

PARLIAMENTARY COMMISSIONER.

No. 124 of 1984.

AN ACT to amend the Parliamentary Commissioner Act 1971.

[Assented to 27 December 1984.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Parliamentary Commissioner Amendment Act 1984*. Short title.

(2) In this Act the Parliamentary Commissioner Act 1971 is referred to as the principal Act.

2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.

Section 11
amended.

3. Section 11 of the principal Act is amended—

- (a) by repealing subsection (1) and substituting the following—

“ (1) In so far as he is authorised so to do by Rules of Parliament made under this Act, or a resolution of both Houses of Parliament the Commissioner may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him delegate to the Deputy Commissioner or any officer of the Commissioner the performance of any of the functions of the Commissioner under this Act other than the power to delegate under this section or to make any report or recommendation under this Act. ”;

- (b) by repealing subsection (6) and substituting the following—

“ (6) The performance of a function by a delegate under this section shall be deemed to be the performance of the function by the Commissioner. ”; and

- (c) by inserting after subsection (6) the following—

“ (7) A delegate shall, upon request by a person affected by the exercise of any power delegated to him, produce the instrument of delegation, or a copy of the instrument, for inspection. ”.

Section 14
amended
and
transitional
provision.

4. Section 14 of the principal Act is amended by inserting, after subsection (1), the following subsections—

“ (1a) Subject to this Act and notwithstanding subsection (1), the Commissioner shall investigate any action taken by a member

of the Police Force or Police Department, whether or not that action relates to a matter of administration, where that action was, or purported to be, done in the exercise of, or in connection with or incidental to the exercise of, that member's powers, duties or functions as a member of the Police Force or Police Department:

Provided that the Parliamentary Commissioner shall not investigate such action until the Commissioner of Police has had a reasonable opportunity to conduct his own investigation into such action.

(1b) For the purposes of the proviso to subsection (1a), the Commissioner of Police shall be deemed to have had a reasonable opportunity to conduct his own investigation into any action referred to in that subsection if—

(a) a period of 42 days; or

(b) such longer period as is agreed to by the Commissioner of Police and the Parliamentary Commissioner,

has expired since the complaint relating to that action was received at the office of the Commissioner of Police.

(1c) The application of subsection (1a) does not extend to action taken by a member of the Police Force or Police Department before that subsection came into operation. ”.

Section 17A
inserted.

6. After section 17 of the principal Act, the following section is inserted—

Complaints
by persons
in custody.

“ 17A. (1) Subject to subsection (5), a person who is detained in custody is entitled—

(a) upon making a request to the officer in whose custody he is detained or to any other officer performing duties in connection with his detention—

(i) to be provided with facilities for preparing a complaint in writing under this Act, for furnishing in writing to the Commissioner after the complaint has been made any other relevant information, and for enclosing the complaint or the other information (if any) in a sealed envelope; and

(ii) to have posted to the Commissioner, without undue delay, a sealed envelope delivered by him to any such officer and addressed to the Commissioner; and

(b) to have delivered to him, without undue delay, any sealed envelope addressed to him and sent by the Commissioner that comes into the possession or under the control of any such officer.

(2) Subject to subsection (5), where a sealed envelope addressed to the Commissioner is delivered by a person detained in custody to an officer referred to in subsection (1) for posting to the Commissioner, or a sealed envelope addressed to a person so detained and sent by the

Commissioner comes into the possession or under the control of any such officer, the officer shall not open the envelope, or inspect any document enclosed in the envelope.

(3) The Commissioner may make arrangements with the relevant authorities for the identification and delivery of sealed envelopes sent by the Commissioner to persons detained in custody.

(4) In subsection (3) "the relevant authorities" means the Commissioner of Police, the Director of the Western Australia Prisons Department appointed under section 6 (1) of the Prisons Act 1981, the Director, Psychiatric Services appointed under section 6 (1) (d) of the Health Legislation Administration Act 1984 and the Director-General appointed under section 7 (1) of the Community Services Act 1972.

(5) Subsections (1) and (2)—

(a) do not affect the operation of sections 67 and 68 of the Prisons Act 1981; and

(b) subject to paragraph (a), have effect notwithstanding anything in any other Act.

(6) An officer referred to in subsection (1) shall not wilfully contravene or fail to comply with this section.

Penalty: \$200. ”.

7. Section 21 of the principal Act is amended by Section 21 amended. repealing subsection (2).

Section 23
amended.

8. Section 23 of the principal Act is amended by inserting, after subsection (1a), the following subsections—

“ (1b) Subsection (1) shall not be taken to preclude the Commissioner from disclosing information, or making a statement, to any person or to the public or a section of the public with respect to the performance of the functions of, or an investigation by, the Commissioner if, in his opinion, it is in the interests of any government department or authority to which this Act applies or of any person, or is otherwise in the public interest, so to disclose that information or to make that statement.

(1c) The Commissioner shall not disclose information or make a statement under subsection (1b) with respect to a particular investigation where the disclosure of that information, or the making of that statement, is likely to interfere with the carrying out of that or any other investigation or the making of a report by him under this Act.

(1d) The Commissioner shall not, in disclosing information or making a statement under subsection (1b) with respect to a particular investigation—

- (a) set out opinions that are, either expressly or impliedly, critical of any government department or authority to which this Act applies or any person unless the Commissioner has complied with subsection (1e) in relation to the investigation; or
- (b) disclose the name of a complainant or any other matter that would enable a complainant to be identified unless it is fair and reasonable in all the circumstances to do so.

(1e) Where the Commissioner proposes to disclose information or make a statement setting out opinions referred to in subsection (1d) (a) he shall, before doing so, afford—

(a) if the opinions relate to a government department or authority, the principal officer of the department or authority and the officer of that department or authority principally concerned in the complaint; or

(b) if the opinions relate to a person, that person,

the opportunity to appear before him and to make submissions, either orally or in writing, in relation to the complaint.

(1f) This section has effect notwithstanding section 19 (2). ”.

9. Section 28 of the principal Act is repealed. Section 28 repealed.

10. Section 30 of the principal Act is amended— Section 30 amended.

(a) in subsections (1) and (2) by deleting “negligently or” in each place where it occurs; and

(b) in subsection (4) by deleting “Neither the Commissioner nor any of his officers shall be called to give evidence” and substituting the following—

“ Except as required for the purpose of proceedings referred to in section 23 (1) (b), neither the Commissioner nor any of his officers shall be called to give evidence or produce any document ”.

Schedule
amended.

11. The Schedule to the principal Act is amended by inserting after "The Police Department" the following—

" The Police Force ".
