



## ANALYSIS

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1975, No. 9

**An Act to consolidate and amend the Parliamentary Commissioner (Ombudsman) Act 1962** [26 June 1975]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Ombudsmen Act 1975.

(2) Part III of the First Schedule to this Act, and sections 13, 18, and 22 of this Act so far as they relate to that Part, shall come into force on a date to be appointed by the Governor-General by Order in Council.

(3) Except as provided in subsection (2) of this section, this Act shall come into force upon its passing.

**2. Interpretation**—In this Act, unless the context otherwise requires,—

“Ombudsman”, in relation to any function, power, or duty under this Act, means the Ombudsman for the time being investigating the complaint in respect of which the function, power, or duty is being exercised.

### *Ombudsmen*

**3. Ombudsmen**—(1) There shall be appointed, as officers of Parliament and Commissioners for Investigations, one or more Ombudsmen.

(2) Subject to the provisions of section 7 of this Act, each Ombudsman shall be appointed by the Governor-General on the recommendation of the House of Representatives.

(3) No person shall be deemed to be employed in the service of Her Majesty for the purposes of the State Services Act 1962 or the Superannuation Act 1956 by reason of his appointment as an Ombudsman.

(4) One of the Ombudsmen shall be so appointed as Chief Ombudsman, and shall be responsible for the administration of the office, and the co-ordination and allocation of the work between the Ombudsmen.

(5) In any case where the Governor-General is satisfied that the Chief Ombudsman is incapacitated by illness, absence, or other sufficient cause from performing the duties of his office, the Governor-General may appoint one of the other Ombudsmen to act for the Chief Ombudsman during his incapacity.

(6) No appointment of an acting Chief Ombudsman and no acts done by him as such, shall in any proceedings be questioned on the ground that the occasion for his appointment had not arisen or had ceased.

Cf. 1962, No. 10, s. 2

**4. Ombudsmen to hold no other office**—An Ombudsman shall not be capable of being a member of Parliament or of a local authority, and shall not, without the approval of the Prime Minister in each particular case, hold any office of

trust or profit, other than his office as an Ombudsman, or engage in any occupation for reward outside the duties of his office.

Cf. 1962, No. 10, s. 3

**5. Term of office of Ombudsmen—**(1) Except as otherwise provided in this Act, every Ombudsman shall hold office for a term of 5 years.

(2) Unless his office sooner becomes vacant, every person appointed as an Ombudsman shall hold office until his successor is appointed. Every such person may from time to time be reappointed.

(3) Any Ombudsman may at any time resign his office by writing addressed to the Speaker of the House of Representatives, or to the Prime Minister if there is no Speaker or the Speaker is absent from New Zealand, and (except in the case of an Ombudsman appointed under section 8 of this Act) shall so resign his office on attaining the age of 72 years.

Cf. 1962, No. 10, s. 4

**6. Removal or suspension from office—**(1) Any Ombudsman may at any time be removed or suspended from his office by the Governor-General, upon an address from the House of Representatives, for disability, bankruptcy, neglect of duty, or misconduct.

(2) At any time when Parliament is not in session, any Ombudsman may be suspended from his office by the Governor-General in Council for disability, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Governor-General; but any such suspension shall not continue in force beyond 2 months after the beginning of the next ensuing session of Parliament.

Cf. 1962, No. 10, s. 5

**7. Filling of vacancy—**(1) If any Ombudsman dies, or resigns his office, or is removed from office, the vacancy thereby created shall be filled in accordance with this section.

(2) If any vacancy in the office of an Ombudsman occurs at any time while Parliament is in session, it shall be filled by the appointment of an Ombudsman by the Governor-General on the recommendation of the House of Representatives:

Provided that if the vacancy occurs less than 2 months before the close of that session and no such recommendation is made in that session, the provisions of subsection (3) of this section shall apply as if the vacancy had occurred while Parliament was not in session.

(3) If any such vacancy occurs at any time while Parliament is not in session, the following provisions shall apply:

(a) The Governor-General in Council may appoint an Ombudsman to fill the vacancy, and the person so appointed shall, unless his office sooner becomes vacant, hold office until his appointment is confirmed by the House of Representatives:

(b) If the appointment is not so confirmed within 2 months after the commencement of the next ensuing session, the appointment shall lapse and there shall be deemed to be a further vacancy in the office of an Ombudsman.

Cf. 1962, No. 10, s. 6

**8. Temporary appointments of Ombudsmen—**(1) The Governor-General may, at any time during the illness or absence of any Ombudsman, or for any other temporary purpose whatsoever, appoint an Ombudsman to hold office in accordance with this section, and every such Ombudsman shall be paid such salary, not exceeding the amount payable in accordance with section 9 of this Act to an Ombudsman other than the Chief Ombudsman, as the Governor-General thinks fit.

(2) The power conferred by this section shall be exercised only on a certificate signed by the Chief Ombudsman to the effect that, in his opinion, it is necessary for the due conduct of the business of the Ombudsmen under this Act that an additional Ombudsman should be temporarily appointed.

(3) Subject to sections 5 to 7 of this Act, every Ombudsman appointed under this section on account of the illness or absence of an Ombudsman shall hold office during the pleasure of the Governor-General, and every other Ombudsman appointed for a temporary purpose shall hold office for such period, not exceeding 2 years, as may be specified in his warrant of appointment.

(4) An Ombudsman appointed under this section may from time to time be reappointed, but no Ombudsman shall hold office under this section for more than 5 years in the aggregate.

(5) The provisions of section 7 of this Act shall apply, with any necessary modifications, to the temporary appointment of an Ombudsman under this section as if the Ombudsman were being appointed under that section to fill a vacancy.

**9. Salaries and allowances of Ombudsmen—**(1) There shall be paid to each Ombudsman out of the Consolidated Revenue Account, without further appropriation than this section, a salary at such rate as the Governor-General, by Order in Council, from time to time determines, and the rate so determined for the Chief Ombudsman may be higher than that for the other Ombudsmen.

(2) The salary of an Ombudsman is not to be diminished by an Order in Council under this section during the continuance of his appointment.

(3) Any Order in Council under this section, and any provision of any such order, may be made so as to come into force on a date to be specified in that behalf in the order, being the date of the making of the order or any other date, whether before or after the date of the making of the order or the date of the commencement of this Act.

(4) Every Order in Council under this section, and every provision of any such order, in respect of which no date is specified as aforesaid shall come into force on the date of the making of the order.

(5) The provisions of section 8 of the Regulations Act 1936 (which relates to the laying of regulations before Parliament) shall extend and apply to every Order in Council made under this section.

(6) There shall be paid to each Ombudsman, in respect of time spent in travelling in the exercise of his functions, travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if the Ombudsman were a member of a statutory Board and the travelling were in the service of a statutory Board.

Cf. 1962, No. 10, s. 7; 1970, No. 96, s. 2

**10. Oath to be taken by Ombudsmen—**(1) Before entering upon the exercise of the duties of his office an Ombudsman shall take an oath that he will faithfully and impartially perform the duties of his office, and that he will not, except in accordance with section 21 of this Act, divulge any information received by him under this Act.

(2) The oath shall be administered by the Speaker or the Clerk of the House of Representatives.

Cf. 1962, No. 10, s. 8

**11. Staff**—(1) Subject to the provisions of this section, the Chief Ombudsman may appoint such officers and employees as may be necessary for the efficient carrying out of the functions, powers, and duties of the Ombudsmen under this Act.

(2) The number of persons that may be appointed under this section, whether generally or in respect of any specified duties or class of duties, shall from time to time be determined by the Prime Minister.

(3) The salaries of persons appointed under this section, and the terms and conditions of their appointments, shall be such as are approved by the Minister of Finance.

(4) No person shall be deemed to be employed in the service of Her Majesty for the purposes of the State Services Act 1962 or the Superannuation Act 1956 by reason of his appointment under this section.

Cf. 1962, No. 10, s. 9

**12. Superannuation or retiring allowances of Ombudsmen and staff**—There may from time to time be paid sums by way of contributions or subsidies to the National Provident Fund or any Fund or scheme approved by the Governor-General in Council for the purpose of providing superannuation or retiring allowances for any Ombudsman and any officer or employee appointed under this Act.

Cf. 1962, No. 10, s. 10

### *Functions of Ombudsmen*

**13. Functions of Ombudsmen**—(1) Subject to section 14 of this Act, it shall be a function of the Ombudsmen to investigate any decision or recommendation made, or any act done or omitted, whether before or after the passing of this Act, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by any of the Departments or organisations named or specified in Parts I and II of the First Schedule to this Act, or by any committee (other than a committee of the whole) or subcommittee of any organisation named or specified in

Part III of the First Schedule to this Act, or by any officer, employee, or member of any such Department or organisation in his capacity as such officer, employee, or member.

(2) Subject to section 14 of this Act, and without limiting the generality of subsection (1) of this section, it is hereby declared that the power conferred by that subsection includes the power to investigate a recommendation made, whether before or after the passing of this Act, by any such Department, organisation, committee, subcommittee, officer, employee, or member to a Minister of the Crown or to any organisation named or specified in Part III of the First Schedule to this Act, as the case may be.

(3) Each Ombudsman may make any such investigation either on a complaint made to an Ombudsman by any person or of his own motion; and where a complaint is made he may investigate any decision, recommendation, act, or omission to which the foregoing provisions of this section relate, notwithstanding that the complaint may not appear to relate to that decision, recommendation, act, or omission.

(4) Without limiting the foregoing provisions of this section, it is hereby declared that any Committee of the House of Representatives may at any time refer to an Ombudsman, for investigation and report by an Ombudsman, any petition that is before that Committee for consideration, or any matter to which the petition relates. In any such case, an Ombudsman shall, subject to any special directions of the Committee, investigate the matters so referred, so far as they are within his jurisdiction, and make such report to the Committee as he thinks fit. Nothing in section 17 or section 22 or section 24 of this Act shall apply in respect of any investigation or report made under this subsection.

(5) Without limiting the foregoing provisions of this section, it is hereby declared that at any time the Prime Minister may, with the consent of the Chief Ombudsman, refer to an Ombudsman for investigation and report any matter, other than a matter concerning a judicial proceeding, which the Prime Minister considers should be investigated by an Ombudsman. Where a matter is referred to an Ombudsman pursuant to this subsection, he shall, notwithstanding anything to the contrary in this Act, forthwith investigate that matter and report thereon to the Prime Minister, and may thereafter make such report to Parliament on the matter as he thinks fit. Nothing in section 22 of this Act shall apply in respect of any investigation or report made under this subsection.

(6) The powers conferred on Ombudsmen by this Act may be exercised notwithstanding any provision in any enactment to the effect that any such decision, recommendation, act, or omission shall be final, or that no appeal shall lie in respect thereof, or that no proceeding or decision of the person or organisation whose decision, recommendation, act, or omission it is shall be challenged, reviewed, quashed, or called in question.

(7) Nothing in this Act shall authorise an Ombudsman to investigate—

(a) Any decision, recommendation, act, or omission in respect of which there is, under the provisions of any Act or regulation, a right of appeal or objection, or a right to apply for a review, available to the complainant, on the merits of the case, to any Court, or to any tribunal constituted by or under any enactment, whether or not that right of appeal or objection or application has been exercised in the particular case, and whether or not any time prescribed for the exercise of that right has expired:

Provided that the Ombudsman may conduct an investigation (not being an investigation relating to any decision, recommendation, act, or omission to which any other paragraph of this subsection applies) notwithstanding that the complainant has or had such right if by reason of special circumstances it would be unreasonable to expect him to resort or have resorted to it:

(b) Any decision, recommendation, act, or omission of any person in his capacity as a trustee within the meaning of the Trustee Act 1956:

(c) Any decision, recommendation, act, or omission of any person acting as legal adviser to the Crown pursuant to the rules for the time being approved by the Government for the conduct of Crown legal business, or acting as counsel for the Crown in relation to any proceedings:

(d) Any decision, recommendation, act, or omission of any member of the Police that may be the subject of an inquiry under section 33 of the Police Act 1958, unless a complaint in relation thereto has been made or conveyed to a member of the Police superior in rank to the member to whom the complaint relates; and

- (i) The complaint has not been investigated; or
- (ii) The complaint has been investigated and the complainant is dissatisfied with the final result.

(8) Nothing in this Act shall authorise an Ombudsman to investigate any matter relating to any person who is or was a member of or provisional entrant to the New Zealand Naval Forces, the New Zealand Army, or the Royal New Zealand Air Force, so far as the matter relates to—

- (a) The terms and conditions of his service as such member or entrant; or
- (b) Any order, command, decision, penalty, or punishment given to or affecting him in his capacity as such member or entrant.

(9) If any question arises whether an Ombudsman has jurisdiction to investigate any case or class of cases under this Act, he may, if he thinks fit, apply to the Supreme Court for a declaratory order determining the question in accordance with the Declaratory Judgments Act 1908, and the provisions of that Act shall extend and apply accordingly.

Cf. 1962, No. 10, s. 11; 1968, No. 138, s. 2

**14. Limitation of time for certain complaints in respect of local organisations**—Nothing in section 13 of this Act shall permit an Ombudsman to investigate any decision or recommendation made, or any act done or omitted, in or by any committee or subcommittee of any organisation named or specified in Part III of the First Schedule to this Act (other than an Education Board or a Hospital Board), or by any officer, employee, or member of any such organisation to which this subsection applies in his capacity as such officer, employee, or member, unless the decision or recommendation was made, or the act or omission occurred or continued within 6 months before Part III of the First Schedule to this Act came into force.

**15. House of Representatives may make rules for guidance of Ombudsmen**—(1) The House of Representatives may from time to time, if it thinks fit, make general rules for the guidance of the Ombudsmen in the exercise of their functions, and may at any time in like manner revoke or vary any such rules.

(2) Any such rules may authorise an Ombudsman from time to time, in the public interest or in the interests of any person or Department or organisation, to publish reports

relating generally to the exercise of his functions under this Act or to any particular case or cases investigated by him, whether or not the matters to be dealt with in any such report have been the subject of a report to Parliament under this Act.

(3) All rules made under this section shall be printed and published in accordance with the Regulations Act 1936.

Cf. 1962, No. 10, s. 12

**16. Mode of complaint—**(1) Every complaint to an Ombudsman shall be made in writing.

(2) Notwithstanding any provision in any enactment, where any letter appearing to be written by any person in custody on a charge or after conviction of any offence, or by any patient of any hospital within the meaning of the Mental Health Act 1969, is addressed to an Ombudsman it shall be immediately forwarded, unopened, to the Ombudsman by the person for the time being in charge of the place or institution where the writer of the letter is detained or of which he is a patient.

Cf. 1962, No. 10, s. 13

**17. Ombudsman may refuse to investigate complaint—**

(1) An Ombudsman may—

(a) Refuse to investigate a complaint that is within his jurisdiction or to investigate any such complaint further if it appears to him that under the law or existing administrative practice there is an adequate remedy or right of appeal, other than the right to petition Parliament, to which it would have been reasonable for the complainant to resort; or

(b) Refuse to investigate any such complaint further if in the course of the investigation of the complaint it appears to him that, having regard to all the circumstances of the case, any further investigation is unnecessary.

(2) Without limiting the generality of the powers conferred on Ombudsmen by this Act, it is hereby declared that an Ombudsman may in his discretion decide not to investigate, or, as the case may require, not to investigate further, any complaint if it relates to any decision, recommendation, act, or omission of which the complainant has had knowledge for more than 12 months before the complaint is received by the Ombudsman, or if in his opinion—

(a) The subject-matter of the complaint is trivial; or

(b) The complaint is frivolous or vexatious or is not made in good faith; or

(c) The complainant has not a sufficient personal interest in the subject-matter of the complaint.

(3) In any case where an Ombudsman decides not to investigate or make further investigation of a complaint he shall inform the complainant of that decision, and shall state his reasons therefor.

Cf. 1962, No. 10, s. 14

**18. Proceedings of Ombudsmen**—(1) Before investigating any matter under this Act, an Ombudsman shall inform the Permanent Head of the Department affected, or, as the case may require, the principal administrative officer of the organisation affected, of his intention to make the investigation.

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

(3) An Ombudsman may hear or obtain information from such persons as he thinks fit, and may make such inquiries as he thinks fit. It shall not be necessary for an Ombudsman to hold any hearing, and no person shall be entitled as of right to be heard by an Ombudsman:

Provided that if at any time during the course of an investigation it appears to an Ombudsman that there may be sufficient grounds for his making any report or recommendation that may adversely affect any Department or organisation or person, he shall give to that Department or organisation or person an opportunity to be heard.

(4) In the case of an investigation relating to a Department or organisation named or specified in Parts I and II of the First Schedule to this Act, an Ombudsman may in his discretion at any time during or after the investigation consult a Minister who is concerned in the matter of the investigation, and an Ombudsman shall consult any Minister who so requests or to whom a recommendation which is the subject of the investigation has been made, after the Ombudsman has made the investigation and before he has formed a final opinion on any of the matters referred to in subsection (1) or subsection (2) of section 22 of this Act.

(5) In the case of an investigation relating to an organisation named or specified in Part III of the First Schedule to this Act, an Ombudsman may in his discretion at any time during or after the investigation consult the Mayor or Chairman of the organisation concerned, and an Ombudsman shall

consult the Mayor or Chairman of the organisation who so requests or to whom a recommendation which is the subject of the investigation has been made, after the Ombudsman has made the investigation and before he has formed a final opinion on any of the matters referred to in subsection (1) or subsection (2) of section 22 of this Act.

(6) If, during or after any investigation, a Commissioner is of opinion that there is substantial evidence of any significant breach of duty or misconduct on the part of any officer or employee of any Department or organisation, he shall refer the matter to the appropriate authority.

(7) Subject to the provisions of this Act and of any rules made for the guidance of Ombudsmen by the House of Representatives and for the time being in force, an Ombudsman may regulate his procedure in such manner as he thinks fit.

Cf. 1962, No. 10, s. 15

**19. Evidence—**(1) Subject to the provisions of this section and of section 20 of this Act, an Ombudsman may from time to time require any person who in his opinion is able to give any information relating to any matter that is being investigated by the Ombudsman to furnish to him any such information, and to produce any documents or papers or things which in the Ombudsman's opinion relate to any such matter as aforesaid and which may be in the possession or under the control of that person. This subsection shall apply whether or not the person is an officer, employee, or member of any Department or organisation, and whether or not such documents, papers, or things are in the custody or under the control of any Department or organisation.

(2) An Ombudsman may summon before him and examine on oath—

(a) Any person who is an officer or employee or member of any Department or organisation named or specified in the First Schedule to this Act and who in the Ombudsman's opinion is able to give any such information as aforesaid; or

(b) Any complainant; or

(c) With the prior approval of the Attorney-General in each case, any other person who in the Ombudsman's opinion is able to give any such information—

and for that purpose may administer an oath. Every such examination by the Ombudsman shall be deemed to be a judicial proceeding within the meaning of section 108 of the Crimes Act 1961 (which relates to perjury).

(3) Subject to the provisions of subsection (4) of this section, no person who is bound by the provisions of any enactment, other than the State Services Act 1962 and the Official Secrets Act 1951, to maintain secrecy in relation to, or not to disclose, any matter shall be required to supply any information to or answer any question put by an Ombudsman in relation to that matter, or to produce to an Ombudsman any document or paper or thing relating to it, if compliance with that requirement would be in breach of the obligation of secrecy or non-disclosure.

(4) With the previous consent in writing of any complainant, any person to whom subsection (3) of this section applies may be required by an Ombudsman to supply information or answer any question or produce any document or paper or thing relating only to the complainant, and it shall be the duty of the person to comply with that requirement.

(5) Every person shall have the same privileges in relation to the giving of information, the answering of questions, and the production of documents and papers and things as witnesses have in any Court.

(6) Except on the trial of any person for perjury within the meaning of the Crimes Act 1961 in respect of his sworn testimony, no statement made or answer given by that or any other person in the course of any inquiry by or any proceedings before an Ombudsman shall be admissible in evidence against any person in any Court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before an Ombudsman shall be given against any person.

(7) No person shall be liable to prosecution for an offence against the Official Secrets Act 1951 or any enactment, other than this Act, by reason of his compliance with any requirement of an Ombudsman under this section.

(8) Where any person is required by an Ombudsman to attend before him for the purposes of this section, the person shall be entitled to the same fees, allowances, and expenses as if he were a witness in a Court, and the provisions of any regulations in that behalf made under the Summary Proceedings Act 1957 and for the time being in force shall apply

accordingly. For the purposes of this subsection an Ombudsman shall have the powers of a Court under any such regulations to fix or disallow, in whole or in part, or increase the amounts payable thereunder.

Cf. 1962, No. 10, s. 16

**20. Disclosure of certain matters not to be required—**

(1) Where the Attorney-General certifies that the giving of any information or the answering of any question or the production of any document or paper or thing—

- (a) Might prejudice the security, defence, or international relations of New Zealand (including New Zealand's relations with the Government of any other country or with any international organisation), or the investigation or detection of offences; or
- (b) Might involve the disclosure of the deliberations of Cabinet; or
- (c) Might involve the disclosure of proceedings of Cabinet, or of any committee of Cabinet, relating to matters of a secret or confidential nature, and would be injurious to the public interest—

an Ombudsman shall not require the information or answer to be given or, as the case may be, the document or paper or thing to be produced.

(2) Subject to the provisions of subsection (1) of this section, the rule of law which authorises or requires the withholding of any document or paper, or the refusal to answer any question, on the ground that the disclosure of the document or paper or the answering of the question would be injurious to the public interest shall not apply in respect of any investigation by or proceedings before an Ombudsman.

Cf. 1962, No. 10, s. 17

**21. Ombudsmen and staff to maintain secrecy—**(1) Every Ombudsman and every person holding any office or appointment under the Chief Ombudsman shall be deemed for the purposes of the Official Secrets Act 1951 to be persons holding office under Her Majesty.

(2) Every Ombudsman and every such person as aforesaid shall maintain secrecy in respect of all matters that come to their knowledge in the exercise of their functions.

(3) Every person holding any office or appointment under the Chief Ombudsman shall, before he begins to perform any

official duty under this Act, take an oath, to be administered by an Ombudsman, that he will not divulge any information received by him under this Act except for the purpose of giving effect to this Act.

(4) Notwithstanding anything in the foregoing provisions of this section, an Ombudsman may disclose such matters as in his opinion ought to be disclosed for the purposes of an investigation or in order to establish grounds for his conclusions and recommendations. The power conferred by this subsection shall not extend to any matter that might prejudice the security, defence, or international relations of New Zealand (including New Zealand's relations with the Government of any other country or with any international organisation) or the investigation or detection of offences, or that might involve the disclosure of the deliberations of Cabinet.

Cf. 1962, No. 10, s. 18

**22. Procedure after investigation—**(1) The provisions of this section shall apply in every case where, after making any investigation under this Act, an Ombudsman is of opinion that the decision, recommendation, act, or omission which was the subject-matter of the investigation—

- (a) Appears to have been contrary to law; or
- (b) Was unreasonable, unjust, oppressive, or improperly discriminatory, or was in accordance with a rule of law or a provision of any Act, regulation, or bylaw or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory; or
- (c) Was based wholly or partly on a mistake of law or fact; or
- (d) Was wrong.

(2) The provisions of this section shall also apply in any case where an Ombudsman is of opinion that in the making of the decision or recommendation, or in the doing or omission of the act, a discretionary power has been exercised for an improper purpose or on irrelevant grounds or on the taking into account of irrelevant considerations, or that, in the case of a decision made in the exercise of any discretionary power, reasons should have been given for the decision.

(3) If in any case to which this section applies an Ombudsman is of opinion—

- (a) That the matter should be referred to the appropriate authority for further consideration; or

- (b) That the omission should be rectified; or
- (c) That the decision should be cancelled or varied; or
- (d) That any practice on which the decision, recommendation, act, or omission was based should be altered;  
or
- (e) That any law on which the decision, recommendation, act, or omission was based should be reconsidered;  
or
- (f) That reasons should have been given for the decision; or
- (g) That any other steps should be taken—

the Ombudsman shall report his opinion, and his reasons therefor, to the appropriate Department or organisation, and may make such recommendations as he thinks fit. In any such case he may request the Department or organisation to notify him, within a specified time, of the steps (if any) that it proposes to take to give effect to his recommendations. The Ombudsman shall also, in the case of an investigation relating to a Department or organisation named or specified in Parts I and II of the First Schedule to this Act, send a copy of his report or recommendations to the Minister concerned, and, in the case of an investigation relating to an organisation named or specified in Part III of the First Schedule to this Act, send a copy of his report or recommendations to the Mayor or Chairman of the organisation concerned.

(4) If within a reasonable time after the report is made no action is taken which seems to an Ombudsman to be adequate and appropriate, the Ombudsman, in his discretion, after considering the comments (if any) made by or on behalf of any Department or organisation affected, may send a copy of the report and recommendations to the Prime Minister, and may thereafter make such report to Parliament on the matter as he thinks fit.

(5) The Ombudsman shall attach to every report sent or made under subsection (4) of this section a copy of any comments made by or on behalf of the Department or organisation affected.

(6) Subsections (4) and (5) of this section shall not apply in the case of an investigation relating to an organisation named or specified in Part III of the First Schedule to this Act.

(7) Notwithstanding anything in this section, an Ombudsman shall not, in any report made under this Act, make any comment that is adverse to any person unless the person has been given an opportunity to be heard.

Cf. 1962, No. 10, s. 19

**23. Ombudsman may require publication of summary of report—**(1) Where an Ombudsman has prepared a report under subsection (3) of section 22 of this Act relating to any organisation named or specified in Part III of the First Schedule to this Act, he may prepare and send to the principal administrative officer of that organisation a written summary of the contents of his report and require that officer to make copies of that summary available during ordinary business hours for inspection by members of the public without charge. Any member of the public may make a copy of the whole or any part of the summary.

(2) Before forwarding any such written summary to the appropriate principal administrative officer under subsection (1) of this section, the Ombudsman shall send a copy of it in draft form to the organisation to which it relates for perusal, and shall, as far as practicable, incorporate in the summary any comments made to him by the organisation.

(3) Within one week after the report is received by the organisation, the principal administrative officer of that organisation shall, at the expense of the organisation, give public notice in such form and in such newspapers as the Ombudsman shall require of the availability of the report for inspection and of the places where it may be inspected.

(4) Every such report shall be made available for a period of 4 weeks from the date of the first publication of the public notice.

**24. Complainant to be informed of result of investigation—**

(1) Where, on any investigation following a complaint, an Ombudsman makes a recommendation under subsection (3) of section 22 of this Act, and no action which seems to the Ombudsman to be adequate and appropriate is taken thereon within a reasonable time, the Ombudsman shall inform the complainant of his recommendation, and may make such comments on the matter as he thinks fit.

(2) The Ombudsman shall in any case inform the complainant, in such manner and at such time as he thinks proper, of the result of the investigation.

Cf. 1962, No. 10, s. 20

**25. Proceedings not to be questioned or to be subject to review—**No proceeding of an Ombudsman shall be held bad for want of form, and, except on the ground of lack

of jurisdiction, no proceeding or decision of an Ombudsman shall be liable to be challenged, reviewed, quashed, or called in question in any Court.

Cf. 1962, No. 10, s. 21

**26. Proceedings privileged**—(1) Except in the case of proceedings for an offence against the Official Secrets Act 1951,—

- (a) No proceedings, civil or criminal, shall lie against any Ombudsman, or against any person holding any office or appointment under the Chief Ombudsman, for anything he may do or report or say in the course of the exercise or intended exercise of his functions under this Act, unless it is shown that he acted in bad faith:
- (b) No Ombudsman, and no such person as aforesaid, shall be called to give evidence in any Court, or in any proceedings of a judicial nature, in respect of anything coming to his knowledge in the exercise of his functions.

(2) Anything said or any information supplied or any document, paper, or thing produced by any person in the course of any inquiry by or proceedings before an Ombudsman under this Act shall be privileged in the same manner as if the inquiry or proceedings were proceedings in a Court.

(3) For the purposes of clause 5 of the First Schedule to the Defamation Act 1954, any report made by an Ombudsman under this Act shall be deemed to be an official report made by a person holding an inquiry under the authority of the legislature of New Zealand.

Cf. 1962, No. 10, s. 22

#### *Miscellaneous Provisions*

**27. Power of entry on premises**—(1) For the purposes of this Act, but subject to the provisions of this section, an Ombudsman may at any time enter upon any premises occupied by any of the Departments or organisations named or specified in the First Schedule to this Act and inspect the premises and, subject to the provisions of sections 19 and 20 of this Act, carry out therein any investigation that is within his jurisdiction.

(2) Before entering upon any such premises an Ombudsman shall notify the Permanent Head of the Department or, as the case may require, the principal administrative officer of the organisation by which the premises are occupied.

(3) The Attorney-General may from time to time by notice to the Chief Ombudsman exclude the application of subsection (1) of this section to any specified premises or class of premises, if he is satisfied that the exercise of the power conferred by this section might prejudice the security, defence, or international relations of New Zealand, including New Zealand's relations with the Government of any other country or with any international organisation.

Cf. 1962, No. 10, s. 23

**28. Delegation of powers by Ombudsman—**(1) With the prior approval of the Prime Minister, any Ombudsman may from time to time, by writing under his hand, delegate to any person holding any office under him any of his powers under this Act, except this power of delegation and the power to make any report under this Act.

(2) Any delegation under this section may be made to a specified person or to the holder for the time being of a specified office or to the holders of offices of a specified class.

(3) Every delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by an Ombudsman.

(4) Any such delegation may be made subject to such restrictions and conditions as the Ombudsman thinks fit, and may be made either generally or in relation to any particular case or class of cases.

(5) Until any such delegation is revoked, it shall continue in force according to its tenor. In the event of the Ombudsman by whom it was made ceasing to hold office, it shall continue to have effect as if made by his successor.

(6) Any person purporting to exercise any power of an Ombudsman by virtue of a delegation under this section shall, when required to do so, produce evidence of his authority to exercise the power.

Cf. 1962, No. 10, s. 24

**29. Annual report—**Without limiting the right of an Ombudsman to report at any other time, but subject to the provisions of subsection (7) of section 22 of this Act and to any rules for the guidance of the Ombudsmen made by the

House of Representatives and for the time being in force, the Ombudsmen shall in each year make a report to Parliament on the exercise of their functions under this Act.

Cf. 1962, No. 10, s. 25

**30. Offences**—Every person commits an offence against this Act and is liable on summary conviction to a fine not exceeding \$200 who—

- (a) Without lawful justification or excuse, wilfully obstructs, hinders, or resists an Ombudsman or any other person in the exercise of his powers under this Act:
- (b) Without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of an Ombudsman or any other person under this Act:
- (c) Wilfully makes any false statement to or misleads or attempts to mislead an Ombudsman or any other person in the exercise of his powers under this Act:
- (d) Represents directly or indirectly that he holds any authority under this Act when he does not hold that authority.

Cf. 1962, No. 10, s. 26

**31. Money to be appropriated by Parliament for purposes of this Act**—Except as otherwise provided in this Act, all salaries and allowances and other expenditure payable or incurred under or in the administration of this Act shall be payable out of money to be appropriated by Parliament for the purpose.

Cf. 1962, No. 10, s. 27

**32. Power to amend First Schedule by Order in Council**—

(1) Where any Department or organisation named or specified in the First Schedule to this Act is abolished, or its name is altered, or where any new Department of State is created, the Governor-General may, by Order in Council, make such amendments to the said Schedule as may be necessary to give effect to the abolition or alteration, or to include the name of the new Department therein.

(2) The Governor-General may from time to time, by Order in Council, amend Part II or Part III of the First Schedule to this Act by—

- (a) Including therein the name of any local organisation or other organisation or the description of any class of local organisations or other organisations:
- (b) Omitting from the said Part II or Part III the name of any local organisation or other organisation or the description of any class of local organisations or other organisations, whether that name or description appeared in that Part as initially enacted or was included therein by any other Act or any Order in Council.

Cf. 1962, No. 10, s. 28

**33. Repeals, amendment, and savings—**(1) Subject to subsection (5) of this section, the enactments specified in the Second Schedule to this Act are hereby repealed.

(2) Section 63 of the Mental Health Act 1969 is hereby amended by omitting from subsection (1) the words “the Ombudsman”, and substituting the words “an Ombudsman”.

(3) The provisions of this Act are in addition to the provisions of any other enactment or any rule of law under which any remedy or right of appeal or objection is provided for any person or any procedure is provided for the inquiry into or investigation of any matter, and nothing in this Act shall limit or affect any such remedy or right of appeal or objection or procedure as aforesaid.

(4) Notwithstanding the repeal of subsection (1) of section 4 of the Parliamentary Commissioner (Ombudsman) Act 1962, any appointment made pursuant to a recommendation under that subsection shall continue in full force and effect until the dissolution or expiration of the Parliament that is in existence at the commencement of this Act.

(5) The enactments specified in the Second Schedule to this Act shall continue in force in relation to the organisations specified in Part III of the Schedule to the Parliamentary Commissioner (Ombudsman) Act 1962, as added by section 2 (6) of the Parliamentary Commissioner (Ombudsman) Amendment Act 1968, until Part III of the First Schedule to this Act comes into force.

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## SCHEDULES

## Section 13

## FIRST SCHEDULE

## DEPARTMENTS AND ORGANISATIONS TO WHICH THIS ACT APPLIES

*Part I—Government Departments*

The Audit Department.  
The Crown Law Office.  
The Customs Department.  
The Department of Education.  
The Department of Health.  
The Department of Internal Affairs.  
The Department of Justice.  
The Department of Labour.  
The Department of Lands and Survey.  
The Department of Scientific and Industrial Research.  
The Department of Social Welfare.  
The Department of Statistics.  
The Department of Trade and Industry.  
The Export Guarantee Office.  
The Government Life Insurance Office.  
The Government Printing Office.  
The Housing Corporation of New Zealand.  
The Inland Revenue Department.  
The Legislative Department.  
The Maori and Island Affairs Department.  
The Maori Trust Office.  
The Mines Department.  
The Ministry of Agriculture and Fisheries.  
The Ministry of Civil Defence.  
The Ministry of Defence.  
The Ministry of Energy Resources.  
The Ministry of Foreign Affairs.  
The Ministry of Recreation and Sport.  
The Ministry of Transport.  
The Ministry of Works and Development.  
The New Zealand Electricity Department.  
The New Zealand Forest Service.  
The New Zealand Government Railways Department.  
The Office of the State Services Commission.  
The Parliamentary Counsel Office.  
The Police Department.  
The Post Office.  
The Prime Minister's Department.  
The Public Trust Office.  
The Rural Banking and Finance Corporation of New Zealand.  
The State Insurance Office.  
The Tourist and Publicity Department.  
The Treasury.  
The Valuation Department.

FIRST SCHEDULE—*continued**Part II—Organisations Other than Local Organisations*

- The Accident Compensation Commission.
- The Agricultural Chemicals Board.
- The Animal Remedies Board.
- The Board of Maori Affairs.
- The Board of Trustees of the National Art Gallery, the National Museum, and the National War Memorial.
- The Canteen Fund Board.
- The Children's Health Camps Board.
- The Decimal Currency Board.
- The Earthquake and War Damage Commission.
- The Fire Service Commission.
- The Government Stores Board.
- The Government Superannuation Board.
- The Land Settlement Board.
- Management Council and Special Councils under the National Art Gallery, Museum, and War Memorial Act 1972.
- The Maori Education Foundation.
- The Maori Purposes Fund Board.
- The Maori Trustee.
- The Marginal Lands Board.
- The National Civil Defence Committee.
- The National Hydatids Council.
- The National Parks Authority.
- The National Provident Fund Board.
- The National Roads Board.
- The National Water and Soil Conservation Authority.
- The New Zealand Army.
- The New Zealand Council for Recreation and Sport.
- The New Zealand Defence Council.
- The New Zealand Historic Places Trust.
- The New Zealand Maori Arts and Crafts Institute.
- The New Zealand Naval Board.
- The New Zealand Naval Forces.
- The New Zealand Patriotic Fund Board.
- The New Zealand Trades Certification Board.
- The Pacific Islands Polynesian Education Foundation Board.
- The Pest Destruction Council.
- The Poisons Committee.
- The Police.
- The Queen Elizabeth the Second Arts Council of New Zealand.
- The Rehabilitation Board.
- The Royal New Zealand Air Force.
- The Social Security Commission.
- The Soil Conservation and Rivers Control Council.
- The Standards Council.
- The State Insurance Investment Board.
- The State Services Commission.
- The Technicians Certification Authority of New Zealand.
- The Urban Public Passenger Transport Council.
- The Vocational Training Council.
- The Water Resources Council.

FIRST SCHEDULE—*continued**Part III—Local Organisations*

Airport Authorities.  
Approved organisations under the Hydatids Act 1968.  
Borough Councils.  
Camp Committees under the Children's Health Camps Act 1972.  
Catchment Boards.  
Catchment Commissions.  
City Councils.  
Committees of Management of Secondary Schools.  
County Councils.  
District Councils.  
District Roads Councils.  
Domain Boards.  
Drainage Boards.  
Education Boards.  
Electric Power Boards.  
Fire Boards.  
Governing bodies of Community Colleges.  
Governing bodies of Secondary Schools.  
Governing bodies of Teachers' Colleges.  
Governing bodies of Technical Institutes.  
Harbour Boards.  
Hospital Boards.  
Irrigation Boards.  
Licensing Trusts.  
Nassella Tussock Boards.  
National Park Board Committees.  
National Park Boards.  
Pest Destruction Boards.  
Provincial Patriotic Councils.  
Public reserves special Boards, Trusts, or Trust Boards.  
Regional Civil Defence Committees.  
Regional Councils.  
Regional Planning Authorities.  
Regional Water Boards.  
River Boards.  
Scenic Boards.  
Secondary Schools Councils.  
Town Councils.  
United Councils.  
The Auckland Harbour Bridge Authority.  
The Auckland Institute and Museum Trust Board.  
The Auckland Regional Authority.  
The Canterbury Museum Trust Board.  
The Christchurch Drainage Board.  
The Christchurch-Lyttelton Road Tunnel Authority.  
The Christchurch Transport Board.  
The Dunedin Drainage and Sewerage Board.  
The Hauraki Gulf Maritime Park Board.  
The Hawke's Bay Crematorium Board.  
The Hutt Valley Drainage Board.

FIRST SCHEDULE—*continued*

The Marlborough Forestry Corporation.  
 The Masterton Trust Lands Trust.  
 The North Shore Drainage Board.  
 The Ohai Railway Board.  
 The Otago Museum Trust Board.  
 The Rangitaiki Drainage Board.  
 The Riccarton Bush Trustees.  
 The Rotorua Area Electricity Supply Authority.  
 The Selwyn Plantation Board.  
 The South Canterbury Wallaby Board.  
 The Waikato Valley Authority.  
 The Waimakariri-Ashley Water Supply Board.  
 The Wairarapa Cadet Training Farm Trust Board.  
 The Wellington Regional Water Board.

## SECOND SCHEDULE

Section 33 (1)

## ENACTMENTS REPEALED

- 1962, No. 10—The Parliamentary Commissioner (Ombudsman) Act 1962.  
 1964, No. 50—The Export Guarantee Act 1964: Section 24.  
 1965, No. 47—The State Advances Corporation Act 1965: So much of the Second Schedule as relates to the Parliamentary Commissioner (Ombudsman) Act 1962.  
 1965, No. 124—The Decimal Currency Amendment Act 1965: Section 10.  
 1967, No. 135—The Water and Soil Conservation Act 1967: Section 39.  
 1967, No. 159—The Finance Act (No. 2) 1967: Section 3.  
 1968, No. 14—The Maori and Island Affairs Department Act 1968: So much of the Schedule as relates to the Parliamentary Commissioner (Ombudsman) Act 1962.  
 1968, No. 39—The Ministry of Transport Act 1968: So much of the Second Schedule as relates to the Parliamentary Commissioner (Ombudsman) Act 1962.  
 1968, No. 138—The Parliamentary Commissioner (Ombudsman) Amendment Act 1968.  
 1969, No. 121—The Parliamentary Commissioner (Ombudsman) Amendment Act 1969.  
 1970, No. 96—The Parliamentary Commissioner (Ombudsman) Amendment Act 1970.  
 1971, No. 52—The Defence Act 1971: So much of the Second Schedule as relates to the Parliamentary Commissioner (Ombudsman) Act 1962.

SECOND SCHEDULE—*continued*

- 1971, No. 60—The Department of Social Welfare Act 1971: Section 28.
- 1971, No. 154—The Water and Soil Conservation Amendment Act (No. 2) 1971: Section 23 (1).
- 1972, No. 3—The Ministry of Agriculture and Fisheries Amendment Act 1972: Section 3 (5).
- 1972, No. 4—The Ministry of Transport Amendment Act 1972: So much of the First Schedule as relates to the Parliamentary Commissioner (Ombudsman) Act 1962.
- 1972, No. 12—The Ministry of Energy Resources Act 1972: So much of the Second Schedule as relates to the Parliamentary Commissioner (Ombudsman) Act 1962.
- 1972, No. 43—The Accident Compensation Act 1972: So much of the Third Schedule as relates to the Parliamentary Commissioner (Ombudsman) Act 1962.
- 1974, No. 3—The Rural Banking and Finance Corporation Act 1974: So much of the Schedule as relates to the Parliamentary Commissioner (Ombudsman) Act 1962.
- 1974, No. 19—The Housing Corporation Act 1974: So much of the First Schedule as relates to the Parliamentary Commissioner (Ombudsman) Act 1962.

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This Act is administered in the Department of Justice.

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