

**SOUTH AFRICAN GOVERNMENT OFFICE  
- WORLD TRADE CENTRE -**

24 May 1993

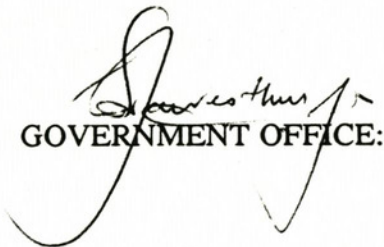
Head of the Administration  
Multi-Party Negotiating Process  
World Trade Centre

Dear Dr Eloff

**SUBMISSION BY THE SOUTH AFRICAN GOVERNMENT FOR THE  
ATTENTION OF THE PLANNING COMMITTEE**

1. Attached is a submission by the South African Government entitled ***PRELIMINARY VIEWS AND PROPOSALS OF THE GOVERNMENT REGARDING THE INDEPENDENCE OF THE JUDICIAL AUTHORITY.***
2. Kindly transmit the document for immediate attention to the Technical Committee: Fundamental Rights during the Transition.

Yours sincerely

  
GOVERNMENT OFFICE: WORLD TRADE CENTRE

DEK

jg2452

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VAN JUSTISIE



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OF JUSTICE

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REPUBLIC OF SOUTH AFRICA

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1993-05-24

Dear Mr Van der Merwe

PRELIMINARY VIEWS AND PROPOSALS OF THE GOVERNMENT REGARDING THE  
INDEPENDENCE OF THE JUDICIAL AUTHORITY

I enclose herewith a document containing the Government's preliminary views and proposals regarding the independence of the judicial authority for submission to the Technical Committee on Fundamental Rights during the Transition.

With kind regards

HEAD : MINISTERIAL SERVICES

OD880593

PRELIMINARY VIEWS AND PROPOSALS OF THE GOVERNMENT REGARDING THE  
INDEPENDENCE OF THE JUDICIAL AUTHORITY

1. Introduction

1.1 It is common cause that our law requires of the judicial authority to act with fearless objectivity and independently of the executive authority. Perseverance in this line of conduct is furthermore one of the most important qualities underlying the *Rechtsstaat* principle.

1.2 It is therefore clear that, in order to ensure an independent judiciary also in a future dispensation, certain structures, such as a Council of Justice, a Judges Commission and a Constitutional Court, should be established. It is common knowledge that the Commission of Inquiry into the Structure and Functioning of the Courts ("Hoexter Commission") recommended that a Council of Justice should be established. This recommendation was supported in principle by the South African Law Commission (Report on Constitutional Models, 1991 (Volume 3)). In addition the South African Law Commission made certain recommendations regarding the establishment of a Judges Commission and a Constitutional Court (p 1103 *et seq*). It should furthermore be mentioned that the Ombudsman Act, 1979 (Act 118 of 1979), a copy of which is attached, has already been amended in accordance with the recommendations of the South African Law Commission. (p 1221 *et seq*).

1.3 The Government is in favour of the establishment of a Council of Justice, a Judges Commission and a Constitutional Court, in order to ensure the independence of the judicial authority. The Government is also in favour of the establishment of an instrument similar to the Human Rights Commission as proposed by the South African Law Commission to deal with preliminary conflict resolution between the State and individuals as well as the different organs of the State. The Government therefore wishes to make the

undermentioned preliminary proposals regarding the establishment, constitution, objectives and powers of such bodies.

## 2. Council of Justice

2.1 The legal profession as a whole should be represented on the Council. Since it would not be practical to have more than 15 members (preferably less) serving on the Council, it is recommended that the Council consist of representatives of members of the bench and also of members of the various legal professions (*inter alia*, advocates, attorneys, attorneys-general) and the executive authority. The Chief Justice should be the Chairman of the Council.

2.2 Although the Council will necessarily have wide-ranging powers, its main objective should be to establish and further the needs of the administration of justice. In order to attain the afore-mentioned objective, the Council should be able to carry out any investigation, make known any finding or recommendation and also report to Parliament. Furthermore, the Council should be able to establish committees to perform such functions as the Council may assign to them.

2.3 The Council would need staff for the administrative work incidental to the functioning of the Council. There appears to be no reason why such work should not be performed by officials of the Department of Justice.

2.4 Finally, it is recommended that provision should be made for the remuneration and expenses of members of the Council and its committees.

## 3. Judges Commission

3.1 The establishment of Judges Commissions is not unknown in the democratic world. On the contrary, this practice seems to be gaining in popularity. However, a Judges Commission ("Commission") would be of no value if it did not function independently of the executive authority.

3.2 The Commission should, in our view, consist mostly of members representing the various divisions of the Supreme Court, and also of members of the General Council of the Bar, the Association of Law Societies of South Africa, the attorneys-general and the executive authority. The Chief Justice should also be the Chairman of the Commission.

3.3 Although the functions of the Commission should include the appointment, discharge and transfer of judges, the opinion is held that the executive authority should not be totally removed from this process and that the State President should still play a role. The involvement of the executive authority should, however, be limited to -

- (a) one member of the executive authority who serves on the Commission; and
- (b) the appointment of judges, by the State President, exclusively from persons designated for this purpose by the Commission.

3.4 It should be mentioned that, with due allowance for current provisions, the transfer and discharge of judges should not occur unless the Commission has recommended it. It is suggested that specific provisions should be enacted in this regard.

3.5 In order to achieve its objectives the Commission should be able to carry out investigations, make known any finding or recommendation and also report to Parliament. Furthermore, the Commission should be able to establish committees to perform such functions as the Commission may assign to them.

3.6 The suggestions in paragraph 2.3 and 2.4 apply *mutatis mutandis* to the administrative work incidental to the functions of the Commission and the remuneration of members of the Commission and its committees.

#### 4. Constitutional Court

4.1 Since it is accepted that a future South African constitution will be of a higher legal order than other laws and enactments, the question of judicial review comes to the fore. Judicial review implies the right and duty of a court or courts to interpret authoritatively the constitution of the country, to decide authoritatively the constitutionality of legislative, executive and administrative acts and, in appropriate cases, to declare such acts invalid and unenforceable when they conflict with the country's constitution. The opinion is held that such functions should be performed by a Constitutional Court.

4.2 Such a Constitutional Court should, in our view, form part of the Appellate Division in all respects, so that all the rules of the law of procedure that at present apply to the Appellate Division would also apply to the Constitutional Court. It is therefore recommended that the Appellate Division should consist of two Chambers, namely a General Chamber and a Constitutional Chamber. The latter should deal with all issues arising from the constitution and the field of administrative law.

4.3 Since the Constitutional Chamber would be an integral part of the Appellate Division, it would not be possible to lodge an application with that Chamber directly, and each application, action or appeal would have to follow the normal course through the existing structure of the courts. The Constitutional Chamber of the Appellate Division should hear all appeals in which the only or main issue or issues arise from the provisions of the constitution in general, and executive or administrative acts.

4.4 In view of the suggestions made in paragraph 3 *supra*, it is envisaged that the Judges Commission will appoint the judges of both Chambers. This would create the opportunity to appoint constitutional experts, such as legal academics, to the Constitutional Chamber. Judges who would serve in this Chamber should, however, be Judges of Appeal in the full sense of the word and should therefore enjoy the same independence as any other Judge of Appeal.

## 5. Conclusion

5.1 In conclusion, it should be mentioned that, in our view, it is an absolute necessity that the above-mentioned bodies be established at this stage and that they be entrenched in a transitional constitution. Endeavours should therefore be made to establish at the earliest possible date the Council of Justice, the Judges Commission and the Constitutional Court as structures which would, were they to function effectively, promote their inclusion in a transitional as well as final Constitution.



H J COETSEE, MP  
MINISTER OF JUSTICE

## STATUTES OF THE REPUBLIC OF SOUTH AFRICA — CONSTITUTIONAL LAW

## OMBUDSMAN ACT NO. 118 OF 1979

[ASSENTED TO 2 JULY, 1979]

[DATE OF COMMENCEMENT: 18 JULY, 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 matters connected therewith.

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

1. Definitions.—In this Act, unless the context otherwise indicates—

“Inquiry” means an inquiry conducted under the provisions of section 5 by the Ombudsman;

“Ombudsman” means the person appointed in terms of section 2 to the office of Ombudsman;

“prescribe” means prescribe by regulation;

“public moneys” means—

- (a) State moneys as defined in section 1 (1) of the Exchequer Act, 1975 (Act No. 66 of 1975);
- (b) revenue accruing to—
  - (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 Provincial 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 institution referred to in section 35 of the Self-governing Territories Constitution 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;
- (c) 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 “public moneys” inserted by s. 1 (a) of Act No. 55 of 1983 and substituted by s. 1 of Act No. 104 of 1991.]



STATUTES OF THE REPUBLIC OF SOUTH AFRICA — CONSTITUTIONAL LAW  
 ss. 1-2 *Ombudsman Act, No. 118 of 1979*

ss. 1-2

"regulation" means a regulation made under section 10;

"State moneys" . . . . .

[Definition of "State moneys" deleted by s. 1 (b) of Act No. 55 of 1983.]

"this Act" includes the regulations.

2. Appointment and conditions pertaining to the office of Ombudsman.—(1) There shall be an Ombudsman for the Republic.

(2) The State President shall appoint 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 admitted 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, after 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;

[Sub-s. (2) substituted by s. 2 (a) 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 determined in respect of a particular Ombudsman shall not be reduced during his term of office, except by an Act of Parliament.

[Sub-s. (3) amended by s. 2 (b) of Act No. 55 of 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 accordance with the provisions of subsections (6), (7), (8) and (9).

(6) (a) The State President may suspend the Ombudsman and, subject to the provisions of this subsection, remove him from office—

(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 the reason therefor shall be communicated by message to 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 commencement of its next ensuing session.

[Para. (b) substituted by s. 2 (c) 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 the Ombudsman so suspended, the Ombudsman shall be restored to his office accordingly.

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

(d) If an address as contemplated in paragraph (c) 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 the State President.

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

(8) If the Ombudsman becomes afflicted with a permanent infirmity of mind or body which renders him incapable of discharging the duties of his office properly, the State President may—

STATUTES OF THE REPUBLIC OF SOUTH AFRICA — CONSTITUTIONAL LAW  
*Ombudsman Act, No. 118 of 1979*

ss. 2-4

ss. 2-4

- (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.
- (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 President 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) If a vacancy 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), appoint 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 Ombudsman, imposed or conferred upon the Ombudsman by this Act.
- (b) The provisions of subsections (3) to (10), inclusive, shall *mutatis mutandis* apply in respect of a person appointed under paragraph (a) and in respect of his office.

3. Staff of Ombudsman and expenditure.—(1) The Ombudsman shall in the performance of his functions under this Act be assisted by—

- (a) persons appointed, with the approval of the State President and after consultation 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 Parliament for that purpose.

4. Laying before Ombudsman of certain matters.—(1) If any person has reasonable grounds to suspect that—

- (a) 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 omission—

(i) in connection with the affairs of the State or of an institution, a body, an association or an organization referred to in the definition of "public moneys" in section 1;

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

STATUTES OF THE REPUBLIC OF SOUTH AFRICA — CONSTITUTIONAL LAW  
 ss. 4-4A *Ombudsman Act, No. 118 of 1979* ss. 4-4A

- (ii) by any person while he is performing service as an employee of the State or of an institution, a body, an association or an organization referred to in the definition of "public moneys" 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 "public moneys" in section 1;  
 [Sub-para. (iii) substituted by s. 3 (b) of Act No. 55 of 1983.]
- (c) 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 (b);
- (d) 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 (ii),  
 [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) before 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.

(1A) 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 (c) of Act No. 104 of 1991.]

(2) Any person wishing to lay a matter referred to in subsection (1) before the Ombudsman, shall do so by means of an affidavit or affirmed declaration specifying—

- (a) the nature of the suspicion;
- (b) the grounds on which the suspicion is based; and  
 [Para. (b) substituted by s. 3 (c) of Act No. 55 of 1983.]
- (c) all other relevant information known to the declarant.

(3) If the 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 legal remedies have been exhausted: Provided that where the allegation of unlawful or improper prejudice arises from the employment relationship of an officer or employee in the service of the State, the Ombudsman shall only investigate the allegation if he is satisfied that the person concerned has exhausted 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.—(1) If the Ombudsman has reason to suspect that a circumstance referred to in section 4 (1) exists in respect of—

- (a) money due to a Government, body or institution referred to in section 35 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),

he may advise the State President accordingly.

(2) Upon receipt of 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 *Gazette*—

STATUTES OF THE REPUBLIC OF SOUTH AFRICA — CONSTITUTIONAL LAW  
 ss. 4A-5 Ombudsman Act, No. 118 of 1979 ss. 4A-5

- (a) request the Ombudsman to hold in such self-governing territory such inquiry as the Ombudsman may deem necessary; and
- (b) 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.—(1) The Ombudsman shall, in respect 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 (c) 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 inquiry—

- (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;
- (b) 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).

STATUTES OF THE REPUBLIC OF SOUTH AFRICA — CONSTITUTIONAL LAW  
*Ombudsman Act, No. 118 of 1979*

ss. 5-7

ss. 5-7

(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, excluding the record of that part of the said evidence the disclosing of which will, in the opinion of the Ombudsman, not be in the interest of the security 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 (e) of Act No. 104 of 1991.]

(7) The Ombudsman may, if he decides to hold an inquiry referred to in subsection (1), at any time prior to or during the holding of the inquiry—

- (a) request any person in the service of the State, or of a fund, institution, body, association or organization referred to in the definition of 'public moneys' 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;
- (b) 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) (b).

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

6. Procedure at and nature of proceedings.—(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 necessary or desirable, shall not be present at the proceedings at the inquiry or any part thereof.

(2) If the 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 unless such person's presence is necessary in connection with such proceedings or is authorized by the Ombudsman.

(3) Notwithstanding anything to the contrary contained in any law no 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.—(1) For the purposes of conducting an inquiry the Ombudsman may direct any person to appear before him to—

- (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 direction 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 Ombudsman and signed by the Ombudsman and served on the person subpoenaed either by

STATUTES OF THE REPUBLIC OF SOUTH AFRICA — CONSTITUTIONAL LAW  
 ss. 7-8 *Ombudsman Act, No. 118 of 1979*

ss. 7-8

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

(5) 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 to peruse such of the documents referred to in section 6 (3) as in the opinion of the Ombudsman are necessary to enable such person to 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.**—The 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.**—The Ombudsman or his assistant or any member of his staff or any person referred to in section 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.**—The 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 to that person.

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

**8. Contempt of Ombudsman.**—(1) No person shall—

(a) insult, disparage or belittle the Ombudsman or an assistant to the Ombudsman, or anticipate the proceedings at an inquiry or the findings of the Ombudsman in a manner calculated to influence such proceedings or findings;

STATUTES OF THE REPUBLIC OF SOUTH AFRICA — CONSTITUTIONAL LAW  
 ss. 8-13 *Ombudsman Act, No. 118 of 1979* ss. 8-13

- (b) wilfully interrupt the proceedings at an inquiry or misbehave himself in any other manner in the place where an inquiry is being held;
- (c) 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.

(4) . . . . .

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

**9. Prohibition of Improper Influencing.**—(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.**—The Ombudsman, or his assistant or any member of his staff or any person referred to in section 5 (7), shall not be liable in respect of anything 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.**—(1) The State President may by proclamation in the *Gazette* make regulations—

- (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.**—Any 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.**—The provisions of this Act shall not affect any inquiry under, or the performance or exercise of any duty or power imposed or conferred by or under, any law.

**13. Short title.**—This Act shall be called the Ombudsman Act, 1979.

[S. 13 substituted by s. 12 of Act No. 104 of 1991.]