

OMBUDSMAN BILL, 2023

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OMBUDSMAN BILL, 2023

A BILL FOR AN ACT TO PROVIDE FOR THE OFFICE OF OMBUDSMAN

Enacted by the Parliament of The Bahamas

PART I - PRELIMINARY

1. Short title and commencement.

- (1) This Act may be cited as the Ombudsman Act, 2023.
- (2) This Act shall come into operation on such date as the Prime Minister may appoint by notice in the Gazette.

2. Interpretation.

- (1) In this Act, unless the context otherwise requires—
 - “**administrative action**” means any action taken by or on behalf of an authority in the exercise of its administrative functions and includes—
 - (a) a decision or an act;
 - (b) a failure to make a decision or do an act, including a failure to provide reasons for a decision;
 - (c) a recommendation; or
 - (d) any action taken because of a recommendation.
 - “**authority**” means the entities prescribed in section 3;
 - “**complainant**” means a person who makes a complaint under this Act;
 - “**Court**” means the Supreme Court;
 - “**fundamental rights and freedoms**” means the fundamental rights and freedoms of the individual protected in Chapter III of the Constitution of the Commonwealth of The Bahamas;

“**Government Business Enterprise**” has the meaning ascribed to it in the Public Finance Management Act, 2023 (*No. 4 of 2023*);

“**investigation**” means an investigation under this Act;

“**local government**” has the meaning ascribed to it in the Public Finance Management Act, 2023 (*No. 4 of 2023*);

“**maladministration**” means inefficient, bad, or improper administration and includes —

- (a) unreasonable delay in dealing with the subject matter of an investigation;
- (b) abuse of any power (including any discretionary power); or
- (c) administrative action that was —
 - (i) contrary to law;
 - (ii) taken without the proper authority;
 - (iii) as a result of negligence or carelessness;
 - (iv) unfair, oppressive or improperly discriminatory or based on procedures that are unfair, oppressive or improperly discriminatory;
 - (v) based wholly or partly on a mistake of law or fact or irrelevant grounds;
 - (vi) as a result of the application of arbitrary or unreasonable procedures; or
 - (vii) otherwise contrary to fair or sound administration or good governance;

“**Ombudsman**” means the person appointed to the office of Ombudsman established by section 5;

“**public entity**” has the meaning ascribed to it in the Public Finance Management Act, 2023 (*No. 4 of 2023*).

- (2) Any reference in this Act to an authority includes a reference to the officers and employees of that authority.

3. **Application of Act.**

This Act applies to the following authorities —

- (a) public entity;
- (b) Government Business Enterprise;
- (c) local government;
- (d) any company registered under the Companies Act (*Ch. 308*), being a company in which the Government or an agency of Government holds not less than forty-nine per centum of the ordinary shares;
- (e) any other body —

- (i) which is established by Act of Parliament ; or
- (ii) whose revenues are wholly or partially derived from public resources (as the term is defined in the Public Finance Management Act, 2023 *No. 4 of 2023*)

4. Objectives of the Act.

The objectives of this Act are to —

- (a) promote transparency, accountability and integrity in the administration and decision making of authorities; and
- (b) ensure the protection of fundamental rights and freedoms and international human rights as the foundation of a fair and just society.

PART II – OFFICE OF OMBUDSMAN

ESTABLISHMENT AND FUNCTIONS OF OFFICE OF OMBUDSMAN

5. Establishment of Office of Ombudsman.

- (1) There shall be a person known as the Ombudsman who shall be appointed by the Governor-General acting on the recommendation of a committee comprised of the following persons —
 - (a) the Prime Minister;
 - (b) Leader of the Opposition;
 - (c) a representative of the Judicial and Legal Service Commission;
 - (d) a representative of the Public Service Commission;
 - (e) the President of The Bahamas Chamber of Commerce and Employer's Confederation, or his representative; and
 - (f) a member representing civil society recommended by the umbrella organisation of civil society organisations in The Bahamas.
- (2) A person shall be eligible for appointment as Ombudsman if qualified for appointment as a Justice of the Supreme Court and meets the following criteria —
 - (a) has knowledge of the Constitution and principles of international human rights law;
 - (b) has experience in advocacy, or adjudication of, matters involving human rights;
 - (c) has knowledge and experience in public governance and administration; and
 - (d) is a person of integrity and good character.

- (3) The Ombudsman shall not be a public officer.
- (4) The *First Schedule* shall have effect with respect to the tenure, remuneration, other terms and conditions of service of the Ombudsman, and other matters related thereto.

6. Ombudsman to hold no other office.

- (1) The Ombudsman shall not hold any office or otherwise engage in any occupation, activity or practice outside the duties of Ombudsman.
- (2) If the Ombudsman becomes aware of an actual or perceived conflict of interest in a matter which is the subject of an investigation by him, the Ombudsman shall —
 - (a) immediately inform the Governor-General and Speaker of the House of Assembly; and
 - (b) take immediate action to avoid the conflict of interest —
 - (i) by eliminating the conflict; or
 - (ii) referring the matter to a court of competent jurisdiction for determination.

7. Functions of Ombudsman.

- (1) The functions of the Ombudsman are —
 - (a) to enquire into and investigate any administrative action by an authority for the purpose of deciding whether there is evidence of —
 - (i) maladministration; or
 - (ii) breach of fundamental rights and freedoms;
 - (b) to make recommendations to any authority concerning any administrative action investigated under paragraph (a) and generally, about ways of improving its administrative practices and procedures;
 - (c) to promote public awareness of fundamental rights and freedoms through the provision of information and education;
 - (d) to consult, engage and cooperate with civil society, religious, ethnic and minority organisations, and academic institutions;
 - (e) in conjunction with the Attorney-General to monitor and promote compliance with international and domestic human rights law by any of the following—
 - (i) making recommendations to the Government as to execution and ratification of an international human rights instrument;
 - (ii) reviewing existing and proposed legislation for consistency with international human rights law and recommending

- additional legislative or other measures to protect fundamental rights and freedoms;
- (iii) advising the Government on its reporting obligations under international human rights instruments and the content of those reports where required;
 - (iv) performing such other functions as may be conferred on him under this or any other Act.
- (2) The Ombudsman may investigate any administrative action taken by or on behalf of any authority —
- (a) where a complaint is made to him by a person who claims —
 - (i) to have been treated unfairly as a result of maladministration; or
 - (ii) to have had a fundamental right and freedom breached;
 - (b) on his own motion, or where either House of Parliament resolves that there are reasonable grounds to carry out an investigation in the public interest.
- (3) The Ombudsman may conduct an investigation notwithstanding a provision in any written law to the effect that —
- (a) any decision, recommendation or act of an authority shall be final;
 - (b) no appeal shall lie in respect thereof; or
 - (c) no proceeding of an authority shall be challenged, reviewed, quashed or called in question.
- (4) If a question arises about the Ombudsman’s jurisdiction to investigate a case, the Ombudsman or complainant may apply to the Court for an order determining the jurisdiction of the Ombudsman.

8. Powers of Ombudsman.

- (1) The Ombudsman shall in investigating a complaint, have the power to —
- (a) make copies of any document or examine any thing produced;
 - (b) enter on any premises occupied by any authority between 9am and 5pm on weekdays;
 - (c) inspect the premises;
 - (d) conduct interviews on the premises with officers of the authority;
 - (e) examine any document found on those premises which specifically relate to the complaint;
 - (f) refer the subject of the complaint to the Commissioner of Police; or
 - (g) issue a stay of a decision pending further investigation.
- (2) Before entering any premises pursuant to subsection (1)(b), the Ombudsman shall give the head of the authority occupying the premises

twenty-four hours notice of his intention to enter the premises and his purpose for entering.

- (3) The Attorney-General may by notice to the Ombudsman exclude the exercise of the powers of the Ombudsman in relation to any complaint being investigated by the Ombudsman, if in the opinion of the Attorney-General, the investigation of such complaint by the Ombudsman is prejudicial to the public interest.
- (4) Where a notice is given under subsection (3) and the Ombudsman is of the opinion that it is necessary to take the action prevented by the notice, the Ombudsman may apply to the Court for an order, setting aside the notice.

PART III - MAKING AND HANDLING OF COMPLAINTS

9. Making a complaint.

- (1) A complaint to the Ombudsman about any administrative action of an authority —
 - (a) may be made by the person aggrieved, or other person authorized by him in writing to act on his behalf;
 - (b) may be made electronically or in writing; and
 - (c) shall be made within one year after the date the complainant first had notice of the administrative action.
- (2) Where a complaint is made to the Ombudsman, he shall record —
 - (a) the complainant's name, street address, email address and telephone number;
 - (b) the subject matter of the complaint; and
 - (c) the date when the complaint was made.
- (3) The Ombudsman shall write to a complainant acknowledging receipt of the complaint within thirty (30) days from the date of receipt of the complaint.
- (4) Where a person who is detained in custody or otherwise confined in an institution informs the person in charge or other person performing duties in connection with his detention or confinement, that he wishes to make a complaint to the Ombudsman, the person so informed shall —
 - (a) provide writing paper, writing utensils and an unsealed envelope to the complainant;
 - (b) take all other steps necessary to facilitate the making of the complaint; and

- (c) without delay, deliver the sealed envelope containing the complaint to the Ombudsman.
- (5) A communication from the Ombudsman to a person detained in custody or confined in an institution, shall be forwarded to that person in a sealed envelope.

10. Restrictions on jurisdiction to investigate.

- (1) The Ombudsman shall not investigate any administrative action—
 - (a) in respect of any matter described in the *Second Schedule*;
 - (b) determined before the commencement of this Act;
 - (c) of which the complainant had notice for more than one year before making a complaint;
 - (d) where the Constitution or any written law, provides a remedy adequate in the circumstances and, the complainant has not availed himself of that remedy without reasonable justification for his failure to do so;
 - (e) where the subject matter of the action was previously determined by a court of competent jurisdiction;
 - (f) which gives rise to a complaint which is frivolous, vexatious or not made in good faith; or
 - (g) where the complainant does not have a sufficient interest in the subject matter of the complaint.
- (2) The Ombudsman may decide not to complete an investigation if —
 - (a) the complainant has abandoned the complaint by failing to respond after a reasonable number of attempts by the Ombudsman to contact him;
 - (b) the complainant withdraws the complaint in writing; or
 - (c) the complaint is settled or is successfully dealt with by mediation.
- (3) Where the Ombudsman does not investigate or complete an investigation, he shall —
 - (a) notify the complainant and the authority in writing within thirty days of his decision not to investigate or to complete the investigation;
 - (b) give reasons for his decision; and
 - (c) notify the complainant in writing of any other recourse available to him.

11. Complaints determined by mediation.

- (1) The Ombudsman may determine a complaint by mediation if he is of the opinion, having regard to all the circumstances of the case, that mediation is suitable.
- (2) The Ombudsman may engage technical or professional advisers as he considers necessary to assist him in the discharge of his functions under this section.
- (3) Where a complaint has been referred to mediation by the Ombudsman, the mediation shall be terminated where the parties are unable to settle the complaint within sixty days of the commencement of mediation and the mediator shall notify the Ombudsman of the termination of mediation.
- (4) If an attempt to deal with a complaint by mediation under this section is unsuccessful —
 - (a) the complaint shall be treated under this Act as if the mediation had not taken place; and
 - (b) the mediator shall be excluded from giving evidence in any subsequent investigation by the Ombudsman.
- (5) Anything said or admitted during the mediation and no document submitted for the purposes thereof shall be admissible in evidence in any subsequent investigation of the complaint unless the complainant consents.
- (6) The cost of engagement of technical or professional advisers shall be payable out of monies appropriated by Parliament for that purpose.

12. Notice of an intention to investigate.

- (1) Where the Ombudsman decides to conduct an investigation he shall, before commencing the investigation, give notice in writing to the authority and complainant.
- (2) The notice shall —
 - (a) inform the authority and the complainant of the investigation;
 - (b) identify the nature of the complaint; and
 - (c) inform the authority and complainant of the powers of the Ombudsman to conduct an investigation.

PART IV – INVESTIGATIONS BY OMBUDSMAN

13. Conduct of investigations.

- (1) The investigation of an administrative action by the Ombudsman shall be conducted in private.
- (2) When conducting an investigation, the Ombudsman —
 - (a) shall not be bound by the strict rules of evidence but shall comply with the rules of natural justice;
 - (b) may afford to the complainant and the authority a legal representative of their own choice and at their own expense, and the Ombudsman shall permit the legal representative to make written or oral representations or both;
 - (c) may obtain information from any person in the manner he considers appropriate; and
 - (d) may make such inquiries as he considers appropriate.
- (3) Subject to the provisions of this Act, the Ombudsman may regulate the procedure for investigations or proceedings in such manner as he sees fit.

14. Evidence of breach of duty or misconduct.

- (1) If during the course of an investigation or thereafter, the Ombudsman is of the opinion that there is evidence of any breach of duty or misconduct on the part of any officer or employee of any authority which may amount to a criminal offence, he shall refer the matter to the Commissioner of Police.
- (2) Where the Ombudsman makes a reference to the Commissioner of Police, proceedings under this Act with respect to the investigation under subsection (1), shall be stayed pending determination of the matter by the Commissioner of Police.

15. Obtaining evidence for purposes of investigation.

- (1) In conducting an investigation, the Ombudsman shall have the powers of a Justice of the Court to summon, compel the attendance and examination of persons, the production of documents or things, and the power to administer oaths and affirmations.
- (2) Pursuant to his powers under subsection (1), the Ombudsman may compel the attendance and examination of any officer or member of the authority under investigation, and the complainant or any other person who, in the opinion of the Ombudsman, is able to give information or produce documents relevant to the investigation or complaint.

- (3) The Ombudsman shall not require —
- (a) any person to furnish any information or answer any question —
 - (i) relating to proceedings or deliberations of the Cabinet or any committee of the Cabinet;
 - (ii) prejudicial to the security, defence or international relations of The Bahamas;
 - (iii) prejudicial to the investigation or detection of offences; or
 - (iv) relating to any matter described in the *Second Schedule*;
 - (b) any person, Minister or Parliamentary Secretary to produce in whole or in part, any document whose release is prohibited by subsection (3)(a).
- (4) For the purposes of subsection (3)(a) —
- (a) a certificate by the Secretary to the Cabinet shall be conclusive proof of the matters referred to in sub-paragraph (i); and
 - (b) a certificate by the Attorney-General shall be conclusive proof of the matters referred to in sub-paragraphs (ii), (iii) and (iv).
- (5) Subject to section 8(3) and subsection (3) —
- (a) the Ombudsman may, for the purpose of an investigation, require any Minister, officer or member of the authority concerned or any other person (including the complainant) to supply any information, produce any document or thing, attend for examination, or allow access by the Ombudsman to any premises of the authority; and
 - (b) no information, answer, document or thing shall be withheld from the Ombudsman on the ground that its disclosure would be contrary to the public interest.

PROCEDURE AFTER INVESTIGATION

16. No evidence of maladministration or breach.

If at the conclusion of an investigation, the Ombudsman determines that there is no evidence of maladministration or in his opinion there is no breach of fundamental rights and freedoms on the part of the authority, he shall as soon as is reasonable and in any case not more than ninety days after his conclusion —

- (a) record his decision and reasons in writing; and
- (b) notify both the complainant and the authority of his decision and reasons.

17. Evidence of maladministration.

- (1) If at the conclusion of an investigation, the Ombudsman decides that there is evidence of maladministration on the part of the authority, the Ombudsman shall report his decision to the authority and the complainant in writing as soon as is reasonable, and in any case not more than ninety days after such decision, make such recommendation to the authority as he sees fit.
- (2) Without restricting subsection (1), the Ombudsman may recommend to the authority that —
 - (a) the act of maladministration be referred to an appropriate authority or the Court for further consideration or redress in the circumstances;
 - (b) an omission or a delay be rectified;
 - (c) a decision or recommendation of an authority be cancelled or altered;
 - (d) reasons be given for the maladministration by the authority;
 - (e) a practice, procedure or course of conduct be altered;
 - (f) an enactment be reviewed; or
 - (g) any other steps be taken.
- (3) In making a recommendation under this section, the Ombudsman shall inform the authority of the requirements under section 18 and the consequences of non-compliance with the requirements.

18. Authority to notify Ombudsman of steps taken after receipt of recommendations.

- (1) Where the Ombudsman makes a recommendation to an authority under section 17, the authority shall notify the Ombudsman in writing, within twenty-one days of receipt of the recommendation, of the action taken or proposed to be taken to give effect to the recommendation.
- (2) Where the authority has taken no action within twenty-one days of receipt of the recommendation or does not propose to take any action, the authority shall give reasons in writing to the Ombudsman, for its failure to implement the recommendation.
- (3) The Ombudsman, if he thinks fit in the circumstances may in writing, extend the time period specified in subsection (1).
- (4) If within the time period specified by this section, the authority —
 - (a) fails to comply with the recommendation given in accordance with subsection (1); or

- (c) has taken action that in the Ombudsman’s opinion is inadequate or inappropriate,

the Ombudsman, after considering any reasons given by the authority, may include the failure of the authority to implement the recommendation in a special report in accordance with section 19.

19. Special report by Ombudsman.

- (1) Where an Ombudsman has made a recommendation under section 17, and the authority fails to comply with the recommendation or has taken action that is inadequate or inappropriate, the Ombudsman shall prepare a special report on the investigation.
- (2) The Ombudsman shall deliver a special report made under this section to the —
 - (a) Speaker of the House of Assembly;
 - (b) Governor-General;
 - (c) President of the Senate; and
 - (d) Minister charged with responsibility for the authority.
- (3) Where any part of a special report deals with any matter concerning an authority for which a Minister is charged with responsibility, the Ombudsman shall also send copies of that part or those parts of the report to that Minister for his information.
- (4) The Ombudsman shall not include in a special report any information relating to —
 - (a) any proceedings or matter that might prejudice the national security, of the Commonwealth of The Bahamas; or
 - (b) proceedings before any court.

20. Evidence of breach of fundamental rights and freedoms.

- (1) If, at the conclusion of an investigation, the Ombudsman is of the opinion that there is evidence of a breach of the complainant’s fundamental rights and freedoms on the part of the authority, the Ombudsman shall within ninety days of his conclusion, prepare and deliver a report of his decision in writing to —
 - (a) the authority; and
 - (b) the complainant and shall include in the report such legal advice as he considers necessary.
- (2) Where a report is prepared by the Ombudsman in accordance with subsection (1), the Ombudsman shall deliver a copy of the report to the —
 - (a) Speaker of the House of Assembly;

- (b) Governor-General;
- (c) President of the Senate; and
- (d) Minister charged with responsibility for the authority.

21. Ombudsman not to make adverse comments.

The Ombudsman shall not —

- (a) in any reference under section 14(1) make any statement adverse to the authority or the person who is the subject of the complaint;
- (b) in any report made under section 26 —
 - (i) in any recommendation contained in the report, make any statement adverse to the authority or person unless that authority or person has been given an opportunity to be heard; or
 - (ii) in any reference contained in the report, make any statement adverse to the authority or person that is the subject of the complaint.

PART V - MISCELLANEOUS

22. Protection and privileges of witnesses.

- (1) Every person shall have the same rights in relation to the giving of information to the Ombudsman, the answering of questions put by the Ombudsman, and the production of any documents and things as witnesses have in the Court.
- (2) Compliance with any requirement of the Ombudsman under section 15(2) —
 - (a) is not a breach of any obligation of secrecy or non-disclosure; and
 - (b) no person shall be liable to prosecution for an offence under the Official Secrets Act, 1911 of the United Kingdom, or any other written law by reason only of that person's compliance with any requirement under section 15(2).
- (3) Except in proceedings for perjury within the meaning of section 423 of the Penal Code Act (*Ch. 84*) in respect of sworn testimony given by a person before the Ombudsman, or in respect of an offence in section 27 —
 - (a) no statement given by any person in the course of any investigation by, or proceedings before the Ombudsman shall be admissible in evidence against that or any other person in any court or in any inquiry or other proceeding; and

- (b) no evidence in respect of proceedings before the Ombudsman shall be given against any person.
- (4) No person shall discriminate against another person (the other person) in any of the ways specified in subsection (5) because that other person —
 - (a) complains, gives evidence or otherwise assists with the reporting of a complaint, investigation or other proceedings under this Act; or
 - (b) discloses information to the Ombudsman about maladministration or a breach of fundamental rights and freedoms on the part of an authority.
- (5) For the purposes of subsection (4), “discrimination” occurs where a person —
 - (a) refuses to employ or to continue to employ the other person;
 - (b) threatens to dismiss, or threatens to penalize the other person in any other way in regard to the terms and conditions of his employment; or
 - (c) intimidates, coerces, or imposes any penalty upon the other person.

23. Privilege.

- (1) Except in the case of proceedings for an offence under section 27, no proceedings whatsoever shall lie against the Ombudsman or any person concerned with the administration of this Act for anything he may do or report or say in the performance of his functions under this Act.
- (2) Anything said or any information supplied or any document or thing produced by any person for the purpose or in the course of, any investigation before the Ombudsman, shall be privileged in the same manner as if the investigation was a proceeding in a court.
- (3) For the purposes of the law of defamation —
 - (a) any communication made by or to the Ombudsman for the purposes of a complaint or investigation shall be privileged in the same manner as if it were made in the course of proceedings in a Court;
 - (b) any report of the Ombudsman under this Act shall be deemed to be authorised to be published by both Houses of Parliament and shall be privileged;
 - (c) any communication between the Ombudsman and a member of either House of Parliament for the purposes of the Ombudsman's functions shall be deemed to be a proceeding in Parliament and shall be privileged.

24. Protection of title.

No person, other than the person for the time being appointed as the Ombudsman shall —

- (a) use the title “the Ombudsman”; or
- (b) hold himself out to be “the Ombudsman”.

25. Appropriation of funds, etc.

- (1) All —
 - (a) salaries, including that of the Ombudsman;
 - (b) allowances and other expenditure payable or incurred under this Act,shall be payable out of monies appropriated by Parliament for that purpose.
- (2) The Ombudsman shall be the chief executive officer and principal accounting officer in respect of estimates of expenditure approved for the office of the Ombudsman.
- (3) The Ombudsman shall cause proper accounts to be kept and maintained of all the financial transactions of the office of the Ombudsman and shall prepare in respect of each financial year, a statement of such accounts in such form as the Treasurer may direct.
- (4) The accounts of the office of the Ombudsman shall be audited and reported on annually by the Auditor-General, and for that purpose the Auditor-General or any person authorised by him in that behalf shall have access to all books, records, returns and other documents relating to such accounts.

26. Annual reports.

- (1) The Ombudsman shall, no later than six months after the end of each financial year, prepare a report on the performance of his functions under this Act during that year.
- (2) The annual report shall contain —
 - (a) statistical information on the complaints received;
 - (b) the recommendations and references made in relation to complaints received;
 - (c) the outcome or steps taken by an authority to give effect to a recommendation made by the Ombudsman; and
 - (d) an account of its transactions.
- (3) The Ombudsman shall prepare and deliver the annual report made under this section to the Speaker of the House of Assembly, and shall send a

copy of the report to the Governor-General and the President of the Senate.

- (4) Where any part of an annual report deals with any matter concerning an authority for which a Minister is charged with responsibility, the Ombudsman shall also send copies of that part or those parts of the report to that Minister for his information.
- (5) Annual reports prepared by the office of the Ombudsman shall be published in a format established by the Ombudsman on the official website of the office of the Ombudsman.
- (6) The Ombudsman shall not include in an annual report any information relating to —
 - (a) any proceedings or matter that might prejudice the national security, of The Bahamas; or
 - (b) proceedings before any court.

27. Offences.

- (1) Any person who without lawful justification or excuse, obstructs, insults, hinders or resists the Ombudsman in the performance of his functions under this Act, commits the offence of contempt and is liable on summary conviction to a fine not exceeding ten thousand dollars or six months' imprisonment.
- (2) Where a person —
 - (a) intentionally makes a false statement to, misleads or attempts to mislead the Ombudsman or another person in the exercise of any function or power conferred by this Act; or
 - (b) discloses information or documents in contravention of paragraph 8 of the *First Schedule*; or
 - (c) discriminates against another person in contravention of section 22(4); or
 - (d) being a person in charge of other persons complained to by a person detained in custody fails to comply with section 9(4),
 commits an offence.
- (3) Any person who commits an offence contrary to subsection (2)(a), (b) and (d) is liable on summary conviction to a fine not exceeding five thousand dollars.
- (4) Any person who commits an offence contrary to subsection 2(c) is liable on summary conviction to a fine not exceeding ten thousand dollars or imprisonment not exceeding six months.

28. Amendment of First and Second Schedules.

The Governor-General may by Order subject to the affirmative resolution of the both Houses of Parliament amend the *First* and *Second Schedules*.

29. Regulations.

- (1) The Governor-General may make regulations for the better carrying into effect of the provisions of this Act, and to provide for any matter in respect of which it may be necessary or desirable to make regulations.
- (2) Any regulations made under subsection (1) shall be subject to affirmative resolution by both Houses of Parliament.

FIRST SCHEDULE

(section 5)

1. Tenure of office.

- (1) Subject to the provisions of this paragraph, any person appointed as Ombudsman shall hold office for a period of five years and shall, at the expiration of such period, be eligible for reappointment for a further period of not more than five years.
- (2) A person appointed as Ombudsman may at his own request be relieved of his office by the Governor-General and shall in any case, subject to the provisions of sub-paragraph (3), vacate office on attaining the age of seventy years.
- (3) Notwithstanding he has attained the age at which he is required by or under the provisions of this paragraph to vacate his office, the Ombudsman may continue in office for such period after attaining that age as the Governor-General, acting on the recommendation of the committee referred to in section 5(2), may specify, in order to enable the Ombudsman to give his decision or do any other thing in relation to any investigation he was conducting before he attained that age.
- (4) Nothing done by the Ombudsman shall be invalid by reason only that he has attained the age at which he is required by this section to vacate his office.
- (5) The Ombudsman may be removed from office for —
 - (a) inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause);

- (b) misbehaviour, or
 - (c) any circumstance arises under paragraph (2) that if he were not Ombudsman, would cause him to be disqualified for appointment, and shall not be removed except in accordance with the provisions of sub-paragraph (6).
- (6) If the Prime Minister represents to the Governor-General that the question of removing the Ombudsman from office ought to be investigated then —
- (a) the Governor-General shall appoint a tribunal, which shall consist of a Chairman and not less than two other members, selected by the Governor-General, acting in accordance with the advice of the Chief Justice from among persons who hold, have held or are qualified to hold high judicial office; and
 - (b) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to the Governor-General whether the Ombudsman ought to be removed from office.
- (7) If the question of the removal of the Ombudsman from office is referred to the tribunal under sub-paragraph (6), the Governor-General may suspend the Ombudsman from performing the functions of his office pending the tribunal's enquiry and any such suspension may at any time be revoked by the Governor-General and shall in any case cease to have effect if the tribunal recommends to the Governor-General that the Ombudsman ought not to be removed from office.
- (8) Where the tribunal has advised the Governor-General that the Ombudsman ought to be removed from office for inability or misbehaviour, the Governor-General shall remove the Ombudsman from office

2. Disqualifications.

A person shall not be qualified for appointment to the office of Ombudsman if he —

- (a) is a member of the House of Assembly or the Senate;
- (b) is a member of a local government authority;
- (c) is an undischarged bankrupt;
- (d) owns ten percent or more of shares in any company in which the government owns any shares;
- (e) has at any time been convicted of any offence involving dishonesty or violence, or is liable on conviction of any offence to be sentenced to imprisonment for a term exceeding twelve months.

3. Filling of vacancy.

- (1) When a vacancy arises in the office of Ombudsman, the Governor-General acting on the recommendation of the committee in accordance with section 5(2) may appoint a person to act in that office during such vacancy, until a substantive appointment is made.
- (2) Where by reason of his absence from the country or other sufficient cause, or by reason of his suspension under paragraph 1(7), the Ombudsman is unable to perform his functions under this Act, the Governor-General, acting in accordance with section 5(2) may appoint a suitable person to perform the functions of the Ombudsman in his absence or during his suspension.
- (3) If after the expiry of six months, the Ombudsman fails to return to his office by reason of his absence from the country or after the Governor-General has revoked his suspension under paragraph 1(7), the Governor-General, acting in accordance with section 5(2) may appoint a new Ombudsman.

4. Remuneration of Ombudsman.

- (1) Subject to sub-paragraph (2), the Ombudsman shall be entitled to receive such remuneration and emoluments as are payable to a Justice of the Court other than the Chief Justice.
- (2) The emoluments and terms and conditions of service of the Ombudsman, shall not be altered to his disadvantage during the period of his appointment.
- (3) The remuneration and emoluments shall be charged and paid out of the Consolidated Fund.

5. Pensions.

The Ombudsman shall be entitled to receive such pension or gratuity as is paid pursuant to the Judges Remuneration and Pensions Act (*Ch. 45*) to a Justice of the Court other than the Chief Justice.

6. Staff.

- (1) The Ombudsman shall appoint such number of public officers as may be required to assist the Ombudsman in the discharge of his functions.
- (2) The Ombudsman may, in addition to the technical or professional advisers engaged to assist him pursuant to section 11(2), may from time to time engage such other technical or professional advisers as he considers necessary to assist him in the discharge of his functions.

- (3) Every person appointed or engaged under this section is subject to the Ombudsman's direction and control in the performance of their functions under this Act.

7. Delegation.

- (1) The Ombudsman may, in writing, delegate to a senior public officer of his staff on conditions as he determines any of his functions under this Act except for the preparation of a statement of account in accordance with section 25 or preparation and delivery of—
- (a) a special report under section 19; and
 - (b) an annual report under section 26.
- (2) Delegation does not relieve the Ombudsman of his accountability under this Act.

8. Ombudsman and staff to maintain secrecy.

- (1) The Ombudsman and every person appointed or engaged under paragraph 6 shall maintain secrecy in respect of all matters that come to their knowledge in the exercise of their functions under this Act except any disclosure for the purposes of -
- (a) an investigation and any report under this Act;
 - (b) proceedings (or possible proceedings) for an offence of perjury under section 22(3);
 - (c) reference to an appropriate authority under sections 14(2) and 17(2) (a);
 - (d) proceedings (or possible proceedings) or an offence under section 27.

SECOND SCHEDULE

(Section 10)

Matters Not Subject to Investigation

1. Proceedings before any court.
2. Any action which relates to or affects national security or orders or directions to the Defence Force or members thereof, or any proceedings under the Defence Act (*Ch. 211*).
3. Action taken by or with the authority of the Attorney-General or any other Minister, the Director of Public Prosecutions or Commissioner of Police for the purposes of investigating crime or protecting the security of the

- Commonwealth of The Bahamas , including action taken with respect to passports.
4. Any action take by the Minister responsible for foreign affairs relating to the extradition of a person.
 5. Any action or advice of a qualified medical practitioner or consultant involving the exercise of professional or clinical judgment.
 6. Matters relating to the grant of liquor licences.
 7. Matters relating to the regulation of public utilities.
 8. Any function of the Minister under the Immigration Act or the regulations made thereunder.
 9. Any decision or action of the Governor-General, Judicial and Legal Service Commission, Public Service Commission, Public Service Board of Appeal and Police Service Commission relating to the appointment, removal, or disciplinary control of any person.
 10. The grant of honours and awards under the National Honours Act, 2016 (*No.1 of 2016*).
 11. Any action relating to or affecting the terms and conditions to which pensions or gratuities are payable.

OBJECTS AND REASONS

Clause 1 provides for the short title and commencement.

Clause 3 seeks to identify the public entities and bodies whose administrative actions will be subject to investigation by the Ombudsman.

Clause 4 establishes the objectives of the Act namely: (a) to promote transparency, accountability and integrity in the administration and decision making of authorities; and, (b) to ensure the protection of fundamental rights and freedoms and international human rights as the foundation of a fair and just society.

Clause 5 seeks to provide for the requirements and procedure in relation to the appointment of the Ombudsman.

Clause 6 provides that the Ombudsman shall not hold any other office for profit or engage in any other occupation or activity that may interfere with his duties and prescribes the procedure for the handling of conflicts of interest by the Ombudsman.

Clause 7 notes the various functions of the Ombudsman namely to: (a) investigate administrative actions by authorities for the purpose of deciding whether there has been maladministration or a breach of a fundamental rights and freedoms, (b) make recommendations based on the findings of his investigation in order to improve the exercise of administrative action which is the subject of a complaint, (c) promote

public awareness of fundamental rights and freedoms to combat discrimination and corruption, (d) to consult and engage with civil society and academic institutions inter alia.

Clause 8 provides for the powers of the Ombudsman to investigate, examine documents, enter and inspect the premises of an authority under investigation, conduct interviews as necessary and refer matters to appropriate authorities such as the Commissioner of Police where required.

Clause 9 outlines the procedures for making a complaint to the Ombudsman and prescribes a complaint may be made by a person aggrieved or authorized person on their behalf. Clause 9 also prescribes the procedure for the making of a complaint where someone has been detained.

Clause 10 provides for the exclusions on the Ombudsman's jurisdiction to investigate certain matters. For example, where a matter is vexatious or frivolous or a matter which has been previously determined by a court.

Clause 11 empowers the Ombudsman to deal with complaints by mediation where he thinks fit and prescribes the mediation procedures to be followed where he refers a matter for mediation.

Clause 12 prescribes the Ombudsman must inform both the complainant and authority where he decides to undertake an investigation by delivering notice as well as mandatory contents of the notice.

Clause 13 provides the rules relative to the conduct of an investigation such as compliance with natural justice rules. In keeping with the rules of natural justice, the clause also provides both the complainant and authority may be represented by counsel in an investigation. The Ombudsman is able to obtain information and make such inquiries as appropriate in the conduct of his investigations.

Clause 14 seeks to outline the procedure to be employed where the Ombudsman finds there is breach of duty or misconduct on behalf of an authority and the legal status of the investigation while the matter has been referred to the appropriate authority.

Clause 15 provides that the powers of the Ombudsman in obtaining evidence for the purpose of conducting an investigation are parallel to the powers of a Justice of the Supreme Court in that respect. However, exclusions to the power of the Ombudsman to obtain information include information which may prejudice national security or disclose Cabinet deliberations and the investigation of matters in the Second Schedule i.e Matters excluded from investigation by the Ombudsman .

Clause 16 prescribes where the Ombudsman has not found any evidence of maladministration or breach of fundamental rights and freedoms on the part of an authority after the conduct of an investigation, the Ombudsman must notify the authority and complainant in writing of his conclusion as soon as is reasonable but no more than ninety (90) days from the date of receipt of the complaint.

Clause 17 prescribes where an Ombudsman has found evidence of maladministration specifically, the Ombudsman must report his decision to the authority and complainant with a ninety (90) day time period from concluding his investigation. In his report, the Ombudsman may make a recommendation to the authority that include inter alia —

- (a) the matter should be referred to an appropriate authority or the Court for further consideration or redress in the circumstances;
- (b) an omission or a delay should be rectified;
- (c) the decision or recommendation should be cancelled or altered;
- (d) reasons should be given;
- (e) the practice, procedure or course of conduct should be altered;
- (f) an enactment should be reviewed;

Clauses 18 and 19 when read together provide the power of the Ombudsman to prepare special reports in the event of non-compliance with the recommendation of the Ombudsman upon a finding of maladministration. Where the Ombudsman has made a recommendation upon a finding of maladministration, the authority to whom recommendation was made is required to either notify the Ombudsman: (i) the recommendation has been given effect or (ii) why the authority does not propose to or has failed to give effect to the recommendation.

Under the provisions of Clause 19, where the authority fails to give effect to the recommendation, the Ombudsman may prepare and deliver a special report on the facts of matter and the authority's non-compliance to the: (i) Speaker of the House of Assembly; (ii) Governor-General (iii) President of the Senate; and (iv) Minister charged with responsibility for the authority.

Clause 20 seeks to provide for the procedure of the Ombudsman where there is evidence of breach of fundamental rights and freedoms by an authority. Under the provisions of Clause 20, the Ombudsman is empowered to prepare and deliver a special report which includes any relevant advice on redress or otherwise as the Ombudsman deems necessary in the circumstances.

Clause 21 limits the ability of the Ombudsman to make adverse comments with respect to authority or complainant where he has referred a matter to the appropriate authority or prepared an annual report under section 26.

Clause 22 prescribes the various protections and privileges afforded to witnesses compelled by the Ombudsman to answer questions and disclose information to the Ombudsman in the conduct of his investigation. Under Clause 22 the disclosure of information during interviews with the Ombudsman does not amount to a breach of any obligation of secrecy or non-disclosure and persons who disclose pursuant to requirement by the Ombudsman are protected from prosecution under the Official Secrets Act, 1911 of the United Kingdom, or any other written law. The rights of witnesses in relation to disclosing information to the Ombudsman are similar to those

rights witnesses have in the Supreme Court.

Subsection (3) of Clause 22 excludes any statement made or evidence given before the Ombudsman to be admissible in any proceedings except in perjury proceedings in respect of sworn testimony. Subsection (4) of Clause 22 mandates that witnesses who have complied with the requirements of the Ombudsman to disclose information shall not be subject to discrimination in the form of a refusal to employ or continue to employ or otherwise.

Clause 23 deems the exercise by the Ombudsman of his functions shall not be subject to proceedings and that certain information or documents produced before the Ombudsman shall be privileged in the same manner as if the information or documents were produced in court.

Clause 24 protects the title of Ombudsman from general or other use other than by the Ombudsman constituted under this Act.

Clause 26 provides for the preparation of an annual report by the Ombudsman to be delivered to the Speaker of the House of Assembly, Governor-General and President of the Senate and prescribes the contents of the annual report include: (i) statistical information on the complaints received; (ii) the recommendations and references made in relation to complaints received; (iii) the outcome or steps taken by an authority to give effect to a recommendation made by the Ombudsman; and (iv) an account of its transactions. Clause 26 also notes effective exclusions to the disclosures in the Ombudsman's annual report.

Clause 27 sets out of the offences under the Act which include inter alia: (i) intentionally making a false statement to, misleads or attempt to mislead the Ombudsman in the conduct of an investigation, and (ii) where a person discriminates against another person in contravention of section 22. The penalties for offences under the Act are also prescribed in Clause 27.

Clause 28 prescribes the procedure for amendment of the First Schedule and Second Schedule which include tenure, remuneration, other terms and conditions of service of the Ombudsman and other matters related to staff; and matters which are excluded from the Ombudsman's jurisdiction to investigate respectively.

Clause 29 notes the regulation making power of the Governor-General where required for the better carrying into effect of the provisions of the Act.