

## PARLIAMENTARY COMMISSIONER FOR INVESTIGATIONS BILL

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### EXPLANATORY NOTE

THE purpose of this Bill is to provide for the appointment of a Parliamentary Commissioner for Investigations, whose principal function will be to inquire into complaints from members of the public relating to administrative decisions of the Government Departments and other organisations named in the *Schedule* to the Bill.

The Commissioner's jurisdiction will not include the investigation of any case where, under any enactment, there is a right of appeal or objection or review on the merits of the case to a Court or to a tribunal.

*Clause 1* relates to the Short Title.

#### *Parliamentary Commissioner for Investigations*

*Clause 2* provides for the appointment of an officer of Parliament to be called the Parliamentary Commissioner for Investigations. He is to be appointed by the Governor-General on the recommendation of the House of Representatives.

*Clause 3* provides that the Commissioner may not be a member of Parliament, and may not without the approval of the Prime Minister hold any office of trust or profit or engage in any other occupation for reward.

*Clause 4* deals with the term of office of the Commissioner. The resolution for his appointment is to be passed by the House in the first or second session of every Parliament, and the person appointed will hold office until his successor is appointed. He will be eligible for reappointment. He may resign by writing addressed to the Speaker. He is to retire on attaining the age of 72.

*Clause 5* provides that the Commissioner may be removed or suspended from office, for disability, bankruptcy, neglect of duty, or misconduct, upon an address of the House. If the House is not in session the Governor-General may suspend him for the same reasons.

*Clause 6* deals with the filling of a vacancy in the office of Commissioner. If the vacancy occurs while Parliament is in session, it is to be filled by the Governor-General on the recommendation of the House. If the vacancy occurs within two months before the close of a session and a recommendation is not made at that session, or if it occurs while Parliament is not in session, the Governor-General may appoint a Commissioner who will hold office until his appointment is confirmed by the House at the next session. If that appointment is not confirmed within two months after the commencement of the next session the appointment lapses and a further vacancy occurs.

*Clause 7* provides that the Commissioner is to be paid a salary at a rate to be fixed by Order in Council, and the usual travelling allowances and expenses under the Fees and Travelling Allowances Act 1951.

*Subclause (2)* provides that every Royal Commission appointed to review parliamentary salaries under the Civil List Act 1950 shall also review the Commissioner's salary, which may then be fixed (at a rate not less than that fixed under *subclause (1)*) by Order in Council.

*Clause 8* requires the Commissioner, on appointment, to take an oath that he will faithfully and impartially perform the duties of his office and will not divulge any information except as authorised by *clause 18*.

*Clause 9* deals with the Commissioner's staff, who will not be officers of the Public Service. *Subclause (1)* provides that the Commissioner may appoint his own staff. *Subclause (2)* provides for the number of persons so appointed to be determined by the Prime Minister. *Subclause (3)* provides for their salaries and terms of appointment to be fixed by the Minister of Finance.

*Clause 10* provides for contributions or subsidies to the National Provident Fund or any other approved Fund or scheme for the purpose of providing superannuation or retiring allowances for the Commissioner and his staff.

#### *Functions of Commissioner*

*Clause 11* sets out the functions of the Commissioner. Under *subclause (1)* his principal function is to investigate, either on a complaint or of his own motion, any administrative decision, recommendation, act, or omission of any of the Departments or organisations named in the *Schedule* to the Bill, or of an officer, employee, or member of any of those Departments or organisations, if it affects any person or body of persons in his or its personal capacity.

*Subclause (2)* provides that any Committee of the House may refer any petition to the Commissioner for investigation and report.

*Subclause (3)* provides that the Commissioner's powers may be exercised notwithstanding any statutory provision excluding a right of appeal or review.

*Subclause (4)* excludes the Commissioner's jurisdiction where there is a statutory provision for appeal or objection or review, on the merits of the case, to a Court or a tribunal. Also, he will have no jurisdiction in relation to the decisions, etc., of a person in his capacity as a trustee within the meaning of the Trustee Act 1956, or of the legal advisers to the Crown in relation to the conduct of Crown legal business.

*Subclause (5)* provides that the Commissioner may not investigate matters relating to the service of a member of any of the New Zealand forces, or to any order given to him or penalty imposed on him.

*Subclause (6)* provides that if a question arises as to his jurisdiction the Commissioner may apply to the Supreme Court for a declaratory order determining the question under the Declaratory Judgments Act 1908.

*Clause 12* provides that the House may make rules for the guidance of the Commissioner.

*Clause 13* provides that a complaint to the Commissioner must be made in writing.

*Subclause (2)* provides that where a letter written by a person in custody on a charge or after conviction of an offence, or by an inmate of a mental hospital, is addressed to the Commissioner it is to be forwarded unopened to the Commissioner.

*Subclauses (3) and (4)* provide for the payment to the Public Account of a fee of £1 on every complaint, unless in special circumstances the Commissioner remits payment.

*Clause 14* empowers the Commissioner to refuse to investigate a complaint if, in his opinion, under the law or existing administrative practice, there is an adequate remedy or right of appeal, or an investigation is unnecessary. In particular he may decide not to investigate if the complaint relates to something of which the complainant has had knowledge for more than 12 months, or if in his opinion the subject-matter is trivial, or the complaint is frivolous or vexatious or is not made in good faith, or the complainant has not a sufficient personal interest.

*Clause 15* provides that, before investigating, the Commissioner is to inform the Permanent Head, or the organisation affected, of his intention to investigate. Every investigation is to be conducted in private. The Commissioner may hear such persons as he thinks fit. A hearing need not be held and no one is entitled as of right to be heard; but if the Commissioner thinks that any Department or organisation or person may be adversely affected by a report he may make, he is to give the Department or organisation or person an opportunity to be heard.

*Subclause (4)* gives the Commissioner the right to consult the Minister concerned.

*Subclause (5)* provides that where the Minister so requests, or where the investigation relates to a recommendation made to the Minister, the Commissioner must consult the Minister after he has made his investigation and before taking action under *clause 19*.

*Subclause (6)* provides that if the Commissioner thinks that there is evidence of a breach of duty or misconduct on the part of an officer or employee he is to refer the matter to the appropriate authority.

*Clause 16* deals with evidence given to the Commissioner. Under *sub-clause (1)* he may require anyone to furnish information or produce documents, etc.

Under *subclause (2)* he may summon before him and examine on oath any officer, employee, or member of a Department or organisation named in the Schedule or, with the approval of the Attorney-General, any other person.

*Subclause (3)* provides that anyone bound by the special provisions of any enactment (for example, the Inland Revenue Department Act 1952 or the Statistics Act 1955) to maintain secrecy in relation to any matter may refuse to give information or produce documents in breach of the obligation

of secrecy; but under *subclause (4)* this right will not exist in relation to matters relating only to the complainant if the latter has previously consented in writing to the disclosure.

*Subclause (5)* provides that all persons are to have the same privileges as witnesses in Courts.

*Subclause (6)*: Except on a charge of perjury, statements made to the Commissioner are not admissible in evidence against any person in any Court or at any inquiry or in any other proceedings.

*Subclause (7)*: No person is liable to prosecution under the Official Secrets Act 1951 or any other enactment (except this Bill) by reason of his compliance with the Commissioner's requirements.

*Subclause (8)* provides for the payment of the usual witnesses' fees and expenses to persons required to attend before the Commissioner.

*Clause 17* provides that the Commissioner is not to require disclosure of information or documents where the Attorney-General certifies that disclosure (a) might prejudice the security, defence, or international relations of New Zealand 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 a committee of Cabinet relating to matters of a secret or confidential nature, and would be injurious to the public interest. In other cases disclosure may not be refused on the ground of injury to the public interest.

*Clause 18*: The effect of *subclauses (1) and (2)* is that the Commissioner and his staff are not only bound by the Official Secrets Act 1951 but must also maintain secrecy in respect of all matters coming to their knowledge.

*Subclause (3)* provides for an oath of secrecy to be taken by every member of the Commissioner's staff.

*Subclause (4)* permits the Commissioner to disclose in any report such matters as are necessary to establish grounds for his conclusions and recommendations, unless they are matters that might prejudice New Zealand's security or defence or international relations or the investigation or detection of offences, or might involve the disclosure of the deliberations of Cabinet.

*Clause 19: Subclauses (1) to (3)* set out the cases in which the Commissioner may take further action after an investigation. He may report his opinion to the appropriate Department or organisation and make such recommendations as he thinks fit as to the steps to be taken. He is also to send a copy of his report and recommendations to the Minister concerned.

*Subclause (4)* provides that if within a reasonable time after his report is made adequate and appropriate action is not taken he may, after considering any comments made in reply, send his report to the Prime Minister, and may thereafter report to Parliament; but under *subclause (5)* he must in either case attach a copy of the comments made by any Department or organisation affected.

*Subclause (6)* provides that in any report made under the Bill the Commissioner shall not make any comment that is adverse to any person unless that person has been given an opportunity to be heard.

*Clause 20* provides for the complainant to be informed of the result of the investigation.

*Clause 21* provides that the proceedings of the Commissioner are not to be challenged or called in question in any Court, except on the ground of lack of jurisdiction.

*Clause 22: Subclause (1)* protects the Commissioner and his staff against civil or criminal proceedings for anything they may do or say in the exercise of their functions, unless it is shown that they acted in bad faith.

Under *subclause (2)*, statements made to the Commissioner are privileged to the same extent as if they had been made in a Court.

Under *subclause (3)* the Commissioner's reports are privileged as if they were reports of Court proceedings.

#### *Miscellaneous Provisions*

*Clause 23: Subclause (1)* authorises the Commissioner to enter on the premises of any of the Departments or organisations named in the *Schedule*, and to inspect the premises and carry out any investigation within his jurisdiction.

*Subclause (2)* provides for notice to be given to the appropriate authority before the power of entry is exercised.

*Subclause (3)* authorises the Attorney-General to exclude the application of *subclause (1)* to any specified premises or class of premises, on the ground of the security, defence, or international relations of New Zealand.

*Clause 24* authorises the Commissioner, with the prior approval of the Prime Minister in each case, to delegate powers to any person holding office under him, except the power to make reports.

*Clause 25* requires the Commissioner to make an annual report to Parliament.

*Clause 26* makes it an offence to wilfully obstruct or mislead the Commissioner or any other person in the exercise of his powers under the Bill, or to fail to comply, without lawful justification, with any lawful requirement of the Commissioner or any other such person.

*Clause 27* provides for the expenses of administration of the Bill to be met out of money to be appropriated by Parliament.

*Clause 28* provides for the amendment of the *Schedule* by Order in Council where it is necessary to give effect to any abolition or alteration in name of a Department or organisation or to include the name of any newly created Department.

*Clause 29* preserves all remedies or rights of appeal available to any person apart from the Bill, and all other procedures provided by law for the inquiry into or investigation of any matter.

The *Schedule* contains the list of Departments and organisations to which the Commissioner's jurisdiction extends.

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Hon. Mr Hanan

## PARLIAMENTARY COMMISSIONER FOR INVESTIGATIONS

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### A BILL INTITULED

**An Act to provide for the appointment of a Commissioner to investigate administrative decisions or acts of Departments of State and certain other organisations, and to define the Commissioner's functions and powers**

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

2 *Parliamentary Commissioner for Investigations*

**1. Short Title**—This Act may be cited as the Parliamentary Commissioner for Investigations Act 1962.

*Parliamentary Commissioner for Investigations*

**2. Parliamentary Commissioner for Investigations**—

(1) There shall be an officer of Parliament to be called the Parliamentary Commissioner for Investigations. 5

(2) Subject to the provisions of section 6 of this Act, the Commissioner shall be appointed by the Governor-General on the recommendation of the House of Representatives. 10

(3) No person shall be deemed to be employed in the service of Her Majesty for the purposes of the Public Service Act 1912 or the Superannuation Act 1956 by reason of his appointment as Commissioner.

**3. Commissioner to hold no other office**—The Commissioner shall not be capable of being a member of Parliament, 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 Commissioner, or engage in any occupation for reward outside the duties of his office. 15 20

**4. Term of office of Commissioner**—(1) The recommendation for the appointment of the Commissioner shall be made in the first or second session of every Parliament.

(2) Unless his office sooner becomes vacant, every person appointed as Commissioner shall hold office until his successor is appointed. Every such person may from time to time be reappointed. 25

(3) The Commissioner 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. 30

(4) The Commissioner shall retire on attaining the age of seventy-two years.

**5. Removal or suspension from office**—(1) The Commissioner 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. 35

(2) At any time when Parliament is not in session, the Commissioner 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  
5 Governor-General; but any such suspension shall not continue in force beyond the end of the next ensuing session of Parliament.

**6. Filling of vacancy**—(1) If the Commissioner dies, or retires, or resigns, or is removed from office, the vacancy  
10 thereby created shall be filled in accordance with this section.

(2) If any vacancy in the office of Commissioner occurs at any time while Parliament is in session, it shall be filled by the appointment of a Commissioner by the Governor-General on the recommendation of the House of Representa-  
15 tives:

Provided that if the vacancy occurs less than two 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  
20 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 a Commissioner to fill the vacancy, and the person  
25 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 two  
30 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 Commissioner.

**7. Salary and allowances of Commissioner**—(1) Subject to the provisions of subsection (2) of this section, there shall be  
35 paid to the Commissioner out of the Consolidated Fund, without further appropriation than this section, a salary at a rate to be fixed by the Governor-General by Order in Council.

(2) Whenever a Royal Commission is appointed to make recommendations for the purposes of section 27 of the Civil  
40 List Act 1950 (which relates to the fixing of salaries and



allowances payable under Parts II, III, and IV of that Act), that Commission shall also inquire into and report upon the salary of the Commissioner under this Act, and may make such recommendation as it thinks fit thereon. On any such recommendation, the Governor-General may from time to time, by Order in Council, fix the salary of the Commissioner, but so that the salary shall be at a rate not less than that fixed under subsection (1) of this section. The provisions of subsection (2) of the said section 27 shall apply to any Order in Council made under this subsection; and while the Order in Council is in force the salary fixed thereunder shall be payable to the Commissioner in every year out of the Consolidated Fund without further appropriation than this section, instead of the salary fixed under subsection (1) of this section.

(3) There shall be paid to the Commissioner, 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 Commissioner were a member of a statutory Board and the travelling were in the service of a statutory Board.

**8. Oath to be taken by Commissioner**—(1) Before entering upon the exercise of the duties of his office the Commissioner 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 18 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.

**9. Staff of Commissioner**—(1) Subject to the provisions of this section, the Commissioner may appoint such officers and employees as may be necessary for the efficient carrying out of his functions 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 Public Service Act 1912 or the Superannuation Act 1956 by reason of his appointment under this section.

5 **10. Superannuation or retiring allowances of Commissioner 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 super-  
10 annuation or retiring allowances for the Commissioner and any officer or employee appointed under this Act.

*Functions of Commissioner*

**11. Functions of Commissioner**—(1) The principal function of the Commissioner shall be to investigate, either on a  
15 complaint made to him or of his own motion, any decision or recommendation made (including any recommendation made to a Minister of the Crown), or any act done or omitted, relating to a matter of administration and affecting any person  
20 or body of persons in his or its personal capacity, in or by any of the Departments or organisations named in the Schedule to this Act, or by any officer, employee, or member thereof in his capacity as such officer, employee, or member.

(2) Without limiting the provisions of subsection (1) of this section, it is hereby declared that any Committee of the House  
25 of Representatives may at any time refer to the Commissioner, for investigation and report by him, any petition that is before that Committee for consideration, or any matter to which the petition relates. In any such case, the Commissioner shall, subject to any special directions of the Committee,  
30 investigate the matters so referred to him, so far as they are within his jurisdiction, and make such report to the Committee as he thinks fit. Nothing in section 14 or section 19 or section 20 of this Act shall apply in respect of any investigation or report made under this subsection.

35 (3) The powers conferred on the Commissioner 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  
40 person or organisation whose decision, recommendation, act, or omission it is shall be challenged, reviewed, quashed, or called in question.

(4) Nothing in this Act shall authorise the Commissioner to investigate—

- (a) Any decision, recommendation, act, or omission in respect of which there is, under the provisions of any enactment, a right of appeal or objection, or a right to apply for a review, 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: 5
- (b) Any decision, recommendation, act, or omission of any person in his capacity as a trustee within the meaning of the Trustee Act 1956: 10
- (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. 15 20

(5) Nothing in this Act shall authorise the Commissioner 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— 25

- (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. 30

(6) If any question arises whether the Commissioner 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. 35

**12. House of Representatives may make rules for guidance of Commissioner**—The House of Representatives may from time to time, if it thinks fit, make general rules for the guidance of the Commissioner in the exercise of his functions, and may at any time in like manner revoke or vary any such rules. 40

**13. Mode of complaint**—(1) Every complaint to the Commissioner shall be made in writing.

(2) Notwithstanding any provision in any enactment, where any letter written by any person in custody on a charge or  
5 after conviction of any offence, or by any inmate of any institution within the meaning of the Mental Health Act 1911, is addressed to the Commissioner it shall be immediately forwarded, unopened, to the Commissioner by the person for  
10 the time being in charge of the place or institution where the writer of the letter is detained or of which he is an inmate.

(3) On every complaint to the Commissioner there shall be paid to the Commissioner, on behalf of the Crown, a fee of one pound, unless, having regard to any special circumstances, the Commissioner directs that no fee shall be payable.

15 (4) The Commissioner shall cause all fees paid to him under this section to be paid into the Public Account.

**14. Commissioner may refuse to investigate complaint**—

(1) If in the course of the investigation of any complaint within his jurisdiction it appears to the Commissioner—

20 (a) That under the law or existing administrative practice there is an adequate remedy or right of appeal, other than the right to petition Parliament, for the complainant (whether or not he has availed himself of it); or

25 (b) That, having regard to all the circumstances of the case, any further investigation is unnecessary—  
he may in his discretion refuse to investigate the matter further.

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

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

(3) In any case where the Commissioner decides not to investigate or further investigate a complaint he shall inform the complainant of that decision, and may if he thinks fit state his reasons therefor, and may also, if he thinks fit, direct that the fee paid by the complainant under this Act be refunded to him. 5

**15. Proceedings of Commissioner**—(1) Before investigating any matter under this Act, the Commissioner shall inform the Permanent Head of the Department affected, or, as the case may require, the organisation affected, of his intention to make the investigation. 10

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

(3) The Commissioner 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 the Commissioner to hold any hearing, and no person shall be entitled as of right to be heard by the Commissioner: 15

Provided that if at any time during the course of an investigation it appears to the Commissioner 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. 20

(4) The Commissioner may in his discretion, at any time during or after any investigation, consult any Minister who is concerned in the matter of the investigation. 25

(5) On the request of any Minister in relation to any investigation, or in any case where any investigation relates to any recommendation made to a Minister, the Commissioner shall consult that Minister after making the investigation and before forming a final opinion on any of the matters referred to in subsection (1) or subsection (2) of section 19 of this Act. 30

(6) If, during or after any investigation, the Commissioner is of opinion that there is evidence of any 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. 35

(7) Subject to the provisions of this Act and of any rules made for the guidance of the Commissioner by the House of Representatives and for the time being in force, the Commissioner may regulate his procedure in such manner as he thinks fit. 40

16. Evidence—(1) Subject to the provisions of this section and of section 17 of this Act, the Commissioner 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 Commissioner to furnish to him any such information, and to produce any documents or papers or things which in the Commissioner'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) The Commissioner 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 in the Schedule to this Act and who in the Commissioner's opinion is able to give any such information as aforesaid; or

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

and for that purpose may administer an oath. Every such examination by the Commissioner 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 Public Service Act 1912 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 the Commissioner in relation to that matter, or to produce to the Commissioner 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 the Commissioner 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 the Commissioner 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 the Commissioner 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 the Commissioner under this section.

(8) Where any person is required by the Commissioner 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 the Commissioner 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.

**17. 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—

the Commissioner 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 the Commissioner.

**18. Commissioner and staff to maintain secrecy—**(1) The Commissioner and every person holding any office or appointment under him shall be deemed for the purposes of the Official Secrets Act 1951 to be persons holding office under Her Majesty.

(2) The Commissioner 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 Commissioner shall, before he begins to perform any official duty under this Act, take an oath, to be administered by the Commissioner, 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, the Commissioner may disclose in any report made by him under this Act such matters as in his opinion ought to be disclosed 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.

**19. Procedure after investigation—**(1) The provisions of this section shall apply in every case where, after making any investigation under this Act, the Commissioner 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 enactment or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory; or 5
- (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 the Commissioner 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. 10 15

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

- (a) That the matter should be referred to the appropriate authority for further consideration; or 20
- (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 25
- (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— 30

the Commissioner 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 Commissioner shall also send a copy of his report and recommendations to the Minister concerned. 35

(4) If within a reasonable time after the report is made no action is taken which seems to the Commissioner to be adequate and appropriate, the Commissioner, 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. 40 45

(5) The Commissioner 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.

5 (6) Notwithstanding anything in this section, the Commissioner 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.

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

10 (1) Where, on any investigation following a complaint, the Commissioner makes a recommendation under subsection (3) of section 19 of this Act, and no action which seems to the Commissioner to be adequate and appropriate is taken thereon within a reasonable time, the Commissioner shall inform the  
15 complainant of his recommendation, and may make such comments on the matter as he thinks fit.

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

20 **21. Proceedings not to be questioned or to be subject to review—**No proceeding of the Commissioner shall be held bad for want of form, and, except on the ground of lack of jurisdiction, no proceeding or decision of the Commissioner shall be liable to be challenged, reviewed, quashed, or called  
25 in question in any Court.

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

30 (a) No proceedings, civil or criminal, shall lie against the Commissioner, or against any person holding any office or appointment under the Commissioner, 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:

35 (b) The Commissioner, and any such person as aforesaid, shall not 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.

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(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 the Commissioner under this Act shall be privileged in the same manner as if the inquiry or proceedings were proceedings in a Court. 5

(3) Any report made by the Commissioner under this Act shall be privileged in the same manner as if it were the report of proceedings in a Court.

*Miscellaneous Provisions*

**23. Power of entry on premises—**(1) For the purposes of this Act, but subject to the provisions of this section, the Commissioner may at any time enter upon any premises occupied by any of the Departments or organisations named in the Schedule to this Act and inspect the premises and, subject to the provisions of sections 16 and 17 of this Act, carry out therein any investigation that is within his jurisdiction. 10 15

(2) Before entering upon any such premises the Commissioner shall notify the Permanent Head of the Department or, as the case may require, the organisation by which the premises are occupied. 20

(3) The Attorney-General may from time to time by notice to the Commissioner 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. 25

**24. Delegation of powers by Commissioner—**(1) With the prior approval in each case of the Prime Minister, the Commissioner 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. 30 35

(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 the Commissioner. 40

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

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

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

**25. Annual report**—Without limiting his right to report at any other time, but subject to the provisions of sub-  
15 section (6) of section 19 of this Act and to any rules for the guidance of the Commissioner made by the House of Representatives and for the time being in force, the Commissioner shall in each year make a report to Parliament on the exercise of his functions under this Act.

20 **26. Offences**—Every person commits an offence against this Act and is liable on summary conviction to a fine not exceeding fifty pounds who—

(a) Without lawful justification or excuse, wilfully obstructs, hinders, or resists the Commissioner or any other  
25 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 the Commissioner or any other person under this Act:

30 (c) Wilfully makes any false statement to or misleads or attempts to mislead the Commissioner or any other person in the exercise of his powers under this Act.

**27. 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  
35 incurred under or in the administration of this Act shall be payable out of money to be appropriated by Parliament for the purpose.

**28. Power to amend Schedule by Order in Council on abolition or creation of Department, etc.**—Where any Department or organisation named in the 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. 5

**29. Savings**—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. 10 15

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SCHEDULE

Section 11 (1)

DEPARTMENTS AND ORGANISATIONS TO WHICH THIS ACT APPLIES

*Part I—Government Departments*

The Air Department.  
The Army Department.  
The Audit Department.  
The Crown Law Office.  
The Customs Department.  
The Department of Agriculture.  
The Department of Education.  
The Department of External Affairs.  
The Department of Health.  
The Department of Industries and Commerce.  
The Department of Internal Affairs.  
The Department of Island Territories.  
The Department of Justice.  
The Department of Labour.  
The Department of Lands and Survey.  
The Department of Maori Affairs.  
The Department of Scientific and Industrial Research.  
The Department of Statistics.  
The Government Life Insurance Office.  
The Inland Revenue Department.  
The Law Drafting Office.  
The Legislative Department.  
The Maori Trust Office.  
The Marine Department.  
The Mines Department.  
The Ministry of Works.  
The Navy Department.  
The New Zealand Electricity Department.  
The New Zealand Forest Service.  
The New Zealand Government Railways Department.  
The Office of the Public Service Commission.  
The Police Department.  
The Post Office.  
The Prime Minister's Department.  
The Printing and Stationery Department.  
The Public Trust Office.  
The Social Security Department.  
The State Advances Corporation of New Zealand.

SCHEDULE—*continued*

DEPARTMENTS AND ORGANISATIONS TO WHICH THIS ACT  
APPLIES—*continued*

*Part I—Government Departments—continued*

The State Fire and Accident Insurance Office.  
The Tourist and Publicity Department.  
The Transport Department.  
The Treasury.  
The Valuation Department

*Part II—Other Organisations*

The Air Board.  
The Army Board.  
The Board of Management of the State Advances Corporation of New Zealand.  
The Board of Maori Affairs.  
The Earthquake and War Damage Commission.  
The Government Stores Board.  
The Government Superannuation Board.  
The Land Settlement Board.  
The Maori Purposes Fund Board.  
The National Parks Authority.  
The National Provident Fund Board.  
The National Roads Board.  
The New Zealand Naval Board.  
The New Zealand Army.  
The New Zealand Naval Forces.  
The Police.  
The Public Service Commission.  
The Rehabilitation Board.  
The Royal New Zealand Air Force.  
The Social Security Commission.  
The Soil Conservation and Rivers Control Council.  
The State Fire Insurance Board.