

# Government Information (Information Commissioner) Act 2009 No 53

[2009-53]



New South Wales

## Status Information

### Currency of version

Current version for 30 October 2023 to date (accessed 6 May 2024 at 18:48)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Responsible Minister

- Attorney General
- Minister for Customer Service and Digital Government

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 30 October 2023

# Government Information (Information Commissioner) Act 2009 No 53



New South Wales

## Contents

**Long title** ..... 5

**Part 1 Preliminary** ..... 5

1 Name of Act ..... 5

2 Commencement ..... 5

3 Definitions ..... 5

**Part 2 Appointment of Information Commissioner** ..... 6

4 Appointment of Information Commissioner ..... 6

5 Veto of proposed appointment of Commissioner ..... 6

6 Remuneration ..... 6

7 Vacancy in office ..... 7

8 Removal from office ..... 7

9 Filling of vacancy ..... 8

10 Commissioner not Public Service employee ..... 8

11 Appointment of acting Commissioner ..... 8

12 Staff of Commissioner ..... 8

13 Delegation ..... 8

**Part 3 Functions of Commissioner** ..... 9

**Division 1 General functions of Commissioner** ..... 9

14 General functions ..... 9

15 General procedures of Commissioner.....	9
16 Expert assistance .....	9
<b>Division 2 Complaints .....</b>	<b>9</b>
17 Making of complaint .....	9
18 Decision to deal with complaint.....	10
19 How complaints are dealt with .....	10
20 Notice to complainant .....	10
<b>Division 3 Investigations .....</b>	<b>10</b>
21 Investigation of agency systems, policies and practices .....	10
22 Investigation of complaints .....	10
23 Procedure for investigations .....	11
24 Report on compliance with Information Act.....	11
<b>Division 4 Powers of Commissioner .....</b>	<b>12</b>
25 Agencies to give information etc .....	12
26 Entry of premises .....	12
27 Limits on coercive powers because of privilege etc .....	12
28 Powers to prevent contravention of Information Act .....	13
29 Formal inquiries .....	14
30 Cabinet proceedings.....	14
<b>Division 5 Disclosure of information .....</b>	<b>15</b>
31 Commissioner may furnish information to Ombudsman.....	15
31A Commissioner may furnish information to Children’s Guardian .....	15
32 Commissioner may furnish information to ICAC, DPP and LECC .....	15
33 Commissioner may furnish information to agency .....	16
34 Ombudsman may furnish information to Commissioner.....	16
35 Restriction on disclosure of information by Commissioner .....	16
<b>Part 4 Reports by Commissioner .....</b>	<b>17</b>
36 Annual report.....	17
37 Report on operation of GIPA Act .....	17
38 Special report to Parliament .....	18
39 Procedure for reporting.....	18

**Part 5 Miscellaneous ..... 18**

40 Ombudsman required to consult ..... 18

41 Commissioner, officer or expert as witness ..... 19

42 Immunity of Commissioner and others ..... 19

43 Offences ..... 19

44 Oversight of Commissioner’s functions by Joint Committee ..... 21

45 Personal liability of Commissioner and others ..... 21

46 Proceedings for offences ..... 22

47 Regulations ..... 22

48 Review of Act ..... 22

**Schedule 1 (Repealed) ..... 22**

# Government Information (Information Commissioner) Act 2009 No 53



New South Wales

An Act to create the office of Information Commissioner; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the [Government Information \(Information Commissioner\) Act 2009](#).

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

(1) In this Act—

**agency** has the same meaning as in the GIPA Act.

**Commissioner** means the Information Commissioner appointed under this Act.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**GIPA Act** means the [Government Information \(Public Access\) Act 2009](#).

**Information Act** means the GIPA Act and any other Act that is declared by the regulations to be an Information Act for the purposes of this Act.

**Joint Committee** means the Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission constituted under the [Ombudsman Act 1974](#) or such other joint committee of members of Parliament as may be appointed to exercise the functions of the Joint Committee under this Act.

**person** has the same meaning as in the GIPA Act.

**Privacy Commissioner** means the Privacy Commissioner under the [Privacy and](#)

*Personal Information Protection Act 1998.*

- (2) Notes included in this Act do not form part of this Act.

## **Part 2 Appointment of Information Commissioner**

### **4 Appointment of Information Commissioner**

- (1) The Governor may appoint an Information Commissioner.
- (2) The Commissioner holds office for such term not exceeding 5 years as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (3) A person is not eligible to be appointed for more than 2 terms of office as Commissioner (whether or not consecutive terms).
- (3A) A person is not eligible to be appointed as Information Commissioner or to act in that office if the person is the Privacy Commissioner.
- (4) A person is not eligible to be appointed as Commissioner or to act in that office if the person is a member of the Legislative Council or of the Legislative Assembly or is a member of a House of Parliament or legislature of another State or Territory or of the Commonwealth.
- (5) The office of Commissioner is a full-time office and the holder of the office is required to hold it on that basis, except to the extent permitted by the Governor.

### **5 Veto of proposed appointment of Commissioner**

- (1) A person is not to be appointed as Commissioner until—
- (a) a proposal that the person be so appointed has been referred to the Joint Committee under section 31BA of the *Ombudsman Act 1974*, and
  - (b) the period that the Committee has under that section to veto the proposed appointment has ended without the Committee having vetoed the proposed appointment or the Committee notifies the Minister that it has decided not to veto the proposed appointment.
- (2) A person may be proposed for appointment on more than one occasion.
- (3) In this section, **appointment** includes re-appointment.

### **6 Remuneration**

- (1) The Commissioner is entitled to be paid—
- (a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and

(b) such travelling and subsistence allowances as the Minister may from time to time determine.

(2) The Commissioner is not, if a Judge of a New South Wales Court and while receiving remuneration as such a Judge, entitled to remuneration under this Act.

## **7 Vacancy in office**

The office of Commissioner becomes vacant if the holder—

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Governor, or
- (d) is nominated for election as a member of the Legislative Council or of the Legislative Assembly or as a member of a House of Parliament or a legislature of another State or Territory or of the Commonwealth, or
- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (f) becomes a mentally incapacitated person, or
- (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (h) is removed from office under section 8.

## **8 Removal from office**

- (1) The Governor may remove the Commissioner from office on the address of both Houses of Parliament.
- (2) The Governor may suspend the Commissioner from office—
  - (a) for misbehaviour, or
  - (b) for incapacity, or
  - (c) if the Commissioner is absent from duty for a period in excess of his or her leave entitlement as approved by the Governor unless the absence is caused by illness or other unavoidable cause.
- (3) The Minister is to lay or cause to be laid before each House of Parliament, within 7 sitting days of that House after the Commissioner has been suspended from office, a full statement of the grounds for the suspension.

- (4) The suspension is to be lifted unless each House of Parliament, within 21 sitting days from the time when the statement was laid before it, declares by resolution that the Commissioner ought to be removed from office.
- (5) If each House does so declare within that period, the Commissioner is to be removed from office by the Governor.
- (6) For the purposes of this section, sitting days are to be counted whether or not they occur in the same session.

## **9 Filling of vacancy**

If the office of Commissioner becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **10 Commissioner not Public Service employee**

The office of Commissioner is a statutory office and the provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to that office.

## **11 Appointment of acting Commissioner**

- (1) The Minister may, from time to time, appoint a person to act in the office of the Commissioner during the illness or absence of the Commissioner or during a vacancy in the office of the Commissioner. The person, while so acting, has all the functions of the Commissioner and is taken to be the Commissioner (including as Chairperson of the Information and Privacy Advisory Committee under the [Privacy and Personal Information Protection Act 1998](#)).
- (2) The Minister may, at any time, remove a person from office as acting Commissioner.
- (3) An acting Commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.

## **12 Staff of Commissioner**

Persons may be employed in the Public Service under the [Government Sector Employment Act 2013](#) to enable the Commissioner to exercise his or her functions.

### **Note—**

Section 59 of the [Government Sector Employment Act 2013](#) provides that the persons so employed (or whose services the Commissioner makes use of) may be referred to as officers or employees, or members of staff, of the Commissioner. Section 47A of the [Constitution Act 1902](#) precludes the Commissioner from employing staff.

## **13 Delegation**

The Commissioner may delegate the exercise of any function of the Commissioner (other than this power of delegation) to—



- (a) any member of staff of the Commissioner, or
- (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.

## **Part 3 Functions of Commissioner**

### **Division 1 General functions of Commissioner**

#### **14 General functions**

The Commissioner has such functions as may be conferred or imposed on the Commissioner by or under this or any other Act.

#### **15 General procedures of Commissioner**

The Commissioner—

- (a) is to act in an informal manner (including avoiding conducting formal hearings) as far as possible, and
- (b) is to act according to the substantial merits of the case without undue regard to technicalities, and
- (c) may determine the procedures to be followed in exercising the Commissioner's functions under this Act, including the procedures to be followed at an inquiry or investigation conducted by the Commissioner, and
- (d) is not bound by the rules of evidence and may inform himself or herself on any matter in any way that the Commissioner considers to be just.

#### **16 Expert assistance**

For the purposes of the exercise of any of the Commissioner's functions, the Commissioner may engage the services of any person for the purpose of getting expert assistance.

### **Division 2 Complaints**

#### **17 Making of complaint**

Any person may complain to the Commissioner about the conduct (including action or inaction) of an agency in the exercise of functions under an Information Act, including conduct that is alleged by the person to constitute a contravention of an Information Act.

**Note—**

A decision of an agency that is reviewable under the GIPA Act cannot be the subject of a complaint to the Commissioner (even if the person is out of time to apply for review of the decision). See section 89 (4) of the GIPA Act.

## **18 Decision to deal with complaint**

- (1) The Commissioner may decide to deal with a complaint or to decline to deal with a complaint.
- (2) The Commissioner may make preliminary inquiries for the purposes of deciding how to deal with a complaint and may request further information from the complainant.

## **19 How complaints are dealt with**

- (1) The Commissioner deals with a complaint by taking appropriate measures to assist in the resolution of the complaint, including (but not limited to) any of the following measures—
  - (a) providing information to the parties to the complaint,
  - (b) undertaking discussions concerning the complaint with the parties to the complaint,
  - (c) facilitating the direct resolution of the complaint by the parties to the complaint (including by conciliation or other informal process).
- (2) The Commissioner can also deal with a complaint by investigating the complaint under Division 3.

## **20 Notice to complainant**

The Commissioner must give notice to the complainant of the Commissioner's decision on whether to deal with the complaint and (if the Commissioner decides to deal with the complaint) how the complaint is to be dealt with.

## **Division 3 Investigations**

### **21 Investigation of agency systems, policies and practices**

- (1) The Commissioner may investigate and report on the exercise of any functions of one or more agencies under an Information Act, including the systems, policies and practices of agencies (or of agencies generally) that relate to functions of agencies under an Information Act.
- (2) The Commissioner is to give a report under this section—
  - (a) to the Minister responsible for any agency to which the report relates, and
  - (b) to the principal officer of an agency that is the subject of the report.

### **22 Investigation of complaints**

- (1) If the Commissioner decides to investigate a complaint, the Commissioner must give notice to the complainant of the decision to investigate and must give notice to an

agency of the Commissioner's decision to investigate a complaint about the agency.

- (2) The Commissioner may discontinue an investigation of a complaint at any time and is to give notice of the discontinuation of an investigation to the complainant and the agency concerned.

## **23 Procedure for investigations**

- (1) An investigation under this Act is to be made in the absence of the public.
- (2) In an investigation under this Act, the Commissioner must give an opportunity to make submissions on the matter the subject of the investigation—
  - (a) if practicable, to the agency whose conduct is the subject of investigation, and
  - (b) in the case of an investigation of a complaint—to the complainant.
- (3) Where, in an investigation under this Act, the Commissioner considers that there are grounds for adverse comment in respect of any person, the Commissioner, before making any such comment in any report, must, in so far as it is practicable to do so—
  - (a) inform that person of the substance of the grounds of the adverse comment, and
  - (b) give the person an opportunity to make submissions.
- (4) Before publishing a report on an investigation that makes an adverse comment in respect of an agency, the Commissioner must inform the Minister responsible for the agency that the Commissioner proposes to publish such a report and must, at the request of that Minister, consult the Minister.

## **24 Report on compliance with Information Act**

- (1) Where, in an investigation under this Act, the Commissioner finds that any conduct of an agency the subject of the investigation is conduct that constitutes a failure to exercise its functions properly in accordance with any provision of an Information Act, the Commissioner must report the matter—
  - (a) to the Minister responsible for the agency, and
  - (b) to the principal officer of the agency, and
  - (c) where the conduct concerns the conduct of a Public Service employee, to the Secretary of the Premier's Department.
- (2) The Commissioner may give a copy of the report—
  - (a) where the investigation arises out of a complaint to the Commissioner, to the complainant, and
  - (b) to the agency to whose conduct the report relates.

- (3) An agency to whose conduct the report relates who is given a copy of the report may, and on request by the Commissioner must, notify the Commissioner of any action taken or proposed in consequence of the report.

## **Division 4 Powers of Commissioner**

### **25 Agencies to give information etc**

- (1) For the purposes of or in connection with the exercise of any function of the Commissioner, the Commissioner may require an agency—
  - (a) to give the Commissioner a statement of information, or
  - (b) to produce to the Commissioner any record or other thing, or
  - (c) to give the Commissioner a copy of any record.
- (2) A requirement under this section must be in writing, must specify or describe the information, record or thing required, and must fix a time and specify a place for compliance.
- (3) The disclosure of information by an agency in compliance with a requirement imposed by or under this or any other Act does not constitute the waiver of any privilege of the agency against disclosure of the information.

### **26 Entry of premises**

For the purposes of any investigation under this Act, the Commissioner may, at any time—

- (a) enter and inspect any premises occupied or used by an agency, and
- (b) inspect any record or thing in or on the premises.

### **27 Limits on coercive powers because of privilege etc**

- (1) The Commissioner must not exercise a coercive entry power and must set aside any requirement imposed under a coercive investigative power if it appears to the Commissioner that any person has a ground of privilege, whereby, in proceedings in a court of law, the person might resist a like requirement or the exercise of a like power, unless—
  - (a) the privilege is a privilege of an agency, or
  - (b) it appears to the Commissioner that the person has waived the privilege.
- (2) However, the Commissioner may exercise a coercive entry or investigative power despite (and is not required to set aside any requirement imposed under a coercive investigative power merely because of)—
  - (a) any rule of law that, in proceedings in a court of law, might justify an objection to

compliance with a like requirement or the exercise of a like power on grounds of public interest, or

(b) any duty of secrecy or other restriction on disclosure applying to an agency.

(3) In this section—

**coercive entry power** means a power to inspect any premises or any record or thing on premises.

**coercive investigative power** means a power to—

(a) require any person to give any statement of information, or

(b) require any person to produce any record or other thing, or

(c) require any person to give a copy of any record, or

(d) require any person to answer any question.

## **28 Powers to prevent contravention of Information Act**

- (1) If a person has engaged, is engaged or is proposing to engage in any conduct that constituted, constitutes or would constitute a contravention of any provision of an Information Act, the Supreme Court may, on the application of the Commissioner, grant an injunction restraining the person from engaging in that conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.
- (2) If a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do any act or thing that the person is required to do by or under an Information Act, the Supreme Court may, on the application of the Commissioner, grant an injunction requiring the person to do that act or thing.
- (3) If an application is made to the Court for an injunction under subsection (1), the Court may, if in its opinion it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in the conduct concerned pending the determination of the application.
- (4) The Court may rescind or vary an injunction granted under this section.
- (5) The Commissioner has standing to bring proceedings by way of judicial review in connection with the exercise of the functions of an agency under the GIPA Act.
- (6) The Commissioner does not have the function of bringing proceedings for an offence under an Information Act.

## 29 Formal inquiries

- (1) The Commissioner may make or hold inquiries for the purposes of an investigation that the Commissioner conducts under this Act.
- (2) For the purposes of any inquiry under this section, the Commissioner has the powers, authorities, protections and immunities conferred on a commissioner by Division 1 of Part 2 of the *Royal Commissions Act 1923* and that Act (section 13 and Division 2 of Part 2 excepted) applies to any witness summoned by or appearing before the Commissioner in the same way as it applies to a witness summoned by or appearing before a commissioner, but section 11 (2) of that Act is to have effect subject to section 27 (Limits on coercive powers because of privilege etc) of this Act.
- (3) A witness appearing before the Commissioner is to be paid such amount as the Commissioner determines, but not exceeding the amount that would be payable to such a witness if he or she were a Crown witness subpoenaed by the Crown to give evidence.

## 30 Cabinet proceedings

- (1) This Act does not enable the Commissioner—
  - (a) to require any person—
    - (i) to give any statement of information, or
    - (ii) to produce any record or other thing, or
    - (iii) to give a copy of any record, or
    - (iv) to answer any question,if compliance with the requirement would disclose information that is Cabinet information, or
  - (b) to inspect any such record or thing.
- (2) A certificate of the Secretary or General Counsel of the Cabinet Office that any information, record or thing or the answer to any question comprises, contains or would reveal Cabinet information is conclusive of that fact for the purposes of this section.

- (3) In this section—

**Cabinet information** means information that is Cabinet information under clause 2 of Schedule 1 to the GIPA Act.

## Division 5 Disclosure of information

### 31 Commissioner may furnish information to Ombudsman

- (1) The Commissioner may, at any time, furnish to the Ombudsman information obtained by the Commissioner in discharging functions under this or any other Act if the Commissioner is of the opinion that the information relates to conduct of an agency that could be the subject of a complaint under the [Ombudsman Act 1974](#).
- (2) However, the Commissioner must not disclose information that could not otherwise be disclosed under this Act or could not be obtained by the Ombudsman under the [Ombudsman Act 1974](#) or any other Act.

### 31A Commissioner may furnish information to Children's Guardian

- (1) The Commissioner may, at any time, furnish to the Children's Guardian, information obtained by the Commissioner in discharging functions under this or any other Act if the Commissioner is of the opinion that the information relates to the conduct of an agency that could be the subject of a complaint under the [Children's Guardian Act 2019](#).
- (2) However, the Commissioner must not disclose information that could not otherwise be disclosed under this Act or could not be obtained by the Children's Guardian under the [Children's Guardian Act 2019](#).

### 32 Commissioner may furnish information to ICAC, DPP and LECC

- (1) The Commissioner may, at any time, furnish information obtained by the Commissioner in discharging functions under this or any other Act to the Director of Public Prosecutions, the Independent Commission Against Corruption or the Law Enforcement Conduct Commission.
- (2) However, the Commissioner must not disclose information that could not otherwise be disclosed under this Act or could not—
  - (a) in the case of the Director of Public Prosecutions—be obtained by the Director under the [Director of Public Prosecutions Act 1986](#) or any other Act, or
  - (b) in the case of the Independent Commission Against Corruption—be obtained by the Commission under the [Independent Commission Against Corruption Act 1988](#) or any other Act, or
  - (c) in the case of the Law Enforcement Conduct Commission—be obtained by the Commission under the [Law Enforcement Conduct Commission Act 2016](#) or any other Act.

### **33 Commissioner may furnish information to agency**

- (1) The Commissioner may, at any time—
  - (a) furnish to an agency information obtained by the Commissioner in discharging functions under this Act with respect to a complaint against or relating to the agency, and
  - (b) make such comments to the agency with respect to the complaint as the Commissioner thinks fit.
- (2) The Commissioner may also furnish any or all of the information referred to in subsection (1) to any other agency, and may make such comments (if any) to that agency as the Commissioner considers appropriate, if—
  - (a) the Commissioner is satisfied that the information concerned is relevant to the functions, policies, procedures or practices of that other agency, and
  - (b) the information does not disclose any personal information (within the meaning of either the [Privacy and Personal Information Protection Act 1998](#) or the [Health Records and Information Privacy Act 2002](#)).

### **34 Ombudsman may furnish information to Commissioner**

- (1) The Ombudsman may at any time furnish to the Commissioner information obtained by the Ombudsman in discharging functions under the [Ombudsman Act 1974](#) or any other Act if the Ombudsman is of the opinion that the information relates to conduct of an agency that could be the subject of a complaint to the Commissioner under this Act.
- (2) However, the Ombudsman must not disclose information that could not otherwise be disclosed under the [Ombudsman Act 1974](#) or could not be obtained by the Commissioner under this or any other Act.

### **35 Restriction on disclosure of information by Commissioner**

- (1) The Commissioner must not, in the exercise of functions under this Act, disclose any information for which there is (or for which an agency claims there is) an overriding public interest against disclosure, as provided by the GIPA Act, unless the disclosure is authorised under this Division.
- (1A) Despite subsection (1), the Commissioner may, in the exercise of functions under this Act, disclose—
  - (a) identifying information, if the information is disclosed for a reason mentioned in the [Public Interest Disclosures Act 2022](#), section 64(2), or
  - (b) information authorised or required to be disclosed by or under the [Public Interest Disclosures Act 2022](#).



- (2) Despite section 91 of the GIPA Act, the Commissioner may disclose information to the Privacy Commissioner in the course of consulting with the Privacy Commissioner under section 94 of the GIPA Act before making a recommendation against a decision of an agency that there is an overriding public interest against disclosure of the information.
- (3) In this section—

**identifying information** has the same meaning as in the [Public Interest Disclosures Act 2022](#), section 64.

## Part 4 Reports by Commissioner

### 36 Annual report

- (1) The Commissioner is, as soon as practicable after 30 June in each year, to prepare a report of the Commissioner's work and activities for the 12 months preceding that date and is to furnish the report to the Presiding Officer of each House of Parliament.
- (2) A copy of the report is to be provided to the Minister.
- (2A) The report is to be included as part of the annual reporting information prepared for the Information and Privacy Commission under the [Government Sector Finance Act 2018](#).
- (3) Division 7.3 of the [Government Sector Finance Act 2018](#) is, in its application to the annual reporting information prepared for the Information and Privacy Commission, modified as follows—
  - (a) the annual reporting information is to be given to the Presiding Officer of each House of Parliament and not to the responsible Minister for the Information and Privacy Commission,
  - (b) provisions of that Act relating to the giving of annual reporting information to the responsible Minister for a GSF agency and to the public availability of annual reporting information do not apply to the Commissioner or the Information and Privacy Commission.
- (4) Section 39 (Procedure for reporting) applies to the annual reporting information for the Information and Privacy Commission as if it were a report made or furnished under this Part.

### 37 Report on operation of GIPA Act

- (1) The Commissioner is, as soon as practicable after 30 June in each year, to prepare and publish a report on the operation of the GIPA Act (generally, across all agencies) for the 12 months preceding that date and is to furnish the report to the Presiding Officer of each House of Parliament.

- (2) A copy of the report is to be provided to the Minister.

### **38 Special report to Parliament**

- (1) The Commissioner may, at any time, make a special report on any matter relating to the functions of the Commissioner to the Presiding Officer of each House of Parliament and must also provide the Minister with a copy of the report.
- (2) The Commissioner may include in a report under this section a recommendation that the report be made public immediately.

### **39 Procedure for reporting**

- (1) **Tabling** A copy of a report made or furnished to the Presiding Officer of a House of Parliament under this Part must be laid before that House on the next sitting day of that House after it is received by the Presiding Officer.
- (2) **Public reports** If a report includes a recommendation by the Commissioner that the report be made public forthwith, the Presiding Officer of a House of Parliament may make it public whether or not that House is in session and whether or not the report has been laid before that House.
- (3) **Privileges and immunities** A report that is made public by the Presiding Officer of a House of Parliament before it is laid before that House attracts the same privileges and immunities as it would if it had been laid before that House.
- (4) **Report procedures** A Presiding Officer need not inquire whether all or any conditions precedent have been satisfied as regards a report purporting to have been made or furnished in accordance with this Act.
- (5) **Reference to Presiding Officer** In this Part, a reference to a Presiding Officer of a House of Parliament is a reference to the President of the Legislative Council or the Speaker of the Legislative Assembly. If there is a vacancy in the office of President, the reference to the President is taken to be a reference to the Clerk of the Legislative Council and, if there is a vacancy in the office of Speaker, the reference to the Speaker is taken to be a reference to the Clerk of the Legislative Assembly.

## **Part 5 Miscellaneous**

### **40 Ombudsman required to consult**

- (1) If the Ombudsman receives a complaint under the [Ombudsman Act 1974](#) about conduct of an agency that it appears could be the subject of a complaint to the Commissioner under this Act, the Ombudsman is to consult with the Commissioner on the matter.
- (2) If the Commissioner decides to deal with the matter as a complaint under this Act—

- (a) the complaint is (to the extent that it relates to conduct that could be the subject of a complaint under this Act) to be transferred to the Commissioner and dealt with as a complaint made to the Commissioner under this Act, and
- (b) the Ombudsman is not to investigate the matter (and is to discontinue any investigation already commenced) to the extent that it relates to conduct that could be the subject of a complaint under this Act.

#### **41 Commissioner, officer or expert as witness**

- (1) Neither the Commissioner nor a member of staff of the Commissioner is competent or compellable to give evidence or produce any document in any legal proceedings in respect of any information obtained by the Commissioner or member of staff in the course of the exercise of functions under this or any other Act.
- (2) Subsection (1) does not apply to any legal proceedings—
  - (a) under section 27 (Limits on coercive powers because of privilege etc), 42 (Immunity of Commissioner and others) or 43 (Offences), or
  - (b) under Part 3 of the [Royal Commissions Act 1923](#), or
  - (c) under Part 4 of the [Special Commissions of Inquiry Act 1983](#).
- (3) This section applies to a person whose services are engaged under section 16 in the same way as it applies to a member of staff of the Commissioner.

#### **42 Immunity of Commissioner and others**

- (1) Neither the Commissioner nor a member of staff of the Commissioner is 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 or any other 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) cannot be brought against the Commissioner or a member of staff of the Commissioner without the leave of the Supreme Court.
- (3) The Supreme Court is not to 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.

#### **43 Offences**

- (1) A person must not—
  - (a) without lawful excuse, wilfully obstruct, hinder or resist the Commissioner or a member of staff of the Commissioner in the exercise of functions under this or any

other Act, or

- (b) without lawful excuse, refuse or wilfully fail to comply with any lawful requirement of the Commissioner under this or any other Act, or
- (c) wilfully make any false statement to or mislead, or attempt to mislead, the Commissioner or a member of staff of the Commissioner in the exercise of functions under this or any other Act.

Maximum penalty—10 penalty units.

- (2) A person must not directly or indirectly—

- (a) falsely represent that he or she is the Commissioner or acting Commissioner, or
- (b) falsely represent that he or she is a member of staff of the Commissioner.

Maximum penalty—10 penalty units.

- (3) For the purposes of subsection (2), a person represents that a state of affairs exists if the person does or says anything, or causes, permits or suffers anything to be done or said, whereby it is represented, or whereby a belief may be induced, that the state of affairs exists.
- (4) A person who uses, causes, inflicts or procures any violence, punishment, damage, loss or disadvantage to any person for or on account of—
- (a) his or her making a complaint to the Commissioner, or
  - (b) his or her assisting the Commissioner, or
  - (c) any evidence given by him or her to the Commissioner,
- is guilty of an indictable offence.

Maximum penalty—200 penalty units or imprisonment for 5 years, or both.

- (5) An employer who dismisses any employee from his or her employment, or prejudices any employee in his or her employment, for or on account of the employee assisting the Commissioner is guilty of an indictable offence.

Maximum penalty—200 penalty units or imprisonment for 5 years, or both.

- (6) In any proceedings for an offence against subsection (5), it lies on the employer to prove that any employee shown to have been dismissed or prejudiced in his or her employment was so dismissed or prejudiced for some reason other than the reasons mentioned in subsection (5).
- (7) In this section, a reference to a person assisting the Commissioner is a reference to a person who—

- (a) has appeared, is appearing or is to appear as a witness before the Commissioner, or
- (b) has complied with or proposes to comply with a requirement under section 25 (Agencies to give information etc), or
- (c) has assisted, is assisting or is to assist the Commissioner in some other manner.

#### **44 Oversight of Commissioner's functions by Joint Committee**

- (1) The Joint Committee has the following functions under this Act—
  - (a) to monitor and review the exercise by the Commissioner of the Commissioner's functions,
  - (b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commissioner or connected with the exercise of the Commissioner's functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed,
  - (c) to examine each annual and other report of the Commissioner and report to both Houses of Parliament on any matter appearing in, or arising out of, any such report,
  - (d) to recommend to both Houses of Parliament any changes to the functions of the Commissioner that the Joint Committee thinks desirable,
  - (e) to inquire into any question in connection with its functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.
- (2) Nothing in this section authorises the Joint Committee—
  - (a) to investigate a matter relating to any particular conduct, or
  - (b) to reconsider any decision to investigate, not to investigate or to discontinue investigation of any particular matter, or
  - (c) to reconsider the findings, recommendations or other decisions of the Commissioner in relation to any particular matter.
- (3) The provisions of Part 4A of the [Ombudsman Act 1974](#) apply in relation to the Joint Committee's functions under this Act in the same way as they apply in relation to the Joint Committee's functions under that Act.

#### **45 Personal liability of Commissioner and others**

A matter or thing done (or omitted to be done) by the Commissioner, a member of staff of the Commissioner or a person acting under the direction of the Commissioner does not, if the matter or thing was done (or omitted to be done) in good faith for the purpose of

executing this Act or any other Act, subject the Commissioner, the member of staff or the person so acting personally to any action, liability, claim or demand.

#### **46 Proceedings for offences**

- (1) Except where otherwise expressly provided by this Act, proceedings for an offence against this Act are to be dealt with summarily before the Local Court.
- (2) If an offence against this Act is an indictable offence, the Local Court may nevertheless hear and determine the proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and prosecutor consent.
- (3) If, in accordance with subsection (2), the Local Court convicts a person of such an offence, the maximum penalty that the court may impose is—
  - (a) in the case of an individual—the smaller of—
    - (i) a fine of 50 penalty units or imprisonment for 2 years, or both, or
    - (ii) the maximum penalty otherwise applicable to the offence when committed by an individual, or
  - (b) in the case of a corporation—the smaller of—
    - (i) a fine of 100 penalty units, or
    - (ii) the maximum penalty otherwise applicable to the offence when committed by a corporation.

#### **47 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

#### **48 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

### **Schedule 1 (Repealed)**