

Seychelles

## Complaints Bureau Act

Act 5 of 1991

Legislation as at 30 June 2012

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# Complaints Bureau Act

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## Complaints Bureau Act

### Act 5 of 1991

Commenced on 1 May 1991

*[This is the version of this document at 30 June 2012 and includes any amendments published up to 30 June 2014.]*

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Complaints Bureau Act.

#### 2. Interpretation

In this Act—

"**action**" includes omission, decision or recommendation;

"**Bureau**" means the Complaints Bureau established by [section 3](#);

"**chief executive officer**" means the person for the time being acting in the capacity of or discharging the functions of chief executive officer in the Ministry or department of the Government or of the public body concerned;

"**Director**" means the Director of the Complaints Bureau appointed under [section 4](#);

"**investigation**" means an investigation under the Act.

### Part II – Establishment of Bureau, appointment of Director

#### 3. Complaints Bureau

- (1) There is established a Complaints Bureau.
- (2) The functions of the Bureau shall, subject to this Act, be to—
  - (a) investigate complaints of administrative actions taken by any person, body or authority on behalf of the Government or a public body; and
  - (b) investigate or otherwise deal with any other class of complaints which the President may from time to time direct.
- (3) The functions of the Bureau shall be performed by its Director.
- (4) The Bureau shall have such other staff as the Minister may from time to time appoint.

#### 4. Director

- (1) There shall be a Director of the Bureau who shall be appointed by the President on such terms and conditions as the President thinks fit.
- (2) The terms and conditions of the Director shall not be altered to his disadvantage after his appointment.
- (3) The salary and allowances payable to the Director shall be charged on the Consolidated Fund.

- (4) The Director shall be the chief executive officer of the Bureau and shall, subject to this Act, have all the powers necessary for the purpose of performing the functions of the Bureau.
- (5) The Minister may delegate to the Director his powers under [section 3\(4\)](#).
- (6) The Director may—
  - (a) delegate to any person any of his powers, other than the power to delegate under this paragraph, under this Act;
  - (b) engage from time to time the assistance of an expert or other person for purpose of assisting in any investigation.

### Part III – Functions of Director

#### 5. Power of investigation

- (1) The Director may—
  - (a) investigate a complaint in respect of an administrative action taken on behalf of the Government or a public body before or after the commencement of this Act where—
    - (i) the complaint is made by a person who the Director believes has been aggrieved by the decision or action; or
    - (ii) he is directed to do so by the President;
  - (b) investigate or otherwise deal with a complaint falling within a class of complaints which the President has directed the Bureau to investigate or deal with.
- (2) The power conferred by subsection (1) shall be exercised in accordance with this Act and notwithstanding a provision in any other written law providing to the effect that a decision is final or not subject to review or appeal.
- (3) The Director may, in the manner specified by the President investigate or otherwise deal with any other class of complaints which the President may from time to time direct.

#### 6. Restriction on investigative power

- (1) Notwithstanding [section 5](#), the Director shall not undertake or continue an investigation into a complaint—
  - (a) relating to any action referred to in the Schedule;
  - (b) if it relates to an action of which the Director is satisfied the complainant became aware more than 12 months before making the complaint, unless the Director believes that in the particular circumstances it is proper to undertake or continue the investigation;
  - (c) if the complaint or a substantial part of it has already been investigated and the Director had not, as a result of the investigation, found any impropriety;
  - (d) if the complainant has or had, by way of remedy under any other written law, a right of appeal, objection or review on the merits of the case and the complainant has not exhausted the remedy, unless the Director believes that in the particular circumstances it is or was not reasonable to expect the complainant to exhaust or to have exhausted the remedy;
  - (e) if, in the opinion of the Director, it is frivolous, vexatious or made in bad faith;
  - (f) if the complaint is not made by the person aggrieved or, where the person aggrieved is dead or incapacitated, his authorised representative or a member of his family.

- (2) The Director may, for any reason which he thinks fit, decide not to undertake or continue an investigation and his decision shall be final and not subject to review in any court but he shall inform the complainant of his decision in writing giving reasons therefor and advising him of any remedies available.
- (3) The Director may continue with an investigation notwithstanding the withdrawal of a complaint.

## **Part IV – Complaint investigation**

### **7. Complaint**

- (1) A complaint shall be in writing and in such form, and be accompanied by such documents, as the Director may provide.
- (2) The staff of the Bureau shall assist a person wishing to make a complaint to comply with subsection (1).
- (3) The Director shall not refuse to consider a complaint solely on the ground that the complaint is not in proper form or accompanied by the required document.
- (4) Where a person who is detained or serving a sentence under any written law wishes to make a complaint, the person in charge of the place where the person is detained or serving a sentence shall—
  - (a) afford the person the necessary facilities for making his complaint;
  - (b) see to it that the complaint is transmitted unopened to the Director.

### **8. Proceedings**

- (1) Except as it is otherwise provided under this Act, the Director shall regulate the procedures relating to an investigation as he considers appropriate in the circumstances.
- (2) The proceedings in respect of an investigation shall be in private and, except as provided in this section, no person shall have a right to be heard or represented.
- (3) Unless he considers it unnecessary in a particular case, the Director shall, before starting an investigation, inform the chief executive officer of the Ministry or department of the Government or other public body concerned of his decision to investigate and may invite his comments on any matter.
- (4) If at any time during the course of an investigation it appears to the Director that there are sufficient grounds to make a report or recommendation which may criticise or adversely affect any person, Ministry or department of the Government or other public body, the Director shall give the person or chief executive officer of the Ministry or department of the Government or public body affected an opportunity to be heard in such manner as the Director thinks fit.
- (5) The Director may, for the purpose or in connection with an investigation—
  - (a) require any person, other than a Minister, to appear before him and—
    - (i) give evidence or provide him with any information ;
    - (ii) produce any document, record or thing;
  - (b) require any person to make available to him any document, record or information however kept and may take copies or extracts from such document, record or information;
  - (c) enter into and inspect any premises.
- (6) The Director may administer oaths for the purposes of subsection (5).

## 9. Information not privileged except as provided under this Act

- (1) Notwithstanding any other written law but subject to this Act, a person shall not refuse to answer any question, or withhold any information, document, record or thing, or refuse to make available to the Director any document, record or information, or refuse access to any premises in connection with an investigation on the ground that the answering of the question or disclosure of the information, document, record or thing or making available of any document, record or information or the granting of access to any premises shall be injurious to the public interest or contrary to any written law or in breach of any obligation, contractual or otherwise, or would disclose any legal advice.
- (2) Where a certificate certifying that the answering of any question, the disclosure of any information, document, record or thing, the making available of any document, record or information or the granting of access to any premises would be contrary to public interest is issued by—
  - (a) the President—
    - (i) because it might prejudice security, defence or international relations in respect of the Republic; or
    - (ii) because it might involve the disclosure of the deliberation of the Council of Ministers;
  - (b) the Attorney General, because it might prejudice the investigation or detection of crime; or
  - (c) the chief executive officer in the Ministry responsible for Health because it might involve the disclosure of information which is covered by medical privilege,the Director shall not require a person to answer the question, disclose the information, record or thing, make available the document, record or information or grant access to the premises, as the case may be.
- (3) Notwithstanding any written law or obligation, whether contractual or otherwise, a person shall not be liable, except as provided under this Act, in any way whatsoever where he answers any question, discloses any information, document, record or thing, makes available any document, record or information or grants access to any premises when required to do so by the Director under this Act.
- (4) Except for the purpose of a trial for perjury in respect of his sworn testimony or for an offence under this Act, no statement made in connection with an investigation shall be admissible in evidence against any person in any court or at any inquiry or in any other proceedings, and no evidence in respect of any investigation shall be given against any person.

## 10. Director and staff to maintain secrecy

- (1) Subject to this Act, the Director or any other person appointed in connection with the administration of this Act shall, while he performs or after he ceases to perform his functions under this Act, maintain secrecy in respect of all matters which come to his knowledge in the exercise of his functions under this Act.
- (2) Subject to subsection (3), subsection (1) shall not apply so as to prevent—
  - (a) the Director or any other person referred to in subsection (1) from—
    - (i) disclosing, in the course of proceedings for an offence under this Act, any matter relevant to the proceedings;
    - (ii) reporting evidence of any crime to such authority as he considers appropriate; or
    - (iii) disclosing any information for the purposes connected with the performance of his functions under this Act;

- (b) the Director from disclosing in any report made by him under this Act any matters which in his opinion ought to be disclosed in order to establish grounds for his conclusions and recommendations.
- (3) Where a certificate certifying that the disclosure of any information concerning a specified matter or matters included in a specified class of matters or a specified document or documents included in a specified class of documents would be contrary to public interest for a reason specified in [section 9\(2\)](#) has been issued under that section, the Director or other person referred to in subsection (1) shall not, while he performs or after he ceases to perform his functions under this Act, disclose to any person the information or the contents of any of the documents or furnish any person with the document or a copy of the document.
- (4) Notwithstanding any other written law but subject to this Act, a person who is or was Director or is performing or has ceased to perform any functions under this Act is not compellable for the purposes of any proceedings before any court, tribunal or other person or authority under any other written law to disclose any information acquired by him in the performance of his functions under this Act.

## 11. Report

- (1) Subject to subsection (7), where after an investigation the Director is of the opinion that the action which was the subject of the investigation reveals that—
  - (a) the action was—
    - (i) contrary to law;
    - (ii) unreasonable, unjust, oppressive or discriminatory;
    - (iii) based on a mistake of facts or a wrongful assessment of facts;
    - (iv) based partly on a mistake of law and facts;
    - (v) based on an improper exercise of a discretionary power or an exercise of a discretionary power based on irrelevant considerations;
    - (vi) an improper refusal to exercise a discretionary power;
    - (vii) based on an exercise or improper use of authority or power;
    - (viii) in accordance with law but the law is unreasonable, unjust, oppressive or discriminatory;
    - (ix) otherwise, in all circumstances, wrong;
  - (b) the action should be cancelled, varied or given further consideration;
  - (c) reasons for the action should have been given;
  - (d) there was unreasonable delay before the decision or action was taken;
  - (e) there was an omission which needs to be rectified;
  - (f) the law or practice on which the action is based should be reconsidered;
  - (g) any other steps should have been taken, the Director shall report his opinion and reasons together with any recommendation or remedy he considers fit to make to the chief executive officer of the Ministry or department of the Government or other public body concerned and shall send a copy of the report to the Minister who has portfolio responsibility for the Ministry, department or public body and, where the investigation relates to a complaint which he has been directed to investigate by the President under [section 5\(1\)\(a\)\(ii\)](#), to the President.

- (2) The Director may specify in his report a time limit within which he is of the opinion it is reasonable for the report to be acted upon.
- (3) Where a report submitted under subsection (1) is not, in the opinion of the Director, adequately acted upon—
  - (a) within the time specified by him; or
  - (b) if no time has been specified, within such reasonable time as the Director is of the opinion reasonable, the Director, may submit the report and recommendation together with such further observations he thinks fit to make to the President.
- (4) The Director shall attach to every report submitted to the President under subsection (3) a copy of any comments made thereon by or on behalf of the chief executive officer of the Ministry, department or public body concerned.
- (5) In addition to making a report under subsections (1) and (3), the Director may, where he is of the opinion that a serious irregularity or injustice has taken place, make a further report, stating his opinion and reasons, to the President.
- (6) The Director shall not later than the 31st January in each year make a general report to the President on the exercise of his functions under this Act during the previous year.
- (7) In the case of a complaint referred to in [section 5\(3\)](#) the Director shall report to the President in such manner as the President may from time to time direct in writing to the Director.

## **12. Complainant to be advised of result of investigation**

Subject to this Act, the Director shall, in any case where he conducts an investigation, inform the complainant in such manner and at such time as he thinks fit, of the result of his investigation.

## **Part V – Miscellaneous**

### **13. Indemnity**

- (1) For the purposes of the law relating to defamation, absolute privilege shall be attached to the publication of any matter by the Director or any person when performing any functions under this Act.
- (2) The Director or any other person shall not be liable for anything done or omitted to be done in good faith in the performance or purported performance of his functions under this Act.

### **14. Investigation shall not affect other action**

An investigation shall not affect any action or proceedings which may be taken against any person in connection with the action which is the subject of the investigation.

### **15. Offences**

- (1) A person who—
  - (a) without lawful excuse, obstructs, hinders or resists the Director or any other person in the exercise of his functions under this Act;
  - (b) without lawful excuse fails to comply with any requirement of the Director or any other person in connection with the exercise of his function under this Act;



- (c) makes a statement which he knows is false or does not believe to be true in connection with any matter under this Act or knowingly misleads the Director or any other person in the performance of his functions under this Act,  
is guilty of an offence and liable to a fine R25,000 and to imprisonment for five years.
- (2) A person who discloses any information, or gives a copy of any document, or allows any person to have access to any document, which came to his knowledge or possession in the course of the performance of his functions under this Act contrary to this Act is guilty of an offence and liable to a fine of R25,000 and to imprisonment for five years.

## 16. Regulations

- (1) The Minister may make regulations for the carrying into effect the purposes and provisions of this Act.
- (2) The Minister may by regulations amend the Schedule.

### Schedule (Section 6)

- 1. Any action taken in respect of any matter certified by the President as affecting security, defence or international relations in respect of the Republic.
- 2. Any action taken in respect of any matter in respect of which proceedings before a court or tribunal has started.
- 3. Any action relating to the conduct of any civil or criminal proceedings before a court or tribunal.
- 4. Any action relating to the exercise of his constitutional functions by the Attorney-General.
- 5. Any action taken personally by the President or a Minister.