

Authorised Version No. 112

Ombudsman Act 1973

No. 8414 of 1973

Authorised Version incorporating amendments as at
24 October 2020

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Authorised Version No. 112

Ombudsman Act 1973

No. 8414 of 1973

Authorised Version incorporating amendments as at
24 October 2020

An Act to provide for the Appointment in Victoria of an
Ombudsman with Power to investigate Administrative Actions
taken by or on behalf of Government Departments and other
Authorities, and for other purposes.

**BE IT ENACTED by the Queen's Most Excellent Majesty by
and with the advice and consent of the Legislative Council
and the Legislative Assembly of Victoria in this present
Parliament assembled and by the authority of the same as
follows (that is to say):**

1 Short title and commencement

- (1) This Act may be cited as the **Ombudsman Act 1973**.
- (2) This Act shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the Government Gazette.

* * * * *

**S. 1(3)
repealed by
No. 15/1989
s. 28(1).**

Part I—Interpretation

2 Definitions

S. 2
amended by
No. 82/2012
s. 224(2) (ILA
s. 39B(1)).

- (1) In this Act unless inconsistent with the context or subject-matter—

S. 2(1) def. of
*Accountability
and Oversight
Committee*
inserted by
No. 82/2012
s. 224(1)(a),
repealed by
No. 2/2019
s. 194(1)(a).

* * * *

S. 2(1) def. of
*acting
coroner*
inserted by
No. 82/2012
s. 224(1)(a),
amended by
No. 5/2013
s. 63(1),
repealed by
No. 63/2013
s. 93.

* * * *

S. 2(1) def. of
*Acting
Ombudsman*
inserted by
No. 82/2012
s. 224(1)(a).

Acting Ombudsman means an Acting
Ombudsman appointed under section 6;

administrative action means any action relating to
a matter of administration, and includes—

- (a) a decision and an act;
- (b) the refusal or failure to take a decision
or to perform an act;
- (c) the formulation of a proposal or
intention; and

(d) the making of a recommendation (including a recommendation made to a Minister);	
<i>Administrative Office</i> has the meaning given by section 4(1) of the Public Administration Act 2004 ;	S. 2(1) def. of <i>Admini- strative Office</i> inserted by No. 82/2012 s. 224(1)(a).
<i>aggrieved person</i> has the meaning given in section 14(1)(a);	S. 2(1) def. of <i>aggrieved person</i> inserted by No. 82/2012 s. 224(1)(a).
<i>assessable disclosure</i> has the meaning given in section 3 of the Public Interest Disclosures Act 2012 ;	S. 2(1) def. of <i>assessable disclosure</i> inserted by No. 85/2012 s. 144(1)(a), amended by No. 2/2019 s. 73(2)(a).
<i>Auditor-General</i> means the Auditor-General appointed under section 94A of the Constitution Act 1975 ;	S. 2(1) def. of <i>Auditor- General</i> inserted by No. 2/2019 s. 175.
<i>authority</i> means—	S. 2(1) def. of <i>authority</i> amended by Nos 8884 s. 2(a), 12/1989 s. 4(1)(Sch. 2 item 86.1), substituted by No. 82/2012 s. 224(1)(b), amended by Nos 1/2014 s. 69(a), 2/2019 s. 147(2).
(a) a Department;	
(b) an Administrative Office;	
(ba) Court Services Victoria;	
(bb) a public body;	
(c) a specified entity—	
but does not include an exempt person or body or a Councillor of a Council;	

S. 2(1) def. of
*Cabinet
information*
inserted by
No. 85/2012
s. 144(1)(a).

Cabinet information means—

- (a) a document that is an exempt document under section 28 of the **Freedom of Information Act 1982**; or
- (b) information that if it were in the form of a document would be a document referred to in paragraph (a);

S. 2(1) def. of
*cancellation
notice*
inserted by
No. 82/2012
s. 224(1)(a).

cancellation notice means a notice issued by the Ombudsman under section 26C(3), (4), (5) or (6) or section 26D(3) cancelling a confidentiality notice;

S. 2(1) def. of
*Chief
Examiner*
inserted by
No. 82/2012
s. 224(1)(a).

Chief Examiner means the Chief Examiner appointed under Part 3 of the **Major Crime (Investigative Powers) Act 2004**;

complainant means a person who makes a complaint;

S. 2(1) def. of
complaint
substituted by
No. 82/2012
s. 224(1)(c).

complaint means a complaint under section 14;

S. 2(1) def. of
*compulsory
appearance*
inserted by
No. 82/2012
s. 224(1)(a).

compulsory appearance means—

- (a) the appearance of a person before the Ombudsman in accordance with a witness summons; or
- (b) the appearance of a person before an Ombudsman officer otherwise than in accordance with a witness summons, in which the person is examined under section 18 of the **Evidence (Miscellaneous Provisions) Act 1958**;

confidentiality notice means a notice issued by the Ombudsman under section 26C(1);

S. 2(1) def. of *confidentiality notice* inserted by No. 82/2012 s. 224(1)(a).

coroner has the meaning given in section 3(1) of the **Coroners Act 2008**;

S. 2(1) def. of *coroner* inserted by No. 82/2012 s. 224(1)(a).

corrupt conduct has the meaning given in section 4 of the **Independent Broad-based Anti-corruption Commission Act 2011**;

S. 2(1) def. of *corrupt conduct* inserted by No. 82/2012 s. 224(1)(a), amended by No. 82/2012 s. 313(a).

Council has the meaning given in section 3(1) of the **Local Government Act 2020**;

S. 2(1) def. of *Council* inserted by No. 82/2012 s. 224(1)(a), amended by No. 9/2020 s. 390(Sch. 1 item 75.1(a)).

Councillor has the meaning given in section 3(1) of the **Local Government Act 2020**;

S. 2(1) def. of *Councillor* inserted by No. 82/2012 s. 224(1)(a), amended by No. 9/2020 s. 390(Sch. 1 item 75.1(a)).

Court Services Victoria means Court Services Victoria established under section 5 of the **Court Services Victoria Act 2014**;

S. 2(1) def. of *Court Services Victoria* inserted by No. 1/2014 s. 69(d).

S. 2(1) def. of
Department
inserted by
No. 82/2012
s. 224(1)(a).

Department has the meaning given by
section 4(1) of the **Public Administration
Act 2004**;

S. 2(1) def. of
*Deputy
Ombudsman*
inserted by
No. 14/1988
s. 4,
repealed by
No. 32/2004
s. 3(a).

* * * *

S. 2(1) def. of
*disciplinary
process or
action*
inserted by
No. 82/2012
s. 224(1)(a).

disciplinary process or action has the meaning
given in section 3(1) of the **Independent
Broad-based Anti-corruption Commission
Act 2011**;

S. 2(1) def. of
*domestic
partner*
inserted by
No. 82/2012
s. 224(1)(a).

domestic partner of a person means—

- (a) a person who is in a registered
relationship with the person; or

Note

A ***registered relationship*** is defined in
subsection (2).

- (b) a person to whom the person is not
married but with whom the person is
living as a couple on a genuine
domestic basis (irrespective of gender);

S. 2(1) def. of
Examiner
inserted by
No. 82/2012
s. 224(1)(a).

Examiner means an Examiner appointed under
Part 3 of the **Major Crime (Investigative
Powers) Act 2004**;

S. 2(1) def. of
*exempt
person or
body*
inserted by
No. 82/2012
s. 224(1)(a).

exempt person or body means a person or body
specified in Schedule 2;

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*	*	*	*	*	S. 2(1) def. of <i>Freedom of Information Commissioner</i> inserted by No. 82/2012 s. 224(1)(a), repealed by No. 20/2017 s. 134(Sch. 1 item 13.1(a)).
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*	*	*	*	*	S. 2(1) def. of <i>Government Department</i> amended by No. 9059 s. 2(1)(Sch. items 28–30), substituted by Nos 62/1989 s. 4(a), 46/1998 s. 7(Sch. 1), amended by No. 108/2004 s. 117(1) (Sch. 3 item 144.1), repealed by No. 82/2012 s. 224(1)(d).
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IBAC means the Independent Broad-based Anti-corruption Commission established under section 12 of the **Independent Broad-based Anti-corruption Commission Act 2011**;

S. 2(1) def. of *IBAC* inserted by No. 82/2012 s. 224(1)(a), amended by No. 82/2012 s. 313(b).

IBAC Officer has the meaning given in section 3(1) of the **Independent Broad-based Anti-corruption Commission Act 2011**;

S. 2(1) def. of *IBAC Officer* inserted by No. 82/2012 s. 224(1)(a).

S. 2(1) def. of
IBAC
personnel
inserted by
No. 82/2012
s. 224(1)(a).

IBAC personnel has the meaning given in
section 3(1) of the **Victorian Inspectorate
Act 2011**;

S. 2(1) def. of
Information
Commissioner
inserted by
No. 20/2017
s. 134(Sch. 1
item 13.1(b)).

Information Commissioner means the
Information Commissioner appointed under
section 6C of the **Freedom of Information
Act 1982**;

S. 2(1) def. of
Integrity and
Oversight
Committee
inserted by
No. 2/2019
s. 194(1)(b).

Integrity and Oversight Committee means the
Integrity and Oversight Committee
established by section 5(a) of the
Parliamentary Committees Act 2003;

S. 2(1) def. of
Judicial
Commission
inserted by
No. 16/2016
s. 201.

Judicial Commission has the same meaning as in
Part IIIAA of the **Constitution Act 1975**;

S. 2(1) def. of
legal
practitioner
inserted by
No. 82/2012
s. 224(1)(a).

legal practitioner means an Australian legal
practitioner within the meaning of the **Legal
Profession Act 2004**;

S. 2(1) def. of
Mayor
inserted by
No. 8884
s. 2(b),
repealed by
No. 12/1989
s. 4(1)(Sch. 2
item 86.2),
new def. of
Mayor
inserted by
No. 82/2012
s. 224(1)(a),
amended by
No. 9/2020
s. 390(Sch. 1
item 75.1(a)).

Mayor means a person elected to be the Mayor of
a Council in accordance with the **Local
Government Act 2020**;

member of Ombudsman staff means any of the following—

- (a) an employee referred to in section 7;
- (b) a person seconded to the office of the Ombudsman;
- (c) a person otherwise engaged to provide services to or assist the Ombudsman in the performance of the Ombudsman's functions;

S. 2(1) def. of *member of Ombudsman staff* inserted by No. 82/2012 s. 224(1)(a).

member of Victoria Police personnel has the meaning given in section 3(1) of the **Victoria Police Act 2013**;

S. 2(1) def. of *member of Victoria Police personnel* inserted by No. 37/2014 s. 10(Sch. item 119.1(a).

* * * * *

S. 2(1) def. of *municipality* inserted by No. 8884 s. 2(b), repealed by No. 12/1989 s. 4(1)(Sch. 2 item 86.3).

office of the Ombudsman means the office in respect of which the Ombudsman has the functions of public service body Head under section 16 of the **Public Administration Act 2004**;

S. 2(1) def. of *office of the Ombudsman* inserted by No. 82/2012 s. 224(1)(a).

Ombudsman officer means any of the following—

- (a) the Ombudsman;
- (b) the Acting Ombudsman;
- (c) a member of Ombudsman staff;

S. 2(1) def. of *Ombudsman officer* inserted by No. 82/2012 s. 224(1)(a).

S. 2(1) def. of
*Ombudsman
premises*
inserted by
No. 82/2012
s. 224(1)(a).

Ombudsman premises means any premises or
part of premises occupied by the office of the
Ombudsman or an Ombudsman officer,
other than residential premises;

S. 2(1) def. of
*own motion
investigation*
inserted by
No. 82/2012
s. 224(1)(a).

own motion investigation means an investigation
by the Ombudsman under section 16A;

S. 2(1) def. of
*Parliamentary
Committee*
inserted by
No. 2/2019
s. 175.

Parliamentary Committee means the Integrity and
Oversight Committee established under
section 5(a) of the **Parliamentary
Committees Act 2003**;

S. 2(1) def. of
*Police
Ombudsman*
inserted by
No. 32/2004
s. 3(b),
repealed by
No. 63/2004
s. 7(a).

* * * *

S. 2(1) def. of
*police
personnel*
inserted by
No. 82/2012
s. 224(1)(a),
repealed by
No. 37/2014
s. 10(Sch.
item 119.1(b)).

* * * *

S. 2(1) def. of
*police
personnel
conduct*
inserted by
No. 82/2012
s. 224(1)(a),
amended by
No. 82/2012
s. 313(c).

police personnel conduct has the meaning
given in section 5 of the **Independent
Broad-based Anti-corruption Commission
Act 2011**;

police personnel misconduct has the same meaning as it has in section 3(1) of the **Independent Broad-based Anti-corruption Commission Act 2011**;

S. 2(1) def. of *police personnel misconduct* inserted by No. 30/2016 s. 55(a).

presiding officer means the Ombudsman officer before whom a person is appearing at a compulsory appearance or voluntary appearance;

S. 2(1) def. of *presiding officer* inserted by No. 82/2012 s. 224(1)(a).

principal officer means—

S. 2(1) def. of *principal officer* amended by Nos 8884 s. 2(c), 12/1989 s. 4(1)(Sch. 2 item 86.4), 62/1989 s. 4(b), 125/1993 s. 20(9), 46/1998 s. 7(Sch. 1), 102/1998 s. 34, 108/2004 s. 117(1) (Sch. 3 item 144.2), substituted by No. 82/2012 s. 224(1)(e), amended by Nos 85/2012 s. 144(1)(b), 1/2014 s. 69(b), 2/2019 ss 73(2)(c), 147(3).

- (a) in relation to a Department, the Department Head of the Department within the meaning of the **Public Administration Act 2004** or the person carrying out the duties of the Department Head;
- (b) in relation to an Administrative Office, the Administrative Office Head of the Administrative Office within the meaning of the **Public Administration Act 2004** or the person carrying out the duties of the Administrative Office Head;
- (ba) in relation to Court Services Victoria, the Chief Executive Officer within the meaning of the **Court Services Victoria Act 2014**;
- (c) in relation to a specified entity, the person (if any) specified in column 2 of Schedule 1 opposite the specified entity;
- (ca) in relation to a public statutory body, the chairperson or presiding member of the public statutory body;

- (d) in relation to a member of the teaching service, the Secretary within the meaning of the **Education and Training Reform Act 2006**;
- (e) in relation to a State funded residential care service, the chief executive officer of the service;
- (f) in relation to a person or body prescribed to be a public interest disclosure entity, the person prescribed as the principal officer for that person or body;

S. 2(1) def. of *protected disclosure complaint* inserted by No. 85/2012 s. 144(1)(a), amended by No. 82/2012 s. 313(d), repealed by No. 2/2019 s. 73(3).

* * * *

S. 2(1) def. of *protected disclosure entity* inserted by No. 85/2012 s. 144(1)(a), repealed by No. 2/2019 s. 73(3).

* * * *

S. 2(1) def. of *public body* inserted by No. 2/2019 s. 147(1).

public body means—

- (a) a body that is performing a public function on behalf of the State or an authority (whether under a contract or otherwise); or
- (b) a public statutory body;

public interest complaint means a disclosure determined to be a public interest complaint under section 26 of the **Public Interest Disclosures Act 2012** and that is referred to the Ombudsman by the IBAC under the **Independent Broad-based Anti-corruption Commission Act 2011**;

S. 2(1) def. of *public interest complaint* inserted by No. 2/2019 s. 73(1).

public interest disclosure entity means—

S. 2(1) def. of *public interest disclosure entity* inserted by No. 2/2019 s. 73(1), amended by No. 2/2019 s. 147(4).

- (a) a member of Parliament;
- (b) a Councillor;
- (c) a member of the teaching service within the meaning of the **Education and Training Reform Act 2006**;
- (d) a State funded residential care service within the meaning of the **Health Services Act 1988**;
- (e) a prescribed person or body;

Public Interest Monitor has the meaning given in section 4 of the **Public Interest Monitor Act 2011**;

S. 2(1) def. of *Public Interest Monitor* inserted by No. 82/2012 s. 224(1)(a).

public statutory body means—

S. 2(1) def. of *Public Statutory Body* amended by No. 15/1998 s. 10(1)(a), substituted by No. 82/2012 s. 224(1)(f).

- (a) a body, whether corporate or unincorporated, that is established by or under an Act for a public purpose; or
- (b) a body whose members, or a majority of whose members, are appointed by the Governor in Council or a Minister; or
- (c) a company all the shares or a majority of the shares in which are held by the State or an authority;

S. 2(1) def. of
*referred
complaint*
inserted by
No. 82/2012
s. 224(1)(a).

referred complaint has the meaning given in
section 16B(1);

S. 2(1) def. of
*referred
matter*
inserted by
No. 82/2012
s. 224(1)(a).

referred matter has the meaning given in
section 16B(2);

S. 2(1) def. of
*relevant
protected
disclosure
complaint*
inserted by
No. 85/2012
s. 144(1)(a),
repealed by
No. 2/2019
s. 73(3).

* * * * *

S. 2(1) def. of
*relevant
public interest
complaint*
inserted by
No. 2/2019
s. 73(1).

relevant public interest complaint means a public
interest complaint that the Ombudsman is
required to investigate under section 15C;

S. 2(1) def. of
*responsible
Minister*
inserted by
No. 82/2012
s. 224(1)(a),
amended by
Nos 85/2012
s. 144(1)(c),
1/2014
s. 69(c),
2/2019
ss 73(2)(d),
147(5), 92020
s. 390(Sch. 1
item 75.1(b)).

responsible Minister means—

- (a) in relation to a Department, the
Minister responsible for the
Department;
- (b) in relation to an Administrative Office,
the Minister responsible for the
Administrative Office;
- (ba) in relation to Court Services Victoria,
the Attorney-General;

- (c) in relation to a specified entity, the Minister (if any) specified in column 3 of Schedule 1 opposite the specified entity;
- (ca) in relation to a public statutory body—
 - (i) in the case of a public statutory body that is established by or under an Act—the Minister administering the provision of the Act under which the public statutory body is constituted or established; or
 - (ii) in any other case—the Minister responsible for the public statutory body;
- (d) in relation to a Councillor, the Minister administering Part 2 of the **Local Government Act 2020**;
- (e) in relation to a member of the teaching service, the Minister administering Part 2.4 of the **Education and Training Reform Act 2006**;
- (f) in relation to a State funded residential care service, the Minister administering section 6 of the **Health Services Act 1988**;
- (g) in relation to a prescribed person or body as a public interest disclosure entity, the Minister prescribed as the responsible Minister for that person or body;

S. 2(1) def. of
*restricted
matter*
inserted by
No. 82/2012
s. 224(1)(a),
amended by
Nos 30/2016
s. 55(b),
2/2019
s. 73(2)(b).

restricted matter means—

- (a) any evidence or information given to, or obtained by, the Ombudsman;
- (b) the contents of any document, or a description of any thing, produced by a person, or obtained by the Ombudsman, at a compulsory appearance or a voluntary appearance;
- (c) the contents of any document, or a description of any thing, which has been inspected under section 21;
- (d) the existence of, or any information about, a confidentiality notice or a witness summons;
- (e) the subject matter of an investigation in relation to which—
 - (i) a witness summons has been issued; or
 - (ii) a person has appeared, or has been requested to appear, at a voluntary appearance;
- (f) any information that could enable a person who has given, or may give, evidence, or who has produced, or may produce, any document or thing, at a compulsory appearance or a voluntary appearance, to be identified or located;
- (g) the fact that a person has given, or may give, evidence, or has produced, or may produce, any document or thing, at a compulsory appearance or a voluntary appearance;
- (h) the fact that a disclosure or related disclosure has been notified to an appropriate entity for assessment

under Part 3 of the **Public Interest Disclosures Act 2012**;

- (i) the fact that a disclosure or related disclosure has been determined under Part 3 of the **Public Interest Disclosures Act 2012** to be a public interest complaint;
- (j) the fact that the Ombudsman intends to conduct an investigation on a public interest disclosure;

specified entity means a person or body specified in column 1 of Schedule 1;

S. 2(1) def. of *specified entity* inserted by No. 82/2012 s. 224(1)(a).

spouse of a person means a person to whom the person is married;

S. 2(1) def. of *spouse* inserted by No. 82/2012 s. 224(1)(a).

State Trustees means the company described as State Trustees in the **State Trustees (State Owned Company) Act 1994** while that company is a company a majority of shares in which is held by or on behalf of the State.

S. 2(1) def. of *State Trustees* inserted by No. 15/1998 s. 10(1)(b).

VAGO officer has the meaning given in section 3(1) of the **Audit Act 1994**;

S. 2(1) def. of *VAGO officer* inserted by No. 82/2012 s. 224(1)(a).

Victorian Auditor-General's Office has the meaning given in section 3(1) of the **Audit Act 1994**;

S. 2(1) def. of *Victorian Auditor-General's Office* inserted by No. 82/2012 s. 224(1)(a).

S. 2(1) def. of
*Victorian
court*
inserted by
No. 82/2012
s. 224(1)(a).

Victorian court means—

- (a) the Supreme Court;
- (b) the County Court;
- (c) the Magistrates' Court;
- (d) the Children's Court;
- (e) the Coroners Court;

S. 2(1) def. of
*Victorian
Inspectorate*
inserted by
No. 82/2012
s. 224(1)(a).

Victorian Inspectorate means the Victorian
Inspectorate established under the **Victorian
Inspectorate Act 2011**;

S. 2(1) def. of
*Victorian
Inspectorate
Officer*
inserted by
No. 82/2012
s. 224(1)(a).

Victorian Inspectorate Officer has the meaning
given in section 3(1) of the **Victorian
Inspectorate Act 2011**;

S. 2(1) def. of
*voluntary
appearance*
inserted by
No. 82/2012
s. 224(1)(a).

voluntary appearance means the appearance of a
person before an Ombudsman officer in the
course of or in relation to the performance of
the Ombudsman's functions under this Act or
any other Act, other than a compulsory
appearance;

S. 2(1) def. of
*witness
summons*
inserted by
No. 82/2012
s. 224(1)(a),
substituted by
No. 2/2019
s. 147(6).

witness summons means a summons issued by the
Ombudsman under section 18(1);

S. 2(2)
inserted by
No. 82/2012
s. 224(2).

(2) For the purposes of the definition of *domestic
partner* in subsection (1)—

- (a) *registered relationship* has the same
meaning as it has in the **Relationships
Act 2008**; and

(b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all of the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case.

(2A) For the purposes of the definition *public body* in subsection (1), in determining whether a body is performing a public function, any of the following factors may be taken into account—

S. 2(2A)
inserted by
No. 2/2019
s. 147(7).

- (a) whether the function is conferred on the body or person by or under a statutory provision;
- (b) whether the function is of a regulatory nature;
- (c) whether the body is publicly funded to perform the function.

(2B) To avoid doubt—

S. 2(2B)
inserted by
No. 2/2019
s. 147(7).

- (a) the factors listed in subsection (2A) are not exhaustive of the factors that may be taken into account in determining whether a body is performing a public function; and
- (b) the fact that one or more of the factors set out in subsection (2A) are present in relation to a function does not necessarily mean that function is a public function.

(3) In this Act, a reference to a person who made a public interest complaint or to a person who made a relevant public interest complaint is a reference to a person who made a disclosure that was determined to be a public interest complaint under section 26 of the **Public Interest Disclosures Act 2012**.

S. 2(3)
inserted by
No. 85/2012
s. 144(2),
amended by
No. 2/2019
s. 73(4).

S. 2A
inserted by
No. 2/2019
s. 148.

2A Objectives

The objectives of this Act are—

- (a) to provide a timely, efficient, effective, flexible and independent means of resolving complaints about administrative action of authorities; and
- (b) to provide for the identification, investigation, exposure and prevention of maladministration; and
- (c) to assist in the identification, investigation, exposure and prevention of improper conduct and corrupt conduct; and
- (d) to assist in improving the quality of administration and complaint handling practices and procedures of authorities; and
- (e) to facilitate the education of the Victorian community and the public sector about matters relating to the functions of the Ombudsman.

Part II—The Ombudsman

3 Appointment of Ombudsman

- (1) There shall be appointed a Commissioner for Administrative Investigations, to be called the Ombudsman.
- (2) The Ombudsman shall be appointed by the Governor in Council and shall hold office in accordance with this Act.
- (3) The Ombudsman shall not be a Member of Parliament of Victoria or of the Commonwealth or any other State.
- (4) Subject to this Act, the Ombudsman holds office for a term of 10 years, and is not eligible to be re-appointed.
- (5) The Ombudsman ceases to hold office if the Ombudsman—
 - (a) resigns in writing and the resignation is accepted by the Governor in Council; or
 - (b) is removed from office upon the presentation of an address of both Houses of the Parliament praying for the Ombudsman's removal from office; or
 - (c) is suspended from office under section 4 and is not restored to office; or
 - (d) nominates for election for either House of the Parliament of Victoria or of any other State or Territory.

**S. 3(4)
substituted by
No. 62/1989
s. 5.**

**S. 3(5)
substituted by
No. 30/2016
s. 70(1).**

4 Suspension of Ombudsman

S. 4(1)
amended by
Nos 62/1989
s. 15(2),
30/2016
s. 70(2)(a).

- (1) The Governor in Council may at any time when Parliament is not in session suspend the Ombudsman from office on the ground of disability, bankruptcy, neglect of duty or misconduct or on any other ground which in the opinion of the Governor in Council makes the Ombudsman unfit to be the Ombudsman.
- (2) The Ombudsman so suspended shall be restored to office unless—
 - (a) a statement setting out the grounds of suspension is laid before each House of Parliament during the first seven sitting days of that House following the suspension; and
 - (b) each House of Parliament within 20 sitting days of the statement being so laid passes an address praying for the Ombudsman to be removed from office.

S. 4(2)(b)
amended by
No. 30/2016
s. 70(2)(b).

5 Salary, allowances and leave of absence

- (1) The Ombudsman shall be paid—
 - (a) a salary at such rate as is fixed from time to time by the Governor in Council; and
 - (b) such travelling and other allowances as are fixed from time to time by the Governor in Council.
- (2) The rate of salary paid to the Ombudsman shall not be reduced during the Ombudsman's term of office without the Ombudsman's consent in writing.
- (3) The Ombudsman shall be entitled to such leave of absence as the Governor in Council from time to time determines.

S. 5(2)
amended by
No. 30/2016
s. 70(2)(c).

- (4) The salary and allowances payable to the Ombudsman shall be paid out of the Consolidated Fund, which to the necessary extent is appropriated accordingly.

6 Acting Ombudsman

- (1) The Governor in Council may appoint an Acting Commissioner of Administrative Investigations, to be called the Acting Ombudsman during the temporary absence or suspension of the Ombudsman or during any vacancy in the office of Ombudsman, and may at any time revoke such appointment.
- (2) The Acting Ombudsman shall, while so acting, have all the powers and may exercise any of the functions of the Ombudsman as if the Acting Ombudsman were the Ombudsman.

S. 6(1)
amended by
Nos 24/1996
s. 30(1),
82/2012
s. 224(3).

S. 6(2)
amended by
No. 30/2016
s. 70(2)(d).

* * * * *

S. 6A
inserted by
No. 14/1988
s. 5,
substituted by
No. 32/2004
s. 4,
amended by
No. 56/2004
s. 76(1),
repealed by
No. 63/2004
s. 7(b).

* * * * *

S. 6B
inserted by
No. 14/1988
s. 5,
substituted by
No. 32/2004
s. 4,
repealed by
No. 63/2004
s. 7(b).

Ombudsman Act 1973
No. 8414 of 1973
Part II—The Ombudsman

S. 6C
inserted by
No. 14/1988
s. 5,
amended by
No. 24/1996
s. 30(2)(3),
repealed by
No. 32/2004
s. 5(1)(a).

* * * * *

S. 6D
inserted by
No. 14/1988
s. 5,
amended by
No. 46/1998
s. 7(Sch. 1),
repealed by
No. 32/2004
s. 5(1)(a).

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S. 6E
inserted by
No. 14/1988
s. 5,
repealed by
No. 32/2004
s. 5(1)(a).

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S. 6F
inserted by
No. 24/1996
s. 31,
repealed by
No. 32/2004
s. 5(1)(a).

* * * * *

S. 7
amended by
No. 14/1988
s. 6(1),
substituted by
Nos 62/1989
s. 6, 46/1998
s. 7(Sch. 1),
amended by
Nos 32/2004
s. 5(1)(b),
63/2004
s. 7(c),
108/2004
s. 117(1)
(Sch. 3
item 144.3).

7 Staff

Any employees that are necessary to enable the functions of the Ombudsman to be properly carried out may be employed under the **Public Administration Act 2004**.

8 Application of Public Administration Act 2004

S. 8 (Heading)
inserted by
No. 108/2004
s. 117(1)
(Sch. 3
item 144.4)

- (1) A person who is the Ombudsman or Acting Ombudsman is not, in respect of the office of Ombudsman or Acting Ombudsman, subject to the **Public Administration Act 2004**.

S. 8(1)
amended by
Nos 9059
s. 2(1)(Sch.
item 31),
14/1988 s. 7,
62/1989
s. 7(a)(b),
46/1998
s. 7(Sch. 1),
substituted by
No. 32/2004
s. 5(2),
amended by
Nos 63/2004
s. 7(d),
108/2004
s. 117(1)
(Sch. 3
item 144.5).

- (2) A person who is the Ombudsman or Acting Ombudsman and who, immediately before their appointment as such was an employee in the public service—

S. 8(2)
amended by
Nos 9059
s. 2(1)(Sch.
item 32),
14/1988 s. 7,
62/1989
s. 7(a)(b),
substituted by
No. 46/1998
s. 7(Sch. 1),
amended by
Nos 32/2004
s. 5(3)(a),
30/2016
s. 70(2)(e).

- (a) is eligible to be employed in the public service at the termination of their office as the Ombudsman or Acting Ombudsman with a classification and emolument corresponding with or higher than that which the person last held or received in the public service immediately before their

S. 8(2)(a)
amended by
Nos 32/2004
s. 5(3)(a),
30/2016
s. 70(2)(e)(f).

appointment as the Ombudsman or Acting Ombudsman as if their service as the Ombudsman or Acting Ombudsman had been service in the public service; and

S. 8(2)(b)
amended by
Nos 32/2004
s. 5(3)(a),
30/2016
s. 70(2)(f).

- (b) for the purposes of long service leave, is to be taken to continue to be an employee in the public service while the person was Ombudsman or Acting Ombudsman.

9 Superannuation

S. 9(1)
amended by
Nos 14/1988
s. 8, 50/1988
s. 93(2)(Sch. 2
Pt 2 item 42),
46/1998
s. 7(Sch. 1),
32/2004
s. 5(3)(b)(i)(ii),
30/2016
s. 70(2)(g).

- (1) A person who is the Ombudsman or Acting Ombudsman or an employee of the Ombudsman and who immediately before their appointment as such was an officer within the meaning of the **State Superannuation Act 1988** or of any corresponding previous enactment shall, subject to that Act, continue during their term of office as the Ombudsman or Acting Ombudsman or an employee of the Ombudsman to be an officer within the meaning of that Act.

S. 9(2)
amended by
Nos 62/1989
s. 15(3),
100/1995
s. 32(Sch. 2
item 4),
46/1998
s. 7(Sch. 1),
30/2016
s. 70(2)(h).

- (2) A person who is the Ombudsman and who immediately before appointment as the Ombudsman was not an employee in the public service may elect to be a contributor to a pension scheme determined by the Governor in Council after consideration of a report by the Secretary to the Department of Treasury and Finance.

10 Oath or affirmation

- | | |
|---|---|
| | S. 10
amended by
Nos 14/1988
s. 9, 15/1989
s. 24,
substituted by
No. 32/2004
s. 6. |
| (1) Before the Ombudsman or Acting Ombudsman performs any of the duties of office of Ombudsman, the Ombudsman or Acting Ombudsman must take an oath or make an affirmation that they— | S. 10(1)
amended by
Nos 63/2004
s. 7(e)(i),
30/2016
s. 70(2)(i)(j). |
| (a) will faithfully and impartially perform the duties of office of Ombudsman; and | S. 10(1)(a)
amended by
No. 63/2004
s. 7(e)(ii). |
| (b) will not divulge, except according to law, any information received in the performance of those duties. | |
| (2) Before a member of Ombudsman staff performs any duties as a member of Ombudsman staff, the member must take an oath or make an affirmation that the member— | S. 10(2)
substituted by
No. 82/2012
s. 225(1),
amended by
No. 30/2016
s. 70(2)(k). |
| (a) will faithfully and impartially perform their duties as a member of Ombudsman staff; and | S. 10(2)(a)
amended by
No. 30/2016
s. 70(2)(l). |
| (b) will not divulge, except according to law, any information received in the performance of those duties. | |
| (3) The oath or affirmation is to be administered by— | |
| (a) the Speaker of the Legislative Assembly, in the case of the Ombudsman or Acting Ombudsman; | |
| (b) the Ombudsman or Acting Ombudsman, in the case of a member of Ombudsman staff. | S. 10(3)(b)
amended by
No. 82/2012
s. 225(2). |

11 Delegation

S. 11(1)
amended by
No. 80/2006
s. 20.

- (1) The Ombudsman or the Acting Ombudsman may, by instrument in writing, delegate all or any of the powers or functions of the Ombudsman (except this power of delegation) under this or any other Act to any person, and may in like manner revoke or vary such delegation.
- (2) A person to whom any such powers or functions have been delegated may exercise or perform those powers and functions so long as they are not revoked.
- (3) The delegation of any powers or functions shall not affect the exercise of those powers or functions by the Ombudsman or, where applicable, by the Acting Ombudsman.

S. 11(4)
inserted by
No. 14/1988
s. 10,
amended by
No. 32/2004
s. 7(1),
repealed by
No. 63/2004
s. 7(f).

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S. 12
amended by
Nos 32/2004
s. 7(2),
63/2004
s. 7(g),
34/2008
s. 143(Sch. 2
item 9),
substituted by
No. 82/2012
s. 226.

12 Restriction on other employment

S. 12(1)
amended by
No. 30/2016
s. 70(2)(m).

- (1) The Ombudsman or Acting Ombudsman must not, without the consent of the Governor in Council, engage in any paid employment outside the duties of their office as Ombudsman or Acting Ombudsman.

Ombudsman Act 1973
No. 8414 of 1973
Part II—The Ombudsman

- (2) An employee referred to in section 7 must not, without the consent of the Ombudsman, engage in any paid employment outside the duties of their employment in the office of the Ombudsman.

S. 12(2)
amended by
No. 30/2016
s. 70(2)(m).

Part III—Functions and jurisdiction of the Ombudsman

S. 13
amended¹,
substituted by
No. 82/2012
s. 227,
amended by
No. 30/2016
s. 70(2)(n),
substituted by
No. 2/2019
s. 149.

13 Principal functions of the Ombudsman

- (1) The principal functions of the Ombudsman are—
 - (a) to resolve complaints about administrative action taken by or in an authority, other than administrative action that—
 - (i) appears to involve corrupt conduct (unless it is an administrative action referred to in paragraph (c)); or
 - (ii) is taken under the **Freedom of Information Act 1982**; and
 - (b) to enquire into or investigate administrative action referred to in paragraph (a); and
 - (c) to enquire into or investigate administrative action taken by or in an authority that appears to involve corrupt conduct on a referral from the IBAC under Division 5 of Part 3 of the **Independent Broad-based Anti-corruption Commission Act 2011**; and
 - (d) to investigate public interest complaints about conduct by or in an authority or a public interest disclosure entity.
- (2) The functions of the Ombudsman under subsection (1)(b) and (c) include the function to enquire into or investigate—
 - (a) whether the relevant administrative action is incompatible with a human right set out in the **Charter of Human Rights and Responsibilities Act 2006**; and
 - (b) if the administrative action involves a decision, whether there was a failure to give proper consideration to a relevant human

right set out in the **Charter of Human Rights and Responsibilities Act 2006**.

- (3) Without limiting the Ombudsman's principal functions under this section, the Ombudsman may enquire into or investigate administrative action that is taken by a person or body (other than an authority or an exempt person or body)—
- (a) on behalf of an authority; or
 - (b) under a power or function that is conferred on the person or body by an authority; or
 - (c) as a result of instructions given by an authority.
- (4) Nothing under this section authorises the Ombudsman to enquire into or investigate the merits of a decision made by a person or body referred to in subsection (3).

* * * * *

S. 13AAA
inserted by
No. 85/2012
s. 145,
amended by
No. 2/2019
s. 79(Sch. 1
Pt C
items 1, 2),
repealed by
No. 2/2019
s. 150.

13AA Other functions of the Ombudsman

- (1) In addition to the principal functions of the Ombudsman under section 13(1), the Ombudsman has the following functions—
- (a) to review the complaint practices and procedures of authorities;

S. 13AA
inserted by
No. 82/2012
s. 227,
amended by
No. 85/2012
ss 146, 313(e),
substituted by
No. 2/2019
s. 151.

- (b) to provide education and training to the Victorian community and the public sector about matters relating to the functions of the Ombudsman;
 - (c) to promote improved public sector administration;
 - (d) any other function conferred by or under this Act or any other Act.
- (2) To avoid doubt, nothing in this Act authorises or requires the Ombudsman to enquire into or investigate anything done or omitted to be done by an exempt person or body.

S. 13AB
inserted by
No. 82/2012
s. 227.

13AB Ombudsman not to prejudice legal proceedings or investigations

S. 13AB(1)
amended by
No. 30/2016
s. 70(2)(o).

- (1) The Ombudsman must not perform the functions or duties or exercise the powers of the Ombudsman in a manner that would prejudice any—
- (a) criminal proceedings or criminal investigations; or
 - (b) investigations by the IBAC or the Victorian Inspectorate.
- (2) For the purposes of ensuring compliance with subsection (1), the Ombudsman may consult any of the following—
- (a) the Director of Public Prosecutions;
 - (b) the Chief Commissioner of Police;
 - (c) the IBAC;
 - (d) the Victorian Inspectorate.

13AC Court Services Victoria

- (1) Despite anything to the contrary in Schedule 2, Court Services Victoria is not an exempt body.
- (2) In performing the functions or duties or exercising the powers of the Ombudsman in relation to Court Services Victoria, the Ombudsman must not—
 - (a) interfere with the exercise of the jurisdiction of a court or VCAT; or
 - (b) direct a court or VCAT as to the manner or outcome of the exercise of its judicial function in any particular case or any other judicial or quasi-judicial function.
- (3) The Ombudsman or a member of Ombudsman staff must not, pursuant to section 21, enter a court or tribunal hearing room in the course of the hearing of a matter, except with the agreement of the presiding judicial officer.
- (4) The Ombudsman or a member of Ombudsman staff must not require a judicial member of the Courts Council or a member of the staff of Court Services Victoria—
 - (a) to provide any information (including answering any question); or
 - (b) to produce any document—to the extent that the information or document concerns the exercise of a judicial or quasi-judicial function by a court, VCAT or a person specified in clause 7 of Schedule 2 or by any person exercising the function on behalf of a court or VCAT.
- (5) Despite subsection (4), the Ombudsman or a member of Ombudsman staff may require a member of the staff of Court Services Victoria to provide information or documents in a matter that relates to the exercise of a judicial

S. 13AC
inserted by
No. 1/2014
s. 70.

S. 13AC(2)
amended by
No. 30/2016
s. 70(2)(p).

or quasi-judicial function if the relevant head of the jurisdiction has approved the provision of such information or documents, subject to any conditions agreed between the relevant head of the jurisdiction and the Ombudsman.

(6) In this section—

Courts Council means the Courts Council established under section 10 of the **Court Services Victoria Act 2014**;

member of the staff, of Court Services Victoria has the same meaning as it has in section 3 of the **Court Services Victoria Act 2014**.

Part IIIA—Enquiries

Pt 3A
(Heading and
ss 13A, 13B)
inserted by
No. 62/1989
s. 9.

13A Conducting of enquiries

S. 13A
inserted by
No. 62/1989
s. 9.

(1) The Ombudsman may conduct an enquiry for the purpose of determining whether—

(a) an investigation under this Act should be conducted; or

S. 13A(1)(a)
amended by
Nos 85/2012
s. 147, 30/2016
s. 56(1)(a).

(b) the matter (other than a public interest complaint) may be resolved informally.

S. 13A(1)(b)
amended by
Nos 30/2016
s. 56(1)(b),
2/2019
s. 79(Sch. 1
Pt C item 3(a)).

(2) The Ombudsman may conduct an enquiry either an own motion or as a consequence of a complaint under section 14, a referred complaint or a referred matter.

S. 13A(2)
amended by
Nos 82/2012
s. 228(a),
30/2016
s. 70(2)(q).

(3) The principal officer of an authority or a public interest disclosure entity (if any) must assist the Ombudsman in the conduct of an enquiry.

S. 13A(3)
amended by
Nos 82/2012
s. 228(b),
30/2016
s. 56(2),
2/2019 s. 79
(Sch. 1 Pt C
item 3(b)).

(4) A person who is under the age of 16 years but of or over the age of 10 years may voluntarily provide information to the Ombudsman during an enquiry.

S. 13A(4)
inserted by
No. 2/2019
s. 152.

S. 13B
inserted by
No. 62/1989
s. 9.

13B Communication of information to complainant

Section 24 applies to—

- (a) information obtained or received in the course or as a result of an enquiry under this Act; and
- (b) the result of an enquiry under this Act and any recommendations made—

as if the enquiry were an investigation under this Act.

Part IIIAB—Review of complaint practices and procedures

Pt 3AB
(Heading and
ss 13C, 13D)
inserted by
No. 2/2019
s. 153.

13C Application of Part

S. 13C
inserted by
No. 2/2019
s. 153.

- (1) This Part does not apply to complaint practices and procedures of an authority taken under the **Freedom of Information Act 1982**.
- (2) This Part does not apply to the complaint practices and procedures and complaint functions of the Information Commissioner.

13D Review of complaint practices and procedures of an authority

S. 13D
inserted by
No. 2/2019
s. 153.

- (1) The Ombudsman may conduct a review of the complaint practices and procedures of an authority—
 - (a) on the Ombudsman's own motion; or
 - (b) in response to a complaint.
- (2) After conducting the review, the Ombudsman may, for the purpose of improving the complaint practices and procedures of the authority—
 - (a) make recommendations to the authority; and
 - (b) provide education and training or other assistance to the authority.
- (3) The principal officer of the authority must assist the Ombudsman in the conduct of the review.
- (4) The powers of the Ombudsman under Division 3 of Part IV do not apply to the review.
- (5) A review under this section does not prevent the Ombudsman from conducting an own motion investigation in relation to the complaint practices and procedures of an authority.

Pt 3AC
(Heading and
ss 13E–13H)
inserted by
No. 2/2019
s. 153.

Part IIIAC—Alternative dispute resolution of complaints

S. 13E
inserted by
No. 2/2019
s. 153.

13E Definition

In this Part, *alternative dispute resolution* includes conciliation and mediation.

S. 13F
inserted by
No. 2/2019
s. 153.

13F Application of Part

This Part does not apply to—

- (a) a public interest complaint; or
- (b) a parliamentary complaint under section 16; or
- (c) a complaint referred to the Ombudsman by IBAC under section 73 of the **Independent Broad-based Anti-corruption Commission Act 2011** where the conduct that is the subject matter of the complaint appears to involve corrupt conduct.

S. 13G
inserted by
No. 2/2019
s. 153.

13G Alternative dispute resolution of complaints

- (1) The Ombudsman or a member of Ombudsman staff authorised to do so by the Ombudsman may, at any time, as part of an enquiry or an investigation of a complaint under section 15B, attempt to resolve the complaint by alternative dispute resolution in accordance with this Part.
- (2) The Ombudsman may authorise a conciliator or a mediator to mediate or conciliate the complaint under this Part.
- (3) Alternative dispute resolution must be conducted in private and in a manner that the Ombudsman thinks fit.

- (4) Participation by a party in alternative dispute resolution is voluntary and any party may withdraw from the alternative dispute resolution at any time.
- (5) A person who is under the age of 16 years but of or over the age of 10 years and accompanied by a parent or guardian or independent person may voluntarily participate in alternative dispute resolution.
- (6) The powers of the Ombudsman under Division 3 of Part IV do not apply to alternative dispute resolution conducted under this Part.
- (7) The Ombudsman or a member of Ombudsman staff may terminate alternative dispute resolution at any time.
- (8) The principal officer of an authority is not required to assist the Ombudsman or a member of Ombudsman staff during alternative dispute resolution however the principal officer may voluntarily participate in the alternative dispute resolution.
- (9) Any information provided or anything done by a party during alternative dispute resolution under this Part is not admissible in evidence in any proceeding before a court or tribunal where the proceeding relates to the subject matter of the complaint.
- (10) For the purposes of this section, an *independent person* is—
 - (a) a person nominated by, or who is acceptable to, the person referred to in subsection (5); or
 - (b) if no person has been nominated by, or is acceptable to, the person referred to in subsection (5), a person chosen by the Ombudsman who—

- (i) is not involved in the subject matter of the enquiry or investigation; and
- (ii) where practicable, is—
 - (A) involved in the care or supervision of the person referred to in subsection (5); and
 - (B) of the same gender as the person referred to in subsection (5) or, if the person identifies as being of a particular gender, of that gender.

S. 13H
inserted by
No. 2/2019
s. 153.

13H Outcome of alternative dispute resolution

- (1) If the Ombudsman considers that a complaint is resolved by alternative dispute resolution under this Part, the Ombudsman may decide that the complaint is resolved informally under this Act.
- (2) If the Ombudsman considers that a complaint is unable to be resolved by alternative dispute resolution under this Part—
 - (a) the Ombudsman may decide that the complaint is to be treated as if the alternative dispute resolution did not occur; and
 - (b) the Ombudsman may decide—
 - (i) to conduct or to continue conducting enquiries on the complaint under section 13A; or
 - (ii) to discontinue conducting enquiries on the complaint under section 13A; or
 - (iii) not to deal with the complaint in accordance with section 15 or 15A; or
 - (iv) to refer the complaint under section 16I or 16IA; or

- (v) to conduct or to continue conducting an investigation on the complaint under section 15B; or
 - (vi) to discontinue conducting an investigation on the complaint under section 15B.
- (3) If the Ombudsman decides to conduct or continue conducting an enquiry under section 13A or to conduct or continue conducting an investigation under section 15B, the Ombudsman must not, without the consent of the parties to the alternative dispute resolution—
 - (a) use in the enquiry or the investigation information obtained during the alternative dispute resolution; or
 - (b) involve in the conduct of the enquiry or the investigation any member of Ombudsman staff who was involved in the alternative dispute resolution.

Part IV—Investigations

Division 1—Complaints generally

Pt 4 Div. 1
(Heading and
ss 14–15C)
amended by
Nos 98/2000
s. 79, 2/2001
s. 113, 6/2012
s. 44,
substituted as
Pt 4 Div. 1
(Heading and
ss 14–15B) by
No. 82/2012
s. 229.

S. 14
substituted by
No. 82/2012
s. 229.

14 Making a complaint

- (1) The following persons may make a complaint to the Ombudsman about an administrative action taken by or in an authority—
 - (a) a person or body of persons affected by the administrative action (an *aggrieved person*); or
 - (b) a member of Parliament acting on behalf of an aggrieved person; or
 - (c) if an aggrieved person has died, a person who the Ombudsman considers is suitable to represent the deceased person; or
 - (d) if the Ombudsman considers that an aggrieved person is unable to act for themselves, a person who the Ombudsman considers is suitable to represent the aggrieved person; or
 - (e) any other person if, having regard to all the circumstances, the Ombudsman considers it is appropriate to deal with the complaint.
- (2) If a complaint to the Ombudsman is not made in writing, the Ombudsman may require the complainant to provide a written statement in the form (if any) specified by the Ombudsman—

S. 14(2)
substituted by
No. 30/2016
s. 57.

- (a) confirming that the complainant wants the Ombudsman to consider the complaint; and
 - (b) specifying the details of the complaint.
- (3) The Ombudsman may deal with a complaint even if, on the face of it, the complaint does not refer to an administrative action taken by or in an authority if the Ombudsman considers there is a likelihood that the cause for complaint arose from such an action.

15 How the Ombudsman is to deal with certain complaints

S. 15
(Heading)
substituted by
No. 30/2016
s. 58(1).

S. 15
substituted by
No. 82/2012
s. 229.

- (1) The Ombudsman must not deal with a complaint that involves police personnel conduct, other than to notify the IBAC or the Victorian Inspectorate under Division 2C.
- (1A) Subject to subsection (1B), the Ombudsman must not deal with a complaint that the Ombudsman suspects on reasonable grounds involves corrupt conduct until the Ombudsman notifies the IBAC or the Victorian Inspectorate under Division 2C.
- (1B) If the IBAC notifies the Ombudsman that it has determined under section 58 of the **Independent Broad-based Anti-corruption Commission Act 2011** to investigate a matter involving corrupt conduct or to refer it to another body, the Ombudsman must not continue to deal with a complaint that involves the matter or continue to conduct an investigation in relation to the matter unless—

S. 15(1)
substituted by
No. 30/2016
s. 58(2).

S. 15(1A)
inserted by
No. 30/2016
s. 58(2).

S. 15(1B)
inserted by
No. 30/2016
s. 58(2).

S. 15(2)
amended by
No. 20/2017
s. 134(Sch. 1
item 13.2).

- (a) the IBAC and the Ombudsman agree, to the extent and subject to the conditions agreed; or
 - (b) where the IBAC refers the matter to another body under section 73 of the **Independent Broad-based Anti-corruption Commission Act 2011**, to the extent of the referral; or
 - (c) the IBAC completes or discontinues its investigation into the matter.
- (2) The Ombudsman must refuse to deal with a complaint about administrative action that is taken under the **Freedom of Information Act 1982** other than, if it could be made the subject of a complaint under Part VIA of that Act, to notify the Information Commissioner under Division 2C.
- (3) The Ombudsman must refuse to deal with a complaint if dealing with it would be contrary to section 13AB.
- (4) The Ombudsman must refuse to deal with a complaint relating to terms and conditions of employment of persons who are or were employed by or in an authority unless the Ombudsman considers that the matter merits investigation in order to avoid injustice.
- (5) If the Ombudsman considers that a complainant has or had a right of appeal or referral to, or review by, a tribunal, the Ombudsman must refuse to deal with the complaint unless the Ombudsman considers that in the particular circumstances—
- (a) it would not be reasonable to expect or have expected the complainant to exercise that right; or
 - (b) the matter merits investigation to avoid injustice.

- (6) If the Ombudsman considers that a complainant has or had a remedy by taking proceedings in a court, the Ombudsman must refuse to deal with the complaint unless the Ombudsman considers that in the particular circumstances—
- (a) it would not be reasonable to expect or have expected the complainant to take those proceedings; or
 - (b) the matter merits investigation to avoid injustice.

15A Ombudsman may refuse to deal with certain complaints

S. 15A
substituted by
No. 82/2012
s. 229.

- (1) The Ombudsman may refuse to deal with a complaint if the Ombudsman considers—
- (a) the subject-matter of the complaint is trivial; or
 - (b) the complaint is frivolous or vexatious or is not made in good faith; or
 - (c) the complaint lacks substance or credibility; or
 - (ca) that dealing, or continuing to deal with the complaint is unnecessary or unjustifiable, having regard to all the circumstances of the case; or
 - (d) the subject-matter of the complaint has already been investigated or otherwise dealt with by—
 - (i) an integrity body within the meaning of the **Independent Broad-based Anti-corruption Commission Act 2011**; or

S. 15A(1)(ca)
inserted by
No. 2/2019
s. 154.

- (ii) any other person or body (whether or not still in existence) with the power to require the production of documents or the answering of questions.
- (2) The Ombudsman may refuse to deal with a complaint if the complainant—
 - (a) made the complaint more than 12 months after becoming aware of the administrative action; and
 - (b) fails to give a satisfactory explanation for the delay in making the complaint.
- (3) The Ombudsman may refuse to deal with a complaint if the complainant fails to comply with a requirement made under section 14(2).

S. 15A(3)
inserted by
No. 30/2016
s. 59.

S. 15B
substituted by
No. 82/2012
s. 229.

15B Investigation of complaints

Subject to sections 15 and 15A, the Ombudsman may conduct an investigation under this Act on a complaint.

Division 1A—Public interest complaints

Pt 4 Div. 1A
(Heading)
amended by
No. 2/2019
s. 79(Sch. 1
Pt C item 4).

Pt 4 Div. 1A
(Heading and
ss 15C–15F)
inserted by
No. 85/2012
s. 148.

15C Ombudsman must investigate public interest complaints

Subject to sections 15D, 15E and 17, the Ombudsman must conduct an investigation under this Act on a public interest complaint about conduct by or in an authority or a public interest disclosure entity.

S. 15C
(Heading)
amended by
No. 2/2019
s. 79(Sch. 1
Pt C item 5).

S. 15C
inserted by
No. 85/2012
s. 148,
amended by
Nos 30/2016
s. 60, 2/2019
s. 79(Sch. 1
Pt C item 6).

15D Ombudsman must refuse to investigate certain public interest complaints

S. 15D
(Heading)
amended by
No. 2/2019
s. 79(Sch. 1
Pt C item 7).

S. 15D
inserted by
No. 85/2012
s. 148.

- (1) The Ombudsman must refuse to conduct an investigation on a public interest complaint if conducting the investigation would be contrary to section 13AB.
- (2) The Ombudsman must refuse to conduct an investigation on a public interest complaint about conduct by or in an authority or a public interest disclosure entity unless the Ombudsman is

S. 15D(1)
amended by
No. 2/2019
s. 79(Sch. 1
Pt C item 8(a)).

S. 15D(2)
amended by
No. 2/2019
s. 79
(Sch. 1 Pt C
item 8(b)).

reasonably satisfied that the public interest complaint shows or tends to show that—

S. 15D(2)(a)
amended by
No. 2/2019
s. 79(Sch. 1
Pt C item 8(c)).

- (a) the authority or public interest disclosure entity or a member, officer or employee of the authority or public interest disclosure entity has engaged, is engaging or proposes to engage in improper conduct; or

S. 15D(2)(b)
amended by
No. 2/2019
s. 79
(Sch. 1 Pt C
item 8(d)).

- (b) the authority or public interest disclosure entity or a member, officer or employee of the authority or public interest disclosure entity has taken, is taking or proposes to take detrimental action against a person in contravention of section 45 of the **Public Interest Disclosures Act 2012**.

S. 15D(3)
amended by
No. 2/2019
s. 79(Sch. 1
Pt C item 8(e)).

- (3) In this section, *improper conduct* has the meaning given in section 4 of the **Public Interest Disclosures Act 2012**.

S. 15E
(Heading)
amended by
No. 2/2019
s. 79(Sch. 1
Pt C item 9).

15E Ombudsman may refuse to investigate certain public interest complaints

S. 15E
inserted by
No. 85/2012
s. 148.

S. 15E(1)
amended by
No. 2/2019
s. 79
(Sch. 1 Pt C
item 10(a)).

- (1) The Ombudsman may refuse to conduct an investigation on a public interest complaint if the Ombudsman considers—

S. 15E(1)(a)
amended by
No. 2/2019
s. 79
(Sch. 1 Pt C
item 10(b)).

- (a) the subject-matter of the public interest complaint is trivial; or

- | | |
|--|--|
| (b) the public interest complaint is frivolous or vexatious; or | S. 15E(1)(b) amended by No. 2/2019 s. 79 (Sch. 1 Pt C item 10(b)). |
| (c) the public interest complaint lacks substance or credibility; or | S. 15E(1)(c) amended by No. 2/2019 s. 79 (Sch. 1 Pt C item 10(b)). |
| (ca) the conduct which is the subject of the public interest complaint does not amount to improper conduct; or | S. 15E(1)(ca) inserted by No. 30/2016 s. 61, amended by No. 2/2019 s. 79 (Sch. 1 Pt C item 10(b)). |
| (cb) the conduct which is the subject of the public interest complaint does not amount to detrimental action against a person in contravention of section 45 of the Public Interest Disclosures Act 2012 ; or | S. 15E(1)(cb) inserted by No. 30/2016 s. 61, amended by No. 2/2019 s. 79 (Sch. 1 Pt C item 10(c)). |
| (d) the subject-matter of the public interest complaint has already been investigated or otherwise dealt with by— | S. 15E(1)(d) amended by No. 2/2019 s. 79 (Sch. 1 Pt C item 10(d)). |
| (i) an integrity body within the meaning of the Independent Broad-based Anti-corruption Commission Act 2011 ; or | |
| (ii) any other person or body (whether or not still in existence) with the power to require the production of documents or the answering of questions. | |

S. 15E(2)
amended by
No. 2/2019
s. 79
(Sch. 1 Pt C
item 10(e)).

(2) The Ombudsman may refuse to conduct an investigation on a public interest complaint if the person who made the public interest complaint—

S. 15E(2)(a)
amended by
No. 2/2019
s. 79
(Sch. 1 Pt C
item 10(f)).

(a) made the disclosure that was determined to be a public interest complaint more than 12 months after becoming aware of the disclosed matter; and

(b) fails to give a satisfactory explanation for the delay in making the disclosure.

S. 15F
(Heading)
amended by
No. 2/2019
s. 79(Sch. 1
Pt C item 11).

15F Person who made public interest complaint to be informed of refusal to investigate

If the Ombudsman refuses to conduct an investigation on a public interest complaint, the Ombudsman, within a reasonable time after receiving the public interest complaint from the IBAC, must inform the person who made the public interest complaint of—

S. 15F
inserted by
No. 85/2012
s. 148,
amended by
No. 2/2019
s. 79(Sch. 1
Pt C item 12).

- (a) the refusal to conduct the investigation; and
- (b) the reason for that refusal.

Division 2—Parliamentary complaints

16 Investigations referred by Parliament

S. 16(1)
amended by
No. 30/2016
s. 70(2)(r).

(1) At any time—

- (a) the Legislative Council or a committee of the Legislative Council;
- (b) the Legislative Assembly or a committee of the Legislative Assembly; or
- (c) a joint committee of both Houses of Parliament—

may refer to the Ombudsman for investigation and report any matter, other than a matter concerning a judicial proceeding, which that

House or committee considers should be investigated by the Ombudsman.

- (2) Where a matter is referred to the Ombudsman pursuant to subsection (1), the Ombudsman shall, notwithstanding anything to the contrary in this Act, forthwith investigate that matter and report thereon.

S. 16(2)
amended by
No. 30/2016
s. 70(2)(r).

Note

Section 25AB provides for the manner of reporting.

Note to
s. 16(2)
inserted by
No. 82/2012
s. 230(a).

* * * * *

S. 16(3)
repealed by
No. 82/2012
s. 230(b).

Division 2A—Own motion investigations

Pt 4 Div. 2A
(Heading and
s. 16A)
inserted by
No. 82/2012
s. 231.

16A Ombudsman may conduct own motion investigation

S. 16A
inserted by
No. 82/2012
s. 231.

- (1) Subject to section 13AB and this section, the Ombudsman may conduct an own motion investigation into any administrative action taken by or in an authority.
- (2) Subject to subsection (2A), the Ombudsman must not conduct an own motion investigation into any administrative action that the Ombudsman suspects on reasonable grounds involves corrupt conduct until the Ombudsman notifies the IBAC or the Victorian Inspectorate under Division 2C.

S. 16A(1)
amended by
No. 30/2016
s. 70(2)(s).

S. 16A(2)
substituted by
No. 30/2016
s. 62.

Note

See also section 16D.

S. 16A(2A)
inserted by
No. 30/2016
s. 62.

- (2A) If the IBAC notifies the Ombudsman that it has determined under section 58 of the **Independent Broad-based Anti-corruption Commission Act 2011** to investigate a matter or to refer it to another body, the Ombudsman must not conduct, or continue to conduct, an own motion investigation into any administrative action that involves the matter unless—
- (a) the IBAC and the Ombudsman agree, to the extent and subject to the conditions agreed; or
 - (b) where the IBAC refers the matter to another body under section 73 of the **Independent Broad-based Anti-corruption Commission Act 2011**, to the extent of the referral; or
 - (c) the IBAC completes or discontinues its investigation into the matter.
- (3) The Ombudsman must not conduct an own motion investigation into any administrative action that is taken under the **Freedom of Information Act 1982**.
- (4) The Ombudsman must not conduct an own motion investigation into a matter relating to terms and conditions of employment of persons who are or were employed by or in an authority unless the Ombudsman considers that the matter merits investigation in order to avoid injustice.
- (5) If the Ombudsman considers that a person aggrieved by any administrative action taken by or in an authority has or had a right of appeal or referral to, or review by, a tribunal, the Ombudsman must not conduct an own motion investigation into the matter unless the Ombudsman considers that in the particular circumstances—

- (a) it would not be reasonable to expect or have expected the person to exercise that right; or
 - (b) the matter merits investigation to avoid injustice.
- (6) If the Ombudsman considers that a person aggrieved by any administrative action taken by or in an authority has or had a remedy by taking proceedings in a court, the Ombudsman must not conduct an own motion investigation into the matter unless the Ombudsman considers that in the particular circumstances—
- (a) it would not be reasonable to expect or have expected the person to take those proceedings; or
 - (b) the matter merits investigation to avoid injustice.

Division 2B—Referred complaints and matters

Pt 4 Div. 2B
(Heading and
ss 16B–16D)
inserted by
No. 82/2012
s. 231.

16B What are referred complaints and referred matters?

S. 16B
inserted by
No. 82/2012
s. 231.

- (1) For the purposes of this Act, a *referred complaint* is—
- (a) a complaint within the meaning of the **Independent Broad-based Anti-corruption Commission Act 2011** (other than a public interest complaint) referred to the Ombudsman by the IBAC under section 73 of that Act; or
 - (b) a complaint about any administrative action taken by or in an authority referred to the Ombudsman by another person or body (whether under an Act or otherwise); or

S. 16B(1)(a)
amended by
Nos 85/2012
s. 149(a),
82/2012
s. 313(f),
2/2019
s. 79(Sch. 1
Pt C item 13).

S. 16B(1)(b)
amended by
No. 85/2012
s. 149(b).

S. 16B(1)(c)
inserted by
No. 85/2012
s. 149(c),
amended by
No. 2/2019
s. 79(Sch. 1
Pt C item 13).

- (c) a public interest complaint that the Ombudsman has refused to investigate under section 15D(2).

- (2) For the purposes of this Act, a *referred matter* is—

S. 16B(2)(a)
amended by
No. 82/2012
s. 313(f).

- (a) a notification within the meaning of the **Independent Broad-based Anti-corruption Commission Act 2011** referred to the Ombudsman by the IBAC under section 73 of that Act; or
- (b) a matter referred, or information provided, to the Ombudsman (whether under an Act or otherwise) about any administrative action taken by or in an authority, but not including a matter referred to the Ombudsman under section 16.

S. 16C
inserted by
No. 82/2012
s. 231.

16C Dealing with referred complaints

- (1) The Ombudsman may deal with a referred complaint if it could be made the subject of a complaint under section 14.
- (2) The referred complaint is to be dealt with as if it were a complaint under section 14.
- (3) Section 15(1) does not apply to a referred complaint that is a complaint within the meaning of the **Independent Broad-based Anti-corruption Commission Act 2011** referred to the Ombudsman by the IBAC under section 73 of that Act.

S. 16C(3)
amended by
No. 82/2012
s. 313(f).

S. 16D
inserted by
No. 82/2012
s. 231.

16D Dealing with referred matters

- (1) The Ombudsman may deal with a referred matter if the matter could be made the subject of an own motion investigation.

Note

Section 16A sets out the Ombudsman's power to conduct an own motion investigation.

- (2) The referred matter is to be dealt with as if it were an own motion investigation.
- (3) Section 16A(2) does not apply to a referred matter that is a notification within the meaning of the **Independent Broad-based Anti-corruption Commission Act 2011** referred to the Ombudsman by the IBAC under section 73 of that Act.

S. 16D(3)
amended by
No. 82/2012
s. 313(f).

**Division 2C—Mandatory notifications by
the Ombudsman**

Pt 4 Div. 2C
(Heading and
ss 16E–16G)
inserted by
No. 82/2012
s. 231.

16E Notification to IBAC

S. 16E
inserted by
No. 82/2012
s. 231.

- (1) Subject to any exemption notice issued under section 57B of the **Independent Broad-based Anti-corruption Commission Act 2011**, the Ombudsman must notify the IBAC of the following—
 - (a) a complaint or referred matter that the Ombudsman suspects on reasonable grounds involves corrupt conduct or police personnel misconduct occurring or having occurred;
 - (b) a matter that the Ombudsman suspects on reasonable grounds involves corrupt conduct or police personnel misconduct occurring or having occurred, of which the Ombudsman becomes aware in the course of dealing with a complaint, conducting an own motion

S. 16E(1)
substituted by
No. 30/2016
s. 63(1).

investigation or performing any other functions under this Act.

S. 16E(2)
amended by
No. 2/2019
s. 155(1).

- (2) If the Ombudsman notifies the IBAC of a complaint under subsection (1), the Ombudsman must advise the complainant that the complaint has been notified to the IBAC for assessment.

S. 16E(3)
amended by
Nos 82/2012
s. 313(f),
2/2019
s. 155(2).

- (3) Subsection (1) does not apply to anything referred to the Ombudsman by the IBAC under section 73 of the **Independent Broad-based Anti-corruption Commission Act 2011**.

S. 16E(4)
amended by
Nos 82/2012
s. 313(f),
30/2016
s. 63(2),
2/2019
s. 155(3).

- (4) If the Ombudsman considers at any time that anything referred to the Ombudsman by the IBAC under section 73 of the **Independent Broad-based Anti-corruption Commission Act 2011** appears to involve conduct that is corrupt conduct that the IBAC may not be aware of, the Ombudsman must inform the IBAC.

S. 16E(4A)
inserted by
No. 2/2019
s. 155(4).

- (4A) The Ombudsman must notify the IBAC under this section in the form agreed to in writing between the Ombudsman and the IBAC.

- (5) This section does not apply to corrupt conduct of the IBAC or IBAC personnel.

S. 16F
inserted by
No. 82/2012
s. 231.

16F Notification to Victorian Inspectorate

- (1) The Ombudsman must notify the Victorian Inspectorate of any of the following—

S. 16F(1)(a)
amended by
No. 30/2016
s. 64(a).

- (a) a complaint or referred matter that appears to involve misconduct of the IBAC or IBAC personnel;

S. 16F(1)(b)
amended by
No. 30/2016
s. 64(b).

- (b) a complaint or referred matter that appears to involve misconduct (other than corrupt conduct) of an Ombudsman officer, a VAGO officer, the Chief Examiner or an Examiner.

- | | |
|--|--|
| (2) The Ombudsman must notify the Victorian Inspectorate of any matter relating to misconduct referred to in subsection (1)(a) or (b) of which the Ombudsman becomes aware in the course of dealing with a complaint, conducting an own motion investigation or an investigation on a relevant public interest complaint or performing any other functions under this Act, if the Ombudsman considers that the matter is relevant to the performance of the functions of the Victorian Inspectorate. | S. 16F(2)
amended by
Nos 85/2012
s. 150, 30/2016
s. 64(c),
2/2019
s. 79(Sch. 1
Pt C item 14). |
| (3) If the Ombudsman notifies the Victorian Inspectorate of a complaint under this section, the Ombudsman must inform the complainant in writing. | |
| (4) The Ombudsman must notify the Victorian Inspectorate under subsection (1) in the form agreed to in writing between the Ombudsman and the Victorian Inspectorate. | S. 16F(4)
inserted by
No. 2/2019
s. 156. |

16G Notification to Information Commissioner

S. 16G
(Heading)
amended by
No. 20/2017
s. 134(Sch. 1
item 13.3).

S. 16G
inserted by
No. 82/2012
s. 231.

- | | |
|--|--|
| (1) The Ombudsman must notify the Information Commissioner of a complaint if the complaint could be made the subject of a complaint under Part VIA of the Freedom of Information Act 1982 . | S. 16G(1)
amended by
No. 20/2017
s. 134(Sch. 1
item 13.4). |
| (2) If the Ombudsman notifies the Information Commissioner of a complaint under this section, the Ombudsman must advise the complainant that the complaint has been notified to the Information | S. 16G(2)
amended by
Nos 20/2017
s. 134(Sch. 1
item 13.4),
2/2019 s. 157. |

Commissioner to be dealt with under Part VIA of
the **Freedom of Information Act 1982**.

Pt 4 Div. 2D
(Heading and
ss 16H–16K)
inserted by
No. 82/2012
s. 231.

Division 2D—Referrals by the Ombudsman

S. 16H
inserted by
No. 82/2012
s. 231,
amended by
No. 2/2019
s. 158 (ILA
s. 39B(1)).

16H Application of Division

- (1) This Division does not apply to—
- (a) a complaint that appears to involve corrupt conduct or police personnel conduct; or
 - (b) a complaint that appears to involve conduct of—
 - (i) the IBAC or IBAC personnel; or
 - (ii) an Ombudsman officer; or
 - (iii) a VAGO officer; or
 - (iv) the Chief Examiner or an Examiner; or
 - (c) a complaint about administrative action that is taken under the **Freedom of Information Act 1982**; or
 - (d) a complaint that is a referred complaint within the meaning of section 16B(1)(c).

S. 16H(1)(c)
amended by
No. 85/2012
s. 151(a).

S. 16H(1)(d)
inserted by
No. 85/2012
s. 151(b).

S. 16H(2)
inserted by
No. 2/2019
s. 158.

- (2) In this Division, a reference to a complaint is not limited to a complaint under section 14.

S. 16I
inserted by
No. 82/2012
s. 231.

16I Ombudsman may refer complaints

The Ombudsman may refer a complaint to a person or body specified in Schedule 3 if, at any time, the Ombudsman considers that—

- (a) the subject matter of the complaint is relevant to the performance of the duties and functions or the exercise of powers of the person or body; and
- (b) it would be more appropriate for the complaint to be dealt with by the person or body rather than by the Ombudsman.

16IA Ombudsman may refer a complaint to an authority

S. 16IA
inserted by
No. 2/2019
s. 159.

The Ombudsman may refer a complaint to an authority to which the complaint relates if—

- (a) the Ombudsman considers that—
 - (i) the complaint is relevant to the functions of the authority; and
 - (ii) it would be more appropriate for the complaint to be dealt with by the authority rather than by the Ombudsman; and
- (b) the complainant consents to the referral.

16J Notice of referral

S. 16J
inserted by
No. 82/2012
s. 231,
amended by
No. 2/2019
s. 160(a).

If the Ombudsman refers a complaint to a person or body under section 16I or 16IA, the Ombudsman—

- (a) must advise the complainant that the complaint has been referred to the person or body; and
- (b) may inform the following in writing—
 - (i) the principal officer (if any) of the authority to which the complaint relates; and
 - (ii) the responsible Minister for the authority to which the complaint relates; and

S. 16J(a)
substituted by
No. 2/2019
s. 160(b).

- (iii) if the authority to which the complaint relates is a member of staff of a Council, the Mayor of the Council.

S. 16K
inserted by
No. 82/2012
s. 231.

16K Consultation prior to referral

For the purposes of deciding whether to make a referral under this Division to a person or body, the Ombudsman may consult that person or body.

* * * * *

Pt 4 Div. 2E
(Heading and
s. 16L)
inserted by
No. 82/2012
s. 231,
amended by
Nos 85/2012
s. 152, 60/2014
s. 140(Sch. 3
item 33.1),
16/2016 s. 202,
30/2016 ss 65,
66, 2/2019
s. 79(Sch. 1
Pt C items 15,
16),
repealed by
No. 2/2019
s. 161.

Division 3—Conduct of investigations

17 Procedure relating to investigations

S. 17(1)
substituted by
No. 8884
s. 4(a),
amended by
Nos 12/1989
s. 4(1)(Sch. 2
item 86.8),
103/2003
s. 30(3)(4),
65/2007 s. 112,
substituted by
No. 82/2012
s. 232(1).

- (1) Before conducting an investigation under this Act, the Ombudsman must inform the following in writing of the Ombudsman's intention to conduct the investigation—

- | | |
|--|---|
| (a) the complainant or the person who made the relevant public interest complaint; and | S. 17(1)(a) amended by Nos 85/2012 s. 153(1)(a), 2/2019 s. 74(1)(a). |
| (b) the principal officer (if any) of the authority or public interest disclosure entity to which the investigation relates; and | S. 17(1)(b) amended by Nos 85/2012 s. 153(1)(b), 2/2019 s. 74(1)(b). |
| (c) the responsible Minister (if any) for the authority or public interest disclosure entity to which the investigation relates; and | S. 17(1)(c) substituted by No. 85/2012 s. 153(1)(c), amended by No. 2/2019 s. 74(1)(b). |
| (d) if the investigation relates to a member of staff of a Council or a Councillor, the Mayor of the Council. | S. 17(1)(d) amended by No. 85/2012 s. 153(1)(d). |
| * * * * * | S. 17(1A) inserted by No. 85/2012 s. 153(2), repealed by No. 2/2019 s. 74(2). |
| (1B) The Ombudsman must not inform a person under subsection (1) if doing so would result in information being disclosed that— | S. 17(1B) inserted by No. 85/2012 s. 153(2). |
| (a) is likely to lead to the identification of a person who has made an assessable disclosure; and | |
| (b) is not information to which section 53(2)(a), (c) or (d) of the Public Interest Disclosures Act 2012 applies. | S. 17(1B)(b) amended by No. 2/2019 s. 74(3). |
| (2) Every investigation under this Act shall be conducted in private. | |

S. 17(3)
amended by
Nos 35/1996
s. 453(Sch. 1
item 62.2),
18/2005
s. 18(Sch. 1
item 73.2),
82/2012
s. 232(2),
30/2016
s. 70(2)(f),
2/2019
s. 162(1).

- (3) The Ombudsman is not required to hold any hearing for the purposes of an investigation, and the Ombudsman may obtain information from such persons and in such manner as the Ombudsman thinks fit.

S. 17(4)
substituted by
No. 82/2012
s. 232(3),
amended by
Nos 85/2012
s. 153(3),
2/2019
s. 74(4).

- (4) If at any time during an investigation it appears to the Ombudsman that there may be grounds for making a report adverse to an authority or a public interest disclosure entity, the Ombudsman must, before making the report, give the principal officer (if any) of the authority or public interest disclosure entity the opportunity to comment on the subject-matter of the investigation.

S. 17(4A)
inserted by
No. 85/2012
s. 153(4),
amended by
No. 2/2019
s. 74(5).

- (4A) If at any time during the course of an investigation on a relevant public interest complaint about a Councillor it appears to the Ombudsman that there may be grounds for making a report adverse to the Councillor, the Ombudsman must, before making the report, give the responsible Minister or the Mayor of the relevant Council the opportunity to comment on the subject-matter of the investigation.

S. 17(5)
amended by
Nos 85/2012
s. 153(5),
2/2019
s. 74(6).

- (5) The Ombudsman may at any time during or after an investigation (other than an investigation on a relevant public interest complaint about a member of Parliament) consult a Minister who is concerned in the subject-matter of an investigation, and if a Minister so requests or the investigation relates to a recommendation made to a Minister, shall consult the Minister before forming an adverse opinion in relation to the administrative action concerned or, in case of

an investigation of a relevant public interest complaint, an adverse opinion in relation to the conduct.

- (5A) If an investigation relates to an administrative action taken by a member of staff of a Council or relates to a relevant public interest complaint about conduct of a Councillor or a member of staff of a Council, the Ombudsman—

- (a) may, at any time during or after the investigation, consult the Mayor of the Council; and

S. 17(5A)
inserted by
No. 8884
s. 4(b),
amended by
No. 12/1989
s. 4(1)(Sch. 2
items 86.9–
86.11) (as
amended by
No. 13/1990
s. 38(2)(m)),
substituted by
No. 82/2012
s. 232(4),
amended by
Nos 85/2012
s. 153(6)(a),
2/2019
s. 74(7).

- (b) must, if the Mayor so requests or the investigation relates to a recommendation made to the Council, consult the Mayor before forming an adverse opinion in relation to the administrative action or conduct.

S. 17(5A)(b)
amended by
No. 85/2012
s. 153(6)(b).

- (6) If, during or after an investigation, the Ombudsman considers that there is evidence of a breach of duty or misconduct on the part of an authority or a public interest disclosure entity, or a member, officer or employee of an authority or a public interest disclosure entity, the Ombudsman must—

S. 17(6)
amended by
Nos 8884
s. 4(c),
12/1989
s. 4(1)(Sch. 2
item 86.12),
substituted by
No. 82/2012
s. 232(4),
amended by
Nos 85/2012
s. 153(7)(a),
2/2019
s. 74(8).

- (a) report the matter to the principal officer (if any) of the authority or public interest disclosure entity; and

S. 17(6)(a)
amended by
Nos 85/2012
s. 153(7)(b),
2/2019
s. 74(8).

S. 17(6)(b)
amended by
Nos 85/2012
s. 153(7)(c),
2/2019
s. 74(8).

(b) send a copy of the report to the responsible Minister and, if the authority or public interest disclosure entity is a member of staff of a Council or a Councillor, to the Mayor of the Council.

S. 17(6A)
inserted by
No. 85/2012
s. 153(8).

(6A) The Ombudsman must not disclose any information under subsection (4), (4A), (5), (5A) or (6) that—

(a) is likely to lead to the identification of a person who has made an assessable disclosure; and

S. 17(6A)(b)
amended by
No. 2/2019
s. 74(9).

(b) is not information to which section 53(2)(a), (c) or (d) of the **Public Interest Disclosures Act 2012** applies.

S. 17(6B)
inserted by
No. 30/2016
s. 67.

(6B) The Ombudsman may at any time during an investigation discontinue the investigation if in all the circumstances the Ombudsman considers that—

(a) a ground specified in section 15A for refusing to deal with the complaint or section 15E for refusing to conduct an investigation would now apply; or

(b) the matter has been sufficiently investigated and further investigation is not warranted.

S. 17(6C)
inserted by
No. 30/2016
s. 67.

(6C) The Ombudsman must at any time during an investigation discontinue the investigation if in all the circumstances the Ombudsman considers that a ground specified in section 15 for refusing to deal with the complaint or section 15D for refusing to conduct an investigation would now apply.

(6D) If the Ombudsman discontinues an investigation in accordance with subsection (6B)(a) or (6C)—

**S. 17(6D)
inserted by
No. 30/2016
s. 67.**

- (a) the Ombudsman must, within a reasonable time of discontinuing the investigation, inform any person informed of the investigation under subsection (1) of—
 - (i) the discontinuance of the investigation; and
 - (ii) the reason for that discontinuance; and
- (b) sections 23, 23A and 24(1) cease to apply in relation to the investigation.

(6E) If the Ombudsman discontinues an investigation in accordance with subsection (6B)(b)—

**S. 17(6E)
inserted by
No. 30/2016
s. 67.**

- (a) sections 23, 23A and 24(1) apply as if the investigation had been completed; and
- (b) the Ombudsman must provide the reason for the discontinuance in any report or notification given under those sections.

(7) Subject to this Act the Ombudsman may regulate the procedures on an investigation in such manner as the Ombudsman thinks fit.

**S. 17(7)
amended by
Nos 30/2016
s. 70(2)(u)(v),
2/2019
s. 162(2).**

S. 18
amended by
Nos 8884 s. 5,
15/1989
s. 28(2),
69/2009
s. 54(Sch. Pt 2
item 37),
52/2012 s. 21,
82/2012 s. 233,
85/2012 s. 154,
67/2014
s. 147(Sch. 2
item 27.1),
30/2016 s. 70
(2)(w)(3)(a),
2/2019
s. 79(Sch. 1
Pt C item 17),
substituted by
No. 2/2019
s. 163.

18 Witness summons

- (1) For the purposes of an investigation under this Act, the Ombudsman may issue a witness summons to a person requiring the person to—
 - (a) attend at a specified time and place on a specified date to produce documents or other things to the Ombudsman; or
 - (b) attend at a specified time and place on a specified date to give evidence before the Ombudsman; or
 - (c) attend at a specified time and place on a specified date before the Ombudsman, to give evidence and to produce documents or other things.
- (2) A witness summons issued by the Ombudsman must—
 - (a) be in the prescribed form; and
 - (b) unless subsection (3) applies, if the witness summons requires the person to whom it is directed to give evidence—state the nature of the matters about which the person is required to give evidence; and
 - (c) include—
 - (i) a statement that failure to comply with the witness summons without reasonable excuse may be an offence to which penalties apply; and
 - (ii) a reference to section 18B(2) and (3) as examples of what may constitute a reasonable excuse for failing to comply with the witness summons; and
 - (iii) a statement of how the person may object to the witness summons; and
 - (iv) any other prescribed matter; and

- (d) be served in accordance with section 18A.
- (3) The Ombudsman is not required to state the nature of the matters about which a person is to give evidence if the Ombudsman considers on reasonable grounds that doing so may—
 - (a) prejudice the conduct of the investigation to which the witness summons relates; or
 - (b) be contrary to the public interest.
- (4) A person whose attendance has been required by a witness summons served under this section is required to attend at the time and place to which the investigation is adjourned or postponed without the issue or service of a further witness summons.

18A Service of witness summons

- (1) A witness summons must be served at a reasonable time, being not less than 7 days, before the date on which the person is required to attend or otherwise comply with the witness summons.
- (2) A witness summons directed to a natural person must be served by giving a copy of the witness summons to the person personally.
- (3) A witness summons directed to a body corporate must be served by leaving a copy of the witness summons at the registered office or principal place of business of the body corporate with a person who, apparently—
 - (a) is employed at that office or place; and
 - (b) is at least 18 years of age.

S. 18A
inserted by
No. 82/2012
s. 234,
substituted by
No. 2/2019
s. 163.

S. 18B
inserted by
No. 82/2012
s. 234,
substituted by
No. 2/2019
s. 163.

18B Variation or revocation of witness summons

- (1) A person on whom a witness summons is served may make a claim to the Ombudsman—
 - (a) that the person has a reasonable excuse for failing to comply with the witness summons; or
 - (b) in the case of a witness summons to produce a document or other thing—that the document or other thing specified in the witness summons is not relevant to the subject matter of the investigation.
- (2) Without limiting subsection (1)(a), it is a reasonable excuse for a natural person to fail to comply with a witness summons by refusing to give information to the Ombudsman if the information might tend to incriminate the person or make the person liable to a penalty in relation to—
 - (a) a proceeding for an offence with which the person has been charged and that has not been finally disposed of; or
 - (b) a proceeding for the imposition or recovery of a penalty that has been commenced against the person but not finally disposed of.
- (3) Without limiting subsection (1)(a), it is a reasonable excuse for a person to fail to comply with a witness summons if the person provides proof of age to the Ombudsman in accordance with section 18E(2).
- (4) If the Ombudsman is satisfied that the person's claim is made out, the Ombudsman, by further written notice served on the person, may vary or revoke the witness summons.

- (5) The Ombudsman, by further written notice served on a person, may at any time on the Ombudsman's own initiative vary or revoke a witness summons served on the person.
- (6) A notice varying or revoking a witness summons must be served in accordance with section 18A.

18C Supreme Court may order service by other means

- (1) If it appears that it is not reasonably practicable to serve a witness summons in accordance with section 18A, the Ombudsman may apply to the Supreme Court for an order that the witness summons be served by another means.
- (2) On an application under subsection (1), if the Supreme Court is satisfied that it is not reasonably practicable to serve a witness summons in accordance with section 18A, the Court may—
 - (a) order that the witness summons be served by any other means the Court considers appropriate; or
 - (b) make an order for substituted service.

S. 18C
inserted by
No. 82/2012
s. 234,
amended by
Nos 85/2012
s. 155, 2/2019
s. 79(Sch. 1
Pt C item 18),
substituted by
No. 2/2019
s. 163.

18D Ombudsman to report to Victorian Inspectorate on issue of witness summons

Within 3 days after the issue of a witness summons, the Ombudsman must give a written report to the Victorian Inspectorate specifying—

- (a) the name of the person summoned; and
- (b) the reasons why the summons was issued.

S. 18D
inserted by
No. 82/2012
s. 234,
substituted by
No. 2/2019
s. 163.

S. 18E
inserted by
No. 82/2012
s. 234,
amended by
Nos 85/2012
s. 156, 30/2016
s. 70(3)(b)(c),
2/2019
s. 79(Sch. 1
Pt C item 19),
substituted by
No. 2/2019
s. 163.

18E Witness summons directed to person under 16 years

- (1) A witness summons directed to a person under the age of 16 years at the date of issue of the witness summons has no effect.
- (2) A person who claims to be under the age of 16 years at the date of issue of a witness summons directed to the person must provide proof of age to the Ombudsman.

S. 18F
inserted by
No. 82/2012
s. 234,
amended by
No. 30/2016
s. 70(3)(d),
substituted by
No. 2/2019
s. 163.

18F Power to take evidence on oath or affirmation

- (1) This section applies to a compulsory appearance or a voluntary appearance.
- (2) The Ombudsman may require a person attending an investigation of the Ombudsman, whether in accordance with a witness summons or otherwise, to give evidence or answer questions on oath or affirmation.
- (3) The Ombudsman, or a member of the Ombudsman's staff who is authorised to do so by the Ombudsman, may administer an oath or affirmation to a person for the purposes of subsection (2).
- (4) This section does not apply to a voluntary appearance of a child witness under section 18O.

S. 18G
inserted by
No. 82/2012
s. 234,
substituted by
No. 2/2019
s. 163.

18G Offence to fail to comply with a witness summons

A person who is duly served with a witness summons must not, without reasonable excuse, refuse or fail to comply with the witness summons.

Penalty: 240 penalty units or imprisonment for 2 years.

Note

See also section 72 of the **Criminal Procedure Act 2009** which deals with the evidential burden of proof.

18H Offence to fail to take oath, make affirmation or answer question

S. 18H
inserted by
No. 2/2019
s. 163.

- (1) A person who is duly served with a witness summons under section 18(1) must not, without reasonable excuse—
- (a) refuse or fail to take an oath or make an affirmation when required to do so; or
 - (b) refuse or fail to answer a question that the person is required to answer by the Ombudsman.

Penalty: 240 penalty units or imprisonment for 2 years.

Note

See also section 72 of the **Criminal Procedure Act 2009** which deals with the evidential burden of proof.

- (2) A person does not commit an offence against subsection (1) unless, before the person is required to take the oath or make the affirmation or answer the question, the Ombudsman informs the person that refusal or failure to do so without reasonable excuse is an offence.

18I Failure to comply with witness summons

S. 18I
inserted by
No. 2/2019
s. 163.

- (1) The Ombudsman may apply to the Supreme Court for an order under subsection (2), if the Ombudsman is satisfied that a person has, without reasonable excuse, failed to comply with a witness summons or a requirement under section 18F.
- (2) On an application under subsection (1), the Supreme Court may order the person to comply with the witness summons or the requirement within the period specified by the Court.

S. 18J
inserted by
No. 2/2019
s. 163.

18J Ombudsman may take statutory declaration

For the purposes of an investigation under this Act, the Ombudsman may take a statutory declaration from—

- (a) a person appearing at a compulsory appearance or a voluntary appearance; or
- (b) any other person.

S. 18K
inserted by
No. 2/2019
s. 163.

18K Privileges in relation to witness summons and investigations

- (1) Any provision of another enactment or any rule of law that—
 - (a) prohibits the disclosure of information or production of a document or other thing by a person in the service of the Crown, an authority or a public interest disclosure entity; or
 - (b) imposes an obligation to maintain secrecy on a person in the service of the Crown, an authority or a public interest disclosure entity; or
 - (c) imposes a duty of confidentiality in relation to the disclosure of information or production of a document or other thing—does not apply to the disclosure of information or production of a document or other thing for the purposes of an investigation under this Act or a witness summons.
- (2) The Crown is not entitled to assert any privilege in relation to a requirement to produce a document or other thing or to give information in relation to an investigation under this Act or a witness summons.
- (3) Any privilege referred to in subsection (2) is abrogated.

- (4) A person is not, in relation to an investigation under this Act or a witness summons, entitled to the privilege provided for in Division 1C of Part 3.10 of the **Evidence Act 2008**.
- (5) Subject to subsections (1), (2), (3) and (4), a person must not be compelled to produce any document or other thing or to give any evidence for the purposes of an investigation under this Act or a witness summons which the person could not be compelled to produce or give in a proceeding before a court.

18L Offence for employers to take detrimental action against employees

S. 18L
inserted by
No. 2/2019
s. 163.

- (1) An employer must not dismiss or threaten to dismiss an employee or take or threaten to take any other detrimental action against an employee because, or in the belief that, the employee has given information to the office of the Ombudsman.

Penalty: 120 penalty units or imprisonment for 12 months.
- (2) It is a defence in a proceeding for an offence against subsection (1) if the reason referred to in subsection (1) was not a reason for the dismissal or other detrimental action.
- (3) Subsection (1) does not apply if an employer dismisses or threatens to dismiss an employee or takes or threatens to take any other detrimental action against an employee because the employee unlawfully gave information to the office of the Ombudsman.

S. 18M
inserted by
No. 2/2019
s. 163.

18M Legal advice and representation

- (1) A person may seek legal advice from, and be represented by, a legal practitioner in relation to—
 - (a) an enquiry or investigation conducted by the Ombudsman under this Act; and
 - (b) the person's rights, liabilities, obligations and privileges under this Act or the **Public Interest Disclosures Act 2012**.
- (2) Without limiting subsection (1) but subject to subsection (3), a person may seek legal advice from, and be represented by, a legal practitioner in relation to—
 - (a) the issue of a witness summons directed to the person; or
 - (b) a compulsory appearance or a voluntary appearance by the person; or
 - (c) a proposed report, or draft or part of a proposed report, under this Act received by the person.
- (3) The Ombudsman may direct a person in writing not to seek legal advice or representation from a specified legal practitioner in relation to any or all of the matters referred to in subsection (2) if the Ombudsman considers on reasonable grounds that the enquiry or investigation to which the matter relates may be prejudiced because the legal practitioner is—
 - (a) appearing at a compulsory appearance; or
 - (b) representing another person who is appearing at a compulsory appearance; or

- (c) involved, or suspected of being involved, in a matter—
 - (i) that is the subject of an enquiry or investigation by the Ombudsman under this Act; or
 - (ii) that is being investigated by the IBAC or the Victorian Inspectorate; or
- (d) representing a person involved, or suspected of being involved, in a matter—
 - (i) that is the subject of an enquiry or investigation by the Ombudsman under this Act; or
 - (ii) that is being investigated by the IBAC or the Victorian Inspectorate.
- (4) A direction under subsection (3)—
 - (a) may be given to a person at any time; and
 - (b) takes effect at the time it is given to the person.
- (5) If the Ombudsman gives a direction to a person under subsection (3) in relation to the issue of a witness summons or a compulsory appearance, the Ombudsman must allow the person at least 3 days after the day the direction is given to obtain representation by another legal practitioner before requiring the person to comply with the witness summons or appear at the compulsory appearance.
- (6) Within 24 hours after giving a direction under subsection (3), the Ombudsman must inform the Victorian Inspectorate in writing of the direction and the reasons for giving it.

18N Advance notice for voluntary appearances

- (1) Within a reasonable time before a person makes a voluntary appearance, the Ombudsman must advise the person of the nature of the matters in

**S. 18N
inserted by
No. 2/2019
s. 163.**

respect of which the person is to be asked questions.

- (2) Despite subsection (1), the Ombudsman is not required to advise the person if the Ombudsman forms the opinion on reasonable grounds that this may prejudice the conduct of the investigation to which the appearance relates or may be contrary to the public interest.
- (3) To avoid doubt, the Ombudsman is not required to give reasons for forming the opinion referred to in subsection (2).

S. 18O
inserted by
No. 2/2019
s. 163.

18O Voluntary appearance of person under age of 16 years but of or over 10 years

- (1) A person who is under the age of 16 years but of or over the age of 10 years (a *child witness*) may appear in an investigation by voluntary appearance.
- (2) Within a reasonable time before the voluntary appearance of a child witness, the Ombudsman must give the advice required under section 18N to—
 - (a) the child witness; and
 - (b) either—
 - (i) a parent or guardian of the child witness; or
 - (ii) an independent person if the Ombudsman—
 - (A) is unable to advise a parent or guardian because the parent or the guardian is unable to be found or is unavailable; or
 - (B) considers on reasonable grounds that to advise a parent or guardian would prejudice the conduct of the

investigation or cause a risk to the safety of the child witness.

- (3) In addition, the Ombudsman must advise the child witness how the Ombudsman may use any information provided by the child witness during the appearance.
- (4) During the voluntary appearance by the child witness—
 - (a) any answer given or any information, document or thing produced by the child witness; or
 - (b) any evidence obtained as a direct or indirect consequence of an answer given or information, document or thing produced by the child witness—

that might tend to incriminate the child witness or make the child witness liable to a penalty is not admissible in evidence against the child witness before any court or any person acting judicially.

- (5) For the purposes of this section, an *independent person* is—
 - (a) a person nominated by, or who is acceptable to, the child witness; or
 - (b) if no person has been nominated by, or is acceptable to, the child witness, a person chosen by the Ombudsman who—
 - (i) is not involved in the subject matter of the investigation; and
 - (ii) where practicable, is—
 - (A) involved in the care or supervision of the child witness; and

(B) of the same gender as the child witness or, if the child witness identifies as being of a particular gender, of that gender.

S. 18P
inserted by
No. 2/2019
s. 163.

18P Further provisions relating to appearances

- (1) This section applies to a compulsory appearance and a voluntary appearance.
- (2) Before the person appearing is asked any questions or required to produce any document, the presiding officer must—
 - (a) confirm the age of the person if the presiding officer considers that the person may be under the age of 18 years; and
 - (b) release the person from the appearance if the person—
 - (i) is under the age of 10 years; or
 - (ii) in the case of a compulsory appearance—is under the age of 16 years; and
 - (c) give the person a copy of the statement (if any) prescribed for the purposes of this subsection; and
 - (d) inform a legal practitioner who is representing the person of—
 - (i) any non-disclosure requirements that apply under this Act; and
 - (ii) in the case of an investigation on a public interest complaint, the confidentiality requirements under Part 7 of the **Public Interest Disclosures Act 2012**; and

- (e) in the case of a voluntary appearance, inform the person that—
 - (i) the person's participation is voluntary and the person may leave at any time; and
 - (ii) the person cannot be compelled to answer any question or provide any document; and
 - (f) take any other actions prescribed for the purposes of this subsection.
- (3) In an investigation on a public interest complaint, before the person appearing is asked any questions or required to produce any document, the presiding officer must—
- (a) advise the person that the person may be subject to further confidentiality obligations under Part 7 of the **Public Interest Disclosures Act 2012**; and
 - (b) advise the person of the nature of those requirements.
- (4) The presiding officer must immediately release a person from an appearance if, at any time during the appearance, the presiding officer becomes aware that the person appearing—
- (a) is under the age of 10 years; or
 - (b) in the case of a compulsory appearance—is under the age of 16 years.
- (5) The presiding officer must immediately release a person from a voluntary appearance if, at any time during the appearance, the person advises the presiding officer that the person—
- (a) wants to leave the appearance; or
 - (b) does not want to answer a question; or

- (c) does not want to produce a document.
- (6) If, before the questioning commences or at any time during the appearance, the person appearing does not have sufficient knowledge of the English language to enable the person to understand questions asked or to answer those questions, the presiding officer must provide for a competent interpreter to be present.
- (7) If the person appearing is under the age of 18 years, the person must be accompanied by a parent, guardian or an independent person.
- (8) The presiding officer must direct that an independent person be present during the appearance if—
 - (a) the presiding officer believes the person appearing has a mental impairment; or
 - (b) the person appearing provides the presiding officer with reasonably satisfactory medical evidence that the person has a mental impairment.
- (9) The Ombudsman may, at the request of the person appearing, allow a person who is chosen by the person appearing to be present during the appearance for the purpose of providing support to the person appearing.
- (10) For the purposes of this section, an *independent person* is—
 - (a) a person nominated by, or who is acceptable to, the person appearing; or
 - (b) if no person has been nominated by, or is acceptable to, the person appearing, a person chosen by the Ombudsman who—
 - (i) is not involved in the subject matter of the investigation; and

(ii) in the case of a person appearing who is under the age of 18 years and where practicable, is—

(A) involved in the care or supervision of the person appearing; and

(B) of the same gender as the person appearing or, if the person appearing identifies as being of a particular gender, of that gender.

18Q Audio or video recording of compulsory appearances

S. 18Q
inserted by
No. 2/2019
s. 163.

- (1) This section applies to a compulsory appearance.
- (2) The presiding officer must ensure that an audio or video recording of the appearance is made.
- (3) Subject to subsection (4), evidence of anything said by the person appearing during the appearance is inadmissible as evidence against any person in any proceeding before a court or tribunal unless—
 - (a) an audio or video recording of the appearance is made; and
 - (b) the audio or video recording is available to be tendered in evidence.
- (4) A court may admit evidence of anything said by the person appearing during the appearance that is otherwise inadmissible because of subsection (3) if the court is satisfied that there are exceptional circumstances that justify the admission of the evidence.
- (5) Unless the Ombudsman considers on reasonable grounds that doing so may prejudice an investigation under this Act, the Ombudsman must provide the person appearing with a copy of—

- (a) the audio or video recording; and
 - (b) any transcript created.
- (6) If the Ombudsman determines not to provide the person with a copy of the audio or video recording and any transcript in accordance with subsection (5), the Ombudsman must allow the person to listen to or view the recording of the person's evidence at the premises of the Ombudsman at any reasonable time.
- (7) As soon as possible after the appearance, the Ombudsman must provide the Victorian Inspectorate with a copy of the audio or video recording and any transcript of the appearance.

S. 18R
inserted by
No. 2/2019
s. 163.

18R Protection of legal practitioners and witnesses at compulsory appearances

- (1) This section applies to a compulsory appearance.
- (2) A legal practitioner representing the person appearing or assisting the presiding officer at the appearance has the same protection and immunity as a legal practitioner has in representing a party in a proceeding in the Supreme Court.
- (3) The person appearing has the same protection and immunity as a witness has in a proceeding in the Supreme Court.

S. 18S
inserted by
No. 2/2019
s. 163.

18S Service of documents

- (1) Any document (other than a witness summons or a confidentiality notice) under this Act or the regulations required or authorised to be given to or served on any person (other than a body corporate) may be served by—
 - (a) giving it or serving it personally on the person; or

- (b) sending it by post or electronic communication to the person at that person's usual or last known place of residence or business; or
 - (c) leaving it at that person's usual or last known place of residence with a person on the premises who is apparently at least 16 years old; or
 - (d) leaving it at that person's usual or last known place of business with a person who is apparently employed at the premises and who is apparently at least 16 years old.
- (2) Any document under this Act or the regulations required or authorised to be given to or served on a body corporate may be served by—
- (a) giving it or serving it on the body corporate at the head office, registered office or principal office of the body corporate; or
 - (b) sending it by post or electronic communication to the body corporate at the head office, registered office or principal office of the body corporate.
- (3) Subsection (2) is in addition to, and not in derogation from, sections 109X and 601CX of the Corporations Act.

19 Deliberations of Ministers and Parliamentary committees not to be disclosed

- (1) A person shall not be required or authorized by virtue of this Act—
- (a) to furnish any information or answer any question; or

- (b) to produce or inspect so much of any document—

which relates to the deliberations of Ministers or any committee consisting of Members of Parliament where the committee is formed for the purpose of advising the Ministers in respect of their deliberations.

- (2) This section does not apply in relation to an investigation on a relevant public interest complaint.

S. 19(2)
substituted by
No. 85/2012
s. 157,
amended by
No. 2/2019
s. 79(Sch. 1
Pt C item 20).

19A Cabinet information not to be disclosed—relevant public interest complaints

In relation to an investigation on a relevant public interest complaint, a person is not required or authorised to—

- (a) furnish any information that is Cabinet information; or
- (b) answer any question that relates to Cabinet information; or
- (c) produce or inspect any document that is Cabinet information.

S. 19A
(Heading)
amended by
No. 2/2019
s. 79(Sch. 1
Pt C item 21).

S. 19A
inserted by
No. 85/2012
s. 158,
amended by
No. 2/2019
s. 79(Sch. 1
Pt C item 22).

19B Deliberations of Parliamentary Committees not to be disclosed—relevant public interest complaints

In relation to an investigation on a relevant public interest complaint, a person is not required or authorised to furnish any information or produce or inspect any document or answer any question that relates to any deliberation in private of the following—

- (a) a Joint Investigatory Committee or the House Committee, within the meaning of the **Parliamentary Committees Act 2003**;

S. 19B
(Heading)
amended by
No. 2/2019
s. 79(Sch. 1
Pt C item 23).

S. 19B
inserted by
No. 85/2012
s. 158,
amended by
No. 2/2019
s. 79(Sch. 1
Pt C item 24).

- (b) a committee of the Legislative Council or Legislative Assembly on a private Bill;
- (c) a committee consisting of members of Parliament established by resolution of either the Legislative Council or the Legislative Assembly, or the resolution of both the Legislative Council and the Legislative Assembly.

19C Conclusive certificates

**S. 19C
inserted by
No. 85/2012
s. 158.**

- (1) The Secretary to the Department of Premier and Cabinet may issue a certificate certifying that—
 - (a) any information or question or document or part of a document relates to deliberations of Ministers or of a committee referred to in section 19; or
 - (b) any information or document or part of a document—
 - (i) is Cabinet information; or
 - (ii) would, if it existed, be Cabinet information; or
 - (c) any question relates to Cabinet information; or
 - (d) any information or question or document or part of a document relates to deliberations in private of a committee referred to in section 19B.
- (2) A certificate issued under this section is conclusive of the facts certified.

S. 19D
(Heading)
amended by
No. 2/2019
s. 79(Sch. 1
Pt C item 25).

19D Disclosure of information subject to legal professional privilege or client legal privilege—relevant public interest complaints

Nothing in this Act entitles a person to disclose information that is the subject of legal professional privilege or client legal privilege in an investigation on a relevant public interest complaint.

S. 19D
inserted by
No. 85/2012
s. 158,
amended by
No. 2/2019
s. 79(Sch. 1
Pt C item 26).

S. 20
(Heading)
inserted by
No. 82/2012
s. 235(1).

20 Disclosing or taking advantage of information—transitional provision

S. 20(1)
amended by
No. 62/1989
s. 10(1)(a)–(c).

- (1) A person (other than the complainant) who obtains or receives information in the course or as a result of the exercise of the functions of the Ombudsman under this Act—

(a) shall not disclose that information except—

S. 20(1)(a)(i)
amended by
No. 62/1989
s. 10(1)(d)(i)(ii).

- (i) for the purposes of the exercise of the functions of the Ombudsman and of any report or recommendation to be made under this Act; or

S. 20(1)(a)(ii)
amended by
Nos 9256
s. 2(a),
62/1989
s. 10(1)(e),
69/2009
s. 54(Sch. Pt 2
item 37).

- (ii) for the purposes of any proceedings in relation to an offence against this Act or section 19 of the **Evidence (Miscellaneous Provisions) Act 1958**; or

S. 20(1)(a)(iii)
inserted by
No. 9256
s. 2(b),
amended by
No. 6/2012
s. 45.

- (iii) for the purposes of any communication authorized under section 20A, 20B, 20C or 20D of this Act; and

- (b) shall not take advantage of any knowledge gained from that information to benefit the person or any other person. S. 20(1)(b) amended by No. 30/2016 s. 70(3)(e).
- (2) A person who in contravention of this section discloses information or takes advantage of knowledge gained from information shall be guilty of an offence against this Act.
- * * * * *
- (4) Proceedings may only be instituted for an offence under subsection (2)—
- (a) by the Ombudsman; or
- (b) by or with the consent of the Director of Public Prosecutions.
- (5) This section does not apply to any information obtained or received by a person on or after the commencement of Division 1 of Part 7 of the **Integrity and Accountability Legislation Amendment Act 2012**. S. 20(3) inserted by No. 62/1989 s. 10(2), amended by No. 69/2009 s. 54(Sch. Pt 2 item 37), repealed by No. 82/2012 s. 235(2).
- S. 20(4) inserted by No. 62/1989 s. 12(1).
- S. 20(5) inserted by No. 82/2012 s. 235(3).

Note

Part VA applies to information acquired on or after the commencement of Division 1 of Part 7 of the **Integrity and Accountability Legislation Amendment Act 2012**.

S. 20A
inserted by
No. 9256 s. 3,
amended by
No. 62/1989
s. 11(a)(b).

20A Communication of information to Commonwealth and State Ombudsmen

The Ombudsman or the Acting Ombudsman may communicate—

- (a) to the Commonwealth Ombudsman or a Deputy Commonwealth Ombudsman appointed under any law of the Commonwealth relating to an Ombudsman; or
- (b) to an Ombudsman Acting Ombudsman or Deputy Ombudsman of any State or Territory of the Commonwealth administering any law of that State or Territory relating to an Ombudsman—

any information obtained or received in the course or as a result of the exercise of the functions of the Ombudsman under this Act being information relating to a matter arising under an Act of the Commonwealth or of any State or Territory of the Commonwealth other than Victoria or arising out of a joint undertaking between Victoria and the Commonwealth of Australia or between Victoria and another State or Territory of the Commonwealth.

S. 20B
inserted by
No. 98/2000
s. 80,
repealed by
No. 82/2012
s. 236.

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S. 20C
inserted by
No. 2/2001
s. 114,
repealed by
No. 82/2012
s. 236.

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S. 20D
inserted by
No. 6/2012
s. 46,
repealed by
No. 82/2012
s. 236.

21 Entry of premises

S. 21
amended by
Nos 82/2012
s. 237, 85/2012
s. 159 (ILA
s. 39B(1)).

- (1) For the purposes of conducting an investigation under this Act (other than an investigation on a relevant public interest complaint) the Ombudsman or a member of Ombudsman staff authorised to do so by the Ombudsman may at any reasonable time enter any premises occupied or used by an authority to which this Act applies, and inspect those premises or anything for the time being therein or thereon.
- (2) For the purpose of conducting an investigation on a relevant public interest complaint, the Ombudsman or a member of Ombudsman staff authorised to do so by the Ombudsman may at any reasonable time enter any premises occupied or used by an authority or a public interest disclosure entity in its capacity as such and inspect those premises or anything for the time being in them or on them.

S. 21(1)
amended by
No. 2/2019
s. 79
(Sch. 1 Pt C
item 27(a)).

S. 21(2)
inserted by
No. 85/2012
s. 159(2),
amended by
No. 2/2019
s. 79
(Sch. 1 Pt C
item 27(b)).

22 Obstruction

S. 22
amended by
No. 62/1989
s. 12(2)(a)(b).

- (1) A person who—
 - (a) without lawful excuse (proof of which shall lie upon that person) wilfully obstructs hinders or resists the Ombudsman or any

S. 22(1)(a)
amended by
No. 30/2016
s. 70(3)(f)(g).

S. 22(1)(b)
amended by
No. 30/2016
s. 70(3)(f).

- other person in the exercise of powers under this Act;
- (b) without lawful excuse (proof of which shall lie upon that person) refuses to or wilfully fails to comply with any lawful requirement of the Ombudsman or any other person under this Act; or

S. 22(1)(c)
amended by
No. 30/2016
s. 70(3)(g)(h).

- (c) wilfully makes a statement the person knows to be false or to be misleading in a material particular or misleads or attempts to mislead the Ombudsman or any other person in the exercise of powers under this Act—

shall be guilty of an offence against this Act.

S. 22(2)
inserted by
No. 62/1989
s. 12(2)(b).

- (2) Proceedings may only be instituted for an offence under subsection (1)—
- (a) by the Ombudsman; or
- (b) by or with the consent of the Director of Public Prosecutions.

Pt 4 Div. 3A
(Heading and
ss 22A–22C)
inserted by
No. 102/1998
s. 36,
repealed by
No. 82/2012
s. 238.

* * * *

Pt 4 Div. 3B
(Heading and
ss 22D, 22E)
inserted by
No. 56/2004
s. 77,
repealed by
No. 79/2004
s. 71(b).

* * * *

Division 4—Action on completion of investigations

23 Procedure on completion of investigation

- (1) Where as a result of an investigation conducted under this Act (other than an investigation conducted under Division 1A or 2) the Ombudsman is of the opinion that the administrative action to which the investigation relates—
- (a) appears to have been taken contrary to law;
 - (b) was unreasonable unjust oppressive or improperly discriminatory;
 - (c) was in accordance with a rule of law or a provision of an enactment or practice that is or may be unreasonable unjust oppressive or improperly discriminatory;
 - (d) was taken in the exercise of a power or discretion, and was so taken for an improper purpose or on irrelevant grounds, or on the taking into account of irrelevant considerations;
 - (e) was a decision that was made in the exercise of a power or discretion and the reasons for the decision were not, but should have been, given;
 - (f) was based wholly or partly on a mistake of law or fact; or
 - (g) was wrong—

the Ombudsman shall take action as set out in subsection (2).

- (2) Where in a case referred to in subsection (1) the Ombudsman is of the opinion—
- (a) that the subject-matter of the investigation should be referred to the appropriate authority for further consideration;

S. 23(1)
amended by
Nos 85/2012
s. 160(1),
30/2016
s. 70(4)(a).

S. 23(2)
amended by
Nos 82/2012
s. 239(1),
30/2016
s. 70(4)(b).

- (b) that action could be, and should be, taken to rectify or mitigate or alter the effects of the action to which the investigation relates;
- (c) that any practice in accordance with which the action was taken should be varied;
- (d) that any law in accordance with which or on the basis of which the action was taken should be reconsidered;
- (e) that reasons should be given for the action; or
- (f) that any other steps should be taken—

the Ombudsman must report the Ombudsman's opinion and the reasons for it to the principal officer of the authority or, if there is no principal officer, to the responsible Minister for the authority, and may make any recommendations the Ombudsman thinks fit.

S. 23(2A)
inserted by
No. 85/2012
s. 160(2),
amended by
No. 2/2019
s. 79
(Sch. 1 Pt C
item 28(a)).

- (2A) On completion of an investigation on a relevant public interest complaint (other than a relevant public interest complaint about a member of Parliament) the Ombudsman—

- (a) must report the findings of the investigation—
 - (i) to the principal officer (if any) of the appropriate authority or public interest disclosure entity; or
 - (ii) if there is no principal officer, to the responsible Minister for the authority or public interest disclosure entity; or

S. 23(2A)(a)(i)
amended by
No. 2/2019
s. 79
(Sch. 1 Pt C
item 28(b)(i)).

S. 23(2A)(a)(ii)
amended by
No. 2/2019
s. 79
(Sch. 1 Pt C
item 28(b)(i)).

- (iii) if the public interest complaint is about a Councillor, to the Mayor of the appropriate Council; and
- (b) may make recommendations as to the action to be taken as a result of the investigation.
- (3) If the Ombudsman makes a report or recommendations under subsection (2) or (2A), the Ombudsman—
- (a) must send a copy—
- (i) to the responsible Minister for the authority or public interest disclosure entity (unless the Ombudsman has made the report or recommendations to the responsible Minister under subsection (2)); and
- (ii) if the authority is a member of staff of a Council, to the Mayor of the Council; and
- (b) may send a copy to the Premier.
- (4) Where, under subsection (2) or (2A), the Ombudsman makes recommendations to the principal officer of, or responsible Minister for, an authority or a public interest disclosure entity, or the Mayor of the appropriate Council, the Ombudsman may request the principal officer or responsible Minister or Mayor to notify the Ombudsman within a specified time of the steps that have been or are proposed to be taken to give effect to the recommendations or, if no such steps

S. 23(2A)(a)(iii)
amended by
No. 2/2019
s. 79
(Sch. 1 Pt C
item 28(b)(iii)).

S. 23(3)
amended by
Nos 8884
s. 6(a),
79/2004
s. 72(1),
substituted by
No. 82/2012
s. 239(2),
amended by
No. 85/2012
s. 160(3)(a).

S. 23(3)(a)(i)
amended by
Nos 85/2012
s. 160(3)(b),
2/2019 s. 79
(Sch. 1 Pt C
item 28(c)).

S. 23(4)
amended by
Nos 82/2012
s. 239(3)(a),
85/2012
s. 160(4),
2/2019 s. 79
(Sch. 1 Pt C
item 28(d)).

have been or are proposed to be taken, the reasons therefor.

S. 23(5)
substituted by
No. 8884
s. 6(b),
amended by
Nos 82/2012
s. 239(3)(b)(i),
85/2012
s. 160(5)(a)(b),
30/2016
s. 70(4)(c)–(e).

- (5) Where it appears to the Ombudsman that no steps that seem to the Ombudsman to be appropriate have been taken within a reasonable time of the making of any report or recommendations under subsection (2) or (2A) the Ombudsman may, after considering the comments (if any) made by or on behalf of the principal officer or responsible Minister or Mayor to whom the report or recommendations were made, send—

- (a) to the Governor in Council; and
- (b) where the report relates to a complaint concerning an administrative action by a member of staff of a Council, to the Mayor of the Council; and

S. 23(5)(b)
amended by
Nos 12/1989
s. 4(1)(Sch. 2
item 86.13),
74/2000
s. 3(Sch. 1
item 92),
82/2012
s. 239(3)(b)(ii),
85/2012
s. 160(5)(c).

- (c) where the report relates to a relevant public interest complaint about a Councillor or a member of staff of a Council, to the Mayor of the Council—

S. 23(5)(c)
inserted by
No. 85/2012
s. 160(5)(d),
amended by
No. 2/2019
s. 79
(Sch. 1 Pt C
item 28(e)).

a copy of the report and the recommendations together with a copy of any such comments.

S. 23(6)
substituted by
No. 79/2004
s. 72(2).

- (6) If a copy of any report and recommendations together with a copy of any comments has been sent to the Governor in Council under subsection (5), the Ombudsman may make a report to the Parliament on any of the matters to which the report and recommendations relate that the Ombudsman thinks fit.

(6A) The Ombudsman must not include in a recommendation under subsection (2) or (2A) any information that—

S. 23(6A)
inserted by
No. 85/2012
s. 160(6).

(a) is likely to lead to the identification of a person who has made an assessable disclosure; and

(b) is not information to which section 53(2)(a), (c) or (d) of the **Public Interest Disclosures Act 2012** applies.

S. 23(6A)(b)
amended by
No. 2/2019
s. 79
(Sch. 1 Pt C
item 28(f)).

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S. 23(7)
repealed by
No. 82/2012
s. 239(3)(c).

23A Report on investigation—relevant public interest complaints about members of Parliament

S. 23A
(Heading)
amended by
No. 2/2019
s. 79(Sch. 1
Pt C item 29).

On completion of an investigation on a relevant public interest complaint about a member of Parliament, the Ombudsman must report the findings of the investigation—

S. 23A
inserted by
No. 85/2012
s. 161,
amended by
No. 2/2019
s. 79(Sch. 1
Pt C item 30).

(a) to the President of the Legislative Council, if the complaint is about a member of the Legislative Council; or

(b) to the Speaker of the Legislative Assembly, if the complaint is about a member of the Legislative Assembly.

S. 24
(Heading)
inserted by
No. 85/2012
s. 162(1),
amended by
No. 2/2019
s. 75(1).
S. 24
amended by
No. 62/1989
s. 13(a)–(d).

S. 24(1)
substituted by
No. 85/2012
s. 162(2),
amended by
No. 2/2019
s. 75(2).

S. 24(2)
inserted by
No. 62/1989
s. 13(d),
amended by
Nos 85/2012
s. 162(3),
2/2019
s. 75(3).

S. 24(3)
inserted by
No. 82/2012
s. 240.

24 Complainant or person who made relevant public interest complaint to be informed of result of investigation

- (1) If the Ombudsman conducts an investigation on a complaint or a relevant public interest complaint, or takes any other action on a complaint, the Ombudsman must inform the complainant or person who made the relevant public interest complaint of the following—
 - (a) the result of the investigation or other action;
 - (b) if the Ombudsman has made any recommendations under section 23(2) or (2A) and it appears that appropriate steps have not been taken within a reasonable time of making those recommendations—
 - (i) the recommendations; and
 - (ii) any comments on the recommendations that the Ombudsman thinks fit.
- (2) The Ombudsman may disclose to a complainant or person who made a relevant public interest complaint any information that the Ombudsman thinks proper, in addition to any information disclosed under subsection (1).
- (3) The Ombudsman must not disclose any information under this section if the Ombudsman considers that the disclosure of the information would—

- (a) not be in the public interest or in the interests of justice; or
- (b) put a person's safety at risk; or
- (c) cause unreasonable damage to a person's reputation; or
- (d) prejudice any criminal proceedings or criminal investigations, or investigations by the Ombudsman, the IBAC or the Victorian Inspectorate; or
- (e) otherwise contravene any applicable statutory secrecy obligations or involve the unreasonable disclosure of information relating to the personal affairs of any person.

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S. 24(4)
inserted by
No. 85/2012
s. 162(4),
repealed by
No. 2/2019
s. 75(4).

Pt 4A
(Heading and
ss 24A–24E)
inserted by
No. 2/2019
s. 176.

Part IVA—Budget, annual plan and performance audit

S. 24A
inserted by
No. 2/2019
s. 176.

24A Budget

The Ombudsman's budget for each financial year is to be determined in consultation with the Parliamentary Committee concurrently with the annual plan under section 24B.

S. 24B
inserted by
No. 2/2019
s. 176.

24B Annual plan

- (1) Before the beginning of each financial year, the Ombudsman must—
 - (a) prepare a draft annual plan describing the Ombudsman's proposed work program for that financial year; and
 - (b) submit the plan to the Parliamentary Committee for its consideration.
- (2) After considering the draft annual plan, the Parliamentary Committee—
 - (a) must return the plan to the Ombudsman; and
 - (b) may provide to the Ombudsman any comments regarding the plan, including suggestions of changes to be made to the plan.
- (3) As soon as practicable after the passage of the annual appropriation Acts for a financial year and after considering any comments received from the Parliamentary Committee, the Ombudsman must finalise the annual plan for that financial year.
- (4) The Ombudsman must indicate in the annual plan the nature of any changes suggested by the Parliamentary Committee under subsection (2)(b) that the Ombudsman has not adopted.

- (5) Before the beginning of the financial year to which the annual plan relates, the Ombudsman must—
- (a) present the annual plan to the Parliamentary Committee; and
 - (b) cause the plan to be transmitted to the Parliament in accordance with section 24C.

24C Transmission of annual plan to Parliament

**S. 24C
inserted by
No. 2/2019
s. 176.**

- (1) The Ombudsman must cause the annual plan for a financial year to be transmitted to each House of Parliament as soon as practicable after it has been prepared.
- (2) The clerk of each House of Parliament must cause the annual plan to be laid before the House on the day on which it is received or on the next sitting day of the House.
- (3) If the Ombudsman proposes to transmit the annual plan to the Parliament at a time when a House of the Parliament is not likely to next sit until after the beginning of the financial year to which the annual plan relates, the Ombudsman must—
 - (a) give one business day's notice of the Ombudsman's intention to do so to the clerk of that House of Parliament; and
 - (b) give the annual plan to the clerk of that House of Parliament on the day indicated in the notice; and
 - (c) publish the annual plan on an Internet website maintained by the Ombudsman on the day after giving it to the clerk.

- (4) If a clerk of a House of the Parliament is given notice under subsection (3)(a), the clerk must—
 - (a) notify each member of the House of the receipt of the notice on the same day that the clerk receives the notice; and
 - (b) give a copy of the annual plan to each member of the House as soon as practicable after the clerk receives the annual plan; and
 - (c) cause the annual plan to be laid before the House on the next sitting day of the House.
- (5) An annual plan given to the clerk of a House of the Parliament in accordance with subsection (3) is taken to have been published by order, or under authority, of the House.

S. 24D
inserted by
No. 2/2019
s. 176.

24D Independent performance audit

- (1) A suitably qualified person may be appointed by resolution of the Legislative Council and Legislative Assembly, on the recommendation of the Parliamentary Committee, as an independent performance auditor of the Ombudsman and the office of the Ombudsman other than the following—
 - (a) the Auditor-General;
 - (b) any other VAGO officer, within the meaning of section 3(1) of the **Audit Act 1994**;
 - (c) a person engaged by the Auditor-General under section 7 of the **Audit Act 1994** to assist in the performance of a function under that Act;
 - (d) a person to whom the Auditor-General has delegated a power or function under section 8 of the **Audit Act 1994**.

- (2) The independent performance auditor—
 - (a) is appointed on such terms and conditions and is entitled to such remuneration as are determined by the Parliamentary Committee; and
 - (b) in conducting the audit, must comply with directions as to the audit given by the Parliamentary Committee.
- (3) Remuneration payable under the appointment is paid out of the Consolidated Fund which is to the necessary extent appropriated accordingly.
- (4) The independent performance auditor must conduct a performance audit at least once every 4 years to determine whether the Ombudsman and the office of the Ombudsman are achieving their objectives effectively, economically and efficiently and in compliance with this Act.
- (5) Subject to any directions given by the Parliamentary Committee, the independent performance auditor may exercise any powers of the Auditor-General under Part 7 of the **Audit Act 1994** to the extent necessary to conduct the audit as if a reference in that Part to the Auditor-General includes a reference to the independent performance auditor.
- (6) The Parliamentary Committee must prepare and finalise a specification for a performance audit before the independent performance auditor may call for any information or rely on any power under Part 7 of the **Audit Act 1994** in relation to the audit.

- (7) Before finalising a specification for a performance audit the Parliamentary Committee must—
 - (a) prepare a draft specification for the performance audit that sets out the objectives of the audit and the particular issues (if any) to be addressed; and
 - (b) consult with the Ombudsman on the draft specification.
- (8) If the Ombudsman does not respond to a request for comment on a draft specification for a performance audit within 15 business days of receiving the request—
 - (a) the Ombudsman is taken to have no comment on the draft specification; and
 - (b) the independent performance auditor may finalise the specification.
- (9) The Parliamentary Committee must provide the final specification for a performance audit to the Ombudsman.
- (10) The independent performance auditor may apply additional auditing and assurance standards applied by the Auditor-General under section 78(2) of the **Audit Act 1994**, to the conduct of performance audits of the Ombudsman and the office of the Ombudsman.

S. 24E
inserted by
No. 2/2019
s. 176.

24E Report of independent performance auditor

- (1) The independent performance auditor may make a report of a performance audit conducted under section 24D.
- (2) A report under subsection (1)—
 - (a) may include any information and recommendations the independent performance auditor considers relevant; and

- (b) must set out the reasons for opinions expressed in the report.
- (3) The independent performance auditor must not make a report under subsection (1) unless—
 - (a) at least 20 business days before making the report, the independent performance auditor gives the Ombudsman a copy of the proposed report or a summary of findings and proposed recommendations; and
 - (b) the independent performance auditor asks the Ombudsman in writing for comment before a specified date, being at least 10 business days after the material referred to in paragraph (a) is given to the Ombudsman; and
 - (c) the independent performance auditor includes in the report any comments made before the specified date, or a summary of those comments, in a form agreed between the independent performance auditor and the Ombudsman.
- (4) The independent performance auditor must, within 7 sitting days of making the report, transmit the report to each House of the Parliament.
- (5) The independent performance auditor must not include in a report under subsection (1)—
 - (a) a finding or an opinion that a specified person is guilty of or has committed, is committing or is about to commit an offence; or
 - (b) a recommendation that a specified person be, or an opinion that a specified person should be, prosecuted for an offence.

- (6) The independent performance auditor must not include in a report under subsection (1)—
- (a) any information that the independent performance auditor considers would prejudice any criminal proceedings or criminal investigation, or any investigations by the Ombudsman, the IBAC or the Victorian Inspectorate; or
 - (b) any information, or information in any document, referred to in section 19, 19A or 19B; or
 - (c) any information that—
 - (i) is likely to lead to the identification of a person who has made an assessable disclosure; and
 - (ii) is not information to which section 53(2)(a), (c) or (d) of the **Public Interest Disclosures Act 2012** applies.
- (7) If the independent performance auditor intends to include in a report under subsection (1) a comment or an opinion that is adverse to any person who is to be named in the report and who is an officer or employee of the office of the Ombudsman, the Ombudsman must, after receiving a copy of the proposed report or the relevant part of the proposed report, give the person a reasonable opportunity to respond to the Ombudsman in relation to the adverse material.

Part V—Annual and other reports

25 Annual and other reports to Parliament

S. 25
substituted by
No. 79/2004
s. 73.

- (1) The Ombudsman must make a report to Parliament on the performance of the Ombudsman's functions during each financial year.

S. 25(1)
amended by
No. 30/2016
s. 70(4)(f).

Note

See also section 69 of the **Public Interest Disclosures Act 2012** for other matters that must be included in the Ombudsman's report.

Note to
s. 25(1)
inserted by
No. 85/2012
s. 163,
amended by
No. 2/2019
s. 79(Sch. 1
Pt C item 31).

- (1A) The Ombudsman must prepare a report of the operations of the office of the Ombudsman during each financial year that includes an account of the implementation of the annual plan required under section 24B.

S. 25(1A)
inserted by
No. 2/2019
s. 177.

- (2) The Ombudsman may at any time make a report to Parliament on any matter arising in connection with the performance of the Ombudsman's functions.

S. 25(2)
amended by
No. 30/2016
s. 70(4)(f).

- (3) Nothing in this section limits the Ombudsman's right to make a report to Parliament under any other provision of this Act.

25AA Transmission of sections 23(6) and 25 reports to Parliament

S. 25AA
(Heading)
amended by
No. 82/2012
s. 241.

- (1) The Ombudsman must cause a report under section 23(6) or 25 to be transmitted to each House of the Parliament—

S. 25AA
inserted by
No. 79/2004
s. 73.

S. 25AA(1)(a)
amended by
No. 2/2019
s. 178.

- (a) in the case of a report under section 25(1) or (1A)—as soon as practicable after the end of the financial year to which it relates;
 - (b) in the case of a report under subsection 23(6) or 25(2)—as soon as practicable after it is completed.
- (2) The clerk of each House of the Parliament must cause the report to be laid before the House on the day on which it is received or on the next sitting day of the House.
- (3) If the Ombudsman proposes to transmit a report to Parliament when Parliament is in recess, the Ombudsman must—

S. 25AA(3)(a)
amended by
No. 30/2016
s. 70(4)(g).

- (a) give one business day's notice of intention to do so to the clerk of each House of the Parliament; and
 - (b) give the report to the clerk of each House on the day indicated in the notice; and
 - (c) publish the report on the Ombudsman's Internet website as soon as practicable after giving it to the clerks.
- (4) The clerk of each House must—
- (a) notify each member of the House of the receipt of a notice under subsection (3)(a) on the same day that the clerk receives that notice; and
 - (b) give a copy of a report to each member of the House as soon as practicable after the report is received under subsection (3)(b); and
 - (c) cause the report to be laid before the House on the next sitting day of the House.

- (5) A report that is given to the clerks under subsection (3)(b) is taken to have been published by order, or under the authority, of the Houses of the Parliament.
- (6) The publication of a report by the Ombudsman under subsection (3)(c) is absolutely privileged and the provisions of sections 73 and 74 of the **Constitution Act 1975** and any other enactment or rule of law relating to the publication of the proceedings of the Parliament apply to and in relation to the publication of the report as if it were a report to which those sections applied and had been published by the Government Printer under the authority of the Parliament.
- (7) For the purposes of this section, Parliament is in recess when neither House is sitting.

S. 25AA(7)
substituted by
No. 30/2016
s. 68.

25AAB Advance copy of report to Minister and Secretary to the Department of Premier and Cabinet

S. 25AAB
inserted by
No. 2/2019
s. 164.

- (1) The Ombudsman must provide a copy of a report to Parliament under section 23(6) or 25 to the Minister and the Secretary to the Department of Premier and Cabinet at least one business day before the report is transmitted to each House of Parliament under section 25AA.
- (2) The Ombudsman is not required to provide a copy of a report to the Secretary to the Department of Premier and Cabinet under subsection (1) if the Ombudsman has already provided the Secretary with the report under section 23(2) or (2A).
- (3) The Ombudsman is not required to provide a copy of a report to the Minister under subsection (1) if the Ombudsman has already provided the Minister with the report under section 23(2) or (2A).

- (4) The Ombudsman is not required to provide a copy of the report to the Minister and the Secretary to the Department of Premier and Cabinet under subsection (1) if the Ombudsman considers that in all the circumstances it would be inappropriate to do so.

S. 25AB
inserted by
No. 82/2012
s. 242.

25AB Transmission of section 16 reports

The Ombudsman must send a report under section 16 to—

- (a) the President of the Legislative Council, if the matter was referred by the Legislative Council or a committee of the Legislative Council; or
- (b) the Speaker of the Legislative Assembly, if the matter was referred by the Legislative Assembly or a committee of the Legislative Assembly; or
- (c) the President of the Legislative Council and the Speaker of the Legislative Assembly, if the matter was referred by a joint committee of both Houses of Parliament.

S. 25A
inserted by
No. 102/1998
s. 37,
substituted by
No. 82/2012
s. 243.

25A Content of reports

- (1) The Ombudsman must not include in a report under this Act—
- (a) any information that the Ombudsman considers would prejudice any criminal proceedings or criminal investigations, or investigations by the Ombudsman, the IBAC or the Victorian Inspectorate; or
 - (b) any information, or information in any document, referred to in section 19, 19A or 19B; or

S. 25A(1)(b)
amended by
No. 85/2012
s. 164(1).

- (c) a finding or an opinion that a specified person is guilty of or has committed, is committing or is about to commit an offence; or
 - (d) a recommendation that a specified person be, or an opinion that a specified person should be, prosecuted for an offence.
- (1A) The Ombudsman must not include in a report under this Act any information that—
- (a) is likely to lead to the identification of a person who has made an assessable disclosure; and
 - (b) is not information to which section 53(2)(a), (c) or (d) of the **Public Interest Disclosures Act 2012** applies.
- S. 25A(1A) inserted by No. 85/2012 s. 164(2).**
- S. 25A(1A)(b) amended by No. 2/2019 s. 79(Sch. 1 Pt C item 32).**
- (2) If the Ombudsman intends to include in a report under this Act a comment or opinion that is adverse to any person, the Ombudsman must first give the person a reasonable opportunity to respond to the adverse material and fairly set out the response in the report.
- (3) The Ombudsman must not include in a report under this Act any information that would identify any person who is not the subject of any adverse comment or opinion unless the Ombudsman—
- (a) is satisfied that it is necessary or desirable to do so in the public interest; and
 - (b) is satisfied that it will not cause unreasonable damage to the person's reputation, safety or wellbeing; and
 - (c) states in the report that the person is not the subject of any adverse comment or opinion.

S. 25B
inserted by
No. 56/2004
s. 78,
repealed by
No. 79/2004
s. 71(c), new
s. 25B
inserted by
No. 82/2012
s. 243.

S. 25B(1)
amended by
No. 2/2019
s. 165(1).

25B Persons who receive proposed or draft reports or information in them

- (1) Subject to subsections (4), (5), and (6), a person who receives a copy of a report to Parliament under section 25AAB, a proposed report, or a draft or part of a proposed report or information contained in a proposed report or draft or part of a proposed report, before the relevant time must not disclose any information contained in the copy of the report to Parliament, the proposed report or draft or part of the proposed report unless—
- (a) the disclosure is permitted under subsection (3); and
 - (b) the advice required by subsection (7) is given at the same time the disclosure is made.
- Penalty: 120 penalty units or imprisonment for 12 months or both.
- (2) For the purposes of subsection (1) the *relevant time* is—
- (a) for a report that is to be laid before a House of the Parliament, the time when the report is so laid; or
 - (b) for any other report, the time when the report is made by the Ombudsman.

(3) For the purposes of subsection (1), a disclosure is permitted if the disclosure—

- (a) is made in accordance with a direction or authorisation given by the Ombudsman; or
- (b) is made by an officer of an authority or a public interest disclosure entity, the responsible Minister for an authority or a public interest disclosure entity or a member of staff of the responsible Minister to other officers of the authority or public interest disclosure entity, the responsible Minister or other members of staff of the responsible Minister for the purposes of enabling the authority or public interest disclosure entity or the responsible Minister to respond to the proposed report or draft or part of the proposed report; or
- (ba) is made by the Secretary to the Department of Premier and Cabinet (who receives a copy of a report to Parliament under section 25AAB) to the Premier or the responsible Minister for the purpose of enabling the Premier or the responsible Minister to respond to the copy of the report; or
- (c) is made by a member of staff of a Council to the Mayor of the Council or by the Mayor to a member of staff of the Council for the purposes of enabling the Council to respond to the proposed report or draft or part of the proposed report; or
- (d) subject to any direction given under section 18M(3), is made for the purposes of obtaining legal advice or representation in relation to the proposed report or draft or part of the proposed report; or

S. 25B(3)(b)
amended by
Nos 85/2012
s. 165, 2/2019
s. 79(Sch. 1
Pt C item 33).

S. 25B(3)(ba)
inserted by
No. 2/2019
s. 165(2).

S. 25B(3)(d)
amended by
No. 2/2019
s. 165(3).

- (e) is otherwise authorised or required to be made by or under this Act.
- (4) Despite subsection (1), a disclosure is permitted if the disclosure is made for the purposes of making a complaint about the conduct of an Ombudsman officer—
 - (a) to the IBAC under the **Independent Broad-based Anti-corruption Commission Act 2011**; or
 - (b) to the Victorian Inspectorate under the **Victorian Inspectorate Act 2011**.
- (5) Despite subsection (1), a disclosure is permitted if the disclosure is made for the purposes of complying with—
 - (a) a witness summons served on a person by the IBAC under the **Independent Broad-based Anti-corruption Commission Act 2011**; or
 - (b) a witness summons served on a person by the Victorian Inspectorate under the **Victorian Inspectorate Act 2011**.
- (6) Despite subsection (1), a disclosure is permitted if the disclosure is made after the information is laid before a House of the Parliament in a report by the Ombudsman or has otherwise been made public in accordance with the Act.
- (7) A person who makes a disclosure of information permitted by subsection (3) must advise any person to whom the disclosure is made that this section applies in relation to the subsequent disclosure of that information by the person to whom the disclosure is made.
- (8) Proceedings may only be instituted for an offence under subsection (1)—
 - (a) by the Ombudsman; or

Ombudsman Act 1973
No. 8414 of 1973
Part V—Annual and other reports

(b) by or with the consent of the Director of
Public Prosecutions.

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S. 26
amended by
No. 30/2016
s. 70(4)(h)(i),
repealed by
No. 2/2019
s. 166.

Pt 5A
(Headings
and ss 26A–
26F)
inserted by
No. 82/2012
s. 244.

Part VA—Confidentiality

Division 1—Confidentiality requirements for Ombudsman officers

S. 26A
inserted by
No. 82/2012
s. 244.

26A Unauthorised disclosure

- (1) A person who is, or was, an Ombudsman officer must not, directly or indirectly, provide or disclose any information acquired by the person by reason of, or in the course of, the performance of the duties and functions of the Ombudsman, or the exercise of the powers of the Ombudsman, under this Act or any other Act except—
- (a) for the performance of the duties and functions of the Ombudsman, or the exercise of the powers of the Ombudsman, in accordance with this Act or any other Act; or
 - (b) for the purposes of—
 - (i) proceedings for an offence; or
 - (ii) a disciplinary process or action—
instituted as a result of an investigation conducted by the Ombudsman; or
 - (c) for the purposes of proceedings for an offence against section 19 of the **Evidence (Miscellaneous Provisions) Act 1958**; or
 - (ca) for the purposes of proceedings for an offence against this Act or the **Public Interest Disclosures Act 2012**; or

S. 26A(1)(ca)
inserted by
No. 85/2012
s. 166(1)(a),
amended by
No. 2/2019
s. 79(Sch. 1
Pt C item 34).

- (d) as is otherwise authorised or required to be made by or under this Act or the **Public Interest Disclosures Act 2012**.

S. 26A(1)(d) amended by Nos 85/2012 s. 166(1)(b), 2/2019 s. 79(Sch. 1 Pt C item 34).

Penalty: 120 penalty units or imprisonment for 12 months or both.

Note

The person may be subject to further confidentiality obligations under Part 7 of the **Public Interest Disclosures Act 2012**.

Note to s. 26A(1) inserted by No. 85/2012 s. 166(2), amended by No. 2/2019 s. 79(Sch. 1 Pt C item 35).

- (2) Proceedings may only be instituted for an offence under subsection (1)—
- (a) by the Ombudsman; or
 - (b) by or with the consent of the Director of Public Prosecutions.
- (3) This section does not apply to the provision or disclosure of information by the Ombudsman officer in accordance with section 16I, 16J, 16K, 17, 26FB or 26FC.

S. 26A(3) inserted by No. 30/2016 s. 69, amended by No. 2/2019 s. 167.

26B Taking advantage of information

- (1) A person who is, or was, an Ombudsman officer must not take advantage of any knowledge gained from information referred to in section 26A to benefit the person or any other person.

Penalty: 120 penalty units or imprisonment for 12 months or both.

S. 26B inserted by No. 82/2012 s. 244.

- (2) Proceedings may only be instituted for an offence under subsection (1)—
- (a) by the Ombudsman; or
 - (b) by or with the consent of the Director of Public Prosecutions.

Division 2—Confidentiality notices

S. 26C
inserted by
No. 82/2012
s. 244.

26C Confidentiality notice

- (1) During an investigation—
- (a) if the Ombudsman considers on reasonable grounds that the disclosure of one or more restricted matters would be likely—
 - (i) to prejudice an investigation by the IBAC or the Victorian Inspectorate; or
 - (ii) to prejudice the safety or reputation of a person; or
 - (iii) to prejudice the fair trial of a person who has been, or may be, charged with an offence—

the Ombudsman must issue a confidentiality notice in respect of the investigation to a person (other than a member of Ombudsman staff, an IBAC Officer or a Victorian Inspectorate Officer) specifying the restricted matter or restricted matters in accordance with this section; and

- (b) if the Ombudsman considers on reasonable grounds that the disclosure of one or more restricted matters would be likely to prejudice the investigation, the Ombudsman may issue a confidentiality notice in respect of the investigation to a person (other than a member of Ombudsman staff, an IBAC Officer or a Victorian Inspectorate Officer)

specifying the restricted matter or restricted matters in accordance with this section.

(2) A confidentiality notice must—

(a) be in the prescribed form;

S. 26C(2)(a)
substituted by
No. 2/2019
s. 168(a).

(b) specify the restricted matter or restricted matters in respect of which the confidentiality notice is issued;

(c) include a copy of the provisions of subsections (3) to (7) and sections 26D and 26F and an explanation of the effect of those provisions;

(ca) in the case of a confidentiality notice issued in respect of an investigation of a public interest complaint, include a statement—

S. 26C(2)(ca)
inserted by
No. 85/2012
s. 167(1),
amended by
No. 2/2019
s. 168(b).

(i) advising the person to whom the confidentiality notice is issued that additional obligations under the **Public Interest Disclosures Act 2012** relating to confidentiality may apply to the person; and

S. 26C(2)(ca)(i)
amended by
No. 2/2019
s. 76(a).

(ii) directing the person to the provisions of that Act which impose those obligations.

S. 26C
(2)(ca)(ii)
amended by
No. 2/2019
s. 76(b).

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S. 26C(2)(d)
amended by
Nos 85/2012
s. 167(2),
30/2016
s. 70(5)(a),
repealed by
No. 2/2019
s. 76(c).

- (3) If at any time the Ombudsman considers on reasonable grounds that it is necessary to restrict disclosure of a different restricted matter from any of those specified in a confidentiality notice in respect of a particular investigation to ensure that the disclosure would not be likely to have the effect specified in subsection (1)(a) or (b), the Ombudsman must issue to the person to whom the confidentiality notice was issued—
 - (a) a notice cancelling the previous confidentiality notice; and
 - (b) a new confidentiality notice in respect of that investigation under subsection (1).
- (4) If at any time the Ombudsman considers on reasonable grounds that disclosure of a particular restricted matter specified in a confidentiality notice in respect of a particular investigation would no longer be likely to have the effect specified in subsection (1)(a) or (b), the Ombudsman must issue to the person to whom the confidentiality notice was issued—
 - (a) a notice cancelling the previous confidentiality notice; and
 - (b) a new confidentiality notice in respect of that investigation under subsection (1).
- (5) If at any time the Ombudsman considers on reasonable grounds that disclosure of the restricted matter or restricted matters specified in a confidentiality notice in respect of a particular investigation would no longer be likely to have the effect specified in subsection (1)(a) or (b), the Ombudsman must issue to the person to whom the confidentiality notice was issued a notice cancelling the confidentiality notice.

- (6) At the conclusion of an investigation in respect of which a confidentiality notice was issued, the Ombudsman must issue to the person to whom the confidentiality notice was issued a notice cancelling the confidentiality notice, unless—
 - (a) the Ombudsman has applied for an order under section 26D extending the confidentiality notice and the application has not been determined; or
 - (b) the Supreme Court has made an order under section 26D extending the confidentiality notice; or
 - (c) the confidentiality notice has already been cancelled under subsection (3), (4) or (5) or section 26D(3).
- (7) A confidentiality notice in respect of a particular investigation ceases to have effect on whichever of the following occurs first—
 - (a) the date on which the Ombudsman issues a notice cancelling the confidentiality notice under subsection (3), (4), (5) or (6) or section 26D(3);
 - (b) the date specified in an order under section 26D extending the confidentiality notice.
- (8) A confidentiality notice under subsection (1) or a notice cancelling a confidentiality notice under subsection (3), (4), (5) or (6) may be issued to a person by serving a copy on the person in the same manner that a witness summons can be served.

26D Extension of confidentiality notice

- (1) If, before the conclusion of an investigation in respect of which a confidentiality notice has been issued, the Ombudsman considers on

**S. 26D
inserted by
No. 82/2012
s. 244.**

reasonable grounds that it is necessary to extend the confidentiality notice for a period following the investigation, the Ombudsman may apply to the Supreme Court for an order extending the confidentiality notice.

- (2) On an application under subsection (1), the Supreme Court may, by order, extend a confidentiality notice to a date specified in the order, if the Supreme Court is satisfied that disclosure of the restricted matter or restricted matters specified in the confidentiality notice before that date would be likely to have the effect specified in section 26C(1)(a) or (b).
- (3) If, on an application under subsection (1), the Supreme Court declines to make an order under subsection (2), the Ombudsman must issue to the person to whom the confidentiality notice was issued a notice cancelling the confidentiality notice, unless the investigation in respect of which the confidentiality notice was issued has not concluded.

Note

Section 26C(6) provides for the issue of a notice cancelling a confidentiality notice at the conclusion of the investigation to which the confidentiality notice relates.

- (4) A notice cancelling a confidentiality notice under subsection (3) may be issued to a person by serving a copy on the person in the same manner that a witness summons can be served.

S. 26E
inserted by
No. 82/2012
s. 244.

26E Ombudsman to provide Victorian Inspectorate with copies

The Ombudsman, as soon as reasonably practicable, must provide the Victorian Inspectorate with a copy of—

- (a) each confidentiality notice issued by the Ombudsman;

- (b) each notice cancelling a confidentiality notice issued by the Ombudsman under section 26C(3), (4), (5) or (6) or section 26D(3);
- (c) each application to the Supreme Court under section 26D(1) to extend a confidentiality notice;
- (d) each order of the Supreme Court under section 26D(2) extending a confidentiality notice.

26F Disclosure subject to confidentiality notice

S. 26F
inserted by
No. 82/2012
s. 244.

- (1) Subject to subsections (2), (2A), (2B), (3), (4) and (5), a person who—
 - (a) is duly served with a confidentiality notice and, if applicable, a copy of any order extending the confidentiality notice; or
 - (b) receives a copy of a confidentiality notice under subsection (6) or (7) and, if applicable, a copy of any order extending the confidentiality notice—

S. 26F(1)
amended by
No. 2/2019
s. 77(1).

must not disclose a restricted matter specified in the confidentiality notice while it has effect.

Penalty: 120 penalty units or imprisonment for 12 months or both.

- (2) Despite subsection (1), a restricted matter specified in a confidentiality notice may be disclosed if the disclosure is made in any of the following circumstances—
 - (a) in accordance with a direction or authorisation given by the Ombudsman;

- (b) to any person where necessary for the purposes of obtaining any information, document or other thing to comply with a witness summons or a confidentiality notice, a notice cancelling a confidentiality notice or an order extending a confidentiality notice, including if the person—
 - (i) does not have a sufficient knowledge of the English language to understand the nature of the witness summons or confidentiality notice, notice cancelling the confidentiality notice or order extending the confidentiality notice, to an interpreter;
 - (ii) is a person under the age of 18 years, to a parent, guardian or independent person;
 - (iii) is a person who is illiterate or has a mental, physical or other impairment which prevents the person from understanding the witness summons, confidentiality notice, notice cancelling the confidentiality notice or order extending the confidentiality notice without assistance, to an independent person;
- (c) subject to any direction given under section 18M(3), for the purposes of obtaining legal advice or representation in relation to—
 - (i) an enquiry or investigation conducted by the Ombudsman under this Act; or
 - (ii) the person's rights, liabilities, obligations and privileges under this Act or a relevant Act;

S. 26F(2)(c)
amended by
No. 2/2019
s. 169.

S. 26F(2)(c)(ii)
amended by
No. 85/2012
s. 168(1),
substituted by
No. 2/2019
s. 77(2)(a).

- (d) by a legal practitioner who receives a disclosure in the circumstances specified in paragraph (c), for the purposes of complying with a legal duty of disclosure or a professional obligation arising from their professional relationship with their client; S. 26F(2)(d) amended by No. 30/2016 s. 70(5)(b).
- (e) to any of the following persons, unless the Ombudsman directs that the restricted matter must not be disclosed to that person— S. 26F(2)(e) substituted by No. 2/2019 s. 77(2)(b).
 - (i) the spouse or domestic partner of the person served with the confidentiality notice;
 - (ii) the employer or manager of the person served with the confidentiality notice, or both;
- (f) in any of the following circumstances, unless the Ombudsman directs that the restricted matter must not be disclosed in that circumstance— S. 26F(2)(f) inserted by No. 2/2019 s. 77(2)(b).
 - (i) to any of the following for the purpose of assisting the person to seek advice or support in relation to the investigation in respect of which the confidentiality notice has been issued—
 - (A) a registered health practitioner;
 - (B) a trade union, within the meaning of the Workplace Relations Act 1996 of the Commonwealth, of which the person is a member;
 - (C) an employee assistance program;
 - (ii) to the Victorian WorkCover Authority for the purpose of a workers' compensation claim;
 - (iii) to a prescribed service for a purpose prescribed for that service;

- (iv) for the purpose of an application to the Fair Work Commission, including any related proceeding;
- S. 26F(2)(g)
inserted by
No. 2/2019
s. 77(2)(b).
- (g) as is otherwise authorised or required to be made by or under this Act.
- S. 26F(2A)
inserted by
No. 2/2019
s. 77(3).
- (2A) Despite subsection (1), a restricted matter specified in a confidentiality notice may be disclosed to the IBAC if—
- (a) the IBAC referred the complaint to which the restricted matter relates to the Ombudsman under section 73 of the **Independent Broad-based Anti-corruption Commission Act 2011**; and
- (b) the IBAC has withdrawn the referral in accordance with section 79 of that Act.
- S. 26F(2B)
inserted by
No. 2/2019
s. 77(3).
- (2B) Despite subsection (1), a restricted matter specified in a confidentiality notice may be disclosed to Victoria Police if—
- (a) the Ombudsman has disclosed information to the Chief Commissioner of Police under section 16L relating to actual or potential criminal conduct; and
- (b) the restricted matter is relevant to an investigation by Victoria Police of the actual or potential criminal conduct.
- (3) Despite subsection (1), a restricted matter specified in a confidentiality notice may be disclosed if the disclosure is made for the purposes of making—
- (a) a complaint to the IBAC under the **Independent Broad-based Anti-corruption Commission Act 2011**; or

- (b) a complaint to the Victorian Inspectorate under the **Victorian Inspectorate Act 2011**.
- (4) Despite subsection (1), a restricted matter specified in a confidentiality notice may be disclosed if the disclosure is made for the purposes of complying with—
- (a) a witness summons served on a person by the IBAC under the **Independent Broad-based Anti-corruption Commission Act 2011**; or
- (b) a witness summons served on a person by the Victorian Inspectorate under the **Victorian Inspectorate Act 2011**.
- (5) Despite subsection (1), a restricted matter specified in a confidentiality notice may be disclosed if the disclosure made is of information that has been laid before a House of the Parliament in a report by the Ombudsman, another investigating entity or the Integrity and Oversight Committee or has otherwise been made public in accordance with this or any other Act.
- (6) A person who makes a disclosure of information permitted by subsection (2) must, when making the disclosure, provide the person to whom the disclosure is made with a copy of the confidentiality notice and of any order extending the confidentiality notice, unless the person has a reasonable excuse for not doing so.
- Penalty: 120 penalty units or imprisonment for 12 months or both.
- (7) If in respect of a particular investigation a person who makes a disclosure of information permitted by subsection (2) receives a new confidentiality notice, a notice cancelling the confidentiality notice or an order extending the confidentiality notice, the person must as soon as reasonably

S. 26F(5)
amended by
No. 2/2019
s. 77(4).

practicable provide a copy of the new confidentiality notice, notice cancelling the confidentiality notice or order extending the confidentiality notice to each person to whom the disclosure has been made, unless the person has a reasonable excuse for not doing so.

Penalty: 120 penalty units or imprisonment for 12 months or both.

(8) Proceedings may only be instituted for an offence under subsection (1), (6) or (7)—

(a) by the Ombudsman; or

(b) by or with the consent of the Director of Public Prosecutions.

(9) In this section—

Fair Work Commission means the body established under section 575 of the Fair Work Act 2009 of the Commonwealth;

investigating entity has the same meaning as in section 3 of the **Public Interest Disclosures Act 2012**;

registered health practitioner means a person registered under the Health Practitioner National Law to practise a health profession (other than as a student);

relevant Act means—

- (a) the **Public Interest Disclosures Act 2012**; or
- (b) the **Independent Broad-based Anti-corruption Commission Act 2011**; or
- (c) the **Victorian Inspectorate Act 2011**; or
- (d) the Fair Work Act 2009 of the Commonwealth; or

S. 26F(9)
inserted by
No. 2/2019
s. 77(5).

S. 26F(9)
def. of
relevant Act
amended by
No. 9/2020
s. 390(Sch. 1
item 75.2).

- (e) the **Local Government Act 2020**; or
- (f) the **Racing Act 1958**; or
- (g) the **Freedom of Information Act 1982**;

Victorian WorkCover Authority has the same meaning as in the **Workplace Injury Rehabilitation and Compensation Act 2013**.

Note

A person who is served with or receives a confidentiality notice may be subject to further confidentiality obligations under Part 7 of the **Public Interest Disclosures Act 2012**.

Note to
s. 26F
inserted by
No. 85/2012
s. 168(2),
amended by
No. 2/2019
s. 77(6).

* * * * *

Pt 5A Div. 3
(Heading and
s. 26FA)
inserted by
No. 85/2012
s. 170,
amended by
No. 30/2016
s. 70(5)(c),
repealed by
No. 2/2019
s. 78.

Pt 5AB
(Heading and
ss 26FB,
26FC)
inserted by
No. 2/2019
s. 170.

Part VAB—Information sharing

S. 26FB
inserted by
No. 2/2019
s. 170.

26FB Disclosure of information by the Ombudsman

- (1) At any time, the Ombudsman may provide or disclose any information received or obtained in the course of the performance of duties and functions or the exercise of powers by the Ombudsman under this Act to a person or body specified in subsection (3) if the Ombudsman considers that—
 - (a) the information is relevant to the performance of the duties and functions or the exercise of the powers of the person or body; and
 - (b) it is appropriate for the information to be brought to the attention of the person or body, having regard to the nature of the information.
- (2) Despite subsection (1), the Ombudsman must not provide or disclose any information to a person or body if—
 - (a) the person or body, or an employee of the person or body, is the subject of an assessable disclosure; and
 - (b) the information—
 - (i) would be likely to lead to the identification of a person who made the assessable disclosure; and
 - (ii) is not information to which section 53(2)(a), (c) or (d) of the **Public Interest Disclosures Act 2012** applies.

(3) For the purposes of subsection (1), the following persons and bodies are specified—

- (a) the IBAC;
- (b) the Victorian Inspectorate;
- (c) the Auditor-General;
- (d) Victoria Police;
- (e) the Director of Public Prosecutions;
- (f) the Commission for Children and Young People established under section 6 of the **Commission for Children and Young People Act 2012**;
- (g) the Chief Municipal Inspector appointed under 182 of the **Local Government Act 2020**;
- (h) a municipal monitor appointed under section 223CA of the **Local Government Act 1989**;
- (i) the Victorian WorkCover Authority within the meaning of the **Workplace Injury Rehabilitation and Compensation Act 2013**;
- (j) the Environment Protection Authority established under section 5 of the **Environment Protection Act 1970**;
- (k) the Racing Integrity Commissioner established under section 37A of the **Racing Act 1958**;
- (l) the Australian Federal Police constituted under section 6 of the Australian Federal Police Act 1979 of the Commonwealth;
- (m) the police force or police service (however described) of another State or a Territory;

S. 26FB(3)(g)
amended by
No. 9/2020
s. 390(Sch. 1
item 75.3).

- (n) a responsible Minister of the Crown;
 - (o) any authority or its principal officer;
 - (p) a person or body to whom the Ombudsman has referred a complaint under section 16I or 16IA;
 - (q) a prescribed person or body.
- (4) Subsection (1) applies subject to any restriction on the provision or disclosure of information under this Act or any other Act (including any Commonwealth Act).
- (5) If—
- (a) a House of the Parliament has by resolution referred a report made by the Ombudsman to a Parliamentary Committee of that House to determine whether there has been a breach of parliamentary privilege or contempt of Parliament; and
 - (b) the Parliamentary Committee requests the Ombudsman to provide or disclose any information received or obtained in the course of preparing the report which the Parliamentary Committee considers may be necessary to determine whether there has been a breach of parliamentary privilege or contempt of Parliament—
- the Ombudsman may at the Ombudsman's discretion comply with the request.
- (6) The Ombudsman must not provide or disclose information under subsection (5) that is likely to lead to the identification of a person who has made an assessable disclosure.

26FC Disclosure of information for specified purposes

**S. 26FC
inserted by
No. 2/2019
s. 170.**

- (1) Subject to subsection (4), the Ombudsman may provide or disclose information received or obtained in the course of the performance of duties and functions or the exercise of powers under this Act to the public if the information relates to the commencement or progress of an own motion investigation or an own motion enquiry or review under Part IIIAB and the Ombudsman is satisfied that the information does not include any information that—
 - (a) is likely to lead to the identification of any person; or
 - (b) is adverse to an authority, unless the information is already in the public domain or the authority has consented to the information being provided or disclosed.
- (2) Subject to subsection (4), the Ombudsman may provide or disclose information received or obtained in the course of the performance of duties and functions or the exercise of powers under this Act to a person, body or authority that the Ombudsman considers appropriate if the Ombudsman considers that the provision or disclosure of the information is necessary to prevent or lessen the risk of harm to a person's health, safety or welfare.
- (3) Subject to subsection (4), the Ombudsman may provide or disclose information received or obtained in the course of the performance of duties and functions or the exercise of powers under this Act to an authority if the Ombudsman—
 - (a) considers that the provision or disclosure of the information is necessary to assist the authority to improve its complaint handling

- or administrative practices or procedures;
and
- (b) is satisfied that the information does not include any information that is likely to lead to the identification of any person unless that person has provided consent or the identification is otherwise authorised under the **Privacy and Data Protection Act 2014**.
- (4) The Ombudsman must not provide or disclose any information under this section that includes—
- (a) any information that the Ombudsman considers would prejudice any criminal proceedings or criminal investigations, or investigations by the Ombudsman, the IBAC or the Victorian Inspectorate; or
 - (b) any information, or information in any document, referred to in section 19, 19A or 19B; or
 - (c) a finding or an opinion that a specified person is guilty of or has committed, is committing or is about to commit an offence; or
 - (d) a recommendation that a specified person be, or an opinion that a specified person should be, prosecuted for an offence; or
 - (e) any information that—
 - (i) is likely to lead to the identification of a person who has made an assessable disclosure; and
 - (ii) is not information to which section 53(2)(a), (c) or (d) of the **Public Interest Disclosures Act 2012** applies.
- (5) The operation of this section is not limited by sections 26FB and 26A.

Part VB—Oversight of the Ombudsman

Pt 5B
(Heading and
ss 26G–26I)
inserted by
No. 82/2012
s. 245.

26G Oversight by Victorian Inspectorate

The functions of the Victorian Inspectorate in respect of Ombudsman officers are set out in the **Victorian Inspectorate Act 2011**.

S. 26G
inserted by
No. 82/2012
s. 245.

26H Oversight by Integrity and Oversight Committee

S. 26H
(Heading)
amended by
No. 2/2019
s. 194(2).

S. 26H
inserted by
No. 82/2012
s. 245.

- (1) The functions of the Integrity and Oversight Committee under this Act are—
 - (a) to monitor and review the performance of the duties and functions of the Ombudsman;
 - (b) to report to both Houses of the Parliament on any matter connected with the performance of the duties and functions of the Ombudsman that requires the attention of the Parliament;
 - (c) to examine any reports by the Ombudsman that are laid before a House of the Parliament.
- (2) Despite anything to the contrary in subsection (1), the Integrity and Oversight Committee cannot—
 - (a) investigate a matter relating to particular conduct the subject of any particular complaint, public interest complaint, referred complaint or referred matter;

S. 26H(1)
amended by
No. 2/2019
s. 194(3).

S. 26H(2)
amended by
No. 2/2019
s. 194(3).

S. 26H(2)(a)
amended by
Nos 85/2012
s. 169, 2/2019
s. 79(Sch. 1
Pt C item 36).

S. 26H(2)(b)
amended by
Nos 85/2012
s. 169, 2/2019
s. 79(Sch. 1
Pt C item 36).

(b) review any decision to investigate, not to investigate or to discontinue an investigation of, a particular complaint, public interest complaint, referred complaint or referred matter;

S. 26H(2)(c)
amended by
Nos 85/2012
s. 169, 2/2019
s. 79(Sch. 1
Pt C item 36).

(c) review any findings, recommendations, determinations or other decisions of the Ombudsman in relation to a particular complaint, public interest complaint, referred complaint or referred matter or an investigation conducted by the Ombudsman;

(d) disclose any information relating to the performance of a function or duty or the exercise of a power by the Ombudsman which may—

(i) prejudice any criminal proceedings or criminal investigations, or investigations by the Ombudsman, the IBAC or the Victorian Inspectorate; or

(ii) contravene any secrecy or confidentiality provision in any relevant Act.

S. 26I
(Heading)
amended by
No. 2/2019
s. 194(4).

26I Powers and procedures of Integrity and Oversight Committee

S. 26I
inserted by
No. 82/2012
s. 245,
amended by
No. 2/2019
s. 194(5).

The powers and procedures of a Joint Investigatory Committee under the **Parliamentary Committees Act 2003** apply to the Integrity and Oversight Committee in the performance of its functions under this Act.

Part VI—Miscellaneous

27 Application to Supreme Court

- (1) Where in the course of an investigation under this Act the question arises as to whether the Ombudsman has jurisdiction to conduct the investigation, the Ombudsman or the party subject to the investigation, may make an application to the Supreme Court for a determination of that question, and on the application the Court may make such order as it considers proper.

* * * * *

S. 27(2)
repealed by
No. 57/1989
s. 3(Sch.
item 143.1).

- (3) For the purposes of this section the principal officer of the authority or public interest disclosure entity affected by the investigation shall be deemed to be a party subject to the investigation.

S. 27(3)
amended by
Nos 85/2012
s. 171, 2/2019
s. 79(Sch. 1
Pt C item 37).

28 Letters by persons in custody etc. to be forwarded immediately to the Ombudsman

- (1) Notwithstanding any provision to the contrary in any enactment where a letter written by a person in custody on a charge or after conviction of an offence or by a patient in a designated mental health service within the meaning of the **Mental Health Act 2014** or residential service or residential treatment facility within the meaning of the **Disability Act 2006** is addressed to the Ombudsman it shall immediately be forwarded unopened to the Ombudsman by the person in charge.

S. 28(1)
amended by
Nos 59/1986
s. 143(2),
15/1989
s. 26(1),
23/2006 s. 246,
26/2014
s. 455(Sch.
item 21.1)),
19/2019 s. 267.

S. 28(1A)
inserted by
No. 15/1989
s. 26(2),
amended by
Nos 23/2006
s. 246, 26/2014
s. 455(Sch.
item 21.1),
19/2019 s. 267.

(1A) Despite anything to the contrary in any Act (other than subsection (3)), if a letter written by the Ombudsman is addressed to a person in custody on a charge or after conviction of an offence or to a patient in a designated mental health service within the meaning of the **Mental Health Act 2014** or residential service or residential treatment facility within the meaning of the **Disability Act 2006**, it must immediately be forwarded unopened to the person to whom it is addressed by the person for the time being in charge.

S. 28(2)
amended by
No. 15/1989
s. 26(3).

(2) A person who prevents or hinders the forwarding of a letter referred to in subsection (1) or (1A) shall be guilty of an offence against this Act.

S. 28(2A)
inserted by
No. 62/1989
s. 12(3).

(2A) Proceedings may only be instituted for an offence under subsection (2)—

(a) by the Ombudsman; or

(b) by or with the consent of the Director of Public Prosecutions.

S. 28(3)
inserted by
No. 15/1989
s. 26(4).

(3) If a letter referred to in subsection (1) or (1A) is suspected by the person in charge of containing drugs, weapons or other contraband, the letter may be opened by the person in charge in the presence of—

S. 28(3)(a)
amended by
No. 82/2012
s. 246(a).

(a) the person who wrote the letter and an Ombudsman officer; or

S. 28(3)(b)
amended by
No. 82/2012
s. 246(b).

(b) the person to whom the letter is addressed and an Ombudsman officer—

as the case requires.

- (4) A person who opens a letter in accordance with subsection (3) is not guilty of an offence under subsection (2). S. 28(4) inserted by No. 15/1989 s. 26(4).
- (5) In this section, *person in charge* means the person who is for the time being in charge of the place, service or institution where the writer of the letter, or the person to whom the letter is addressed (as the case requires) is detained or is a patient. S. 28(5) inserted by No. 15/1989 s. 26(4), amended by No. 30/2016 s. 70(5)(d).

29 Protection of the Ombudsman and officers of the Ombudsman

- (1) Neither the Ombudsman nor any of the Ombudsman's officers shall be liable, whether on the ground of want of jurisdiction or on any other ground, to any civil or criminal proceedings to which the Ombudsman or the officer would have been liable apart from this section in respect of any act purporting to be done in pursuance of this Act, unless the act was done in bad faith. S. 29(1) amended by Nos 8884 s. 7(a), 30/2016 s. 70(6)(a)(b).
- (2) No civil or criminal proceedings shall be brought against the Ombudsman or any of the Ombudsman's officers in respect of any act referred to in subsection (1) without the leave of the Supreme Court, and the Supreme Court shall not give leave unless it is satisfied that there is substantial ground for the contention that the person to be proceeded against has acted in bad faith. S. 29(2) amended by Nos 8884 s. 7(b), 30/2016 s. 70(6)(c).
- (3) Despite subsections (1) and (2)—
- (a) no order shall be made—
- (i) restraining the Ombudsman from carrying out, or compelling the Ombudsman to carry out, an S. 29(3) amended by No. 57/1989 s. 3(Sch. item 143.2), substituted by No. 36/2001 s. 113.
S. 29(3)(a)(i) amended by No. 30/2016 s. 70(6)(d).

S. 29(3)(a)(ii)
amended by
No. 30/2016
s. 70(6)(d).

- enquiry to determine whether an investigation should be conducted; or
- (ii) restraining the Ombudsman from carrying out, or compelling the Ombudsman to carry out, any investigation; or

S. 29(3)(a)(iii)
amended by
No. 30/2016
s. 70(6)(d).

- (iii) restraining the Ombudsman from making, or compelling the Ombudsman to make a report; or

S. 29(3)(a)(iv)
amended by
No. 30/2016
s. 70(6)(d).

- (iv) restraining the Ombudsman from making, or compelling the Ombudsman to make a recommendation; and

- (b) no proceedings shall be brought against the Ombudsman under which the issue of such an order is sought.

S. 29(4)
amended by
Nos 15/1989
s. 27, 61/1999
s. 20(Sch.
item 2),
37/2014
s. 10(Sch.
item 119.2),
30/2016
s. 70(6)(e)–(g).

- (4) Neither the Ombudsman nor any of the Ombudsman's officers shall be called to give evidence in any court or in any judicial proceedings or before the Police Registration and Services Board in respect of any matter coming to the Ombudsman's or the officer's knowledge in the exercise of functions under this Act.

S. 29A
inserted by
No. 36/2001
s. 114.

29A Exemption from Freedom of Information Act 1982

S. 29A(1)
amended by
No. 32/2004
s. 8,
substituted by
No. 82/2012
s. 247.

- (1) The **Freedom of Information Act 1982** does not apply to a document that is in the possession of any person or body to the extent to which the document discloses information that relates to—
- (a) a complaint, a referred complaint, a referred matter or a matter referred to the Ombudsman under section 16; or
- (b) an enquiry or investigation conducted under this Act; or

- (c) a recommendation made by the Ombudsman under this Act; or
 - (d) a report made under this Act or a draft of a report.
- (2) In this section—

document has the same meaning as in the
Freedom of Information Act 1982.

29B Evidence

Information obtained or received by a party from the Ombudsman in the course of or as a result of the performance of the Ombudsman's functions under this Act is not admissible in evidence (if given by that party) in any legal proceedings other than proceedings in relation to—

- (a) an offence against this Act; or
- (b) an offence against section 19 of the **Evidence (Miscellaneous Provisions) Act 1958**; or
- (c) an offence against section 45, section 72 or section 73 of the **Public Interest Disclosures Act 2012**; or
- (d) an action for damages brought under section 47 of the **Public Interest Disclosures Act 2012**; or
- (e) an application for an injunction or order under section 50 of the **Public Interest Disclosures Act 2012**.

S. 29B
inserted by
No. 82/2012
s. 248.

S. 29B(b)
amended by
No. 85/2012
s. 172(a).

S. 29B(c)
inserted by
No. 85/2012
s. 172(b),
amended by
No. 2/2019
s. 79(Sch. 1
Pt C item 38).

S. 29B(d)
inserted by
No. 85/2012
s. 172(b),
amended by
No. 2/2019
s. 79(Sch. 1
Pt C item 38).

S. 29B(e)
inserted by
No. 85/2012
s. 172(b),
amended by
No. 2/2019
s. 79(Sch. 1
Pt C item 38).

S. 30
amended by
No. 82/2012
s. 249.

30 Penalties

Unless another penalty is specified in the provision creating the offence, a person who is guilty of an offence against this Act shall be liable to a penalty not exceeding \$1000 or imprisonment for 12 months or to both such penalty and imprisonment.

S. 30A
inserted by
No. 36/2001
s. 115.

30A Supreme Court—limitation of jurisdiction

It is the intention of section 29(3) of this Act, as substituted by section 113 of the **Whistleblowers Protection Act 2001**, to alter or vary section 85 of the **Constitution Act 1975**.

S. 31(1)
amended by
No. 30/2016
s. 70(6)(h),
substituted by
No. 2/2019
s. 171.

31 Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations—
 - (a) may be of general or limited application;
 - (b) may differ according to differences in time, place or circumstance;
 - (c) may leave any matter or thing to be determined, applied, dispensed with or regulated from time to time by a specified person or class of persons;
 - (d) may provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to the extent specified;

- (e) may confer powers or impose duties in connection with the regulations on any specified person or specified class of persons;
- (f) may apply, adopt or incorporate with or without modification, any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed (whether under this or any other Act) or published by any person—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as formulated, issued, prescribed (whether under this or any other Act) or published at the time the regulations are made or at any time before then; or
 - (iii) as formulated, issued, prescribed (whether under this or any other Act) or published from time to time;
- (g) may impose a penalty not exceeding 20 penalty units for a contravention of the regulations.

32 Administration of Act

Except as otherwise expressly provided in this Act the expenses incurred in the administration of this Act shall be defrayed out of the moneys to be provided by Parliament for that purpose.

Pt 7 (Heading
and s. 33)
inserted by
No. 27/2009
s. 17.

Part VII—Saving and transitional provisions

S. 33
inserted by
No. 27/2009
s. 17.

33 Validity of certain actions taken by Ombudsman

- (1) Without limiting the effect of section 13(3AA), the following actions are taken to be and always to have been valid to the extent (if any) that they were not authorised because of the effect of section 13(3)(aa) as in force before the commencement day—
 - (a) any inquiry or investigation commenced or undertaken by the Ombudsman into the Director, Police Integrity or the Office of Police Integrity before the commencement day;
 - (b) any act or action taken or decision made by, or on behalf of, the Ombudsman concerning—
 - (i) any inquiry or investigation commenced or undertaken by the Ombudsman into the Director, Police Integrity or the Office of Police Integrity before the commencement day; or
 - (ii) any complaint received by the Ombudsman concerning the Director, Police Integrity or the Office of Police Integrity before the commencement day.
- (2) Without limiting the effect of section 13(3AA), any enquiry into or investigation by the Ombudsman into the Director, Police Integrity or the Office of Police Integrity may relate to

conduct that occurred before the commencement day.

- (3) In this section *commencement day* means the date of commencement of section 16 of the **Public Administration Amendment Act 2009**.

34 Transitional provision—complaints under the Freedom of Information Act 1982

S. 34
inserted by
No. 6/2012
s. 47.

Despite the amendment of this Act by section 43 of the **Freedom of Information Amendment (Freedom of Information Commissioner) Act 2012**, this Act continues to apply to any complaint made to the Ombudsman before the commencement of section 43 in relation to an administrative action under the **Freedom of Information Act 1982**, as if section 43 had not been enacted.

35 Transitional provisions—Integrity and Accountability Legislation Amendment Act 2012

S. 35
inserted by
No. 82/2012
s. 250.

- (1) Subject to this section, this Act, as in force immediately before the commencement day, continues to apply on and after the commencement day to—
- (a) a complaint made before the commencement day under section 14;
 - (b) an investigation begun before the commencement day under section 14(1) on the Ombudsman's own motion;
 - (c) a matter referred to the Ombudsman before the commencement day under section 16 for investigation and report;
 - (d) a review begun before the commencement day under section 13(2AB).
- (2) Section 18, as amended by section 233 of the amending Act, applies to a witness summons issued on or after the commencement day,

including a witness summons issued in relation to a complaint, investigation, matter or review referred to in subsection (1).

- (3) Sections 18A and 18B apply in relation to a witness summons issued on or after the commencement day, including a witness summons issued in relation to a complaint, investigation, matter or review referred to in subsection (1).
- (4) A summons issued by the Ombudsman under section 17 of the **Evidence (Miscellaneous Provisions) Act 1958** to a person who is under the age of 16 years that was in force immediately before the commencement day ceases to have any force or effect on and from that day.
- (5) Section 18C applies on and after the commencement day including in relation to a complaint, investigation, matter or review referred to in subsection (1). However, section 18C(3) applies only in relation to—
 - (a) a witness summons issued on or after the commencement day; or
 - (b) a compulsory appearance on or after that day; or
 - (c) a proposed report, or draft or part of a proposed report, under this Act received by a person on or after that day.
- (6) Sections 18D, 18E, 18F and 18G apply to a compulsory appearance or voluntary appearance (as the case requires) on or after the commencement day, including a compulsory or voluntary appearance in relation to a complaint, investigation, matter or review referred to in subsection (1).

- (7) Section 24, as amended by section 240 of the amending Act, applies on and after the commencement day including in relation to a complaint referred to in subsection (1)(a).
- (8) Section 25A applies to a report made on or after the commencement day, including a report made in relation to a complaint, investigation, matter or review referred to in subsection (1).
- (9) Section 25B applies to a person who receives a proposed report, or a draft or part of a proposed report or information contained in a proposed report or draft or part of a proposed report, on or after the commencement day, including a proposed report, or a draft or part of a proposed report or information contained in a proposed report or draft or part of a proposed report, in relation to a complaint, investigation, matter or review referred to in subsection (1).
- (10) Part VA, as inserted by section 244 of the amending Act, applies to information acquired on or after the commencement day, including information acquired on or after the commencement day in relation to a complaint, investigation, matter or review referred to in subsection (1).
- (11) Section 20(5), as inserted by section 235(3) of the amending Act, applies on and after the commencement day in relation to a complaint, investigation, matter or review referred to in subsection (1).
- (12) For a complaint, investigation or matter referred to in subsection (1) that involves administrative action taken by the Director, Police Integrity or by or in the Office of Police Integrity, this Act applies on or after the commencement day as if—

- (a) a reference to the relevant authority were a reference to the IBAC; and
- (b) a reference to the principal officer were a reference to the Commissioner within the meaning of the **Independent Broad-based Anti-corruption Commission Act 2011**; and
- (c) a reference to the responsible Minister were a reference to the Minister administering the **Independent Broad-based Anti-corruption Commission Act 2011**.

S. 35(13)
amended by
No. 82/2012
s. 313(g).

- (13) The Ombudsman must give the IBAC any document, information or other thing in the Ombudsman's possession that is reasonably required by the IBAC for the performance of functions under Part 8 of the **Independent Broad-based Anti-corruption Commission Act 2011**.
- (14) The Ombudsman may make and retain a copy of any document, information or other thing given to the IBAC under subsection (13) if it is necessary to do so for the performance of the Ombudsman's functions or duties or the exercise of the Ombudsman's powers under this or any other Act.
- (15) In this section—
amending Act means the **Integrity and Accountability Legislation Amendment Act 2012**;
commencement day means the day on which Division 1 of Part 7 of the amending Act comes into operation.

36 Transitional provisions—Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019

S. 36
inserted by
No. 2/2019
s. 172.

- (1) In this section—

2019 Act means the **Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019**;

commencement day means the day on which
Part 4 of the 2019 Act comes into operation.

- (2) Part IIIAC as inserted by section 153 of the 2019 Act, applies on and after the commencement day to—
- (a) an enquiry under section 13A begun before the commencement day; or
 - (b) an investigation under section 15B begun before the commencement day.
- (3) Despite the substitution of section 18 by section 163 of the 2019 Act, a summons issued to a person by the Ombudsman under section 17 of the **Evidence (Miscellaneous Provisions) Act 1958** that was in force immediately before the commencement day, continues to have effect on and from that day until the person complies with the summons or the summons is varied or revoked under section 18B as substituted by section 163 of the 2019 Act.
- (4) Sections 18 and 18A to 18S, as substituted by section 163 of the 2019 Act, apply on and after the commencement day to—
- (a) an investigation begun before the commencement day under section 15B; or

- (b) a witness summons issued by the Ombudsman on or after the commencement day.
- (5) Section 13A(4), as inserted by section 152 of the 2019 Act, and sections 18O and 18P, as inserted by section 163 of the 2019 Act, apply on and after the commencement day to—
 - (a) an enquiry under section 13A begun before the commencement day; or
 - (b) an investigation under section 15B begun before the commencement day.
- (6) Despite the repeal of section 19 of the **Evidence (Miscellaneous Provisions) Act 1958** by item 16.2 of Schedule 2 to the **Inquiries Act 2014**, section 29B(b) of this Act, as in force immediately before the commencement day, continues to apply to any legal proceeding in relation to an offence under section 19 of the **Evidence (Miscellaneous Provisions) Act 1958** that had commenced before the commencement day.

Ombudsman Act 1973
No. 8414 of 1973
Schedules

Schedules

Schs
(Heading)
inserted by
No. 82/2012
s. 251.

Schedule 1—Specified entities

Section 2(1)

	<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Item</i>	<i>Specified entity</i>	<i>Principal officer</i>	<i>Responsible Minister</i>
1	Office of the Commissioner for Environmental Sustainability	Commissioner for Environment Sustainability	Minister administering the Commissioner for Environmental Sustainability Act 2003
2	Office of the Essential Services Commission	The Chairperson within the meaning of the Essential Services Commission Act 2001	Minister administering the Essential Services Commission Act 2001
3	Office of the Victorian Information Commissioner	The Information Commissioner	Minister administering Part IA of the Freedom of Information Act 1982 and Minister administering the Privacy and Data Protection Act 2014
4	Office of the Victorian Legal Services Commissioner	Victorian Legal Services Commissioner	Minister administering the Legal Profession Uniform Law Application Act 2014

Sch.
amended by
Nos 35/1989
s. 22, 29/2006
s. 3(Sch. 1
item 25)
substituted as
Sch. 1 by
No. 82/2012
s. 251,
amended by
Nos 35/2014
s. 62, 67/2013
s. 649(Sch. 9
item 26),
60/2014
s. 140(Sch. 3
item 33.2),
17/2014
s. 160(Sch. 2
item 66.1),
30/2016
s. 70(7)(a),
20/2017
s. 134(Sch. 1
item 13.5),
63/2017
s. 21(Sch. 1
items 6.1, 6.2),
38/2018
s. 291(1),
2/2019 s. 173,
9/2020
s. 390(Sch. 1
item 75.5).

Ombudsman Act 1973
No. 8414 of 1973
Schedule 1—Specified entities

<i>Column 1</i>		<i>Column 2</i>		<i>Column 3</i>
<i>Item</i>	<i>Specified entity</i>	<i>Principal officer</i>		<i>Responsible Minister</i>
	*	*	*	* *
6	Office of Public Prosecutions	Solicitor for Public Prosecutions		Minister administering the Public Prosecutions Act 1994
7	Office of the Road Safety Camera Commissioner	Road Safety Camera Commissioner		Minister administering the Road Safety Camera Commissioner Act 2011
8	Office of the Commercial Passenger Vehicle Commission	Chairperson of the Commission		Minister administering Division 3 of Part 5 of the Transport Integration Act 2010
9	Victorian Commission for Gambling and Liquor Regulation	Chairperson of the Commission		Minister administering the Victorian Commission for Gambling and Liquor Regulation Act 2011
10	Victorian Equal Opportunity and Human Rights Commission	The Commissioner within the meaning of the Equal Opportunity Act 2010		Minister administering the Equal Opportunity Act 2010
11	Victorian Multicultural Commission	Chairperson of the Commission		Minister administering the Multicultural Victoria Act 2011

Ombudsman Act 1973
No. 8414 of 1973
Schedule 1—Specified entities

	<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Item</i>	<i>Specified entity</i>	<i>Principal officer</i>	<i>Responsible Minister</i>
12	State Trustees	The Chair of State Trustees	Minister administering the State Trustees (State Owned Company) Act 1994
	*	*	*
14	The holder of an office established by or under an Act to which the right to appoint is vested in the Governor in Council or a Minister	There is no principal officer	The Minister administering the provision of the Act by or under which the office is established
15	A member of staff of a Council	The Chief Executive Officer of the Council	Minister administering Part 2 of the Local Government Act 2020
16	A person in the person's capacity as a delegate of the Victorian WorkCover Authority administering claims under the Workers Compensation Act 1958	The delegate or, if the delegate is a body corporate, the senior executive officer of the delegate (by whatever title known)	Minister administering Part 11 of the Workplace Injury Rehabilitation and Compensation Act 2013
17	A person in the person's capacity as an authorised agent of the Victorian WorkCover Authority under the Workplace Injury Rehabilitation and Compensation Act 2013	The authorised agent or, if the authorised agent is a body corporate, the senior executive officer of the authorised agent (by whatever title known)	Minister administering Part 11 of the Workplace Injury Rehabilitation and Compensation Act 2013

Ombudsman Act 1973
No. 8414 of 1973
Schedule 1—Specified entities

	<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Item</i>	<i>Specified entity</i>	<i>Principal officer</i>	<i>Responsible Minister</i>
18	A body corporate in its capacity as a self-insurer under the Workplace Injury Rehabilitation and Compensation Act 2013	The senior executive officer of the self-insurer (by whatever title known)	Minister administering Part 8 of the Workplace Injury Rehabilitation and Compensation Act 2013
19	A registered community service within the meaning of section 3(1) of the Children, Youth and Families Act 2005 in its capacity as carrying out any duty or function or exercising any power under that Act	The person in charge of the registered community service	Minister administering Chapter 2 of the Children, Youth and Families Act 2005
20	A person authorised under section 18 or 19 of the Children, Youth and Families Act 2005 in the person's capacity as carrying out any duty or function or exercising any power under that Act	The Secretary within the meaning of section 3(1) of the Children, Youth and Families Act 2005	Minister administering Chapter 2 of the Children, Youth and Families Act 2005
21	A person in the person's capacity as an authorised assessor under Division 5 of Part 3.3 of the Children, Youth and Families Act 2005	The Secretary within the meaning of section 3(1) of the Children, Youth and Families Act 2005	Minister administering Division 5 of Part 3.3 of the Children, Youth and Families Act 2005

Ombudsman Act 1973
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Schedule 1—Specified entities

	<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Item</i>	<i>Specified entity</i>	<i>Principal officer</i>	<i>Responsible Minister</i>
22	A person in the person's capacity as an authorised investigator under Division 4 of Part 3.4 of the Children, Youth and Families Act 2005	The Secretary within the meaning of section 3(1) of the Children, Youth and Families Act 2005	Minister administering Division 4 of Part 3.4 of the Children, Youth and Families Act 2005
23	A contractor within the meaning of section 3(1) of the Corrections Act 1986 in its capacity as a provider of services under that Act	The holder of the office specified in the agreement under section 8B(1), 9(1) or 9AA of the Corrections Act 1986 for the purposes of the application of this Act to the contractor	Minister administering Part 2A of the Corrections Act 1986
24	A sub-contractor within the meaning of section 3(1) of the Corrections Act 1986 in its capacity as a manager of a prison or police gaol under a sub-contract agreement	The holder of the office specified in the sub-contract agreement for the purposes of the application of this Act to the sub-contractor	Minister administering Part 2A of the Corrections Act 1986
25	A contractor within the meaning of section 2(1) of the Court Security Act 1980 in its capacity as a provider of court security services under that Act	The holder of the office specified in the agreement under section 2C of the Court Security Act 1980 for the purposes of the application of this Act to the contractor	Minister administering section 2C of the Court Security Act 1980

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Schedule 1—Specified entities

	<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Item</i>	<i>Specified entity</i>	<i>Principal officer</i>	<i>Responsible Minister</i>
26	A person appointed as an authorised officer under section 71A(1) of the Domestic Animals Act 1994	There is no principal officer	Minister administering the Domestic Animals Act 1994
27	A person appointed as an authorised officer under section 72A(1) of the Domestic Animals Act 1994	The Mayor of the relevant Council	Minister administering the Domestic Animals Act 1994
28	A contractor or sub-contractor within the meaning of section 69A of the Health Services Act 1988 in its capacity as a provider of health services to public hospital patients at the hospital in accordance with an agreement under section 69B(1) of that Act or a sub-contract agreement	The holder of the office specified in the agreement under section 69B(1) of the Health Services Act 1988 or the sub-contract agreement for the purposes of the application of this Act to the contractor or sub-contractor	Minister administering Part 3A of the Health Services Act 1988
29	A contractor within the meaning of section 124A of the Magistrates' Court Act 1989 in its capacity as a provider of services under an agreement under section 124B(1) of that Act	The holder of the office specified in the agreement under section 124B(1) of the Magistrates' Court Act 1989 for the purposes of the application of this Act to the contractor	Minister administering Part 6A of the Magistrates' Court Act 1989

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	<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Item</i>	<i>Specified entity</i>	<i>Principal officer</i>	<i>Responsible Minister</i>
30	A sub-contractor within the meaning of section 124A of the Magistrates' Court Act 1989 in its capacity as a provider of services under a sub-contract agreement under that Act	The holder of the office specified in the sub-contract agreement for the purposes of the application of this Act to the contractor	Minister administering Part 6A of the Magistrates' Court Act 1989
31	An approved inspection service within the meaning of section 3(1) of the Plant Biosecurity Act 2010 in its capacity as a provider of services under an agreement under section 66 of that Act	The holder of the office specified in the agreement under section 66 of the Plant Biosecurity Act 2010 for the purposes of the application of this Act to the approved inspection service	Minister administering Division 2 of Part 7 of the Plant Biosecurity Act 2010
32	An officer of the Royal Society for the Prevention of Cruelty to Animals who is approved as a general inspector under section 18(1)(b)(ii) of the Prevention of Cruelty to Animals Act 1986	The Chief Executive Officer of the Royal Society for the Prevention of Cruelty to Animals	Minister administering the Prevention of Cruelty to Animals Act 1986

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Schedule 1—Specified entities

	<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Item</i>	<i>Specified entity</i>	<i>Principal officer</i>	<i>Responsible Minister</i>
33	A person in the person's capacity as an authorised officer within the meaning of section 3(1) of the Public Health and Wellbeing Act 2008	<p>For a person appointed by a Council under section 29 of the Public Health and Wellbeing Act 2008, the Chief Executive Officer of the Council</p> <p>For a person appointed under section 30 of the Public Health and Wellbeing Act 2008, the Secretary within the meaning of section 3(1) of that Act</p> <p>For a person appointed by a Council under section 224(1) of the Local Government Act 1989, the Chief Executive Officer of the Council</p>	Minister administering Part 9 of the Public Health and Wellbeing Act 2008
33A	A person in the person's capacity as an authorised officer within the meaning of the Commercial Passenger Vehicle Industry Act 2017	A Commissioner within the meaning of section 115I of the Transport Integration Act 2010	Minister administering Division 2 of Part 7 of the Commercial Passenger Vehicle Industry Act 2017

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Schedule 1—Specified entities

	<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Item</i>	<i>Specified entity</i>	<i>Principal officer</i>	<i>Responsible Minister</i>
34	A person in the person's capacity as an authorised officer within the meaning of section 208 of the Transport (Compliance and Miscellaneous) Act 1983	For a person appointed under section 221A of the Transport (Compliance and Miscellaneous) Act 1983 , the Secretary within the meaning of section 2(1) of that Act For a person appointed under section 221AB of the Transport (Compliance and Miscellaneous) Act 1983 , the senior executive officer of the person or body by whom the person is employed or engaged	Minister administering Division 4AA of Part VII of the Transport (Compliance and Miscellaneous) Act 1983

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Schedule 1—Specified entities

	<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Item</i>	<i>Specified entity</i>	<i>Principal officer</i>	<i>Responsible Minister</i>
35	A person in the person's capacity as a transport safety officer within the meaning of section 2(1) of the Transport (Compliance and Miscellaneous) Act 1983 (other than a person employed by a public statutory body)	For a person appointed under section 228T of the Transport (Compliance and Miscellaneous) Act 1983 who is employed by or in an authority, the principal officer of the authority For any other person, the senior executive officer (by whatever title he or she is known) of the person's employer	Minister administering Division 4B of Part VII of the Transport (Compliance and Miscellaneous) Act 1983
36	The Victorian Auditor-General's Office	The Auditor-General	Minister administering the Audit Act 1994
37	A prescribed person or body	The person prescribed as the principal officer of the prescribed person or body	The Minister prescribed as the responsible Minister for the prescribed person or body
38	Victorian Disability Worker Commission	Victorian Disability Worker Commissioner	Minister administering the Disability Service Safeguards Act 2018

Schedule 2—Exempt persons and bodies

Section 2(1)

- 1 Victoria Police and members of Victoria Police personnel
- 2 The Office of the Governor, the Official Secretary within the meaning of the **Public Administration Act 2004** and employees in the Office of the Governor
- 3 The IBAC and IBAC Officers
- 4 The Victorian Inspectorate and Victorian Inspectorate Officers
- 5 A Public Interest Monitor
- 6 The Chief Examiner and an Examiner appointed under Part 3 of the **Major Crime (Investigative Powers) Act 2004**
- 7 A Victorian court or VCAT and any of the following—
 - (a) judicial officers and non-judicial members of VCAT within the meaning of the **Judicial Commission of Victoria Act 2016**;
 - (b) any judicial employee employed under Division 3 of Part 6 of the **Public Administration Act 2004**;
 - (c) any other member of the staff of a registry or office of a court, to the extent that their functions relate to a judicial or quasi-judicial function of the court
- 7A The Judicial Commission or an investigating panel under the **Constitution Act 1975**
- 8 A board, tribunal (other than VCAT), commission or other body presided over by a judge, magistrate or Australian lawyer presiding as such by virtue of a statutory requirement and appointment
- 9 A Royal Commission, whether established under the **Inquiries Act 2014** or under the prerogative of the Crown, and Royal Commission officers within the meaning of that Act

Sch. 2
inserted by
No. 82/2012
s. 251,
amended by
Nos 85/2012
s. 173, 5/2013
s. 63(2),
63/2013 s. 94,
1/2014 s. 71,
37/2014
s. 10(Sch.
item 119.3),
67/2014
s. 147(Sch. 2
item 27.2),
17/2014
s. 160(Sch. 2
item 66.2),
16/2016
s. 203(1),
30/2016
s. 70(7)(b),
27/2017
s. 59, 2/2019
s. 79(Sch. 1
Pt C item 39).

- 10 A Board of Inquiry established under the **Inquiries Act 2014** and Board of Inquiry officers within the meaning of that Act
- 10A A Formal Review established under the **Inquiries Act 2014** and Formal Review officers within the meaning of that Act
- 11 A person acting as legal adviser to the Crown or an authority or a public interest disclosure entity, or as counsel for the Crown or an authority or a public interest disclosure entity in any proceedings, including Crown Prosecutors and Associate Crown Prosecutors
- 12 The Solicitor-General appointed under the **Attorney-General and Solicitor-General Act 1972**
- 13 The Director of Public Prosecutions
- 14 A person in the capacity of trustee under the **Trustee Act 1958** (but not including State Trustees)
- 15 The Victorian Electoral Commission
- 16 The Auditor-General
- 17 The Electoral Boundaries Commission
- 18 A Department of the Parliament
- 19 The Parliamentary Budget Officer

Schedule 3—Persons and bodies to whom or which the Ombudsman may refer complaints

Section 161

- 1 The Auditor-General
- 2 The Chief Commissioner of Police
- 2A The Commission for Children and Young People
- 3 The Commissioner for Environmental Sustainability
- 4 The Information Commissioner, in the Information
Commissioner's capacity under the **Privacy and Data
Protection Act 2014**
- 5 The Director of Public Prosecutions
- 6 The Electoral Boundaries Commission
- 7 The Inspector-General for Emergency Management
- 8 The Environment Protection Authority
- 9 The Health Complaints Commissioner
- 10 The IBAC
- 10AA The Judicial Commission
- 10A The Mental Health Complaints Commissioner
- * * * *
- 12 The Racing Integrity Commissioner
- 13 The Road Safety Camera Commissioner
- 14 The Commercial Passenger Vehicle Commission
- 15 The Victorian Electoral Commission
- 16 The Victorian Equal Opportunity and Human Rights
Commission
- 17 The Victorian Inspectorate
- 18 The Victorian WorkCover Authority

Sch. 3
inserted by
No. 82/2012
s. 251,
amended by
Nos 73/2013
s. 97, 26/2014
s. 455(Sch.
item 21.2),
60/2014
s. 140(Sch. 3
item 33.3),
67/2014
s. 147(Sch. 2
item 27.3),
16/2016
s. 203(2),
22/2016 s. 239,
4/2017 s. 16,
20/2017
s. 134(Sch. 1
item 13.6),
63/2017
s. 21(Sch. 1
item 6.3),
38/2018
s. 291(2),
2/2019 s. 174,
9/2020
s. 390(Sch. 1
item 75.6).

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Schedule 3—Persons and bodies to whom or which the Ombudsman
may refer complaints

- 19 A coroner
 - 20 A Royal Commission, whether established under the **Inquiries Act 2014** or under the prerogative of the Crown
 - 21 A Board of Inquiry established under the **Inquiries Act 2014**
 - 21A A Formal Review established under the **Inquiries Act 2014**
 - 22 The Chief Municipal Inspector appointed under section 182 of the **Local Government Act 2020**
 - 23 A prescribed person or body
 - 24 The Victorian Disability Worker Commission
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Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

The **Ombudsman Act 1973** was assented to on 17 April 1973 and came into operation on 30 October 1973: Government Gazette 30 October 1973 page 3595.

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

2 Table of Amendments

This publication incorporates amendments made to the **Ombudsman Act 1973** by Acts and subordinate instruments.

Ombudsman (Exemption) Act 1974, No. 8651/1974

Assent Date: 17.12.74
Commencement Date: 17.12.74
Current State: All of Act in operation

Ombudsman (Municipalities) Act 1976, No. 8884/1976

Assent Date: 19.10.76
Commencement Date: 1.1.77: Government Gazette 22.12.76 p. 3739
Current State: All of Act in operation

Statute Law Revision Act 1977, No. 9059/1977

Assent Date: 29.11.77
Commencement Date: 29.11.77; subject to s. 2(2)
Current State: All of Act in operation

Ombudsman (Co-operation) Act 1979, No. 9256/1979

Assent Date: 26.6.79
Commencement Date: 26.6.79
Current State: All of Act in operation

Police Regulation (Amendment) Act 1985, No. 10250/1985

Assent Date: 10.12.85
Commencement Date: S. 22 never proclaimed, repealed by No. 14/1988 s. 19
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Mental Health Act 1986, No. 59/1986

Assent Date: 3.6.86
Commencement Date: S. 143(2)(Sch. 7) on 1.10.87: Government Gazette 30.9.87 p. 2585
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Deputy Ombudsman (Police Complaints) Act 1988, No. 14/1988

Assent Date: 11.5.88
Commencement Date: 11.5.88: Government Gazette 11.5.88 p. 1150
Current State: All of Act in operation

State Superannuation Act 1988, No. 50/1988

Assent Date: 24.5.88
Commencement Date: S. 93(2) (Sch. 2 item 42) on 1.7.88: Government Gazette 1.6.88 p. 1487
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

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Local Government (Consequential Provisions) Act 1989 No. 12/1989 (as amended by No. 13/1990)

Assent Date: 9.5.89
Commencement Date: S. 4(1)(Sch. 2 items 86.1–86.13) on 1.11.89:
Government Gazette 1.11.89 p. 2798
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Police Regulation (Amendment) Act 1989, No. 15/1989

Assent Date: 16.5.89
Commencement Date: Ss 1–32 on 16.5.89; s. 33 on 23.8.89: Government
Gazette 23.8.89 p. 2146
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Legal Profession Practice (Amendment) Act 1989, No. 35/1989

Assent Date: 6.6.89
Commencement Date: S. 22 on 20.9.89: Government Gazette 20.9.89 p. 2404
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 3(Sch. item 143) on 1.9.90: Government Gazette
25.7.90 p. 2217.
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Ombudsman (Amendment) Act 1989, No. 62/1989

Assent Date: 12.9.89
Commencement Date: 12.12.89: Special Gazette (No. 72) 12.12.89 p. 1
Current State: All of Act in operation

Local Government (Miscellaneous Amendments) Act 1993, No. 125/1993

Assent Date: 7.12.93
Commencement Date: S. 20(9) on 7.12.93: s. 2 (4)
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Miscellaneous Acts (Omnibus Amendments) Act 1995, No. 100/1995

Assent Date: 5.12.95
Commencement Date: S. 32(Sch. 2 item 4) on 5.12.95: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

**Public Sector Management and Parliamentary Officers (Amendment) Act 1996,
No. 24/1996**

Assent Date: 2.7.96
Commencement Date: S. 33(1) on 16.11.93: s. 2(2); rest of Act on 2.7.96:
s. 2(1)
Current State: All of Act in operation

Ombudsman Act 1973
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Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 item 62) on 1.1.97 s. 2(3)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Audit (Amendment) Act 1997, No. 93/1997

Assent Date: 16.12.97
Commencement Date: S. 26(2) on 16.12.97: s. 2(1); s. 26(1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

State Trustees (Amendment) Act 1998, No. 15/1998

Assent Date: 28.4.98
Commencement Date: S. 10 on 1.7.98: Government Gazette 18.6.98 p. 1511
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Melbourne City Link (Amendment) Act 1998, No. 102/1998

Assent Date: 1.12.98
Commencement Date: Ss 34–37 on 1.12.98: s. 2(1)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Police Regulation (Amendment) Act 1999, No. 61/1999

Assent Date: 21.12.99
Commencement Date: S. 20(Sch. item 2) on 2.4.00: Government Gazette 30.3.00 p. 569
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 92) on 22.11.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Information Privacy Act 2000, No. 98/2000

Assent Date: 12.12.00
Commencement Date: Ss 79, 80 on 1.9.01: s. 2(2)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Health Records Act 2001, No. 2/2001

Assent Date: 10.4.01
Commencement Date: Ss 113, 114 on 1.7.02: s. 2(2)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Ombudsman Act 1973
No. 8414 of 1973
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Whistleblowers Protection Act 2001, No. 36/2001

Assent Date: 19.6.01
Commencement Date: S. 114 on 19.6.01: s. 2(1); ss 113, 115 on 1.1.02:
s. 2(2)
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Electoral Act 2002, No. 23/2002

Assent Date: 12.6.02
Commencement Date: S. 201 on 1.9.02: Government Gazette 29.8.02 p. 2333
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Animals Legislation (Animal Welfare) Act 2003, No. 103/2003

Assent Date: 9.12.03
Commencement Date: S. 30(1)(3) on 10.12.03: s. 2(1); s. 30(2)(4) on 1.12.05:
s. 2(3)
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Ombudsman Legislation (Police Ombudsman) Act 2004, No. 32/2004

Assent Date: 1.6.04
Commencement Date: Ss 3–8 on 2.6.04: s. 2
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Sex Offenders Registration Act 2004, No. 56/2004

Assent Date: 21.9.04
Commencement Date: Ss 76–78 on 1.10.04: s. 2
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Major Crime Legislation (Office of Police Integrity) Act 2004, No. 63/2004

Assent Date: 12.10.04
Commencement Date: S. 7 on 16.11.04: Special Gazette (No. 237) 16.11.04
p. 1
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Major Crime (Investigative Powers) Act 2004, No. 79/2004

Assent Date: 16.11.04
Commencement Date: Ss 71–73 on 16.11.04: Special Gazette (No. 237)
16.11.04 p. 2
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 144) on 5.4.05: Government
Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Ombudsman Act 1973
No. 8414 of 1973
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Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 73) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Disability Act 2006, No. 23/2006

Assent Date: 16.5.06
Commencement Date: S. 246 on 1.7.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Statute Law (Further Revision) Act 2006, No. 29/2006

Assent Date: 6.6.06
Commencement Date: S. 3(Sch. 1 item 25) on 7.6.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Charter of Human Rights and Responsibilities Act 2006, No. 43/2006

Assent Date: 25.7.06
Commencement Date: S. 47(Sch. item 2) on 1.1.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006

Assent Date: 10.10.06
Commencement Date: S. 20 on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Animals Legislation Amendment (Animal Care) Act 2007, No. 65/2007

Assent Date: 11.12.07
Commencement Date: Ss 111, 112 on 1.9.09: Special Gazette (No. 298) 1.9.09 p. 1
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Police Integrity Act 2008, No. 34/2008

Assent Date: 1.7.08
Commencement Date: S. 143(Sch. 2 item 9) on 5.12.08: Special Gazette (No. 340) 4.12.08 p. 1
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Public Administration Amendment Act 2009, No. 27/2009

Assent Date: 17.6.09
Commencement Date: Ss 16, 17 on 18.6.09: s. 2(1)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Ombudsman Act 1973
No. 8414 of 1973
Endnotes

**Statute Law Amendment (Evidence Consequential Provisions) Act 2009,
No. 69/2009**

Assent Date: 24.11.09
Commencement Date: S. 54(Sch. Pt 2 item 37) on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Statute Law Revision Act 2011, No. 29/2011

Assent Date: 21.6.11
Commencement Date: S. 3(Sch. 1 item 64) on 22.6.11: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Independent Broad-based Anti-corruption Commission Act 2011, No. 66/2011

Assent Date: 29.11.11
Commencement Date: S. 42 on 1.7.12: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Victorian Inspectorate Act 2011, No. 70/2011

Assent Date: 29.11.11
Commencement Date: S. 46 on 1.7.12: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Public Interest Monitor Act 2011, No. 72/2011

Assent Date: 6.12.11
Commencement Date: S. 52 on 18.9.12: Special Gazette (No. 316) 18.9.12
p. 1
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

**Freedom of Information Amendment (Freedom of Information Commissioner)
Act 2012, No. 6/2012**

Assent Date: 6.3.12
Commencement Date: Ss 43–47 on 1.12.12: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Statute Law Revision Act 2012, No. 43/2012

Assent Date: 27.6.12
Commencement Date: S. 3(Sch. item 36) on 28.6.12: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Evidence Amendment (Journalist Privilege) Act 2012, No. 52/2012

Assent Date: 18.9.12
Commencement Date: S. 21 on 1.1.13: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Ombudsman Act 1973
No. 8414 of 1973
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Integrity and Accountability Legislation Amendment Act 2012, No. 82/2012

Assent Date: 18.12.12
Commencement Date: Ss 224–251 on 10.2.13: Special Gazette (No. 32)
6.2.13 p. 2; s. 313 on 11.2.13: s. 2(5)
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Protected Disclosure Act 2012, No. 85/2012

Assent Date: 18.12.12
Commencement Date: Ss 144–173 on 10.2.13: Special Gazette (No. 32)
6.2.13 p. 2
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Courts Legislation Amendment (Reserve Judicial Officers) Act 2013, No. 5/2013

Assent Date: 26.2.13
Commencement Date: S. 63 on 17.4.13: Special Gazette (No. 141) 16.4.13
p. 1
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Courts Legislation Amendment (Judicial Officers) Act 2013, No. 63/2013

Assent Date: 6.11.13
Commencement Date: Ss 93, 94 on 1.2.14: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Workplace Injury Rehabilitation and Compensation Act 2013, No. 67/2013

Assent Date: 12.11.13
Commencement Date: S. 649(Sch. 9 item 26) on 1.7.14: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Emergency Management Act 2013, No. 73/2013

Assent Date: 3.12.13
Commencement Date: S. 97 on 1.7.14: Special Gazette (No. 148) 13.5.14 p. 1
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Court Services Victoria Act 2014, No. 1/2014

Assent Date: 11.2.14
Commencement Date: Ss 69–71 on 1.7.14: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Legal Profession Uniform Law Application Act 2014, No. 17/2014

Assent Date: 25.3.14
Commencement Date: S. 160(Sch. 2 item 66) on 1.7.15: Special Gazette
(No. 151) 16.6.15 p. 1
Current State: This information relates only to the provision/s
amending the **Ombudsman Act 1973**

Ombudsman Act 1973
No. 8414 of 1973
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Mental Health Act 2014, No. 26/2014

Assent Date: 8.4.14
Commencement Date: S. 455(Sch. item 21) on 1.7.14: s. 2(1)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Transport Legislation Amendment (Further Taxi Reform and Other Matters) Act 2014, No. 35/2014

Assent Date: 13.5.14
Commencement Date: S. 62 on 30.6.14: Special Gazette (No. 188) 17.6.14 p. 1
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014

Assent Date: 3.6.14
Commencement Date: S. 10(Sch. item 119) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Privacy and Data Protection Act 2014, No. 60/2014

Assent Date: 2.9.14
Commencement Date: S. 140(Sch. 3 item 33) on 17.9.14: Special Gazette (No. 317) 16.9.14 p. 1
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Inquiries Act 2014, No. 67/2014

Assent Date: 23.9.14
Commencement Date: S. 147(Sch. 2 item 27) on 15.10.14: Special Gazette (No. 364) 14.10.14 p. 2
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Judicial Commission of Victoria Act 2016, No. 16/2016

Assent Date: 19.4.16
Commencement Date: Ss 201–203 on 1.7.17: s. 2(2)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Health Complaints Act 2016, No. 22/2016

Assent Date: 3.5.16
Commencement Date: S. 239 on 1.2.17: s. 2(2)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Ombudsman Act 1973
No. 8414 of 1973
Endnotes

Integrity and Accountability Legislation Amendment (A Stronger System) Act 2016, No. 30/2016

Assent Date: 31.5.16
Commencement Date: Ss 55–62, 63(2), 64–70 on 1.7.16: Special Gazette (No. 194) 21.6.16 p. 1; s. 63(1) on 1.12.16: Special Gazette (No. 194) 21.6.16 p. 1
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Children Legislation Amendment (Reportable Conduct) Act 2017, No. 4/2017

Assent Date: 28.2.17
Commencement Date: S. 16 on 1.7.17: Special Gazette (No. 216) 27.6.17 p. 1
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Freedom of Information Amendment (Office of the Victorian Information Commissioner) Act 2017, No. 20/2017

Assent Date: 16.5.17
Commencement Date: S. 134(Sch. 1 item 13) on 1.9.17: s. 2(3)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Parliamentary Budget Officer Act 2017, No. 27/2017

Assent Date: 27.6.17
Commencement Date: S. 59 on 1.7.17: s. 2(2)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Commercial Passenger Vehicle Industry Amendment (Further Reforms) Act 2017, No. 63/2017

Assent Date: 19.12.17
Commencement Date: S. 21(Sch. 1 item 6) on 2.7.18: Special Gazette (No. 248) 29.5.18 p. 1
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Disability Service Safeguards Act 2018, No. 38/2018

Assent Date: 28.8.18
Commencement Date: S. 291 on 20.8.19: Special Gazette (No. 324) 20.8.19 p. 1
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019, No. 2/2019

Assent Date: 5.3.19
Commencement Date: S. 194 on 6.3.19: s. 2(1); ss 73–78, 79(Sch. 1 Pt C) on 31.12.19: Special Gazette (No. 537) 17.12.19 p. 1; ss 147–174 on 1.1.20: s. 2(3); ss 175–178 on 1.7.20: s. 2(4)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Ombudsman Act 1973
No. 8414 of 1973
Endnotes

Disability (National Disability Insurance Scheme Transition) Amendment Act 2019, No. 19/2019

Assent Date: 25.6.19
Commencement Date: S. 267 on 1.7.20: s. 2(4)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

Local Government Act 2020, No. 9/2020²

Assent Date: 24.3.20
Commencement Date: S. 390(Sch. 1 items 75.1, 75.5) on 6.4.20: Special Gazette (No. 150) 24.3.20 p. 1; s. 390(Sch. 1 items 75.2–75.4, 75.6) on 24.10.20: s. 2(3)(f)
Current State: This information relates only to the provision/s amending the **Ombudsman Act 1973**

3 Amendments Not in Operation

This version does not contain amendments that are not yet in operation.

4 Explanatory details

¹ S. 13 amended by Nos 8651 s. 2, 8884 s. 3, 9059 s. 2(1)(Sch. item 33), 14/1988 s. 11, 12/1989 s. 4(1)(Sch. 2 items 86.5–86.7) (as amended by No. 13/1990 s. 38(2)(1)), 15/1989 s. 25, 62/1989 s. 8, 35/1996 s. 453(Sch. 1 item 62.1), 93/1997 s. 26, 15/1998 s. 10(2), 102/1998 s. 35, 23/2002 s. 201, 103/2003 s. 30(1)(2), 56/2004 s. 76(2), 79/2004 s. 71(a), 18/2005 s. 18(Sch. 1 item 73.1), 43/2006 s. 47(Sch. item 2), 65/2007 s. 111, 27/2009 s. 16, 29/2011 s. 3(Sch. 1 item 64), 66/2011 s. 42, 70/2011 s. 46, 72/2011 s. 52, 6/2012 s. 43, 43/2012 s. 3(Sch. item 36), substituted by No. 82/2012 s. 227, amended by No. 30/2016 s. 70(2)(n), substituted by No. 2/2019 s. 149.

² Table of Amendments (**Local Government Act 2020**): The amendment proposed by section 390(Schedule 1 item 75.4) of the **Local Government Act 2020**, No. 9/2020 is not included in this publication because the words "municipal monitor appointed under section 223CA of the **Local Government Act 1989**" do not appear in section 26FB(3)(g).

Section 390(Schedule 1 item 75.4) reads as follows:

Schedule 1—Consequential amendments to specified Acts

75.4 In section 26FB(3)(g), for "municipal monitor appointed under section 223CA of the **Local Government Act 1989**" substitute "Municipal Monitor appointed under 182 of the **Local Government Act 2020**".