

## **Nru. 126**

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### **MALTA**

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#### **KAMRA TAD-DEPUTATI**

#### **HOUSE OF REPRESENTATIVES**

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ABBOZZ ta' Ligi mressaq mill-Onorevoli Eddie Fenech Adami, M.P., Prim Ministru, u moqri għall-Ewwel darba fis-Seduta tal-5 ta' April, 1995.

A BILL introduced by the Honourable Eddie Fenech Adami, M.P., Prime Minister, and read the First time at the Sitting of the 5th April, 1995.

**ATT** biex jipprovdi għall-hatra ta' Ombudsman b'setgha li jinvestiga l-azzjonijiet amministrattivi li jsiru mill-Gvern u minn awtoritajiet ohra jew f'isimhom, u għal għanijiet ohra li għandhom x'jaqsmu ma' dan.

**AN ACT** to provide for the appointment of an Ombudsman with power to investigate the administrative actions taken by or on behalf of Government and other authorities, and for other purposes connected therewith.

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**RICHARD J. CAUCHI**

*Skrivan tal-Kamra tad-Deputati*

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**RICHARD J. CAUCHI**

*Clerk of the House of Representatives*

## ABBOZZ TA' LIĠI imsejjah

*ATT biex jipprovdi għall-hatra ta' Ombudsman b'setgħa li jinvestiga l-azzjonijiet amministrattivi li jsiru mill-Gvern u minn awtoritajiet oħra jew f'isimhom, u għal għanijiet oħra li għandhom x'jaqsmu ma' dan.*

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f' dan il-Parlament, u bl-awtorità ta' l-istess, hareġ b'liġi li ġej:-

### PRELIMINARI

1. (1) Dan l-Att jista' jissejjah l-Att ta' l-1995 dwar l-Ombudsman.

Titolu u bidu  
fis-sehħ.

(2) Dan l-Att għandu jibda jsehħ f'dik id-data li l-Prim Ministru jista' jistabbilixxi b'avviż fil-Gazzetta, u jistgħu jiġu hekk stabbiliti dati differenti għal dispozizzjonijiet differenti u għal għanijiet differenti ta' dan l-Att.

2. F'dan l-Att, kemm-il darba r-rabta tal-kliem ma teħtieġx xort'oħra –

Tifsir.

“azzjoni” tfisser kull azzjoni li jkollha x'taqsam ma' xi haġa li tolqot l-amministrazzjoni u tinkludi n-nuqqas li wieħed jagħmel xi haġa;

“korp statutorju” tfisser kull korporazzjoni jew korp magħqud ieħor li jkun stabbilit bil-liġi;

“Kunsill Lokali” tfisser kunsill lokali mwaqqaf bis-saħħa ta’ l-Att ta’ l-1993 dwar Kunsilli Lokali;

“Ombudsman” tinkludi sal-limitu ta’ kull delega li ssir skond l-artikolu 27 ta’ dan l-Att persuna li tiġi hekk delegata;

“uffiċjal pubbliku” għandha l-istess tifsira kif lilha mogħtija fl-artikolu 124 tal-Kostituzzjoni.

## HATRA

Hatra ta’  
Ombudsman.

3. Għandu jinħatar bħala Uffiċjal tal-Parlament Kummissarju għal Investigazzjonijiet Amministrattivi li jissejjaħ Ombudsman, li jinħatar mill-President li jaġixxi skond Riżoluzzjoni tal-Kamra tad-Deputati li tgħaddi bis-saħħa tal-voti ta’ mhux anqas minn żewġ-terzi tal-membri kollha li hemm fil-Kamra:

Lzda meta persuna li ma tkunx membru tal-Kamra tad-Deputati tiġi eletta bħala *Speaker* tal-Kamra tad-Deputati, dik il-persuna ma għandhiex titqies li tkun membru tal-Kamra bil-għan li tiġi stabbilita l-magħġoranza meħtieġa b’dan l-artikolu.

Skwalifiki u  
inkompatibilitajiet.

4. (1) Persuna ma jkollhiex kwalifika li tinħatar fil-kariga ta’ Ombudsman jekk hija tkun membru tal-Kamra tad-Deputati, membru ta’ kunsill lokali, jew uffiċjal pubbliku.

(2) Il-kariga ta’ Ombudsman ma tkunx kompatibbli ma’ l-eżerċizzju ta’ xi attività professjonali, bankarja, kummerċjali jew ta’ *trade union*, jew ma’ kull attività oħra li ssir għal profitt jew rikompens.

(3) L-Ombudsman ma għandu jkun f’ebda qagħda li ma tkunx kompatibbli mat-tweqqif korrett tad-dmirijiet uffiċjali tiegħu jew ma’ l-imparzjalità u l-indipendenza tiegħu jew mal-fiduċja pubblika dwarhom. L-Ombudsman għandu jiddikjara lill-*Speaker* tal-Kamra tad-Deputati u jikseb l-approvazzjoni tiegħu dwar kull kariga, *trust* jew tesserament li l-Ombudsman iqis bħala li ma jolqtux l-imparzjalità, jew indipendenza u fiduċja pubblika, u li huwa jkun jixtieq li jzomm matul iż-żmien tal-kariga tiegħu.

Zmien tal- kariga.

5. (1) Kemm-il darba ma jigix provdut mod ieħor f’dan l-Att, Ombudsman għandu jibqa’ f’ dik il-kariga għal żmien hames snin u jkun eliġibbli biex jerga’ jinħatar għal perijodu wieħed konsekuttiv ta’ hames snin.

(2) Sakemm ma jigix li dik il-kariga ssir vakanti qabel, persuna li tinhatar Ombudsman ghandha tibqa' f' dik il-kariga sa meta jinhatar is-successur taghha.

(3) Ombudsman jista' f' kull zmien jaghti r-rizenja tieghu mill-kariga bil-miktub lill-President.

6. (1) Ombudsman jista' f' kull zmien jitneħħa jew jigì sospiz mill-kariga tieghu mill-President, meta jsirlu indirizz mill-Kamra tad-Deputati li jsir bis-saħħa tal-voti ta' mhux anqas minn żewġ-terzi tal-membri kollha tal-Kamra, li fih jintalab biex inehħih mill-kariga minħabba f' inkapaçita' evidenti li jwettaq il-funzjonijiet tal-kariga tieghu (sew jekk dawn ikunu minħabba f' nuqqas ta' saħħa fizika jew mentali) jew minħabba f' imġieba ħażina evidenti, u d-dispożizzjonijiet tal-proviso li hemm ma' l-artikolu 3 ta' dan l-Att ghandhom japplikaw ukoll għall-ghan li tiġi stabbilita l-maġġoranza meħtieġa b' dan is-subartikolu.

Tneħħija jew  
sospensjoni  
mill-kariga.

(2) F' kull zmien meta ma jkunx hemm sessjoni tal-Parlament, Ombudsman ikun jista' jigì sospiz mill-kariga tieghu mill-President li jaġixxi skond id-diskrezzjoni tieghu, dwar l-inkapaçità li jwettaq id-dmirijiet tal-kariga tieghu jew imġieba ħażina li dwarha tingieb prova li tissodisfa lill-President; izda kull sospensjoni bħal dik ma ghandhiex tkompli sseħħ għal iktar minn xahrejn wara li tibda s-sessjoni tal-Parlament li jkun imiss minnufih wara.

7. (1) Jekk Ombudsman imut, jew jirriżenja mill-kariga tieghu, jew jivvaka l-kariga tieghu jew jitneħħa mill-kariga, il-post vakanti li hekk jirriżulta ghandu jigì okkupat skond ma jinghad f' dan l-artikolu.

Okkupazzjoni  
tal-kariga  
vakanti.

(2) Jekk il-kariga vakanti ta' Ombudsman isseħħ f' xi zmien meta l-Parlament ikun qiegħed f' sessjoni, din ghandha tiġi okkupata bil-ħatra ta' l-Ombudsman mill-President fuq ir-rakkomandazzjoni tal-Kamra tad-Deputati skond l-artikolu 3 ta' dan l-Att:

Izda jekk il-kariga vakanti sseħħ inqas minn xahrejn qabel l-gheluq ta' dik is-sessjoni u ma ssir ebda rakkomandazzjoni bħal dik f' dik is-sessjoni, id-dispożizzjonijiet tas-subartikolu (3) ta' dan l-artikolu ghandhom ikunu japplikaw bħallikieku l-kariga vakanti seħħet filwaqt li l-Parlament ma kienx qiegħed f' sessjoni.

(3) Jekk dik il-kariga vakanti sseħħ f' xi zmien meta l-Parlament ma jkunx qiegħed f' sessjoni, il-President jahtar l-Ombudsman sabiex jokkupa l-kariga, u min jigì hekk maħtur ghandu, kemm-il darba l-kariga tieghu ma ssirx vakanti qabel, jibqa' fil-kariga sakemm jinhatar Ombudsman skond l-artikolu 3 ta' dan l-Att.

## 8. (1) Il-President jista':

(a) f'kull żmien li matulu l-Ombudsman ikun marid jew assenti, jew

(b) għal kull raġuni oħra temporanja meta l-Ombudsman iqis li jkun hekk jehtieg li ma jmexxi investigazzjoni hu nnifsu minhabba f'dawk iċ-ċirkostanzi li kieku huwa kien imħallef tal-grati superjuri huwa kien jastjeni,

jahtar Ombudsman sabiex jidhol fil-kariga skond dan l-artikolu, u dak l-Ombudsman għandu jithallas dak is-salarju, li ma jkunx aktar mill-ammont li jkun qed jithallas lill-Ombudsman, skond kif il-President jikkonsidra li jkun xieraq.

(2) Is-setgħa mogħtija bil-paragrafu (b) tas-subartikolu (1) ta' dan l-artikolu għandha biss titwettaq wara li ssir kitba li tiġi ffirmata mill-Ombudsman fejn jingħad li, fil-fehma tiegħu, ikun jenhtieg sabiex ikun jista' jsir ix-xogħol ta' Ombudsman skond dan l-Att li jinħatar temporanjament Ombudsman addizzjonali.

(3) Ombudsman li jinħatar bis-saħħa ta' dan l-artikolu minhabba f'li l-Ombudsman ikun marid jew assenti għandu jibqa' fil-kariga sa dak iż-żmien meta l-Ombudsman jerga' jidhol fil-kariga tiegħu, u kull Ombudsman ieħor li jinħatar għal għan temporanju għandu jibqa' fil-kariga sakemm huwa jwettaq il-funzjoni lill-Ombudsman.

(4) Hadd ma jista' jinħatar bis-saħħa ta' dan l-artikolu kemm-il darba min jinħatar ma jkollux il-kwalifki biex jinħatar Ombudsman skond ma hemm fl-artikolu 4 ta' dan l-Att.

9. (1) Qabel ma jibda jwettaq id-dmirijiet tal-kariga tiegħu, Ombudsman għandu jiehu għurament li jkun ser jaqdi d-dmirijiet tal-kariga tiegħu f'fedeltà u imparzjalità, u li huwa ma jikxifx, hliet skond l-artikolu 21 ta' dan l-Att, xi tagħrif li jkun kiseb bis-saħħa ta' dan l-Att.

(2) Il-gurament jingħatalu mill-*Speaker* tal-Kamra tad-Deputati,

10. (1) Bla hsara għad-dispożizzjonijiet tal-Kostituzzjoni u ta' kull liġi oħra li tapplika għal dan, u bla hsara għad-dispożizzjonijiet ta' dan l-artikolu l-Ombudsman jista' jahtar lil dawk l-Uffiċjali u impjegati li jistgħu jenhtiegu għat-twettiq tal-funzjonijiet, setgħat u dmirijiet li jittnejjun minn dan l-Att. Din is-setgħa ta' htra tinkludi l-approvazzjoni

għall-għadd ta' persuni li jistghu jinhatru bis-saħħa ta' dan l-artikolu sew jekk b'mod ġeneriku jew għar-rigward ta' xi dmirijiet speċifiċi jew klassi ta' dmirijiet, is-salarji u l-kondizzjonijiet tal-ħatra tagħhom.

(2) L-Ombudsman jista' filwaqt li jkun qiegħed jagħmel investigazzjoni, jahtar, f'kapacità konsultiva, lil min irid jekk il-perizja partikolari tiegħu tkun meħtieġa biex l-investigazzjoni tkun tista' ssir b'mod iktar effettiv:

Izda meta l-konsulent meħtieġ ikun uffiċjal pubbliku, il-Prim Ministru jista' jahtar, wara li ssirlu talba mill-Ombudsman, lil dak l-uffiċjal pubbliku sabiex jagħti l-għajjnuna tiegħu.

(3) Bla ħsara għad-dispożizzjonijiet ta' dan l-artikolu l-Ombudsman ikun responsabbli li japprova l-livell ta' tagħmir kapitali, mobbilja, materjal u attivitajiet amministrattivi meħtieġa għat-twettiq tal-funzjonijiet, setgħat u dmirijiet li jitnisslu minn dan l-Att.

(4) Il-finanzi meħtieġa għas-salarju u *allowances* ta' l-Ombudsman, u għar-rizorsi deskritti fis-subartikoli (1), (2) u (3) ta' dan l-artikolu ma għandhomx jeċċedu dak l-ammont massimu li jiġi indikat f'Ombudsplan li jiġi approvat mill-Kamra tad-Deputati u dan ikun nefqa li ssir mill-Fond Konsolidat mingħajr il-ħtieġa ta' ebda approprjazzjoni ohra hlief dan l-Att:

Izda l-Ombudsman għandu jipprezenta quddiem il-Kamra, mhux iktar tard mill-15 ta' Settembru ta' kull sena, Ombudsplan li jkun jindika l-attivitajiet tas-sena li ġeja.

(5) Is-salarju, *allowances* u spejjeż li jithallsu lill-Ombudsman għandhom ikunu bir-rati li jkunu daqs dawk li japplikaw fil-każ ta' mħallef tal-Qrati Superjuri. Is-salarju ma għandux jitnaqqas matul it-tkomplija tal-ħatra ta' l-Ombudsman.

(6) L-uffiċjali u l-impjegati mahtura skond is-subartikolu (1) għandhom qabel ma jibdeu iwettqu l-kariga jew l-impieg tagħhom jieħdu ġurament li jkunu ser iwettqu d-dmirijiet tal-kariga jew ta' l-impjeg tagħhom fedelment u b'imparzjalità, u li ma jikxfu, hlief skond ma hemm fl-artikolu 21 ta' dan l-Att, ebda informazzjoni li huma jkunu kisbu bis-saħħa ta' dan l-Att. Dak il-ġurament għandu jingħatalhom mill-Ombudsman.

11. Il-kontijiet ta' l-Uffiċċju ta' l-Ombudsman għandhom jiġu verifikati mid-Direttur tal-Verifika u għal dan għandu japplika l-Att dwar l-Amministrazzjoni Finanzjarja u l-Verifika.

Verifika.

## FUNZJONIJIET

Kif japplika  
dan l-Att.

12. (1) Bla ħsara għad-dispożizzjonijiet ta' dan l-artikolu, dan l-Att japplika għal –

(a) il-Gvern, inkluż kull Dipartiment tal-Gvern jew awtorità oħra tal-Gvern, kull Ministru jew Segretarju Parlamentari, kull uffiċjal pubbliku u kull membru jew impjegat ta' awtorità kif imsemmi qabel;

(b) kull korp statutorju, u kull soċjetà jew korp ieħor li fih il-Gvern jew xi wieħed jew iktar minn dawk il-korpi jew xi kombinazzjoni tagħhom ikollu kontroll ta' l-ishma jew li fuqhom ikollu kontroll effettiv, inkluż kull direttur, membru, *manager* jew uffiċjal ieħor jew dak il-korp jew soċjetà jew tal-korp li jkollu kontroll tagħhom (hawn iżjed 'il quddiem kollettivament imsejja bħala organizzazzjoni); u

(ċ) kunsilli lokali u kull kumitat tagħhom, is-sindki, kunsillieri u membri tal-personell tal-kunsilli lokali kollha.

(2) Dan l-Att japplika kif imsemmi qabel ukoll meta l-persuni li jkun japplika għalihom ikunu aġixxew skond rakkomandazzjonijiet li huma jkunu irċevew jew wara li jkunu għamlu konsultazzjonijiet skond il-liġi jew wara li jkunu osservaw htigiet legali oħra.

(3) (a) Dan l-Att ma japplikax għall-persuni jew għall-korpi li jinsabu elenkati fit-Taqsima A fl-Ewwel Skeda li tinsab ma' dan l-Att.

(b) Dan l-Att ma japplikax għall-korpi elenkati fit-Taqsima B fl-Ewwel Skeda li tinsab ma' dan l-Att, kemm-il darba ma tingiebx prova b'sodisfazzjon ta' l-Ombudsman li tkun turi li kull mezz possibbli għall-ksib ta' rimedju jkun ġie eżawrit.

Funzjonijiet.

13. (1) Bla ħsara għad-dispożizzjonijiet ta' dan l-artikolu, tkun il-funzjoni ta' l-Ombudsman li jinvestiga kull azzjoni li ssir minn jew f'isem il-Gvern, jew awtorità, korp jew persuna oħra li għalihom japplika dan l-Att, li tkun azzjoni li ssir fit-twettiq tal-funzjonijiet amministrattivi tagħhom.

(2) L-Ombudsman jista' jmexxi kull investigazzjoni bħal dik b'inizjattiva tiegħu jew wara li jasallu ilment bil-miktub ta' persuna li jkollha interess fil-kwistjoni li tippretendi li tkun ġiet leża minn xi

azzjoni bħal dawk imsemmija, jew meta l-persuna leża tkun mietet jew għal kull raġuni li tkun ma tkunx kapaċi taġixxi f'isimha, ta' l-eredi jew rappreżentant tagħha.

(3) Minkejja d-dispożizzjoni tas-subartikolu (1) ta' dan l-artikolu, l-Ombudsman jista', jekk iqis li jkun sew li jagħmel hekk, jirrifjuta milli jwettaq is-setgħa tiegħu taht dan l-artikolu f'kull każ fejn ikun hemm jew kien hemm disponibbli għal min jagħmel l-ilment mezz biżżejjed ta' rimedju taht xi liġi oħra:

Izda l-Ombudsman jista' jmexxi investigazzjoni jekk ikun sodisfatt li fiċ-ċirkostanzi partikolari ma jkunx raġonevoli li tippretendi lil min jagħmel l-ilment li jipproċedi jew li jkun ipproċeda b'dawk il-mezzi ta' rimedju.

(4) Mingħajr ma jiġu limitati d-dispożizzjonijiet ta' qabel ta' dan l-artikolu, qiegħed b'dan jiġi dikjarat li kull Kumitat tal-Kamra tad-Deputati jista' f'kull waqt jirreferi lill-Ombudsman petizzjoni li tkun tinsab quddiem dak il-Kumitat għall-konsiderazzjoni tiegħu, jew kull haġa li dwarha dik il-petizzjoni tkun tittratta. F'kull każ bħal dak l-Ombudsman għandu jinvestiga, kif sugġett għal kull direttiva speċjali tal-Kumitat il-kwistjonijiet hekk lilu riferiti, kemm-il darba dawn ikunu jaqgħu taht il-ġurisdizzjoni tiegħu, u jagħmel dak ir-rapport lill-Kumitat li jqis li għandu jagħmel. Ebda haġa fl-artikolu 17, jew fl-artikolu 22, jew fl-artikolu 23 ta' dan l-Att ma għandha tkun tapplika dwar xi investigazzjoni jew rapport li jsir skond dan is-subartikolu.

(5) L-Ombudsman ma għandux iġhaddi biex jinvestiga xi ilment fuq xi kwistjoni li fuqha jkun hemm pendenti proċedimenti fil-qorti jew quddiem xi tribunal ieħor, u għandu jissospendi l-investigazzjoni jekk xi persuna li jkollha interess tagħmel talba quddiem qorti jew tribunal ieħor dwar il-kwistjoni li tkun qed tiġi investigata; b'dan li investigazzjoni tista' tibqa' għaddejja meta jkun hemm problemi ta' interess ġenerali fl-ilment.

(6) Bla ħsara għad-dispożizzjonijiet tas-subartikolu (3) ta' l-artikolu 12 u mingħajr ma jiġu limitati d-dispożizzjonijiet ta' qabel ta' dan l-artikolu, il-Prim Ministru jista' f'kull żmien jirreferi lill-Ombudsman għal investigazzjoni u rapport kull kwistjoni, sakemm din ma tkunx kwistjoni sugġetta għal proċediment ġudizzjarju, li l-Prim Ministru jikkonsidra li għandha tiġi investigata mill-Ombudsman. Meta bis-saħħa ta' dan is-subartikolu kwistjoni tiġi investigata mill-Ombudsman, huwa għandu jirrapporta dwarha lill-Prim Ministru, u jista' wara li jagħmel hekk jagħmel dak ir-rapport lill-Parlament dwar dik il-kwistjoni hekk kif jidhirlu li jkun xieraq.

(7) L-Ombudsman ma jistax imexxi investigazzjoni taht dan l-Att ghar-rigward ta' xi azzjoni jew kwistjoni bhal dawk imsemmija fit-Tieni Skeda li tinsab ma' dan l-Att.

(8) Fit-twettiq tal-funzjonijiet tieghu l-Ombudsman ma ghandu jkun suggett ghal ebda direzzjoni jew kontroll ta' xi persuna jew awtorita ohra.

Preskrizzjoni  
ghall-ilmenti.

**14.** (1) Ebda haga fl-artikolu 13 ta' dan l-Att ma ghandha tippermetti lill-Ombudsman li jinvestiga ilment fuq xi att li gara iktar kmieni minn sitt xhur qabel id-data meta dan l-Att jibda jseh.

(2) Ma ghandhiex tittiehed konjizzjoni ta' ilment taht dan l-Att kemm-il darba dan l-ilment ma jsirx mhux iktar tard minn sitt xhur wara li min jaghmel l-ilment sar ghall-ewwel jaf bil-kwistjonijiet li jkun qed jilmenta dwarhom; izda l-Ombudsman jista' jmexxi investigazzjoni fuq ilment li ma jkunx sar matul dak iz-zmien jekk huwa jqis li jkun hemm cirkostanzi speċjali li jkunu jiggustifikaw li ssir dik l-investigazzjoni.

Regoli dwar  
kif jimxi l-  
Ombudsman.

**15.** (1) Minn zmien ghal zmien il-Kamra tad-Deputati tista' taghmel, jekk hekk ikun jidhrilha li taghmel, regoli generali dwar kif ghandu jimxi l-Ombudsman fit-twettiq ta' dmirijietu taht dan l-Att, u tista' f'kull zmien bl-istess mod tirrevoka jew tibdel kull regola li tkun ghamlet.

(2) Kull regola li ssir taht dan l-artikolu ghandha tigi stampata u pubblikata fil-Gazzetta.

Kif isir l-ilment.

**16.** (1) Kull ilment li jsir lill-Ombudsman ghandu jintghamel bil-miktub jew bil-fomm. Meta ilment isir bil-fomm dan ghandu jitnizzel bil-miktub kemm jista' jkun malajr.

(2) Minkejja kull dispozizzjoni f'xi ligi ohra, meta ittra li tkun tidher bhala li nkitbet minn persuna li tkun qeghda tinzamm f'kustodja jew li tkun akkuzata jew wara li tkun instabet hatja ta' xi reat, jew minn pazjent f'xi sptar fil-qies tat-tifsira fl-Att dwar is-Sahha Mentali, tkun indirizzata lill-Ombudsman, din ghandha minnufih titwassal, mhux miftuha, lill-Ombudsman mill-peruna li f'dak iz-zmien ikollu responsabbilta tal-post jew istituzzjoni fejn il-kittieb ta' dik l-ittra jkun qed jinzamm jew li fih ikun qiegheed bhala pazjent. Ittra li tinkiteb mill-Ombudsman lil persuna jew pazjent kif hawn imsemmija ghandha titwassal minnufih, mhux miftuha, lil dik il-persuna jew dak il-pazjent minn min f'dak iz-zmien ikun responsabbli ghal dak il-post jew istituzzjoni.

Kap. 262.

Rifjut ta' investigazzjoni ta' ilmenti.

17. (1) Jekk meta jsir ilment, jew filwaqt li jkun qiegħed jinvestiga ilment l-Ombudsman jidhirlu li, fil-qies ta' ċirkostanzi kollha tal-każ, kull investigazzjoni, jew investigazzjoni ulterjuri ma tkunx meħtieġa, huwa jista' jiċċad li jinvestiga, jew ikompli jinvestiga dak l-ilment.

(2) Bla ma jitqiegħed ebda limitu għas-setgħat mogħtija lill-Ombudsman b'dan l-Att, l-Ombudsman jista' fid-diskrezzjoni tiegħu jiddeċiedi li ma jinvestigax, jew, skond il-ħtieġa tal-każ, li ma jkomplix jinvestiga ilment jekk fil-fehma tiegħu —

(a) is-sustanza ta' l-ilment tkun waħda trivjali; jew

(b) l-ilment ikun wieħed frivolu jew vessatorju jew ma jsirx *in bona fide*, jew

(c) min jagħmel l-ilment ma jkollux interess personali suffiċjenti fis-sustanza ta' l-ilment.

(3) F'kull każ meta l-Ombudsman jiddeċiedi li ma jinvestigax jew li ma jkomplix jinvestiga ilment, huwa għandu jgħarraf b'dan lil min ikun għamel l-ilment, u jagħti r-raġunijiet għal dik id-deċiżjoni.

## PROCEDIMENTI

Proċedimenti.

18. (1) Qabel ma l-Ombudsman jinvestiga xi haġa skond dan l-Att huwa għandu jgħarraf lill-Kap tad-Dipartiment konċernat, jew, skond ma jkun jeħtieġ il-każ, l-uffiċjal eżekuttiv prinċipali ta' l-organizzazzjoni konċernata, jew is-sindku tal-kunsill lokali konċernat, bl-intenzjoni tiegħu li jagħmel l-investigazzjoni.

(2) Kull investigazzjoni li ssir mill-Ombudsman skond dan l-Att għandha titmexxa bil-magħluq.

(3) L-Ombudsman jista' jisma' jew jirċievi tagħrif minn dawk il-persuni li jidhrlu xierqa, u jista' jagħmel dawk l-inkjesti li jidhrlu xierqa. Ma jkunx meħtieġ li l-Ombudsman jagħmel xi seduta, u ebda persuna ma jkollha xi jedd li tinstema' mill-Ombudsman bi dritt:

Izda jekk f'xi waqt fil-perkors ta' investigazzjoni l-Ombudsman jidhirlu li jista' jkun hemm raġunijiet suffiċjenti li fuqhom ikun jista' jagħmel ir-rapport jew rakkomandazzjoni tiegħu li jista' jolqot hażin lil xi Dipartiment, organizzazzjoni, kunsill lokali jew persuna, l-Ombudsman għandu jagħti lil dak id-Dipartiment, organizzazzjoni, kunsill lokali jew persuna l-opportunità li jinstemgħu.

(4) Fil-każ ta' investigazzjoni li jkollha x'taqsam ma' xi Dipartiment, organizzazzjoni jew kunsill lokali, l-Ombudsman jista', fid-diskrezzjoni tiegħu f'kull waqt matul jew wara l-investigazzjoni, jikkonsulta lil xi Ministru, Kap ta' Dipartiment, *Chief Executive*, Sindku jew kull persuna oħra li tkun il-qofol ta' l-investigazzjoni, u l-Ombudsman għandu jikkonsulta lil xi Ministru, Kap ta' Dipartiment, *Chief Executive*, Sindku jew xi persuna oħra li hekk titlob jew li tkun saritilha rakkomandazzjoni li tkun il-qofol ta' l-investigazzjoni, wara li l-Ombudsman ikun għamel l-investigazzjoni u qabel ma jkun sawwar opinjoni konklużiva fuq kull waħda mill-kwistjonijiet imsemmija fis-subartikoli (1) u (2) ta' l-artikolu 22 ta' dan l-Att.

(5) Jekk l-Ombudsman, matul jew wara xi investigazzjoni, jkun tal-fehma li jkun hemm prova sostanzjali ta' xi ksur evidenti ta' xi dmir jew ta' imġieba hażina li titwettag minn xi uffiċjal jew impjegat ta' xi Dipartiment, organizzazzjoni jew kunsill lokali, huwa għandu jirreferi l-kwistjoni lill-awtorità konċernata inklużi l-Pulizija:

Izda l-Ombudsman jista' jkompli għaddej bl-investigazzjoni tiegħu wara li jirreferi l-kwistjoni kif imsemmi qabel.

(6) Bla hsara għad-dispożizzjonijiet ta' dan l-Att u ta' kull regola magħmula bis-saħħa tiegħu, l-Ombudsman jista' jirregola l-proċedura tiegħu b'kull mod li huwa jqis li jkun xieraq.

Provi.

19. (1) Bla hsara għad-dispożizzjonijiet ta' dan l-artikolu u ta' l-artikolu 20 ta' dan l-Att, l-Ombudsman jista' minn żmien għal żmien jeħtieġ lil xi persuna li fil-fehma tiegħu tkun tista' tagħti xi tagħrif li jkollu x'jaqşam ma' xi kwistjoni li tkun qegħda tiġi investigata mill-Ombudsman li tagħtih dak it-tagħrif, u li tipproduċi kull dokument jew inkartament jew oġġett li fil-fehma ta' l-Ombudsman ikollhom x'jaqsmu mal-kwistjoni kif imsemmija qabel u li tista' tkun fil-pussess jew taħt il-kontroll ta' dik il-persuna. Dan is-subartikolu għandu japplika sew jekk dik il-persuna tkun jew ma tkunx uffiċjal, impjegat jew membru ta' xi Dipartiment, organizzazzjoni jew kunsill lokali, u sew jekk dawk id-dokumenti, inkartamenti jew oġġetti jkunu jew ma jkunux fil-kustodja jew taħt il-kontroll ta' xi Dipartiment, organizzazzjoni jew kunsill lokali.

(2) L-Ombudsman ikollu s-setgħa li jharrek ix-xieħda u li jagħti l-gurament lil kull xhud u persuna involuti fl-investigazzjoni, u jeħtieġhom li jixhdu.

(3) Kull persuna mħarrka kif imsemmi qabel li tirrifjuta jew mingħajr kawża ġusta tonqos milli tattendi fil-hin u fil-post imsemmija fit-taħrika, jew tirrifjuta mingħajr kawża ġusta li twiegeħ jew li twiegeħ bis-shiħ u b'mod sodisfaċenti fil-qies ta' kemm taf u tifhem kull

mistoqsija li ssirilha mill-Obudsman, jew li tirrifjuta jew tonqos minghajr kawza ġusta li tipproduci xi dokument li l-Ombudsman ikun htiegħa li tipproduci, tkun hatja ta' reat u tehel, meta tinsab hatja, multa ta' mhux iżjed minn hames mitt lira Maltija jew prigunerija għal żmien ta' mhux iżjed minn tliet xhur, jew għal dik il-multa u prigunerija flimkien:

Iżda, minghajr preġudizzju għall-generalità tas-subartikolu (2) ta' dan l-artikolu, ebda persuna li tkun qegħda tixhed quddiem l-Ombudsman ma tista' tingieghel twieġeb għal xi domanda li għandha mnejn tesponiha għal xi prosekuzzjoni kriminali, u kull tali persuna għandu jkollha jedd, għar-rigward ta' kull xhieda minnha mogħtija quddiem l-Ombudsman, għall-istess privileġġi li jkollu jedd għalihom xhud li jkun qed jixhed quddiem qorti tal-ġustizzja.

**20.** (1) Meta l-Prim Ministru jiċcertifika li l-ghoti ta' xi tagħrif jew it-tweġib ta' xi mistoqsija jew il-produzzjoni ta' xi oġġett, inkartament jew dokument ieħor —

(a) ikun jolqot is-sikurezza jew id-difiża ta' Malta jew ir-relazzjonijiet jew arrangamenti bejn il-Gvern ta' Malta u xi Gvern ieħor jew xi organizzazzjoni internazzjonali ta' Stati jew Gvernijiet; jew

Ezenzjonijiet minn kxif.

(b) ikun x'aktarx jagħmel ħsara serja lill-ekonomija nazzjonali; jew

(c) ikun jinvolvi l-kxif tad-diskussjonijiet jew proċedimenti tal-Kabinett jew ta' xi kumitat tal-Parlament jew tal-Kabinett; jew

(d) ikun jippreġudika l-investigazzjoni jew is-sejbien ta' reati,

l-Ombudsman ma għandux jenhtieg li t-tagħrif jew ir-risposta jkollhom jingħataw jew, skond il-każ, li l-oġġett, inkartament jew dokument ieħor jiġu prodotti.

(2) Bla ħsara għad-dispożizzjonijiet tas-subartikolu (1) ta' dan l-artikolu, kull liġi li tawtorizza jew tehtieg it-tiżmim ta' xi dokument, oġġett jew inkartament, jew ir-rifjut li tintwieġeb xi mistoqsija, għar-raġuni li l-kxif tad-dokument, oġġett jew inkartament jew it-tweġib tal-mistoqsija jkun ta' ħsara għall-interess pubbliku, ma għandhiex tapplika għar-rigward ta' xi investigazzjoni magħmula mill-Ombudsman jew proċedimenti li jsiru quddiemu.

**21.** (1) Kull tagħrif li jinkiseb mill-Ombudsman u minn kull persuna li jkollha xi kariga, hatra jew pożizzjoni li jkunu jaqgħu taħt l-Ombudsman, filwaqt li tkun qegħda ssir investigazzjoni bis-saħħa ta' dan l-Att jew għall-ghan tagħha, ma għandux jinkixef hlief għall-

It-tagħrif ikun sigriet.

għanijiet ta' l-investigazzjoni u ta' kull rapport li jkollu jsir fuq dik l-investigazzjoni bis-saħħa ta' dan l-Att, jew bil-għan ta' xi proċedimenti li jkollhom x'jaqsmu ma' xi reat li jsir taħt dan l-Att, u l-Ombudsman u l-membri ta' l-uffiċċju tiegħu ma għandhomx jiġu mharrka sabiex jixhdu f' xi proċedimenti, hliel dawk imsemmija qabel, dwar kull haġa li jsiru jafu biha matul l-investigazzjoni li tkun qegħda ssir bis-saħħa ta' dan l-Att.

(2) L-artikolu 133 tal-Kodiċi Kriminali għandu japplika għall-Ombudsman u l-membri ta' l-uffiċċju tiegħu u dwarhom l-istess bħalma japplika għal jew dwar uffiċjal jew impjegat pubbliku kif hemm imsemmi fl-artikolu 133 tal-Kodiċi Kriminali.

## PROCEDURA WARA L-INVESTIGAZZJONI

Proċedura wara l-investigazzjoni.

**22.** (1) Id-dispożizzjonijiet ta' dan l-artikolu għandhom ikunu japplikaw f'kull każ meta, wara li ssir investigazzjoni bis-saħħa ta' dan l-Att, l-Ombudsman ikun tal-fehma li d-deċiżjoni, rakkomandazzjoni, att jew ommissjoni li kienu l-qofol ta' l-investigazzjoni —

(a) jidhru li jkunu saru kontra dak li trid il-liġi; jew

(b) ikunu irragonevoli, ingusti, oppressivi jew improprijament diskriminatorji, jew ikunu skond liġi, jew xi prattika li tkun jew tista' tkun irragonevoli, ingusta, oppressiva jew improprijament diskriminatorja; jew

(ċ) ikunu msejsa għal kollox jew f'parti minnhom fuq żball tal-liġi jew ta' xi fatt; jew

(d) ikunu hżiena.

(2) Id-dispożizzjonijiet ta' dan l-artikolu għandhom ikunu wkoll japplikaw f'kull każ meta l-Ombudsman ikun tal-fehma li fit-teħid tad-deċiżjoni jew fl-għemil tar-rakkomandazzjoni, jew fl-għemil jew ommissjoni ta' l-att, tkun twettqet xi setgħa diskrezzjonali għal xi għan mhux tajjeb jew għal raġunijiet mhux relevanti jew għaliex ikunu

tqiesu affarijiet li ma jkunux relevanti, jew li, fil-każ ta' decizjoni magħmula fit-tweqqi ta' xi setgħa diskrezzjonali, kellhom jinghataw raġunijiet għad-decizjoni.

(3) Jekk f'xi każ li dan l-artikolu jgħodd għalih l-Ombudsman ikun tal-fehma —

(a) li l-kwistjoni għandha tiġi riferita lill-awtorità propizja sabiex tiġi aktar kunsidrata; jew

(b) li l-ommissjoni għandha tiġi rettifikata; jew

(c) li d-decizjoni għandha tithassar jew tinbidel; jew

(d) li xi Prattika li fuqha jkunu ġew ibbażati d-decizjoni, rakkomandazzjoni, att jew ommissjoni għandha tinbidel; jew

(e) li xi liġi li fuqha ssejsu d-decizjoni, ir-rakkomandazzjoni, l-att, jew l-ommissjoni għandha tiġi kkunsidrata mill-ġdid; jew

(f) li għandhom jinghataw raġunijiet għad-decizjoni; jew

(g) li għandhom jittiehdu xi passi oħra —

L-Ombudsman għandu jirrapporta l-fehma tiegħu, u r-raġunijiet tiegħu għaliha, lid-Dipartiment, organizzazzjoni jew kunsill lokali li jkunu, u jista' jagħmel dawk ir-rakkomandazzjonijiet li jidhru xierqa. F'kull każ bħal dak huwa jista' jitlob lid-Dipartiment, organizzazzjoni jew kunsill lokali li javzawh, fi żmien li jiġi stabbilit, dwar il-passi (jekk ikun il-każ) li jkunu qegħdin jipponu li jiehdu sabiex jagħtu seħħ lir-rakkomandazzjonijiet tiegħu. L-Ombudsman għandu wkoll, fil-każ ta' investigazzjoni, jibgħat kopja tar-rapport jew rakkomandazzjoni tiegħu lill-Ministru konċernat u lis-Sindku fil-każ ta' xi kunsill lokali.

(4) Jekk fi żmien raġonevoli wara li jsir ir-rapport ma tittiehed ebda azzjoni li l-Ombudsman ikun tal-fehma li tkun waħda adegwata u xierqa, l-Ombudsman jista', fid-diskrezzjoni tiegħu, wara li jikkonsidra l-kummenti (jekk ikun hemm) magħmulin minn jew f'isem xi Dipartiment, organizzazzjoni jew kunsill lokali involuti, jibgħat kopja tar-rapport u tar-rakkomandazzjonijiet lill-Prim Ministru, u jista' wara dan jagħmel dak ir-rapport lill-Kamra tad-Deputati li jidhirlu li jkun xieraq.

(5) L-Ombudsman għandu jehmeż ma' kull rapport li jintbagħat bis-saħħa tas-subartikolu (4) ta' dan l-artikolu kopja ta' kull

kumment li jsir minn jew f'isem id-Dipartiment, organizzazzjoni jew kunsill lokali involuti.

(6) Minkejja kull haġa li tinsab f'dan l-artikolu, l-Ombudsman ma ghandux jagħmel, f'xi rapport li jsir bis-saħħa ta' dan l-Att, xi kumment li jolqot lil xi persuna kemm-il darba dik il-persuna ma tkunx inghatat l-opportunità li tagħti l-verżjoni tagħha.

Tagħrif lil min jagħmel l-ilment.

**23.** (1) Meta, f'xi investigazzjoni li ssir wara ilment, l-Ombudsman jagħmel rakkomandazzjoni skond is-subartikolu (3) ta' l-artikolu 22 ta' dan l-Att, u ma tittiehed dwarha fi żmien raġonevoli ebda azzjoni li l-Ombudsman ikun tal-fehma li tkun adegwata u xierqa, l-Ombudsman għandu jgħarraf lil min jagħmel l-ilment bir-rakkomandazzjoni tiegħu, u jista' jagħmel dawk il-kummenti fuq il-kwistjoni li jqis li għandu jagħmel.

(2) L-Ombudsman għandu f'kull każ iġharraf lil min jagħmel l-ilment, b'dak il-mod u f'dak iż-żmien li huwa jqis li jkun xieraq, bir-riżultat ta' l-investigazzjoni.

Il-proċedimenti ma jistgħux jiġu riveduti.

**24.** Hlief għar-raġuni ta' nuqqas ta' ġurisdizzjoni, ebda proċediment jew deċiżjoni ta' l-Ombudsman ma jistgħu jiġu kontestati f'xi Qorti.

Proċedimenti pivilieġġati.

**25.** (1) Ma jistgħu jittiehdu ebda proċedimenti, ċivili jew kriminali, kontra l-Ombudsman jew kontra xi membru ta' l-uffiċċju tiegħu għal dak li jista' jagħmel jew jirrapporta jew iġhid matul it-twettiq jew it-twettiq maħsub tal-funzjonijiet tiegħu bis-saħħa ta' dan l-Att kemm-il darba ma jiġix ippruvat li jkun aġixxa *in mala fede*.

(2) Kemm l-Ombudsman kif ukoll dawk il-persuni msemmija qabel ma għandhomx jitharrku sabiex jixhdu quddiem xi Qorti, jew matul xi proċedimenti ta' xorta ġudizzjarja, dwar xi haġa li huma jsiru jafu biha fit-twettiq tal-funzjonijiet tagħhom bis-saħħa ta' dan l-Att.

(3) Kull haġa li tingħad jew kull tagħrif li jingħata jew kull dokument, inkartament jew oġġett prodott minn persuna matul inkjesta ta' l-Ombudsman jew proċedimenti quddiemu bis-saħħa ta' dan l-Att għandhom ikunu privileġġati bl-istess mod bhallikieku l-inkjesta jew il-proċedimenti kienu proċedimenti quddiem il-Qorti.

## MIXXELLANJI

**26.** (1) Għall-ghanijiet ta' dan l-Att, iżda bla hsara għad-dispożizzjonijiet ta' dan l-artikolu, l-Ombudsman jista' f'kull hin jidhol għewwa fond li jintuża minn xi Dipartiment jew organizzazzjoni li dan l-Att japplika għalih kif speċifikat fl-artikolu 12, u jispezzjona dak il-fond u, bla hsara għad-dispożizzjonijiet ta' l-artikoli 19 u 20 ta' dan l-Att, hemm għew jagħmel kull investigazzjoni li għandu setgħa li jagħmel.

Setgħa ta' dħul għewwa fondi.

(2) Qabel ma jidhol għewwa fond bħal dak l-Ombudsman għandu javża lill-Prinċipal Permanenti tad-Dipartiment jew, skond il-htieġa tal-każ, lill-uffiċjal amministrattiv prinċipali ta' dik l-organizzazzjoni li tkun qieghda tuża dak il-fond.

**27.** (1) L-Ombudsman jista' jiddelega bil-miktub lil persuna li jkollha xi kariga tahtu kull setgħa li huwa għandu bis-saħħa ta' dan l-Att, hliet din is-setgħa ta' delega.

Delega ta' funzjonijiet.

(2) Delega ta' funzjonijiet bis-saħħa ta' dan l-Att għandha tkun mingħajr preġudizzju għat-twettiq ta' dawk il-funzjonijiet mill-Ombudsman, u dik id-delega tista' tigi revokata mill-Ombudsman meta jrid hu.

**28.** (1) Hadd hliet l-Ombudsman mahtur bis-saħħa ta' dan l-Att ma jista' juża l-isem "Ombudsman" f'dak li għandu x'jaqşam ma' xi negozju, sengħa jew kariga, jew fl-għoti ta' xi servizz, sew bi hlas jew mod ieħor, jew jipprezenta ruħu bħala Ombudsman hliet bil-kunsens bil-miktub ta' l-Ombudsman mahtur bis-saħħa ta' dan l-Att.

Użu ta' l-isem "Ombudsman".

(2) Min jikser is-subartikolu (1) ta' dan l-artikolu jkun hati ta' reat u jehel, meta jinsab hati, multa ta' mhux aktar minn mitt lira Maltija.

**29.** (1) L-Ombudsman għandu jagħmel rapport, ta' kull sena jew b'dik il-frekwenza li huwa jista' jqis spedjenti, lill-Kamra tad-Deputati dwar it-twettiq tal-funzjonijiet tiegħu bis-saħħa ta' dan l-Att lill-*Speaker* li għandu javża lill-Kap tal-Kamra sabiex iqiegħed kopja tar-rapport fuq il-Mejda tal-Kamra ma' l-ewwel opportunità li jkollu.

Rapporti.

(2) L-Ombudsman jista' minn żmien għal żmien fl-interess pubbliku, jew fl-interess ta' kull persuna, jew dipartiment, jew organizzazzjoni, jippubblika rapporti li b'mod ġeneriku jkollhom x'jaqsmu mat-twettiq tal-funzjonijiet tiegħu taht dan l-Att, jew rapporti li jkollhom x'jaqsmu ma' xi każ jew każijiet partikolari investigati.

Dawk ir-rapporti jistghu jigu pubblikati sew jekk il-kwistjonijiet trattati fir-rapport ikunu l-qofol ta' rapport lill-Kamra tad-Deputati skond dan l-Att sew jekk ma jkunux.

Thassir.  
Kap. 320.

**30.** L-Att dwar l-Investigazzjoni ta' Ingustizzji qiegħed b'dan jiġi mħassar mingħajr preġudizzju għal kull haga magħmula jew li naqset milli ssir bis-saħħa tiegħu, b'dan illi kull ilment li jkun wasal sad-data tal-bidu fis-seħħ ta' dan l-artikolu għandu jkompli jiġi investigat u konkluz u li d-dispożizzjonijiet ta' dak l-Att għandhom jibqgħu japplikaw fir-rigward tiegħu.

## L-EWWEL SKEDA

(Artikolu 12)

### TAQSIMA A

Il-President

Il-Kamra tad-Deputati

Il-Kabinett

Il-Ġudizzjarju

Kull Tribunal imwaqqaf b'xi liġi jew bis-saħħa tagħha

Il-Kummissjoni għall-Amministrazzjoni tal-Ġustizzja

Il-Kummissjoni Elettorali

L-Awtorità dwar ix-Xandir ta' Malta

Il-Kummissjoni dwar l-Impiegi

Il-Kummissjoni Permanenti Kontra l-Korruzzjoni

Il-Kummissjoni għall-Investigazzjoni ta' Ingustizzji

L-Avukat Ġenerali fit-twettiq tas-setgħat imsemmija fis-subartikolu (3) ta' l-artikolu 91 tal-Kostituzzjoni

Kull Avukat jew Konsulent Legali tal-Gvern li jaġixxi f'dik il-kariga

Id-Direttur ta' Verifika dwar il-funzjonijiet li jhorgu mis-subartikoli (4) u (5) ta' l-artikolu 108 tal-Kostituzzjoni

Il-Forzi Armati ta' Malta hliet skond dak li hemm provdut fit-Taqsima B ta' din l-Iskeda.

## TAQSIMA B

## Il-Kummissjoni dwar is-Servizz Pubbliku

Il-Forzi Armati ta' Malta għar-rigward biss ta' hatriet, promozzjonijiet, salarji u drittijiet ta' pensjoni ta' l-uffiċjali u suldati f' dik il-Forza Armata.

## IT-TIENI SKEDA

(Artikolu 13)

Kwistjonijiet li ma jistgħux jiġu investigati.

1. Kull kwistjoni li tista' tiġi ċertifikata mill-Prim Ministru bħala li tolgot is-sikurezza interna jew esterna ta' Malta.

2. Azzjoni li tittiehed fi kwistjonijiet ċertifikati mill-Ministru responsabbli għall-affarijiet barranin bħala li jolqtu r-relazzjonijiet jew arrangamenti bejn il-Gvern ta' Malta u Gvern ieħor jew xi organizzazzjoni internazzjonali ta' Stati jew Gvernijiet.

3. Azzjoni li tittiehed mill-Ministru responsabbli għall-ġustizzja bis-saħħa ta' l-Att dwar l-Estradizzjoni.

Kap. 276.

4. L-istituzzjoni jew it-tmexxija ta' proċedimenti ċivili jew kriminali quddiem qorti tal-ġustizzja jew xi tribunal f' Malta, jew ta' proċedimenti dwar reati militari li jsiru bis-saħħa ta' l-Att dwar il-Forzi Armati ta' Malta, jew ta' proċedimenti quddiem xi qorti jew tribunal internazzjonali.

Kap. 220.

5. It-twettiq tas-setgħa li għandu l-Prim Ministru bis-saħħa ta' l-artikolu 515 tal-Kodiċi Kriminali.

6. Kull investigazzjoni kriminali magħmula mill-Pulizija.

## **Għanijiet u Raġunijiet**

L-Għan ewlieni ta' l-Abbozz huwa sabiex jistabbilixxi l-Kariga ta' Ombudsman li jiġi nominat mill-Parlament, u li jkollu l-funzjonijiet li jinvestiga azzjonijiet amministrattivi li jsiru minn jew f'isem Dipartimenti tal-Gvern, kunsilli lokali u awtoritajiet pubbliċi oħra. Ikun l-għan ta' l-investigazzjoni li jiġu stabbiliti l-fatti u, meta dan ikun japplika, li tittiehed azzjoni ta' rimedju mill-awtoritajiet konċernati.

**A BILL  
entitled**

*AN ACT to provide for the appointment of an Ombudsman with power to investigate the administrative actions taken by or on behalf of Government and other authorities, and for other purposes connected therewith.*

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same as follows:—

PRELIMINARY

1. (1) This Act may be cited as the Ombudsman Act, 1995.

Short title and commencement.

(2) This Act shall come into force on such date as the Prime Minister may by notice in the Gazette appoint, and different dates may be so appointed for different provisions and different purposes of this Act.

2. In this Act, unless the context otherwise requires –

Interpretation.

“Ombudsman” includes, to the extent of any delegation under section 27 of this Act, a person so delegated;

“action” means any action relating to a matter of administration and includes failure to act;

“public officer” has the same meaning as is assigned to it by section 124 of the Constitution;

“statutory body” means any corporation or other body corporate established by law;

“local council” means a local council established under the Local Councils Act, 1993.

## APPOINTMENT

Appointment of  
Ombudsman.

3. There shall be appointed as an Officer of Parliament a Commissioner for Administrative Investigations to be called the Ombudsman, who shall be appointed by the President acting in accordance with a Resolution of the House of Representatives supported by the votes of not less than two-thirds of all the members of the House:

Provided that when a person who is not a member of the House of Representatives is elected to be the Speaker of the House of Representatives he shall not be treated as a member of the House for the purpose of establishing the majority required by this section.

Disqualification  
and  
incompatibilities.

4. (1) A person shall not be qualified to be appointed to the office of Ombudsman if he is a member of the House of Representatives, a member of a local council, or if he is a public officer.

(2) The office of Ombudsman shall be incompatible with the exercise of any professional, banking, commercial or trade union activity, or other activity for profit or reward.

(3) The Ombudsman shall not hold any position which is incompatible with the correct performance of his official duties or with his impartiality and independence or with public confidence therein. The Ombudsman shall declare to, and seek the approval of the Speaker of the House of Representatives to any positions, trusts or memberships which the Ombudsman considers do not affect impartiality, or independence and public confidence, and which it is desired to retain during the term of office.

Term of office.

5. (1) Except as otherwise provided in this Act, an Ombudsman shall hold office for a term of five years, and shall be eligible for reappointment for one consecutive term of five years.

(2) Unless his office sooner becomes vacant, a person appointed as an Ombudsman shall hold office until his successor is appointed.

(3) An Ombudsman may at any time resign his office by writing addressed to the President.

6. (1) An Ombudsman may at any time be removed or suspended from his office by the President, upon an address from the House of Representatives supported by the votes of not less than two-thirds of all members of the House, praying for such removal on the ground of proved inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour, and the provisions of the proviso to section 3 of this Act shall also apply for the purpose of establishing the majority required under this subsection. Removal or suspension from office.

(2) At any time when Parliament is not in session, an Ombudsman may be suspended from his office by the President acting in accordance with his own discretion for inability to perform the functions of his office or misbehaviour proved to the satisfaction of the President; but any such suspension shall not continue in force beyond two months after the beginning of the next ensuing session of Parliament.

7. (1) If an Ombudsman dies, or resigns from office, or vacates his office or is removed from office, the vacancy thereby created shall be filled in accordance with this section. Filling of vacancy.

(2) If the vacancy in the office of an Ombudsman occurs at any time while Parliament is in session, it shall be filled by the appointment of the Ombudsman by the President on the recommendation of the House of Representatives in accordance with section 3 of this Act:

Provided that if the vacancy occurs less than two months before the close of that session and no such recommendation is made in that session, the provisions of subsection (3) of this section shall apply as if the vacancy had occurred while Parliament was not in session.

(3) If any such vacancy occurs at any time while Parliament is not in session, the President shall appoint an Ombudsman to fill the vacancy, and the person so appointed shall, unless his office sooner becomes vacant, hold office until an Ombudsman is appointed in accordance with section 3 of this Act.

Temporary  
appointment of  
Ombudsman.

8. (1) The President may:

(a) at any time during the illness or absence of the Ombudsman, or

(b) for any other temporary purpose where the Ombudsman considers it necessary not to conduct an investigation himself because of such circumstances, that were he a judge of the superior courts, he would abstain,

appoint an Ombudsman to hold office in accordance with this section, and such an Ombudsman shall be paid such salary, not exceeding the amount payable to the Ombudsman, as the President thinks fit.

(2) The power conferred by paragraph (b) of subsection (1) of this section shall be exercised only on a certificate signed by the Ombudsman to the effect that, in his opinion, it is necessary for the due conduct of the business of the Ombudsman under this Act that an additional Ombudsman should be temporarily appointed.

(3) An Ombudsman appointed under this section on account of the illness or absence of the Ombudsman shall hold office until the resumption of office of the Ombudsman, and every other Ombudsman appointed for a temporary purpose shall hold office until he performs the function assigned to him.

(4) No person shall be appointed under this section unless he is qualified to be appointed Ombudsman under section 4 of this Act.

Oath of Office.

9. (1) Before entering upon the exercise of the duties of his office an Ombudsman shall take an oath that he will faithfully and impartially perform the duties of his office, and that he will not, except in accordance with section 21 of this Act, divulge any information acquired by him under this Act.

(2) The oath shall be administered by the Speaker of the House of Representatives.

Resources.

10. (1) Subject to the provisions of the Constitution and of any other enactment applicable thereto, and subject to the provisions of this section the Ombudsman may appoint such officers and employees as may be necessary for the carrying out of the functions, powers and duties under this Act. This power to appoint includes approval to the

numbers of persons that may be appointed under this section whether generally or in respect of any specific duties or classes of duties, their salaries and conditions of appointment.

(2) The Ombudsman may in the conduct of an investigation, engage, in a consultative capacity, any person whose particular expertise is essential to the effectiveness of the investigation:

Provided that if the consultant required is a public officer the Prime Minister may, at the request of the Ombudsman, designate the public officer to assist.

(3) Subject to the provisions of this section the Ombudsman shall be responsible for approving the level of capital equipment, furnishings, materials, and administrative activities for the carrying out of the functions, powers and duties under this Act.

(4) The finance required for the Ombudsman's salary and allowances, and for the resources described in subsections (1), (2) and (3) of this section shall not exceed a maximum amount indicated in an Ombudsplan approved by the House of Representatives and shall be a charge on the Consolidated Fund without any further appropriation other than this Act:

Provided that the Ombudsman shall present to the House by the 15th day of September of each year, an Ombudsplan which will indicate the ensuing year's activities.

(5) The salary, allowances and expenses payable to the Ombudsman shall be at rates equivalent to those applicable to a judge of the Superior Courts. The salary is not to be diminished during the continuance of the Ombudsman's appointment.

(6) The officers and employees appointed in accordance with subsection (1) shall before entering into the exercise of their office or employment take an oath that they will faithfully and impartially perform the duties of their office or employment, and that they will not, except in accordance with section 21 of this Act, divulge any information acquired by them under this Act. Such oath shall be administered by the Ombudsman.

11. The accounts of the office of the Ombudsman shall be audited by the Director of Audit and the Financial Administration and Audit Act shall apply.

Audit

Cap. 174.

## FUNCTIONS

Application of  
this Act.

12. (1) Subject to the provisions of this section, this Act applies to –

(a) the Government, including any Government Department or other authority of the Government, any Minister or Parliamentary Secretary, any public officer and any member or servant of an authority as aforesaid;

(b) any statutory body, and any partnership or other body in which the Government or any one or more of the said bodies aforesaid or any combination thereof has a controlling interest or over which it has effective control, including any director, member, manager or other officer of such body or partnership or of its controlling body (hereinafter collectively referred to as organisation); and

(c) Local councils and any committee thereof, mayors, councillors and members of staff of all local councils.

(2) This Act applies as aforesaid even when the persons to whom it applies have acted in accordance with recommendations received or after holding consultations according to law or after observing other legal requirements.

(3) (a) This Act does not apply to the persons or bodies listed in Part A of the First Schedule to this Act.

(b) This Act shall not apply to the bodies listed in Part B of the First Schedule to this Act, unless proof to the satisfaction of the Ombudsman is produced showing that all available means of redress have been exhausted.

Functions.

13. (1) Subject to the provisions of this section, it shall be the function of the Ombudsman to investigate any action taken by or on behalf of the Government, or other authority, body or person to whom this Act applies, being action taken in the exercise of their administrative functions.

(2) The Ombudsman may conduct any such investigation on his initiative or on the written complaint of any person having an interest who claims to have been aggrieved by any action as aforesaid,

or where the person aggrieved has died or is for any reason unable to act for himself, of his heir or representative.

(3) Notwithstanding the provision of subsection (1) of this section, the Ombudsman may, if he considers it desirable so to do, decline to exercise his power under this section in any case where adequate means of redress are or have been available to the complainant under any other law:

Provided that the Ombudsman may conduct an investigation if satisfied that in the particular circumstances it is not reasonable to expect the complainant to resort or have resorted to such means of redress.

(4) Without limiting the foregoing provisions of this section, it is hereby declared that any Committee of the House of Representatives may at any time refer to the Ombudsman, any petition that is before that Committee for consideration, or any matter to which the petition relates. In any such case the Ombudsman shall, subject to any special directions of the Committee, investigate the matters so referred, so far as they are within his jurisdiction, and make such report to the Committee as he thinks fit. Nothing in section 17, or section 22, or section 23 of this Act shall apply in respect of any investigation or report made under this subsection.

(5) The Ombudsman shall not proceed to investigate any complaint on the subject-matter of which proceedings are pending in a court or other tribunal, and shall suspend the investigation if any interested person shall file a demand before any court or other tribunal on the subject-matter of the investigation; provided that an investigation may be proceeded with in respect of problems of general interest contained in the complaint.

(6) Subject to the provisions of subsection (3) of section 12 and without limiting the foregoing provisions of this section, the Prime Minister may at any time refer to the Ombudsman for investigation and report any matter, other than a matter which is subject to judicial proceeding, which the Prime Minister considers should be investigated by the Ombudsman. Where, pursuant to this subsection, a matter is investigated by the Ombudsman, he shall report thereon to the Prime Minister, and may thereafter make such report to Parliament on the matter as he thinks fit.

(7) The Ombudsman shall not conduct an investigation under this Act in respect of such action or matter as is described in the Second Schedule to this Act.

(8) In exercise of his functions the Ombudsman shall not be subject to the direction or control of any other person or authority.

Time limit for complaints.

14. (1) Nothing in section 13 of this Act shall permit the Ombudsman to investigate a complaint on an act which occurred earlier than six months prior to the date on which this Act comes into force.

(2) A complaint shall not be entertained under this Act unless it is made not later than six months from the day on which the complainant first had knowledge of the matters complained about; but the Ombudsman may conduct an investigation pursuant to a complaint not made within that period if he considers that there are special circumstances which make it proper to do so.

Rules for Ombudsman's guidance.

15. (1) The House of Representatives may by resolution from time to time if it thinks fit, make general rules for the guidance of the Ombudsman, in the exercise of his functions under this Act, and may at any time in like manner revoke or vary any such rules.

(2) All rules made under this section shall be printed and published in the Gazette.

Mode of complaint.

16. (1) Every complaint to the Ombudsman shall be made in writing or orally. A complaint made orally shall be put in writing as soon as practical.

(2) Notwithstanding any provision in any enactment, where any letter appearing to be written by a person in custody or on a charge or after conviction of any offence, or by any patient of any hospital within the meaning of the Mental Health Act, is addressed to the Ombudsman, it shall be immediately forwarded, unopened, to the Ombudsman by the person for the time being in charge of the place or institution where the writer of the letter is detained or of which he is a patient. Any letter written by the Ombudsman to a person or patient so described shall be immediately forwarded, unopened, to such person or patient by the person for the time being in charge of the place or institution.

Cap. 262.

Refusal to investigate complaints.

17. (1) If upon a complaint, or in the course of an investigation of a complaint it appears to the Ombudsman that, having regard to all the circumstances of the case, any investigation, or further investigation is unnecessary, he may refuse to investigate, or investigate further any such complaint.

(2) Without limiting the generality of the powers conferred on the Ombudsman by this Act, the Ombudsman may in his discretion decide not to investigate, or, as the case may require, not to investigate further a complaint if in his opinion –

- (a) the subject-matter of the complaint is trivial; or
- (b) the complaint is frivolous or vexatious or is not made in good faith; or
- (c) the complainant has not a sufficient personal interest in the subject-matter of the complaint.

(3) In any case where an Ombudsman decides not to investigate or make further investigation of a complaint he shall inform the complainant of that decision, and shall state his reasons therefor.

## PROCEEDINGS

18. (1) Before investigating any matter under this Act the Ombudsman shall inform the Head of Department concerned, or, as the case may require, the chief executive officer of the organisation concerned, or the mayor of the local council concerned, of his intention to make the investigation. Proceedings.

(2) Every investigation by the Ombudsman under this Act shall be conducted in private.

(3) The Ombudsman may hear or obtain information from such persons as he thinks fit, and may make such enquiries as he thinks fit. It shall not be necessary for the Ombudsman to hold any hearing, and no person shall be entitled as of right to be heard by the Ombudsman:

Provided that if at any time during the course of an investigation it appears to the Ombudsman that there may be sufficient grounds for his making any report or recommendation that may adversely affect any Department, organisation, local council or person, he shall give to that Department, organisation, local council or person an opportunity to be heard.

(4) In the case of an investigation relating to a Department, organisation or local council, the Ombudsman may in his discretion at any time during or after the investigation consult a Minister, Head of Department, Chief Executive, Mayor or any other person who is concerned in the matter of the investigation, and the Ombudsman shall consult any Minister, Head of Department, Chief Executive, Mayor or any other person who so requests or to whom a recommendation which is the subject of the investigation has been made, after the Ombudsman had made the investigation and before he has formed a final opinion on any of the matters referred to in subsections (1) and (2) of section 22 of this Act.

(5) If, during or after any investigation, the Ombudsman is of the opinion that there is substantial evidence of any significant breach of duty or misconduct on the part of any officer or employee of any Department, organisation or local council, he shall refer the matter to the appropriate authority including the Police:

Provided that the Ombudsman may continue further with his investigation after having referred the matter as aforesaid.

(6) Subject to the provisions of this Act and of any rules made thereunder, the Ombudsman may regulate his procedure in such manner as he thinks fit.

*Evidence.*

19. (1) Subject to the provisions of this section and of section 20 of this Act, the Ombudsman may from time to time require any person who in his opinion is able to give any information relating to any matter that is being investigated by the Ombudsman to furnish to him any such information, and to produce any documents or papers or things which in the Ombudsman's opinion relate to any such matter as aforesaid and which may be in the possession or under the control of that person. This subsection shall apply whether or not the person is an officer, employee, or member of any Department, organisation or local council, and whether or not such documents, papers, or things are in the custody or under the control of any Department, organisation or local council.

(2) The Ombudsman shall have power to summon witnesses and to administer an oath to any witness and to any person concerned in the investigation, and require them to give evidence.

(3) Any person summoned as aforesaid who refuses, or without sufficient cause fails, to attend at the time and place mentioned in the summons, or refuses, without sufficient cause to answer or to answer fully and satisfactorily, to the best of his knowledge and belief

all questions put to him by the Ombudsman, or refuses or fails, without sufficient cause, to produce any document he was required to produce by the Ombudsman shall be guilty of an offence and shall be liable on conviction to a fine (*multa*) not exceeding five hundred Maltese liri or to imprisonment not exceeding three months, or to both such fine and imprisonment:

Provided that, without prejudice to the generality of the provisions of subsection (2) of this section, no person giving evidence before the Ombudsman may be compelled to answer any question which tends to expose him to any criminal prosecution, and every such person shall, in respect of any evidence given by him before the Ombudsman, be entitled to the same privileges to which a witness giving evidence before a court of law is entitled.

20. (1) Where the Prime Minister certifies that the giving of any information or the answering of any question or the production of any thing, paper or other document – Exemptions from disclosure.

(a) affects the security or defence of Malta or relations or dealings between the Government of Malta and any other Government or any international organisation of States or Governments; or

(b) is likely to damage seriously the national economy; or

(c) involves the disclosure of the deliberations or proceedings of Cabinet or any committee of Cabinet; or

(d) prejudices the investigation or detection of offences,

the Ombudsman shall not require the information or answer to be given or, as the case may be, the thing, paper or other document to be produced.

(2) Subject to the provisions of subsection (1) of this section, the rule of law which authorises or requires the withholding of any document, thing, or paper, or the refusal to answer any question, on the ground that the disclosure of the document, thing or paper or the answering of the question would be injurious to the public interest shall not apply in respect of any investigation by or proceedings before the Ombudsman.

21. (1) Information obtained by the Ombudsman and every person holding any office, appointment or designation under the Ombudsman, in the course of or for the purpose of an investigation Secrecy of information.

under this Act, shall not be disclosed except for the purposes of the investigation and of any report to be made thereon under this Act, or for the purpose of any proceedings relating to an offence under this Act, and the Ombudsman and members of his staff shall not be called upon to give evidence in any proceedings, other than such as aforesaid, of matters coming to their knowledge in the course of an investigation under this Act.

(2) Section 133 of the Criminal Code shall apply to and in relation to the Ombudsman and his staff as they apply to or in relation to a public officer or servant referred to in section 133 of the Criminal Code.

#### PROCEDURE AFTER INVESTIGATION

Procedure after  
investigation.

22. (1) The provisions of this section shall apply in every case where, after making any investigation under this Act, the Ombudsman is of opinion that the decision, recommendation, act or omission which was the subject-matter of the investigation –

(a) appears to have been contrary to law; or

(b) was unreasonable, unjust, oppressive, or improperly discriminatory, or was in accordance with a law or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory; or

(c) was based wholly or partly on a mistake of law or fact;  
or

(d) was wrong.

(2) The provisions of this section shall also apply in any case where the Ombudsman is of opinion that in the making of the decision or recommendation, or in the doing or omission of the act, a discretionary power has been exercised for an improper purpose or on irrelevant grounds or on the taking into account of irrelevant considerations, or that, in the case of a decision made in the exercise of any discretionary power, reasons should have been given for the decision.

(3) If in any case to which this section applies the Ombudsman is of opinion –

- (a) that the matter should be referred to the appropriate authority for further consideration; or
- (b) that the omission should be rectified; or
- (c) that the decision should be cancelled or varied; or
- (d) that any practice on which the decision, recommendation, act, or omission was based should be altered; or
- (e) that any law on which the decision, recommendation, act, or omission was based should be reconsidered; or
- (f) that reasons should have been given for the decision; or
- (g) that any other steps should be taken –

the Ombudsman shall report his opinion, and his reasons therefor, to the appropriate Department, organisation or local council, and may make such recommendations as he thinks fit. In any such case he may request the Department, organisation or local council to notify him, within a specified time, of the steps (if any) that it proposes to take to give effect to his recommendations. The Ombudsman shall also, in the case of an investigation send a copy of his report or recommendations to the Minister concerned and to the Mayor in the case relating to a local council.

(4) If within a reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman, in his discretion, after considering the comments (if any) made by or on behalf of any Department, organisation or local council affected, may send a copy of the report and recommendations to the Prime Minister, and may thereafter make such report to the House of Representatives on the matter as he thinks fit.

(5) The Ombudsman shall attach to every report sent under subsection (4) of this section a copy of any comments made by or on behalf of the Department, organisation or local council affected.

(6) Notwithstanding anything in this section, the Ombudsman shall not, in any report made under this Act, make any comment that is adverse to any person unless the person has been given an opportunity to be heard.

Information to  
complaint.

23. (1) Where, on any investigation following a complaint, the Ombudsman makes a recommendation under subsection (3) of section 22 of this Act and no action which seems to the Ombudsman to be adequate and appropriate is taken thereon within a reasonable time, the Ombudsman shall inform the complainant of his recommendation, and may make such comments on the matter as he thinks fit.

(2) The Ombudsman shall in any case inform the complainant, in such manner and at such time as he thinks proper, of the result of the investigation.

Proceedings not  
subject to review.

24. Except on the ground of lack of jurisdiction, no proceeding or recommendation of the Ombudsman may be challenged in any Court.

Proceedings  
privileged.

25. (1) No proceedings, civil or criminal, shall lie against the Ombudsman or against any member of his staff for anything he may do or report or say in the course of the exercise or intended exercise of his functions under this Act unless it is shown that he acted in bad faith.

(2) The Ombudsman and such persons as aforesaid, shall not be called to give evidence in any Court, or in any proceedings of a judicial nature, in respect of anything coming to his knowledge in the exercise of his functions under this Act.

(3) Anything said or any information supplied or any document, paper or thing produced by any person in the course of any inquiry by or proceedings before the Ombudsman under this Act shall be privileged in the same manner as if the inquiry or proceedings were proceedings in a Court.

#### MISCELLANEOUS

Power to enter  
premises.

26. (1) For the purposes of this Act, but subject to the provisions of this section, an Ombudsman may at any time enter any premises occupied by any of the Departments or organisations to which this Act applies as specified in section 12, and inspect the premises and, subject to the provisions of sections 19 and 20 of this Act, carry out therein any investigation that is within his jurisdiction.

(2) Before entering any such premises an Ombudsman shall notify the Permanent Head of the Department or, as the case may require, the principal administrative officer of the organisation by which the premises are occupied.

27. (1) The Ombudsman may delegate in writing to any person holding any office under him any of his powers under this Act, except this power of delegation. Delegation of functions.

(2) A delegation of functions under this Act shall be without prejudice to the exercise of those functions by the Ombudsman, and shall be revocable by the Ombudsman at will.

28. (1) No person other than the Ombudsman appointed under this Act, may use the name "Ombudsman" in connection with any business, trade or occupation, or the provision of any service, whether for payment or otherwise, or hold himself out to be an Ombudsman except with the written consent of the Ombudsman appointed under this Act. Use of name "Ombudsman".

(2) A person who contravenes subsection (1) of this section shall be guilty of an offence and shall on conviction be liable to a fine (*multa*) not exceeding one hundred Maltese liri.

29. (1) The Ombudsman shall annually or as frequently as he may deem expedient report to the House of Representatives on the performance of his functions under this Act to the Speaker who shall instruct the Leader of the House to lay a copy on the Table of the House at the first available opportunity. Reports.

(2) The Ombudsman may from time to time in the public interest, or in the interest of any person, or department, or organisation publish reports relating generally to the exercise of his functions under this Act, or reports relating to any particular case or cases investigated. Such reports may be published whether or not the matters dealt with in the report have been the subject of a report to the House of Representatives under this Act.

30. The Investigation of Injustices Act, is hereby repealed without prejudice to anything done or omitted to be done thereunder, provided that complaints received up to the date of the coming into force of this section shall continue to be investigated and concluded and that the provisions of the said Act shall continue to apply in relation thereto. Repeal. Act 320.

FIRST SCHEDULE

(Section 12)

PART A

The President

The House of Representatives

The Cabinet

The Judiciary

Any Tribunal constituted by or under any law

The Commission for the Administration of Justice

The Electoral Commission

The Malta Broadcasting Authority

The Employment Commission

The Permanent Commission against Corruption

The Commission for Investigation of Injustices

The Attorney General in the exercise of the powers referred to in subsection (3) of section 91 of the Constitution

Any Counsel or Legal Adviser to the Government acting in such a capacity

The Director of Audit in respect of the functions under subsections (4) and (5) of section 108 of the Constitution

The Armed Forces of Malta except as provided in Part B hereof.

PART B

The Public Service Commission

The Armed Forces of Malta in respect only of appointments, promotion, pay and pension rights of officers and men of the Force.

## SECOND SCHEDULE

(Section 13)

Matters not subject to Investigation.

1. Any matter certified by the Prime Minister to affect the internal or external security of Malta.

2. Action taken in matters certified by the Minister responsible for foreign affairs to affect relations or dealings between the Government of Malta and any other Government or any international organisation of States or Governments.

3. Action taken by the Minister responsible for justice under the Extradition Act. Cap. 276.

4. The commencement or conduct of civil or criminal proceedings before any court of law or any tribunal in Malta, or of proceedings in respect of military offences under the Malta Armed Forces Act, or of proceedings before any international court or tribunal. Cap. 220.

5. The exercise of the power of the Prime Minister under section 515 of the Criminal Code.

6. Any criminal investigation by the Police.

**Objects and Reasons**

The principal Object of the Bill is to establish the Office of Ombudsman who shall be nominated by Parliament, with functions to investigate administrative actions taken by or on behalf of Government Departments, local councils and other public authorities. It shall be the aim of the investigation to establish facts and, where applicable, cause remedial action to be taken by the authorities concerned.