



Western Australia

# **Parliamentary Commissioner Act 1971**

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## Parliamentary Commissioner Act 1971

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**Defined Terms**



Western Australia

## **Parliamentary Commissioner Act 1971**

**An Act to provide for the appointment of a Parliamentary Commissioner for Administrative Investigations with functions relating to the investigation of administrative action taken by or on behalf of certain departments and authorities and to the deaths of certain children and for incidental purposes.**

*[Long title amended by No. 78 of 1996 s. 4; No. 78 of 2003 s. 72(1); No. 10 of 2009 s. 4.]*

## Part I — Preliminary

**1. Short title**

This Act may be cited as the *Parliamentary Commissioner Act 1971*<sup>1</sup>.

**2. Commencement**

This Act shall come into operation on a date to be fixed by Proclamation<sup>1</sup>.

[3. Deleted by No. 10 of 1998 s. 76.]

**4. Terms used**

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 department or authority by which or on behalf of which the action that is the subject of such investigation was taken;

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

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

**contractor** means a contractor as defined in the *Court Security and Custodial Services Act 1999* or the *Prisons Act 1981*, as is relevant to the case;

**Corruption and Crime Commission** has the meaning given to **Commission** under the *Corruption and Crime Commission Act 2003*;

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

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



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

**Inspector of Custodial Services** means the Inspector of Custodial Services under the *Inspector of Custodial Services Act 2003*;

**officer of the Commissioner** means an officer appointed under section 9(1);

**officer of the Corruption and Crime Commission** has the meaning given to **officer of the Commission** under the *Corruption and Crime Commission Act 2003*;

**officer of the Parliamentary Inspector of the Corruption and Crime Commission** has the meaning given to **officer of the Parliamentary Inspector** under the *Corruption and Crime Commission Act 2003*;

**Parliamentary Inspector of the Corruption and Crime Commission** has the meaning given to **Parliamentary Inspector** under the *Corruption and Crime Commission Act 2003*;

**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 —

- (a) in relation to a department or an organisation within the meaning of the *Public Sector Management Act 1994*, the chief executive officer or chief employee of the department or organisation; and
- (aa) in relation to a contractor and to any subcontractor under the relevant contract, the holder of the office specified in the relevant contract to be the principal officer for the purposes of this Act; 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;

**s. 4A**

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

**responsible Minister** means —

- (a) in relation to action taken by any department or 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; and
- (b) in relation to action taken by a contractor or subcontractor, the Minister to whom the administration of the *Court Security and Custodial Services Act 1999* or the *Prisons Act 1981* is committed, as is relevant to the case;

**staff**, in relation to the Commissioner, means officers of the Commissioner and persons whose services are used under section 9(2a) and persons engaged under section 9(2B);

**subcontractor** means a subcontractor as defined in the *Court Security and Custodial Services Act 1999* or the *Prisons Act 1981*, as is relevant to the case;

**tribunal** includes the person constituting a tribunal consisting of one person.

*[Section 4 amended by No. 13 of 1982 s. 2; No. 73 of 1994 s. 4; No. 78 of 1996 s. 5 and 21; No. 43 of 1999 s. 20; No. 47 of 1999 s. 23; No. 74 of 2003 s. 91(2); No. 75 of 2003 s. 56(1); No. 78 of 2003 s. 72; No. 10 of 2009 s. 5.]*

**4A. Term used: authority**

- (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;

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- (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;
- (f) a contractor or subcontractor.
- (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 4A inserted by No. 78 of 1996 s. 6; amended by No. 47 of 1999 s. 24.]*

**Part II — The Parliamentary Commissioner for  
Administrative Investigations**

**5.        Commissioner and Deputy Commissioner, appointment of  
etc.**

- (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 5 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) deleted]*
- (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 charged to the Consolidated Account 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 3 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 authorised 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 52 of the *Interpretation Act 1984* does not apply to the office of Commissioner or Deputy Commissioner.
- [Section 5 amended by No. 13 of 1982 s. 3; No. 6 of 1993 s. 11; No. 49 of 1996 s. 64; No. 78 of 1996 s. 7; No. 10 of 1998 s. 57(1); No. 77 of 2006 s. 4.]*

**6. Removal or suspension of Commissioner or Deputy Commissioner**

- (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; or
  - (b) has shown himself incompetent properly to perform, or has neglected, those duties; or

**s. 6A**

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(c) is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; 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) 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 7 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 30 sitting days of that statement being so laid, passes an address praying for his removal from his office.

*[Section 6 amended by No. 13 of 1982 s. 4; No. 18 of 2009 s. 62.]*

**6A. Deputy Parliamentary Commissioner, functions of**

(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; or

(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.

*[Section 6A inserted by No. 13 of 1982 s. 5.]*

**7. Acting Parliamentary Commissioner, appointment of etc.**

- (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.
- (2) An Acting Commissioner may be appointed —
  - (a) when the Commissioner is absent from duty for any reason or is absent from the State; or
  - (b) when the Commissioner has been suspended; or
  - (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.

*[Section 7 amended by No. 13 of 1982 s. 6.]*

**8. Oath or affirmation of Commissioner, Deputy Commissioner and Acting Commissioner**

- (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.

**s. 9**

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- (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.

*[Section 8 amended by No. 68 of 1976 s. 2; No. 13 of 1982 s. 7.]*

**9. Staff of Commissioner**

- (1) The Commissioner may 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 Commissioner determines.
- (2a) The Commissioner may by arrangement with the employing authority of the officer or employee, make use, either full-time or part-time, of the services of any officer or employee employed in the Public Service or in a State instrumentality or otherwise in the service of the Crown in right of the State.
- (2B) The Commissioner may engage persons under contracts for services to provide professional, technical or other assistance for the purpose of enabling the functions of the Commissioner properly to be carried out.
- (3) A member of the Commissioner's staff 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.



(4) The Commissioner may by arrangement with an employing authority, State instrumentality or other statutory office holder, agree to that authority, instrumentality or office holder making use, either full-time or part-time, of the services of any officer of the Commissioner.

(5) In this section —

*employing authority* means an employing authority within the meaning of the *Public Sector Management Act 1994*.

[Section 9 amended by No. 74 of 2003 s. 91(3), (4), (6), (8) and (9); No. 10 of 2009 s. 6.]

#### **10. Other provisions as to Commissioner and other officers**

(1) Part 3 of the *Public Sector Management Act 1994* does not apply to the Commissioner, the Deputy Commissioner, the Acting Commissioner, or the officers of the Commissioner.

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

(3) When a public service officer 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 a public service officer.

(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 a public service officer 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 a public service officer.

**s. 11**

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- (5) Where —
- (a) the Commissioner or Deputy Commissioner; or
  - (b) an officer of the Commissioner who is appointed for a fixed term,

immediately prior to his appointment under this Act, occupied an office under Part 3 of the *Public Sector Management Act 1994* for an indefinite period as a permanent officer, he shall, if his term of office expires by effluxion of time and he is not reappointed, be entitled to be appointed to an office under Part 3 of the *Public Sector Management Act 1994*, not lower in status than the office which he occupied immediately prior to his appointment as Commissioner, Deputy Commissioner or officer of the Commissioner, as the case requires.

- (6) Subsection (5) applies to an officer of the Commissioner irrespective of whether the officer was appointed before or after the day on which subsection (5)(b) commenced.

*[Section 10 amended by No. 68 of 1976 s. 3; No. 13 of 1982 s. 8; No. 32 of 1994 s. 19; No. 78 of 1996 s. 8; No. 74 of 2003 s. 91(10), (11).]*

**11. Delegation by Commissioner**

- (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 member of the Commissioner's staff 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.
- (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) The performance of a function by a delegate under this section shall be deemed to be the performance of the function by the Commissioner.
- (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 11 amended by No. 124 of 1984 s. 3; No. 74 of 2003 s. 91(12).]*

## **12. Rules of Parliament**

- (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.

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- (4) Rules of Parliament made under this Act shall be published in the *Government Gazette*.
- (5) Section 42 of the *Interpretation Act 1984* does not apply to Rules of Parliament made under this Act.

*[Section 12 amended by No. 78 of 1996 s. 9.]*

## **Part III — Jurisdiction and functions of the Commissioner**

### **Division 1 — Extent of jurisdiction**

#### **13. Departments and authorities subject to investigation**

- (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; or
  - (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*; or
  - (c) the Clerk or the Deputy Clerk of either House of Parliament; or
  - (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; or
  - (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*; or
  - (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 Principal Registrar, a registrar or a deputy registrar of that Court; or
  - (g) the Magistrates Court, or a magistrate or acting magistrate appointed under the *Magistrates Court Act 2004*, or a justice of the peace when constituting that Court; or

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- (ga) the Children's Court, or a judge, acting judge, magistrate or acting magistrate, appointed under the *Children's Court of Western Australia Act 1988*, or a justice of the peace when constituting that Court; or
  - (h) the Liquor Licensing Court<sup>3</sup>, 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; or
  - (i) any other court of law; or
  - (j) a commissioner of any court; or
  - [(k) deleted]*
  - (ka) the State Administrative Tribunal, a judicial or non-judicial member of that Tribunal or any person acting in the office, or performing the functions, of the executive officer of that Tribunal; or
  - (l) a coroner; or
  - (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.
- (3) For the purposes of this Act, but subject to subsection (5) —
- (a) references to a department or authority shall be construed as including references to each of the members, officers, and employees thereof; and
  - (b) references to an officer of an authority shall be construed —
    - (i) as including references to an officer appointed by, or a person employed or engaged to work in, that authority under any enactment; and

- (ii) in the case of a contractor or subcontractor, as also including references to an officer of, or a person employed or engaged to work for, the contractor or subcontractor;
- and
- (c) references to a member of an authority shall be construed —
    - (i) 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; and
    - (ii) in the case of a contractor or subcontractor, as including references to each director of the contractor or subcontractor.
- (4) For the purposes of this Act, but subject to subsection (5), the following persons shall be deemed to constitute the officers and employees of a department, namely —
- (a) the chief executive officer of the department; and
  - (b) public service officers employed in the department; and
  - (c) officers appointed by the Governor under the provisions of any Act administered in that department; and
  - (d) officers appointed, and persons employed or engaged, by the Minister of the Crown administering the department or the chief executive officer of the department, being either —
    - (i) officers or persons who are so appointed, employed or engaged under any enactment; or
    - (ii) officers or persons whose remuneration as such is defrayed in whole or in part out of moneys provided by Parliament.
- (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 13 amended by No. 13 of 1982 s. 9; No. 14 of 1994 s. 19(1); No. 29 of 1996 s. 26; No. 78 of 1996 s. 10 and 21; No. 41 of 1997 s. 34; No. 47 of 1999 s. 25; No. 55 of 2004 s. 1325; No. 59 of 2004 s. 141.]*

**14. Matters subject to investigation**

- (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 department or authority to which this Act applies in the exercise of any power or function.
- (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; and
  - (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 authorise 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), 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 the Crown'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), 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 department or 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 authorises 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.

*[Section 14 amended by No. 68 of 1976 s. 4; No. 124 of 1984 s. 4; No. 78 of 1996 s. 21; No. 78 of 2003 s. 72(1).]*

## **Division 2 — Initiation of investigations**

### **15. Investigations on reference by Parliament**

- (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; or
  - (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) Section 14(4) 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.

*[Section 15 amended by No. 68 of 1976 s. 5.]*

## **16. Initiation of investigations**

- (1) Without prejudice to the provisions of section 15 any investigation that the Commissioner is authorised to conduct under this Act may be so conducted, either on his own motion or on a complaint made in accordance with section 17.
- (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 section 14(1).

## **17. Complaints to Commissioner**

- (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) The provisions of any enactment prohibiting or restricting or authorising 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.

*[(4) deleted]*

- (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 12 months from the day on which the person aggrieved first had notice of the matters alleged in the complaint.

*[(6) Omitted under the Reprints Act 1984 s. 7(4)(e).]*

*[Section 17 amended by No. 124 of 1984 s. 5; No. 78 of 1996 s. 11.]*

**17A. Complaints by persons in custody**

- (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

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- (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 chief executive officer of the department principally assisting the Minister administering the *Prisons Act 1981* with the administration of that Act, the CEO as defined in the *Court Security and Custodial Services Act 1999*, the Director, Psychiatric Services<sup>4</sup> appointed under section 6(1)(d) of the *Health Legislation Administration Act 1984* and the chief executive officer within the meaning of the *Young Offenders Act 1994*.
- (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.
- (5a) A reference in subsection (1) to an officer in whose custody a person is detained includes a reference to a person authorised to exercise a power set out in Division 1, 2 or 3 of Schedule 2, or in Schedule 3, to the *Court Security and Custodial Services Act 1999* in relation to the detained person.
- (6) An officer referred to in subsection (1) who wilfully contravenes or fails to comply with this section is guilty of an offence.

Penalty: \$200.

*[Section 17A inserted by No. 124 of 1984 s. 6; amended by No. 47 of 1987 s. 26; No. 113 of 1987 s. 31; No. 78 of 1996 s. 12; No. 47 of 1999 s. 26.]*

## **18. Refusal to investigate complaints**

- (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 —
  - (a) the matter raised in the complaint is trivial; or
  - (b) the complaint is frivolous or vexatious or is not made in good faith; or
  - (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 3A — Deaths of certain children**

*[Heading inserted by No. 10 of 2009 s. 7.]*

**19A. Terms used**

(1) In this Division —

**CCS Act** means the *Children and Community Services Act 2004*;

**investigable death** has the meaning given in subsection (3).

(2) If a term is given a meaning in the CCS Act, it has the same meaning in this Division unless the contrary intention appears in this Division.

(3) An investigable death occurs if a child dies and any of the following circumstances exists —

- (a) in the 2 years before the date of the child's death, the CEO had received information that raised concerns about the wellbeing of the child or a child relative of the child;
- (b) in the 2 years before the date of the child's death, the CEO, under section 32(1) of the CCS Act, had determined that action should be taken to safeguard or promote the wellbeing of the child or a child relative of the child;
- (c) in the 2 years before the date of the child's death, any of the actions listed in section 32(1) of the CCS Act was done in respect of the child or a child relative of the child;
- (d) protection proceedings are pending in respect of the child or a child relative of the child;
- (e) the child or a child relative of the child is in the CEO's care.

*[Section 19A inserted by No. 10 of 2009 s. 7.]*

**19B. Functions as to investigable deaths**

- (1) When the advisory body called the Child Death Review Committee, taken to be established under section 27 of the CCS Act, is abolished, the Commissioner is its successor for the purposes of the *State Records Act 2000* section 8 which applies accordingly.
- (2) The Commissioner, after taking account of any information and reasons given to the Commissioner under the CCS Act section 242A(3), may decide if the death of a child is or is not an investigable death.
- (3) The Commissioner's functions in relation to investigable deaths are as follows —
  - (a) to review the circumstances in which and why the deaths occurred;
  - (b) to identify any patterns or trends in relation to the deaths;
  - (c) to make recommendations to any department or authority about ways to prevent or reduce investigable deaths.
- (4) To enable the Commissioner to perform the functions in subsections (2) and (3), the Commissioner may exercise any power the Commissioner has under Division 3 in order to obtain information relevant to the death of a child.
- (5) The Commissioner may perform the functions the Commissioner has under this Act to investigate a decision or recommendation made, or an act done or omitted, in or by a department or authority to which this Act applies in the exercise of any power or function if the decision, recommendation, act or omission relates to —
  - (a) a matter of administration; and
  - (b) an investigable death.

*[Section 19B inserted by No. 10 of 2009 s. 7.]*

### **Division 3 — Conduct of investigations**

#### **19. Proceedings on investigations**

- (1) Subject to subsection (1a), before investigating under this Act any action taken by or on behalf of a department or 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.
- (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.
- (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 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 section 25(1) or (2).
- (7) If, during or after an investigation, the Commissioner is of the opinion that there is evidence of any breach of duty or misconduct on the part of any member, officer, or employee of any 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 or, in the case of a contractor or subcontractor, to the Minister to whom the administration of the *Court Security and Custodial Services Act 1999* or the *Prisons Act 1981* is committed, as is relevant to the case.
- (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.

*[Section 19 amended by No. 78 of 1996 s. 13 and 21; No. 43 of 1999 s. 20; No. 47 of 1999 s. 27.]*

**20. Commissioner has powers under *Royal Commissions Act 1968*; privilege and secrecy provisions**

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

(2A) 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.

(2B) 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 subsections (2A) and (2B), 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.

*[Section 20 amended by No. 68 of 1976 s. 6; No. 19 of 2010 s. 51.]*

**21. Power to enter premises**

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

*[Section 21 amended by No. 124 of 1984 s. 7; No. 78 of 1996 s. 21; No. 10 of 1998 s. 57(2).]*

**22. Protection for proceedings in Cabinet**

- (1) A person shall not be required or authorised 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) is conclusive of the fact so certified.

**22A. Consultation**

- (1) The Commissioner may consult the Corruption and Crime Commission, the Inspector of Custodial Services or the Director of Public Prosecutions concerning any complaint under this Act or any investigation under this Act.
- (2) Information obtained by the Commissioner, the Deputy Commissioner or a member of the Commissioner's staff 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).

*[Section 22A inserted by No. 78 of 1996 s. 14; amended by No. 43 of 1999 s. 20; No. 74 of 2003 s. 91(13); No. 78 of 2003 s. 72.]*

**22B. Disclosure of certain information**

A person who is the Commissioner, the Deputy Commissioner or a member of the Commissioner's staff authorised for the purposes of this section by the Commissioner or the Deputy Commissioner may disclose information obtained by the

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Commissioner, the Deputy Commissioner or a member of the Commissioner's staff in the course of, or for the purpose of, an investigation under this Act if the information —

*[(a) deleted]*

(aa) is disclosed to a person who is —

- (i) the Inspector of Custodial Services; or
- (ii) a member of the staff of the Inspector authorised for the purposes of this subparagraph by the Inspector,

and concerns a matter that is relevant to the functions of the Inspector; or

(b) is disclosed to a person who is —

- (i) the Director of Public Prosecutions; or
- (ii) the Deputy Director of Public Prosecutions; or
- (iii) a member of the staff of the Director of Public Prosecutions authorised 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 the Corruption and Crime Commission, the Parliamentary Inspector, or the Director of Public Prosecutions; or

(c) is disclosed to —

- (i) the Corruption and Crime Commission; or
- (ii) a person who is an officer of the Corruption and Crime Commission authorised for the purposes of this subparagraph by the Corruption and Crime Commission,

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

(d) is disclosed to a person who is —

- (i) the Parliamentary Inspector of the Corruption and Crime Commission; or

- (ii) an officer of the Parliamentary Inspector of the Corruption and Crime Commission authorised for the purposes of this subparagraph by the Parliamentary Inspector,  
and concerns a matter that is relevant to the functions of the Parliamentary Inspector; or
- (e) is disclosed to a person who is —
  - (i) the Commissioner for Children and Young People; or
  - (ii) a member of the staff of the Commissioner for Children and Young People authorised for the purposes of this subparagraph by the Commissioner,  
and concerns a matter that is relevant to the death of a child.

*[Section 22B inserted by No. 78 of 1996 s. 14; amended by No. 43 of 1999 s. 20; No. 74 of 2003 s. 91(14); No. 78 of 2003 s. 72; No. 10 of 2009 s. 8.]*

## **23. Secrecy**

- (1) Information obtained by the Commissioner, the Deputy Commissioner or a member of the Commissioner's staff 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; or
  - (c) as authorised by section 22A or 22B.
- (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.

- (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 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 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 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).

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

*[Section 23 amended by No. 68 of 1976 s. 7; No. 124 of 1984 s. 8; No. 14 of 1994 s. 19(2); No. 29 of 1996 s. 26; No. 78 of 1996 s. 15 and 21; No. 74 of 2003 s. 91(15).]*

**23A. Documents sent to or by Commissioner not admissible**

Any document that is sent to the Commissioner, the Deputy Commissioner or a member of the Commissioner's staff or by the Commissioner, the Deputy Commissioner or a member of the Commissioner's staff 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.

*[Section 23A inserted by No. 73 of 1976 s. 8; amended by No. 74 of 2003 s. 91(16).]*

**24. Obstruction**

Any person who —

(a) without lawful excuse, wilfully obstructs, hinders, or resists the Commissioner or any other person in the exercise of his powers under this Act; or

- (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**

##### **25. Procedure on completion of investigation**

- (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; or
  - (b) was unreasonable, unjust, oppressive, or improperly discriminatory; or
  - (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; or
  - (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; or
  - (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; or
  - (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).



- (2) Where in such a case as is referred to in subsection (1) the Commissioner is of the opinion —
- (a) that the subject matter of the investigation should be referred to the appropriate authority for further consideration; or
  - (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; or
  - (c) that any practice in accordance with which the action was taken should be varied; or
  - (d) that any law in accordance with which, or on the basis of which, the action was taken should be reconsidered; or
  - (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), he shall send a copy thereof to the responsible Minister.
- (4) If under subsection (2) 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), 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), 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.

**26. Information to complainant on investigation**

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 section 25(2) 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.

*[Section 26 amended by No. 68 of 1976 s. 9.]*

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

**27. Commissioner may report to Parliament**

- (1) Notwithstanding the *Financial Management Act 2006*, the Commissioner 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.

- (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.

*[Section 27 inserted by No. 98 of 1985 s. 3; amended by No. 78 of 1996 s. 16; No. 77 of 2006 Sch. 1 cl. 118(1).]*

**[28.]** *Deleted by No. 124 of 1984 s. 9.]*

## **Part IV — Miscellaneous**

### **29. Supreme Court may determine jurisdictional questions**

- (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.
- (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.

### **30. Protection of Commissioner and officers**

- (1) Neither the Commissioner, the Deputy Commissioner nor any member of the Commissioner's staff 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 in bad faith.
- (2) No civil or criminal proceedings shall be brought against the Commissioner, the Deputy Commissioner or any member of the Commissioner's staff in respect of any such act as is referred to in subsection (1) 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 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) Except as required for the purpose of proceedings referred to in section 23(1)(b), neither the Commissioner, the Deputy Commissioner nor any member of the Commissioner's staff shall be called to give evidence or produce any document 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.

*[Section 30 amended by No. 124 of 1984 s. 10; No. 74 of 2003 s. 91(17)-(19).]*

**30A. Protection of complainants etc.**

- (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; or
  - (c) providing information about the death of a child for the purposes of Part III Division 3A.
- (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), (b) or (c) 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.

*[Section 30A inserted by No. 78 of 1996 s. 17; amended by No. 10 of 2009 s. 9.]*

**30B. Victimisation**

- (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

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- (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 30B inserted by No. 78 of 1996 s. 17.]*

**31. General penalty**

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

*[Section 31 inserted by No. 78 of 1996 s. 18.]*

**32. Expenses of Act**

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.

**33. Regulations**

The Governor may make regulations for amending Schedule 1.

*[Section 33 inserted by No. 78 of 1996 s. 19.]*

**34. Energy ombudsman scheme**

- (1) The Parliamentary Commissioner may enter into an agreement with the governing body of an energy ombudsman scheme under which —
  - (a) the person for the time being holding or acting in the office of Parliamentary Commissioner is to serve as the ombudsman under the scheme; and
  - (b) officers referred to in section 9 are to assist him or her in doing so.
- (2) The persons referred to in subsection (1)(a) and (b) may provide services in accordance with the agreement.
- (3) Section 5(9) does not apply to the rendering of services under the agreement.
- (4) The services are to be paid for by the governing body of that energy ombudsman scheme at a rate to be provided for in the agreement.
- (5) For the purposes of this Act, the rendering of services under the agreement is not to be regarded —
  - (a) as the exercise or performance of powers, functions or duties under this Act; or
  - (b) as attracting the operation of section 27 or 32.
- (6) Despite subsection (5), section 30(1), (2) and (3) apply for the purpose of this section in the same way as they apply in respect of the other functions of the Commissioner.
- (7) In this section —

***energy ombudsman scheme*** means a scheme approved under section 11ZPZ of the *Energy Coordination Act 1994* or section 92 of the *Electricity Industry Act 2004*;

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***governing body*** of an energy ombudsman scheme means the entity responsible for the operation of the scheme.

*[Section 34 inserted by No. 53 of 2003 s. 34; amended by No. 33 of 2004 s. 48.]*



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## Schedule 1 — Departments and authorities, and extent, to which this Act does not apply

[s. 13(2)(n)]

*[Heading inserted by No. 10 of 2009 s. 10.]*

<b>Act establishing department or authority</b>	<b>Department or authority, and extent, to which this Act does not apply</b>
<i>Auditor General Act 2006</i>	The Auditor General 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.
<i>Commissioner for Children and Young People Act 2006</i>	Commissioner for Children and Young People to the extent of the Commissioner's functions other than that of chief employee under the <i>Public Sector Management Act 1994</i> .
<i>Corruption and Crime Commission Act 2003</i>	Corruption and Crime Commission. Parliamentary Inspector of the Corruption and Crime Commission.
<i>Director of Public Prosecutions Act 1991</i>	Director of Public Prosecutions. Deputy Director of Public Prosecutions.
<i>Economic Regulation Authority Act 2003</i>	Economic Regulation Authority to the extent of its functions given by or under the <i>National Gas Access (WA) Act 2009</i> or referred to in the <i>Railways (Access) Act 1998</i> section 20(1).
<i>Electoral Act 1907</i>	Electoral Commissioner 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.  Deputy Electoral Commissioner.

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**Schedule 1** Departments and authorities, and extent, to which this Act does not apply

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<b>Act establishing department or authority</b>	<b>Department or authority, and extent, to which this Act does not apply</b>
<i>Equal Opportunity Act 1984</i>	Commissioner for Equal Opportunity. Director of Equal Opportunity in Public Employment.
<i>Freedom of Information Act 1992</i>	Information Commissioner.
<i>Inspector of Custodial Services Act 2003</i>	Inspector of Custodial Services.
<i>Parliamentary Commissioner Act 1971</i>	Parliamentary Commissioner for Administrative Investigations. Deputy Parliamentary Commissioner for Administrative Investigations.
<i>Public Sector Management Act 1994</i>	Public Sector Commissioner to the extent of the Commissioner's functions other than that of chief executive officer of the department of the Public Service principally assisting in the administration of the <i>Public Sector Management Act 1994</i> .
<i>Racing and Wagering Western Australia Act 2003</i>	Racing and Wagering Western Australia.
<i>Royal Commissions Act 1968</i>	Any Royal Commission.
<i>Solicitor-General Act 1969</i>	Solicitor-General.
<i>State Administrative Tribunal Act 2004</i>	State Administrative Tribunal.

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*[Schedule 1 inserted by No. 10 of 2009 s. 10; amended by No. 16 of 2009 s. 71; No. 39 of 2010 s. 80.]*

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## Notes

- <sup>1</sup> This is a compilation of the *Parliamentary Commissioner Act 1971* and includes the amendments made by the other written laws referred to in the following table<sup>1a, 5, 6</sup>. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Parliamentary Commissioner Act 1971</i>	64 of 1971	22 Dec 1971	12 May 1972 (see s. 2 and <i>Gazette</i> 12 May 1972 p. 1043)
<i>Parliamentary Commissioner Act Amendment Act 1976</i>	68 of 1976	6 Oct 1976	6 Oct 1976
<i>Parliamentary Commissioner Amendment Act 1982</i>	13 of 1982	14 May 1982	14 May 1982
<b>Reprint of the <i>Parliamentary Commissioner Act 1971</i> approved 19 Jul 1983</b> (includes amendments listed above)			
<i>Parliamentary Commissioner Amendment Act 1984</i>	124 of 1984	27 Dec 1984	s. 1 and 2: 27 Dec 1984; Act other than s. 1 and 2: 1 Jul 1985 (see s. 2 and <i>Gazette</i> 28 Jun 1985 p. 2291)
<i>Acts Amendment (Authority for Intellectually Handicapped Persons) Act 1985 Pt. III</i>	69 of 1985	15 Nov 1985	1 Jan 1986 (see s. 2 and <i>Gazette</i> 13 Dec 1985 p. 4757)
<i>Acts Amendment (State Planning Commission) Act 1985 Pt. IV</i>	92 of 1985	4 Dec 1985	6 Dec 1985 (see s. 2 and <i>Gazette</i> 6 Dec 1985 p. 4591)
<i>Acts Amendment (Financial Administration and Audit) Act 1985 s. 3</i>	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Acts Amendment (Water Authorities) Act 1985 Pt. X</i>	110 of 1985	17 Dec 1985	14 Mar 1986 (see s. 2 and <i>Gazette</i> 14 Mar 1986 p. 726)
<i>Acts Amendment (Meat Industry) Act 1985 Pt. IV</i>	107 of 1985	7 Jan 1986	1 Jul 1986 (see s. 2 and <i>Gazette</i> 27 Jun 1986 p. 2159)
<i>Perth Mint Amendment Act 1986 Pt. III</i>	39 of 1986	1 Aug 1986	1 Oct 1986 (see s. 2 and <i>Gazette</i> 30 Sep 1986 p. 3769)

## Parliamentary Commissioner Act 1971

Short title	Number and year	Assent	Commencement
<i>State Government Insurance Commission Act 1986 s. 46(2)</i>	51 of 1986	5 Aug 1986	1 Jan 1987 (see s. 2 and <i>Gazette</i> 19 Dec 1986 p. 4859)
<i>Western Australian Sports Centre Trust Act 1986 s. 21</i>	101 of 1986	12 Dec 1986	24 Dec 1986 (see s. 2 and <i>Gazette</i> 24 Dec 1986 p. 4963)
<i>Boxing Control Act 1987 s. 64</i>	2 of 1987	29 May 1987	22 Feb 1991 (see s. 2 and <i>Gazette</i> 22 Feb 1991 p. 867)
<i>Great Southern Development Authority Act 1987 s. 34</i>	9 of 1987	11 Jun 1987	29 Apr 1988 (see s. 2 and <i>Gazette</i> 29 Apr 1988 p. 1292)
<i>Occupational Health, Safety and Welfare Amendment Act 1987 s. 19</i>	43 of 1987	6 Jul 1987	16 Sep 1988 (see s. 2 and <i>Gazette</i> 16 Sep 1988 p. 3757)
<i>Acts Amendment (Corrective Services) Act 1987 Pt. VI</i>	47 of 1987	3 Oct 1987	11 Dec 1987 (see s. 2 and <i>Gazette</i> 11 Dec 1987 p. 4363)
<i>Gaming Commission Act 1987 s. 116</i>	50 of 1987	8 Oct 1987	4 Mar 1988 (see s. 2 and <i>Gazette</i> 4 Mar 1988 p. 665)
<i>Mines Regulation Amendment Act 1987 s. 21</i>	64 of 1987	18 Nov 1987	3 Jun 1988 (see s. 2 and <i>Gazette</i> 3 Jun 1988 p. 1851)
<i>Minerals and Energy Research Act 1987 s. 42</i>	89 of 1987	9 Dec 1987	1 Feb 1988 (see s. 2 and <i>Gazette</i> 15 Jan 1988 p. 67)
<i>Rottneest Island Authority Act 1987 s. 51</i>	91 of 1987	9 Dec 1987	30 May 1988 (see s. 2 and <i>Gazette</i> 30 May 1988 p. 1823)
<i>Gold Banking Corporation Act 1987 s. 79</i>	99 of 1987	18 Dec 1987	30 Jun 1988 (see s. 2 and <i>Gazette</i> 30 Jun 1988 p. 2133)
<i>Acts Amendment (Public Service) Act 1987 s. 32</i>	113 of 1987	31 Dec 1987	16 Mar 1988 (see s. 2 and <i>Gazette</i> 16 Mar 1988 p. 813)
<i>Acts Amendment (Retail Trading Hours) Act 1987 s. 11</i>	114 of 1987	31 Dec 1987	1 Sep 1988 (see s. 2 and <i>Gazette</i> 12 Aug 1988 p. 2695)
<i>Geraldton Mid-West Development Authority Act 1988 s. 33</i>	4 of 1988	30 Jun 1988	22 Jul 1988 (see s. 2 and <i>Gazette</i> 22 Jul 1988 p. 2479)
<i>Acts Amendment (Swan River Trust) Act 1988 Pt. 8</i>	21 of 1988	5 Oct 1988	1 Mar 1989 (see s. 2 and <i>Gazette</i> 27 Jan 1989 p. 264)

Short title	Number and year	Assent	Commencement
<i>Art Gallery Amendment Act 1988 s. 8</i>	59 of 1988	8 Dec 1988	20 Jan 1989 (see s. 2 and <i>Gazette</i> 20 Jan 1989 p. 110)
<i>Horticultural Produce Commission Act 1988 s. 27(1)</i>	75 of 1988	23 Dec 1988	1 Sep 1989 (see s. 2 and <i>Gazette</i> 1 Sep 1989 p. 3017)
<b>Reprint of the Parliamentary Commissioner Act 1971 as at 31 Mar 1989</b> (includes amendments listed above except those in the <i>Boxing Control Act 1987</i> and the <i>Horticultural Produce Commission Act 1988</i> )			
<i>Coal Industry Superannuation Act 1989 s. 33(2)</i>	28 of 1989	12 Dec 1989	1 Jul 1990 (see s. 2 and <i>Gazette</i> 22 Jun 1990 p. 3027)
<i>Acts Amendment (Parliamentary Superannuation) Act 1989 Pt. 4</i>	31 of 1989	15 Dec 1989	15 Dec 1989 (see s. 2)
<i>Acts Amendment (Perth Market Authority) Act 1990 Pt. 6</i>	6 of 1990	12 Jul 1990	1 Jan 1991 (see s. 2 and <i>Gazette</i> 21 Dec 1990 p. 6211)
<i>Acts Amendment (Gold Banking Corporation) Act 1990 Pt. 5</i>	10 of 1990	31 Jul 1990	28 Sep 1990 (see s. 2 and <i>Gazette</i> 28 Sep 1990 p. 4981)
<i>Lotteries Commission Act 1990 s. 33</i>	16 of 1990	31 Jul 1990	1 Jan 1991 (see s. 2 and <i>Gazette</i> 28 Dec 1990 p. 6369)
<i>Guardianship and Administration Act 1990 s. 123</i>	24 of 1990	7 Sep 1990	20 Oct 1992 (see s. 2 and <i>Gazette</i> 2 Oct 1992 p. 4811)
<i>Goldfields-Esperance Development Authority Act 1990 s. 36</i>	39 of 1990	8 Nov 1990	7 Dec 1990 (see s. 2 and <i>Gazette</i> 7 Dec 1990 p. 5979)
<i>State Employment and Skills Development Authority Act 1990 s. 48</i>	40 of 1990	26 Nov 1990	22 Mar 1991 (see s. 2 and <i>Gazette</i> 22 Mar 1991 p. 1209)
<i>Soil and Land Conservation Amendment Act 1990 s. 17</i>	91 of 1990	17 Dec 1990	28 Oct 1995 (see s. 2 and <i>Gazette</i> 27 Oct 1995 p. 4937)
<i>R &amp; I Bank Act 1990 s. 45(1)</i>	73 of 1990	20 Dec 1990	1 Jan 1991 (see s. 2(2) and <i>Gazette</i> 28 Dec 1990 p. 6369)

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Short title	Number and year	Assent	Commencement
<i>Building and Construction Industry Training Fund and Levy Collection Act 1990 s. 33</i>	76 of 1990	20 Dec 1990	1 Jul 1991 (see s. 2 and <i>Gazette</i> 28 Jun 1991 p. 3101)
<i>Acts Amendment (Heritage Council) Act 1990 s. 4</i>	97 of 1990	22 Dec 1990	25 Feb 1991 (see s. 2 and <i>Gazette</i> 22 Feb 1991 p. 868)
<i>Tobacco Control Act 1990 s. 39</i>	104 of 1990	2 Jan 1991	8 Feb 1991 (see s. 2(1) and <i>Gazette</i> 8 Feb 1991 p. 575)
<i>State Supply Commission Act 1991 s. 35</i>	5 of 1991	6 Jun 1991	20 Sep 1991 (see s. 2 and <i>Gazette</i> 20 Sep 1991 p. 4855)
<i>Human Reproductive Technology Act 1991 s. 62</i>	22 of 1991	8 Oct 1991	6 Mar 1992 (see s. 2 and <i>Gazette</i> 6 Mar 1992 p. 1107)
<i>East Perth Redevelopment Act 1991 s. 59</i>	62 of 1991	30 Dec 1991	1 Jul 1992 (see s. 2 and <i>Gazette</i> 1 Jul 1992 p. 2945)
<i>South West Development Authority Amendment Act 1992 s. 12(2)</i>	5 of 1992	14 May 1992	11 Aug 1992 (see s. 2 and <i>Gazette</i> 11 Aug 1992 p. 3959)
<i>Western Australian Financial Institutions Authority Act 1992 s. 57</i>	29 of 1992	19 Jun 1992	1 Jul 1992 (see s. 2 and <i>Gazette</i> 26 Jun 1992 p. 2643)
<i>Western Australian Land Authority Act 1992 s. 49</i>	35 of 1992	23 Jun 1992	1 Jul 1992 (see s. 2(2) and <i>Gazette</i> 30 Jun 1992 p. 2869)
<b>Reprint of the <i>Parliamentary Commissioner Act 1971</i> as at 21 Oct 1992</b> (includes amendments listed above except those in the <i>Soil and Land Conservation Amendment Act 1990</i> )			
<i>Pilbara Development Commission Act 1992 s. 25</i>	59 of 1992	11 Dec 1992	1 Jul 1993 (see s. 2 and <i>Gazette</i> 1 Jul 1993 p. 3209)
<i>Local Government (Superannuation) Amendment and Repeal Act 1993 s. 17</i>	2 of 1993	18 Aug 1993	1 Jul 1993 (see s. 2)
<i>Financial Administration Legislation Amendment Act 1993 s. 11</i>	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Rural Adjustment and Finance Corporation Act 1993 s. 57</i>	10 of 1993	6 Oct 1993	24 Dec 1993 (see s. 2 and <i>Gazette</i> 24 Dec 1993 p. 6796)

Short title	Number and year	Assent	Commencement
<i>Workplace Agreements Act 1993 s. 103</i>	13 of 1993	23 Nov 1993	1 Dec 1993 (see s. 2 and <i>Gazette</i> 30 Nov 1993 p. 6439)
<i>Bee Industry Amendment and Repeal Act 1993 s. 21</i>	26 of 1993	15 Dec 1993	4 Feb 1994 (see s. 2 and <i>Gazette</i> 4 Feb 1994 p. 339)
<i>Mines Regulation Amendment Act 1993 s. 12</i>	30 of 1993	16 Dec 1993	24 Dec 1993 (see s. 2 and <i>Gazette</i> 24 Dec 1993 p. 6796)
<i>Disability Services Act 1993 s. 58</i>	36 of 1993	16 Dec 1993	23 Dec 1993 (see s. 2)
<i>Regional Development Commissions Act 1993 s. 44</i>	53 of 1993	22 Dec 1993	8 Apr 1994 (see s. 2 and <i>Gazette</i> 8 Apr 1994 p. 1462)
<i>Adoption Act 1994 s. 145</i>	9 of 1994	15 Apr 1994	1 Jan 1995 (see s. 2 and <i>Gazette</i> 25 Nov 1994 p. 5905)
<i>Acts Amendment (Official Corruption Commission) Act 1994 s. 19</i>	14 of 1994	22 Apr 1994	24 May 1994 (see s. 2 and <i>Gazette</i> 24 May 1994 p. 2193)
<i>Acts Amendment (Public Sector Management) Act 1994 s. 19</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Subiaco Redevelopment Act 1994 s. 67</i>	35 of 1994	8 Jul 1994	24 Aug 1994 (see s. 2 and <i>Gazette</i> 23 Aug 1994 p. 4364)
<i>Perth International Centre for Application of Solar Energy Act 1994 s. 35</i>	36 of 1994	8 Jul 1994	22 Jul 1994 (see s. 2 and <i>Gazette</i> 22 Jul 1994 p. 3727)
<i>Acts Amendment (Coal Mining Industry) Act 1994 s. 23</i>	45 of 1994	22 Sep 1994	22 Sep 1994 (see s. 2(1))
<i>Mines Safety and Inspection Act 1994 s. 109</i>	62 of 1994	7 Nov 1994	9 Dec 1995 (see s. 2 and <i>Gazette</i> 8 Dec 1995 p. 5935)
<i>Statutes (Repeals and Minor Amendments) Act 1994 s. 4</i>	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
<i>Energy Corporations (Transitional and Consequential Provisions) Act 1994 s. 109</i>	89 of 1994	15 Dec 1994	1 Jan 1995 (see s. 2(2) and <i>Gazette</i> 23 Dec 1994 p. 7069)
<i>Taxi Act 1994 s. 50</i>	83 of 1994	20 Dec 1994	10 Jan 1995 (see s. 2 and <i>Gazette</i> 10 Jan 1995 p. 73)

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Short title	Number and year	Assent	Commencement
<i>Hospitals Amendment Act 1994 s. 18</i>	103 of 1994	11 Jan 1995	3 Feb 1995 (see s. 2 and <i>Gazette</i> 3 Feb 1995 p. 333)
<i>Planning Legislation Amendment Act (No. 2) 1994 s. 44 and 46</i>	84 of 1994	13 Jan 1995	1 Mar 1995 (see s. 2 and <i>Gazette</i> 21 Feb 1995 p. 567)
<i>Industrial Legislation Amendment Act 1995 s. 35</i>	1 of 1995	9 May 1995	1 Jan 1996 (see s. 2(2) and <i>Gazette</i> 24 Nov 1995 p. 5389)
<b>Reprint of the Parliamentary Commissioner Act 1971 as at 25 May 1995</b> (includes amendments listed above except those in the <i>Mines Safety and Inspection Act 1994</i> and the <i>Industrial Legislation Amendment Act 1995</i> )			
<i>Marketing of Potatoes Amendment Act 1995 s. 58(4)</i>	11 of 1995	30 Jun 1995	4 Sep 1995 (see s. 2 and <i>Gazette</i> 1 Sep 1995 p. 4063)
<i>Occupational Safety and Health Legislation Amendment Act 1995 s. 48</i>	30 of 1995	11 Sep 1995	1 Oct 1995 (see s. 2 and <i>Gazette</i> 15 Sep 1995 p. 4301)
<i>Acts Amendment (Racing and Betting Legislation) Act 1995 s. 94</i>	63 of 1995	27 Dec 1995	28 Jun 1996 (see s. 2 and <i>Gazette</i> 25 Jun 1996 p. 2901)
<i>Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995 s. 188</i>	73 of 1995	27 Dec 1995	1 Jan 1996 (see s. 2(2) and <i>Gazette</i> 29 Dec 1995 p. 6291)
<i>Health Services (Conciliation and Review) Act 1995 s. 80(6)</i>	75 of 1995	9 Jan 1996	16 Aug 1996 (see s. 2 and <i>Gazette</i> 16 Aug 1996 p. 4007)
<i>Guardianship and Administration Amendment Act 1996 s. 38</i>	7 of 1996	24 May 1996	1 Jul 1996 (see s. 2 and <i>Gazette</i> 28 Jun 1996 p. 3014)
<i>Local Government (Consequential Amendments) Act 1996 s. 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Official Corruption Commission Amendment Act 1996 s. 26</i>	29 of 1996	28 Aug 1996	30 Aug 1996 (see s. 2 and <i>Gazette</i> 30 Aug 1996 p. 4365)
<i>Financial Legislation Amendment Act 1996 s. 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))



Short title	Number and year	Assent	Commencement
<i>Parliamentary Commissioner Amendment Act 1996</i>	78 of 1996	14 Nov 1996	14 Nov 1996 (see s. 2)
<b>Reprint of the <i>Parliamentary Commissioner Act 1971</i> as at 20 Jan 1997</b> (includes amendments listed above)			
<i>Acts Amendment and Repeal (Family Court) Act 1997 s. 34</i>	41 of 1997	9 Dec 1997	26 Sep 1998 (see s. 2 and <i>Gazette</i> 25 Sep 1998 p. 5295)
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998 s. 57 and 76</i>	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<i>Gas Pipelines Access (Western Australia) Act 1998 Sch. 3 Div. 8</i>	65 of 1998	15 Jan 1999	9 Feb 1999 (see s. 2 and <i>Gazette</i> 8 Feb 1999 p. 441)
<i>Prisons Amendment Act 1999 s. 20 (Sch. 1 cl. 5)</i>	43 of 1999	8 Dec 1999	Sch. 1 cl. 5(1), (3) and (4): 18 Dec 1999 (see s. 2(2) and <i>Gazette</i> 17 Dec 1999 p. 6175); Sch. 1 cl. 5(2) and (5)-(7): 18 Jun 2000 (see s. 2(3) and (4) and <i>Gazette</i> 16 Jun 2000 p. 2939)
<i>Court Security and Custodial Services (Consequential Provisions) Act 1999 Pt. 8</i>	47 of 1999	8 Dec 1999	18 Dec 1999 (see s. 2 and <i>Gazette</i> 17 Dec 1999 p. 6175-6)
<i>Railways (Access) Amendment Act 2000 s. 12</i>	55 of 2000	28 Nov 2000	28 Nov 2000 (see s. 2)
<b>Reprint of the <i>Parliamentary Commissioner Act 1971</i> as at 16 Mar 2001</b> (includes amendments listed above)			
<i>Racing and Gambling Legislation Amendment and Repeal Act 2003 s. 22</i>	35 of 2003	26 Jun 2003	1 Aug 2003 (see s. 2 and <i>Gazette</i> 29 Jul 2003 p. 3259)
<i>Energy Legislation Amendment Act 2003 s. 34</i>	53 of 2003	8 Oct 2003	17 Apr 2004 (see s. 2(2)(b) and <i>Gazette</i> 16 Apr 2004 p. 1209)
<i>Economic Regulation Authority Act 2003 s. 62</i>	67 of 2003	5 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5723)
<i>Statutes (Repeals and Minor Amendments) Act 2003 s. 91<sup>7</sup></i>	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)

## Parliamentary Commissioner Act 1971

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Short title	Number and year	Assent	Commencement
<i>Inspector of Custodial Services Act 2003</i> s. 56(1)	75 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Corruption and Crime Commission Amendment and Repeal Act 2003</i> s. 72-74 <sup>8</sup>	78 of 2003	22 Dec 2003	s. 72(1), 73 and 74(1): 1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5723); s. 72(2) and 74(2): 7 Jul 2004 (see s. 2 and <i>Gazette</i> 6 Jul 2004 p. 2697)
<b>Reprint 7: The Parliamentary Commissioner Act 1971 as at 1 Oct 2004</b> (includes amendments listed above)			
<i>Electricity Legislation Amendment Act 2004</i> Pt. 2 Div. 5	33 of 2004	20 Oct 2004	25 Jun 2005 (see s. 2 and <i>Gazette</i> 24 Jun 2005 p. 2751)
<i>State Administrative Tribunal Act 2004</i> s. 177	54 of 2004	23 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> s. 1325 <sup>9</sup>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4 and Sch. 1 cl. 118	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<b>Reprint 8: The Parliamentary Commissioner Act 1971 as at 3 Oct 2008</b> (includes amendments listed above)			
<i>Parliamentary Commissioner Amendment Act 2009</i>	10 of 2009	29 Jun 2009	s. 1 and 2: 29 Jun 2009 (see s. 2(a)); Act other than s. 1 and 2: 30 Jun 2009 (see s. 2(b))
<i>National Gas Access (WA) Act 2009</i> s. 71	16 of 2009	1 Sep 2009	1 Jan 2010 (see s. 2(b) and <i>Gazette</i> 31 Dec 2009 p. 5327)
<i>Acts Amendment (Bankruptcy) Act 2009</i> s. 62	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))
<i>Standardisation of Formatting Act 2010</i> s. 51	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)

Short title	Number and year	Assent	Commencement
<i>Public Sector Reform Act 2010</i> s. 80	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)
<b>Reprint 9: The Parliamentary Commissioner Act 1971 as at 3 Dec 2010</b> (includes amendments listed above)			

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Native Title (State Provisions) Act 1999</i> s. 7.3 <sup>10</sup>	60 of 1999	10 Jan 2000	Operative on earliest of commencement of Pt. 2 (except s. 2.2), Pt. 3 (except s. 3.1) and Pt. 4 (see s. 1.2)
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i> s. 75 <sup>11</sup>	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))
<i>Water Services Legislation Amendment and Repeal Act 2012</i> s. 221 <sup>12</sup>	25 of 2012	3 Sep 2012	To be proclaimed (see s. 2(b))

<sup>2</sup> The *Superannuation and Family Benefits Act 1938* was repealed by the *State Superannuation Act 2000* s. 39, but its provisions continue to apply to and in relation to certain schemes because of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 26.

<sup>3</sup> Under the *Liquor Control Act 1988* Sch. 1A cl. 9 a reference to the Liquor Licensing Court is to be read and construed as a reference to the Liquor Commission.

<sup>4</sup> The *Health Legislation Administration Act 1984* s. 6(1) was amended by the *Mental Health (Consequential Provisions) Act 1996* s. 38 to replace the office of Director, Psychiatric Services with the office of Chief Psychiatrist.

<sup>5</sup> The amendments in the *R & I Holdings Act 1990* s. 22(3)(a)(i), the *Caravan Parks and Camping Grounds Act 1995* Sch. 2 it. 5, the *Vocational Education and*

*Training Act 1996* Sch. 3 it. 28, the *Acts Amendment (ICWA) Act 1996* Sch. 1 it. 10 and the *Mental Health (Consequential Provisions) Act 1996* Pt. 14 are not included because the Schedule they sought to amend had been deleted before the amendments purported to come into operation.

<sup>6</sup> The *Conservation and Land Management Amendment Act 1991* Sch. It. 6 had not come into operation when it was deleted by the *Statutes (Repeal and Miscellaneous Amendment) Act 2009* s. 35(3).

<sup>7</sup> The *Statutes (Repeals and Minor Amendments) Act 2003* s. 91(5) and (7) read as follows:

(5) The amendments made by subsections (2) and (3) do not affect the appointment, or terms and conditions of service, of a person appointed and holding office under section 9 of the *Parliamentary Commissioner Act 1971*, as in force immediately before the commencement of this section, except that the person is taken to have been appointed under section 9 of that Act, as amended by this section.

(7) The purported exercises by the Governor of the power conferred by section 9(1) of the *Parliamentary Commissioner Act 1971*, as in force immediately before the commencement of this section, to appoint officers on secondment are validated and all such appointments are taken to be secondments effected by the Commissioner under section 9(2a) of the *Parliamentary Commissioner Act 1971* as if that subsection had been in force at the time the appointments were purportedly made.

<sup>8</sup> The *Corruption and Crime Commission Amendment and Repeal Act 2003* s. 73 reads as follows:

**73. Parliamentary Commissioner must refer certain investigations to CCC**

(1) In this section —  
*records* includes —

- (a) evidence in any form; and
- (b) information and other things.

(2) On the commencement of this Division the Parliamentary Commissioner must —

- (a) cease any investigation referred to in section 14(1a) of the *Parliamentary Commissioner Act 1971*;
- (b) refer the investigation to the CCC; and

- (c) transfer to the CCC any records in the possession of the Parliamentary Commissioner immediately before the commencement of this Division that relate to an investigation referred to in section 14(1a) of the *Parliamentary Commissioner Act 1971*.
- (3) Records transferred under subsection (1) become the records of the CCC and may be dealt with accordingly.

<sup>9</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

<sup>10</sup> As at the date on which this compilation was prepared, the *Native Title (State Provisions) Act 1999* s. 7.3, which gives effect to Sch. 2, had not come into operation. It reads as follows:

**7.3 Consequential provisions**

Schedule 2 has effect.

Schedule 2 cl. 48 reads:

**48. Schedule 1 amended**

Schedule 1 to the *Parliamentary Commissioner Act 1971* is amended by inserting in the appropriate alphabetical position the following —

“

The Native Title Commission established by the *Native Title (State Provisions) Act 1999*.

”.

<sup>11</sup> On the date as at which this compilation was prepared, the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 75 had not come into operation. It reads as follows:

**75. Various provisions repealed**

The provisions listed in the Table to this section are repealed.

**Table of provisions repealed**

**Act**

**Provision**

Act	Provision
..... <i>Parliamentary Commissioner Act 1971</i> .....	..... s. 10(2) .....

<sup>12</sup> On the date as at which this compilation was prepared, the *Water Services Legislation Amendment and Repeal Act 2012* s. 221 had not come into operation. It reads as follows:

**221. Parliamentary Commissioner Act 1971 amended**

- (1) This section amends the *Parliamentary Commissioner Act 1971*.
- (2) In section 34(1) after “energy ombudsman scheme” insert:

or a water ombudsman scheme

- (3) In section 34(4) delete “energy ombudsman”.
- (4) In section 34(5) delete “under the” and insert:

under an

- (5) In section 34(7) insert in alphabetical order:

***water ombudsman scheme*** means a scheme approved under the *Water Services Act 2012* Part 4.

- (6) In section 34(7) in the definition of ***governing body***:
  - (a) after “ombudsman scheme” insert:

or a water ombudsman scheme

- (b) delete “scheme.” and insert:

scheme;

Note: The heading to amended section 34 is to read:  
**Energy and water ombudsman schemes**



Defined Terms

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**Defined Terms**

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined Term</b>	<b>Provision(s)</b>
Acting Commissioner .....	4
appropriate authority .....	4
authority .....	4
body .....	4A(2)
CCS Act .....	19A(1)
Commissioner .....	4
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