

CHAPTER 88

OMBUDSMAN (FURTHER PROVISIONS)

ARRANGEMENT OF SECTIONS

SECTION

1. SHORT TITLE
2. INTERPRETATION
3. OMBUDSMAN TO VACATE OTHER OFFICES
4. OATHS OF OFFICE
5. INVESTIGATIONS BY OMBUDSMAN
6. PERSONS BY WHOM COMPLAINTS MAY BE MADE
7. CIRCUMSTANCES IN WHICH OMBUDSMAN SHALL NOT INVESTIGATE COMPLAINTS
8. PROCEDURE FOR MAKING COMPLAINT
9. RECORDING AND NOTIFYING INTENDED INVESTIGATION
10. CONDUCT OF INVESTIGATIONS
11. DISCLOSURE OF INFORMATION
12. ATTENDANCE OF WITNESSES
13. PRIVILEGE OF WITNESSES
14. POWERS OF ENTRY
15. INVESTIGATION NOT TO AFFECT DEPARTMENTAL ACTION
16. PROCEEDINGS AFTER INVESTIGATION
17. PRIVILEGE OF COMMUNICATION
18. EXPENSES AND ALLOWANCES
19. ADMINISTRATIVE EXPENSES
20. OFFENCES
21. OMBUDSMAN MAY DETERMINE NOT TO INVESTIGATE COMPLAINT WHERE UNDUE PUBLICITY GIVEN
22. REGULATIONS

SCHEDULE

CHAPTER 88

OMBUDSMAN (FURTHER PROVISIONS)

AN ACT TO MAKE FURTHER PROVISIONS RELATING TO THE OFFICE AND POWERS OF THE OMBUDSMAN AND FOR MATTERS CONNECTED THEREWITH AND INCIDENTAL THERETO

1 of 1980
7 of 1983

[25th April 1980]

1. This Act may be cited as the Ombudsman (Further Provisions) Act.

Short title
7 of 1983, s. 3

2. In this Act, unless the context otherwise requires-

Interpretation

"Ombudsman" means the Ombudsman appointed in accordance with section 96(2) of the Constitution;

"political party" means an association or group of persons, whether corporate or unincorporated, whose objectives include the nomination and election of members of Parliament or of a Provincial Assembly;

"resident of Solomon Islands" means a person entitled to reside in Solomon Islands in accordance with the provisions of section 7 or section 8 of the Immigration Act;

Cap. 60

"undue publicity", in relation to a complaint made to the Ombudsman or an investigation carried out by the Ombudsman, means statements made or broadcast in the news media or by broadsheet or pamphlet which include matter other than factual details of the complaint or investigation as the case may be, which matter is of a nature calculated to arouse controversy over the complaint or investigation.

3.-(1) In addition to vacating his seat as a member of Parliament or of any Provincial Assembly in accordance with section 96(3) of the Constitution, the person appointed as Ombudsman shall forthwith vacate any-

Ombudsman to vacate
other offices

(a) public office;

(b) membership of any Commission established by the Constitution;

(c) office in a statutory authority or Government agency.

(2) The person appointed as Ombudsman shall, if he holds any office in, or membership of, any political party, resign such office or membership.

4.-(1) Before entering upon the exercise of the duties of his office, the Ombudsman shall take and subscribe the oaths prescribed in the Official Oaths Act and shall take before the Chief Justice an oath in the form set out in the First Part of the Schedule to this Act.

(2) The members of the staff of the Ombudsman shall maintain secrecy in respect of all matters which come to their knowledge in the exercise of their duties and shall, before entering upon the exercise of their duties take an oath to be administered by the Ombudsman in the form set out in the Second Part of the Schedule to this Act.

5.-(1) Subject to the provisions of subsection (3) and section 7, the Ombudsman may for the purposes of section 97(1) of the Constitution investigate any action taken by any officer or authority to which this section applies in the exercise of the administrative functions of that officer or authority in any case in which-

(a) complaint under this section is made alleging that a person or body of persons has suffered injustice in consequence of that action;

(b) he is invited to do so by any Minister or any member of Parliament; or

(c) he considers it desirable to do so of his own motion.

(2) This section applies to the following officers and authorities-

(a) any department of the Government or officer of such a department;

(b) the police force or any member thereof;

(c) the Prisons Service or any other service maintained and controlled by the Government or any officer or authority of any such service;

(d) any Provincial Assembly;

(e) any authority empowered to determine the person with whom any contract or class of contract is to be entered into by or on behalf of the Government or any such officer or authority;

(f) any body incorporated by Act of Parliament;

(g) such other officers or authorities as may be prescribed by resolution of Parliament.

(3) This section shall not apply in relation to-

(a) any of the persons referred to in the proviso to section 97(3) of the Constitution;

(b) any of the persons referred to in section 97(4) of the Constitution when acting in the exercise of his judicial functions.

6.-(1) A complaint under section 5 may be made by any individual, or by any body of persons whether incorporated or not, not being-

Persons by whom
complaints may be made

(a) a department or authority of the Government or any authority or body constituted for purposes of the public service or local government; or

(b) any other authority or body whose members are appointed by the Governor-General or by a Minister or whose revenues consist wholly or mainly of moneys provided from public funds.

(2) Where any person by whom a complaint might have been made has died or is for any reason unable to act for himself, the complaint may be made by his personal representatives or by a member of his family or other individual suitable to represent him; but except as aforesaid a complaint shall not be entertained unless made by the person aggrieved himself.

7.-(1) The Ombudsman shall not conduct an investigation in respect of any complaint unless the person aggrieved is a resident of Solomon Islands (or, if he is dead, was a resident at the time of his death) or the complaint relates to action taken in relation to him while he was present in Solomon Islands or in relation to rights or obligations that accrued or arose in Solomon Islands.

Circumstances in which
Ombudsman shall not
investigate complaints

(2) The Ombudsman shall not conduct an investigation in respect of any complaint in so far as it relates to any of the following matters, that is to say-

(a) any action in respect of which the person aggrieved has a right of appeal, reference or review to or before a tribunal constituted by or under any law in force in Solomon Islands; or

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

Provided that-

(i) the Ombudsman may conduct such an investigation notwithstanding that the person aggrieved has or had such a right or remedy if satisfied that in the particular circumstances it is not reasonable to expect him to avail himself or to have availed himself of the right or remedy; and

(ii) nothing in this subsection shall preclude the Ombudsman from conducting any investigation as to whether any of the provisions of Chapter II of the Constitution has been contravened.

(3) The Ombudsman shall not conduct an investigation in respect of any complaint in respect of any action if he is given notice in writing by the Prime Minister that the action was taken by a Minister in person in the exercise of his own deliberate judgment.

(4) The Ombudsman shall not conduct an investigation in respect of any complaint where it appears to him-

(a) that the complaint is merely frivolous or vexatious;

(b) that the subject-matter of the complaint is trivial;

(c) that the person aggrieved has no sufficient interest in the subject-matter of the complaint; or

(d) that the making of the complaint has, without reasonable cause, been delayed for more than twelve months.

(5) The Ombudsman shall not conduct an investigation in respect of any matter if he is given notice by the Prime Minister that the investigation of that matter would not be in the interests of the security of Solomon Islands.

(6) In this section "action" includes failure to act.

8.-(1) Any complaint or invitation made to the Ombudsman shall be in writing and shall be submitted direct to the Ombudsman.

Procedure for making
complaint

(2) Notwithstanding the provisions of any written law, any complaint made to the Ombudsman by any person who is in legal custody or who is an inmate of any mental hospital or similar institution shall be forwarded unopened to the Ombudsman by the person in charge of the place where the complainant is detained or is an inmate.

9.-(1) Subject to the provisions of this section, the Ombudsman shall before entering upon an investigation-

(a) record the nature and scope of the investigation he proposes to make and inform the officer or authority concerned of his intention to make such investigation and to furnish him with a copy of such record; or

(b) if he considers that the complaint is of a trivial or vexatious nature, or he determines to apply the provisions of section 21, he shall record that he does not intend to make an investigation and so notify the person making the complaint.

(2) If in the course of an investigation the Ombudsman considers that the nature or scope of an investigation should be enlarged he shall cause a further record to be made to that effect and shall furnish to the officer or authority a copy thereof.

(3) The record and any further record made in accordance with this section shall form part of the proceedings of an investigation.

(4) Nothing in this section shall be construed as precluding the Ombudsman, before complying with subsection (1) or subsection (2), from conducting an examination of any person who has made a complaint or from consulting the officer or authority concerned in order that he may determine whether or not an investigation should be made or whether or not the nature or scope of an investigation should be enlarged.

10.-(1) Subject to the provisions of this Act, the Ombudsman may obtain information from such persons and in such manner and make such inquiries as he thinks fit and may determine whether any person may be represented by a legal representative or otherwise in an investigation.

(2) Every investigation shall be conducted in private and subject to the provisions of section 8 and this section, the procedure for conducting an investigation shall be such as the Ombudsman considers appropriate in the circumstances of the case.

(3) It shall not be necessary for the Ombudsman to hold a hearing during the course of an investigation nor shall any person be entitled as of right to be heard by him:

Provided that if at any time during the course of an investigation it appears to the Ombudsman that there may be sufficient grounds for his making any report or recommendation that may adversely affect any person, officer or authority, he shall afford such person, officer or authority an opportunity to be heard; and no comment that is adverse to any person, officer or authority shall be contained in a report to Parliament, to a Minister or to a department or authority unless such person, officer or authority has been given an opportunity to be heard.

11.-(1) For the purposes of an investigation under this Act, the Ombudsman may require any Minister, officer or member of any department or authority concerned or any other person who in his opinion is able to furnish information or produce documents or things relevant to the investigation to furnish any such information or produce any such document or thing.

(2) No obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to persons in the public service imposed by any law in force in Solomon Islands or any rule or law shall apply to the disclosure of information for the purposes of any such investigation; and the Crown shall not be 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) No person shall be required or authorised by virtue of this section to furnish any information or answer any question or produce any document relating to proceedings of the Cabinet or any committee thereof; and for the purposes of this subsection a certificate issued by the Secretary to the Cabinet with the approval of the Prime Minister and certifying that any information, question or document so relates shall be conclusive.

(4) The Attorney-General may give notice to the Ombudsman with respect to any document or information specified in the notice, or any class of documents or information so specified, that in his opinion the disclosure of that document or information or documents or information of that class, would be contrary to the public interest in relation to defence, external relations or internal security; and where such notice is given nothing in this section shall be construed as authorising or requiring the Ombudsman or any member of his staff to communicate to any person for any purpose any document or information specified in the notice or any document or information of a class so specified.

12.-(1) Subject to the provisions of this Act, the Ombudsman may by order require any person who in his opinion is able to furnish information or produce any document, paper or thing relevant to an investigation to attend before him at a time and place specified in such order and be examined on oath or produce such document, paper or thing.

(2) Where the Ombudsman orders any person to be examined on oath, he may administer such oath.

(3) An order made under this section shall be served on the person to whom it is directed by a member of the staff of the Ombudsman or by a police officer in the manner prescribed for the service of a summons on a witness in civil proceedings before a

court of law.

(4) If a person to whom an order under this section is directed does not attend at the time and place mentioned therein, the Ombudsman may, upon being satisfied that the order was duly served or that the person to whom the order was directed wilfully avoided service, issue a warrant to apprehend such person and to bring such person before him at a time and place specified therein. Every warrant issued this section shall be executed by a police officer.

(5) Where a person is arrested in pursuance of a warrant issued under this section and is not brought before the Ombudsman within twenty-four hours of his arrest or is earlier released by order of the Ombudsman on his undertaking to attend at a time and place specified therein, such person shall forthwith be taken before a Magistrate who shall-

(a) if such person enters into a suitable recognisance for his appearance before the Ombudsman, release him from custody; or

(b) order such person to be detained in custody until such time as he can be brought before the Ombudsman.

(6) When any person is required by the Ombudsman to attend before him for the purposes of this section, such person shall be entitled to the same fees, allowances and expenses as if he were a witness before a court of law and for the purposes of this subsection, the Ombudsman shall have the powers of a court to fix or disallow the amount of any such fee, allowance or expenses.

(7) For the avoidance of doubt it is hereby declared that this section shall apply whether or not the person or witness concerned is a person in respect of whose conduct the Ombudsman has jurisdiction to inquire.

13.-(1) Subject to section 11(2) every person required to give any information or ordered to attend to give evidence or to produce any document, paper or thing before the Ombudsman shall be entitled in respect of such information, evidence, document, paper or thing to the same rights and privileges as a witness in any court of law.

Privilege of witnesses

(2) An answer given by a person to a question put by the Ombudsman or a statement made by a person to the Ombudsman shall not be admissible in evidence against him in any civil or criminal proceedings except in the case of criminal proceedings for an offence against this Act or for perjury, subornation of perjury or defeating or obstructing the course of justice, and no evidence in respect of proceedings at a hearing before the Ombudsman shall be given against any person other than in further proceedings before the Ombudsman.

(3) When a person gives evidence or produces any document, paper or thing at a hearing before the Ombudsman in pursuance of this Act the proceedings shall be deemed to be judicial proceedings for the purposes of a prosecution for perjury, subornation of perjury or defeating or obstructing the course of justice.

(4) The Ombudsman may hear and obtain information whether or not the same be evidence within the meaning of the law for the time being regulating the admissability of evidence in courts of law.

14.-(1) For the purposes of this Act the Ombudsman or any person specifically authorised by him may at any time enter upon any premises occupied by any person, department or authority in respect of which he may carry out an investigation and inspect the premises and thereon make such inquiries as he shall think fit.

Powers of entry

(2) Before entering upon any premises pursuant to the preceding subsection, the Ombudsman shall give at least 24 hours notice to the appropriate person, department or authority.

15. The conduct of an investigation by the Ombudsman shall not affect any action taken by the department or authority concerned or any power or duty of that department or authority to take further action in respect of any matter which is the subject of the investigation.

Investigation not to affect departmental action

16.-(1) The provisions of this section shall apply in every case where, after making an investigation, the Ombudsman is of opinion that the action that was the subject-matter of investigation was-

Proceedings after investigation

(a) contrary to law;

(b) based wholly or partly on a mistake of law or fact;

(c) unreasonably delayed; or

(d) otherwise unjust or manifestly unreasonable.

(2) If in any case to which this section applies the Ombudsman is of the opinion that-

(a) the matter should be given further consideration;

(b) the omission should be rectified;

(c) the decision should be cancelled, reversed or varied;

(d) any practice on which the act, omission, decision or recommendation was based should be altered;

(e) any law on which the act, omission, decision or recommendation was based should be reconsidered;

(f) reasons should have been given for the decision; or

(g) any other steps should be taken,

the Ombudsman shall report his opinion and his reasons therefor to the officer, of the department or authority concerned and may make such recommendations as he thinks fit and shall also send a copy of his report and recommendations to the Prime Minister and to any Minister concerned.

(3) When reporting his opinion to the officer of the department or authority concerned, the Ombudsman may request such officer to notify him within a specified time of the steps (if any) that it is proposed to take to give effect to the recommendations of the Ombudsman.

(4) The Ombudsman shall inform the person who has made a complaint of the result of his investigations-

(a) where the officer of the department or authority concerned is not required to take any steps in the matter, at the time that he sends a copy of his report to the Prime Ministers; or

(b) where the officer of the department or authority concerned is requested in accordance with subsection (3) to notify the Ombudsman of the steps that it is proposed to take, upon receipt of such notification or at the expiry of 28 days from the date of the request, whichever shall be the earlier.

(5) If within a reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman if he thinks fit after considering the comments, if any, made by or behalf of any department, authority, body or person affected, may thereafter make such further report on the matter as he thinks fit to Parliament.

17. For the purposes of any law relating to defamation, the publication, by the Ombudsman or by any member of his staff, of any report or communication and the publication to the Ombudsman or to any member of his staff, or to any member of Parliament in accordance with the provisions of section 5(1) of this Act, of any

Privilege of
communication

complaint or other matter, shall, if made in accordance with the provisions of section 98(3) of the Constitution or of this Act, be absolutely privileged.

18. The Ombudsman may, in his discretion, pay to any person by whom a complaint has been made or to any person who attends or furnishes information for the purposes of an investigation, sums in respect of expenses properly incurred or by way of allowance or compensation for loss of time, in accordance with such scales and subject to such conditions as may be prescribed.

Expenses and allowances

19. The administrative expenses of the office of the Ombudsman including such expenses and allowances as are authorised by the provisions of this Act shall to such amount as may be sanctioned by Parliament be paid out of the Consolidated Fund.

Administrative expenses

20.-(1) Any person who, otherwise than in the course of his duty, directly or indirectly, by himself or by any other person, in any manner whatsoever including giving undue publicity to his complaint wilfully influences or attempts to influence the decision of the Ombudsman with regard to any complaint made to him or to any investigation made by him, shall be guilty of an offence.

Offences

(2) Subject to the provisions of this Act, any person who is requested by the Ombudsman or by any member of the staff of the Ombudsman acting in the exercise of his duties, to furnish any information or to produce any document, paper or thing and who wilfully fails to furnish such information or to produce such document, paper or thing, shall be guilty of an offence.

(3) Any person who, in connection with any matter which lies within the jurisdiction of Ombudsman, wilfully gives him any information which is false or misleading by reason of the falsity of, or the omission of, a material particular, shall be guilty of an offence.

(4) Any person guilty of an offence under the provisions of this section shall be liable to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

(5) No prosecution for an offence against this section shall be instituted except with the consent of the Director of Public Prosecutions.

21. The Ombudsman may determine not to make an investigation in the case of any complaint where the complainant or any person acting in his behalf (whether or not the complainant has authorised or consented to his doing so) has given undue

Ombudsman may determine not to investigate complaint where undue publicity

publicity to the complaint, on the ground that such undue publicity may prejudice the impartial investigation of the complaint. given

22. The Prime Minister may make regulations in order to carry this Act into effect and for prescribing anything which is required to be prescribed hereunder. Regulations

SCHEDULE

FIRST PART

OATH OF OMBUDSMAN

I, swear that I will well, faithfully and impartially serve Her Majesty, Queen Elizabeth the Second, Her heirs and successors according to law, in the office of Ombudsman and that I will not, except in accordance with the provisions of Chapter IX of the Constitution and the Ombudsman (Further Provisions) Act divulge any information received by me in the exercise of my duties as Ombudsman to any person. So help me God.

SECOND PART

OATH OF MEMBER OF STAFF OF OMBUDSMAN'S OFFICE

I, swear that I will regard all information, documents and other matters which may come into my possession or to my knowledge in the course of my official duties, as secret and that I will not, except in accordance with the provisions of Chapter IX of the Constitution and the Ombudsman (Further Provisions) Act, divulge any information received by me in the exercise of my official duties of any person. So help me God.

(No Subsidiary Legislation)