

**REPUBLIC OF NAMIBIA**

**NATIONAL ASSEMBLY**

---

**OMBUDSMAN BILL**

---

*(As passed by the National Assembly)*

---

*(Introduced by the Minister of Justice)*

## BILL

**To define and prescribe the powers, duties and functions of the Ombudsman; to provide for the appointment of the Deputy Ombudsman and an acting Ombudsman; to establish the Office of the Ombudsman as an office in the public service; and to provide for incidental matters.**

*(Introduced by the Minister of Justice)*

### ARRANGEMENT OF SECTIONS

#### PART 1 PRELIMINARY

1. Definitions

#### PART 2 OMBUDSMAN, DEPUTY OMBUDSMAN AND ACTING OMBUDSMAN

2. Terms and conditions for appointment of Ombudsman
3. Appointment of Deputy Ombudsman
4. Appointment of acting Ombudsman
5. Term of office of Deputy Ombudsman
6. Vacation of office by Ombudsman and Deputy Ombudsman

#### PART 3 FUNCTIONS AND POWERS OF OMBUDSMAN

7. Functions of Ombudsman
8. Power to investigate and other powers of Ombudsman
9. Ombudsman may establish committees and engage special services

#### PART 4 OFFICE OF OMBUDSMAN AND PERSONNEL PROVISIONS

10. Establishment of Office
11. Appointment of Executive Director and other staff members
12. Complaints investigators

#### PART 5 FINANCIAL PROVISIONS

13. Funds of Office
14. Accounts of Office

#### PART 6 COMPLAINTS, INVESTIGATION, INQUIRY AND POWER TO INSTITUTE LEGAL PROCEEDINGS

15. State, government institutions or local or regional authorities may refer matter for investigation or inquiry
16. Complaints to Ombudsman
17. Conduct of investigation or inquiry
18. Actions or steps to be taken by Ombudsman in connection with outcome of investigation or inquiry

19. Power to institute legal proceedings before court

PART 7  
REPORTS BY OMBUDSMAN

20. Reports by Ombudsman

PART 8  
GENERAL PROVISIONS

21. Delegation of powers and assignment of functions  
22. Preservation of secrecy  
23. Limitation of liability  
24. Offences and penalties  
25. Regulations  
26. Repeal of laws  
27. Saving and transitional provisions  
28. Transfer of assets, rights, agreements, liabilities and obligations to Office  
29. Short title and commencement

**BE IT ENACTED** as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

PART 1  
PRELIMINARY

**Definitions**

1. In this Act, unless the context otherwise indicates -

“acting Ombudsman” means a person appointed as acting Ombudsman in terms of section 4;

“Attorney-General” means the Attorney-General appointed pursuant to Article 32(3)(i) (ee) of the Namibian Constitution;

“Auditor-General” means the Auditor-General appointed pursuant to Article 32(4)(b) (aa) of the Namibian Constitution;

“Cabinet” means the Cabinet referred to in Article 35 of the Namibian Constitution;

“Children’s Advocate” means the Children’s Advocate referred to in section 25 of the Child Care and Protection Act and designated in terms of section 3(5);

“Child Care and Protection Act” means the Child Care and Protection Act, 2015 (Act No. 3 of 2015);

“complaints investigator” means a person designated in terms of section 12 as a complaints investigator;

“Deputy Ombudsman” means a person appointed as Deputy Ombudsman in terms of section 3;

“government institution” includes -

- (a) any board, council, commission, corporation, committee, body of persons, fund, account or institution established or instituted by or under any law, whether as a juristic person or not, for purposes of exercising a public power or performing a public function, whether at the level of central or regional or local government; or
- (b) an entity, whether incorporated or not, in which the State, a nominee of the State, a government institution or a nominee of the government institution is -
  - (i) the sole or a majority shareholder in that entity; or
  - (ii) by the holding of shares or other financial input or in any other manner, in a position to influence the policy or decision of that entity;

“human rights” means any -

- (a) fundamental right or freedom as contained in Chapter 3 of the Namibian Constitution; and
- (b) human rights or freedoms forming part of the law of Namibia by Article 144 of the Namibian Constitution;

“Inspector-General” means the Inspector-General of Police appointed pursuant to Article 32(4)(c)(bb) of the Namibian Constitution;

“Judicial Service Commission” means the Judicial Service Commission established by Article 85 of the Namibian Constitution;

“legal practitioner” means a legal practitioner as defined in section 1 of the Legal Practitioners Act, 1995 (Act No. 15 of 1995);

“local or regional authority” means -

- (a) the local authority council as defined in section 1 of the Local Authorities Act, 1992 (Act No. 23 of 1992); or
- (b) the regional council as defined in section 1 of the Regional Councils Act, 1992 (Act No. 22 of 1992);

“Minister” means the Minister responsible for Justice;

“Ministry” means the Ministry administering matters relating to justice;

“Office” means the Office of the Ombudsman established in terms of section 10;

“official” means an official as defined in Article 93 of the Namibian Constitution;

“Ombudsman” means the Ombudsman appointed pursuant to Article 32(4)(a)(bb) of the Namibian Constitution;

“prescribed” means prescribed by regulation made under this Act;

“public monies” means any money received for the account of, or payable to, or belonging to, or held by, the State, any government institution or local or regional authority, and

includes negotiable instruments and securities of any kind for the payment of money;

“public property” means any movable or immovable property that belongs to, is owned by, or held by, the State, government institution or local or regional authority, or in respect of which the State, institution or authority has the right to exercise control;

“Public Service Act” means the Public Service Act, 1995 (Act No. 13 of 1995);

“Public Service Commission” means the Public Service Commission established pursuant to Article 112 of the Namibian Constitution;

“staff member” means a staff member as defined in section 1 of the Public Service Act;

“State Finance Act” means the State Finance Act, 1991 (Act No. 31 of 1991); and

“this Act” includes the regulations.

## PART 2

### OMBUDSMAN, DEPUTY OMBUDSMAN AND ACTING OMBUDSMAN

#### **Terms and conditions for appointment of Ombudsman**

**2.** (1) The appointment of the Ombudsman pursuant to Article 32(4) (a)(bb) of the Namibian Constitution is on such terms and conditions as the President, on the recommendation of the Judicial Service Commission, may determine by Proclamation in the *Gazette*.

(2) The Ombudsman may not -

- (a) perform or commit himself or herself to perform remunerative work outside his or her official duties; or
- (b) receive any remuneration for work performed outside his or her official duties.

#### **Appointment of Deputy Ombudsman**

**3.** (1) The President may, on recommendation of the Judicial Service Commission, by Proclamation in the *Gazette* appoint one person who -

- (a) is a fit and proper person; and
- (b) is a judge of Namibia, or a person who possesses legal qualifications that would entitle the person to practise in all the courts of Namibia,

as the Deputy Ombudsman.

(2) The appointment of the Deputy Ombudsman pursuant to subsection (1) is on such terms and conditions as the President, on the recommendation of the Judicial Service Commission, may determine by Proclamation in the *Gazette*.

(3) The Deputy Ombudsman -

- (a) assists the Ombudsman in the performance or exercise of the Ombudsman's functions and powers in terms of the Namibian Constitution, this Act or any other law; and
- (b) exercises and performs powers and functions as may be delegated or assigned to him or her by the Ombudsman under this Act or any other law.
- (4) The Deputy Ombudsman may not -
  - (a) perform or commit himself or herself to perform remunerative work outside his or her official duties; or
  - (b) receive any remuneration for work performed outside his or her official duties.

(5) The Ombudsman must designate the Deputy Ombudsman as the Children's Advocate who must, in addition to the functions and powers assigned or delegated to the Deputy Ombudsman under this Act, assist the Ombudsman in the performance and exercise of functions and powers relating to children under the Child Care and Protection Act.

#### **Appointment of acting Ombudsman**

4. (1) If the Ombudsman –
- (a) is for any reason unable to exercise or perform his or her powers or functions;
  - (b) is removed from office pursuant to Article 94 of the Namibian Constitution; or
  - (c) vacates his or her Office pursuant to section 6,

the President must, in writing, appoint the Deputy Ombudsman to act as the Ombudsman.

- (2) If both the Ombudsman and the Deputy Ombudsman are –
- (a) unable to exercise or perform their powers and functions in terms of the Namibian Constitution, this Act or any other law; or
  - (b) removed from office pursuant to Article 94 of the Namibian Constitution or section 6,

the President must, on recommendation of the Judicial Service Commission, appoint any other person as acting Ombudsman if that person -

- (i) is a fit and proper person; and
- (ii) is a judge of Namibia, or a person who possesses legal qualifications that would entitle him or her to practise in all the courts of Namibia.

(3) The person appointed as acting Ombudsman under subsection (2) may not act as Ombudsman for a period of more than 12 months at a time.

(4) The Deputy Ombudsman designated as acting Ombudsman or any other person appointed as acting Ombudsman is, on a *pro rata* basis, entitled to remuneration payable to the Ombudsman for the period that the Deputy Ombudsman or the person acts as Ombudsman.

#### **Term of office of Deputy Ombudsman**

5. Subject to section 6, the Deputy Ombudsman holds office until the age of 65 years, but the President may extend the retiring age of the Deputy Ombudsman to not more than 70 years.

#### **Vacation of office by Ombudsman and Deputy Ombudsman**

6. (1) The Ombudsman vacates office if he or she -

- (a) resigns from office after giving three months' written notice to the President of the Ombudsman's intention to resign or by giving a shorter written notice with the approval of the President; or
- (b) is removed from office pursuant to Article 94 of the Namibian Constitution.

(2) The Deputy Ombudsman vacates office if he or she -

- (a) resigns from office after giving three months' written notice to the President of the Deputy Ombudsman's intention to resign or by giving a shorter written notice with the approval of the President; or
- (b) is removed from office under subsection (3).

(3) The Deputy Ombudsman may be removed from office before the expiry of his or her term of office by the President, on the recommendation of the Judicial Service Commission.

(4) The Deputy Ombudsman may only be removed from office on the grounds of mental incapacity or for gross misconduct, and in accordance with subsection (5).

(5) If the Judicial Service Commission considers that the question of removing the Deputy Ombudsman under this section ought to be investigated, the Commission must establish a tribunal which -

- (a) consists of three persons, all of whom must be holding or have held judicial office, and the Commission must appoint one of the persons as the chairperson of the tribunal; and
- (b) must inquire into the matter and report on the facts of the matter to the Judicial Service Commission.

(6) If the Judicial Service Commission after considering the report referred to in subsection (5)(b) and after due deliberation on the matter recommends that the President remove the Deputy Ombudsman for any reason referred to in subsection (4), the President must remove the Deputy Ombudsman from the office.

(7) For the purposes of Article 94(3)(a) of the Namibian Constitution and subsection (5)(a), a person who holds or has held a judicial office, excludes a person who holds or has held office as a magistrate.

PART 3  
FUNCTIONS AND POWERS OF OMBUDSMAN

**Functions of Ombudsman**

7. (1) In addition to the functions set out in Article 91 of the Namibian Constitution, this Act or any other law, the Ombudsman has the following functions –

- (a) to investigate and inquire into any instance or matter, on his or her own accord or on request by any person or complaint lodged with his or her office, and take such action or steps as may be prescribed by the Namibian Constitution, this Act or any other law concerning any decision, recommendation or any act or omission by an official or other person employed or engaged to perform a public function in the course of the administration of the affairs of Government or a government institution which results, or is likely to result, in prejudice to any other person or which is incompatible with any human rights;
- (b) to receive and investigate complaints concerning children or concerning any violation of the rights of the children and matters concerning children contemplated in Article 15 of the Namibian Constitution or section 25 of the Child Care and Protection Act;
- (c) to promote human rights by implementing educational and informative measures to advocate understanding, awareness and respect for human rights and the importance of human rights at all levels of society by such means as the Ombudsman considers appropriate, including publications, advertisements, public lectures, workshops, community meetings and any other appropriate platforms available;
- (d) to review the adequacy and effectiveness of laws and practices in Namibia relating to the protection or promotion of human rights and the compliance with international human rights instruments to which Namibia is a party and to make recommendations to the Government and National Assembly in relation to measures which the Ombudsman considers must be taken to strengthen, promote, protect and uphold human rights;
- (e) to advise and encourage the Government in relation to the ratification of, or accession to, any international instruments relating to human rights to which Namibia is not a party;
- (f) to visit correctional facilities and other places of detention, either by arrangement or unannounced, for the purpose of receiving complaints and the inspection of general conditions of such facilities or places and detainees;
- (g) to develop and conduct information programmes to foster public understanding of this Act, the Child Care and Protection Act and any other laws that make provision for the role and activities of the Ombudsman; and



- (h) to co-operate with the United Nations and other agencies in the United Nations system, the African Union, civil society organisations, Ombudsmen or institutions with similar objectives and national human rights institutions of other countries to promote and protect human rights.

(2) Without derogating from the provisions of subsection (1), a request or complaint in respect of instances or matters referred to in that subsection, may include any instance or matter in respect of which the Ombudsman has reason to suspect that -

- (a) a decision taken or about to be taken or recommendation made or about to be made by or under the authority of the State, a government institution or any local or regional authority, or an act performed or about to be performed, or any omission to act on account of any decision or recommendation, by any person in the employment of the State, institution or authority, or any act performed or about to be performed, or any omission to act, being an act or omission on behalf of the State or institution or authority or purporting to be any such act or omission -
- (i) abolishes, diminishes or derogates from human rights or will abolish, diminish or derogate from human rights;
  - (ii) is or will be in conflict with any law, including the common law;
  - (iii) is or will be unreasonable, unjust, unfair, irregular, unlawful or discriminatory or is based on any practice which may be considered to be as such; or
  - (iv) is based on a wrong interpretation of the law or the relevant facts;
- (b) a law, a practise or any other matter administered by or under the authority of the State, a government institution or a local or regional authority or by any person in the employment of the State, institution or authority is followed in a manner that is not in the public interest;
- (c) a power, duty or function which vests in the State or a government institution or a local or regional authority, or in any person in the employment of the State, institution or authority, is exercised or performed in an incompetent, dishonest or irregular manner or is not exercised or performed; or
- (d) public money or public property is being or has been dealt with in a dishonest, irregular or improper manner.

(3) For the purposes of Article 91(a) of the Namibian Constitution, the phrase "inhabitant of Namibia" includes a visitor to Namibia.

#### **Power to investigate and other powers of Ombudsman**

8. (1) Subject to this Act, the Ombudsman may -
- (a) on his or her own accord; or

- (b) on request by any person or on complaint on any instance or matter lodged or brought before the Ombudsman,

in accordance with the Namibian Constitution, this Act or any other law, conduct any investigation into the instance or matter and take such action or step in response to the instance or matter.

(2) In addition to the powers contemplated in Article 92 of the Namibian Constitution, the Ombudsman when performing his or her functions in terms of the Constitution, this Act or any other law, has the powers contemplated in subsection (3).

(3) Subject to any law regulating the privileges or immunities of the President, members of the Cabinet or Parliament or any other person or institution, the Ombudsman, the Deputy Ombudsman, a complaints investigator, a staff member authorised in writing by the Ombudsman or any other person authorised in writing by the Ombudsman, subject to subsection (4), has the power to -

- (a) at any time, enter any building or premises or any part of any building or premises as the Ombudsman on reasonable grounds considers it sufficient or appropriate for purposes of investigation or inquiry;
- (b) make such inquiry and ask any person employed in a building or premises or finds himself or herself in or on that building or premises referred to in paragraph (a) such questions as the Ombudsman may consider necessary for purposes of investigation or inquiry;
- (c) access all books, vouchers, documents, money, stamps, securities, forms having a face or potential value, equipment, stores and other movable goods in the possession or under the control of a person and which the Ombudsman considers necessary to investigate or inquire into in connection with such inquiry or investigation;
- (d) request particulars or information from a person whom the Ombudsman considers necessary in connection with the investigation or inquiry, and the person furnishing such particulars or information to the Ombudsman must do so on a date, place and within a period specified by the Ombudsman;
- (e) without payment of any fees, make or obtain extracts from, or copies of, any book, voucher or other document which he or she considers necessary in connection with the investigation or inquiry;
- (f) seize anything concerning, or is reasonably believed to be concerned, with the matter being investigated or inquired into or which is connected with the investigation or inquiry and retain the seized thing in safe custody for as long as it is necessary for purposes of the investigation or inquiry;
- (g) take such measures as may be necessary to preserve anything that has been seized under paragraph (f) which measures may include directing a person in charge of, or who has access to, the premises where the thing seized is located not to tamper with the thing in a manner that evidence required for investigation or inquiry may be obliterated or destroyed; and

- (h) despite any law to the contrary, take photographs, digital images or recordings, electronic recordings and make such photographs, digital images or recordings, electronic recordings or any recordings forming part of evidence during an investigation or inquiry.
- (4) Despite subsection (3) -
  - (a) any building or premises or any part of the building or premises used as a private home may only be entered and searched; or
  - (b) correspondence or communications may only be interfered with,

if the matter or complaint being investigated relates to the violation or alleged violation of human rights or misappropriation or alleged misappropriation of public money or public property and the -

- (i) owner or occupier of the home or the owner of the correspondence or communication has consented to the search or interference; or
- (ii) Ombudsman, the Deputy Ombudsman, a complainants investigator, a staff member or person referred to in that subsection on reasonable grounds believes that –
  - (aa) a search warrant will be granted if applied for; and
  - (bb) the delay in obtaining the search warrant would defeat the object of the search.

(5) To the extent that this section authorises the interference with the privacy of a person's home, correspondence or communication as contemplated in Sub-Article (1) of Article 13 of the Namibian Constitution, this section is enacted on the authority of Sub-Article (2) of that Article.

### **Ombudsman may establish committees and engage special services**

9. (1) The Ombudsman may establish any committee to advise or assist him or her in the exercise or performance of his or her powers or functions in terms of the Namibian Constitution, this Act or any other law and in accordance with such directions as he or she may determine.

(2) The Ombudsman may, by agreement, engage the services of any person, including a person in the service of any organ of State, a government institution or a local or regional authority, to exercise or perform any power or function in accordance with the Namibian Constitution, this Act or any other law.

(3) The Ombudsman may remunerate a member of the committee established under subsection (1) or the person engaged under subsection (2) who is not in the full-time employment of the State from the funds of the Office.

PART 4  
OFFICE OF OMBUDSMAN AND PERSONNEL PROVISIONS

**Establishment of Office**

**10.** (1) There is established in the public service an office to be known as the Office of the Ombudsman.

(2) The Office is responsible for providing administrative and financial support services to the Office and assist the Ombudsman in performing his or her powers, functions and duties as provided for in the Namibian Constitution, this Act or any other law.

(3) The Office consists of the Ombudsman, Deputy Ombudsman, who is also the Children's Advocate and the staff members.

**Appointment of Executive Director and other staff members**

**11.** (1) The Prime Minister must, in accordance with the Public Service Act, appoint the Executive Director of the Office and other staff members of the Office as may be required for the proper performance of the functions of the Office.

(2) The Public Service Act, regulations, rules, directives and any other thing made or issued under that Act apply -

- (a) to the Executive Director and staff members of the Office; and
  - (b) in respect of the administration of the Office.
- (3) The Executive Director -
- (a) is the accounting officer of the Office as contemplated in section 8 of the State Finance Act; and
  - (b) is responsible for the day-to-day administration of the Office and for the efficient management and administration of the Office.

**Complaints investigators**

**12.** (1) Among the staff members referred to in section 11, the Ombudsman must designate one or more staff members to be complaints investigators for the purposes of this Act.

- (2) A complaints investigator -
- (a) has such powers, functions and duties as may be provided for by this Act or as may be delegated or assigned to the complaints investigator by the Ombudsman; and
  - (b) must exercise such powers, perform such functions and discharge such duties in compliance with the directions or instructions as may be specified orally or in writing by the Ombudsman.

(3) The Ombudsman must issue to every staff member designated as a complaints investigator an authority card -

- (a) which must be signed by the Ombudsman;
- (b) which is *prima facie* evidence of the designation and identity of the person concerned; and
- (c) containing prescribed information and particulars.

(4) A complaints investigator must display his or her authority card to any person in respect of whom he or she may seek to exercise any power or perform any function or duty under this Act.

## PART 5 FINANCIAL PROVISIONS

### **Funds of Office**

13. (1) The funds of the Office consist of moneys -

- (a) appropriated by Parliament for the purposes of the Office; and
- (b) given to the Office by way of grants from whatever source in Namibia or outside Namibia, which the Executive Director may, with the approval of the Ombudsman and the Minister responsible for Finance, accept.

(2) Subject to subsection (1)(b), the Executive Director may accept grants that are for the benefit of projects, activities or functions of the Office as may be agreed on with the person giving grants.

(3) Subject to subsection (2), funds of the Office are used for -

- (a) remuneration of staff members and any other persons that have been engaged to perform functions or exercise powers on behalf of the Ombudsman or the Office;
- (b) travelling, transport and subsistence allowances for the Ombudsman, the Deputy Ombudsman and staff members as determined by any law;
- (c) capital projects of the Office; and
- (d) other administrative expenses of the Office.

### **Accounts of Office**

14. (1) The Executive Director must keep proper accounts of the funds of the Office in accordance with the State Finance Act.

(2) The accounts of the funds of the Office referred to in subsection (1) are audited by the Auditor-General in accordance with the State Finance Act.

PART 6  
COMPLAINTS, INVESTIGATION, INQUIRY AND POWER TO  
INSTITUTE LEGAL PROCEEDINGS

**State, government institutions or local or regional authorities may refer matters for investigation or inquiry**

**15.** (1) The State, a government institution or any local or regional authority may at any time and in the public interest refer any instance or matter of which the administration vests in the State, Cabinet, National Assembly, government institution or local or regional authority to Ombudsman for investigation or inquiry.

(2) The State, institution or authority referred to in subsection (1) may refer any instance or matter to the Ombudsman if -

- (a) the State, institution or authority has reason to suspect that such instance or matter is of a nature contemplated in section 7; or
- (b) any other person alleges that such instance or matter is of a nature contemplated in the section referred to in paragraph (a).

(3) For the purposes of subsection (1), the State, government institution or local or regional authority must compile a report on the instance or matter to accompany the referral of the instance or matter to the Ombudsman.

(4) The Ombudsman must investigate or inquire into the instance or matter and must -

- (a) take such action or steps as may be necessary in terms of the Namibian Constitution, this Act or any other law; or
- (b) report on such instance or matter in accordance with the Namibian Constitution, this Act or any other law.

**Complaints to Ombudsman**

**16.** (1) A person wishing to lodge a complaint concerning any instance or matter referred to in Article 91 of the Namibian Constitution or in section 7 with the Ombudsman -

- (a) may do so anonymously;
- (b) may disclose his or her identity and request that his or her identity and particulars be kept confidential by the Office; or
- (c) may lodge a complaint in any other manner as the Ombudsman may determine.

(2) Any person has the right of access, and the right to lodge a complaint concerning any instance or matter as contemplated in subsection (1), to the Ombudsman.

(3) The manner of lodging a complaint by a person who is -

- (a) detained in custody on a charge or after conviction of any offence;

- (b) a patient in an institution under the Mental Health Act, 1973 (Act No. 18 of 1973); or
- (c) detained under the Immigration Control Act, 1993 (Act No. 7 of 1993),

is as prescribed.

(4) The Ombudsman may refuse to investigate or discontinue an investigation of any complaint laid with him or her, if the Ombudsman after conducting a preliminary investigation is of the opinion that the complaint -

- (a) is frivolous, vexatious, is not made in good faith or concerns a trivial matter; or
- (b) does not fall within the mandate of the Ombudsman,

and the Ombudsman must notify the person who requested or lodged the complaint accordingly.

### **Conduct of investigation or inquiry**

17. (1) Without derogating from any power conferred on the Ombudsman by section 8, the Ombudsman determines -

- (a) the nature and extent of the investigation or inquiry to be conducted under the Namibian Constitution, this Act or any other law; and
- (b) the place and time within which the investigation or inquiry must be conducted.

(2) Subject to section 8(3), the Ombudsman may, by notice in writing to any person, require the person to -

- (a) appear before the Ombudsman in relation to an investigation or inquiry at a time and place specified in the notice; or
  - (b) submit to the Ombudsman any book, voucher or other documents or things in possession or under the control of the person, which the Ombudsman considers necessary in connection with the investigation or inquiry.
- (3) The Ombudsman or a person authorised by the Ombudsman may -
- (a) administer an oath or take an affirmation from a person referred to in subsection (2) or any person present at the place referred to in that subsection, irrespective of whether or not that person has been served with a notice referred to in that subsection, to appear before the Ombudsman; and
  - (b) question any person referred to in paragraph (a) in connection with any matter which the Ombudsman considers necessary for the purposes of the investigation or inquiry.

(4) The Ombudsman may direct that a person, any category of persons or all persons who, in the opinion of the Ombudsman, are not desirable to be present at the investigation or inquiry or any part of the investigation or inquiry not be present at the investigation or inquiry.

(5) A person who is requested to appear before the Ombudsman and who -

- (a) has received a written notice to so appear; and
- (b) is not employed in the public service,

is entitled to witness fees as if the person has been summoned to attend criminal proceedings before the High Court of Namibia.

(6) A person appearing before the Ombudsman must -

- (a) answer fully and truthfully any question relevant to the investigation or inquiry;
- (b) co-operate with the Ombudsman and disclose truthfully and frankly any information within his or her knowledge relevant to any investigation or inquiry; and
- (c) subject to section 8(3), produce any book, voucher or other document or anything to the Ombudsman which the Ombudsman considers necessary in connection with the investigation or inquiry.

(7) Subsection (6) may not be construed to mean that the Ombudsman, Deputy Ombudsman and any member of the Office are competent and compelled to answer any question in any proceedings before a court of law, any person or a commission appointed under the Commissions Act, 1947 (Act No. 8 of 1947) in connection with information which came to the knowledge of, or any book, voucher or other document or anything produced by, the Ombudsman, Deputy Ombudsman or any member of the Office pursuant to that subsection.

#### **Actions or steps to be taken by Ombudsman in connection with outcome of investigation or inquiry**

**18.** (1) The Ombudsman, after holding any investigation or inquiry in accordance with this Act -

- (a) must notify the person who lodged a complaint before the Ombudsman under section 15 or 16 of the outcome of the investigation or inquiry in such manner and form as the Ombudsman may determine and to such extent as the Ombudsman considers necessary in the public interest;
- (b) must take appropriate action to remedy, correct or reverse the instance or matter as contemplated in Article 91(e) of the Namibian Constitution;
- (c) may refer the instance or matter to the Auditor-General, the Anti-Corruption Commission or the Namibian Police Force for investigation;
- (d) without derogating from the provisions of paragraph (b), and if the Ombudsman is of the opinion that any action must be taken to remedy,



rectify, correct or reverse the effects of the instance or matter to which the investigation or inquiry relates may -

- (i) report his or her opinion and the reason for his or her opinion to the Government, a government institution or a local or regional authority which may include any recommendations the Ombudsman thinks appropriate, and request that the Government, institution or authority notifies the Ombudsman within a specified period of the steps that have been or are to be taken in order to give effect to the recommendation of the Ombudsman, and if no such steps have been taken or are proposed to be taken, the reasons for not taking such steps; or
- (ii) approach the Supreme Court for a declaratory order.

(2) If it appears to the Ombudsman that the State, government institution or local or regional authority referred to in subsection (1)(d) has not taken any step that seems appropriate to the Ombudsman within a reasonable time after the Ombudsman has made the report or recommendation under that subsection, the Ombudsman may, after considering any comment made by or on behalf of the State, authority or institution, submit a report on the matter in accordance with section 20(2).

(3) When investigating or inquiring into an instance or matter under the Namibian Constitution, this Act or any other law which appears to involve or constitute a criminal offence, the Ombudsman must immediately refer the matter to the Inspector-General for investigation, and the Ombudsman may do so before submitting any report in respect of the matter under section 20.

#### **Power to institute legal proceedings before court**

**19.** (1) For the purpose of performing his or her functions under the Namibian Constitution, this Act or any other law, the Ombudsman may, in his or her official capacity or on behalf of any other person or group of persons, institute legal proceedings before any court of law in order to seek any remedy or any other action.

- (2) For the purposes of subsection (1), the Ombudsman may -
  - (a) appear himself or herself or through a staff member of the Office who is admitted as a legal practitioner; or
  - (b) engage the services of a legal practitioner.

### PART 7 REPORTS BY OMBUDSMAN

#### **Reports by Ombudsman**

**20.** (1) The Ombudsman must, not later than 30 June each year, submit to the Speaker of the National Assembly the report referred to in Article 91(g) of the Namibian Constitution.

(2) In addition to the report referred to in subsection (1), the Ombudsman must at such a times as determined by him or her compile a report in respect of a matter or matters investigated or inquired into by him or her and which has or have not been

rectified, corrected or remedied to the satisfaction of the Ombudsman and must submit such report as soon as possible to the Speaker of the National Assembly.

(3) The Ombudsman must set out in the report referred to in subsection (2)

-

(a) the nature of the instance or matter investigated or inquired into and the facts in connection with, and the circumstances under which, the instance or matter came to his or her attention;

(b) if the facts in connection with the instance or matter were in dispute, the facts which he or she found in the circumstances to be proved and the reasons for such finding;

(c) the nature and extent of the investigation or inquiry;

(d) any defect or deficiency which in his or her opinion exists in the administration of the instance or matter concerned;

(e) any other finding which he or she made in the course of the investigation or inquiry;

(f) if the Ombudsman has made any adverse finding in relation to a person, the opportunity afforded to the person to challenge allegations or facts on which the finding is based or to reply to such finding and what the person has adduced in contradicting or replying to the finding;

(g) the action or steps taken to remedy, rectify, correct or reverse the instance or matter in question;

(h) the outcome of the action or steps so taken;

(i) whether the report may in his or her opinion be laid on the table of the National Assembly as a confidential paper in terms of subsection (5);

(j) make such recommendations in that report as he or she may consider necessary or expedient; and

(k) such other matters which in his or her opinion may be brought to the attention of the National Assembly.

(4) Subject to subsection (5), the Speaker of the National Assembly must, within 14 days after receipt of the report submitted in terms of subsection (1) or (2), lay such report before the National Assembly if the National Assembly -

(a) is then in session; or

(b) is not then in session, within 14 days after the commencement of its ensuing session.

(5) If a report submitted in terms of this section to the Speaker of the National Assembly contains information which has been obtained by the Ombudsman -

- (a) under the Namibian Constitution, this Act or any other law but which may not be obtained or made known to certain persons in terms of any law on the protection of certain information; or
- (b) in spite of any law on privilege, arising from considerations concerning the security of the State,

the report must be laid before the table of the National Assembly as a confidential paper for submission to a select committee of the National Assembly to consider the question whether the report contains confidential information and whether the report may be made available to members of the National Assembly.

(6) A person having access to the report referred to in subsection (5) may not disclose any confidential information contained in that report.

(7) The Ombudsman must transmit a copy of the report referred to in subsection (2) to the Cabinet, and in the case of a matter of which the administration vests in the government institution or local or regional authority, the Ombudsman must in addition transmit a copy of the report to such institution or authority concerned.

## PART 8 GENERAL PROVISIONS

### **Delegation of powers and assignment of functions**

**21.** (1) The Ombudsman may, in writing and on such conditions as the Ombudsman may determine, delegate a power or assign a function conferred or imposed on the Ombudsman by or under this Act to the Deputy Ombudsman or a complaints investigator, other than the power to -

- (a) make a report under this Act;
- (b) delegate under this section; or
- (c) designate staff members as complaints investigators;

(2) The Ombudsman -

- (a) is not divested of a power delegated or function assigned under this section; and
- (b) may, at any time, without prejudice of a right, amend or withdraw a decision made by virtue of the power so delegated.

### **Preservation of secrecy**

**22.** The Ombudsman, the Deputy Ombudsman, an acting Ombudsman, a staff member of the Office and any other person exercising or performing powers or functions under this Act must -

- (a) preserve and aid in the preserving of secrecy in respect of the instance or matter that comes to his or her knowledge in the exercise or performance of his or her powers and functions under the Namibian Constitution, this Act or any other law; and

- (b) not communicate any such instance or matter to any person or permit a person to have access to any documents in his or her possession or custody,

except -

- (i) for purposes of exercising a power or performing a function in terms of the Namibian Constitution, this Act or any other law; or
- (ii) when required to do so by a court of law or under any law.

### **Limitation of liability**

**23.** The Ombudsman, the Deputy Ombudsman or an acting Ombudsman, any staff member of the Ombudsman or any other person performing a function or exercising a power under this Act is not personally liable in respect of anything done in good faith under any provision of this Act unless such thing is done or omitted to be done due to the gross negligence or unlawful conduct of the Ombudsman, Deputy Ombudsman, staff member or such person.

### **Offences and penalties**

- 24.** Any person who -
- (a) refuses or fails to appear before the Ombudsman after having received the notice issued in terms of section 17(2), at a time and place specified in the notice;
  - (b) refuses to submit or produce to Ombudsman any book, voucher or other documents or things in the possession or under the control of the person or who refuses or fails to furnish any particulars or information for purposes of the investigation or inquiry;
  - (c) obliterates or destroys anything seized and preserved or any evidence contained on anything seized and preserved in terms of this Act;
  - (d) refuses to take an oath or to make an affirmation on the request of the Ombudsman pursuant to section 17(3);
  - (e) refuses to co-operate with the Ombudsman for purposes of investigation or inquiry;
  - (f) refuses to answer any question put to him or her by the Ombudsman or who provides an answer to a question which to his or her knowledge is false;
  - (g) discloses to any other person the contents of any book, voucher or other document in the possession of the Ombudsman or the Office or the record of any proceedings of investigation or an inquiry;
  - (h) insults, disparages or belittles the Ombudsman or anticipates the proceedings at an investigation or inquiry or the findings of the Ombudsman in a manner calculated to influence such proceedings or findings;

- 
- (i) wilfully hinders or obstructs the Ombudsman in the exercise of his or her powers or the performance of his or her duties or functions;
  - (j) wilfully interrupts the proceedings at an investigation or inquiry or misbehaves himself or herself in any manner during an investigation or inquiry;
  - (k) during an investigation or inquiry does anything which, if done in connection with the proceedings in a court of law, would constitute contempt of court;
  - (l) does anything calculated improperly to influence the Ombudsman in respect of any matter being or to be considered by the Ombudsman in relation to any investigation or inquiry;
  - (m) discloses confidential information contained in a report submitted in terms of section 20;
  - (n) directly or indirectly, by himself or herself or by any other person make use or threatens to make use of any violence, force or restraint, or inflicts or threatens to inflict any injury, damage, harm or loss, on or against, or does or threatens to do anything to the disadvantage of, any other person, or his or her next of kin, on account of such other person -
    - (i) having lodged a complaint of any instance or matter with the Ombudsman in terms of this Act or any other law; or
    - (ii) having furnished any particulars or information or produced any book, voucher or other document or thing, at or in connection with any investigation or inquiry; or
    - (iii) intending to lodge a complaint of any instance or matter with the Ombudsman or to furnish any particulars or information or to produce any book, voucher or other document or thing at or in connection with any investigation or inquiry,

commits an offence and on conviction is liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

### **Regulations**

- 25. (1) The Ombudsman may make regulations relating to -
  - (a) forms and methods for the collection of statistics pertaining to the implementation of this Act;
  - (b) any matter which in terms of this Act is required or permitted to be prescribed; or
  - (c) generally any other matter which the Ombudsman considers necessary or expedient to give effect to the objects of this Act.

(2) A regulation made under this section may create an offence for contravention or failure to comply with the regulation and prescribe a penalty not exceeding N\$4 000 or imprisonment for a period not exceeding six months or both such fine and such imprisonment.

### **Repeal of laws**

26. Subject to section 27, the Ombudsman Act, 1990 (Act No. 7 of 1990) is repealed.

### **Saving and transitional provisions**

27. (1) Despite any other law to the contrary, a person who, immediately before the coming into operation of this Act, was employed in the Ministry as a staff member, whether on the permanent and pensionable establishment or as a temporary employee, in connection with the operations and administration of matters of the Ombudsman is deemed on the coming into operation of this Act to be a staff member of the Office under this Act.

(2) Any request, complaint, investigation, inquiry, action or steps made, done or taken and any other act performed under a law repealed by section 26 which could be made, issued, or done under a corresponding provision of this Act is deemed to have been made, issued, done, taken or performed under a corresponding provision of this Act.

### **Transfer of assets, rights, agreements, liabilities and obligations to Office**

28. (1) In this section “asset” includes immovable and movable properties and other real rights.

- (2) Subject to this section, the Minister -
- (a) with the concurrence of the Minister responsible for finance; and
  - (b) on such conditions as the Minister may determine,

must, by notice in the *Gazette*, transfer to the Office such assets, liabilities, agreements, rights or obligations of the State which relate to or are connected with the functions of the Office, with effect from a date specified in such notice.

(3) Despite any law to the contrary, the Office is vested with the ownership of the assets and rights, and is charged with the liabilities and obligations, transferred to it under subsection (2), with effect from the date of such transfer.

(4) A certificate issued and signed by the Minister stating that any State land or a servitude or other real right or lease or any other asset or right described in such certificate has been transferred to the Office in terms of subsection (1), is sufficient proof that the asset, right, liability or obligation so described is vested in the Office.

- (5) On submission of the certificate referred to in subsection (4) to -
- (a) the Registrar of Deeds; or

- (b) any other person in charge of any other office where a register or record of ownership or an entitlement to an asset or right is being kept,

he or she must make such endorsement or entries in or on any relevant register, title deed or other document in his or her office as may be necessary to effect the transfer in the name of the Office.

(6) The Office is substituted for the State as a contracting party in respect of any agreement transferred to the Office in terms of subsection (2).

(7) Despite any law to the contrary, no duty, fee, tax or levy payable in terms of any law for the acquisition or transfer of assets or rights is payable in respect of the transfer of assets or rights by the State to the Office in terms of subsection (2).

#### **Short title and commencement**

**29.** (1) This Act is called the Ombudsman Act, 2025, and commences on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.

---