



OMBUDSMAN BILL 2016

(NO. 17 OF 2016)



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BILL

Entitled

AN ACT TO PROVIDE FOR MATTERS RELATED TO THE OFFICE AND POWERS OF THE OMBUDSMAN, TO REPEAL THE OMBUDSMAN (FURTHER PROVISIONS) ACT (CAP. 88), AND FOR RELATED PURPOSES.

ENACTED BY THE NATIONAL PARLIAMENT OF SOLOMON ISLANDS.

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OMBUDSMAN BILL 2016

PART 1 PRELIMINARY MATTERS

1 Short title

This Act may be cited as the *Ombudsman Act 2016*.

2 Commencement

This Act commences on the day appointed by the Minister by *Gazette* notice.

3 Definitions

In this Act:

“administrative conduct” has the meaning given in section 4;

“authorised officer” means a person appointed to be an authorised officer under section 12;

“complaint” means a complaint made under section 13;

“investigation” means an investigation into administrative conduct conducted under Part 4, Division 3;

“Ombudsman’s Office” means the agency established by section 9;

“prescribed body” has the meaning given in section 5(1);

“prescribed officer” has the meaning given in section 5(2);

“staff member”, of the Ombudsman’s Office, means a staff member mentioned in section 11.

4 Administrative conduct

(1) ***“Administrative conduct”*** means any of the following:

(a) an administrative decision or action;

- (b) a failure to make an administrative decision or take an administrative action;
 - (c) the adoption of an administrative practice or procedure.
- (2) In addition, administrative conduct of a prescribed body includes administrative conduct related to the exercise of a power, or performance of a function, of the body by any of the following:
 - (a) a member of the body;
 - (b) an officer or employee of the body;
 - (c) a board, panel or committee of the body;
 - (d) a contractor of the body;
 - (e) an agent of the body.

5 Prescribed officers and bodies

- (1) A “**prescribed body**” is body to which section 97 of the Constitution applies.
- (2) A “**prescribed officer**” is an individual to whom section 97 of the Constitution applies.
- (3) For section 97(3) of the Constitution, the following additional offices and bodies are prescribed:
 - (a) a local authority;
 - (b) an agency, Ministry or department of the Government or of a local authority;
 - (c) a body or office established by the Constitution or by any other written law;
 - (d) a contractor of a prescribed body.

6 Act binds Crown

This Act binds the Crown.

PART 2 OMBUDSMAN

7 Ombudsman not to hold other offices

- (1) If a person appointed to be the Ombudsman holds any of the following offices at the time of the appointment, he or she must vacate the office before exercising the powers or performing the functions of Ombudsman:
 - (a) a position in a Commission established by the Constitution;
 - (b) a position in a state owned enterprise or statutory authority;
 - (c) any other public office.
- (2) If a person appointed to be the Ombudsman is a member of a political party registered under section 25 of the *Political Parties Integrity Act 2014* at the time of the appointment, he or she must resign from the party before exercising the powers or performing the functions of Ombudsman.
- (3) To avoid doubt, this section applies in addition to the requirements of section 96(3) of the Constitution.

8 Arrangements with other bodies

- (1) The Ombudsman may enter into an arrangement with a public body for the purpose of carrying out his or her functions.
- (2) If the Ombudsman enters into an arrangement with a Ministry, the Ombudsman must ensure that the arrangement is approved by the Permanent Secretary of the Ministry responsible for the public service.

PART 3 STAFF AND FINANCE MATTERS

9 Establishment of Ombudsman's Office

- (1) The Ombudsman's Office is established as the Government agency that provides administrative support to enable the Ombudsman to discharge his or her functions.
- (2) The Office consists of:

- (a) the Ombudsman; and
- (b) the staff members of the Ombudsman's Office.

10 Funds of the Office

For the purposes of the *Public Financial Management Act 2013*:

- (a) the Ombudsman's Office is taken to be a Government agency, with a head of revenue and expenditure in the national budget prepared in accordance with that Act; and
- (b) the Ombudsman is the accountable officer for the Ombudsman's Office, as the person in charge of the day to day operations of the Office.

11 Staff members

- (1) The Ministry responsible for the public service must ensure the Ombudsman's Office is provided with the staff necessary to enable the Ombudsman to properly exercise his or her powers and perform his or her functions.
- (2) The staff members of the Ombudsman's Office are public officers subject to the directions of the Ombudsman in the performance of their functions.
- (3) A staff member of the Ombudsman's Office must perform their functions:
 - (a) in accordance with this Act and any other written law; and
 - (b) in a way that protects the integrity of the office of the Ombudsman.
- (4) A staff member of the Ombudsman's Office must make the oath or affirmation specified in the Schedule before the Ombudsman before performing their functions.

12 Authorised officers

- (1) The Ombudsman may appoint any staff member of the Ombudsman's Office to be an authorised officer to conduct investigations under this Act.

- (2) An authorised officer has the powers and functions conferred by this or any other Act.
- (3) An authorised officer is subject to the directions of the Ombudsman in the exercise of their powers and the performance of their functions.
- (4) The Ombudsman must issue each authorised officer an identity card stating the officer's name and that they are an authorised officer.
- (5) The identity card must:
 - (a) show a recent photograph of the officer; and
 - (b) show the card's date of issue and expiry; and
 - (c) be signed by the officer and the Ombudsman.
- (6) An authorised officer exercising a power or performing a function under this Act in relation to a person must, if asked by the person, produce the officer's identity card for the person's inspection.
- (7) A person who ceases to be an authorised officer commits an offence if the person does not return the person's identity card to the Ombudsman within 21 days after the cessation.

Maximum penalty: 1000 penalty units.

PART 4 INVESTIGATIONS

Division 1 Making and receiving complaints

13 Making a complaint

- (1) A person who is aggrieved by the administrative conduct of a prescribed officer or body in the exercise of powers or the performance of functions of the officer or body may make a complaint to the Ombudsman about the conduct.
- (2) The complaint may initially be made orally or in writing, but if it is made orally it must be put into writing by a staff member of the Ombudsman's Office.

- (3) The complaint may be made by a third party on behalf of the complainant.

14 Further information

The Ombudsman may request a complainant to give further information about a complaint, either orally or in writing.

15 Register of complaints

The Ombudsman must keep a register of complaints containing the following information for each complaint received:

- (a) the date the complaint was made;
- (b) the name of the complainant (unless the complainant has asked to remain anonymous);
- (c) the action taken by the Ombudsman in response to the complaint and the reason for that action;
- (d) any other prescribed details.

Division 2 Initial action in response to complaint

16 How complaint may be dealt with

- (1) The Ombudsman must examine each complaint received and do any of the following:
 - (a) dismiss the complaint under section 18;
 - (b) conduct an investigation into the conduct complained of under Division 3;
 - (c) refer the complaint to another person or body if the Ombudsman considers that it warrants investigation or action by the other person or body (whether or not the Ombudsman also begins an investigation).
- (2) The Ombudsman must give the complainant a written notice specifying:
 - (a) how the complaint will be dealt with; and

- (b) if the complaint is being dismissed under section 18, the reasons for the dismissal.

17 Preliminary inquiries

The Ombudsman may conduct preliminary inquiries in relation to a complaint before deciding what action to take in relation to it.

18 Summary dismissal of complaint

The Ombudsman may dismiss a complaint without conducting an investigation under Division 3 if:

- (a) further information is not given as requested under section 14 and there is insufficient information to investigate the complaint further; or
- (b) the Ombudsman considers the complaint to be vexatious, misconceived, frivolous or lacking in substance; or
- (c) the Ombudsman considers that the complainant does not have a sufficient interest in the subject matter of the complaint; or
- (d) having conducted preliminary inquiries in relation to the complaint, the Ombudsman is satisfied the matter can be resolved without an investigation; or
- (e) it is reasonable in the circumstances for the complainant to pursue another available avenue to deal with the conduct complained of; or
- (f) the conduct complained of has been the subject of a previous complaint that has been dealt with by the Ombudsman; or
- (g) the conduct complained of occurred more than 12 months before the complaint was made, and there was no reasonable cause for the delay in making the complaint; or
- (h) the complaint cannot be dealt with under this Act.

Division 3 Investigations

19 Decision to begin investigation

The Ombudsman may begin an investigation into any administrative conduct of a prescribed officer or body:

- (a) in response to a complaint; or
- (b) in response to the referral of a matter by a member of Parliament; or
- (c) on his or her own initiative on the basis of information received from another source.

20 Informing subject of investigation

Before beginning an investigation, the Ombudsman must give each person whose conduct is being investigated written notice of the investigation:

- (a) detailing the alleged conduct being investigated; and
- (b) inviting the person to provide a written response to the allegations before a specified date.

21 Conduct of investigation

- (1) The Ombudsman may conduct an investigation personally or may designate one or more authorised officers to conduct the investigation.
- (2) The Ombudsman may issue administrative directions that are not inconsistent with this Act prescribing the procedures for conducting investigations generally, or for conducting a specific investigation.

22 Request for information and documents

- (1) The Ombudsman or an authorised officer conducting an investigation may in writing request a person to do any of the following for the purpose of assisting with the investigation:
 - (a) provide specified information to the officer in writing before a specified date; or

- (b) produce any specified document or thing to the officer before a specified date; or
 - (c) attend an oral examination before the officer on a specified date.
- (2) The person commits an offence if the person fails to comply with the request.
- Maximum penalty: 50,000 penalty units or imprisonment for 5 years, or both.
- (3) A person is entitled to be accompanied to an oral examination, at his or her own expense, by a legal practitioner.
- (4) A complete written record of an oral examination must be made and:
- (a) signed by the person examined; or
 - (b) if the person refuses to sign it, the reasons for the refusal recorded by the person conducting the examination.
- (5) The Ombudsman may, in his or her discretion, authorise the payment of reasonable expenses (other than the expenses of a legal practitioner) incurred by a person in complying with a request under subsection (1).

23 Powers of entry and seizure

- (1) For the purposes of an investigation, the Ombudsman or an authorised officer may:
- (a) enter:
 - (i) premises used for official purposes by a prescribed body or officer, other than premises used wholly or partly as a residence; and
 - (ii) with the consent of the occupier of the premises, premises used wholly or partly as a residence; and
 - (b) seize any document or thing, or take extracts from, or copy in any way, any document located at the premises; and

- (c) require any public officer at the premises to assist the authorised officer in exercising a power mentioned in paragraph (a) or (b).
- (2) For subsection (1), the Ombudsman or authorised officer may be assisted by a police officer.

24 Referral of matter during investigation

The Ombudsman may refer any matter that comes to his or her attention during an investigation to another person or body if the Ombudsman considers that the matter warrants investigation or action by the other person or body.

25 Report of investigation

- (1) After an investigation has been completed, the Ombudsman must:
 - (a) consider the information gathered during the investigation; and
 - (b) prepare a preliminary report of the findings of the investigation, including any recommendations for action to be taken in response to the findings.
- (2) The Ombudsman must:
 - (a) give each prescribed body or officer whose administrative conduct was investigated a copy of the preliminary report; and
 - (b) invite the body or officer to give the Ombudsman a written response to the preliminary report within a specified period.
- (3) After considering any response of the body or officer, the Ombudsman:
 - (a) may amend the report if he or she considers it appropriate to do so; and
 - (b) must prepare a final report of the findings of the investigation, including any recommendations for action to be taken in response to the findings.
- (4) The Ombudsman must give the final report to:
 - (a) each prescribed body or officer whose administrative conduct

was investigated; and

- (b) the Minister responsible for each prescribed body or officer whose administrative conduct was investigated; and
- (c) the Prime Minister; and
- (d) if the investigation was conducted in response to a complaint, the person who made the complaint.

26 Further reports on implementation of recommendations

- (1) At any time after the Ombudsman has made a final report of an investigation, the Ombudsman may:
 - (a) request a report from a prescribed body or officer whose administrative conduct was investigated on the action the body or officer has taken or intends to take to implement any recommendations made in the report of the investigation; and
 - (b) make a further report to any person mentioned in section 25(4) in relation to the implementation of the recommendations.
- (2) The Prime Minister must table a report received under this section in Parliament within 6 sitting days after he or she receives it.
- (3) However, the Ombudsman must ensure that the report given to the Prime Minister for tabling does not include any information that may identify an individual who made a complaint.

PART 5 CONFIDENTIALITY, PRIVILEGES AND PROTECTIONS

27 Information disclosure and privilege

- (1) Subject to section 28, for the purposes of an investigation:
 - (a) no obligation to maintain secrecy or other restriction on the disclosure of information by a prescribed body or officer imposed by any law applies; and
 - (b) a prescribed body or officer is not entitled to any privilege that

would apply in a legal proceeding to the production of documents, or the giving of evidence.

- (2) For the purposes of an investigation, an individual other than a prescribed body or officer has equivalent privileges to the privileges the individual would have as a witness in a proceeding in a court.

28 Disclosure of particular matters not required

A person is not required to disclose information, answer a question or produce a document if:

- (a) the Secretary to Cabinet certifies that giving the information, answering the question or producing the document would involve the disclosure of proceedings or deliberations of Cabinet or a committee of Cabinet; or
- (b) the Attorney-General certifies that giving the information, answering the question or producing the document would be contrary to the defence, external relations or internal security of Solomon Islands.

29 Confidentiality of information

- (1) A person commits an offence if the person:

- (a) obtains information while exercising a power or performing a function as any of the following:
 - (i) the Ombudsman;
 - (ii) an authorised officer;
 - (iii) a staff member of the Ombudsman's Office; and
- (b) engages in conduct that results in the disclosure of the information.

Maximum penalty: 50,000 penalty units or imprisonment for 5 years, or both.

- (2) Subsection (1) does not apply if the person discloses the information:
- (a) for the exercise of the person's powers or the performance of the person's functions under this Act; or
 - (b) for the administration of this Act; or
 - (c) with the consent of the person to whom the information relates; or
 - (d) for legal proceedings arising out of the operation of this Act.

30 Protection from liability

A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as any of the following:

- (a) the Ombudsman;
- (b) an authorised officer;
- (c) a staff member of the Ombudsman's Office.

PART 6 GENERAL OFFENCES

31 Misleading information or document

- (1) A person commits an offence if:

- (a) the person gives information to the Ombudsman or an authorised officer; and
- (b) the person knows the information is misleading.

Maximum penalty: 50,000 penalty units or imprisonment for 5 years, or both.

- (2) A person commits an offence if:

- (a) the person gives a document to the Ombudsman or an authorised officer; and

- (b) the person knows the document contains misleading information.

Maximum penalty: 50,000 penalty units or imprisonment for 5 years, or both.

- (3) Subsection (2) does not apply if the person, when giving the document:

- (a) draws the misleading aspect of the document to the attention of the Ombudsman or authorised officer; and

- (b) to the extent to which the person can reasonably do so – gives the Ombudsman or authorised officer the information necessary to remedy the misleading aspect of the document.

- (4) In this section:

“misleading information” means information that is misleading in a material particular or because of the omission of a material particular.

32 Impersonating Ombudsman or authorised officer

A person must not falsely represent, by words or conduct, that the person is the Ombudsman or an authorised officer.

Maximum penalty: 20,000 penalty units or imprisonment for 2 years, or both.

33 Obstructing, threatening or influencing Ombudsman or authorised officer

A person commits an offence if the person directly or indirectly obstructs, threatens or influences the Ombudsman or an authorised officer acting in an official capacity.

Maximum penalty: 50,000 penalty units or imprisonment for 5 years, or both.

PART 7 MISCELLANEOUS MATTERS

34 Investigation does not affect other action

An investigation by the Ombudsman into the administrative conduct of a prescribed body or officer does not affect:

- (a) any action taken by the prescribed body or officer or any other person in relation to the conduct; or
- (b) any power or duty of the prescribed body or officer or any other person to take action in relation to the conduct.

35 Delegation

The Ombudsman may delegate any of his or her powers and functions under this or any other Act to a staff member of the Ombudsman's Office.

36 Regulations

The Minister may make regulations under this Act.

PART 8 REPEALS AND TRANSITIONAL MATTERS

37 Definitions

In this Part:

“commencement date” means the date this Part commences;

“repealed Act” means the *Ombudsman (Further Provisions) Act* (Cap. 88) as in force immediately before the commencement date.

38 Repeal of Ombudsman (Further Provisions) Act

The *Ombudsman (Further Provisions) Act* (Cap. 88) is repealed.

39 Actions and investigations before repeal date

- (1) This Act applies to the administrative conduct of a prescribed body or officer that occurred before the commencement date.
- (2) However, if an investigation has been started under the repealed

Act in relation to the administrative conduct but not completed by the commencement date, the investigation must be completed under the repealed Act as if it had not been repealed.

40

Oaths

A person is taken to have made the oath or affirmation required under section 11 of this Act if:

- (a) the person held office as a staff member of the Ombudsman immediately before the repeal date; and
- (b) the person took the oath required for that office under section 4 of the repealed Act.

SCHEDULE Oaths or affirmation for staff member

Section 11(4)

I,, [swear][affirm] that I will exercise the powers and functions of my office as a staff member of the Ombudsman's Office honestly, faithfully and diligently without favour or affection, malice or ill-will and I will not, except in accordance with the provisions of Chapter IX of the Constitution and the *Ombudsman Act 2016*, divulge any information received by me in the performance of my functions to any person.

[So help me God].

Sworn before:

Date:

OMBUDSMAN BILL 2016

OBJECTS AND REASONS

The objects of the Bill are:

- (a) to repeal and replace the current *Ombudsman (Further Provisions) Act* (Cap.88) to give effect to the Constitutional independence and mandate of the office of the Ombudsman in an improved manner;
- (b) to ensure there is continuity in the functions of the Ombudsman even in cases where the position of the Ombudsman is vacant;
- (c) to ensure there is more responsiveness on the part of prescribed persons and bodies in relation to implementing the recommendations of the Ombudsman;
- (d) to provide more transparency, accountability and protection from arbitrary and unfair decisions by prescribed persons or bodies against citizens and residents of Solomon Islands.

HON. MANASSEH SOGAVARE
PRIME MINISTER

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EXPLANATORY MEMORANDUM

Part 1 deals with preliminary matters such as the short title, commencement and interpretation. Three important concepts are defined – “administrative conduct”, “prescribed officer” and “prescribed body”. These are important because the Ombudsman is empowered to investigate the administrative conduct of a prescribed officer or body. Section 97 of the Constitution already lists a number of offices and bodies that fall within the scope of the Ombudsman’s functions. The new definitions extend this list, including by listing contractors of prescribed bodies. The definition of administrative conduct also extends to conduct of a prescribed body by employees, contractors and agents of the body.

Part 2 provides for matters related to the Ombudsman. Clause 7 requires a newly appointed Ombudsman to vacate certain offices before exercising powers or performing functions as Ombudsman. This expands on the existing requirements of section 96(3) of the Constitution, which prohibits the Ombudsman from performing the functions of certain other offices, but does not require the Ombudsman to vacate those offices. Clause 8 allows the Ombudsman to enter into an arrangement with a public body for the purpose of carrying out his or her powers and functions.

Part 3 provides for matters relating to staff and finance. This is a key part of the Bill that significantly changes existing administrative arrangements by establishing:

- a formal administrative structure to support the work of the Ombudsman, by establishing the Ombudsman’s Office as a government agency with its own budget
- formal requirements for adequate staffing of the Ombudsman’s Office
- a mechanism for appointing authorised officers to conduct investigations

Part 4 deals with the requirements and procedures for complaints and investigations into the administrative conduct of prescribed officers or bodies.

- **Division 1** allows a person who is aggrieved by the administrative conduct of prescribed officer or body to make a complaint to the Ombudsman. The Ombudsman is required to keep a register of complaints.

- **Division 2** specifies how the Ombudsman can deal with a complaint. There are 3 options:
 1. The Ombudsman can dismiss the complaint without investigating it if any of the following circumstances apply:
 - there is insufficient information to investigate and the complainant has not responded to a request for further information
 - the complaint is vexatious, frivolous, misconceived or lacking in substance
 - the complainant does not have a sufficient interest in the complaint
 - the Ombudsman is satisfied the subject matter of the complaint can be dealt with informally
 - the complainant has an alternative avenue to deal with the conduct complained of
 - another complaint has been made about the same conduct that has already been dealt with by the Ombudsman
 - there has been an unreasonable delay in making the complaint
 - the complaint cannot be dealt with by the Ombudsman because, for example, it is not a complaint about administrative conduct
 2. The Ombudsman can refer the complaint to another body or person if it warrants investigation or action by the other person. The Ombudsman can do this even if he or she is also beginning an investigation into all or part of the complaint. For example, if the entire complaint relates to a criminal offence rather than maladministration, the Ombudsman can refer the entire complaint to the Commissioner for Police and not investigate it. If the complaint involves some conduct that may be a criminal offence and other conduct that may be maladministration, the Ombudsman can refer the relevant part of the complaint that may involve a criminal offence to the Commissioner for Police, and start an investigation into the conduct that may be maladministration. This ensures that all or part of a complaint does not “fall through the cracks” simply because it does not involve maladministration.

3. The Ombudsman can begin an investigation into the conduct complained of.

Before deciding how to deal with a complaint, the Ombudsman may (but is not required to) conduct preliminary inquiries.

- **Division 3** deals with the procedures for conducting investigations. The Ombudsman may begin an investigation in response to a complaint, in response to a referral from a member of Parliament or on his or her own initiative. The Ombudsman must inform a person whose conduct is being investigated of the investigation and invite the person to provide a written response to the relevant allegations. The person can also be compelled to provide information in writing or by way of oral examination. The Ombudsman may conduct the investigation personally or by using one or more authorised officers. Authorised officers are given powers of entry and seizure. The Ombudsman may refer any matter that comes to his or her attention during an investigation to another body or person if it warrants investigation or action by the other person. This does not prevent the continuation of the investigation. After an investigation is completed, the Ombudsman must prepare a preliminary report. An officer or body whose conduct was investigated has the opportunity to respond to the preliminary report before a final report is prepared. The final report must be given to the officer or body, as well as the Minister responsible for that officer or body, the Prime Minister and the complainant (if any). The Ombudsman may later request a report on the implementation of any recommendation made in the final report from the officer or body and make a further report on the implementation. The further report must be tabled in Parliament.

Part 5 provides for confidentiality, privileges and protections in relation to investigations. Any obligation of secrecy that may otherwise apply to a prescribed officer or body is removed for the purposes of an investigation. However, disclosure of information is not required if the information is Cabinet confidential or if the disclosure would be contrary to the defence, external relations or internal security of Solomon Islands. The Division also includes provisions creating an offence for disclosure of confidential information by the Ombudsman, an authorised officer or a staff member of the Ombudsman and protecting those persons from liability for things done in the course of discharging their functions.

Part 6 creates offences of providing misleading information to the Ombudsman or an authorised officer, impersonating the Ombudsman or an authorised officer and obstructing, threatening or influencing the Ombudsman or an authorised officer.

Part 7 provides for miscellaneous matters, such as power of delegation and to make regulations. It also includes a provision specifying that an investigation by the Ombudsman into conduct does not affect any other action taken or required to be taken in relation to the conduct.

Part 8 repeals the *Ombudsman (Further Provisions) Act* (Cap. 88) and provides for matters necessary to enable the transition from the repealed Act to the new Act.