

PRIVACY COMMITTEE ACT.

New South Wales



ANNO VICESIMO QUARTO

ELIZABETHÆ II REGINÆ

Act No. 37, 1975.

An Act to provide for the constitution of a Privacy Committee and to define its powers, authorities, duties and functions; to amend the Defamation Act, 1974, and the Ombudsman Act, 1974; and for purposes connected therewith. [Assented to, 16th April, 1975.]

BE

Privacy Committee.

BE it enacted by the Queen's Most Excellent Majesty, by No. 37, 1975 and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the "Privacy Committee Short title. Act, 1975".

2. (1) This section and section 1 shall commence on the Com- date of assent to this Act. men-

(2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3. This Act binds the Crown in right of the State of The Crown. New South Wales and also, so far as the legislative power of Parliament permits, in all its other capacities.

4. In this Act, except in so far as the context or subject- Interpre- matter otherwise indicates or requires— tion.

"appointed member" means a member other than the Ombudsman or the executive member;

"Committee" means the Privacy Committee constituted under this Act;

"executive member" means the person holding office as the executive member under section 9 (1);

"member" means a member of the Committee;

"Ombudsman" includes the acting Ombudsman, if any, appointed under section 7 of the Ombudsman Act, 1974.

5.

Privacy Committee.

No. 37, 1975 **5.** (1) There shall be a Privacy Committee which shall have and may exercise and perform the powers, authorities, duties and functions conferred and imposed on it by this Act.

Privacy
Committee.

(2) The Committee shall consist of not less than twelve nor more than fifteen members.

(3) Of the members—

- (a) one shall be the Ombudsman;
- (b) one shall be the executive member; and
- (c) the remainder shall be appointed by the Governor.

(4) Of the appointed members—

- (a) one shall be a member of the Legislative Assembly or the Legislative Council nominated by the Minister;
- (b) one shall be a member of the Legislative Assembly or the Legislative Council nominated by the Leader of the Opposition in the Legislative Assembly;
- (c) not more than two shall be persons each of whom is an officer or employee within the meaning of the Public Service Act, 1902, and who shall be nominated by the Minister;
- (d) not less than two shall be persons each of whom is employed by a university established in New South Wales and who shall be nominated by the Minister; and
- (e) not less than four shall be persons each of whom has, in the opinion of the Minister, special knowledge of or interest in matters affecting the privacy of persons and who shall be nominated by the Minister.

(5)

Privacy Committee.

(5) Where an appointment of a member referred to in subsection (4) (b) is not made by reason only that a person is not nominated as provided in subsection (4) (b) within such time as may be notified by the Minister to the Leader of the Opposition in the Legislative Assembly, the Committee shall be deemed to be as fully and properly constituted as if the appointment of a member so referred to had been made. No. 37, 1975

(6) Nothing in subsection (5) limits the operation of section 39 of the Interpretation Act, 1897.

(7) The provisions of the Public Service Act, 1902, do not apply to or in respect of the appointment of an appointed member or to or in respect of a member, other than the executive member, in his capacity as a member during his term of office.

(8) Notwithstanding section 9, the provisions of the Public Service Act, 1902, do not apply to or in respect of the executive member in respect of his participation in the deliberations and decisions of the Committee or of any subcommittee of the Committee or in respect of any power, authority, duty or function of the Committee which he exercises or performs as its delegate.

6. (1) Subject to this Act, an appointed member shall hold office— Term of office.

(a) in the case of an appointed member referred to in section 5 (4) (a) or (b), until his successor, being a person referred to in section 5 (4) (a) or (b), as the case may be, is appointed; and

(b) in the case of any other appointed member, for such term not exceeding three years as is specified in the instrument of his appointment.

(2)

Privacy Committee.

No. 37, 1975 (2) An appointed member who for any reason has ceased to hold office is, if otherwise qualified, eligible for reappointment as a member.

Vacation
of office
of certain
appointed
members.

7. (1) An appointed member vacates his office—

- (a) if he dies;
- (b) if, upon the expiration of four weeks after the last of three consecutive ordinary meetings of the Committee of which reasonable notice has been given him either personally or in the ordinary course of post and from which he was absent without leave granted by the Committee, he has not been excused by the Committee for his absence from those meetings;
- (c) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes any assignment of his fees or allowances, if any, or of his estate, for their benefit;
- (d) if he becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- (e) if he is convicted in New South Wales of a felony or misdemeanour punishable by imprisonment for twelve months or upwards or if he is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be a felony or misdemeanour so punishable;
- (f) if, being an appointed member referred to in section 5 (4) (a), (b), (c) or (d), he ceases to hold the qualification by virtue of which he was appointed;

(g)

Privacy Committee.

(g) if he resigns his office by writing under his hand No. 37, 1975 addressed to the Governor; or

(h) if he is removed from office by the Governor.

(2) The Governor may, for any cause which to him seems sufficient, remove an appointed member, not being an appointed member referred to in section 5 (4) (a) or (b), from office.

8. One of the appointed members shall, by the instrument Chairman. of his appointment as a member or by a subsequent instrument executed by the Governor, be appointed as Chairman of the Committee to hold office during his term of office as a member.

9. (1) The Governor may appoint and employ, under Executive member and subject to the Public Service Act, 1902, a person as the officers and executive member of the Committee and such other officers employees. and employees as may be necessary to enable the Committee to exercise and perform its powers, authorities, duties and functions under this Act.

(2) Subject to any direction of the Minister, the executive member shall perform such duties as the Committee may direct.

(3) For the purpose of exercising and performing its powers, authorities, duties and functions under this Act, the Committee may, with the approval of the Minister of the Department concerned and on such terms as may be arranged, make use of the services of any of the officers or employees of any Government Department.

(4) The Committee may for the like purpose with the approval of a public authority make use of the services of any of the officers or employees of that public authority.

(5)

Privacy Committee.

No. 37, 1975 (5) A person who is employed for the purposes of subsection (1) (other than the executive member) or whose services are made use of under subsection (3) or (4) is, while he is so employed or his services are so used, an officer of the Committee.

Substitute members.

10. (1) The Governor may appoint a person other than a member to act as a member during the absence and in the place of any appointed member who is absent from his office as a member and that person while so acting—

- (a) shall have and may exercise and perform the powers, authorities, duties and functions of the member in whose place he has been appointed to act; and
- (b) shall be deemed to be the Chairman or a member other than the Chairman, according to whether he is appointed to act in the place of the Chairman or another member.

(2) A person shall not, under subsection (1), be appointed to act in the place of a member unless—

- (a) he is nominated for appointment by the person who nominated that member for appointment;
- (b) where that member was nominated under section 5 (4) (a), (b), (c) or (d), he has the same qualification for appointment as that member; and
- (c) where that member was nominated under section 5 (4) (e), he has, in the opinion of the Minister, special knowledge of or interest in matters affecting the privacy of persons.

(3) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising a person to act in the place of a member and all things done

or

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or omitted to be done by a person appointed so to act while he is so acting shall be as valid and effectual and shall have the same consequences as if they had been done or omitted to be done by that member. No. 37, 1975

11. (1) A member is entitled to receive—

Fees,
allowances,
etc.

- (a) such fees and allowances for attending meetings and transacting the business of the Committee as the Minister may from time to time determine; and
- (b) travelling expenses for travelling on the business of the Committee (not including expenses of travelling to and from meetings of the Committee) at such rates as the Minister may from time to time determine.

(2) The provisions of—

- (a) subsection (1) do not apply to the executive member; or
- (b) subsection (1) (a) do not apply to an appointed member referred to in section 5 (4) (a) or (b) or to the holder of an office of profit under the Crown,

but nothing in this subsection affects the remuneration and any allowances payable to the executive member as an officer within the meaning of the Public Service Act, 1902.

(3) The provisions of any Act or instrument requiring the holder of an office to devote the whole of his time to the duties of his office do not operate to disqualify him from holding that office and also the office of a member and retaining any fees, allowances and expenses payable to him under this section.

(4) The office of a member shall, for the purpose of any Act, be deemed not to be an office or place of profit under the Crown.

12.

Privacy Committee.

No. 37, 1975 **12.** (1) The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Committee.

Proceedings
of the
Committee.

(2) The person appointed under section 8 as Chairman of the Committee shall preside at any meeting of the Committee at which he is present.

(3) In the absence of that person, the members present at any meeting of the Committee shall appoint a chairman of that meeting from among their number.

(4) Six members shall form a quorum and any duly convened meeting of the Committee at which a quorum is present shall be competent to transact any business of the Committee and shall have and may exercise and discharge all the powers, authorities, duties and functions of the Committee.

(5) The chairman of a meeting of the Committee shall, in the event of an equality of votes, have in addition to a deliberative vote, a second or casting vote.

(6) A decision supported by a majority of the votes cast at a meeting of the Committee at which a quorum is present shall be the decision of the Committee.

(7) The Committee shall cause full and accurate minutes to be kept of its proceedings at meetings and furnish copies of those minutes to the Minister.

Subcom-
mittees.

13. (1) The Committee may appoint such subcommittees (consisting of not less than two persons) of the Committee as it thinks fit to assist and advise it in connection with the exercise or performance of its powers, authorities, duties and functions or to exercise and perform, pursuant to a delegation made under section 14, the powers, authorities, duties and functions of the Committee that have been delegated to the subcommittee.

(2)

Privacy Committee.

(2) The Committee may, with the approval in No. 37, 1975 writing of the Minister, co-opt any person as a member of a subcommittee.

(3) The procedure for the calling of meetings of a subcommittee and for the conduct of business at those meetings shall, subject to any direction given by the Committee, be as determined by the subcommittee.

(4) A quorum of a subcommittee shall consist of one-half of the members of the subcommittee or, if that number is not a whole number, the number of members that is next above one-half of the members of the subcommittee and any duly convened meeting of a subcommittee at which a quorum is present shall be competent to transact any business of the subcommittee and shall have and may exercise and discharge all the powers, authorities, duties and functions of the subcommittee.

(5) A decision supported by a majority of the votes cast at a meeting of a subcommittee at which a quorum is present shall be the decision of the subcommittee.

14. (1) Subject to subsections (2), (3) and (4), the Committee may, by instrument in writing, delegate to a member, the members of a subcommittee of the Committee or an officer of the Committee the exercise or performance of any powers, authorities, duties or functions of the Committee. *Delegation.*

(2) The Committee may not delegate the exercise or performance of—

- (a) the power and authority conferred by subsection (1); or
- (b) any power, authority, duty or function to make any report under section 17 or 18.

(3)

Privacy Committee.

No. 37, 1975

(3) The Committee may not delegate to the executive member its power or authority conferred by section 9 (2).

(4) The Committee may not delegate the exercise or performance of any power or authority conferred by section 16 except with the approval of the Minister.

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

(6) An instrument of delegation shall specify—

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

(7) The Committee may revoke a delegation under this section at any time.

(8) Notwithstanding any delegation made under this section, the Committee may continue to exercise or perform all or any of the powers, authorities, duties or functions delegated.

(9) Any act or thing done, suffered or omitted pursuant to a delegation under this section has the same force and effect as if done, suffered or omitted by the Committee.

Powers,
authorities,
duties and
functions
of the Com-
mittee.

15. (1) Subject to this Act, the Committee—

- (a) may conduct research and collect and collate information in respect of any matter relating to the privacy of persons;

(b)

Privacy Committee.

- (b) may and, if directed by the Minister so to do, shall **No. 37, 1975** make reports and recommendations to the Minister in relation to any matter that concerns the need for or the desirability of legislative or administrative action in the interests of the privacy of persons ;
- (c) may make reports and recommendations to any person in relation to any matter that concerns the need for or the desirability of action by that person in the interests of the privacy of persons ;
- (d) may receive and investigate complaints about alleged violations of the privacy of persons and in respect thereof may make reports to complainants ;
- (e) may, in relation to any matter relating to the privacy of persons generally, disseminate information and undertake educational work ;
- (f) may, in relation to any matter relating to the privacy of persons generally, make public statements ; and
- (g) may, for the purposes of this Act, conduct such inquiries and make such investigations as it thinks fit.

(2) The Committee shall, from time to time when requested by the Minister, prepare and submit to the Minister programmes for the examination of matters relating to the privacy of persons and pursue those programmes in such order, if any, as is determined by the Minister and notified by him to the Committee.

(3) Any member of the Committee may submit to the Minister a minority report or recommendation on any matter in respect of which the Committee makes a report or recommendation to the Minister.

Privacy Committee.

No. 37, 1975 **16.** (1) For the purpose of exercising or performing its powers, authorities, duties and functions, the Committee may require any person—

Informa-
tion,
inquiries
and investi-
gations.

- (a) to give any statement of information ;
- (b) to produce any document or thing ; or
- (c) to give a copy of any document,

to a member of the Committee specified in the requirement.

(2) In relation to any inquiry or investigation conducted by it, the Committee shall have the powers, authorities, protections and immunities conferred on a Commissioner by Division 1 of Part II of the Royal Commissions Act, 1923, and that Act (section 13 and Division 2 of Part II excepted) applies to any witness summoned by or appearing before the Committee in the same way as it applies to a witness summoned by or appearing before a commissioner, but section 11 of that Act shall have effect subject to subsections (3) and (4).

(3) The Committee shall set aside any requirement—

- (a) to give any statement of information ;
- (b) to produce any document or thing ;
- (c) to give a copy of any document ; or
- (d) to answer any question,

whether that requirement was made pursuant to the powers conferred on it by subsection (1) or (2), if it is made to appear to the Committee that—

- (e) any rule of law would in proceedings in a court of law justify an objection by any person to compliance with a like requirement on the grounds of public interest ; or

(f)

Privacy Committee.

(f) any person has a ground of privilege whereby, in proceedings in a court of law, he would be entitled to resist a like requirement, No. 37, 1975

and it does not appear to the Committee that that person consents to compliance with the requirement.

(4) Subject to subsection (3), the fact that a person of whom a requirement referred to in subsection (3) (a), (b), (c) or (d) is made is under any duty of secrecy or other restriction on disclosure (whether by reason of any Act, contract or otherwise) does not excuse that person from complying with that requirement.

(5) A requirement under subsection (1) shall be in writing, shall specify or describe the information, document or thing required, and shall fix a time for compliance.

(6) The Committee may, with the approval of the Minister, pay a person who has complied with a requirement under subsection (1) his reasonable expenses of compliance in a sum assessed by the Committee.

(7) Where, under subsection (1), a person is required to give a statement that tends to incriminate that person, neither the requirement nor the statement may be used in any proceedings against that person except proceedings under section 22.

(8) Subsection (7) applies whether the person required to give a statement objects to giving it or not.

17. (1) The Committee shall, as soon as practicable after the thirty-first day of December in each year, prepare and submit to the Minister a report of its work and activities for the twelve months preceding that date or, in the case of the first report, for the period from the day appointed and notified under section 2 (2) until the thirty-first day of December next following that commencement. Annual report.

(2)

Privacy Committee.

No. 37, 1975 (2) The Minister shall, as soon as practicable after the receipt by him of a report under subsection (1), lay the report, or cause it to be laid, before both Houses of Parliament.

Special report to Parliament. 18. (1) The Committee may, at any time, make a special report to the Minister for presentation to Parliament on any matter arising in connection with the exercise or performance of its powers, authorities, duties and functions.

(2) The Committee may include in a report under subsection (1) a recommendation that the report be made public forthwith.

(3) Where a report under subsection (1) contains such a recommendation, the Minister may make it public notwithstanding that it has not been presented to Parliament.

Authentication of instruments. 19. An instrument the execution of which purports to be authorised by the Committee or a subcommittee of the Committee, if it is signed by two persons purporting to be members of the Committee or that subcommittee, shall, in the absence of evidence to the contrary, be deemed to be an instrument the execution of which is authorised by the Committee or that subcommittee.

Prohibition on disclosure by members and others. 20. A member, a member of a subcommittee of the Committee or an officer of the Committee shall not disclose any information obtained by him in the course of his office, unless the disclosure is made—

(a) for the purpose of any proceedings under section 22 or under Part III of the Royal Commissions Act, 1923; or

(b) for the purpose of the execution or administration of this Act.

Penalty : \$1,000.

Privacy Committee.

21. (1) A member, a member of a subcommittee of the Committee or an officer of the Committee shall not be competent or compellable to give evidence in respect of any information, or to produce in any proceedings any statement of information, any document or thing or any copy of a document, obtained by him in the execution or administration of this Act. No. 37, 1975
Members
and others
as witnesses.

(2) Subsection (1) does not apply in respect of any proceedings under section 22 or under Part III of the Royal Commissions Act, 1923.

22. A person shall not—

Offences.

- (a) without lawful excuse, wilfully obstruct, hinder or resist the Committee, a member, a subcommittee of the Committee, a member of a subcommittee of the Committee or an officer of the Committee in the exercise or performance of any of its or his powers, authorities, duties or functions under this Act;
- (b) without lawful excuse, refuse or wilfully fail to comply with any lawful requirement of the Committee; or
- (c) wilfully make any false or misleading statement to the Committee, a member, a subcommittee of the Committee, a member of a subcommittee of the Committee or an officer of the Committee in the exercise or performance of any of its or his powers, authorities, duties or functions under this Act.

Penalty : \$1,000.

23. Proceedings for an offence against this Act may be disposed of summarily before a stipendiary magistrate sitting alone. Proceedings
for offences.

24.

Privacy Committee.

No. 37, 1975 **24.** The Governor may make regulations for or with
Regulations. respect to prescribing all matters which are necessary or
convenient to be prescribed for the purpose of carrying out or
giving effect to this Act.

Amendment **25.** The Defamation Act, 1974, is amended—
of Act No.
18, 1974.

Sec. 17B. (a) by inserting after section 17A the following
section :—

Matters
arising
under
Privacy
Committee
Act, 1975.

17B. (1) There is a defence of absolute privilege
for a publication to a member of the Privacy Com-
mittee constituted under the Privacy Committee
Act, 1975, a member of a subcommittee of that
Committee or an officer of that Committee for
the purpose of the execution or administration of
that Act or, for that purpose, by that Committee,
by a subcommittee of that Committee to that
Committee or by such a member or officer.

(2) There is a defence of absolute privilege
for the publication under section 18 (3) of the
Privacy Committee Act, 1975, of a report under
that Act.

(3) There is a defence of absolute privilege
for the publication under the authority of the
Minister for the time being administering the
Privacy Committee Act, 1975, of a copy of a report
previously made public under section 18 (3) of
that Act.

Sch. 2. (b) (i) by omitting from clause 2 (9) of Schedule 2
the word "or" where fourthly occurring;
(ii) by omitting from clause 2 (10) of Schedule 2
the matter "1974." and by inserting instead the
following matter and subclause :—

1974; or

Privacy Committee.

- (11) proceedings of the Privacy Committee constituted under the Privacy Committee Act, 1975, so far as those proceedings are included in a report previously made public under section 18 (3) of that Act. No. 37, 1975

26. The Ombudsman Act, 1974, is amended—

Amendment
of Act No.
68, 1974.

- (a) (i) by omitting from section 10 (2) (b) the word “or” where thirdly occurring; Sec. 10.
(Delegation.)
- (ii) by omitting from section 10 (2) (c) the matter “(1)” and by inserting instead the following matter and paragraph :—

(1); or

- (d) any of his powers, authorities, duties or functions as a member of the Privacy Committee constituted under the Privacy Committee Act, 1975;

- (b) by inserting after item 15 of the Schedule the Schedule following items :—

16. Conduct of the Privacy Committee constituted under the Privacy Committee Act, 1975.

17. Conduct of a public authority relating to alleged violations of the privacy of persons.

PUBLIC