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Â® OMBUDSMAN A4z

REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA
Tel. (012) 322 2916 Privaatsak Â¢ Private Bag X677
Fax (012) 322 5093 Pretoria 0001
: 228 Visagie Str. 228
Verwysing :
Reference Pretoria
6/mb/tech2

MEMORANDUM BY THE OMBUDSMAN OF THE REPUBLIC OF SOUTH AFRICA ON THE FINAL NINTH PROGRESS REPORT OF THE TECHNICAL COMMITTEE ON FUNDAMENTAL RIGHTS DURING THE TRANSITION

In terms of the Ninth Progress Report the formulation of Chapter 8 of the Draft Interim Constitution dealing with the Ombudsman and the Human Rights Commission has now been handed over to the Technical Committee on Constitutional Matters for finalisation.

To assist the latter committee I have prepared this memorandum containing comments and suggestions regarding the Ninth Progress Report. This must be read with my previous memorandum dealing

---with the draft of the Ninth Progress Report, which is annexed hereto.

1 The name of the office:
The International Bar Association, in August 1974, at a meeting in

Vancouver, adopted a resolution regarding the office. It was subsequently amended at a meeting in Berlin in August 1980.

The following is the amended resolution:

"Be it resolved that the International Bar Association recom-

mends:

1. That consideration be given to the establishment of the office of OMBUDSMAN on the national, state, province levels and local government in order to protect persons against the violation of their rights by government officials or agencies.

2. That the office of OMBUDSMAN so established should be in

accordance with the following definition:
An office provided for by the constitution or by action of the legislature or parliament and headed by an independent, high-level public official who is responsible to the legisla-ture or parliament, who receives complaints from aggrieved persons against government agÃ©ncies, officials and employees, or who acts on his own motion, and who has the power to investigate, recommend corrective action, and issue re-

ports."

This defines the â\200\231classicalâ\200\231 ombudsman concept. The Ombudsman concept and ’â\200\230name has spread over the world. The office has become a powerful tool to protect the rights of the citizen on the one hand and on the other to absolve government agencies and officials from unjustified complaints.

Throughout the countries of the world where the office was insti-tuted the name Ombudsman is the predominant appellation of the office. Other names such as Parliamentary Commissioner, Citizens

Advocate, Procurator and Procurator General have also been used.

In 1981 already the office of the Advocate-General established in terms of Act 118 of 1979 was recognized by the International Ombudsman Institute as falling within "other complaint handling systems’.

By the amendment of the Advocate-General Act 118 of 1979 by Act 104 of 1991 the classical ombudsman function was provided for and the name Advocate-General changed to the world wide accepted and understood by all, name, Ombudsman. The office has functioned, become known throughout the Republic and has dealt with grievances from all sections of the population under that name over the past

2% years.

Among all the classical ombudsman offices throughout the world although not all have adopted the name Ombudsman, none, not even our neighbour Namibia have opted for Ombud, which is the name

preferred by the Technical Committee on Fundamental Rights.

May I suggest that the office description OMBUDSMAN has in reality no gender connotation and can be applied irrespective of gender of the office-bearer and should be retained in the interim and permanent constitution. After all we want to return to the world fold on an internationally acceptable basis and in conformity with accepted international concepts.

Otherwise as I indicated in the previous memorandum I would suggest a South African term to be coined to describe the office in either Afrikaans and English. May I venture to suggest then the name used for 11 years 'Advocate-general' or '"Complaints Commissioner'". These, however, must clearly be understood to be poor second choices after the existing and internationally known and accepted Ombudsman.

2 The function of the office:

The provisions of the Ombudsman act 118 of 1979 have been evolved over 14 years and effectively applied in practice to cover all aspects of the functioning of the office: the making and receiving of complaints, reporting, the making of recommendations and the manner and form of investigations including, discussions and negotiations.

"The phrase â\200\231being prejudiced in an improper mannerâ\200\231 is all-encompassing and covers all possible present and future rights that may be affected by the acts or omissions of any government agency or official. It is wide enough to include transgressions of a Bill of Rights.

Is it necessary to rewrite the act in different words with the

same content or to re-invent the wheel?

It must be borne in mind that the more prescriptive an act the less easily can matters not prescribed be dealt with. It is far better to have very wide powers which are then evolved as the need

arises in practice over the years.

May I suggest that the provisions of the Ombudsman Act 118 of 1979 be adhered to and only be departed from if it is a real and meaningful and above all practical and functional improvement about

which this office has been consulted.

3.0 Comment on the wording of the clauses as suggested in the final Ninth Progress Report.

3.1.0 Appointment

Sub-clauses 1(1)(2) and (3) It is acceptable that the Ombudsman be appointed by the National Assembly. That is the only body the office is responsible to, but it is preferable if the office-bearer is to be legally trained, that the appointment be made in the same manner as a judge with the same security of tenure.

3.1:1 The Ombudsman should be a person of such standing to be acceptable to all. It is highly inadvisable that, if an appointment be made by the National Assembly, there be a vote on the appointment. If the National Assembly is to make the appointment it should be made by consensus, otherwise the office becomes politicised.

The draft on which I previously commented referred to election by majority vote. This final draft mentions only elect. This is a

change without substance. The clause should be explicit about

consensus.

3.2 Sub-clauses 1(4) Obviously the Ombudsman must be .a South African citizen of acknowledged integrity, impartiality and independence. Equally, if not primarily, the office-bearer must be legally qualified. Ten years practical involvement with the law is a necessity.

This was the qualification set in the draft previously commented upon. This is the qualification interms of act 118 of 1979. Why this change?

In fact the salary remuneration and other conditions of service of the office-bearer in terms of clause 4(1) shall not be less

favourable than that of a judge of the Supreme Court.

3.3 Sub-clause 1(5) Security of tenure is of utmost importance. Clause 96(1) and (2) of the Twelfth Report of the Technical Committee on constitutional Issues deals with the security of tenure of Judges and the continuation of existing legislation. This should also apply to the Ombudsman and the Ombudsman Act 118 of 1979.

4.0 Powers and duties: Clause 2

The principle has already been commented upon. Section 4 of act 118 of 1979 and the concept of improper prejudice is all-encompassing and wide enough to cover all that is envisaged in sub-clause 2(a).

4.1 In Sub-clause 2(a)(iii) discourteous conduct or undue delay are vague terms and should only fall to be investigated if improper prejudice results. Once again improper prejudice as concept encompasses all that is envisaged here, and more, and is not

definitive.

4.2 All that is proposed in clause 2(b) is covered by Sections 5, 6 and 7 of the Ombudsman Act 118 of 1979.

.24 Clause 2(b)(iii) will involve the Ombudsman in litigation. How is this to be done, who will assume liability for costs? These and many other aspects have not been clearly considered. To have this clause is inadvisable. The principle is beyond reproach but other mechanisms must be created for such litigation and the Ombudsman can merely refer the complainant to that particular structure - perhaps the Human Rights Commission.

4.3 Sub-clause 2(c) is deemed unnecessary and inadvisable. The Ombudsman is neutral and must be so perceived. Advise to Government will tend to place a question mark behind that neutrality.

In any event in the Ombudsman Act 118 of 1979, section 5(1) deal-

- ing with reports to the legislature provides for the making of

recommendations. Such recommendations and the recommendations referred to in section 5(4)(b) of that act cover the making of

such recommendations envisaged in draft clause 2(c).

4.4 Sub-clause 2(2) is covered fully by, and, may I suggest, much more practically an legally sound in sections 6, 7 and 7A of Act 118 of 1979.

4.4.1 Sub-clause 2(2)(a) is in any event legally unsound. A Judge of the Supreme Court has no such powers unless he is presiding in a case and the rules of procedure prescribe some of these powers.

4.5 Sub-clause 2(3) is ill-advised. The duty of the Ombudsman is to report to Parliament. Once he has reported the report becomes a public document. The possibility in this sub-clause that a report may before tabling in Parliament become public knowledge is inadvisable.

â\200\230 Interim recommendations may well be made public before the report is tabled. ’

5.0 Deputies and Assistants

In section 2(13)(a) of Act 118 of 1979 provision is made for assistants to the Ombudsman (Deputies) to have the same qu%lificaâ\200\224 tions and to be appointed in the same manner as the Ombudsman.

In practice this takes place in consultation with the Ombudsman.

This poÃ©ition should be retained and it is of utmost importance that the assistant (Deputy) shall have the same legal qualifications. Such a person acts in the stead of the Ombudsman

when necessary.

5.1 Once again the appointment of the assistant (deputy) and other personnel is adequately provided for in sections 2(13) and 3 of the Ombudsman Act 118 of 1979 and should be left unchanged.

6. Finances

What is not provided for in the Ninth Progress Report is the source of funds of the Ombudsman. A clause similar to Section 3(2) of Act 118 of 1979 should be inserted. 1In practice the Ombudsman is the accounting officer for the office assuring proper control of the finances of the office.

7. Codditions of Service Clause 4

7.1 If as provided in Clause 4(1) the conditions of service of the Ombudsman shall not be less favourable than that of a judge of the Supreme Court, the office-bearer should have the same quali- fications and be appointed and removed from office in the same

manner as a Judge.

7.2 Sub-clause 4(2) An official of such standing is not disci-

plined. He may be removed from office. Removal from office should be in the same manner as a Judge of the Supreme Court. It

is in any event adequately and in detail provided for in section 2(5), (6), (7), (8) and (9) of Act 118 of 1979.

7.3 Sub-clause 4(3) The assistant or deputy Ombudsman as is the position with the Ombudsman is not a member of the public service and this must be clearly set out. Once again sections 2(13) and 3 of the Ombudsman Act 118 of 1979 correctly reflect and adequately provide for the appointment of the assistant (deputy) and personnel and should be followed.

In practice other legally qualified persons are also appointed to the personnel of the office.

7.4 Sub-clause 3(b) The Ombudsman is in full control and in charge of the office and personnel. The term discipline is inappropriate, but in any event nobody can take action or transfer a member of the personnel of the Ombudsman. If the person concerned has been seconded from the public service the provisions of the public service legislation will in any event still apply to such a member of the personnel.

8.0 Regional appointments

It is important that the Ombudsman has jurisdiction over all government agencies and officials throughout the country. The reason is that Ombudsmanship very much reflects the philosophy and style of a particular incumbent during that officialâ\200\231s tenure of office. It is therefore important that the same philosophy and approach should be reflected and apply in all Ombudsman functions and actions throughout the country. For one - there must be a uniform human rights culture and approach. On the other hand SPRâ\200\231s are a reality and also their exclusive jurisdiction in

respect of certain matters.

Serious thought should be given to bring the regibhal Ombudsman at least under consultative control of the National Ombudsman.

Consultation must be obligatory to endeavour to achieve uniform-

ity. Perhaps a regional Ombudsman should be appointed and perform functions under the control of the National Ombudsman.

One does not want to diminish the exclusive powers of the SPRâ\200\231s but this aspect should be very clearly and carefully worded. It must be borne in mind that the Human Rights Commission and .the Appellate Division of the Supreme Court will make rulings binding on the whole Country. Should the Ombudsman not function in the same manner? I would welcome a further discussion on this

aspect.

Complaints Clause 6

In the Ombudsman Act 118 of 1979 the lodging of complaints is dealt with in section 4(2). An affidavit or affirmed declaration is specified. Over the past 14 years if affidavits were insisted upon in more than 1% of the complaints it would be a generous estimate.

However, the affidavit requirement is a necessary filtering

mechanism. Some highly irresponsible and defamatory complaints

are made which clearly have no substance. If the complainant is required to put the allegations in an affidavit that is usually the end of the matter.

Illiterate persons are assisted by the Ombudsman and the office will give directions in what manner and with whose assistance the complaint is to be made. It is inadvisable to involve government

agencies. They might even be the object of the complaint.

This matter is best left unprescribed and to the discretion of the Ombudsman. In practice a toll-free telephone line is available which makes the office accessible to all and sundry where ever they may be.

The provision of section 4(2) of Act 118 of 1979 are adequate and should be left unchanged.

I am grateful for the suggested opportunity to consult with members of the Technical Committee on Constitutional Issues. This memorandum will be forwarded to the Chairman of the Committee or handed to the members concerned when the envisaged consultation

takes place.

---For ease of reference and your convenience I annex a copy of the Ombudsman Act 118 of 1979. Obviously the act needs to be amended. In the main the amendments will not be of substance but merely a matter of form.

As stated in the memorandum some aspects might need further discussion and consultation. It is important that this takes place when the need is felt since clarity of thought on formulation of the functions and powers of the office is of paramount importance in a new constitutional dispensation. I am available for further

discussion whenever necessary.

Jo) Lt

MR JUSTICE P J NAN DER WALT
OMBUDSMAN

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WETTE VAN DIE REPUBLIEK VAN SUID-AFRIKA â\200\224 STAATSREG

WET OP DIE OMBUDSMAN
NO. 118 VAN 1979

[GOEDGEKEUR OP 2 JULIE 1979] [DATUM VAN INVOERING: 18 JULIE 1979]
(Afrikaanse teks deur die Staatspresident geteken)

soos gewysig deur

Wysigingswet op die Advokaat-generaal, No. 55 van 1983
Wysigingswet op die Advokaat-generaal, No. 104 van 1991

WET
Om die amp van Ombudsman in te stel; voorsiening te maak vir die aanstelling van iemand in daardie amp; die pligte en bevoegdhede van die Ombudsman te bepaal; en voor-

siening te maak vir aangeleenthede wat daarmee in verband staan.
[Lang titel vervang deur a. 13 van Wet No. 104 van 1991.]

1. Woordomskrywing.â\200\224Tensy uit die samehang anders blyk, beteken in hierdie Wetâ\200\224
,hierdie Wetâ\200\235 ook die regulasies;

,,OmbudsmanÂ® die persooa wat ingevelge artikel 2 in die amp van Ombudsman aan-gestel is;

,,ondersoekâ\200\235, wanneer dit as ’n naamwoord gebruik word, ’n ondersoek wat kragtens die bepalings van artikel 5 deur die Ombudsman gedoen word;

,, publieke geldâ\200\235â\200\224
(a) Staatsgeld soos omskryf in artikel 1 (1) van die Skatkiswet, 1975 (Wet No.

66 van 1975);

(b) inkomste watâ\200\224
(i) die Spoorweg- en Hawefonds, die Poskantoorfonds en ’n Rekening vir Provinsiale Dienste toeval;

(i) â\200\231n instelling of liggaam beoog in artikel 84 (1) (f) van die Wet op Pro-vinsiale Bestuur, 1961 (Wet No. 32 van 1961), toeval;

(iii) ’n statutÃ©re liggaam soos omskryf in artikel 1 (1) van die Skatkiswet, 1975, maar, behoudens artikel 4A, nie ook ’n Regering, liggaam of in-stelling bedoel in artikel 35 van die Grondwet van die Selfregerende Gebiede, 1971 (Wet No. 21 van 1971), nie, toeval; ;

(iv) â\200\231n liggaam, vereniging of organisasie wat ingevolge artikel 5 (3) van die Wet op die Ouditeur-generaal, 1989 (Wet No. 52 van 1989), geag word ’n statutÃ©re liggaam soos omskryf in artikel 1 van daardic Wet te wees, toeval;

(Â¢) alle ander geld hoegenaamd wat vir of op rekening van ’n fonds, instelling, liggaam, vereniging of organisasie in enige subparagraaf van paragraaf Â®)

bedoel, ontvang is of gehou word; e

(Omskrywing van ,.publieke geld" ingevoeg deur a. 1 (a) van Wet No. 55 van 1983 en vervang deur a. | van Wet No. 104 van 1931.]

# OMBUDSMAN ACT
NO. 118 OF 1979

[ASSENTED TO 2 JULY, 1979] [DATE OF COMMENCEMENT: 18 JuLyY, 1979]
(Afrikaans text signed by the State President)

as amended by

Advocate-General Amendment Act, No. 55 of 1983
Advocate-General Amendment Act, No. 104 of 1991

ACT
To establish the office of Ombudsman; to provide for the appointment of a person to that office; to determine the duties and powers of the Ombudsman; and to provide for matter s

connected therewith.
[Long title substituted by s. 13 of Act No. 104 of 1991.]

1. Definitions.â\200\224In this Act, unless the context otherwise indicatesâ\200\224

â\200\234inquiryâ\200\235 means an inquiry conducted under the provisions of section 5 by t he
Ombudsman;

â\200\234Ombudsmanâ\200\235 means the person appointed in terms of section 2 to the office of
Ombudsman;

â\200\234prescribeâ\200\231 means prescribe by regulation;

â\200\234public moneysâ\200\235 meansâ\200\224
(a) State moneys as defined in section | (1) of the Exchequer Act, 1975 (Act No.

66 of 1975);

(b) revenue accruing toâ\200\224
(i) the Railway and Harbour Fund, the Post Office Fund and an Account for Provincial Services;

(ii) any institution or body contemplated in section 84 (1) (f) of the Pro-vincial Government Act, 1961 (Act No. 32 of 1961);

(iii) any statutory body as defined in section 1 (1) of the Exchequer Act, 1975, but, subject to section 4A, excluding any Government, body or insti-tution referred to in section 35 of the Self-governing Territories Con-stitution Act, 1971 (Act No. 21 of 1971);

(iv) any body, association or organization deemed in terms of section 5 (3) of the Auditor-General Act, 1989 (Act No. 52 of 1989), to be a statutory body as defined in section 1 of that Act;

(Â¢) all other moneys whatever received or held for, or on account of, a fund, institution, body, association or organization referred to in any subparagraph

of paragraph (b);

[Definition of *â\200\234public moneysâ\200\235 inserted by s. 1 (a) of Act No. 55 of 1983 and substituted
by s. I of Act No. 104 of 1991.]

wregulasieâ\200\235 â\200\231n regulasie wat kragtens artikel 10 uitgevaardig is;

pStaatsgeldâ\200\235 ... ...
[Omskrywing van ,,Staatsgeldâ\204¢ geskrap deur a. 1 () van Wet No. 55 van 1983.]

Â»veorskryf* by regulasie voorskryf.

2. Aanstelling en ampsvoorwaardes van Ombudsman.â\200\224(1) Daar is in d1c Republiek ’n Ombudsman.

(2) Die Staatspresident moet, in *n heeltydse of in ’n deeltydse hoedanigheid, iemand in die amp van Ombudsman aanstel wat uit hoofde van sy kwalifikasies geregtig is om ingevolge die bepalings van artikel 3 van die Wet op die Toelating van Advokate, 1964 (Wet No. 74 van 1964), toegelaat en gemagtig te word om as advokaat te praktiseer en ingeskryf te word en wat na verwerwing van sodanige kwalifikasies vir ’n tydperk van minstens 10 jaar of tydperke wat tesaam minstens 10 jaar beloop, by die toepassing van die reg betrokke was.

[Sub-a. (2) vervang deur a. 2 (@) van Wet No. 55 van 1983 en deur a. 2 (a) van Wet No. 104 van 1991.]

(3) Die salaris en ander ampsvoorwaardes (as daar is) van die Ombudsman word van tyd tot tyd deur die Staatspresident bepaal: Met dien verstande dat die salaris aldus bÃ©paal ten opsigte van ’n bepaalde Ombudsman nie gedurende sy ampstermyn verminder mag word nie, behalwe by Parlementswet.

[Sub-a. (3) gewysig deur a. 2 (b) van Wet No. 55 van 1983 en deur a. 2 (b) van Wet No. 104 van 1991.]

(4) Die Ombudsman mag nie sonder die toestemming van die Staatspresident be-

soldigde werk buite sy ampspligte verrig of hom verbind om dit te verrig nie.

(5) Die Ombudsman mag nie in sy amp geskors of daarvan onthef word nie behalwe ooreenkomstig die bepalings van subartikels (6), (7), (8) en (9).

(6) (a) Die Staatspresident kan die Ombudsman in sy amp skors en, behoudens die bepalings van hierdie subartikel, hom daarvan onthefâ\200\224

(i) weens wangedrag; of

(ii) weens ongeskiktheid vir sy ampspligte of weens onvermoÃ© om hulle op â\200\231n bekwame wyse uit te voer.

(b) â\200\231n Skorsing van die Ombudsman en die rede daarvoor moet by boodskap aan die Parlement meegedeel word binne 14 dae na die skorsing, as die Parlement dan in sessie is; of, as die Parlement nie dan in sessie is nie, binne 14 dae na die aanvang van sy eersvolgende sessie. e

[Par. (b) vervang deur a. 2 (Â¢) van Wet No. 104 van 1991.]

. (c) As daar te eniger tyd gedurende 5o ’n sessie van die Parlement â\200\231n versoekskri f
deur die onderskeie Huise om die herstel in sy amp van die Ombudsman wat aldus geskors is, aan die Staatspresident voorgelÃ© word, moet die Ombudsman dienooreenkomstig in sy amp herstel word.

[Par. (Â¢) vervang deur a. 2 (Â¢) van Wet No. 104 van 1991.]

(d) As â\200\231n versoekskrif socs bedoel in paragraaf (Â¢) nie aan die Staatspresident voorgelÃ© word nie, bekragtig hy die skorsing en onthef hy die Ombudsman van sy amp.

(7) Die Ombudsman moet ook deur die Staatspresident van sy amp onthef word indien daar â\200\231n versoekskrif van die onderskeie Huise van die Parlement in dieselfde sessie
aan die Staatspresident voorgelÃ© word waarin op grond van wangedrag van die Ombudsman

of ongeskiktheid vir sy ampspligte of sy onvermoÃ© om hulle op ’n bekwame wyse uit te voer, om sodanige ontheffing gevra word.

[Sub-a. (7) vervang deur a. 2 (d) van Wet No. 104 van 1991.]

(8) Asdie Ombudsman â\200\231n blywende verstandelike of liggaamlike gebrek opdoen wat hom ongeskik maak vir die behoorlike vervulling van sy ampspligte, kan die Staatspresidentâ \200\224

â\200\234regulationâ\200\235 means a regulation made under section 10;

â\200\234State moneysâ\200\235
[Definition of â\200\234*State moneysâ\200\235 deleted by s. 1 (b) of Act No. 55 of 1983.]

â\200\234this Actâ\200\235 includes the regulations.

2. Appointment and conditions pertaining to the office of Ombudsman.â\200\224(l) There shall be an Ombudsman for the Republic.

(2) The State President shall appeint to the office of Ombudsman, in a full-time or in a part-time capacity, a person who by virtue of his qualifications is entitled to be adm itted
and authorized to practice and be enrolled as an advocate in terms of the provisions of section 3 of the Admission of Advocates Act, 1964 (Act No. 74 of 1964), and who, aiter obtaining such qualifications, was concerned in the application of the law for a period of at least 10 years or periods which together amount to at least 10 years;

f[Sub-s. (2) substituted by s. 2 (@) of Act No. 55 of 1983 and by s. 2 (a) of Act No. 104 of 1991.]

(3) The salary and other conditions of employment (if any) of the Ombudsman shall from time to time be determined by the State President: Provided that a salary so determine d
in respect of a particular Ombudsman shall not be reduced during his term of office, except by an Act of Parliament.

[Sui: s. (3) amended by s. 2 (b) of Act No. 55 cf 1983 and by s. 2 (b) of Act No. 104 of 1991

(4) The Ombudsman shall not perform or commit himself to perform remunerative

work outside his official duties without the permission of the State President.

(5) The Ombudsman shall not be suspended or removed from office except in ac-
cordance with the provisions of subsections (6), (7), (8) and (9).

(6) (a) The State President may suspend the Ombudsman and, subject to the pro-
visions of this subsection, remove him from officeâ\200\224

(i) for misconduct; or

(ii) for unfitness for the duties of his office or incapacity to carry them out efficiently,

(b) A suspension of the Ombudsman and tl*e reason therefor shall be commu-
nicated by message 10 Parliament within 14 days after such suspension, if Parliament is then in session, or, if Parliament is not then in session, within 14 days after the com-
mencement of its next ensuing session. =

[Para. () substituted by s. 2 (Â¢) of Act No. 104 of 1991.]

(c) If an address is at any time during such a session of Parliament presented to the State President by the respective Houses praying for the restoration to his office of t he
Ombudsman so suspended, the Ombudsman shall be restored to his office accordingly.

[Para. (c) substituted by s. 2 (Â¢) of Act No. 104 of 1991.)

(d) If an address as contemplated in paragraph (Â¢) is not presented to the State President, he shall confirm the suspension and remove the Ombudsman from his office.

(7) The State President shall also remove the Ombudsman from office if an address from the respective Houses of Parliament in the same session praying for such removal on the ground of misconduct of the Ombudsman or unfitness for the duties of his office or his incapacity to carry them out efficiently. is presented to tlie State President.

[Sub-s. (7) substituted by s. 2 (d) of Act No. 104 of 1991.)

(8) Ifthe Ombudsman becomes afflicted with 2 permanent infirmity of mind or body which renders him incapable of discharging the duties of his office properly, the State President mayâ\200\224

(Issue No 26)

(@) hom toelaat om sy amp neer te I&; of

(b)) hom, behoudens die bepalings van subartikel (6), op grond van onvermog
van sy amp onthef.

(9) Behoudens die bepalings van subartikel (10) moet die Ombudsman sy amp neerlÃ©
wanneer hy die leeftyd van 70 jaar bereik: Met dien verstande dat as hy genoemde
leeftyd na die eerste dag van ’n maand bereik, hy geag word bedoelde leeftyd op die eerste
dag van die eersvolgende maand te bereik. "

(10) As dit in die openbare belang is om die Ombudsman in sy amp in diens te hou
na die leeftyd waarop hy ooreenkomstig subartikel (9) sy amp moet neerlÃ©, kan die Staats-
president van tyd tot tyd gelas dat hy aldus in dicns gehou word, maar nie vir â\200\231n t
ydperk
wat, of tydperke wat aitesaam, twee jaar te bowe gaan nie. =

(11) Wanneer daar ’n vakature in die amp van Ombudsman ontstaan, moet die
Staatspresident, behoudens die bepalings van subartikel (2), iemand anders in daardie amp
aanstel.

(12) Die Staatspresident kan van tyd tot tyd, maar behoudens die bepalings van
subartikel (2), ’n \YÃ©aiâ\200\231_herâ\200\231ï¬\201_Ã©xicfie Ombudsman aanstel om die amp
spligte van die Ombuds-
man te vervul wanneer hy am enige rede nie in staat is om sy ampspligte te vervul nie of
terwyl die aanstelling van iemand in die amp van Ombudsman hangende is.

. (13) (@) Die Staatspresident kan, behoudens die bepalings van subartikel (2), iemand
as â\200\231n assistent of twee of meer persone as assistente vir die Ombudsman aanstel om,
on-
derworpe aan die beheer en voorskrifte van die Ombudsman, pligte te verrig en bevoegdhede
uit te oefen wat by hierdie Wet die Ombudsman opgelâ\202¬ of aan hom verleen word.

(b) Die bepalings van subartikels(3) tot en met (10) is mutatis mutandis ten opsigte
van iemand wat kragtens paragraaf (a) aangestel is, en ten opsigte van sy amp, van toepassi
ng.

3. Personeel van Ombudsman en uitgawes.â\200\224(1) By die verrigting van sy werk- .
saamhede kragtens hierdie Wet word die Ombudsman bygestaan deurâ\200\224

(@) persone met die goedkeuring van die Staatspresident en na oorleg met die
Staatsdienskommissie deur die Ombudsman aangestel onderworpe aan die
diensvoorwaardes wat die Ombudsman, met die goedkeuring van die Mi-
nister van Finansies, ten opsigte van die bekleders van die betrokke poste
bepaal;

(b) beamptes in die Staatsdiens wat tydelik aan die diens van dic Ombudsman
afgestaan word ingevolge artikel 13 (6) van die Staatsdienswet, 1957 (Wat

b No. 54 van-1957).

Â« (2) Die uitgawes veibonde aan die verrigting van sy werksaamhede kragtens hierdie
Wet deur die Ombudsmansword bestry uit geld wat die Parlement vir diÃ© doel bewillig
het.

4. Aanhangigmaking van sekere aangeleenthede by Ombudsman.â\200\224(1) Indien iemand
redelike gronde het om te vermoed datâ\200\224
(a) daar op â\200\231n oneerlike wyse met publieke geld gehandel is of word;
[Par. (a) vervang deur a. 3 (a) van Wet No. 55 van 1983.]
(aA) die Staat of die publiek in die algemeen deur wanbestuur in verband met die
sake van die Staat benadeel word;
[Par. (aA) ingevoeg deur a. 3 (a) van Wet No. 104 van 1991.]
() â\200\231n persoon op onwettige of onbehoorlike wyse, hetsy direk of indirek, verryk
of bevoordeel is of word deur of as gevolg van ’n handeling of versuimâ\200\224
(i) in verband met die sake van die Staat of van â\200\231n instelling, liggaam,
vereniging of organisasie in die omskrywing van ,,publieke geldâ\200\235 in ar-

tikel 1 bedoel;
[Subpar. (i) vervang deur a.â\200\2313 (b) van Wet No. 55 van 1983.]

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(a) allow him to vacate his office; or

(b) subject to the provisions of subsection (6), remove him from office on the ground of incapacity.

(9) Subject to the provisions of subsection (10), the Ombudsman shall vacate his office on attaining the age of 70 years: Provided that if he attains the said age after the first day of any month, he shall be deemed to attain that age on the first day of the next succeeding month. â\200\230 2

(10) If it is in the public interest to retain the Ombudsman in his office beyond the age at which he shall, in accordance with subsection (9), vacate his office, the State Pres ident
may from time to time direct that he be so retained, but not for a period which exceeds, or periods which in the aggregate exceed, two years.

(11) Ifavacancy occurs in the office of Ombudsman, the State President shall, subject to the provisions of subsection (2). appoint another person to that office.

(12) The State President may from time to time but subject to the provisions of subsection (2), appoint an acting Ombudsman to discharge the duties of the office of the Ombudsman whenever he is for any reason unable to perform the duties of his office, or while the appointment of a person to the office of Ombudsman is pending.

(13) (a) The State President may, subject to the provisions of subsection (2), ap-point a person as an assistant or two or more persons as assistants to the Ombudsman to discharge duties and exercise powers, subject to the control and directions of the Om-budsman, imposed or conferred upon the Ombudsman by this Act.

(b) The provisions of subsections (3) to (10), inclusive, shall muratis mutandis apply in respect of a person appointed under paragraph (a) and in respect of his office.

3. Staff of Ombudsman and expenditure.â\200\224(1) The Ombudsman shall in the perfor-mance of his functions under this Act be assisted byâ\200\224

(a) persons appointed, with the approval of the State President and after con-sultation with the Public Service Commission, by the Ombudsman subject to such conditions of service as the Ombudsman may, with the approval of the Minister of Finance, determine in respect of the incumbents of the posts in question;

(b) officers in the Public Service seconded to the service of the Ombudsman in terms of section 13 (6) of the Public Service Act, 1957 (Act No. 54 of 1957).

(2) The expenditure incidental to the performance of his functions under this Act by the Ombudsman shall be defrayed from money appropriated by Parllament for that purpose.

4. Laying before Ombudsman of certain matters.â\200\224(1) If any person has reasonable grounds 1o suspect thatâ\200\224
(Â¢) public moneys have been or are being dealt with in a dishonest manner;
[Para. (a) substituted by s. 3 (a) of Act No. 55 of 1983.]
(aA) the State or the public in general is being prejudiced by maladministration in connection with the affairs of the State;
[Para. (aA) inserted by s. 3 (a) of Act No. 104 of 1991.] ;
(b) any person either directly or indirectly has been or is being enriched, or has received or is receiving any advantage, in an unlawful or improper manner through or as a result of any act or omissionâ\200\224
(i) in connection with the affairs of the State or of an institution, a body, an association or an organization referred 1o in the definition of â\200\234*public

moneysâ\204¢ in section I:
[Sub-para. (i) substituted by s. 3 () of Act No. 55 of 1983.]

(ii) deur iemand terwyl hy diens verrig as werknemer van die Staat of van ’n instelling, liggaam, vereniging of organisasie in die omskrywing van â\200\234.publieke geldâ\200\235 in artikel 1 bedoel; of
[Subpar. (ii) vervang deur a. 3 (b) van Wet No. 55 van 1983.)
(iii) ten koste van die Staat of van ’n instelling, liggaam, vereniging of organisasie in die omskrywing van ,,publieke geldâ\200\235 in artikel 1 bedoel;
[Subpar. (iii) vervang deur a. 3 (b) van Wet No. 55 van 1983.]
(c) gepoog is of word om â\200\231n handeling bedoel in paragraaf (a) te verrig of ’n toestand bedoel in paragraaf (b) teweeg te bring;
(d) hy, of ’n ander persoon, behoudens die bepalings van subartikel (3), op ’n onwettige of onbehoorlike wyse, hetsy direk of indirek, benadeel is of word of mag word deur of as gevolg van ’n handeling of versuim in paragraaf (b) (i) of (ii) bedoel,

[Par. (d) ingevoeg deur a. 3 (b) van Wet No. 104 van 1991.] ]
kan hy die betrokke aangeleentheid ooreenkomstig die bepalings van subartikel (2) by die Ombudsman aanhangig maak, en nadat daardie aangeleentheid aldus by hom aanhangig gemaak is, moet die Ombudsman ten opsigte daarvan die stappe doen en kan die Ombudsman ten opsigte daarvan die stappe doen wat hy ingevolge die bepalings van hierdie Wet-moet of kan doen.

Â¥ (1A) Subartikel (1) (aA) en (d) het ook betrekking op gebeure wat voor die datum van inwerkingtreding van die Wysigingswet op die Advokaat-generaal, 1991, ’n aanvang geneem het, maar op genoemde datum nog nie voltooi was nie.
(Sub-a. (1A) ingevoeg deur a. 3 (Â¢) van Wet No. 104 van 1991.]

(2) Iemand wat ’n aangeleentheid bedoel in subartikel (1) by die Ombudsman aanhangig wil maak, moet dit doen by wyse van ’n beÃ©digde of bevestigde verklaring waarin vermeld wordâ\200\224

(a) die aard van die vermoede;
(b) die gronde waarop die vermoede berus; en
(Par. (b) vervang deur a. 3 (c) van Wet No. 55 vanâ\200\231 1983.]
(Â¢) alle ander ter sake dienende inligting wat aan die deklarant bekend is.

(3) Indien die Ombudsman van oordeel is dat die persoon wat volgens die betrokke beÃ©digde of bevestigde verklaring vermoed word benadeel te wees, regsmiddele wat ten opsigte van die betrokke aangeleentheid by of kragtens enige wet aan hom verleen word, tot sy beskikking het, en daardie persoon nog nie daardie regsmiddele uitgeput het nie, kan die Ombudsman weier om die aangeleentheid te ondersoek totdat daardie regsmiddele uitgeput is: Met dien verstande dat waar die bewering van onwettige of onbehoorlike benadeling spruit uit die diensverhouding van ’n beampte of werknemer in diens van die Staat, die Ombudsman slegs die bewering ondersoek indien hy oortuig is dat die betrokke persoon die regsmiddele aan hom verleen deur die Staatsdienswet, 1984 (Wet No. 111 van 1984), of enige ander wet wat sy diensverhouding beheer, uitgeput het.

" [Sub-a. (3) bygevoeg deur a. 3 (d) van Wet No. 104 van 1991.]

4A. Optrede van Ombudsman in selfregerende gebiede.â\200\224(1) Indien die Ombudsman rede het om te vermoed dat daar ten aansien vanâ\200\224
(a) geld watâ\200\231n Regering, liggaam of instelling bedoel in artikel 35 van die Grondwet van die Selfregerende Gebiede, 1971 (Wet No. 21 van 1971), toekom of deur so ’n Regering, liggaam of instelling ontvang is of gehou word; of
(b) enige handeling of versuim van ’n Regering, liggaam of instelling in paragraaf (a) bedoel,
’n omstandigheid bedoel in artikel 4 (1) bestaan, kan hy die Staatspresident dienooreenkomstig inlig.
(2) By ontvangs van die inligting in subartikel (1) vermeld, kan die Staatspresident, na oorleg met die Regering van die betrokke selfregerende gebied, by proklamasie in die Staatskoerantâ\200\224

(ii) by any person while he is performing service as an employee of the Staie
or of an institution, a body, an association or an organization referred
to in the definition of *â\200\234â\200\230public moneysâ\204¢ in section 1; or

{Sub-para. (ii) substituted by s. 3 (b) of Act No. 55 of 1983.]

(iii) at the expense of the State or of an institution, a body, an association
or an organization referred to in the definition of â\200\234public moneysâ\200\235 in
section 1; â\200\230
[Sub-para. (iii) substituted by s. 3 (b) of Act No. 55 of 1983.]

any attempt has been or is being made to perform an act referred to in

paragraph (a) or to bring about a situation referred to in paragraph ();

he, or any other person, subject to the provisions of subsection (3), has been

or is being or may be prejudiced, either directly or indirectly, in an unlawful

or improper manner by or as a result of an act or omission as contemplated
in paragraph (b) (i) or (1i),
[Para. (d) added by s. 3 (b) of Act No. 104 of 1991.]
he may lay the matter in question in accordance with the provisions of subsection (2) befor
e
the Ombudsman, and after such matter has been so laid before him, the Ombudsman shall
take such steps in respect thereof as he is required to take and. may take such steps in
respect thereof as he is permitted to take in terms of the provisions of this Act.

(IA) Subsection (1) (aA) and (d) shall also apply to incidents commencing prior to
the date of commencement of the Advocate-General Amendment Act, 1991, but which
had not been completed on the said date.

[Sub-s. (1A) inserted by s. 3 (Â¢) of Act No. 104 of 1991.]

(2) Any person wishing to lay a matter referred to in subsection (1) before the Om-

budsman, shall do so by means of an affidavit or affirmed declaration specifyingâ\200\224

(@) the nature of the suspicion;

(b) the grounds on which the suspicion is based; and
[Para. (b) substituted by s. 3 (Â¢) of Act No. 55 of 1983.]

(c) all other relevant information known to the declarant.

(3) Ifthe Ombudsman is of the opinion that the person who according to the relevant
affidavit or affirmed declaration is presumed to have been prejudiced, has legal remedies
in respect of the matter concerned at his disposal which have been conferred upon him by
or under any law and that person has not exhausted those legal remedies, the Ombudsman
may refuse to inquire into the matter until those Jegal remedies have been exhausted:
Provided that where the aliegation of unlawful or improper prejudice arises from the em-
ployment relationship of an officer or employee ir: the service of the State, the Ombudsman
shall only investigate the allegation if he is satisfied that the person concerned has exha
usted
the legal remedies conferred upon him by the Public Service Act, 1984 (Act No. 111 of

1984), or any other law controlling his employment relationship.
[Sub-s. 3 added by s. 3 (d) of Act No. 104 of 1991.]

4A. Action of Ombudsman in self-governing territories.â\200\224(1) If the Ombudsman has
reason to suspect that a circumstance referred to in section 4 (1) exists in respect ofâ
\200\224

(@) money due to a Government, body or institution referred to in section 335 of
the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971),
or which is received or being held by such a Government, body or institution;

or
(b) any act or omission of a Government, body or institution referred to in paragraph (a), i
he may advise the Staie President accordingly.
(2) Upon receipt cf the information referred to in subsection (1), the State President may, after consultation with the Government of the self-governing territory concerned, by proclamation in the Gazetteâ\200\224

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(@) die Ombudsman versoek om in so ’n selfregerende gebied diÃ© ondersoek te doen wat die Ombudsman nodig ag; en

(b) verklaar dat die bepalings van hierdie Wet mutatis mutandis ten opsigte van daardie ondersoek van toepassing is totdat die Ombudsman sy werksaamhede ten aansien van die bepaalde aangeleentheid afgehandel het en kragtens artikel

5 daaroor verslag gedoen het.
[A. 4A ingevoeg deur a. 4 van Wet No. 104 van 1991.]

5. Pligte en bevoegdhede van Ombudsman.â\200\224(1) Die Ombudsman moet, ten opsigte van ’n aangeleentheid wat mgcvolge artikel 4 by hom aanhangig gemaak is of wat hy kragtens artikel 4A (2) (a) versoek is om te ondersoek, bepaal of die betrokke vermoede gegrond is en, indien wel, dit onverwyld ondersoek en â\200\231n verslag aangaande sy bevindinge en aa ngaande
die aanbevehngs as daar is, wat hy verlang om te doen, oorhandig aan die Speaker van die Parlement vir oorhandiging binne sewe dae aan die Minister van Justisie, wat die versla g
binne 14 dae nadat dit aan hom oorhandig is, in die Parlement ter Tafel moet 1â\202¬ as die Parlement dan in sessie is of, as die Parlement nie dan in sessie is nie, binne 14 dae na d ie
aanvang van die eersvolgende sessie van die Parlement: Met dien verstande dat vir die doe]emdes van die publikasie van die inhoud van bedoelde verslag sodamge oorhandiging aan- â\200\234die Minister van Justisie as die Parlement nie dan in sessie is nie, behouden s die
bepalings van subartikel (2), geag word sodamge tertafellegging uit te maak: Met dien ver- stande voorts dat â\200\231n verslag ten opsigte van â\200\231n ondersoek kragtens artikel 4A gedoen, ook
deur die Ombudsman aan die Regering van die betrokke selfregerende gebied oorhandig moet word.

[Sub-a. (1) vervang deur a. 5 (a) van Wet No. 104 van 1991.]

(2) Ondanks die bepalings van subartikel (1) moet die Ombudsman, indien hy in verband met ’n aangeleentheid wat ingevolge subartikel (1) deur hom ondersoek is, van oordeel is dat die publikasie van die inhoud van sy verslag nie in belang van die veiligheid
van die Staat is nie, in die verslag bedoel in subartikel (1) aanbeveel dat sodanige publik asie
verbied word, en ’n verslag waarin so ’n aanbeveling vervat is, moet binne 14 dae nadat dit aan die Minister van Justisiec oorhandig is, deur hom ingevolge die Reglement van die Parlement as ’n vertroulike dokument in die Parlement ter Tafel gelÃ© word as die Parlement dan in sessie is of, as die Parlement nie dan in sessie is nie, binne 14 dae na die aanvang van die eersvolgende sessie van die Parlement, in albei gevalle vir voorlegging aan, en oorweging van bedoelde aanbeveling en verslagdoening aan die Parlement deur, â\200\231n ges a-
mentlike komitee van die Parlement.

[Sub-a. (2) vervang deur a. 5 (b)) van Wet No. 104 van 1991.]

’(3) ’n Komitee bedoel in subartikel (2) kan vir die doeleindes van hierdie Wet by besluit deur die Parlement gemagtig word om sy werksaamhede voort te sit ondanks ’n prorogasxc van die Parlement. 2

[Sub-a. (3) vervang deur a. 5 () van Wet No. 104 van 1991.]

*’ (4) Die Ombudsman kan, hetsy hy ’n ondersoek instel soos in subartikel (1) bedoel, of nie, en, indien hy wel ’n ondersoek instel, te eniger tyd voor, tydens of na die hou van so ’n-ondersoekâ\200\224

(@) indien hy van oordeel is dat die feite die pleging van ’n misdryf deur die een of ander persoon openbaar, die betrokke gesag wat met vervolgings belas is, daarvan verwittig;

(b) indien hy dit gerade ag, enige aangeleentheid wat met wanbestuur verband hou, verwys na die instelling, liggaam, vereniging of organisasie wat daardeur

geraak word of ’n gepaste aanbeveling cor die regstelling van die benadeling in artikel 4 (1) (d) bedoel of enige ander aanbeveling wat hy dienstig ag, aan die betrokke instelling, liggaam, vereniging of organisasie doen.

[Sub-a. (4) vervang deur a. 5 (d) van Wet No. 104 van 1991.]

(5) Indien die Ombudsman rede het om te vermoed dat ’n omstandigheid bedoel in artikel 4 (1) bestaan, kan hy die betrokke aangeleentheid ooreenkomstig die bepalxngs van hierdie Wet ondersoek asof dit ingevolge artikel 4 (2) by hom aanhang:g gemaak is.

(a) request the Ombudsman to hold in such self-governing territory such inquiry as the Ombudsman may deem necessary; and

declare the provisions of this Act to be applicable mutatis mutandis in respect of that inquiry until the Ombudsman has completed his functions in respect of the specific matter and reported thereon in terms of section 5.

[S. 4A inserted by s. 4 of Act No. 104 of 1991.]

5. Duties and powers of Ombudsman.â\200\224(1) The Ombudsman shall, in respeÃ©t of a matter laid before him in terms of section 4 or which he has been requested to inquire into in terms of section 4A (2) (a), establish whether the suspicion in question is well-founded and, if so, inquire forthwith into it and hand a report on his findings and on such recommendations, if any, as he may wish to make to the Speaker of Parliament for handing over within seven days to the Minister of Justice, who shall, within 14 days after it has been handed to him, lay the report upon the Table in Parliament if Parliament is then in session or, if Parliament is not then in session, within 14 days after the commencement of the next ensuing session of Parliament: Provided that for the purposes of the publication of the contents of the said report such handing over to the Minister of Justice if Parliament is then not in session, shall, subject to the provisions of subsection (2), be deemed to constitute such laying upon the Table: Provided further that a report in respect of an inquiry held under section 4A, shall also be handed by the Ombudsman to the Government of the self-governing territory concerned.

[Sub-s. (1) substituted by s. 5 (a) of Act No. 104 of 1991.]

(2) Notwithstanding the provisions of subsection (1) the Ombudsman shall, if in connection with a matter inquired into by him in terms of subsection (1) he is of the opinion that the publication of the contents of his report will not be in the interest of the security of the State, recommend in the report referred to in subsection (1) that such publication be prohibited, and a report in which such recommendation is contained shall, within 14 days after it has been handed to the Minister of Justice, be laid upon the Table of Parliament by him as a confidential paper in terms of the Standing Rules of Parliament if Parliament is then in session or, if Parliament is not then in session, within 14 days after the commencement of the next ensuing session of Parliament, in both cases for submission to, and consideration of the said recommendation and the making of a report to Parliament by a joint committee of Parliament.

[Sub-s. (2) substituted by s. 5 (b) of Act-No. 104 of 1991.]

(3) A committee referred to in subsection (2) may, for the purposes of this Act, be authorized by resolution of Parliament to continue its functions notwithstanding any prorogation of Parliament.

[Sub-s. (3) substituted by s. 5 (Â¢) of Act No. 104 of 1991.]

(4) The Ombudsman may, whether or not he holds an inquiry referred to in subsection (1), and, if he does in fact hold an inquiry, at any time prior to, during or after the holding of such inquiryâ\200\224

(a) if he is of the opinion that the facts disclose the commission of an offence by any person, bring the matter to the notice of the relevant authority charged with prosecutions; .
if he deems it advisable, refer any matter which has a bearing on mismanagement to the institution, body, association or organization affected by it or make an appropriate recommendation regarding the redress of the prejudice referred to in section 4 (1) (d) or make any other recommendation which he deems expedient to the institution, body, association or organization concerned.
[Sub-s. (4) substituted by s. 5 (d) of Act No. 104 of 1991.)

(5) If the Ombudsman has reason to suspect that any circumstance referred to in section 4 (1) exists, he may inquire into the matter in question in accordance with the provisions of this Act as if it had been laid before him in terms of section 4 (2).

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(6) ’n Verslag wat ingevolge hierdie artikel deur die Ombudsman oorhandig word, gaan vergesel van die oorkonde van die getuienis wat in verband met die betrokke aangeleentheid voor die Ombudsman afgelÃ© is, uitgesonderd die oorkonde van daardie deel van bedoelde getuienis waarvan die openbaarmaking na die oordeel van die Ombudsman . nie in belang van die veiligheid van die Staat is nie: Met dien verstande dat indien die gesamentlike komitee bedoel in subartikel (2) dit van hom vereis die Ombudsman laasgenoemde oorkonde aan bedoelde komitee moet verstrek. :

[Sub-a. (6) gewysig deur a. 5 (c) van Wet No. 104 van 1991.]

(7) Die Ombudsman kan, indien hy besluit om â\200\231n ondersoek soos in subartikel (1) bedoel, in te stel, te eniger tyd voor of tydens die hou van die ondersoekâ\200\224

(a) iemand in die diens van die Staat, of van ’n fonds, instelling, liggaam, vereniging of organisasie bedoel in die omskrywing van ,,publieke geldâ\200\235 in artikel 1, of in die diens van ’n Regering, liggaam of instelling in artikel 4A bedoel, versoek om hom, onder sy toesig en beheer, by die verrigting van sy werksaamhede behulpsaam te wees;

iemand benoem om namens hom â\200\231n ondersoek in artikel 7 bedoel, of ’n gedeelte daarvan, te onderneem en aan hom verslag te doen, en vir diÃ© doel het so ’n persoon dieselfde bevoegdhede as diÃ©Â¢ wat die Ombudsman kragtens artikels 6 en 7 het en is die bepalings van artikels 8 en 9 mutatis mutandis ten opsigte van daardie persoon van toepassing.

[Sub-a. (7) bygevoeg deur a. 5 (f) van Wet No. 104 van 1991.]

(8) Die bepalings van die instruksies wat die Tesourie kragtens artikel 39 van die Skatkiswet, 1975 (Wet No. 66 van 1975), ten aansien van Kommissies van Ondersoek uitgereik het, is mutatis mutandis van toepassing op ’n persoon in subartikel (7) (b) bedoe l.

[Sub-a. (8) bygevoeg deur a. 5 (/) van Wet No. 104 van 1991.]

6. Prosedure by en aard van verrigtinge.â\200\224(1) Die prosedure wat by die hou van ’n ondersoek gevolg moet word, word na goeddunke deur die Ombudsman bepaal met inagneming van die omstandighede van elke geval, en die Ombudsman kan na goeddunke gelas dat die een of ander kategorie persone of alle persone wie se teenwoordigheid na sy oordeel nie nodig of wenslik is nie, nie by die verrigtinge by die ondersoek of enige deel daarvan teenwoordig mag wees nie. :

(2) Indien die aangeleentheid wat ondersoek word, betrekking het op geld waarmee die Rekening vir Geheime Dienste ingestel by artikel 1 van die Wet op die Rekening vir Geheime Dienste, 1978 (Wet No. 56 van 1978), gekrediteer is, mag niemand by die verrigtinge by die ondersoek teenwoordig wees nie tensy so iemand se teenwoordigheid in verband met bedoelde verrigtinge noodsaaklik is of deur die Ombudsman gemagtig is.

< (3) Ondanks andersluidende wetsbepalings mag niemand sonder die toestemming van:die Ombudsman die inhoud van enige stuk in besit van die Ombudsman of van â\200\231’n assistent of lid van die personeel van die Ombudsman, of die notule van enige getuienis wat:tydens ’n ondersoek voor die Ombudsman of â\200\231n assistent van die Ombudsman afgelÃ© is, aan iemand openbaar maak nie.

(4) Iemand wat subartikel (3) oortree, is aan ’n misdryf skuldig.

7. Ondersoek van aangeleentheid deur Ombudsman.â\200\224(1) Vir die doeleindes van die hou van ’n ondersoek kan die Ombudsman enigiemand gelas om voor hom te verskyn omâ\200\224

(a) getuienis af te IÃ©; of
(b) â\200\231n stuk wat in sy besit of onder sy beheer is, voor te IÃ©, wat, na die oordeel van die Ombudsman, betrekking het op die aangeleentheid wat deur die Ombudsman ondersoek word, en so iemand ondervra. 3
(2) Bedoelde lasgewing geskied by wyse van ’n dagvaarding bevattende besonderhede van die aangeleentheid in verband waarmee die gedagvaarde verlang word om voor die

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(6) A report handed over by the Ombudsman in terms of this section shall be accompanied by the record of the evidence given before the Ombudsman in connection with the matter in question, excludxng the record of that part of the said evidence the dxsclosmg of which will, in the opinion of the Ombudsman, not be in the interest of the secunly of the State: Provided that if required to do so by the joint committee referred to in subsection (2), the Ombudsman shall furnish the said committee with the last-mentioned record.

[Sub-s. (6) amended by s. 5 (Â¢) of Act No. 104 of 1991.] ey

(7) The Ombudsman may, if he decides to hold an inquiry referred toin subsecuon (1), at any time prior to or during the holding of the inquiryâ\200\224

(@) request any person in the service of the State, or of a fund, institution, body, association or organization referred to in the definition of â\200\230public moneysâ\200\231 in section 1, or in the employment of a Government, body or institution referred to in section 4A, to assist him, under his supervision and control, in the performance of his functions;

designate any person to conduct an inquiry referred to in section 7, or any part thereof, on his behalf and to report to him, and for this purpose such a person shall have the same powers as those which’the Ombudsman has in terms of sections 6 and 7 and the provisions of sections 8 and 9 shall apply mutatis mutandis in respect of that person.

[Sub-s. (7) added by s. 5 (f) of Act No. 104 of 1991.]

(8) The provisions of the instructions issued by the Treasury under section 39 of the Exchequer Act 1975, (Act No. 66 of 1975), in respect of Commissions of Inquiry, shall apply mutatis mutandis to a person referred to in subsection (7) ().

[Sub-s. (8) added by s. 5 (f) of Act No. 104 of 1991.]

6. Procedure at and nature of proceedings.â\200\224(1) The procedure to be followed in conducting an inquiry shall be determined by the Ombudsman at his discretion with due regard to the circumstances of each case, and the Ombudsman may in his discretion direct that any category of persons or all persons whose presence is, in his opinion, not necessar y or desirable, shall not be present at the proceedings at the inquiry or any part thereof.

(2) Ifthe matter being inquired into relates to moneys with which the Secret Services Account established by section 1 of the Secret Services Account Act, 1978 (Act No. 56 of 1978), has been credited, no person shall be present at the proceedings at the inquiry unle ss such personâ\200\231s presence is necessary in connection with such proceedings or is autho rized by the Ombudsman.

(3) Notwithstanding anything to the contrary contained in any law ng person shall without the permission of the Ombudsman disclose to any other person the contents of any document in the possession of the Ombudsman or of an assistant to or a member of the staff of the Ombudsman, or the record of any evidence given before the Ombudsman or an assistant to the Ombudsman during an inquiry.

(4) Any person who contravenes subsection (3) shall be guilty of an offence.

7. Inquiry into matter by Ombudsman.â\200\224(1) For the purposes of conducting an inquiry the Ombudsman may direct any person to appear before him toâ\200\224
(a) give evidence; or
(b) produce any document in his possession or under his control,
which. in the opinion of the Ombudsman. has a bearing on the matter being inquired into by the Ombudsman, and may examine such person.

(2) Such dircction shall be by way of a subpoena containing particulars of the matter in connection with which the person subpoenaed is required to appear before the Om-

budsman and signed by the Ombudsman and served on the person subpoenaed either by

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Ombudsman te verskyn en wat deur die Ombudsman onderteken is en aan die gedagvaarde bestel word of per aangetekende brief deur dic pos versend of deur aflewering deur iemand wat die Ombudsman daartoe gemagtig het.

[Sub-a. (2) vervang deur a. 4 van Wet No. 55 van 1983.]

(3) Wanneer die Ombudsman dit nodig ag, kan hy van iemand wat kragtens sub-artikel (1) voor hom as getuie verskyn, vereis dat hy getuienis onder eed of na die doen van ’n bevestiging aflÃ©, en so iemand geniet dieselfde privilegie as ’n getuie in ’n straf geding voor ’n afdeling van die Hooggeregshof van Suid-Afrika.

(4) Die Ombudsman kan so iemand ’n eed oplÃ© of van hom â\200\231n bevestiging aanneem.

(5) Iemand wat uit hoofde van die bepalings van subartikel (1) voor die Ombudsman verskyn, kan by sy ondervraging bygestaan word deur ’n advokaat van die Hooggeregshof van Suid-Afrika of iemand wat behoorlik toegelaat is om in enige deel van die Republiek as prokureur te praktiseer, en is geregtig op insae in daardie stukke bedoel in artikel 6 (3) wat na die oordeel van die Ombudsman nodig is ten einde so iemand in staat te stel om sy geheue te verfris.

˜(6) (a) Indien dit in die loop van ’n ondersoek vir die Ombudsman voorkom dat jerfiand betrek word by die aangeleentheid wat ondersoek word, moet die Ombudsman aan so iemand die geleentheid bied om in verband daarmee by wyse van die aflÃ© van getuienis aaffgehoor te word, en so iemand of sy regsverteenwoordiger is daarop geregtig om deur dieâ\200\231’Ombudsman in verband met die betrokke aangeleentheid vrae te stel aan ander getuies, detir die Ombudsman bepaal, wat ingevolge hierdie artikel voor die Ombudsman verskyn het. :
(b) Die bepalings van hierdie artikel is van toepassing op iemand bedoel in paragraaf (a).

(7) Iemand wat weier of versuira om aan ’n lasgewing kragtens subartikel (1) te voldoen of wat weier om op â\200\231n vraag aan hem kragtens daardie subartikel gestel, ’n antwoord te verstrek of op so ’n vraag ’n antwoord â\200\230versirek wat na sy wete onjuis is, of weier om op versoek van die Ombudsman ingevolge subartikel (3) die eed af te 1& of ’n bevestiging te doen, is aan ’n misdryf skuldig. . -

7A. Betreding van perseel deur Ombudsman.â\200\224Die Ombudsman, of enige persoon skriftelik deur hom daartoe gemagtig, kan by die verrigting van sy werksaamhede ingevolge hierdie Wet te eniger tyd en sonder voorafgaande kennisgewing of met diÃ© kennisgewing wat hy voldoende of geskik ag enige gebou of perseel betree en daar die ondersoek instel en die navraag doen wat hy nodig ag, en op enigiets op daardie perseel wat na sy mening betrekking het op die doel van die ondersoek beslag 18, of uittreksels uit dokumente of afskrifte daarvan maak, en van enigiemand, wat, na hy vermoed, oor die nodige inligting

beskik, ’n verduideliking eis van enigiets in so ’n dokument vervat.
[A. 7A ingevoeg deur a. 6 van Wet No. 104 van 1991.]

_ 7B. Ombudsman is nie bevoeg of verpligbaar om vrae te beantwoord nie.â\200\224Die Ombudsman of sy assistent of enige lid van sy personeel of enige persoon in artikel 5 (7) bedoel, is nie bevoeg of verpligbaar om in enige verrigtinge in â\200\231n geregshof of voor ’n kragtens of by wet ingestelde liggaam of instelling of voor Â°’n kommissaris beoog in die Kommissiewet, 1947 (Wet No. 8 van 1947), vrae te beantwoord in verband met enige inligting wat in die loop van sy ondersoek ingevolge hierdie Wet tot sy kennis gekom het nie.

[A. 7B ingevoeg deur a. 6 van Wet No. 104 van 1991.]
7C. Vergoeding ten aansien van uitgawes.â\200\224Die Ombudsman kan, met die instemming van die Tesourie, na goeddunke gelas dat die uitgawes of ’n gedeelte van die uitgawes wat deur iemand in die loop van of in verband met ’n ondersoek deur die Ombudsman, aangegaan is, uit Staatsfondsc aan daardie persoon vergoed word.

[A. 7C ingevoeg deur a. 6 van Wet No. 104 van 1991.]
8. Minagting van Ombudsman.â\200\224(1) Niemand magâ\200\224
(a) die Ombudsman of ’n assistent van die Ombudsman beledig, neerhaal of verkleineer, of die verrigtinge by ’n ondersoek of die bevindinge van die Ombudsman vooruitloop op ’n wyse wat bereken is om dit te beinvloed nie;

a registered letter sent through the post or by delivery by a person authorized lhcretgy

the Ombudsman.
[Sub-s. (2) substituted by s. 4 of Act No. 55 of 1983.]

(3) When the Ombudsman considers it necessary to do so, he may require any person appearing as a witness before him under subsection (1) to give evidence on oath or after having made an affirmation. and such person shall enjoy the same privilege as a witness testifying in a criminal proceeding before a division of the Supreme Court of South Africa.

(4) The Ombudsman may administer an oath to, or accept an affirmation from, any. such person. S

(3) Any person appearing before the Ombudsman by virtue of the provisions of subsection (1) may be assisted at his examination by an advocate of the Supreme Court of South Africa or any person duly admitted to practise as an attorney in any part of the Republic. and shall be entitled 1o peruse such of the documents referred 1o in section 6 3) as in the opinion of the Ombudsman are necessary to enable such person 1o refresh his memory. :

(6) (a) If it appears to the Ombudsman during the course of an inquiry that any person is being implicated in the matter being inquired into, the Ombudsman shall afford such person an opportunity to be heard in connection therewith by way of the giving of evidence. and such person or his legal representative shall be entitled, through the Ombudsman. to question other witnesses, determined by the Ombudsman, who have appeared before the Ombudsman in terms of this section.

(b) The provisions of this section shall be applicable to any person referred to in paragraph (a). :

(7) Any person who refuses or fails to comply with a direction under subsection (1 or who refuses to answer any question put to him under that subsection or gives to such question an answer which to his knowledge is false, or refuses to take the oath or to make an affirmation at the request of the Ombudsman in terms of subsection (3), shall be guilty of an offence. ’

7A. Entering upon premises by Ombudsman.â\200\224The Ombudsman, or any person authorized thereto by him in writing, may in the performance of his functions in terms of this Act at any time and without prior notice or with such notice as he may deem sufficient or appropriate, enter any building or premises and there make such investigation or inquiry as he may deem necessary, and seize anything on those premises which in his opinion has a bearing on the purpose of the investigation, or make extracts from documents or copies thereof. and require any person whom he suspects of having the necessary information, to

give an explanation of anything contained in such a document.
[S. 7A inserted by s. 6 of Act No. 104 of 1991.]

7B. Ombudsman not competent or compellable to answer questions.â\200\224 The Ombudsman or his assistant or any member of his staff or any person referred to in tection 5 (7), shall not be competent or compellable to answer questions in any proceedings in a court of law or before any body or institution established by or under any law or before a commissioner referred to in the Commissions Act, 1947 (Act No. 8 of 1947), in connection with any information which in the course of his inquiry in terms of this Act has come to his knowledge.

[S. 7B inserted by s. 6 of Act No. 104 of 1991.]

7C. Compensation regarding expenses.â\200\224The Ombudsman may, if he deems it advisable. with the concurrence of the Treasury, order that the expenses or a portion of the expenses incurred by any person in the course of or in connection with an inquiry by the Ombudsman be paid from State funds 1o that person.
[S. 7C inserted by s. 6 of Act No. 104 of 1991.]

8. Contempt of Ombudsman.â\200\224(1) No person shallâ\200\224
- (@) insult. disparage or belittle the Ombudsman or an assistant to the Ombudsman. or anticipate the proceedings at an inquiry or the findings of the Om-

budsman in a manner calculated to influence such proceedings or findings:;

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opsetlik die verrigtinge by ’n ondersoek onderbreek of hom op ’n ander wyse
in die plek waar ’n ondersoek gehou word, misdra nie;
in verband met â\200\231n ondersoek iets doen nie wat, indien bedoelde ondersoek
verrigtinge in â\200\231’n geregshof was, minagting van die hof sou uitgemaak het:
Met dien verstande dat die bepalings van hierdie paragraaf nie bespreking in
die Parlement van ’n aangeleentheid wat deur die Ombudsman ondersock
word, belet nie.

[Par. () vervang deur 2. 7 van Wet No. 104 van 1991.)

(2) Iemand wat ’n bepaling van subartikel (1) oortree, is aan ’n misdryf skuldig.

(3) Indien iemand die bepalings van subartikel (1) (b) oortrec of by die hou van ’n
ondersoek die bepalings van subartikel (1) (c) oortree, kan die Ombudsman die betrokke
persoon op staande voet ’n straf voorgeskryf in artikel 11 oplÃ©.

[Sub-a. (4) geskrap deur a. 5 van Wet No. 55 van 1983.]

9. Verbod op onbehoorlike beinvloeding.â\200\224(1) Niemand mag enigiets doen nie wat
daarop bereken is om die Ombudsman of ’n assistent van die Ombudsman onbehoorlik
te beinvloed ten opsigte van enige aangeleentheid wat deur die Ombudsman of â\200\231n assi
stent
van die Ombudsman met betrekking tot ’n ondersoek oorweeg word of gaan word: Met
dien verstande dat die bepalings van hierdie subartikel nie uitgelÃ© word nie as sou dit
iemand belet om â\200\231n handeling kragtens die bepalings van hierdie Wet te verrig.

(2) Iemand wat subartikel (1) oortree, is aan ’n misdryf skuldig.

9A. Beperking van aanspreeklikheid.â\200\224Die Ombudsman, of sy assistent of enige lid
van sy personeel of iemand in artikel 5 (7) bedoel, is nie aanspreeklik ten opsigte van iet
s
wat te goeder trou kragtens ’n bepaling van hierdie WÃ©t deur die Ombudsman, of sy assisten
t
of â\200\231n lid van sy personeel of iemand in artikel 5 (7) bedoel, na gelang van die gev
al, gedoen

is nie.
[A. 9A ingevoeg deur a. 8 van Wet No. 104 van 1991.]
10. Regulasies.â\200\224(1) Die Staatspresident kan by proklamasie in die Staatskoerant
regulasies uitvaardigâ\200\224
(@) betreffende die notulering van die verrigtinge by ’n ondersoek;
(b) wat voorsiening maak vir geheimhouding;
(Â¢) betreffende enige ander aangeleentheid wat kragtens hierdie Wet voorgeskryf
moet of kan word,
en in die algemeen om die oogmerke en doeleindes van hierdie Wet beter te verwesenlik. .
(2) Regulasies kragtens subartikel (1) () uitgevaardig, kan vir ’n oortreding daarvan
strawwe voorskryf wat ’n boete van R2 000 of gevangenisstraf vir ’n tydperk van ses maande

nie te bowe gaan nie.
[Sub-a. (2) gewysig deur a. 9 van Wet No. 104 van 1991.]

11. Strawwe.â\200\224Iemand wat skuldig bevind word aan ’n misdryf bedoel in artikel 6

(4), 7 (7), 8 (2) of 9 (2), is strafbaar met ’n boete van hoogstens R4 000 of gevangenisstr
af

vir ’n tydperk van hoogstens 12 maande of met daardie boete sowel as daardie gevangenisstra
f.
[A. 11 vervang deur a. 10 van Wet No. 104 van 1991.]

12. Toepassing van Wet.â\200\224Die bepalings van hierdie Wet raak nie enige ondersoek
kragtens, of die nakoming of uitoefening van enige plig of bevoegdheid opgelÃ© of verleen
by of kragtens, die een of ander wet nie.

13. Kort titel.â\200\224Hierdie Wet heet die Wet op die Ombudsman, 1979.
[A. 13 vervang deur a. 12 van Wet No. 104 van 1991.)

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(b) wilfully interrupt the proceedings at an inquiry or misbehave himself in any other manner in the place where an inquiry is being held;
(Â¢) in connection with an inquiry do anything which, if done in connection with = a court of law, would have constituted contempt of court: Provided that the provisions of this paragraph shall not prohibit discussion in Parliament of any matter being inquired into by the Ombudsman.
[Para. (c) substituted by s. 7 of Act No. 104 of 1991.]
(2) Any person who contravenes a provision of subsection (1) shall be guilty of an offence. : -
(3) If any person contravenes the provisions of subsection (1) (b) or at the holding of an inquiry contravenes the provisions of subsection (1) (c), the Ombudsman may summarily impose upon such person a penalty prescribed in section 11.

[Sub-s. (4) deleted by s. 5 of Act No. 55 of 1983.]

9. Prohibition of improper influencing.â\200\224(1) No person shall do anything calculated improperly to influence the Ombudsman or an assistant to the Ombudsman in respect of any matter being or to be considered by the Ombudsman or an assistant to the Ombudsman with regard to an inquiry: Provided that the provisions of this subsection shall not be construed as prohibiting any person from performing any act under the provisions of this Act.

(2) Any person who contravenes subsection (1) shall be guilty of an offence.

9A. Limitation of liability.â\200\224 The Ombudsman, or his assistant or any member of his staff or any person referred to in section 5 (7), shall not be liatle in respect of anythin g
done in good faith under any provision of this Act by the Ombudsman, or his assistant or any member of his staff or any person referred to in section 5 (7), as the case may be.
[S. 9A inserted by s. 8 of Act No. 104 of 1991.] ’

10. Regulations.â\200\224(1) The State President may vy proclamation in the Gazette make regulationsâ\200\224
(a) relating to the recording of the proceedings at an inquiry;
(b) providing for the preservation of secrecy;
(c) relating to any other matter which may or is required to be prescribed under this Act,
and generally better to achieve the objects and purposes of this Act.

(2) Regulations made under subsection (1) (b) may prescribe for a contravention thereof penalties not exceeding a fine of R2 000 or imprisonment for a period of six months .
[Sub-s. (2) amended by s. 9 of Act No. 104 of 1991.]

11. Penalties.â\200\224Any person convicted of an offence referred to in section 6 (4), 7 ( 7),
8 (2) or 9 (2), shall be liable to a fine not exceeding R4 000 or imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.
[S. 11 substituted by s. 10 of Act No. 104 of 1991.)

12. Application of Act.â\200\224The provisions of this Act shall not affect any inquiry un der,
or the performance or exercise of any duty or power imposed or conferred by or under,
- any law,

13. Short title.â\200\224This Act shall be called the Ombudsman Act, 1979.
[S. 13 substituted by s. 12 of Act No. 104 of 1991.)