



OMBUDSMAN ACT 2017

(NO. 10 OF 2017)





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ASSESSED by the National Parliament this twenty-sixth day of July 2017.

This printed impression has been carefully compared by me with the Bill passed by Parliament and found by me to be a true copy of the Bill)

A handwritten signature in blue ink, appearing to read 'Clezy Rore'.

Clezy Rore
Clerk to National Parliament

ASSENTED to in Her Majesty's name and on Her Majesty's behalf this eleventh day of August 2017.

A handwritten signature in blue ink, appearing to read 'F. O. Kabui'.

Sir Frank Utu Ofagioro Kabui
Governor-General

Date of Commencement: see section 2.

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.

OMBUDSMAN ACT 2017

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OMBUDSMAN ACT 2017

PART 1 PRELIMINARY MATTERS

1 Short title

This Act may be cited as the *Ombudsman Act 2017*.

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 to 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.

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).

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.

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.

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 2017*, divulge any information received by me in the performance of my functions to any person.

[So help me God].

Sworn before:

Date: