

WESTERN AUSTRALIA.

PARLIAMENTARY COMMISSIONER ACT 1971-1982.

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THE SCHEDULE.

Approved for Reprint 19 July 1983.

WESTERN AUSTRALIA.

PARLIAMENTARY COMMISSIONER.

No. 64 of 1971.¹

[As amended by Acts:

No. 68 of 1976, assented to 6 October 1976;
No. 13 of 1982, assented to 14 May 1982,

and reprinted pursuant to the Amendments Incorporation Act 1938.]

AN ACT to provide for the appointment of a Parliamentary Commissioner for Administrative Investigations for the investigation of administrative action taken by or on behalf of certain government departments and other authorities and for incidental purposes.

[Assented to 22 December 1971.]

BE it enacted—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Parliamentary Commissioner Act 1971-1982*. Short title.

2. This Act shall come into operation on a date to be fixed by Proclamation.¹ Commencement.

¹ Came into operation on 12 May 1972; see *Gazette* 12/5/72, p. 1043.

Arrange-
ment of Act.

3. This Act is arranged as follows—

PART I.—PRELIMINARY. Ss. 1-4.

PART II.—THE PARLIAMENTARY COMMISSIONER
FOR ADMINISTRATIVE INVESTIGATIONS. Ss. 5-12.

PART III.—JURISDICTION AND FUNCTIONS OF THE
COMMISSIONER.

Division 1—Extent of Jurisdiction. Ss. 13-14.

Division 2—Initiation of Investigations. Ss. 15-18.

Division 3—Conduct of Investigations. Ss. 19-24.

Division 4—Action on Investigations. Ss. 25-26.

*Division 5—Annual and other reports of the
Commissioner. Ss. 27-28.*

PART IV.—MISCELLANEOUS. Ss. 29-32

Definitions.
Amended by
No. 13 of
1982, s. 3.

4. In this Act, unless the contrary intention appears—

“Acting Commissioner” means the Acting Parliamentary Commissioner for Administrative Investigations appointed under this Act;

“appropriate authority”, in relation to an investigation under this Act, means the government department or other authority by which or on behalf of which the action that is the subject of such investigation was taken;

“Commissioner” means the Parliamentary Commissioner for Administrative Investigations appointed under this Act;

“department of the Public Service” means any department constituted by or under the Public Service Act 1978, or constituted by or under any other enactment as a department within the meaning of that Act;

“Deputy Commissioner” means the Deputy Parliamentary Commissioner for Administrative Investigations appointed under this Act;

“officer of the Commissioner” means an officer appointed under subsection (1) of section 9;

“officer of the Public Service” means a person employed in the Public Service as that expression is defined in the Public Service Act 1978;

“permanent head”, in relation to a department of the Public Service, means the permanent head thereof for the purposes of the Public Service Act 1978;

“person aggrieved”, in relation to a complaint under this Act, means the person who appears from the complaint to be the person personally affected by the action to which the complaint relates;

“principal officer” means, in relation to—

- (a) a department of the Public Service or similar organization, the permanent head or other principal officer thereof; and
- (b) any other authority, the president, chairman, or other principal or presiding member thereof or, if the authority is constituted of a single person, that person;

Parliamentary Commissioner.

“responsible Minister” means, in relation to action taken by any government department or other authority, the Minister charged with the administration of that department or the enactment in relation to the functions conferred by, or arising under which, the action was taken;

“section” means a section of this Act;

“tribunal” includes the person constituting a tribunal consisting of one person.

PART II.—THE PARLIAMENTARY COMMISSIONER FOR ADMINISTRATIVE INVESTIGATIONS.

Appoint-
ment, etc.,
of Commis-
sioner and
Deputy
Commis-
sioner.
Amended by
No. 13 of
1982, s. 3.

5. (1) For the purpose of conducting investigations in accordance with this Act there shall be appointed a Commissioner, to be known as the Parliamentary Commissioner for Administrative Investigations.

(1a) The Commissioner shall be assisted by a Deputy Commissioner, to be known as the Deputy Parliamentary Commissioner for Administrative Investigations.

(2) The Commissioner and Deputy Commissioner shall be appointed by the Governor, and shall hold office in accordance with the provisions of this Act.

(3) The Commissioner and Deputy Commissioner shall be appointed to hold office for a term of five years, but either the Commissioner or the Deputy Commissioner may, at any time, by writing under his hand, addressed to the Governor, resign his office, and on receipt of his resignation by the Governor, he shall vacate office as Commissioner or Deputy Commissioner, as the case requires.

(4) The Commissioner or Deputy Commissioner shall vacate his office on completing the year of service in which he attains the age of sixty-five years.

(5) The Commissioner and Deputy Commissioner shall be paid a salary at such rate as the Governor may determine; and the rate of that salary shall not, without the consent of the Commissioner or the Deputy Commissioner, as the case requires, be reduced during the term of office of the Commissioner or the Deputy Commissioner, as the case requires.

(6) The salary payable to the holder of the office of Commissioner or Deputy Commissioner under this section shall be paid out of the Consolidated Revenue Fund which, to the necessary extent, is hereby appropriated accordingly.

(7) The Commissioner and Deputy Commissioner are entitled to such leave of absence and such travelling and other allowances as the Governor determines.

(8) No person who is or has been within the preceding three years a member of the Parliament of the Commonwealth or any State shall be appointed as Commissioner or Deputy Commissioner, and if the Commissioner or Deputy Commissioner is nominated for election for any of such Houses of Parliament he shall vacate office as Commissioner or Deputy Commissioner, as the case requires.

(9) The Commissioner or Deputy Commissioner shall not, except in so far as he is authorized so to do by resolutions of both Houses of Parliament, hold any office of profit or trust (other than his office as Commissioner or Deputy Commissioner, as the case requires) or engage in any occupation for reward outside the duties of his office, and if the Commissioner or Deputy Commissioner contravenes this subsection he shall be regarded, for the purposes of section 6, as being guilty of misconduct.

(10) Section 34 of the Interpretation Act 1918 does not apply to the office of Commissioner or Deputy Commissioner.

Removal or suspension of Commissioner or Deputy Commissioner.
Amended by No. 13 of 1982, s. 4.

6. (1) The Commissioner or Deputy Commissioner may, at any time, be suspended or removed from his office by the Governor on addresses from both Houses of Parliament.

(2) Where the Governor is satisfied that the Commissioner or Deputy Commissioner—

- (a) is incapable of properly performing the duties of his office;
- (b) has shown himself incompetent properly to perform, or has neglected, those duties;
- (c) has applied to take, or has taken, advantage of any law relating to bankruptcy, or has compounded, or entered into any arrangement, with his creditors; or
- (d) has been guilty of misconduct,

he may suspend the Commissioner or Deputy Commissioner, as the case requires, from his office.

(3) When the Commissioner or Deputy Commissioner has been suspended from his office under subsection (2) of this section he shall be restored to office unless—

- (a) a statement of the grounds of his suspension is laid before each House of Parliament during the first seven sitting days of that House following the suspension; and
- (b) each House of Parliament, during the session in which the statement is so laid, and within thirty sitting days of that statement being so laid, passes an address praying for his removal from his office.

6A. (1) The Deputy Commissioner shall perform such duties as the Commissioner directs.

(2) Subject to section 7, when—

- (a) the Commissioner is absent from duty for any reason or is absent from the State;

Deputy Parliamentary Commissioner.
Inserted by No. 13 of 1982, s. 5.

(b) the Commissioner has been suspended; or

(c) the office of Commissioner is vacant,

the Deputy Commissioner shall act in the office of the Commissioner during the absence, suspension or vacancy and he may, while so acting, exercise all the powers and functions, and shall perform all the duties, of the Commissioner.

7. (1) The Governor may appoint a person to act in the office of the Commissioner in such cases or in such circumstances as may be provided for under this section, and the person so appointed shall be known as the Acting Parliamentary Commissioner for Administrative Investigations.

Acting
Parliamentary
Commissioner.
Amended by
No. 13 of
1982, s. 6.

(2) An Acting Commissioner may be appointed—

(a) when the Commissioner is absent from duty for any reason or is absent from the State;

(b) when the Commissioner has been suspended;

(c) when the office of Commissioner is vacant;
or

(d) in such other case or circumstances as may be specified in Rules of Parliament.

(2a) The Acting Commissioner, while so acting, may exercise the functions of the Commissioner, and anything done by the Acting Commissioner in so exercising those functions has the like effect as if it were done by the Commissioner.

(3) The Acting Commissioner is entitled to such remuneration, leave of absence and such travelling and such other allowances as the Governor may determine.

Oath of Commissioner, Deputy Commissioner and Acting Commissioner.
Amended by No. 68 of 1976, s. 2; No. 13 of 1982, s. 7.
Cf. 55 Vict. No. 14.

8. (1) Before entering upon the exercise of the duties of their respective offices the Commissioner, the Deputy Commissioner and the Acting Commissioner shall each take an oath or affirmation that he will faithfully and impartially perform the duties of his office, and that he will not, except in accordance with this Act, divulge any information received by him under this Act.

(2) The oath or affirmation shall be administered by the Speaker of the Legislative Assembly or, if the office of Speaker is then vacant or the Speaker is by reason of absence or incapacity unable to administer the oath or affirmation, by the President of the Legislative Council but, if the office of President is vacant or the President is by reason of absence or incapacity unable to administer the oath or affirmation, the oath or affirmation shall be administered by such person as is appointed by the Governor for the purpose.

Staff of the Commissioner.

9. (1) The Governor may, on the recommendation of the Commissioner, appoint such officers as he considers necessary for the purpose of enabling the functions of the Commissioner properly to be carried out.

(2) Subject to this Act, the terms and conditions of service of officers of the Commissioner shall be such as the Governor determines.

Cf. 55 Vict. No. 14.

(3) An officer of the Commissioner shall, before he commences his duties as such, take an oath or affirmation, to be administered by the Commissioner, that, except in accordance with this Act, he will not divulge any information received by him under this Act.

10. (1) The Public Service Act 1978, does not apply to the Commissioner, the Deputy Commissioner, the Acting Commissioner, or the officers of the Commissioner.

Supplementary provisions as to Commissioner and other officers.

Amended by No. 68 of 1976, s. 3; No. 13 of 1982, s. 8.

(2) The Commissioner, the Deputy Commissioner and each officer of the Commissioner shall, for the purposes of the Superannuation and Family Benefits Act 1938, be deemed to be an employee within the meaning of that Act.

(3) When an officer of the Public Service is appointed to the office of Commissioner, Deputy Commissioner or Acting Commissioner or becomes an officer of the Commissioner he is entitled to retain all his existing and accruing rights as if his service in that office or as such an officer as the case may be, were a continuation of his service as an officer of the Public Service.

(4) When a person ceases to hold the office of Commissioner, Deputy Commissioner or Acting Commissioner or to be an officer of the Commissioner and becomes an officer of the Public Service his service in that office or as an officer of the Commissioner shall be regarded as service in the Public Service for the purposes of determining his rights as an officer of the Public Service.

(5) Where a Commissioner immediately prior to his appointment occupied an office under the Public Service Act 1978, he shall, if his term of office expires by effluxion of time, other than by his attaining the age of sixty-five years, and he is not re-appointed, be entitled to be appointed to an office under the Public Service Act 1978, not lower in status than the office which he occupied immediately prior to his appointment as Commissioner.

11. (1) In so far as he is authorized so to do by Rules of Parliament made under this Act, or a resolution of both Houses of Parliament, the Commissioner may, by instrument in writing under his hand, delegate to any officer of the

Delegation of functions of Commissioner.

Commissioner the exercise of any powers conferred on the Commissioner under this Act, except the powers conferred on him by this subsection and the power to make any report or recommendations under this Act.

(2) A 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 specified offices.

(3) Every delegation under this section may be revoked or varied at any time by the Commissioner by instrument in writing under his hand, and no such delegation prevents the exercise of any power by the Commissioner.

(4) A delegation under this section may be made subject to conditions and restrictions, and may be made generally or in relation to any particular case or class of cases.

(5) When a Commissioner by whom a delegation is made dies, or ceases to hold, or is suspended from, office, the delegation shall be deemed to continue in force according to its tenor until it is revoked or varied under this section.

(6) Any act done by an officer of the Commissioner in the exercise of the powers delegated to him under this section has the like effect as if it were done by the Commissioner.

Rules of
Parliament.

12. (1) Rules of Parliament may be made for the guidance of the Commissioner in the exercise of his functions and for the other purposes for which Rules of Parliament may be made under this Act.

(2) Subject to this Act the functions of the Commissioner shall be exercised in accordance with the Rules of Parliament made under this Act.

(3) The Rules of Parliament referred to in this section are rules that have been agreed upon by each House of Parliament in accordance with the rules and orders thereof.

(4) Rules of Parliament made under this Act shall be published in the *Government Gazette*.

(5) Section 36 of the Interpretation Act 1918 does not apply to Rules of Parliament made under this Act.

PART III.—JURISDICTION AND FUNCTIONS OF THE COMMISSIONER.

Division 1.—Extent of Jurisdiction.

13. (1) Subject to subsection (2) of this section, this Act applies to the government departments and other authorities specified in The Schedule to this Act, and to any other government departments or other authorities to which this Act is declared to apply by Rules of Parliament.

Departments and authorities subject to investigation.
Amended by No. 13 of 1982, s. 9.

(2) This Act does not apply to—

- (a) the Supreme Court, The District Court of Western Australia, the Family Court of Western Australia or any other court of law;
- (b) a Judge of the Supreme Court, of The District Court of Western Australia or of the Family Court of Western Australia or any person acting in the office, or executing the functions of, the Master of the Supreme Court, the Principal Registrar or a Registrar of the Supreme Court, the Registrar of the District Court, or the Registrar or a Deputy Registrar of the Family Court;
- (c) a commissioner of any court or a stipendiary magistrate;

- (d) a coroner;
- (e) the Auditor General; or
- (f) the Parliamentary Privileges Act 1891.

(3) For the purposes of this Act—

- (a) references to a government department or authority shall be construed as including references to each of the members, officers, and employees thereof;
- (b) references to an officer of an authority shall be construed as including references to an officer appointed by that authority under any enactment; and
- (c) references to a member of an authority shall be construed as including references to the holder of any office created by an enactment who by virtue of his holding that office is a member of that authority.

(4) For the purposes of this Act, but subject to subsection (5) of this section, the following persons shall be deemed to constitute the officers and employees of a department of the Public Service, namely—

- (a) the permanent head of the department;
- (b) officers of the Public Service employed in the department;
- (c) officers appointed by the Governor under the provisions of any Act administered in that department; and
- (d) officers appointed by the Minister of the Crown administering the department or the permanent head of the department, being either—
 - (i) officers who are so appointed under any enactment; or

- (ii) officers whose remuneration as such is defrayed in whole or in part out of moneys provided by Parliament.

(5) A member of a board, committee, or similar body constituted by any enactment or by virtue of Her Majesty's prerogative, or of any tribunal so constituted, shall not, as such, be regarded, for the purposes of this Act, as an officer or employee of a department of the Public Service.

14. (1) Subject to this Act, the Commissioner shall investigate any decision or recommendation made, or any act done or omitted, that relates to a matter of administration and affects any person or body of persons in his or its personal capacity in or by any government department or other authority to which this Act applies in the exercise of any power or function.

Matters
subject to
investiga-
tion.
Amended by
No. 68 of
1976, s. 4.

(2) References in this Act to the taking of any action shall be construed as including references to—

- (a) a failure or refusal to perform any act;
- (b) the formulation of any proposal or intention; and
- (c) the making of any recommendation (including a recommendation to a Minister of the Crown).

(3) This section does not authorize or require the Commissioner to investigate under this Act any decision made by Cabinet or by a Minister of the Crown or question the merits of any such decision.

(4) Subject to subsection (5) of this section, the Commissioner shall not conduct an investigation under this Act in respect of any of the following matters, that is to say—

- (a) any action in respect of which the person aggrieved has or had a right of appeal,

reference, or review to or before a tribunal constituted under any enactment or by virtue of Her Majesty's prerogative; and

- (b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law.

(5) Notwithstanding anything in subsection (4) of this section, the Commissioner may conduct any investigation notwithstanding that the person aggrieved has or had such a right or remedy as is referred to in that subsection if he is satisfied that, in the particular circumstances, it is not reasonable to expect him to resort, or to have resorted, to it.

(6) The Commissioner shall not conduct an investigation into any action taken by a person acting as legal adviser or as counsel.

(7) The powers of the Commissioner under this Act in relation to any action taken by a government department or other authority may be exercised notwithstanding that that action was taken on behalf of, or in the exercise of any functions conferred on, an authority to which this Act does not apply, but nothing in this Act authorizes or requires the Commissioner to question the merits of any decision made by such an authority.

(8) The powers of the Commissioner to investigate any action may, if in all the circumstances he considers it proper so to do, be exercised in respect of action taken before the coming into operation of this Act.

Division 2.—Initiation of Investigations.

15. (1) Either House of Parliament, or any committee of either of those Houses, or a joint committee of both Houses of Parliament, may refer to the Commissioner, for investigation and report, any matter which is within his jurisdiction and which that House or committee considers should be investigated by him.

(2) On any matter being referred to him under this section the Commissioner shall, as soon as may be, carry out the investigation and submit his report thereon, in the case of a matter referred—

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

(3) Subsection (4) of section 14 does not apply to a matter referred to the Commissioner under this section, but where, in relation to that matter any person aggrieved thereby has or had such a right or remedy as is referred to in that subsection, the Commissioner may refrain from commencing any investigation into that matter until he is satisfied that that right or remedy cannot or will not be exercised or sought or, if it has been exercised or sought, the proceedings thereon have been finally concluded or abandoned.

16. (1) Without prejudice to the provisions of section 15 any investigation that the Commissioner is authorized to conduct under this Act may be so conducted, either on his own motion or on a complaint made in accordance with section 17.

Initiation
of investiga-
tions in
other cases.

(2) An investigation may be commenced as a consequence of a complaint notwithstanding that the complaint may not on its face be against any such action as is referred to in subsection (1) of section 14.

Complaints.

17. (1) Except as otherwise provided in this section a complaint under this Act shall be made in writing by any person or by any body of persons, whether incorporated or not.

(2) When the person by whom a complaint might have been made under this Act dies or is for any reason unable to act for himself, the complaint may be made by his personal representative or by a member of his family or other individual suitable to represent him; but except as otherwise provided in this subsection a complaint shall not be entertained under this Act unless it is made by the person aggrieved himself.

(3) (a) The provisions of any enactment prohibiting or restricting or authorizing or requiring the imposition of prohibitions or restrictions on communication to any other person do not apply to any communication made for the purpose of making a complaint under this Act.

(b) Any person having the right to keep in custody, or to detain in any place, a person who desires to make a complaint under this Act shall take all steps necessary to facilitate the making of the complaint.

(4) A person who contravenes subsection (3) of this section is guilty of an offence.

(5) Except where the Commissioner, in the special circumstances of a case, otherwise determines, a complaint shall not be entertained under this Act unless it is made not later than twelve months from the day on which the person aggrieved first had notice of the matters alleged in the complaint.

(6) Notwithstanding anything in subsection (5) of this section a complaint in respect of any action taken before the date of the coming into operation of this Act may be entertained if it is made within the six months following that date.

18. (1) The Commissioner may refuse to entertain a complaint, or, having commenced to investigate a matter raised in a complaint, may refuse to continue the investigation if he is of the opinion that—

Refusal to investigate complaints.

- (a) the matter raised in the complaint is trivial;
- (b) the complaint is frivolous or vexatious or is not made in good faith;
- (c) the person aggrieved has not a sufficient personal interest in the matter raised in the complaint; or
- (d) having regard to all the circumstances of the case, the investigation, or the continuance of the investigation of the matter raised in the complaint, is unnecessary or unjustifiable.

(2) Where, under this Act, the Commissioner is precluded from entertaining, or refuses to entertain, a complaint, or refuses to continue an investigation of any matter raised in a complaint, he shall inform the complainant of his decision and at the same time state the reasons therefor.

Division 3.—Conduct of Investigations.

19. (1) Before investigating under this Act any action taken by or on behalf of a government department or other authority the Commissioner shall notify the principal officer thereof and the responsible Minister in writing of his intention so to do, specifying the action in respect of which the investigation is to be conducted.

Proceedings on investigations.

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

(3) Subject to any Rules of Parliament made under this Act, the Commissioner is not required to hold any hearing for the purposes of an investigation, and he may obtain information from such persons and in such manner, and make such inquiries, as he thinks fit. Any person who is concerned or involved in the investigation may be represented by counsel or otherwise.

(4) If, at any time during the course of an investigation, it appears to the Commissioner that there may be grounds for making a report on that investigation that may affect or concern any government department or authority to which this Act applies he shall, before making that report, afford to the principal officer thereof an opportunity to comment on the subject matter of the investigation.

(5) The Commissioner may, at any time during or after an investigation consult any Minister of the Crown who is concerned in the subject matter of the investigation.

(6) In relation to any investigation, if a Minister of the Crown so requests or the investigation relates to any recommendation made to such a Minister, the Commissioner shall consult that Minister before forming a final opinion on any of the matters referred to in subsection (1) or subsection (2) of section 25.

(7) If, during or after an investigation, the Commissioner is of opinion that there is evidence of any breach of duty or misconduct on the part of any member, officer, or employee of any government department or authority to which this Act applies—

- (a) he shall report that matter to the principal officer thereof; and
- (b) he shall furnish a copy of the report to the Minister charged with the administration of that department or the enactment by which the authority is constituted.

(8) Subject to this Act and any Rules of Parliament made thereunder the Commissioner may regulate his procedure on an investigation in such manner as he thinks fit.

20. (1) Where the Commissioner has decided to investigate any matter under this Act—

Commissioner has power of Royal Commission and Chairman thereof. Evidence etc. Amended by No. 68 of 1976, s. 6.

(a) the Commissioner has all the powers, rights and privileges that are specified in the Royal Commissions Act 1968, as appertaining to a Royal Commission and the Chairman thereof; and

(b) all the provisions of that Act have effect as if they were enacted in this Act and in terms made applicable to the Commissioner and that matter as if the matter were one into which a Royal Commission was appointed to inquire under that Act.

(2) (a) No obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to persons in the service of the Crown or any authority to which this Act applies, whether imposed by any enactment or by any rule of law, applies to the disclosure of information for the purposes of an investigation under this Act.

(b) The Crown or any authority to which this Act applies is not entitled in relation to any such investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.

(3) Subject to subsection (2) of this section, a person is not compelled for the purposes of an investigation under this Act to give any evidence or produce any document that he could not be compelled to give or produce in proceedings before a court.

Entry of
premises.

21. (1) For the purposes of conducting an investigation under this Act, the Commissioner may, at anytime, enter any premises occupied or used by any government department or authority to which this Act applies, and inspect those premises or anything for the time being therein.

(2) The powers conferred by this section to enter any premises occupied or used by a government department or other authority shall not be exercised unless previous notice of the intention so to do has been given a reasonable time before the proposed entry to the principal officer thereof in writing.

Protection
for proceed-
ings in
Cabinet.

22. (1) A person shall not be required or authorized by virtue of this Act—

- (a) to furnish any information or answer any question relating to proceedings of Cabinet or of any committee of Cabinet; or
- (b) to produce or inspect so much of any document as relates to any such proceedings.

(2) For the purposes of this section a certificate issued by the Director General, Department of the Premier and Cabinet, with the approval of the Premier of the State, certifying that any information or question, or any document or part of a document, relates to any such proceedings as are referred to in subsection (1) of this section is conclusive of the fact so certified.

Secrecy.
Amended by
No. 68 of
1976, s. 7.

23. (1) Information obtained by the Commissioner or his officers in the course of, or for the purpose of, an investigation under this Act, shall not be disclosed, except—

- (a) for the purposes of the investigation and of any report or recommendations to be made thereon under this Act; or

- (b) for the purposes of any proceedings for any perjury or any offence under the Royal Commissions Act 1968, or under this Act alleged to have been committed in any proceedings upon such an investigation.

(1a) The Commissioner may in writing direct the person to whom a document is sent by the Commissioner not to disclose to any other person any information contained in the document except for the purposes of the investigation to which the document relates, and a person to whom such a direction is given shall comply with the direction.

(2) Any person who discloses information contrary to the provisions of this section is guilty of an offence.

23A. Any document that is sent to the Commissioner or his officers or by the Commissioner or his officers in the course of, or for the purposes of, an investigation under this Act and was prepared specifically for the purposes of the investigation shall be privileged and be not admissible in evidence in any proceedings other than proceedings for perjury or any offence under the Royal Commissions Act 1968 or under this Act alleged to have been committed in any proceedings upon such an investigation.

Documents sent to or by the Commissioner not admissible. Inserted by No. 73 of 1976, s. 8.

24. Any person who—

Obstruction.

- (a) without lawful excuse, wilfully obstructs, hinders, or resists the Commissioner or any other person in the exercise of his powers under this Act;
- (b) without lawful excuse, refuses or wilfully fails to comply with any lawful requirement of the Commissioner or any other person under this Act; or

- (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,

is guilty of an offence.

Division 4.—Action on Investigations.

Procedure
on comple-
tion of in-
vestigation.

25. (1) Where, as a result of an investigation conducted under this Act (not being an investigation conducted pursuant to section 15), the Commissioner is of the opinion that the action to which the investigation relates—

- (a) appears to have been taken contrary to law;
- (b) was unreasonable, unjust, oppressive, or improperly discriminatory;
- (c) was in accordance with a rule of law or a provision of an enactment or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory;
- (d) was taken in the exercise of a power or discretion, and was so taken for an improper purpose or on irrelevant grounds, or on the taking into account of irrelevant considerations;
- (e) was a decision that was made in the exercise of a power or discretion and the reasons for the decision were not, but should have been, given;
- (f) was based wholly or partly on a mistake of law or fact; or
- (g) was wrong,

he shall, as in the circumstances of the case he thinks fit, carry out the duties imposed on him by subsection (2) of this section.

(2) Where in such a case as is referred to in subsection (1) of this section the Commissioner is of the opinion—

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

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

(3) Where the Commissioner makes any report or recommendations to the principal officer of an authority under subsection (2) of this section, he shall send a copy thereof to the responsible Minister.

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

(5) Where it appears to the Commissioner that no steps that seem to him to be appropriate have been taken within a reasonable time of his making any report or recommendations under subsection (2) of this section, the Commissioner, after considering the comments (if any) made by or on behalf of the principal officer to whom the report or recommendations were made, may, if he thinks fit, send to the Premier of the State a copy of the report and the recommendations together with a copy of any such comments.

(6) Where a copy of any report, recommendations, or comments has been sent to the Premier of the State under subsection (5) of this section, the Commissioner may lay before each House of Parliament such report on the matters to which they relate as he thinks fit.

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

Information
to com-
plainant on
investiga-
tion.
Amended by
No. 68 of
1976, s. 9.

26. Where the Commissioner conducts an investigation on a complaint made under this Act he shall inform the complainant, in such manner and at such time as he thinks proper, of the result of the investigation and may from time to time if he thinks it proper, at any time prior to the conclusion of the investigation, inform the complainant in such manner as he thinks proper of the progress then made in the conduct of the investigation, and, where the Commissioner has made any recommendation under subsection (2) of section 25 and it appears to him that steps which seem to him to be appropriate have not been taken within a reasonable time of the making of those recommendations, the Commissioner shall inform the complainant of the recommendations, making such comments thereon as he thinks proper.

Division 5.—Annual and other reports of the Commissioner.

27. Without limiting his right under any other provision of this Act to lay a report before either House of Parliament, the Commissioner, subject to any Rules of Parliament made under this Act, shall, as soon as practicable after each thirtieth day of June, lay before each House of Parliament a report on the exercise of his functions during the twelve months ending on that date, and, may, at any time, if he thinks fit, lay before each House of Parliament, a report on any matter arising in connection with the exercise of his functions.

Annual and other reports to Parliament.

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

Other reports on authority of Rules of Parliament.

PART IV.—MISCELLANEOUS.

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

Application to Supreme Court.

(2) References in this section, in relation to an investigation into any action taken by or on behalf of an authority, to the party subject to the investigation shall be construed as references to that authority or the principal officer thereof.

Protection
of Commis-
sioner and
officers.

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

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

(3) Notwithstanding anything in the foregoing provisions of this section, no prerogative writ shall be issued compelling the Commissioner to carry out any investigation, and no proceedings shall be brought against the Commissioner whereby the issue of such a writ is sought.

(4) Neither the Commissioner nor any of his officers shall be called to give evidence in any court, or in any judicial proceedings, in respect of any matter coming to his knowledge in the exercise of his functions under this Act.

Penalties.

31. A person who is guilty of an offence under this Act is liable to a fine of two hundred and fifty dollars or imprisonment for twelve months, or to both the fine and the imprisonment.

Expenses of
Act.

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

THE SCHEDULE.

(Section 13.)

The Schedule.
Substituted
by No. 13 of
1982, s. 10.

Government Departments and other Authorities
to which this Act applies.

All departments of the Public Service, but excluding there-
from—

- (a) officers of the establishment of the Governor;
and
- (b) the Agent General and officers employed in his
office.

Local Authorities, namely—

- (a) the council of each city, town or shire, and any
committee of, or appointed by, any such council,
and any regional council under the Local Gov-
ernment Act 1960;
- (b) a commissioner of a municipality appointed
under the Local Government Act 1960;
- (c) any other body constituted under an enact-
ment that has the power to levy, or cause to
be levied, a rate on or with respect to, land.

Western Australian Meat Commission constituted under the
Abattoirs Act 1909.

Agriculture Protection Board constituted under the Agricul-
ture Protection Board Act 1950 and any regional advisory
committee or zone control authority constituted under
the Agriculture and Related Resources Protection Act
1976.

Albany Port Authority constituted under the Albany Port
Authority Act 1926.

Western Australian Alcohol and Drug Authority consti-
tuted under the Alcohol and Drug Authority Act 1974.

Animal Resources Authority established under the Animal
Resources Authority Act 1981.

The Board of the Art Gallery of Western Australia
constituted under the Art Gallery Act 1959.

Artificial Breeding Board constituted under the Artificial
Breeding Board Act 1965.

Parliamentary Commissioner.

- Beekeepers' Compensation Fund Committee constituted under the Bee Industry Compensation Act 1953.
- Builders' Registration Board of Western Australia constituted under the Builders' Registration Act 1939.
- Registrar of Building Societies holding office under the Building Societies Act 1976.
- Bunbury Port Authority constituted under the Bunbury Port Authority Act 1909.
- Bush Fires Board and bush fire brigades constituted under the Bush Fires Act 1954.
- Carnarvon Banana Industry Compensation Committee constituted under the Carnarvon Banana Industry (Compensation Trust Fund) Act 1961.
- The Trustees of a Public Cemetery under the Cemeteries Act 1897.
- Air Pollution Control Council and the Scientific Advisory Committee established under the Clean Air Act 1964.
- Coal Mine Workers' Pensions Tribunal established under the Coal Mine Workers (Pensions) Act 1943.
- The Coal Miners' Welfare Board of Western Australia established under the Coal Miners' Welfare Act 1947.
- Construction Safety Advisory Board constituted under the Construction Safety Act 1972.
- Consumer Products Safety Committee established under the Consumer Affairs Act 1971.
- Country High School Hostels Authority established under the Country High School Hostels Authority Act 1960.
- Registrar of Credit Unions holding office under the Credit Unions Act 1979.
- Dairy Industry Authority of Western Australia constituted under the Dairy Industry Act 1973.
- Dried Fruits Board constituted under the Dried Fruits Act 1947.

Education Department and Board of Secondary Education constituted under the Education Act 1928.

Esperance Port Authority constituted under the Esperance Port Authority Act 1968.

Factory Welfare Board, Holiday Resorts Advisory Committee and Retail Trade Advisory and Control Committee established under the Factories and Shops Act 1963.

Finance Brokers Supervisory Board constituted under the Finance Brokers Control Act 1975.

Western Australian Fire Brigades Board constituted under the Fire Brigades Act 1942.

Fremantle Port Authority constituted under the Fremantle Port Authority Act 1902.

Insurance Brokers Licensing Board constituted under the General Insurance Brokers and Agents Act 1981.

Geraldton Port Authority constituted under the Geraldton Port Authority Act 1968.

Government Employees' Housing Authority established under the Government Employees' Housing Act 1964.

The Promotions Appeal Board established under the Government Employees (Promotions Appeal Board) Act 1945.

Western Australian Government Railways Commission constituted under the Government Railways Act 1904.

The Grain Pool of W.A. constituted under the Grain Marketing Act 1975.

Hairdressers Registration Board of Western Australia established under the Hairdressers Registration Act 1946.

Honey Pool of Western Australia constituted under the Honey Pool Act 1978.

Any Board within the meaning of the Hospitals Act 1927.

The State Housing Commission preserved and continued under the Housing Act 1980.

Advisory Committee established under section 6 of the Industrial Development (Kwinana Area) Act 1952.

Parliamentary Commissioner.

The Land Resumptions for Industries Committee established under section 4 of the Industrial Development (Resumption of Land) Act 1945.

Industrial Training Advisory Council and any industrial training advisory board established under the Industrial Training Act 1975.

The Industries Assistance Board constituted under the Industries Assistance Act 1915.

Joondalup Development Corporation established under the Joondalup Centre Act 1976.

Benger Drainage Board constituted under the Land Drainage Act 1925.

Land Valuers Licensing Board constituted under the Land Valuers Licensing Act 1978.

The Library Board of Western Australia constituted under the Library Board of Western Australia Act 1951.

The Land Surveyors Licensing Board constituted under the Licensed Surveyors Act 1909.

Keep Australia Beautiful Council (W.A.) established under the Litter Act 1979.

Local Government Superannuation Board established under the Local Government Superannuation Act 1980.

Lotteries Commission constituted under the Lotteries (Control) Act 1954.

Commissioner of Main Roads appointed under the Main Roads Act 1930.

Machinery Safety Advisory Board constituted under the Machinery Safety Act 1974.

Western Australian Egg Marketing Board constituted under the Marketing of Eggs Act 1945.

Western Australian Potato Marketing Board constituted under the Marketing of Potatoes Act 1946.

Every Board of Visitors under the Mental Health Act 1962.

Metropolitan Market Trust constituted under the Metropolitan Market Act 1926.

Metropolitan (Perth) Passenger Transport Trust constituted under the Metropolitan (Perth) Passenger Transport Trust Act 1957.

The Metropolitan Region Planning Authority constituted under the Metropolitan Region Town Planning Scheme Act 1959.

Metropolitan Water Authority preserved and continued by the Metropolitan Water Authority Act 1982.

Mine Workers' Relief Board constituted under the Mine Worker's Relief Act 1932.

Motor Vehicle Dealers Licensing Board constituted under the Motor Vehicle Dealers Act 1973.

The Motor Vehicle Insurance Trust constituted under the Motor Vehicle (Third Party Insurance) Act 1943.

Murdoch University established under the Murdoch University Act 1973.

The Western Australian Museum Board constituted under the Museum Act 1969.

National Parks Authority constituted under the National Parks Authority Act 1976.

Painters' Registration Board constituted under the Painters' Registration Act 1961.

The Trustees of the Parliamentary Superannuation Fund under the Parliamentary Superannuation Act 1970.

An authorized officer appointed under the Petroleum Products Subsidy Act 1965.

Poisons Advisory Committee constituted under the Poisons Act 1964.

The Police Department.

Port Hedland Port Authority constituted under the Port Hedland Port Authority Act 1970.

Potato Growing Industry Trust Fund Advisory Committee constituted under the Potato Growing Industry Trust Fund Act 1947.

Parliamentary Commissioner.

Poultry Industry Trust Fund Committee constituted under the Poultry Industry (Trust Fund) Act 1948.

The Public Service Board established under the Public Service Act 1978.

Real Estate and Business Agents Supervisory Board constituted under the Real Estate and Business Agents Act 1978.

Rural Housing Authority constituted under the Rural Housing (Assistance) Act 1976.

Rural Youth Movement Council constituted under the Rural Youth Movement Act 1955.

Settlement Agents Supervisory Board constituted under the Settlement Agents Act 1981.

The State Energy Commission of Western Australia preserved and continued by the State Energy Commission Act 1979.

The State Government Insurance Office constituted under the State Government Insurance Office Act 1938.

State Tender Board of Western Australia established under the State Tender Board Act 1965.

Superannuation Board constituted under the Superannuation and Family Benefits Act 1938.

Taxi Control Board constituted under the Taxi-cars (Coordination and Control) Act 1963.

Totalisator Agency Board constituted under the Totalisator Agency Board Betting Act 1960.

Town Planning Board established under the Town Planning and Development Act 1928.

Registrar of Trade Associations appointed under the Trade Associations Registration Act 1959.

The Transport Commission under the Transport Act 1966.

University of Western Australia established under the University of Western Australia Act 1911.

Bunbury Water Board, Busselton Water Board and Harvey Water Board constituted under the Water Boards Act 1904.

Waterways Commission, Leschenault Inlet Management Authority, Peel Inlet Management Authority and Swan River Management Authority constituted under the Waterways Conservation Act 1976.

Western Australian Coastal Shipping Commission constituted under the Western Australian Coastal Shipping Commission Act 1965.

Western Australian Institute of Technology established under the Western Australian Institute of Technology Act 1966.

The Western Australian Wildlife Authority constituted under the Wildlife Conservation Act 1950.

Workers' Compensation Board and a Supplementary Workers' Compensation Board constituted, or constituted and continued, under the Workers' Compensation and Assistance Act 1981.

