

South Australia



ANNO QUINQUAGESIMO PRIMO
ELIZABETHAE II REGINAE
A.D. 2002

**OMBUDSMAN (HONESTY AND ACCOUNTABILITY IN GOVERNMENT)
AMENDMENT ACT 2002**

No. 36 of 2002

[Assented to 28 November 2002]

An Act to amend the Ombudsman Act 1972.

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The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Ombudsman (Honesty and Accountability in Government) Amendment Act 2002*.

(2) The *Ombudsman Act 1972* is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Amendment of long title

3. The long title of the principal Act is amended by striking out "departments of the Public Service and other authorities" and substituting "agencies".

Amendment of s. 3—Interpretation

4. Section 3 of the principal Act is amended—

(a) by striking out the definitions of "administrative act", "agency to which this Act applies" and "authority" in subsection (1) and substituting the following definitions:

"administrative act" means—

- (a) an act relating to a matter of administration on the part of an agency to which this Act applies or a person engaged in the work of such an agency; or
- (b) an act done in the performance of functions conferred under a contract for services with the Crown or an agency to which this Act applies,

but does not include—

- (c) an act done in the discharge of a judicial authority; or
- (d) an act done by a person in the capacity of legal adviser to the Crown; or
- (e) an act of a class declared by the regulations not to be an administrative act for the purposes of this definition;

"administrative unit" means an administrative unit under the *Public Sector Management Act 1995*;

"agency to which this Act applies" means—

- (a) a person who holds an office established by an Act; or
- (b) an administrative unit; or
- (c) a council; or

- (d) any incorporated or unincorporated body—
- (i) established for a public purpose by an Act; or
 - (ii) established for a public purpose under an Act (other than an Act providing for the incorporation of companies or associations, co-operatives, societies or other voluntary organisations); or
 - (iii) established or subject to control or direction by the Governor, a Minister of the Crown or any instrumentality or agency of the Crown or a council (whether or not established by or under an Act or an enactment); or
- (e) a person or body declared by the regulations to be an agency to which this Act applies,

but does not include a person or body declared by the regulations to be an agency to which this Act does not apply;;

- (b) by striking out the definitions of "council" and "department" in subsection (1) and substituting the following definition:

"council" means a council within the meaning of the *Local Government Act 1999*;;

- (c) by striking out the definitions of "principal officer" and "responsible Minister" in subsection (1) and substituting the following definitions:

"principal officer" in relation to an agency to which this Act applies means—

- (a) if the agency consists of a single person (including a corporation sole but not any other body corporate)—that person;
- (b) if the agency is a council—the principal member of the council;
- (c) if the agency consists of an unincorporated board or committee—the presiding officer;
- (d) in any other case—the chief executive officer of the agency or a person declared by the regulations to be the principal officer of the agency;

"responsible Minister" in relation to an agency to which this Act applies means—

- (a) if the agency is an administrative unit—the Minister responsible for that administrative unit;
- (b) if the agency is a council—the Minister responsible for the administration of the *Local Government Act 1999*;
- (c) if the agency is a body established by or under an Act—the Minister responsible for the administration of that Act;

- (d) in any other case—the Minister declared by the regulations to be the responsible Minister for the agency or, in the absence of such a declaration, the Minister responsible for the administration of this Act;

"Statutory Officers Committee" means the committee of that name established under the *Parliamentary Committees Act 1991*;;

(d) by striking out subsection (3) and substituting the following subsections:

(3) The Governor may, by regulation—

- (a) declare a person or body to be an agency to which this Act applies; or
- (b) declare a person or body to be an agency to which this Act does not apply; or
- (c) declare a person to be the principal officer of an agency to which this Act applies; or
- (d) declare a Minister to be the responsible Minister for an agency to which this Act applies.

(4) A regulation under subsection (3)(a) cannot take effect unless it has been laid before both Houses of Parliament and—

- (a) no motion for disallowance of the regulation is moved within the time for such a motion; or
- (b) every motion for disallowance of the regulation has been defeated or withdrawn, or has lapsed.

(5) A regulation under subsection (3)(b) may declare part of an administrative unit to be part of an administrative unit to which this Act does not apply.

Amendment of s. 6—Appointment of Ombudsman

5. Section 6 of the principal Act is amended by striking out from subsection (1a) "established under the *Parliamentary Committees Act 1991*".

Insertion of s. 14A

6. The following section is inserted after section 14 of the principal Act:

Administrative audits

14A. (1) If the Ombudsman considers it to be in the public interest to do so, the Ombudsman may conduct a review of the administrative practices and procedures of an agency to which this Act applies.

(2) The provisions of this Act apply in relation to a review under subsection (1) as if it were an investigation of an administrative act under this Act, subject to such modifications as may be necessary, or as may be prescribed.

Substitution of s. 31

7. Section 31 of the principal Act is repealed and the following sections are substituted:

Conferral of certain functions on Statutory Officers Committee

31. (1) The Statutory Officers Committee has, in addition to its other functions, the following functions:

- (a) to consider matters relating to the general operation of this Act;
- (b) to provide, on or before 31 December in each year, an annual report to Parliament on the work of the Committee relating to this Act during the preceding financial year.

(2) In considering matters relating to the general operation of this Act, the Committee must not engage in a review of any particular decision of the Ombudsman.

Use of word "Ombudsman" by agencies to which Act applies in describing internal reviews prohibited

32. An agency to which this Act applies must not use the word "Ombudsman" in describing a process or procedure by which the agency investigates and resolves complaints against the agency, or in describing a person responsible for carrying out such a process or procedure.

Regulations

33. The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.