to which the investigation relates—
 - (a) appears to have been taken contrary to law;
 - (b) was unreasonable unjust oppressive or improperly discriminatory;
 - (c) was in accordance with a rule of law or a provision of an enactment or practice that is or may be unreasonable unjust oppressive or improperly discriminatory;
 - (d) was taken in the exercise of a power or discretion, and was so taken for an improper purpose or on irrelevant grounds, or on the taking into account of irrelevant considerations;

- (e) was a decision that was made in the exercise of a power or discretion and the reasons for the decision were not, but should have been, given;
- (f) was based wholly or partly on a mistake of law or fact; or
- (g) was wrong—

he shall take action as set out in subsection (2).

(2) Where in a case referred to in subsection (1) the Ombudsman is of the opinion—

- (a) that the subject-matter of the investigation should be referred to the appropriate authority for further consideration;
- (b) that action could be, and should be, taken to rectify or mitigate or alter the effects of the action to which the investigation relates;
- (c) that any practice in accordance with which the action was taken should be varied;
- (d) that any law in accordance with which or on the basis of which the action was taken should be reconsidered;
- (e) that reasons should be given for the action;
or
- (f) that any other steps should be taken—

the Ombudsman shall report his opinion and his reasons therefor to the principal officer of the appropriate authority, and may make such recommendations as he thinks fit.

(3) Where the Ombudsman makes a report or recommendations under subsection (2) he shall send a copy thereof to the responsible Minister and, where relevant, to the mayor of the appropriate municipality and may send a copy to the Premier.

S. 23(3)
amended by
Nos 8884
s. 6(a),
79/2004
s. 72(1).

(4) Where, under subsection (2), the Ombudsman makes recommendations to the principal officer of an authority he may request that principal officer to notify him within a specified time of the steps that have been or are proposed to be taken to give effect to the recommendations or, if no such steps have been or are proposed to be taken, the reasons therefor.

(5) Where it appears to the Ombudsman that no steps that seem to him to be appropriate have been taken within a reasonable time of his making any report or recommendations under subsection (2) he may, after considering the comments (if any) made by or on behalf of the principal officer to whom the report or recommendations were made, send—

**S. 23(5)
substituted by
No. 8884
s. 6(b).**

(a) to the Governor in Council; and

(b) where the report relates to a complaint concerning an administrative action by a member of staff of a municipal council, to the mayor of the municipal council—

**S. 23(5)(b)
amended by
Nos 12/1989
s. 4(1)(Sch. 2
item 86.13),
74/2000
s. 3(Sch. 1
item 92).**

a copy of the report and the recommendations together with a copy of any such comments.

(6) If a copy of any report and recommendations together with a copy of any comments has been sent to the Governor in Council under subsection (5), the Ombudsman may make a report to the Parliament on any of the matters to which the report and recommendations relate that the Ombudsman thinks fit.

**S. 23(6)
substituted by
No. 79/2004
s. 72(2).**

(7) The Ombudsman shall not in any report under this Act make any comment adverse to any person unless that person has been given an opportunity of being heard in the matter and his defence is fairly set forth in the report.

S. 24
amended by
No. 62/1989
s. 13(a)–(d).

24 Complainant to be informed of result of investigation

- (1) Where the Ombudsman conducts an investigation or takes any other action on a complaint made under this Act he shall inform the complainant in such manner and at such time as he thinks proper of the result of the investigation or other action, and where the Ombudsman has made any recommendation under subsection (2) of section 23 and it appears to him that steps which seem to him to be appropriate have not been taken within a reasonable time of the making of those recommendations, the Ombudsman shall inform the complainant of the recommendations, making such comments thereon as he thinks proper.
- (2) The Ombudsman may disclose to a complainant any information that the Ombudsman thinks proper, in addition to any information disclosed under subsection (1).

S. 24(2)
inserted by
No. 62/1989
s. 13(d).

PART V—ANNUAL AND OTHER REPORTS

25 Annual and other reports to Parliament

- (1) The Ombudsman must make a report to Parliament on the performance of his or her functions during each financial year.
- (2) The Ombudsman may at any time make a report to Parliament on any matter arising in connection with the performance of his or her functions.
- (3) Nothing in this section limits the Ombudsman's right to make a report to Parliament under any other provision of this Act.

S. 25
substituted by
No. 79/2004
s. 73.

25AA Transmission of reports to Parliament

- (1) The Ombudsman must cause a report under section 23(6) or 25 to be transmitted to each House of the Parliament—
 - (a) in the case of a report under section 25(1)—as soon as practicable after the end of the financial year to which it relates;
 - (b) in the case of a report under subsection 23(6) or 25(2)—as soon as practicable after it is completed.
- (2) The clerk of each House of the Parliament must cause the report to be laid before the House on the day on which it is received or on the next sitting day of the House.
- (3) If the Ombudsman proposes to transmit a report to Parliament when Parliament is in recess, the Ombudsman must—
 - (a) give one business day's notice of his or her intention to do so to the clerk of each House of the Parliament; and
 - (b) give the report to the clerk of each House on the day indicated in the notice; and

S. 25AA
inserted by
No. 79/2004
s. 73.

-
- (c) publish the report on the Ombudsman's Internet website as soon as practicable after giving it to the clerks.
- (4) The clerk of each House must—
- (a) notify each member of the House of the receipt of a notice under subsection (3)(a) on the same day that the clerk receives that notice; and
 - (b) give a copy of a report to each member of the House as soon as practicable after the report is received under subsection (3)(b); and
 - (c) cause the report to be laid before the House on the next sitting day of the House.
- (5) A report that is given to the clerks under subsection (3)(b) is taken to have been published by order, or under the authority, of the Houses of the Parliament.
- (6) The publication of a report by the Ombudsman under subsection (3)(c) is absolutely privileged and the provisions of sections 73 and 74 of the **Constitution Act 1975** and any other enactment or rule of law relating to the publication of the proceedings of the Parliament apply to and in relation to the publication of the report as if it were a report to which those sections applied and had been published by the Government Printer under the authority of the Parliament.
- (7) For the purposes of this section, Parliament is in recess when each House stands adjourned to a date to be fixed by the presiding officer of that House.

25A Reports about tolling information review

- (1) The Ombudsman must give the Minister administering the **Melbourne City Link Act 1995** a written report of the results of the reviews required by section 13(2AB) as soon as is practicable, and in any event within 3 months, after the end of the financial year in which the reviews occurred.
- (2) The Ombudsman must give a copy of the report to the Chief Commissioner of Police and to the Attorney-General.

S. 25A
inserted by
No. 102/1998
s. 37.

* * * * *

S. 25B
inserted by
No. 56/2004
s. 78,
repealed by
No. 79/2004
s. 71(c).

26 Rules of Parliament

Rules of Parliament made under this Act may authorize the Ombudsman to publish in the public interest or in the interests of any person authority or other organization reports relating generally to the exercise of his functions or to any case investigated by him (whether or not the matters to be dealt with in that report have been the subject of a report laid before either House of Parliament under this Act).

PART VI—MISCELLANEOUS

27 Application to Supreme Court

- (1) Where in the course of an investigation under this Act the question arises as to whether the Ombudsman has jurisdiction to conduct the investigation, the Ombudsman or the party subject to the investigation, may make an application to the Supreme Court for a determination of that question, and on the application the Court may make such order as it considers proper.

S. 27(2)
repealed by
No. 57/1989
s. 3(Sch.
item 143.1).

* * * * *

- (3) For the purposes of this section the principal officer of the authority affected by the investigation shall be deemed to be a party subject to the investigation.

28 Letters by persons in custody etc. to be forwarded immediately to the Ombudsman

S. 28(1)
amended by
Nos 59/1986
s. 143(2),
15/1989
s. 26(1),
23/2006 s. 246.

- (1) Notwithstanding any provision to the contrary in any enactment where a letter written by a person in custody on a charge or after conviction of an offence or by a patient in a mental health service within the meaning of the **Mental Health Act 1986** or residential service, residential institution or residential treatment facility within the meaning of the **Disability Act 2006** is addressed to the Ombudsman it shall immediately be forwarded unopened to the Ombudsman by the person in charge.

- (1A) Despite anything to the contrary in any Act (other than subsection (3)), if a letter written by the Ombudsman is addressed to a person in custody on a charge or after conviction of an offence or to a patient in a mental health service within the meaning of the **Mental Health Act 1986** or residential service, residential institution or residential treatment facility within the meaning of the **Disability Act 2006**, it must immediately be forwarded unopened to the person to whom it is addressed by the person for the time being in charge.
- (2) A person who prevents or hinders the forwarding of a letter referred to in subsection (1) or (1A) shall be guilty of an offence against this Act.
- (2A) Proceedings may only be instituted for an offence under subsection (2)—
- (a) by the Ombudsman; or
- (b) by or with the consent of the Director of Public Prosecutions.
- (3) If a letter referred to in subsection (1) or (1A) is suspected by the person in charge of containing drugs, weapons or other contraband, the letter may be opened by the person in charge in the presence of—
- (a) the person who wrote the letter and an officer of the Ombudsman; or
- (b) the person to whom the letter is addressed and the Deputy Ombudsman or an officer of the Ombudsman—
- as the case requires.
- (4) A person who opens a letter in accordance with subsection (3) is not guilty of an offence under subsection (2).

S. 28(1A)
inserted by
No. 15/1989
s. 26(2),
amended by
No. 23/2006
s. 246.

S. 28(2)
amended by
No. 15/1989
s. 26(3).

S. 28(2A)
inserted by
No. 62/1989
s. 12(3).

S. 28(3)
inserted by
No. 15/1989
s. 26(4).

S. 28(4)
inserted by
No. 15/1989
s. 26(4).

s. 29

S. 28(5)
inserted by
No. 15/1989
s. 26(4).

- (5) In this section, *person in charge* means the person who is for the time being in charge of the place, service or institution where the writer of the letter, or the person to whom the letter is addressed (as the case requires) is detained or of which he or she is a patient.

29 Protection of the Ombudsman and officers of the Ombudsman

S. 29(1)
amended by
No. 8884
s. 7(a).

- (1) Neither the Ombudsman nor any of his officers shall be liable, whether on the ground of want of jurisdiction or on any other ground, to any civil or criminal proceedings to which he would have been liable apart from this section in respect of any act purporting to be done in pursuance of this Act, unless the act was done in bad faith.

S. 29(2)
amended by
No. 8884
s. 7(b).

- (2) No civil or criminal proceedings shall be brought against the Ombudsman or any of his officers in respect of any act referred to in subsection (1) without the leave of the Supreme Court, and the Supreme Court shall not give leave unless it is satisfied that there is substantial ground for the contention that the person to be proceeded against has acted in bad faith.

S. 29(3)
amended by
No. 57/1989
s. 3(Sch.
item 143.2),
substituted by
No. 36/2001
s. 113.

- (3) Despite subsections (1) and (2)—
- (a) no order shall be made—
- (i) restraining the Ombudsman from carrying out, or compelling him to carry out, an enquiry to determine whether an investigation should be conducted; or
 - (ii) restraining the Ombudsman from carrying out, or compelling him to carry out, any investigation; or
 - (iii) restraining the Ombudsman from making, or compelling him to make a report; or

- (iv) restraining the Ombudsman from making, or compelling him to make a recommendation; and
- (b) no proceedings shall be brought against the Ombudsman under which the issue of such an order is sought.
- (4) Neither the Ombudsman nor any of his officers shall be called to give evidence in any court or in any judicial proceedings or before the Police Appeals Board in respect of any matter coming to his knowledge in the exercise of his functions under this Act.

S. 29(4)
amended by
Nos 15/1989
s. 27, 61/1999
s. 20(Sch.
item 2).

29A Exemption from Freedom of Information Act 1982

S. 29A
inserted by
No. 36/2001
s. 114.

- (1) The **Freedom of Information Act 1982** does not apply to a document that is in the possession of the Ombudsman or any officer of the Ombudsman, to the extent to which the document discloses information that relates to—
 - (a) a complaint; or
 - (b) an enquiry under Part IIIA to determine whether an investigation should be conducted; or
 - (c) an investigation under Part IV; or
 - (d) a report made under Part IV; or
 - (e) a recommendation made under Part IV.

S. 29A(1)
amended by
No. 32/2004
s. 8.

- (2) In this section—

document has the same meaning as in the **Freedom of Information Act 1982**.

30 Penalties

A person who is guilty of an offence against this Act shall be liable to a penalty not exceeding \$1000 or imprisonment for 12 months or to both such penalty and imprisonment.

S. 30A
inserted by
No. 36/2001
s. 115.

30A Supreme Court—limitation of jurisdiction

It is the intention of section 29(3) of this Act, as substituted by section 113 of the **Whistleblowers Protection Act 2001**, to alter or vary section 85 of the **Constitution Act 1975**.

31 Rules of Parliament

- (1) Rules of Parliament may be made for the guidance of the Ombudsman in the exercise of his functions and for any other purpose for which Rules of Parliament may be made under this Act.
- (2) Subject to this Act the functions of the Ombudsman shall be exercised in accordance with the Rules of Parliament made under this Act.
- (3) The Rules of Parliament referred to in this section are Rules that have been agreed upon by both Houses of Parliament in accordance with the Rules and Orders thereof.
- (4) Rules of Parliament made under this Act shall be published in the Government Gazette.

32 Administration of Act

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

PART VII—SAVING AND TRANSITIONAL PROVISIONS

Pt 7 (Heading
and s. 33)
inserted by
No. 27/2009
s. 17.

33 Validity of certain actions taken by Ombudsman

S. 33
inserted by
No. 27/2009
s. 17.

- (1) Without limiting the effect of section 13(3AA), the following actions are taken to be and always to have been valid to the extent (if any) that they were not authorised because of the effect of section 13(3)(aa) as in force before the commencement day—
- (a) any inquiry or investigation commenced or undertaken by the Ombudsman into the Director, Police Integrity or the Office of Police Integrity before the commencement day;
 - (b) any act or action taken or decision made by, or on behalf of, the Ombudsman concerning—
 - (i) any inquiry or investigation commenced or undertaken by the Ombudsman into the Director, Police Integrity or the Office of Police Integrity before the commencement day; or
 - (ii) any complaint received by the Ombudsman concerning the Director, Police Integrity or the Office of Police Integrity before the commencement day.
- (2) Without limiting the effect of section 13(3AA), any enquiry into or investigation by the Ombudsman into the Director, Police Integrity or the Office of Police Integrity may relate to conduct that occurred before the commencement day.

Ombudsman Act 1973
No. 8414 of 1973
Part VII—Saving and Transitional Provisions

s. 33

(3) In this section *commencement day* means the date of commencement of section 16 of the **Public Administration Amendment Act 2009**.

Sch.

SCHEDULE

**AUTHORITIES AND BRANCHES OF AUTHORITIES TO
WHICH THIS ACT DOES NOT APPLY**

Offices of the establishment of the Governor.

S. 13(2).
Sch.
amended by
Nos 35/1989
s. 22, 29/2006
s. 3(Sch. 1
item 25).

ENDNOTES

1. General Information

The **Ombudsman Act 1973** was assented to on 17 April 1973 and came into operation on 30 October 1973: Government Gazette 30 October 1973 page 3595.

2. Table of Amendments

This Version incorporates amendments made to the **Ombudsman Act 1973** by Acts and subordinate instruments.

Ombudsman (Exemption) Act 1974, No. 8651/1974

Assent Date: 17.12.74
Commencement Date: 17.12.74
Current State: All of Act in operation

Ombudsman (Municipalities) Act 1976, No. 8884/1976

Assent Date: 19.10.76
Commencement Date: 1.1.77: Government Gazette 22.12.76 p. 3739
Current State: All of Act in operation

Statute Law Revision Act 1977, No. 9059/1977

Assent Date: 29.11.77
Commencement Date: 29.11.77; subject to s. 2(2)
Current State: All of Act in operation

Ombudsman (Co-operation) Act 1979, No. 9256/1979

Assent Date: 26.6.79
Commencement Date: 26.6.79
Current State: All of Act in operation

Police Regulation (Amendment) Act 1985, No. 10250/1985

Assent Date: 10.12.85
Commencement Date: S. 22 never proclaimed, repealed by No. 14/1988 s. 19
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Mental Health Act 1986, No. 59/1986

Assent Date: 3.6.86
Commencement Date: S. 143(2)(Sch. 7) on 1.10.87: Government Gazette 30.9.87 p. 2585
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Deputy Ombudsman (Police Complaints) Act 1988, No. 14/1988

Assent Date: 11.5.88
Commencement Date: 11.5.88: Government Gazette 11.5.88 p. 1150
Current State: All of Act in operation

State Superannuation Act 1988, No. 50/1988

Assent Date: 24.5.88
Commencement Date: S. 93(2) (Sch. 2 item 42) on 1.7.88: Government Gazette 1.6.88 p. 1487
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Ombudsman Act 1973
No. 8414 of 1973

Endnotes

Local Government (Consequential Provisions) Act 1989 No. 12/1989 (as amended by No. 13/1990)

Assent Date: 9.5.89
Commencement Date: S. 4(1)(Sch. 2 items 86.1–86.13) on 1.11.89: Government Gazette 1.11.89 p. 2798
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Police Regulation (Amendment) Act 1989, No. 15/1989

Assent Date: 16.5.89
Commencement Date: Ss 1–32 on 16.5.89; s. 33 on 23.8.89: Government Gazette 23.8.89 p. 2146
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Legal Profession Practice (Amendment) Act 1989, No. 35/1989

Assent Date: 6.6.89
Commencement Date: S. 22 on 20.9.89: Government Gazette 20.9.89 p. 2404
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 3(Sch. item 143) on 1.9.90: Government Gazette 25.7.90 p. 2217.
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Ombudsman (Amendment) Act 1989, No. 62/1989

Assent Date: 12.9.89
Commencement Date: 12.12.89: Special Gazette (No. 72) 12.12.89 p. 1
Current State: All of Act in operation

Local Government (Miscellaneous Amendments) Act 1993, No. 125/1993

Assent Date: 7.12.93
Commencement Date: S. 20(9) on 7.12.93: s. 2 (4)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Miscellaneous Acts (Omnibus Amendments) Act 1995, No. 100/1995

Assent Date: 5.12.95
Commencement Date: S. 32(Sch. 2 item 4) on 5.12.95: s. 2(1)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Public Sector Management and Parliamentary Officers (Amendment) Act 1996, No. 24/1996

Assent Date: 2.7.96
Commencement Date: S. 33(1) on 16.11.93: s. 2(2); rest of Act on 2.7.96: s. 2(1)
Current State: All of Act in operation

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No. 8414 of 1973

Endnotes

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 item 62) on 1.1.97 s. 2(3)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Audit (Amendment) Act 1997, No. 93/1997

Assent Date: 16.12.97
Commencement Date: S. 26(2) on 16.12.97: s. 2(1); s. 26(1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

State Trustees (Amendment) Act 1998, No. 15/1998

Assent Date: 28.4.98
Commencement Date: S. 10 on 1.7.98: Government Gazette 18.6.98 p. 1511
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Melbourne City Link (Amendment) Act 1998, No. 102/1998

Assent Date: 1.12.98
Commencement Date: Ss 34–37 on 1.12.98: s. 2(1)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Police Regulation (Amendment) Act 1999, No. 61/1999

Assent Date: 21.12.99
Commencement Date: S. 20(Sch. item 2) on 2.4.00: Government Gazette 30.3.00 p. 569
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 92) on 22.11.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Information Privacy Act 2000, No. 98/2000

Assent Date: 12.12.00
Commencement Date: Ss 79, 80 on 1.9.01: s. 2(2)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Health Records Act 2001, No. 2/2001

Assent Date: 10.4.01
Commencement Date: Ss 113, 114 on 1.7.02: s. 2(2)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Ombudsman Act 1973
No. 8414 of 1973

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Whistleblowers Protection Act 2001, No. 36/2001

Assent Date: 19.6.01
Commencement Date: S. 114 on 19.6.01: s. 2(1); ss 113, 115 on 1.1.02:
s. 2(2)
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Electoral Act 2002, No. 23/2002

Assent Date: 12.6.02
Commencement Date: S. 201 on 1.9.02: Government Gazette 29.8.02 p. 2333
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Animals Legislation (Animal Welfare) Act 2003, No. 103/2003

Assent Date: 9.12.03
Commencement Date: S. 30(1)(3) on 10.12.03: s. 2(1); s. 30(2)(4) on 1.12.05:
s. 2(3)
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Ombudsman Legislation (Police Ombudsman) Act 2004, No. 32/2004

Assent Date: 1.6.04
Commencement Date: Ss 3–8 on 2.6.04: s. 2
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Sex Offenders Registration Act 2004, No. 56/2004

Assent Date: 21.9.04
Commencement Date: Ss 76–78 on 1.10.04: s. 2
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Major Crime Legislation (Office of Police Integrity) Act 2004, No. 63/2004

Assent Date: 12.10.04
Commencement Date: S. 7 on 16.11.04: Special Gazette (No. 237) 16.11.04
p. 1
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Major Crime (Investigative Powers) Act 2004, No. 79/2004

Assent Date: 16.11.04
Commencement Date: Ss 71–73 on 16.11.04: Special Gazette (No. 237)
16.11.04 p. 2
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 144) on 5.4.05: Government
Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Ombudsman Act 1973
No. 8414 of 1973

Endnotes

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 73) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Disability Act 2006, No. 23/2006

Assent Date: 16.5.06
Commencement Date: S. 246 on 1.7.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Statute Law (Further Revision) Act 2006, No. 29/2006

Assent Date: 6.6.06
Commencement Date: S. 3(Sch. 1 item 25) on 7.6.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Charter of Human Rights and Responsibilities Act 2006, No. 43/2006

Assent Date: 25.7.06
Commencement Date: S. 47(Sch. item 2) on 1.1.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006

Assent Date: 10.10.06
Commencement Date: S. 20 on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Animals Legislation Amendment (Animal Care) Act 2007, No. 65/2007

Assent Date: 11.12.07
Commencement Date: Ss 111, 112 on 1.9.09: Special Gazette (No. 298) 1.9.09 p. 1
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Police Integrity Act 2008, No. 34/2008

Assent Date: 1.7.08
Commencement Date: S. 143(Sch. 2 item 9) on 5.12.08: Special Gazette (No. 340) 4.12.08 p. 1
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Public Administration Amendment Act 2009, No. 27/2009

Assent Date: 17.6.09
Commencement Date: Ss 16, 17 on 18.6.09: s. 2(1)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Ombudsman Act 1973
No. 8414 of 1973

Endnotes

**Statute Law Amendment (Evidence Consequential Provisions) Act 2009,
No. 69/2009**

Assent Date: 24.11.09
Commencement Date: S. 54(Sch. Pt 2 item 37) on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Statute Law Revision Act 2011, No. 29/2011

Assent Date: 21.6.11
Commencement Date: S. 3(Sch. 1 item 64) on 22.6.11: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

3. Explanatory Details

No entries at date of publication.