

OMBUDSMAN (AMENDMENT) ACT, 1983, No. 189

New South Wales



ANNO TRICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 189, 1983.

An Act to amend the Ombudsman Act, 1974, to provide for the appointment of Assistant Ombudsmen, to enable the Ombudsman to delegate certain functions to persons in other jurisdictions exercising functions similar to the Ombudsman's and to receive a like delegation, to extend certain powers, authorities, immunities and protections of the Ombudsman and the Ombudsman's officers and to validate certain matters; and for certain other purposes. [Assented to, 31st December, 1983.]

Ombudsman (Amendment).

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

Short title.

1. This Act may be cited as the "Ombudsman (Amendment) Act, 1983".

Principal Act.

2. The Ombudsman Act, 1974, is referred to in this Act as the Principal Act.

Schedules.

3. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

Amendment of Act No. 68, 1974.

4. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

Validation—appointment, acts and omissions of Assistant Ombudsmen.

5. (1) The purported appointment of a person as an Assistant Ombudsman that would, had the Principal Act as amended by this Act been in force at the time the appointment was purported to have been made, have been validly made, shall be deemed to be, and always to have been, validly made.

Ombudsman (Amendment).

(2) Without affecting the operation of subsection (1), any act, matter or thing done or omitted to be done before the commencement of this Act by a person in purported exercise or performance of the powers, authorities, duties or functions of an Assistant Ombudsman that would have been validly done or omitted to be done—

- (a) had the Principal Act as amended by this Act been in force at the time of the act or omission;
- (b) had the person been validly appointed as an Assistant Ombudsman and had that appointment been in force at the time of the act or omission; and
- (c) had an appropriate delegation under section 10 of the Principal Act, as in force before the commencement of this Act, been made to the person in respect of the power, authority, duty or function purported to be exercised or performed, and had that delegation been in force at the time of the act or omission,

shall be deemed to have been validly done or omitted to be done, as the case may require.

SCHEDULE 1.

(Sec. 4.)

AMENDMENTS TO THE PRINCIPAL ACT.

- (1) (a) Section 5 (1), definition of “administration”—

Before the definition of “appointed day”, insert:—

“administration” includes administration of an estate or a trust whether involving the exercise of executive functions of government or the exercise of other functions;

- (b) Section 5 (1), definition of “public authority”—

In paragraph (c), after “officer”, insert “or temporary employee”.

- (c) Section 5 (1), definition of “responsible Minister”—

In paragraph (b) (i), after “officer”, insert “or temporary employee”.

Ombudsman (Amendment).

 SCHEDULE 1—*continued.*

 AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (d) Section 5 (1), definition of “statutory employee”—
 In paragraph (b), after “officer”, insert “or temporary employee”.
- (e) Section 5 (1), definition of “statutory employee”—
 From paragraph (b), omit “connection.”, insert instead “connection;”.
- (f) Section 5 (1), definition of “Supreme Court”—
 After the definition of “statutory employee”, insert:—
 “Supreme Court” means the Supreme Court of New South Wales.
- (g) Section 5 (3)—
 After section 5 (2), insert:—
 (3) A reference in this Act, except in section 37 (2) (e), to an officer of the Ombudsman includes a reference to an acting Ombudsman, a Deputy Ombudsman and an Assistant Ombudsman.
- (2) Section 8 (3)—
 Omit “19 (2), 29 (b) and (c) or 30”, insert instead “10A, 19 (2), 21A or 30, and other than the power to accept or to refuse to accept a delegation to which section 10B applies or the power to exercise or to refuse to exercise a function conferred on the Ombudsman as referred to in that section”.
- (3) Section 8A—
 After section 8, insert:—
Assistant Ombudsmen.
 8A. (1) The Governor may, on the recommendation of the Minister, appoint one or more Assistant Ombudsmen.
 (2) Sections 6 and 33 apply to and in respect of an Assistant Ombudsman as they apply to and in respect of the Ombudsman.

Ombudsman (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3) For the purposes of this Act (except section 37 (2) (d)), an Assistant Ombudsman shall be a special officer of the Ombudsman.

(4) Where a person who is an Assistant Ombudsman is appointed as acting Ombudsman the person does not, on that account, cease to be an Assistant Ombudsman.

(4) (a) Section 10 (1)—

Omit “functions of the Ombudsman.”, insert instead “functions of the Ombudsman, including any function which the Ombudsman may exercise pursuant to section 10B.”.

(b) Section 10 (2) (b)—

Omit “section 9 or 19 (2)”, insert instead “section 9, 10A, 19 (2) or 21A, or the power to accept or to refuse to accept a delegation to which section 10B applies or the power to exercise or to refuse to exercise a function conferred on the Ombudsman as referred to in that section”.

(5) Sections 10A, 10B—

After section 10, insert:—

Delegation to other Ombudsmen.

10A. (1) The Ombudsman may, with the approval of the Minister, delegate the exercise of any functions of the Ombudsman under sections 18, 19 (1), 20 and 23 to a person who is empowered to exercise under a law of another State, the Commonwealth or a Territory of the Commonwealth functions similar to the functions exercised by the Ombudsman under this Act, where—

(a) the Ombudsman is of the opinion that an investigation authorised to be carried out by the Ombudsman under this Act may more effectively or more appropriately be carried out by the person to whom it is proposed the delegation be made; and

Ombudsman (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) the delegation is for the purpose of enabling that person to carry out that investigation.

(2) A delegation under this section may be made subject to conditions or limitations as to the exercise of any of the functions delegated, or as to time or circumstances.

(3) A delegation under this section must be made by instrument in writing.

(4) An instrument of delegation must specify—

- (a) the functions the exercise of which is delegated; and
- (b) any conditions or limitations on the delegation.

(5) The Ombudsman may revoke a delegation under this section at any time, whether made by that Ombudsman or not.

(6) A delegation under this section is not revoked by the happening of a vacancy in the office of Ombudsman or by an absence or disability of the Ombudsman, except to the extent that the instrument of delegation so provides.

(7) During a vacancy in the office of Ombudsman, if there is no acting Ombudsman, the Minister may revoke a delegation under this section.

(8) Notwithstanding any delegation made under this section, the Ombudsman may continue to exercise all or any of the functions delegated.

(9) Where the exercise of a function is delegated under this section, then, for the purpose of enabling a person to carry out an investigation, as referred to in subsection (1) (b), that investigation shall, for the purposes of—

- (a) the provisions of this Act which confer or impose the delegated function; and

Ombudsman (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) the provisions of sections 21 and 24,
be an investigation under this Act, and references in those provisions to the Ombudsman shall be construed as including references to the delegate.

(10) Where the exercise of a function is delegated under this section, the provisions of sections 34, 35 and 35A apply to and in respect of the delegate and officers of the delegate in the same way as those provisions apply to and in respect of the Ombudsman and officers of the Ombudsman.

Delegation from other jurisdictions.

10B. (1) Where by or under the law of another State, the Commonwealth or a Territory of the Commonwealth any function is conferred on or delegated to the Ombudsman, the Ombudsman may—

- (a) exercise the function so conferred or may refuse to exercise the function; or
- (b) accept the delegation and exercise the function so delegated or may refuse to accept the delegation.

(2) Except where otherwise expressly provided, a function exercised by the Ombudsman in pursuance of subsection (1) shall, for the purposes of this Act, be deemed to be exercised in the course of the Ombudsman's office or in the execution of this Act, as the case may require.

(6) Section 11 (b)—

After "section 10", insert "or 10A".

(7) Section 18 (2)—

After "time", insert "and specify a place".

Ombudsman (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(8) Section 21A—

After section 21, insert:—

Injunction.

21A. (1) The Supreme Court may, on an application made by the Ombudsman, grant an injunction restraining any conduct in which a public authority is engaging or in which a public authority appears likely to engage, where that conduct is the subject of, or affects the subject of, an investigation or proposed investigation by the Ombudsman.

(2) The Supreme Court shall not grant an application under subsection (1) unless it is of the opinion that the conduct sought to be restrained is likely to prejudice or negate the effect or implementation of a recommendation which the Ombudsman might make pursuant to section 26 (2) were the Ombudsman to find that the conduct or part of the conduct, the subject of the investigation referred to in subsection (1), was wrong.

(3) The Ombudsman shall not be required, as a condition for the granting of an injunction pursuant to an application referred to in subsection (1), to give any undertaking as to damages.

(9) (a) Section 34 (c)—

After “1923”, insert “, or Part IV of the Special Commissions of Inquiry Act, 1983”.

(b) Section 34 (2)—

At the end of section 34, insert:—

(2) Subsection (1) does not prevent the Ombudsman from furnishing any information relating to—

(a) a matter arising under a law of another State, the Commonwealth or a Territory of the Commonwealth; or

Ombudsman (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) an undertaking that is or was being carried out jointly by New South Wales and another State, the Commonwealth or a Territory of the Commonwealth,

to a person exercising under a law of that other State, the Commonwealth or that Territory, as the case may be, functions similar to those exercised by the Ombudsman under this Act.

(10) (a) Section 35 (1)—

After “evidence”, insert “or produce any document”.

(b) Section 35 (2)—

Omit the subsection, insert instead:—

(2) Subsection (1) does not apply to any legal proceedings—

(a) under section 21A, 35A, 35B or 37;

(b) under Part III of the Royal Commissions Act, 1923; or

(c) under Part IV of the Special Commissions of Inquiry Act, 1983.

(11) Sections 35A, 35B—

After section 35, insert:—

Immunity of Ombudsman and others.

35A. (1) The Ombudsman shall not, nor shall an officer of the Ombudsman, be liable, whether on the ground of want of jurisdiction or on any other ground, to any civil or criminal proceedings in respect of any act, matter or thing done or omitted to be done for the purpose of executing this Act unless the act, matter or thing was done, or omitted to be done, in bad faith.

(2) Civil or criminal proceedings in respect of any act or omission referred to in subsection (1) shall not be brought against the Ombudsman or an officer of the Ombudsman without the leave of the Supreme Court.

Ombudsman (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3) The Supreme Court shall not grant leave under subsection (2) unless it is satisfied that there is substantial ground for the contention that the person to be proceeded against has acted, or omitted to act, in bad faith.

Application to Supreme Court.

35B. (1) Where any question arises as to the jurisdiction of the Ombudsman to conduct an investigation or proposed investigation, the Ombudsman, or any interested party, may apply to the Supreme Court for a determination of that question.

(2) On an application made under subsection (1) the Supreme Court may make such order as it considers appropriate.

(3) For the purposes of subsection (1), the following persons are interested parties:—

- (a) the public authority the conduct of which is the subject of the investigation or proposed investigation;
- (b) the head of that public authority;
- (c) if the investigation arises from the making of a complaint under section 12 (1), the complainant.

(4) This section has effect notwithstanding section 35A.

(12) (a) Section 37 (2)—

After “he” wherever occurring, insert “or she”.

(b) Section 37 (2) (c1)—

After section 37 (2) (c), insert:—

- (c1) where he or she is not an Assistant Ombudsman—
represent that he or she is an Assistant Ombudsman;

Ombudsman (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) Section 37 (2) (d1)—

After section 37 (2) (d), insert:—

- (d1) where he or she is not a person to whom a delegation has been made pursuant to section 10A—represent that he or she is such a person;

(13) (a) Schedule 1, item 2—

Omit the item, insert instead:—

2. Conduct of—

- (a) a court or a person associated with a court; or
(b) a person or body (not being a court) before whom witnesses may be compelled to appear and give evidence, and persons associated with such a person or body, where the conduct relates to the carrying on and determination of an inquiry or any other proceeding.

(b) Schedule 1, item 11—

After item 10, insert:—

11. Conduct of a public authority where acting as a Commissioner under the Special Commissions of Inquiry Act, 1983.

(c) Schedule 1, item 15—

After item 14, insert:—

15. Conduct of a public authority where the conduct is a decision made by the public authority in the course of the administration of an estate or a trust, being a decision as to the payment or investment of money or the transfer of property.

Ombudsman (Amendment).

SCHEDULE 2.

(Sec. 4.)

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

(1) Long title—

Omit “powers, authorities, duties and ”.

(2) Section 5 (4)—

At the end of section 5, insert:—

(4) In this Act, a reference to—

(a) a function includes a reference to a power, authority and duty; and

(b) the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) Section 6 (6)—

Omit “1902”, insert instead “1979”.

(4) (a) Section 8 (3)—

Omit “or perform any power, authority, duty or”, insert instead “any”.

(b) Section 8 (3)—

Omit “power, authority, duty or” where secondly occurring.

(5) (a) Section 10 (1)—

Omit “or performance of any powers, authorities, duties or”, insert instead “of any”.

(b) Section 10 (2), (3), (5) (a)—

Omit “or performance” wherever occurring.

(c) Section 10 (2) (a)—

Omit “power, authority or duty”, insert instead “function”.

Ombudsman (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION—
continued.

- (d) Section 10 (2) (b)—
Omit “power or authority”, insert instead “function”.
- (e) Section 10 (2) (c)—
Omit “power and authority”, insert instead “function”.
- (f) Section 10 (2) (d), (3), (5) (a), (9)—
Omit “powers, authorities, duties or” wherever occurring.
- (g) Section 10 (9)—
Omit “or perform”.
- (6) Section 22 (2)—
Omit “Permanent Head”, insert instead “head”.
- (7) (a) Section 26 (3) (b)—
Before “authority”, insert “public”.
- (b) Section 26 (3) (c)—
Omit “1902”, insert instead “1979”.
- (8) Section 28 (c)—
Omit “1902”, insert instead “1979”.
- (9) Section 30 (1)—
Omit “the thirtieth day of”, insert instead “30th”.
- (10) Section 32 (1)—
Omit the subsection, insert instead:—
 - (1) Such staff as may be necessary to enable the Ombudsman to exercise the Ombudsman’s functions may be employed under and subject to the Public Service Act, 1979.

Ombudsman (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION—
continued.

(11) Sections 34, 37 (1), (2)—

Omit "One thousand dollars" wherever occurring, insert instead "\$1,000".

(12) Section 37 (2) (f)—

Omit "power, authority, duty or".
