



Towards establishing the Ombudsman as the National Human Rights Institution in Malta

A proposal for a
new Ombudsman Act

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FOREWORD

Towards establishing the Ombudsman as the National Human Rights Institution in Malta

A proposal for a new Ombudsman Act

Malta is one of the very few member states of the European Union and the Council of Europe that has not yet established a National Human Rights Institution (NHRI) in accordance with the Paris Principles of the United Nations.

The Office of the Ombudsman has consistently advocated for its designation as the NHRI for Malta by extending its present remit to include a broader human rights mandate. The Ombudsman Act 1995, as it stands today, empowers the Office to investigate complaints and make recommendations relating to acts or omissions of the public administration when these are found to be unjust, oppressive, or improperly discriminatory.

The strength of the Office of the Ombudsman to act as a promoter and/or protector of human rights derives from its statutory independence from the Government and other State organs. Furthermore, although its budget requires

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parliamentary approval - given that the Ombudsman is an officer of Parliament - the Office enjoys financial autonomy. Additionally, the Office is a constitutional entity.

Timeline of Advocacy Efforts

1. Advocacy Initiatives (2013)

In 2013, the Office of the Ombudsman proposed the establishment of an NHRI in Malta to monitor, promote, and ensure the observance of fundamental human rights in the country. The proposal envisioned the Office acting as a catalyst and focal point for other national institutions as well as public and private authorities. The model was designed to provide a comprehensive overview of the protection afforded to individuals against violations of their fundamental rights.

2. Renewed Efforts (2023)

Following my appointment as Parliamentary Ombudsman in 2023, I reinforced the call for Malta to establish an NHRI and proposed that the Office of the Ombudsman be designated as Malta's NHRI. This approach builds on Malta's existing legal and operational framework, avoiding the complexity and resource demands of creating a new institution. It aligns with practices in other European countries where Ombudsman Institutions serve dual roles as NHRIs.

3. The Ombudsman and Human Rights

Across the EU, many NHRIs integrate their functions with Ombudsman Institutions, enabling them to address public grievances while promoting and protecting human rights. The Paris Principles allow flexibility in structuring NHRIs, enabling countries to tailor their approach to their legal and social contexts. Despite its limited current mandate, international bodies, including ENNHRI, have recognised the Office of the Ombudsman as essential in promoting human rights in Malta.

4. The White Paper on Human Rights and Equality (2015)

In 2015, the Government of Malta published a White Paper proposing the establishment of a Human Rights and Equality Commission (HREC). The Office of the Ombudsman supported the principle of creating such a body but emphasised the importance of complementing existing institutions, including the Ombudsman, to ensure integration rather than overlap.

At the time, the Ombudsman raised concerns regarding the proposed Bills, cautioning against oversimplified interpretations that could lead to jurisdictional conflicts between existing bodies. The Office recommended in-depth consultations to ensure the proposed Commission would be effectively integrated into Malta's legal framework. Eventually, two bills were presented before Parliament: The Equality Bill and the Human Rights and Equality Commission Bill. A debate on both bills followed.

On 20 February 2022, Parliament was dissolved, and Malta held a General Election. Consequently, all pending bills, including the Equality Bill and the Human Rights and Equality Commission Bill, lapsed. Since the current Parliament convened, no bills relating to equality and human rights have been proposed.

5. Renewed proposal

In November of last year, we formally submitted a proposal to the Prime Minister for the Office of the Ombudsman to also serve as Malta's NHRI. The proposal highlighted several advantages of leveraging the existing institutional framework of the Office, thereby avoiding the need to establish a separate institution.

The current Ombudsman Act already aligns with the Paris Principles. The institution's established infrastructure, experienced

personnel, and existing procedures provide a solid foundation for expanding its role to cover a broader human rights mandate. This would allow for the rapid implementation of NHRI functions while enhancing public trust through the Ombudsman's well-known and respected role.

The Prime Minister referred the proposal to the Parliamentary Secretary for Reforms and Equality for discussion. A meeting was held in February 2024, during which the Ombudsman explained the rationale behind the proposal.

The EU Rule of Law Report 2024

The Rule of Law Report, published on 24 July 2024, highlights the lack of significant progress in establishing a National Human Rights Institution (NHRI) in Malta. The 2023 Rule of Law Report recommended that Malta takes steps to establish an NHRI in accordance with the UN Paris Principles.

European Network of National Human Rights Institutions (ENNHRI) Associate Membership

In February 2024, the Office of the Ombudsman applied to become an Associate Member of the European Network of National Human Rights Institutions (ENNHRI), marking an important step in its efforts to establish itself as Malta's NHRI.

In its application, the Office stated that since no concrete progress had been made on the establishment of an NHRI following the dissolution of Parliament in 2022, it had again proposed integrating the functions of an NHRI within its existing structure. This approach was presented as both practical and necessary given the current circumstances.

A few weeks later, the ENNHRI board officially accepted the application, and the Office of the Ombudsman became an Associate Member of ENNHRI.

Review of the Ombudsman Act

Following its acceptance as an Associate Member of ENNHRI, the Office of the Ombudsman requested ENNHRI to review the Ombudsman Act to ensure its alignment with the Paris Principles.

Between April and May 2024, ENNHRI conducted a detailed review and identified several key areas for improvement, including:

- Expanding the mandate to include promoting and protecting human rights.
- Strengthening the selection and appointment process to ensure transparency and pluralism.
- Enhancing the Office's independence and securing adequate resources.
- Engaging more actively with civil society.

A new Ombudsman Act

In response to the challenges highlighted during ENNHRI's review, the Ombudsman commissioned legal experts to conduct a detailed analysis and propose amendments to the Ombudsman Act to address ENNHRI's feedback comprehensively.

Proposed changes were submitted, which were, in turn, subject to a thorough internal discussion. The Office decided to replace the current Act with a fully-fledged Ombudsman Bill rather than introduce piecemeal amendments to the existing legislation.

In October 2024, the draft of the new Ombudsman Act was resubmitted to ENNHRI for further review. On 28 October, during the ENNHRI General Assembly, the Office of the Ombudsman participated in a parallel meeting with ENNHRI representatives to discuss the proposed bill and explore potential enhancements.

ENNHRI commended the efforts of the Office

of the Ombudsman in Malta to align itself with the Paris Principles and transition into an NHRI. It acknowledged that significant amendments had been introduced to the current Ombudsman Act to support the Institution's mandate as an NHRI. Key amendments included:

- Introduction of a broad human rights mandate, including specific functions to protect and promote human rights through awareness-raising, education, advising on national legislation, and reporting on the national human rights situation;
- Inclusion of a comprehensive definition of human rights, encompassing rights set out in international, regional, and domestic instruments, as well as those recognised by national and international courts;
- Strengthening the mandate of the Ombudsman Institution to follow up on recommendations made to national authorities; and
- Reinforcing the Ombudsman's independence by explicitly stating that the Ombudsman shall not be subject to direction from any other person or authority.

ENNHRI provided additional technical advice aimed at further enhancing the legislative framework of the Office of the Ombudsman. Following an internal review, the Office adopted recommendations suitable for

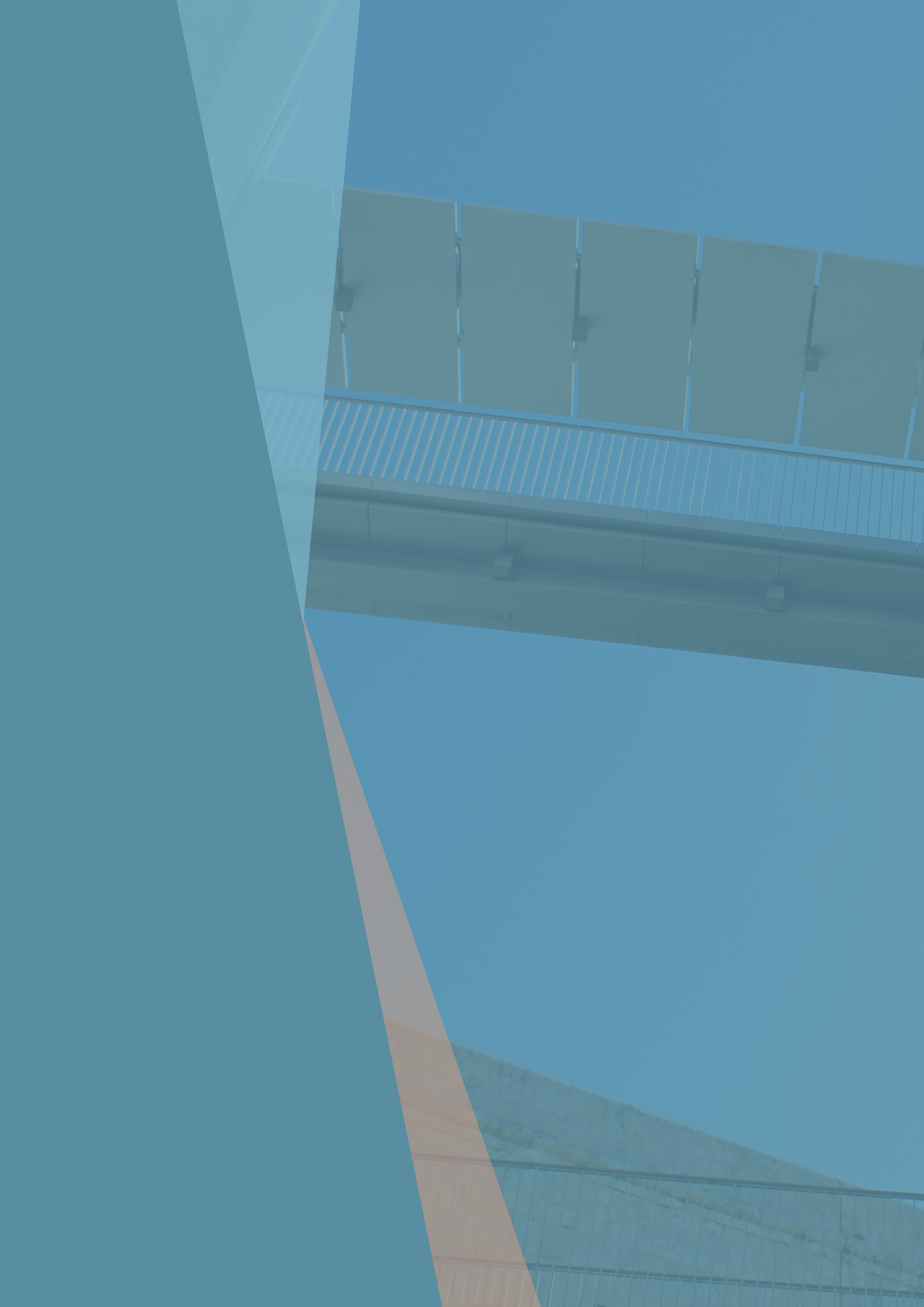
Malta's context, which are included in the proposed new Ombudsman Act presented in this document.

Conclusion

The new Ombudsman Bill represents a practical, resource-efficient solution for establishing a National Human Rights Institution in Malta. By broadening the existing framework of the Office of the Ombudsman, the proposed legislation aims to ensure compliance with the Paris Principles while addressing Malta's pressing need for a robust and independent NHRI.

This proactive initiative reflects our commitment to safeguarding and promoting fundamental human rights and freedoms in Malta.

**Judge Emeritus
Joseph Zammit McKeon
Parliamentary Ombudsman**



The background is a low-angle, blue-tinted photograph of a modern building. The building features a complex, geometric facade with many small, protruding rectangular elements. A skybridge with a glass railing is visible in the upper left. The overall composition is clean and architectural.

The proposed
New Ombudsman Act

**A BILL
Entitled**

An Act to provide for the appointment of an Ombudsman to investigate administrative actions taken by or on behalf of Government and other authorities, and to promote, investigate and protect the fundamental rights and freedoms of the person vis-a-vis Government and other authorities in line with the Principles relating to the Status of National Institutions (Paris Principles - Adopted by General Assembly of the United Nations resolution 48/134 of 20 December 1993).

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:

**PART I
Preliminary**

1. The short title of this Act is the Ombudsman Act.

Interpretation

- 2.(1) In this Act, unless the context otherwise requires:

“Ombudsman” includes, to the extent of any delegation under article 36, a person so delegated;

“action” means any action concerning the fundamental rights and freedoms of the person committed by or on behalf of the Government or other authority or body or person to whom this Act applies;

“fundamental rights and freedoms of the person” means all fundamental rights and freedoms of the person set out in international, regional and domestic instruments, and those principles and practices recognised by the judgements of Maltese and international courts;

“administrative action” means any action relating to a matter of administration committed by or on behalf of the Government or other authority or body or person to whom this Act applies, and includes failure to act;

“public officer” has the same meaning as is assigned to it by article 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 Government Act.

- (2) For the purposes of this Act:

“the Government, or other authority, body or person to whom this Act applies”, wherever it occurs, means the entities referred to in article 15(1) and (2) as well as:

- (a) any agency established as provided by article 26 of the Public Administration Act; other than the Attorney General in the exercise of powers referred to in article 91(3) of the Constitution;
- (b) any foundation established by the Government or by any statutory body and any partnership or other body referred to in article 15(2)(b);
- (c) chairmen and members of boards, committees, commissions and other decision making bodies, whether established by law or by an administrative act, which can take decisions affecting any member of the public and which do not fall under article 15(3);
- (d) any organisation involved in a public-private partnership as defined by the Organisation for Economic Cooperation & Development.

Appointment of Ombudsman

- 3. There shall be appointed as an Officer of Parliament a Commissioner for the Promotion and Protection of Fundamental Rights and Freedoms of the person, and for Administrative Investigations, who is to be called the Ombudsman, who shall be appointed by the President of Malta 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 article.

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 of Malta.

Removal or suspension from office

6. (1) An Ombudsman may at any time be removed or suspended from his office by the President of Malta, 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 solely 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 that impacts adversely on his capacity to fulfil the functions of his office.
- (2) The provisions of the proviso to article 3 shall also apply for the purpose of establishing the majority required under subarticle (1).
- (3) At any time when Parliament is not in session, an Ombudsman may be suspended from his office by the President of Malta 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 of Malta; but any such suspension shall not continue in force beyond two months after the beginning of the next ensuing session of Parliament.

Filling of Vacancy

7. (1) If an Ombudsman dies, or resigns from office, vacates his office or is removed from office, the vacancy thereby created shall be filled in accordance with this article.
- (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 of Malta on the recommendation of the House of Representatives in accordance with article 3:

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 subarticle (3) 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 of Malta 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 article 3.

Temporary Ombudsman

8. (1) The President of Malta 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 article, and such an Ombudsman shall be paid such salary, not exceeding the amount payable to the Ombudsman, as the President of Malta thinks fit.
- (2) The power conferred by article (1)(b) 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 article 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) (a) A person shall not be qualified to be approved under this article if he is disqualified to be appointed to the Office of Ombudsman under article 4(1).
- (b) The provisions of articles 4(2) and (3) shall apply to a person appointed under this article:

Provided that a person appointed under this article may exercise any activity for profit or reward which is not in any way incompatible with the provisions of article 4(3).

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 article 28, 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 article, 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 article 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 exercise of his functions engage, solely in a consultative capacity, any person whose knowledge and expertise is essential for the effectiveness of the particular task before him:

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 article 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 subarticles (1), (2) and (3) 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, and which shall include a separate budget line specifically for the purposes of articles 12, 13 and 14.

- (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 subarticle (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 article 28, divulge any information acquired by them under this Act. Such oath shall be administered by the Ombudsman.

Audit

11. The accounts of the office of the Ombudsman shall be audited by the Auditor General and the Public Finance Management Act shall apply.

The Ombudsman as Promoter and Protector of the Fundamental Rights and Freedoms of the Person

12. The functions of the Ombudsman as promoter and protector of the fundamental rights and freedoms of the person shall include:
- (a) to promote and protect all fundamental rights and freedoms;
 - (b) to investigate without any limitation whatsoever alleged breaches of fundamental rights and freedoms of the person by the Government of Malta, including its ministries and departments, specialised units, agencies, government entities, commissions and boards as defined in the Public Administration Act, and by regional and local councils established under the Local Government Act, and by organisations involved in public-private partnerships as defined by the Organisation for Economic Cooperation & Development, including by their officials, employees and other representatives. Such investigations are initiated either on his own initiative or on a written complaint lodged in accordance with this Act by any person, even if assisted or being represented by any association, organisation, or legal entity;
 - (c) to work in favour of the elimination of the abuse of fundamental rights and freedoms of the person;
 - (d) to encourage the development of a culture of respect for fundamental rights and freedoms of the person;
 - (e) to enhance public knowledge and understanding on fundamental rights and freedoms of the person;
 - (f) to submit to Government, Parliament and public bodies, on an advisory basis, either at the request of the authorities concerned or on his own initiative, opinions, recommendations, proposals, and reports on any matter concerning the promotion and protection of the fundamental rights and freedoms of the person;
 - (g) to monitor and examine the drafting and the implementation of national policies related to fundamental rights and freedoms of the person, and to make such recommendations as he deems appropriate in order to ensure that these policies conform to the fundamental rights and freedoms of the person;
 - (h) to examine and keep under review the adequacy and effectiveness of legislative or administrative provisions in force, as well as bills and legislative proposals, either at the request of the authorities or on his own initiative, and to make such recommendations as he deems appropriate in order to ensure that these provisions conform to the fundamental rights and freedoms of the person and, if necessary, to recommend the adoption of new legislation, the amendment of legislation already in force and the adoption or amendment of administrative measures;

- (i) to monitor and promote the harmonisation of national legislation, regulations and practices with international fundamental rights and freedoms of the person, instruments to which Malta is a party, and their effective implementation;
- (j) to prepare reports and to commission research on the national situation with regard to the fundamental rights and freedoms of the person, or on any subject or on any other specific sector related to said rights and freedoms;
- (k) to provide independent assistance, including legal assistance where and as he may consider appropriate to victims or potential victims of breaches of their fundamental rights and freedoms by the Government of Malta including its ministries and departments, specialised units, agencies, government entities, commissions and boards as defined in the Public Administration Act, and by regional and local councils established under the Local Government Act, and by organisations involved in public-private partnerships as defined by the Organisation for Economic Cooperation & Development, including by their officials, employees and other representatives;
- (l) to maintain consultation and, where he considers appropriate to better fulfil his functions, to cooperate with governmental organisations responsible for the promotion and protection of the fundamental rights and freedoms of the person, or the elimination of violations to said rights, or which are devoted to protecting vulnerable groups;
- (m) to contribute to the formulation of programmes for the teaching of, and research into, the fundamental rights and freedoms of the person, and to take part in their execution in schools, colleges, universities and other educational establishments;
- (n) to cooperate with other organisations in order to promote and protect the fundamental rights and freedoms of the person;
- (o) to participate, contribute to, and share information with other international entities in international fora for the global and regional development of the fundamental rights and freedoms of the person;
- (p) to provide the necessary knowledge and skills in order to facilitate the implementation of legislation on the fundamental rights and freedoms of the person, enforceable in Malta through the use, among others, of training and awareness raising campaigns;
- (q) to advocate for the ratification of, accession and compliance with international human rights standards.
- (r) to publish any material which he considers to be of public interest;
- (s) to institute proceedings in his own name relating to alleged breaches of the fundamental rights and freedoms of the person by the Government of Malta including its ministries and departments, specialised units,

agencies, government entities, commissions and boards as defined in the Public Administration Act, and by regional and local councils established under the Local Government Act, and by organisations involved in public-private partnerships as defined by the Organisation for Economic Cooperation & Development, including by their officials, employees and other representatives, before the Civil Court, First Hall in its constitutional jurisdiction when he is of the opinion that a legal provision is unconstitutional;

- (t) to be notified of every application lodged in accordance with article 46(1) of the Constitution of Malta and article 4(1) of the European Convention Act (Chapter 319) with the right to fully participate as intervenor in the proceedings;

and

- (u) to perform any such other function as may be assigned to him under this Act or under any other law.

13. In carrying out his functions as promoter and protector of the fundamental rights and freedoms of the person, the Ombudsman shall consult persons working in the field of promotion and protection of fundamental rights and freedoms of the person.
14. (1) Any person may complain to the Ombudsman on any action concerning fundamental rights and freedoms, where that person considers that his or her rights have been, are being, or are likely to be contravened by the specialised units, agencies, government entities, commissions and boards as defined in the Public Administration Act, and by regional and local councils established under the Local Government Act, and by organisations involved in public-private partnerships as defined by the Organisation for Economic Cooperation & Development, including by their officials, employees and other representatives.
- (2) A complaint to the Ombudsman on a matter concerning the protection of said rights must be either made in writing or, if made orally, should be put in writing as soon as practical.
- (3) 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.
- (4) When a complaint is received by the Ombudsman on any matter concerning

the fundamental rights and freedoms of the person, and any information obtained by the Ombudsman and by every person holding any office, appointment or designation under the Ombudsman, in the course of or for the purpose of an investigation 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. Article 133 of the Criminal Code shall apply to the Ombudsman and his staff in case of a breach of this obligation as they apply or in relation to a public officer or servant under the same provision.

- (5) The Ombudsman may, if he considers it desirable so to do, decline to exercise his power under this article 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 to have resorted to such means of redress.

- (6) The Ombudsman may refuse to investigate a complaint on any matter concerning the fundamental rights and freedoms of the person, or may decide to discontinue an investigation into such a complaint if he considers the complaint to be frivolous, vexatious, trivial or not made in good faith. In such circumstances, the complainant is informed in writing, which communication must include detailed reasons. Such written communication from the Ombudsman shall be final and is not subject to any form of review or appeal whether before a court of justice or elsewhere.
- (7) Where the Ombudsman decides to accept for investigation a complaint on any matter concerning the fundamental rights and freedoms of the person, 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.
- (8) Every investigation by the Ombudsman shall be held in private.
- (9) During the course of the investigation related to the protection of human rights, the Ombudsman shall have the right to carry out unannounced visits and shall have free access to inspect and examine any premises, documents, equipment and assets without prior notice. The Ombudsman may hear, obtain information and make inquiries 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 person or entity whether private or public in nature, he shall give that person or entity an opportunity to be heard before concluding any report or making any recommendation.

- (10) In the course of the investigation, 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 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 subarticle 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.
- (11) The Ombudsman shall have the 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.
- (12) 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 one thousand and one hundred and sixty euro (1,160) or to imprisonment not exceeding three months, or to both such fine and imprisonment:
- Provided that, without prejudice to the generality of the provisions above, 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.
- (13) 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 into a complaint concerning the protection of the fundamental rights and freedoms of the person, 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. Article 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 article 133 of the Criminal Code.
- (14) Having concluded an investigation into a complaint, if the Ombudsman identifies a breach or breaches of the fundamental rights and freedoms of the person as defined in this Act, he may make any recommendation that he may consider appropriate under the circumstances. Where a breach or breaches as defined in this Act is/are identified, the opinion of the Ombudsman and

any recommendation shall be reported to the government ministry, department, specialised unit, agency, government entity, commission or board, or regional or local council which the Ombudsman finds to have committed said breach. The recipient of the report and opinion shall be required to report back to the Ombudsman within thirty (30) days of receipt what steps are intended to be taken to give effect to the Ombudsman's recommendation or recommendations, at which stage the Ombudsman shall inform the complainant (except where an investigation was carried out on the Ombudsman's own initiative) about his findings, his conclusions, any recommendation he may have made and subsequent action.

- (15) Having concluded an investigation on a complaint, if the Ombudsman does not find a breach or breaches of fundamental rights and freedoms of the person as defined in this Act, he shall inform in writing the complainant and the government ministry, department, specialised unit, agency, government entity, commission or board, or regional or local council, against whom the complaint was lodged.
- (16) If within a reasonable time after a report with recommendations is made, no action is taken which the Ombudsman deems to be adequate and appropriate to implement the recommendations, the Ombudsman, in his discretion, after considering the comments (if any) made by or on behalf of any affected government ministry, department, specialised unit, agency, government entity, commission or board, or regional or local council or organisation involved in a private-public partnership, 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.

The Ombudsman shall attach with every such report a copy of any comments made by or on behalf of the affected government ministry, department, specialised unit, agency, government entity, commission or board, or regional or local council or organisation involved in a private-public partnership.

Provided that 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.

- (17) If, notwithstanding steps taken in accordance with sub-article 16, the Ombudsman remains of the opinion that no adequate or appropriate action has been taken, he shall inform the complainant accordingly.

Proceedings not subject to review

13. No proceeding, finding or recommendation of the Ombudsman further to an investigation into an alleged breach of fundamental rights and freedoms under this Act, may be challenged in any court or tribunal.

Independence of the Ombudsman

14. The Ombudsman shall not be subject to the direction or control of any other person or authority.

The Ombudsman as Investigator of Administrative Action

Investigation into administrative action

- 15 (1) Subject to the provisions of this article, the Ombudsman shall carry out investigations into the administrative action of –
- (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) The persons or bodies listed in Part A of the First Schedule to this Act are exempt from the Ombudsman's power to investigate administrative action.
- (b) The bodies listed in Part B of the First Schedule to this Act are exempt from the Ombudsman's power to investigate administrative action, unless proof to the satisfaction of the Ombudsman is produced showing that all available means of redress have been exhausted.
- (4) (a) The Prime Minister may by order in the Government Gazette amend, vary or substitute the lists in Part A and Part B of the First Schedule to this Act.
- (b) No order made under this subarticle shall have effect unless it has received the prior approval of the House of Representatives signified by resolution.

- 16 (1) It shall be the function of the Ombudsman to investigate any administrative 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 subarticle (1), the Ombudsman may, if he considers it desirable so to do, decline to exercise his power under this article 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 article, 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 article 20, or article 29, or article 30 of this Act shall apply in respect of any investigation or report made under this subarticle.
- (5) Insofar only as concerns investigations into administrative action, 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 subsection (3) of this article, and without limiting the other provisions of this article, 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 subarticle, 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 into administrative action in respect of such action or matter as is described in the Second Schedule to this Act.
- (8) The Ombudsman shall not be subject to the direction or control of any other person or authority.

Time limit for complaints about administrative action

- 17. A complaint about administrative action 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 such 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

- 18. (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 function as an investigator of administrative action under this Act, and may at any time in like manner revoke or vary any such rules.
- (2) All rules made under this article shall be published in the website of the Government Gazette.

Mode of complaint about administrative action

- 19. (1) Every complaint about administrative action has to directed to the Ombudsman for the purposes of investigation.
- (2) For any investigation with regard to administrative action, a complaint shall be made in writing.
- (3) Where a person submits an oral complaint about administrative action, that person shall put his oral complaint in writing as soon as practical, should he wish his complaint to be investigated by the Ombudsman.
- (4) 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.

Refusal to investigate complaints about administrative action

20. (1) If upon a complaint about administrative action, or in the course of an investigation of such 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 about administrative action 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 does not have 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.

Appointment of Commissioners for Administrative Investigations and their functions

21. (1) The Ombudsman may appoint Commissioners for Administrative Investigations, hereinafter “the Commissioners”, for specialized areas of administrative action as may be determined by him, with the concurrence of the Prime Minister. The Commissioners shall be Officers of Parliament and shall be appointed by the Ombudsman in accordance with the following provisions of this article.
- (2) The Ombudsman shall appoint as Commissioner such person as the Prime Minister and the Leader of the Opposition shall jointly communicate to him in writing as the person to be appointed to the post. In default of receipt of such communication within three weeks from the date when the Ombudsman informs in writing both the Prime Minister and the Leader of the Opposition of the decision to appoint such Commissioner or from the date when a vacancy arises in any such office, the appointment of Commissioner shall be made by the Ombudsman acting in accordance with his own deliberate judgment.
- (3) The Commissioners shall be so appointed from amongst persons knowledgeable and well versed in those specialized areas for which they shall be appointed to investigate. Notice of their respective appointments, dates

of appointment and dates on which they shall vacate their office shall be published in the Government Gazette.

- (4) The salary, allowances and expenses payable to the Commissioners shall be at rates equivalent to those applicable to a magistrate of the courts. The salary is not to be diminished during the continuance of the Commissioners' appointment.
- (5) The functions of the Commissioners shall be approved by the Ombudsman after consultation with the Prime Minister and shall be published by way of rules in the Gazette.
- (6) The Commissioners shall communicate their report to the Government, or other authority, body or person to whom this Act applies and to the complainant, if any. Before communicating any report as aforesaid a Commissioner may seek the Ombudsman's opinion on any matter of substance or procedure thereon. The Ombudsman may establish a list of those subject matters upon which the Commissioners have received his opinion.
- (7) The Ombudsman shall not accept complaints asking him to review the report of any Commissioner once such report has been communicated to the Government, or other authority, body or person to whom this Act applies and to the complainant, unless the request for a review is filed in writing not later than thirty (30) days from the date of issue of the report.
- (8) The Commissioners appointed under article 21 shall, whilst retaining their full autonomy and independence in the exercise of their respective functions, utilize the administrative and investigative services of the Office of the Ombudsman.
- (9) The Ombudsman shall not review any final report submitted by a Commissioner except in cases where the Ombudsman feels that there are points of law or principles of equity or natural justice involved.
- (10) It shall be the duty of the Ombudsman to ensure that the Commissioners are provided with such administrative and investigative services to enable them to carry out their respective duties in terms of such functions as may be assigned to them in terms of sub-section (5).
- (11) The Commissioners shall enjoy full immunity from any disciplinary, administrative or civil action for any act arising from the execution of their official duties.
- (12) The provisions of this Act applicable to the Office of the Ombudsman shall *mutatis mutandis* apply to the Commissioners acting in exercise of their duties under this Act so that the investigative procedure into administrative action shall be as homogeneous and uniform as possible. The Commissioners shall have full access to all information relating to the investigation.
- (13) A Commissioner appointed under this article shall prepare and submit an Annual Report which shall be incorporated within the Annual Report of the Ombudsman.

Application of the Ombudsman Act to the Commissioners

22. (1) The provisions of articles 4, 5, 6, 7, 9, 16, 17, 18, 19, 20, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 and 38 shall *mutatis mutandis* apply to the Commissioners.
23. (1) The Ombudsman may appoint a temporary Commissioner in the same circumstances that the President may make a temporary appointment of an Ombudsman under article 8, and the provisions of that article shall *mutatis mutandis* apply to such a temporary appointment as if for the word “President” there were written the word “Ombudsman” and for the word “Ombudsman” there were written the word “Commissioner”. Notice of such temporary appointment shall be published in the Gazette.

Review of recommendations made by the Commissioners

24. (1) Except where a Commissioner has not drawn up a report, or where although such a report has been drawn up it contains no recommendations, the said Commissioner shall send his report to the Government or other authority, body or person to whom this Act applies, to the Ombudsman and to the competent Minister. Where no action as recommended by the Commissioner is taken within a reasonable time from the date that the Commissioner has sent his report to the Government, or to the said authority, body or person, or where the Commissioner is informed that no action will be taken or that only partial action will be taken on his recommendations by the Government, or by the said authority, body or person, the Commissioner shall inform accordingly the Ombudsman, the competent Minister and the complainant, if any, within a reasonable time of receipt of the aforesaid report.
- (2) Where the Commissioner has informed a complainant that the Government, authority, body or person aforesaid will not be implementing the Commissioner’s recommendation in his report, or will be implementing his recommendations only partially, or where no reply has been received by the Ombudsman within such time indicated by the Commissioner in his report, the complainant may request the Ombudsman to review that Commissioner’s report and the objection thereto of the Government, authority, body or person as aforesaid.

Proceedings

25. (1) Before investigating any matter related to administrative action, 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.

- (2) Every investigation by the Ombudsman into administrative action shall be conducted in private.
- (3) When conducting an investigation into administrative action 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 into administrative action 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 article 29(1) and (2).
- (5) If, during or after any investigation into administrative action, 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) If during or after any investigation into administrative action the Ombudsman is of the opinion that there is evidence of any corrupt practice as defined in the Permanent Commission Against Corruption Act, the Ombudsman may refer his findings directly to the Attorney General.
- (7) Subject to the provisions of this Act concerning investigations into administrative action and of any rules made thereunder, the Ombudsman may regulate his procedure in such manner as he thinks fit.

Evidence

26. (1) When conducting investigations into administrative action 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 subarticle 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) When conducting investigations into administrative action, 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 one thousand and one hundred and sixty euro (1,160) 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 subarticle (2), 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.

Power to enter premises

27. (1) The Ombudsman as investigator of administrative action may at any time enter any premises occupied by any of the departments or organisations to which this Act applies, inspect the premises and carry out therein any investigation that is within his jurisdiction.
- (2) Before entering any such premises, the Ombudsman shall notify the permanent secretary of the department or, as the case may require, the principal administrative officer of the organisation by which the premises are occupied.

Exemptions from disclosure

28. (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 during an Ombudsman investigation into administrative action–

- (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 subarticle (1), 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 into administrative action by or proceedings before the Ombudsman.

Secrecy of information

29. (1) Information obtained by the Ombudsman and every person holding any office, appointment or designation under the Ombudsman, in the course of the execution of their duties whether under this Act or under the Protection of the Whistleblower Act shall not be disclosed except for the purposes of an 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 the execution of their duties whether under this Act or under the Protection of the Whistleblower Act.
- (2) Article 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 article 133 of the Criminal Code.

Procedure after investigation into administrative action

30. (1) The provisions of this article shall apply in every case where, after making any investigation into administrative action, the Ombudsman is of the 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 article shall also apply in any case concerning administrative action 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 article 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 into administrative action 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. The House of Representatives shall debate and decide on that report at the first opportunity.
- (5) The Ombudsman shall attach to every report sent under subarticle (4) a copy of any comments made by or on behalf of the department, organisation or local council affected.
- (6) Notwithstanding anything in this article, 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 complainant

31. (1) Where, on any investigation into administrative action following a complaint, the Ombudsman makes a recommendation 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.

Suspension of prescription

32. The lodging of a complaint with the Ombudsman, concerning administrative action, shall serve to suspend the time limits for instituting any form of proceeding against those subjected to the Ombudsman's jurisdiction under this Act, until such time as the Ombudsman:
- (a) either informs the complainant that his complaint is not admissible for investigation; or
 - (b) having accepted the complaint for investigation decides not to investigate further any complaint and terminates said investigation; or
 - (c) having accepted a complaint for investigation concludes such investigation and writes to the complainant informing him that such investigation into the administrative action complained about, has been concluded and that the case has been closed.

This provision shall also apply in circumstances where a complaint lodged with the Ombudsman is handled by any of the Commissioners for Administrative Investigations.

Proceedings not subject to review

33. No proceeding, findings or recommendations of the Ombudsman further to an investigation with regards to administrative action under this Act may be challenged in any court or tribunal.

Declaratory provision

34. Upon commencement of a new investigation whether as a result of a complaint received or on his own initiative, and at every stage of the same investigation, the Ombudsman shall declare whether he is acting as promoter and protector of human rights, or as investigator of administrative action. Should circumstances so require, the Ombudsman may even distinguish between different parts of the same investigation and specify accordingly under which capacity he is operating. If during the course of an investigation, circumstances dictate a change in declaration of capacity, the Ombudsman shall inform in writing all parties involved. Such declaration may not be challenged before any court, tribunal or other forum.

Proceedings privileged

35. (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 any 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 any of his functions under this Act.
- (3) Anything said, or any information supplied or any document, paper or thing produced by any person to the Ombudsman under this Act or under the Protection of the Whistleblowers Act shall be privileged in the same manner as if the inquiry or proceedings were proceedings in a court.

Delegation of functions

36. (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.
- (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.

Use of name "Ombudsman"

37. (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.
- (2) A person who contravenes subarticle (1) shall be guilty of an offence and shall on conviction be liable to a fine (multa) not exceeding two hundred and thirty euro (230).

Reports

38. (1) The Ombudsman, as investigator of administrative action 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. The said report shall, as soon as possible, be discussed during a dedicated parliamentary sitting.

- (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.
- (3) The Ombudsman, as Protector and Promoter of Fundamental Rights and Freedoms of the Person shall annually or as frequently as he may deem expedient submit a report on the human rights and freedoms situation in the country to the House of Representatives. The report will be presented 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. The said report shall, as soon as possible, be discussed during a dedicated parliamentary sitting.
- (4) In the formulation of the report on human rights and freedoms situation in the country, the Ombudsman shall consult a Standing Consultative Committee, set up for this purpose, that shall be composed of the following:
- a) the Commissioner for Children or a representative;
 - b) the Commissioner on Gender-Based Violence and Domestic Violence or a representative;
 - c) the Commissioner for Mental Health or a representative;
 - d) the Commissioner for Older Persons or a representative;
 - e) the Commissioner for the Rights of Persons with Disability or a representative;
 - f) the Commissioner for Voluntary Organisations or a representative;
 - g) the Information and Data Protection Commissioner or a representative;
 - and
 - h) the Refugee Commissioner or a representative.

For this purpose, the Ombudsman may consult other stakeholders, bodies, and members of civil society with an interest on Fundamental Rights and Freedoms.

- (5) The Ombudsman will chair the Standing Consultative Committee.

Saving provisions

39. (1) All complaints pending before those persons who were competent, prior to the coming into force of this Act, to investigate those complaints shall continue to be investigated by those persons who have been appointed to investigate such complaints.
- (2) The Prime Minister may, after consultation with the Ombudsman, establish different dates for the entry into force of different provisions of this Act.
- (3) Nothing in the preceding provisions of this article shall invalidate any procedure whether written or oral which may have taken place before

the coming into force of this Act and which was valid according to the law in force at the time it took place.

- (4) Without prejudice to the generality of the foregoing provisions of this article, when a new office of Commissioner is established in terms of the Ombudsman Act, the Commissioner appointed to that office shall take cognizance of those complaints pending before the Ombudsman which the Ombudsman may assign to such Commissioner; and the said Commissioner shall continue to investigate those complaints irrespective of the stage of investigation those complaints might have reached.

40. (1) On the coming into force of this Act, the Prime Minister shall, by notice or notices in the Gazette, establish the date of the repeal of the Ombudsman Act 1995:

Provided that the Prime Minister may by such notice or notices in the Gazette establish different dates for the repeal of different provisions of the Ombudsman Act 1995.

- (2) Upon the coming into force of this Act, the subsidiary legislation that became law by virtue to the Ombudsman Act 1995 shall remain in force also by virtue of this Act.

FIRST SCHEDULE

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 article 91(3) of the Constitution
 Any Counsel or Legal Adviser to the Government acting in such a capacity
 The Auditor General in respect of the functions under articles 108(5) and 108(8) of the Constitution
 The Armed Forces of Malta except as provided in Part B hereof
 The Security Service.

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

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. Cap. 276.
3. Action taken by the Minister responsible for justice under the Extradition Act. Cap. 220.
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. 9.
5. The exercise of the power of the Prime Minister under article 515 of the Criminal Code.
6. Any criminal investigation by the Police.

Constitution of Malta

64A.(1) There shall be a Commissioner for the Promotion and Protection of Human Rights and for Administrative Investigations to be called the Ombudsman who shall firstly have a specific mandate to promote and protect human rights, and secondly to investigate actions taken by or on behalf of the Government, or by such other authority, body or person as may be provided by law (including an authority, body or office established by this Constitution), being actions taken in the exercise of their administrative functions.

(2) The Ombudsman shall be appointed by the President acting in accordance with a resolution of the House supported by the votes of not less than two-thirds of all the members of the House:

Provided that notwithstanding the provisions of any other law, if the Resolution is not supported by the votes of not less than two-thirds of all the members of the House, the person occupying the office of the Ombudsman shall, in any circumstance, remain in office until the Resolution is supported by the votes of not less than two-thirds of all the members of the House:

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

(3) The Ombudsman may at any time be removed or suspended from his office by the President, upon an address from the House supported by the votes of not less than two-thirds of all members of the House, requesting 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 sub-article (2) shall also apply for the purpose of establishing the majority required under this sub-article:

Provided that 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.

(4) Subject to the provisions of this sub-article and without prejudice to sub-article (1), the Ombudsman may conduct any 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:

Provided that any Committee of the House 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 if he thinks fit:

Provided further that 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 proviso, the 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:

Provided further that in the exercise of his functions, the Ombudsman shall not be subject to the direction or control of any other person or authority:

Provided further that if during or after any investigation the Ombudsman is of the opinion that there is evidence of any corrupt practice as defined in the Permanent Commission Against Corruption Act, the Ombudsman may refer his findings directly to the Attorney General.

- (5) Any matter ancillary or incidental thereto or considered necessary or expedient for the carrying out of the function referred to in sub-article (1) shall be provided for by an Act of Parliament.



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