

WESTERN AUSTRALIA

**PARLIAMENTARY
COMMISSIONER AMENDMENT
ACT 1996**

No. 78 of 1996

AN ACT to amend the *Parliamentary Commissioner Act 1971*.

[Assented to 14 November 1996.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Parliamentary Commissioner Amendment Act 1996*.

Commencement

2. This Act comes into operation on the day on which it receives the Royal Assent.

Principal Act

3. In this Act the *Parliamentary Commissioner Act 1971** is referred to as the principal Act.

[* Reprinted as at 25 May 1995.
For subsequent amendments see 1995 Index to
Legislation of Western Australia, Table 1, pp. 161-2
and Acts Nos. 63 and 75 of 1995 and 7 and 14
of 1996.]

Long title amended

4. The long title to the principal Act is amended by deleting “**government departments and other authorities**” and substituting the following —

“
 **departments and authorities, for the
 investigation of any action taken by a member of
 the Police Force or Police Department**
”.

Section 4 amended

5. Section 4 of the principal Act is amended —

(a) by inserting after the definition of “Acting Commissioner” the following definition —

“
 “Anti-Corruption Commission” means
 the Anti-Corruption Commission
 established under the *Anti-Corruption
 Commission Act 1988*;
”;

- (b) by inserting after the definition of “appropriate authority” the following definition —

“**“authority”** has the meaning given by section 4A;
”;

- (c) by deleting the definition of “chief executive officer”;

- (d) by deleting the definition of “department of the Public Service” and substituting the following definition —

“**“department”** means a department of the Public Service;
”;

- (e) by inserting after the definition of “Deputy Commissioner” the following definition —

“**“Director of Public Prosecutions”** means the Director within the meaning of the *Director of Public Prosecutions Act 1991*;
”;

- (f) by deleting the definition of “officer of the Public Service”;

- (g) by deleting the definition of “principal officer” and substituting the following definitions —

“**“principal officer”** means —
(a) in relation to a department or an organization within the meaning of the *Public Sector Management Act 1994*, the chief executive officer or chief employee of the department or organization; and

- (b) in relation to any other authority, the president, chairman, or other principal or presiding member of the authority or, if the authority is constituted by a single person, that person;

“public service officer” has the meaning that it has in the *Public Sector Management Act 1994*;

”;

and

- (h) by deleting the definition of “section”.

Section 4A inserted

6. After section 4 of the principal Act the following section is inserted in Part I of the principal Act —

“

Authorities

4A. (1) Each of the following is an authority for the purposes of this Act —

- (a) a local government or regional local government;
- (b) the Police Force of Western Australia;
- (c) a body, or the holder of an office, post or position —
 - (i) established for a public purpose under a written law; or
 - (ii) established by the Governor or a Minister;

- (d) a corporation or association over which control can be exercised by the State, by a Minister, by a department to which this Act applies or by an authority referred to in paragraph (a) or (c) and to which this Act applies;
- (e) an individual who, or body which, has been delegated the exercise of any power or the performance of any function of —
 - (i) a department to which this Act applies; or
 - (ii) an authority referred to in paragraph (a) or (c) and to which this Act applies,

but only to the extent of the exercise of the power or the performance of the function.

- (2) In subsection (1) (c) and (e) —

“**body**” includes —

- (a) agency, authority, board, college, commission, commissioner, committee, council, directorate, foundation, institute, instrumentality, office, panel, state trading concern, trustee and university, whether or not incorporated; and
- (b) association, company and corporation.

- (3) In subsection (1) (c) —

“**established**” includes created, appointed, constituted and continued.

”.

Section 5 amended

7. Section 5 (4) of the principal Act is repealed.

Section 10 amended

8. (1) Section 10 (3) of the principal Act is amended by deleting in both places where it occurs “an officer of the Public Service” and substituting in each case the following —

“ a public service officer ”.

(2) Section 10 (4) of the principal Act is amended by deleting in both places where it occurs “an officer of the Public Service” and substituting in each case the following —

“ a public service officer ”.

(3) Section 10 (5) of the principal Act is amended —

(a) by inserting after “a Commissioner” the following —

“ or Deputy Commissioner ”;

(b) by deleting “, other than by his attaining the age of 65 years,”; and

(c) by inserting after “as Commissioner” the following —

“ or Deputy Commissioner, as the case requires ”.

Section 12 amended

9. Section 12 (5) of the principal Act is amended by deleting “Section 36 of the *Interpretation Act 1918*” and substituting the following —

“ Section 42 of the *Interpretation Act 1984* ”.

Section 13 amended

10. (1) Section 13 of the principal Act is amended by repealing subsections (1) and (2) and substituting the following subsections —

“

(1) Subject to subsection (2), this Act applies to all departments and authorities.

(2) This Act does not apply to —

- (a) either House of Parliament, any committee or member of either of those Houses or a joint committee of both Houses of Parliament;
- (b) any member of a department of the staff of Parliament referred to in, or an electorate officer within the meaning of, the *Parliamentary and Electorate Staff (Employment) Act 1992*;
- (c) the Clerk or the Deputy Clerk of either House of Parliament;
- (d) the Supreme Court, a Judge or any person acting in the office, or performing the functions of, a Master, the Principal Registrar or a Registrar of the Supreme Court;
- (e) the District Court, a District Court Judge or any person acting in the office, or performing the functions of, a Registrar within the meaning of the *District Court of Western Australia Act 1969*;

- (f) the Family Court, a Judge or an acting Judge of that Court or any person acting in the office, or performing the functions of, the Registrar or a Deputy Registrar of that Court;
- (g) the Children’s Court or a Judge, magistrate or member within the meaning of the *Children’s Court of Western Australia Act 1988*;
- (h) the Liquor Licensing Court, the Judge or an Acting Judge of that Court or any person acting in the office, or performing the functions of, the Registrar of that Court;
- (i) any other court of law;
- (j) a commissioner of any court;
- (k) a stipendiary magistrate;
- (l) a coroner;
- (m) the Governor, a member of the Governor’s Establishment within the meaning of the *Governor’s Establishment Act 1992* or a person to whom section 6 (1) (a) of that Act applies; or
- (n) any department or authority specified in Schedule 1 but if the extent to which this Act does not apply in respect of a department or authority has been set out in the item in Schedule 1 relating to that department or authority then this Act does not apply to that extent.

”.

(2) Section 13 (3) of the principal Act is amended —

- (a) by inserting after “Act” the following —
“ , but subject to subsection (5) ”; and

- (b) in paragraph (b) by inserting after “by” the following —

“
 , or a person employed or engaged to work
in,
”.

- (3) Section 13 (4) of the principal Act is amended —

- (a) by deleting “of the Public Service”;
(b) in paragraph (b) by deleting “officers of the Public Service” and substituting the following —

“ public service officers ”;

- (c) in paragraph (d) by inserting after “officers appointed” the following —

“ , and persons employed or engaged, ”;

- (d) in paragraph (d) (i) by deleting “who are so appointed” and substituting the following —

“
 or persons who are so appointed, employed
or engaged
”;

and

- (e) in paragraph (d) (ii) by inserting after “officers” the following —

“ or persons ”.

- (4) Section 13 (5) of the principal Act is repealed and the following subsection is substituted —

“
 (5) A person who is a ministerial officer for the purposes of section 74 (3) of the *Public Sector Management Act 1994* shall not, as such, be regarded for the purposes of this Act as a member or an officer or employee of a department or authority.
”.

Section 17 amended

11. Section 17 of the principal Act is amended —

- (a) in subsection (3) by deleting the paragraph designation “(a)”; and
- (b) by repealing subsection (4).

Section 17A amended

12. (1) Section 17A (4) of the principal Act is amended —

- (a) by deleting “of Government”; and
- (b) by deleting “Director-General appointed under section 7 (1) of the *Community Services Act 1972*” and substituting the following —

“ chief executive officer within the meaning of the *Young Offenders Act 1994* ”.

(2) Section 17A (6) of the principal Act is repealed and the following subsection is substituted —

“ (6) An officer referred to in subsection (1) who wilfully contravenes or fails to comply with this section is guilty of an offence. ”.

Section 19 amended

13. Section 19 of the principal Act is amended —

- (a) in subsection (1) by deleting “Before” and substituting the following —
“ Subject to subsection (1a), before ”;

- (b) by inserting after subsection (1) the following subsection —

“

(1a) If the Commissioner is of the opinion that, because of the nature or circumstances of a complaint, the complaint could be investigated and resolved expeditiously by conducting an informal investigation then —

(a) instead of notifying the principal officer in writing the Commissioner may notify the principal officer orally; and

(b) the Commissioner may notify the responsible Minister but does not have to do so.

”;

and

- (c) in subsection (7) by inserting before “opinion” the following —

“ the ”.

Sections 22A and 22B inserted

14. After section 22 of the principal Act the following sections are inserted —

“

Consultation

22A. (1) The Commissioner may consult the Anti-Corruption Commission or the Director of Public Prosecutions concerning any complaint under this Act or any investigation under this Act.

(2) Information obtained by the Commissioner or his officers in the course of, or for the purpose of, an investigation under this Act may be disclosed for the purposes of any consultation under subsection (1).

Disclosure of certain information

22B. A person who is the Commissioner, the Deputy Commissioner or an officer of the Commissioner authorized for the purposes of this section by the Commissioner or the Deputy Commissioner may disclose information obtained by the Commissioner or his officers in the course of, or for the purpose of, an investigation under this Act if the information —

- (a) is disclosed to a person who is —
 - (i) a member of the Anti-Corruption Commission; or
 - (ii) an officer or a seconded officer of the Anti-Corruption Commission authorized for the purposes of this subparagraph by the Anti-Corruption Commission,

and concerns a matter that is relevant to the functions of the Anti-Corruption Commission; or

- (b) is disclosed to a person who is —
 - (i) the Director of Public Prosecutions;
 - (ii) the Deputy Director of Public Prosecutions; or

- (iii) a member of the staff of the Director of Public Prosecutions authorized for the purposes of this subparagraph by the Director of Public Prosecutions or the Deputy Director of Public Prosecutions,

and concerns a matter that is relevant to the functions of either the Anti-Corruption Commission or the Director of Public Prosecutions.

”.

Section 23 amended

15. Section 23 (1) (c) of the principal Act is deleted and the following paragraph is substituted —

“ (c) as authorized by section 22A or 22B. ”.

Section 27 amended

16. Section 27 of the principal Act is amended —

(a) by inserting after the section designation “**27.**” the subsection designation “(1)”; and

(b) by inserting the following subsection —

“ (2) If neither House of Parliament is sitting at the time when the Commissioner wishes to lay a report in accordance with subsection (1) then the Commissioner may —

(a) send copies of the report to the Clerks of both Houses of Parliament; and

(b) make the report available to the public.

”.

Sections 30A and 30B inserted

17. After section 30 of the principal Act the following sections are inserted —

“

Protection of complainants etc.

30A. (1) A person is not liable to any civil proceedings in respect of —

- (a) making a complaint under this Act; or
- (b) providing information in the course of, or for the purpose of, an investigation under this Act.

(2) Subsection (1) does not apply if the complaint was made, or the information was provided, in bad faith.

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

Victimization

30B. (1) A person shall not —

- (a) prejudice, or threaten to prejudice, the safety or career of; or
- (b) intimidate or harass, or threaten to intimidate or harass; or

- (c) do any act that is, or is likely to be, to the detriment of,

another person because the other person —

- (d) has made or will or may in the future make a complaint under this Act; or
- (e) has provided, is providing or will or may in the future provide information in the course of, or for the purpose of, an investigation under this Act; or
- (f) has exercised a power conferred by this Act on the other person or has performed a duty imposed by this Act on the other person or is exercising or performing, or will or may in the future exercise or perform, any such power or duty.

Penalty: \$8 000 or imprisonment for 2 years.

(2) A person who attempts to commit an offence under subsection (1) commits an offence and is liable to the penalty set out in subsection (1).

(3) A person who —

- (a) intends that an offence under subsection (1) be committed; and
- (b) incites another person to commit the offence,

commits an offence and is liable to the penalty set out in subsection (1).

”.

Section 31 repealed and substituted

18. Section 31 of the principal Act is repealed and the following section is substituted —

“

General penalty

31. Unless otherwise expressly provided, a person who is guilty of an offence under this Act is liable to a penalty of \$1 000.

”.

Section 33 inserted

19. After section 32 of the principal Act the following section is inserted —

“

Regulations

33. The Governor may make regulations for amending Schedule 1.

”.

The Schedule repealed and a Schedule substituted

20. The Schedule to the principal Act is repealed and the following Schedule is substituted —

“

**SCHEDULE 1 — ENTITIES, AND EXTENT,
TO WHICH THIS ACT DOES NOT APPLY**

[Section 13 (2) (n)]

Note: each item in this Schedule is listed in the alphabetical order of the Act to which the item relates.

The Anti-Corruption Commission established under the *Anti-Corruption Commission Act 1988*.

The Director of Public Prosecutions and the Deputy Director of Public Prosecutions under the *Director of Public Prosecutions Act 1991*.

The Electoral Commissioner within the meaning of the *Electoral Act 1907* to the extent of the Electoral Commissioner's functions other than that of chief executive officer of the department of the Public Service known as the Western Australian Electoral Commission.

The Deputy Electoral Commissioner within the meaning of the *Electoral Act 1907*.

The Commissioner for Equal Opportunity appointed under the *Equal Opportunity Act 1984*.

The Director of Equal Opportunity in Public Employment appointed under the *Equal Opportunity Act 1984*.

The Auditor General appointed under the *Financial Administration and Audit Act 1985* to the extent of the Auditor General's functions other than that of chief executive officer of the department of the Public Service known as the Office of the Auditor General.

The Information Commissioner under the *Freedom of Information Act 1992*.

The Commissioner for Public Sector Standards under the *Public Sector Management Act 1994* to the extent of the Commissioner's functions other than that of chief executive officer of the department of the Public Service principally assisting the Commissioner in the performance of the Commissioner's functions under that Act.

The Parliamentary Commissioner for Administrative Investigations and the Deputy Commissioner for Administrative Investigations under the *Parliamentary Commissioner Act 1971*.

Any Royal Commission constituted under the *Royal Commissions Act 1968* and any member of a Royal Commission.

The Solicitor-General appointed under the *Solicitor-General Act 1969*.

”.

Minor amendments

21. (1) The provisions of the principal Act listed in the Table to this subsection are amended by deleting “government department or authority” wherever it occurs in those provisions and substituting the following —

“ department or authority ”.

Table

s. 13 (3)	s. 23 (1b)
s. 19 (4)	s. 23 (1d) (a)
s. 19 (7)	s. 23 (1e) (a)
s. 21 (1)	

(2) The provisions of the principal Act listed in the Table to this subsection are amended by deleting “government department or other authority” wherever it occurs in those provisions and substituting the following —

“ department or authority ”.

Table

s. 4 (in the definition of “appropriate authority”)	s. 14 (1)
	s. 14 (7)
s. 4 (in the definition of “responsible Minister”)	s. 19 (1)