

1973

NEW SOUTH WALES

REPORT
OF THE
LAW REFORM COMMISSION
ON
APPEALS IN
ADMINISTRATION

[L.R.C. 16]

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PREFACE

The Law Reform Commission is constituted by the Law Reform Commission Act, 1967. The Commissioners are—

The Honourable Mr Justice C. L. D. Meares, Chairman.

Mr R. D. Conacher, Deputy Chairman.

Mr C. R. Allen.

Professor D. G. Benjafield.

Mr D. Gressier.

Mr T. W. Waddell, Q.C.

The offices of the Commission are in Goodsell Building, 8-12 Chifley Square, Sydney. The Secretary of the Commission is Mr R. J. Watt. Letters should be addressed to him.

This is the sixteenth report of the Commission on a reference from the Attorney General. Its short citation is L.R.C. 16.

ACKNOWLEDGMENTS

We express our thanks to those engaged in the public service of the State who assisted us with matters within our terms of reference. Their co-operation was generous.

Few replies were received to our published notices in the press inviting assistance. We are grateful, however, to the persons who did make submissions to us.

We had useful conferences with Sir Guy Powles, Ombudsman for New Zealand, with the Honourable J. C. McRuer, a former Chief Justice of the High Court of Ontario, and with Professor H. W. R. Wade, Q.C., of the University of Oxford. We acknowledge their valuable assistance.

We acknowledge particularly our indebtedness to the Reports of the McRuer Royal Commission "Inquiry into Civil Rights".

The Report of the Commonwealth Administrative Review Committee was published in the course of our work. It aided us greatly. Also it enabled our treatment of matters common to Commonwealth and New South Wales administrative law to be shorter than otherwise it would have been.

Mr R. L. Cope, Parliamentary Librarian, extended co-operation and assistance to us in large measure. We thank him.

CONTENTS

	Page
Preface	3
Acknowledgments	4
Contents	5
Summary of Report	6
Report	7
Part I.—Preliminary	7
Part II.—Introduction	9
Part III.—Official Actions of Public Authorities	19
Division 1.—Public Authorities	19
Division 2.—The Nature of the Powers Exercisable by Public Authorities	19
Division 3.—Procedural Requirements for Official Actions	24
Division 4.—Judicial Review of Official Actions	26
Division 5.—Appeals from Official Actions	29
Part IV.—Ombudsman	33
Part V.—Experience of some other Countries and States	41
Part VI.—Conclusions and Recommendations	60
Part VII.—General	73
Part VIII.—Proposed Bills	77
1. The Commissioner for Public Administration Bill	77
2. The Public Administration Tribunal Bill	87
3. The Ombudsman Bill	128
Part IX.—Notes on Proposed Bills	150
1. The Commissioner for Public Administration Bill	150
2. The Public Administration Tribunal Bill	151
3. The Ombudsman Bill	167
Annexures	
A. Public Authorities	180
B. Official Actions—Minister for Lands	224
C. Official Actions—Chief Secretary	238
D. Existing Appeals	249
E. Judicial Review	284
F. Ombudsmen in Other Places	303
G. Comparison of Some Ombudsman Legislation	304
Table of Cases	352
Tables of Statutes	355
Index	359

SUMMARY OF REPORT

1. We recommend—

- (a) that a Commissioner for Public Administration be appointed and an Advisory Council on Public Administration be constituted (paras 136–142);
- (b) that a Public Administration Tribunal be constituted (paras 143–157);
- (c) that an Ombudsman be appointed (paras 158–163).

2. We make the recommendations mentioned in para. 1 because, in our view—

- (1) The remedies now available for correcting wrong official actions of public authorities are inadequate (paras. 11–26).
- (2) More rights of appeal from official actions of public authorities should be granted and existing rights of appeal should be re-examined (paras 54–60).
- (3) Most official actions of public authorities are legislative or adjudicative, or both legislative and adjudicative, in character (paras 28–39).
- (4) Where an official action of a public authority is legislative in character, an appellate tribunal concerned with the action should give effect to Government policy (paras 32, 35 and 147).
- (5) Where an official action of a public authority is adjudicative in character, an appellate tribunal concerned with the action should be independent and impartial (paras 33, 35 and 147).
- (6) A new appellate-type body—the Public Administration Tribunal mentioned in para. 1 (b)—is needed to give full effect to the propositions stated in (4) and (5).
- (7) Although our recommendations relating to the Public Administration Tribunal are self-contained, they should be more fully developed by work of an empirical nature. For this, and other purposes, an independent person—the Commissioner for Public Administration mentioned in para. 1 (a)—is needed.
- (8) An independent person—the Ombudsman mentioned in para. 1 (c)—is needed to act as a conciliator, as distinct from an arbitrator, between Government and citizen.

REPORT

APPEALS IN ADMINISTRATION

PART I

PRELIMINARY

1. The Honourable K. M. McCaw, Q.C., M.L.A., Attorney General for New South Wales has made a reference to this Commission in the following terms:

"To consider whether a right of appeal should be granted from decisions of administrative tribunals and officers, and whether, in this regard, it may be desirable to appoint an Ombudsman; and in particular to deal with the following:

- (a) the effect of any such proposals upon judicial review including the Prerogative Writs and Crown Privilege; and
- (b) the form of any legislation which may be proposed for consideration by the Government."

2. For the purposes of the terms of reference, we read:

"a right of appeal" as referring to a right which can be conferred only by statute.

"decision" as including an act done or omitted which adversely affects a person.

"administrative tribunal" and "officer" as referring to one or more persons, whether incorporated or not and however described, upon whom power is conferred; including the Governor, Ministers of the Crown, departments, sub-departments, authorities, boards, commissions, committees and other emanations of New South Wales Government but excluding Parliament and the courts, and whether power is conferred by statute or by the common law or by the prerogative.

“Ombudsman” as referring to an impartial person who deals with specific complaints about decisions of administrative tribunals and officers and who investigates, assesses and reports upon, but does not himself reverse or modify, these decisions.¹

“judicial review” as referring to the supervisory powers of the Supreme Court of New South Wales—

- (a) to command tribunals and officers to perform public duties;
- (b) to prohibit or otherwise restrain tribunals and officers from proceeding in matters before them;
- (c) to command or otherwise require the removal into the Court of matters before tribunals or officers whether for the purpose of quashing or otherwise; and
- (d) to determine by declaration matters concerning the powers of tribunals and officers.

“Prerogative Writs” as including the writ of habeas corpus and subjiciendum and judgments or orders of the Supreme Court granting a relief or remedy which was formerly granted by way of the prerogative writs of prohibition, mandamus or certiorari.²

“Crown Privilege” as referring to a claim made in any proceedings, whether or not the Crown is a party to the proceedings, that evidence which is relevant and otherwise admissible should be excluded because its admission would be injurious to the public interest.³

3. We emphasize that the rights of appeal with which we are concerned are, as we see them, rights of appeal granted by statute. The nature of an appeal is determined by the terms of the relevant statute. Unless the statute otherwise provides, the appellate body is in the same position as if the hearing of the appeal were the original hearing, and hence it may receive evidence in addition to that before the tribunal or officer below, and it may consider the whole case and not merely the points as to which the appeal is brought. Statutes do, however, often confer limited rights of appeal: for example, an appeal may be limited to matters of law and not extend to matters of fact. Unlike a right to appeal, judicial review is, in origin, a common law concept. Review involves the exercise by the Supreme Court of control over another tribunal or officer; it does not involve any reconsideration of the merits of the matter the subject of review. In general, it provides a review of error, but only where error is regarded as having led a body to exceed its powers or to fail to exercise its powers.

¹ See Rowat (ed.), *The Ombudsman*, 2nd ed. (1968), p. xxiv; Gellhorn, *Ombudsmen and Others* (1966), pp. 420–439.

² See Annexure E, paras 53, 59 and 63–66.

³ See Hogg, *Liability of the Crown* (1971), Ch. 3.

4. Subject to limited exceptions, we do not read the terms of reference as—

- (a) requiring us to consider matters within our terms of reference “to review the law relating to proceedings by and against the Crown and incidental matters”; or
- (b) entitling us to consider—
 - (i) decisions relating to the making of rules, regulations and by-laws having force as subordinate legislation; or
 - (ii) whether compensation should be payable to a person adversely affected by the decision of an administrative tribunal or officer.

5. Where convenient, we refer hereafter to “decisions of administrative tribunals and officers” as “official actions of public authorities”. We treat an “official action” as including a failure to take official action, a refusal to take official action, a purported official action and a proposed official action.

PART II

INTRODUCTION

6. Our terms of reference are less technical than any others given to us. We think it right, therefore, to state our starting-points, even if in general and imprecise terms. They are—

- (1) The growth of public administration is a characteristic of contemporary society.
- (2) The powers of public authorities to affect private rights have increased in recent decades and are increasing.
- (3) Problems of administrative justice cause concern in most parts of the world, including New South Wales.
- (4) When objectives of government policy have been determined, those objectives must be attained without unreasonable delay and account must be taken of the needs of public authorities to run the day-to-day government of the State.
- (5) Any official action should have “reasonable regard to the balance between the public interest which it promotes and the private interest which it disturbs”, and be fair.

- (6) Any person adversely affected by an official action should be able to question the action simply, cheaply and quickly; and procedures should be available to him which are fair, impartial and, wherever possible, open.⁴

7. We are required to consider the official actions of *administrative tribunals and officers*. The inclusion of *officers* means that the scope of our inquiry is wide. Difficulties flow from that width. Some 57,000 officers are employed under the Public Service Act, 1902, and a far greater number are employed by public authorities under other Acts. In short, where we speak of "official actions" we are, of necessity, referring to actions of public authorities ranging from the Governor of this State to the most junior employee of government; their respective powers may differ but the action of a clerk in posting a letter tomorrow rather than today may sometimes affect a person more than any action of the Governor.

8. We do not try to specify every public authority and every official action within the application of our terms of reference. Annexure A lists some 1,500 public authorities to whom specific reference is made in the legislation of this State. Annexure B lists some 350 separate official actions which may be taken by the Minister for Lands or by public authorities subject to his administrative control. Annexure C lists some 200 separate official actions which may be taken by the Chief Secretary or by public authorities subject to his administrative control. Each of the Annexures is intended to be illustrative, not exhaustive. We have assembled and studied material from which like lists can be prepared of official actions which may be taken by the remaining sixteen Ministers of the Crown and their respective departments, and under Acts administered by them. We believe, however, that Annexures A, B and C sufficiently illustrate the public authorities and the official actions with which we are concerned and, also, the difficulty of drawing general conclusions appropriate to each authority and to each action.

9. Annexure D lists some 350 examples of official actions against which there is a right of appeal or a right in the nature of an appeal; rights which vary according to the terms of the statutes conferring them—from rights of full appeal to rights of limited appeal. A sample of these examples is listed below together with a sample of official actions against which there is no right of appeal. Our research convinces us that in New South Wales the latter actions far outnumber the former actions; our assessment is that the ratio is in the order of not less than twenty to one.

⁴Our starting-points are taken, in part, from the Report of the Committee on Administrative Tribunals and Enquiries (the Franks Committee) (Cmd. 218 (1957), paras. 21, 23 and 112). The Committee's terms of reference were narrower than ours are but, in our view, many of their observations apply generally to official actions of public authorities.

Existing Rights of Appeal

Public Authority	Power	Appellate Body
(1) The Minister ..	To grant a charity exemption from registration under the Charitable Collections Act, 1934 (s. 4).	District Court.
(2) Commissioner of Police.	To approve of a pistol club (Pistol Licence Act, 1927) (s. 5A (1) (a)).	Court of Petty Sessions.
(3) State Planning Authority.	To determine in certain circumstances that only that part of a contribution under the Land Development Contribution Management Act, 1970, as the Authority considers reasonable, shall be payable (s. 15 (1) (c)).	Appeals Board constituted under s. 59 of the Act.
(4) Under Secretary, Department of Labour and Industry.	To register premises as factory (Factories, Shops and Industries Act, 1962, s. 11).	The Minister.
(5) Chief Inspector of Scaffolding and Lifts.	To grant a certificate of competency entitling person to act as crane or hoist driver (Scaffolding and Lifts Act, 1912, s. 17).	The Minister, who must refer matter to a Board of Reference.
(6) Apprenticeship Committee.	To cancel an apprentice's indentures (Apprentices Act, 1969, s. 18).	Industrial Commission.
(7) Commissioner of Land Tax.	To decide taxpayer's objection to an assessment made by the Commissioner (Land Tax Management Act, 1956, s. 35).	The Supreme Court.
(8) The Minister ..	To cancel the licence of a fisherman convicted of an offence under s. 37 of the Fisheries and Oyster Farms Act, 1935 (s. 119).	Quarter Sessions.
(9) Auditor General	To surcharge an accounting officer (Audit Act, 1902, s. 49).	The Governor.
(10) Auditor General	To surcharge a disallowance of expenditure of a Pastures Protection Board (Pastures Protection Act, 1934, s. 19A (1) (c), (2) and (3)).	Court of Petty Sessions or a District Court.

No Rights of Appeal

Public Authority	Power
(1) Bookmakers Revision Committee constituted under Bookmakers (Taxation) Act, 1917, s. 35.	To refuse application by a bookmaker proposing to carry on business at a race meeting (s. 36).

Public Authority	Power
(2) Housing Commission of N.S.W. constituted under the Housing Act, 1912, s. 3 and the Housing Act, 1941, s. 5.	To adjust rentals of properties (Housing Act, 1912, s. 8 (4)).
(3) Registrar appointed under the Permanent Building Societies Act, 1967.	To refuse approval of any person as a valuer for the purposes of s. 13 of the Act.
(4) Industrial Registrar	To refuse a licence to an outdoor worker in the clothing trades (Factories, Shops and Industries Act, 1962, s. 116).
(5) The Minister	To refuse exemption of a person from the provisions of the Rural Workers Accommodation Act, 1969, s. 12.
(6) Commissioner for Main Roads	To refuse consent to the construction of a means of access from an adjoining property to a motor way (Main Roads Act, 1924, s. 27c (4) (b)).
(7) The Minister	To cancel a greyhound race-course licence for any good cause (Gaming and Betting Act, 1912, s. 52A (3)).
(8) Nurses Registration Board ..	Where it appears to the Board that to prevent the spread of infection it is necessary for any registered nurse to abstain from practising, to direct such nurse to abstain from practising as such for such period as the Board may determine (Nurses Registration Act, 1953, s. 25 (1)).
(9) The Minister	To require a bread manufacturer to cause bread to be delivered within such area as the Minister may specify (Bread Act, 1969, s. 15).
(10) Under Secretary	To exempt a factory from compliance with specified health requirements where the Under Secretary is satisfied that compliance is unnecessary or impracticable (Factories, Shops and Industries Act, 1962, s. 26).

10. Little detailed study has been made in New South Wales of how public authorities act. Everyone is affected but we cannot specify who or how many are *adversely* affected by official actions or by whom or in what way. Reliable knowledge of this kind is, however, notoriously difficult to get. Through the co-operation of Ministers of the Crown and others, we have collected much helpful material but we believe that no matter what factual inquiries are undertaken only an imperfect picture of public authorities in action can be obtained. For example, we are told that during the twelve months which ended on 30th June, 1971, 41,057 notices were issued under Regulation 94B of the Motor Traffic Act, 1909 (notices directing that motor vehicles

in a defective condition be not used until specified repairs are effected) and some 60,000 rental accounts were reviewed by the Housing Commission of New South Wales. In no case was there a right of appeal. We cannot demonstrate that any one of these official actions was wrong but it is unrealistic to suggest that all were free from error. We have to treat all powers exercisable by public authorities as sources of potential maladministration, even though we thus arrive at some conclusions which cannot be supported by empirical data.

11. Public authorities, though not more than other men and women, can be susceptible to the ills identified by one writer as "excessive sense of self-importance, indifference to the feelings or convenience of others, obsessive adherence to established practice regardless of resulting hardship" and "persistent addiction to formality".⁵ And even the best and most efficient public authorities sometimes make mistakes. Government tries to detect and correct both the ills and the mistakes and if existing methods for doing so are effective, or if ineffective can be made effective, granting new rights of appeal may be unnecessary. We comment, therefore, on—

- (a) the doctrine of Ministerial responsibility;
- (b) the roles of Parliament and Members of Parliament;
- (c) departmental investigations;
- (d) the Public Service Board;
- (e) the mass media;
- (f) the courts.

MINISTERIAL RESPONSIBILITY

12. A Minister of the Crown is *individually* accountable to Parliament for everything done within that part of public administration which is under his control and direction. This convention applies whether the thing done arises from the ordinary operations of government or the exercise of special powers conferred on the Minister or on subordinate public authorities subject to his control and direction. The doctrine of ministerial responsibility is complex. Conventions are still evolving and theory is sometimes at variance with the realities of politics. Although a Minister may, in a constitutional sense, be responsible to Parliament, sanctions for breach of responsibility are more likely to be imposed by his leader, his party and his electors than by Parliament itself. "If the Minister is free from personal fault and could not by reasonable diligence in controlling his department have prevented the mistake, there is no compulsion to resign".⁶ And censure motions directed to Ministers appear to have lost much of their significance since their widespread use as a political tactic.

⁵ Robson as quoted by Gellhorn, *When Americans Complain* (1966), p. 4.

⁶ The Hon. B. M. Snedden, Q.C., M.P., "Ministerial Responsibility in Modern Parliament Government", *Papers of the Third Commonwealth and Empire Law Conference* (1965), p. 3 at p. 8; and see generally S. E. Finer, "The Individual Responsibility of Ministers" (1965) *Public Administration* 377.

13. The business of modern government is vast and complex. A Minister in charge of one or more departments and answerable for the actions of a number of public authorities cannot be expected to control personally all things done on his behalf. In this State, eighteen Ministers administer some hundreds of Acts of Parliament and many more pieces of subordinate legislation. We think it unrealistic to suggest that because, in some circumstances, a Minister may suffer loss of office for the misdeeds or neglects of his subordinates that those misdeeds or neglects become known to him and are corrected.

14. What we have written in paras 12 and 13 is not directed to the *collective* responsibility of Ministers to Parliament for the policies of their Government. A basis of our system of parliamentary government is the convention that if the Premier ceases to command the confidence of the majority of the Legislative Assembly he shall, unless at his request Parliament is dissolved, tender the resignation of his Cabinet. Some of our later recommendations rest on this convention.

PARLIAMENT AND MEMBERS OF PARLIAMENT

15. "In Britain, Parliament is the place for ventilating the grievances of the citizen by history, tradition and past and present practice. It is one of the functions of the elected Member of Parliament to try to secure that his constituents do not suffer injustice at the hand of the Government. The procedures of Parliamentary Questions, Adjournment Debates and Debates on Supply have developed for this purpose under the British pattern of Parliamentary Government; and Members are continually taking up constituents' complaints in correspondence with Ministers, and bringing citizens' grievances, great or small, to Parliament, where Ministers individually and Her Majesty's Government collectively are accountable."[†]

16. The words quoted in para. 15 apply generally to the functions of Members of Parliament and the procedures of Parliament in this State. Yet we doubt that it is practical for ninety-six Members of the Legislative Assembly and sixty Members of the Legislative Council to cope with the administrative grievances of a population which exceeds four millions and a half. Members of Parliament do extensive and dedicated work for constituents and others but the average population of electorates in this State is some 40,000 and, with limited time, money and staff, a Member can only be impossibly burdened if he tries to investigate in depth the grievances of all the people who seek his aid. He has little choice but to refer such grievances, with his

[†] White Paper, *The Parliamentary Commissioner for Administration* (Cmd. 2767, October, 1965) para. 4.

submissions, to the Minister who has under his administration the public authority concerned. The Member's knowledge of the particular problem will generally be restricted to what he is told by his constituent and to what the Minister or public authority cares to reveal. He cannot insist on sighting relevant documents and files and sometimes his effectiveness may be thereby weakened. If his submissions are unsuccessful and he is unconvinced by those to whom they are made, he may raise the matter in Parliament.

17. Doubtless the knowledge that official actions of public authorities must always be capable of explanation in Parliament aids good administration but, in our view, few people challenging an official action look to the parliamentary question as a remedy. It is not often used for private grievances and when so used its effectiveness is restricted by the limits of parliamentary time which can be allowed for questions—

“We have a Parliament of 94 members and we limit question time to 45 minutes. In practice we are lucky if we get through 14 questions every day . . . The reason is that members abuse the rules and Ministers, in turn, abuse the rules in replying to questions. In practice question time in the State Parliament of New South Wales develops into a political battle between the Opposition seeking to criticize and expose the Government and the Government seeking to protect itself and itself indulging in political propaganda. In the result almost every question contains argument and comment.”⁸

18. To petition Parliament is a privilege of the citizen which, in the case of private grievances, has largely fallen into disuse. Unlike England and New Zealand, no Parliament in Australia has a Petitions Committee charged with the duty of informing it of the results of petitions. To us, the petition is not suitable for general use as a challenge to an official action of a public authority—

“The situation in New South Wales is that Members of Parliament no longer regard petitions as an effective method of seeking to redress grievances. The Members present petitions to Parliament only because they regard them as a means of pacifying their electors who are agitated about something . . . The simple fact is that if a Member thinks that a grievance deserves to be followed up in any way, it is open to him to have it followed up by other parliamentary forms.”⁹

⁸ Sir Kevin Ellis, Speaker, *Legislative Assembly—Report of First Conference of Australian Presiding Officers and Clerks-at-the-Table*, January, 1968, p. 20.

⁹ Sir Kevin Ellis—*Report of Second Conference of Presiding Officers and Clerks of the Parliaments of Australia* . . . April, 1969, p. 69.

Indeed, a petition to Parliament is an unwieldy instrument to deal with what may be a minor grievance.

19. Nothing we have written detracts from the unique position of Parliament and its Members when dealing with official actions of public authorities. Put shortly, our views are: a Government's accountability to its electors is inadequate in this context; to make use of Parliament for such purposes is, mostly, to apply an inappropriate force—one greater than should be needed; to use Parliamentarians for the same purpose is, usually, to challenge the public authority which took the official action—a challenge which, for reasons about to be stated, we believe is not wholly satisfactory.

DEPARTMENTAL INVESTIGATIONS

20. A public authority investigating a challenge to one of its official actions will try to be free from its own influence and to be, and to be seen to be, impartial despite friendships within the authority, group loyalties and natural protective attitudes to its own work. Yet few unsuccessful challengers are likely to be satisfied with the worth of that challenge. To us, only when clearly impartial minds examine official action complained about can there be a likelihood of unsuccessful, but reasonable, complainants being so satisfied. We think that criteria of impartiality and openness are not reasonably satisfied if a challenge to an official action is dealt with finally by or within the public authority which took the action. "Self-policing, highly valuable though it be for managerial purposes, will never be a wholly accepted means of redressing errors so long as administrative heads may veil their own or their subordinates' discovered blunders in order to avoid possible embarrassment."¹⁰ "The process contains two inherent weaknesses: first, the investigation is carried out by the Department whose conduct is impugned, and secondly, it is based upon documents which are not available to the complainant or indeed to anyone other than the Department. The investigation, therefore, is not impartial in the sense that it is conducted by an independent authority having access to all relevant documents and it is inevitable in these circumstances that the complainant could feel that the Department has been judge in its own cause and for that reason, if for no other, should feel dissatisfied with the process."¹¹

PUBLIC SERVICE BOARD

21. The Public Service Board inspects departments and investigates performance of work. In this State, however, official action may be taken by public authorities which are not Public Service departments, e.g., the Public Transport Commission. Also, in some Public Service departments there are authorities who are not subject to the jurisdiction of the Public Service Board, e.g., ministerial appointees within, say,

¹⁰ Gellhorn, *When Americans Complain* (1966), p. 218.

¹¹ JUSTICE Report, *"The Citizen and the Administration"* (1966, para. 82.

the Departments of Education and Conservation. Because the Board's jurisdiction is thus limited its activities have similarly limited relevance to our terms of reference. Further, and perhaps more importantly, it is not the primary function of the Board to act as an administrative complaints bureau.

MASS MEDIA

22. Many people who work in the mass media (by this expression we mean mass communication by press, radio and television) try to right official actions which are said to be wrong and their efforts, though often unpublicized, are frequently successful. The same people apply their own criteria in deciding whether or not to take up a person's complaint: they may take it up because he appears to have suffered an injustice, because to take it up is consistent with editorial policy, or because the complaint may involve a matter of public interest. Most official actions are, however, insufficiently noteworthy to warrant publicity; even newspaper columns which deal with complaints by members of the public appear to be mainly concerned with local government, consumer and service hurts as distinct from State government hurts. Also, momentary editorial or other indignation need not be followed by investigation, analysis and action. Press, radio and television are powerful, indispensable and effective critics of how public authorities act but the detection and correction of wrong official action is a function of government and government should deal with complaints on the mere ground that a person may have suffered injustice: the extent to which the mass media successfully engage in this work is one test of the effectiveness or ineffectiveness of government.

THE COURTS

23. Professor S. A. de Smith has said of the role of the courts in England: "The law is both complex and technical"; "The classes of administrative acts and decisions that are unreviewable because of the nature of their subject matter are more extensive than in most foreign systems"; "Classes of acts and decisions that are prima facie reviewable often prove to be unreviewable in practice"; and "An outstanding characteristic of judicial review in English administrative law is that it is so seldom invoked".¹² In our view, the words quoted apply to judicial review of official actions in this State. Also, in our view, the comments made and the question put by Professor H. W. R. Wade in 1968 are pertinent: "Unlike other legal subjects which run more or less steadily in predictable directions, administrative law is a network of major roads, minor roads and dangerous intersections. All who work in this field share the sense of insecurity which makes it difficult to tell the major roads from the minor roads, or who should give way to whom. In one case an important general principle is proclaimed in the

¹² *Judicial Review of Administrative Action*, 2nd ed. (1968), pp. 24, 25, 30.

widest terms, in another it is tossed aside in favour of minor technicalities. Moreover, there is also the uncomfortable feeling that the roads may not even be leading to the right destination. Is our system of administrative law the right one, and can it cope with the . . . growth of governmental power . . .?"¹³

24. To some extent the procedural law of judicial review was reformed in this State by the Supreme Court Act, 1970.¹⁴ But the grounds upon which the Supreme Court may review an official action of a public authority are limited. So too is the relief which the Court can give. And judicial review is costly and unpredictable. The Legal Assistance Act, 1943, and the Legal Practitioners (Legal Aid) Act, 1970, meet part, but by no means all, of the criticism based on cost; the other criticism, unpredictability, is, in practice, inevitable and unanswerable. Moreover, in our view, a challenge to an official action of a public authority should be available which does not require proceedings to be commenced in the Supreme Court. To us, using that Court for that purpose is in one respect much the same as using Parliament—it involves applying a force greater than should be needed to secure effective reconsideration of an official action.

25. Courts other than the Supreme Court and tribunals other than courts are, of course, empowered to examine some official actions. A number of statutes provide that action taken under them can be challenged by appeal. By way of example, a milkman aggrieved by the cancellation of his certificate of registration may appeal to a Court of Petty Sessions,¹⁵ a physiotherapist aggrieved by the removal of his name from the register of physiotherapists may appeal to a District Court¹⁶ and, in some cases, a holder of a licence under the Clean Waters Act, 1970, who is aggrieved by the revocation of the licence may appeal to the Clean Waters Appeal Board.¹⁷ But, to us, telling criticisms of the arrangements for administrative appeals in New South Wales are the immensity of the areas they do not touch¹⁸ and their fragmented nature.¹⁹

26. We conclude that the remedies now available for correcting wrong official actions are inadequate. We agree that "there is a need for the establishment of machinery which provides for a more comprehensive review of administrative decisions".^{19a} The question whether "appeals" should be the machinery cannot be answered until other issues are considered. To this task we now turn.

¹³ "Crossroads in Administrative Law", *Current Legal Problems*, 1968, p. 75.

¹⁴ See especially Supreme Court Rules 1970, Part 40, r. 1.

¹⁵ Dairy Industry Authority Act, 1970, s. 34.

¹⁶ Physiotherapists Registration Act, 1945, s. 24 (6).

¹⁷ Clean Waters Act, 1970, s. 25.

¹⁸ See para. 9.

¹⁹ See paras 155, 156.

^{19a} Report of the Commonwealth Administrative Review Committee (1971), para. 12.

PART III

OFFICIAL ACTIONS OF PUBLIC AUTHORITIES

DIVISION 1.—*Public Authorities*

27. In a general sense, we are concerned with governmental authorities, not with other authorities. But what authorities are governmental and what are not? Similar questions have been answered in detail over a long period in relation to the work of the Auditor-General. We take these answers as serviceable starting-points and say, as a solution in part of the problem of definition, that any person is a public authority if in relation to the official actions of that person the Auditor-General has any powers, duties or responsibilities. If the Auditor-General, an officer of Parliament, audits any books of account relating to a public authority, official actions of that authority, should, in our view, be taken to be within the scope of our terms of reference.

DIVISION 2.—*The Nature of the Powers Exercisable by Public Authorities*

28. What is the nature of the powers exercisable by public authorities? The doctrine of the separation of powers states that it is the function of the legislature to make law, the function of the judiciary to resolve particular disputes according to law and the function of the executive to put law into effect. The doctrine assumes that it is possible to distinguish between three categories of governmental power. But, in practice, "[N]o test for distinguishing between the three powers of government is at once intellectually satisfying and functionally useful".^{19b}

29. Under the system of government in New South Wales there has never been a strict separation of powers. To illustrate: Parliament makes law by passing Acts; the courts make law by laying down rules of the common law and by interpreting law made by or under the authority of Parliament; and public authorities make law under powers conferred by Parliament and by interpreting law. "Interpreting" law is law-making in nature because it assumes a doubt as to the meaning of law and it resolves that doubt by deciding that one view rather than another is to be adopted. A particular law may be made by an Act of Parliament, a decision of a court or a decision of a public authority.

30. In practice, the doctrine of the separation of powers is important only in that it points to basic differences in the functions of the bodies which exercise power and in the emphasis it gives to the need for adjudication to be independent of administration. This need for adjudication to be independent is "perhaps the only aspect of the doctrine on which all democracies concur".²⁰

^{19b} Paton, *Jurisprudence*, 3rd ed. (1963), p. 301.

²⁰ Friedmann, *Law in a Changing Society* (1972), p. 383.

31. A legislator and an adjudicator approach their respective functions differently. The legislator is concerned primarily with constructing and maintaining a system of government applicable to the State as a whole. The adjudicator is concerned primarily with resolving disputes between small numbers of people. We stress the word "primarily" because legislators often deal with problems within restricted areas and adjudicators, especially those in the superior courts, have, through the doctrine of precedent, influence over wide areas. The modification of existing laws and the making of new laws is a minor, but important, part of the judicial process whereas it is the major part of the legislative process.

32. It is more difficult to make general statements about the function of the administrator—in our terms, the public authority. Sometimes, whether by legislative delegation or otherwise, he makes law or rules of general application without necessarily having regard to particular cases. At other times he applies existing rules, whether made by Parliament or by another public authority, to particular cases. And sometimes he does both. We adopt the view that where a public authority creates legal rights and liabilities or creates rules by which legal rights and liabilities may be ascertained, the public authority is legislating. It is proper, in our view, that in such circumstances, the public authority should act according to government policy. For example, under the Land Development Contribution Management Act, 1970, land becomes liable for contribution upon the publication of an order by the Minister that the land is to be so liable;²¹ Parliament has, in effect, delegated to the Minister (a public authority) its power of legislating within this particular area. An order made under the Act creates legal rights and liabilities and the making of such an order should be considered as a legislative act of government.

33. On the other hand, where a public authority ascertains legal rights and liabilities by reference to existing rules, the authority is adjudicating. This is so whether or not a dispute has arisen. The authority does not then take government policy into account. For example, under the Valuation of Land Act, 1916, the Valuer-General is required to make valuations of the unimproved, improved and assessed annual value of certain lands;²² when doing so he is governed only by the standards stated in that Act²³ and he is not concerned with government policy.

34. Not infrequently, power to administer and power to adjudicate are conferred on the same public authority. For example, it has been said that under the Mining Act, 1906, "a warden has functions to perform which are administrative and functions to perform which constitute the exercise of judicial power".²⁴

²¹ Section 11.

²² Section 14.

²³ Sections 5-7.

²⁴ Per Asprey, J. A., in *Vukicevic v. Astley* (1970) 92 W.N. (N.S.W.) 656, 660.

35. In our view—

- (a) where an official action of a public authority is legislative in character, the official action should be subject to control by Government or Parliament or both;
- (b) where an official action of a public authority is adjudicative in character, the official action should be subject to control by the ordinary courts or by an independent and impartial body; and
- (c) where an official action of a public authority is both legislative and adjudicative in character, the official action should—
 - (i) as to its legislative part, be subject to the control mentioned in (a); and
 - (ii) as to its adjudicative part, be subject to the control mentioned in (b).

We rest these propositions on the convention of collective ministerial responsibility for delegated legislation and on the need, so far as practicable, for adjudication to be independent of administration. We do not rest them on the general principles of the doctrine of the separation of powers. Any danger that public authorities may make unjustified encroachments upon the rights of a person comes from uncontrolled power, not from mixed power. But to a substantial extent the nature of a power dictates the nature of the appropriate means for controlling an exercise of the power.

36. We illustrate how a public authority may legislate, adjudicate or do both—

- (a) “[A]ll fish . . . in the possession of any person contrary to the provisions of this Act, shall be forfeited to the use of His Majesty.” “If any article, seized under this Act as forfeited, shall be fish . . . the same may be forthwith sold by the inspector seizing the same . . .”²⁵

Before the inspector can validly act under his power of sale, certain requirements must be satisfied. These can include: a matter of fact—is a seized article “fish” in the generally accepted sense of that word; a matter of law—is the fish, in the generally accepted sense of that word, a “fish” within the meaning of the Act; and a matter of mixed fact and law—was the fish, “in the possession of any person contrary to the provisions of this Act”? The inspector’s power of sale involves adjudication;

²⁵ Fisheries and Oyster Farms Act, 1935, ss. 94 and 98.

- (b) "An inspector may serve on the owner or occupier of any land or premises a notice requiring him to take such measures or do such acts as are specified in such notice . . . to prevent the spread of any disease or pest."²⁶

An inspector cannot validly serve on an owner or occupier a notice requiring action to be taken which is not related to preventing the spread of "disease" or "pest"; and each of these terms has to be interpreted in accordance with the definitions contained in the Act. Matters to be decided by the inspector are matters of fact, law, and mixed fact and law, and when deciding them he adjudicates. But in deciding what "measures" or "acts" are to be specified in a notice, the inspector is legislating;

- (c) "[T]he Minister may cancel any [greyhound race-course] licence . . . if he is satisfied that the holder of such licence has ceased to be a non-proprietary association."²⁷

Before the Minister can validly act under his power of cancellation, certain requirements must be satisfied. These include matters of mixed fact and law—is he satisfied that the licensee has ceased to be "a non-proprietary association", within the meaning of that expression as it is used in the Act? To be so satisfied the Minister must adjudicate and then, and then only, does the question arise of his legislating—will he cancel the licence?

- (d) "The Minister may . . . prohibit the employment in any factory . . . of persons under the age of sixteen years in any work in which he considers it undesirable that they should be employed."²⁸

In deciding whether certain premises are a "factory", the Minister is adjudicating but then all that is required is that the Minister should decide that persons under the age of sixteen years should not be employed in certain work. The making of the latter decision is, it seems, legislating.

- (e) "Any . . . officer may also cause any rooms, premises, and articles in the house or place where the patient then is to be cleansed and disinfected to his satisfaction . . ."²⁹

In deciding, for example, that a "house or place" is subject to the legislation, the officer is adjudicating but once this decision is made the scope or area of the officer's potential action is limited mainly by his policy: his judgment of what is "to his satisfaction". Here, it seems, he legislates.

²⁶ Plant Diseases Act, 1924, s. 14.

²⁷ Gaming and Betting Act, 1912, s. 52c.

²⁸ Factories, Shops and Industries Act, 1962, s. 51 (1).

²⁹ Public Health Act, 1902, s. 32B (4).

37. The words used in statutes may be uncertain aids for ascertaining whether, in any particular case, a public authority is legislating or adjudicating. To illustrate: under the Stock (Artificial Insemination) Act, 1948, the Minister for Agriculture may refuse an application for the renewal of a licence issued under the Act in respect of particular species of stock.³⁰ No rules are specified in the statute and the Minister's power of refusal appears to be legislative in nature in that he may set his own standards and act accordingly. But let it be assumed, for the purposes of the illustration, that the policy of the statute is to control artificial insemination of stock so as to ensure the success in this State of that breeding technique. The statute provides for the licensing of premises to be used for the collection, storage and packing of semen for sale because it is obviously important that premises used for that work be suitable for the purpose, and be adequately equipped and supervised. Let it be assumed also that a refusal by the Minister to renew a licence should be related to matters of hygiene, or competence on the part of the licensee and his employees. The objectives of the Act may still be secured if the section is expressed to the effect of the following:

"The Minister may refuse any application under this section if:

- (a) the premises specified therein are not reasonably suitable for the collection, storage or packing for sale of semen of the species of stock specified therein; or
- (b) the applicant is not competent to collect, store or pack for sale semen of the species of stock specified therein."

Expressed thus, if our supposition of policy is correct, the Minister's power of refusal is a power to adjudicate, not a power to legislate—in the sense that he is required to apply specified rules and to ignore matters which are not comprehended within those rules.

38. The propositions stated in para. 35 cannot be applied to a particular official action unless the power to take that official action is examined in relation to the particular policy and purpose which lie behind its creation. Does the power permit the public authority to legislate or to adjudicate or to do both? Should the official action be subject to control by the Government or by an independent and impartial body? The results of any such examination must, to some extent, vary according to the intuitive responses of the person making the examination. But until all powers exercisable by public authorities are examined individually and, as far as possible, objectively, no answers to the questions implicit in our terms of reference can be complete. Later in this Report, we recommend that this total examination be undertaken.³¹ Because it may take some years to complete, our other recommendations provide for the situation in the meantime.³²

³⁰ Section 5.

³¹ See paras 136, 138, 139.

³² See para. 148.

39. We have not considered official actions which are purely administrative in character, that is, official actions which do not involve legislation or adjudication. The omission stems from our belief that where a public authority takes an official action it mostly acts in a way akin to that of the Legislature or the courts.³³ Where a public authority has a mandatory duty to take a particular official action (for example, to issue a licence upon payment of a prescribed fee) the taking of that action is purely an administrative act. For present purposes, however, this kind of official action does not require our special consideration. It is, however, within the application of our later recommendations.^{33A}

DIVISION 3.—*Procedural Requirements for Official Actions*

40. Procedural requirements for official actions of public authorities may be imposed by statute or by the common law: "The cases seem to me to show that persons acting in a capacity which is not on the face of it judicial but rather executive or administrative have been held by the courts to be subject to the principles of natural justice."³⁴ Shortly stated, the term "natural justice" means that official actions affecting the rights of a person must be preceded by a fair hearing. In this context, a fair hearing requires at least two things: that the public authority must hear the person concerned and that it must not be "interested" in the subject matter of the official action or be otherwise "biased".

41. Well founded criticisms of the law relating to natural justice and official actions of public authorities include—

- (1) Until the courts have made a decision it cannot be said with certainty whether the rules of natural justice do or do not apply to a particular official action of a particular public authority. This uncertainty gives rise to two difficulties—
 - (a) the public authority does not know whether he is required to adhere to the rules of natural justice and to govern his procedure accordingly; and
 - (b) those who may be affected by the official action do not know what their procedural rights are.
- (2) Even where it is reasonably clear that a fair procedure must be followed, the requirements of fair procedure in the case of a particular official action of a particular public authority may be uncertain.

³³ See Wade, "Quasi-Judicial' and Its Background" (1948-1950) 10 Camb. L.J. 216 at 222.

^{33A} See the Ombudsman Bill, s. 12. See the Public Administration Tribunal Bill, s. 17.

³⁴ Per Lord Hodson in *Ridge v. Baldwin* [1964] A.C. 40, 130.

42. It is relevant to our terms of reference to inquire whether a right of appeal should be granted from an official action because of non-compliance with prescribed procedural rules or the rules of natural justice. We think a right of appeal is desirable—"The history of liberty has largely been the history of observance of procedural safeguards."³⁵ A more difficult question is how best to formulate the procedural rules a breach of which may give rise to an appeal. The undermentioned five possible courses of action require consideration:

- (1) *To enact detailed rules in each statute conferring a power to take official action.* This course would eliminate uncertainties with respect to each statute in which rules were enacted and the rules could be appropriately made to accord with the nature of the power. But this course has disadvantages. The enactment of such legislation would occupy Parliament's limited time with detail that could better be worked out in consultation with those concerned with the administration of the statute.
- (2) *To enact general legislation establishing uniform detailed rules applying to all powers to take official action.* The diversity in the character, nature and purpose of power is such that a uniform statute could not be drawn so as to cover in detail the procedure to be followed in the exercise of every power, which would be consistent with effective governmental action. Variation in procedure is required to meet the purposes for which particular powers are conferred.
- (3) *To give, in each statute conferring a power on a public authority, a further power to make procedural rules for official actions to be taken under the power.* Regulations made under each statute would remove much uncertainty and tend to reconcile the requirements of justice with those of governmental efficiency. Both factors could be weighed in the preparation of the rules applicable to each power. In addition, flexibility would be maintained. This is the course that has been adopted, in part, in the United Kingdom and in New South Wales. It is open to the standard objections to subordinate legislation.
- (4) *To enact general legislation establishing uniform minimum rules of procedure for official actions.* Minimum rules would establish generally recognized procedural requirements applying to the exercise of any power where fair procedure is required. The minimum standards would be supplemented for each official action or class of official actions by detailed rules made by regulation. This is the course that has been followed in the United States. It is also the course that has been adopted in Ontario.

³⁵ Per Frankfurter J. in *McNabb v. United States* (1943) 318 U.S. 332, 347.

- (5) *To adopt, in whole or in part, one or more of the foregoing alternatives.* Adoption of this course of action should result in the formulation of the best possible procedural rules. It would, however, require an extensive review of all statutes and subordinate legislation which confer power to take official action. We recommend that the review be undertaken.

43. The review mentioned in para. 42 (5) can be made in conjunction with the examination of particular powers referred to in para. 38. We do not reject the concept of general legislation establishing minimum rules of procedure for official actions. A proposal that legislation of this nature be enacted may result from the review we recommend. If made, such a proposal would relate mainly to official actions which are taken only after a hearing of persons likely to be affected by the official actions. Most of the official actions we are considering are not within that category and hence we are more concerned to recommend reforms of general application. The Bills we propose contain provisions applicable to breaches of procedural rules.³⁶

DIVISION 4.—*Judicial Review of Official Actions*

44. In Annexure E we examine in some detail the law relating to judicial review of official actions of public authorities. We do so not only because our terms of reference refer specifically to that law but also because the examination highlights matters which are pertinent to “rights of appeal”. Here we make only general comments. But first we note that for most assertions made in the field of judicial review contrary assertions may be found in the decided cases, in the textbooks or in both. Many review concepts interlock or overlap and in Annexure E we are sometimes forced into repetition.

45. We repeat³⁷ that judicial review of an official action of a public authority involves the exercise by the Supreme Court of control over the public authority but it does not involve any reconsideration of the merits of the official action.

46. On review, the role of the Supreme Court is restricted in three ways—

- (1) *As to errors of fact.* Although the Court in reviewing an official action of a public authority might conclude that the authority made an erroneous finding of fact it will not set the official action aside on this ground if the public authority was acting within its power—to do so would be to entertain an appeal.

³⁶ The Ombudsman Bill, s. 12; the Public Administration Tribunal Bill, ss. 17 and 5 (2) and (3).

³⁷ See para. 3.

- (2) *As to errors of law.* If the Court decides that the fulfilment of a legal requirement is a matter which falls within the power of a public authority to decide, the Court will not look at the position to see whether in its view the authority was right or wrong—to do so would be to entertain an appeal. An exception to this general proposition is the case of error of law on the face of the record.
- (3) *As to the merits, wisdom or reasonableness of the official action.* If the official action of a public authority is so unreasonable or so unrelated to the actual policy of the relevant statute that no authority acting reasonably could have taken the action, the Court may hold the action to be beyond the powers of the authority. Where the action is one that a reasonable authority might have taken, the Court will not set it aside, even though it may feel that it would have acted differently—to do so would be to entertain an appeal.

47. In the case of the exception mentioned in para. 46 (2), access to the Supreme Court is restricted. Because the Court has power to review official actions for errors of law on the face of the record, it follows that the more complete the record the greater the scope for review. If, however, public authorities are not obliged to make a record or to give reasons for their official actions and do not do so, the opportunity for review is restricted: an aggrieved person is then confronted by the "inscrutable face of a sphinx".³⁸

48. Access to the Supreme Court for review of official actions may also be restricted by statutes which contain privative clauses. The following are examples of such clauses contained in New South Wales statutes—

- (1) "[A]ny decision of the Controller under this Division that any prescribed premises are or are not shared accommodation shall be final and without appeal, and no writ of prohibition or certiorari shall lie in respect thereof."³⁹
- (2) "(1) No writ of injunction or mandamus or other proceeding shall lie or be taken in respect of the allocation of any quota by, or of any order, determination, proceeding or direction of, the Minister, the Grain Elevators Board or the Committee, relating to, or on the face of the proceedings appearing to relate to, any matter arising out of this Act.
- (2) The validity of any proceeding or decision of the Minister, the Grain Elevators Board or the Committee shall not be challenged in any manner whatsoever."⁴⁰

³⁸ Per Lord Sumner in *R. v. Nat Bell Liquors Ltd* [1922] 2 A.C. 128, at 159.

³⁹ Landlord and Tenant (Amendment) Act, 1948, s. 30 (4).

⁴⁰ Wheat Quotas Act, 1969, s. 44 (1), (2).

49. A form of privative clause, relevant both to judicial review and to appeals, is also found in those statutes which impose time limits for the commencement of proceedings relating to official actions of public authorities. For example, if an applicant for a certificate of registration of a shop is dissatisfied with a determination of the Under Secretary as to the class to which it belongs, he may within seven days of being notified of such determination appeal to the Minister.⁴¹ Such limitations may vary according to the nature of the power: in some instances the appropriate time should, of necessity, be short but in other instances, where there is less urgency, a short time limit operates to restrict the opportunity for commencing proceedings.

50. Arguments for restricting judicial review are—

- (1) Where power is conferred on a public authority, it is selected as the expert body to exercise the power.
- (2) In matters relating to conditions or requirements under the statute which are clear, the public authority can decide them as well as the courts.
- (3) Where matters of doubt arise, the public authority is in a better position than the courts to reach a right decision, for it acquires a specialized experience and familiarity with the field of activity in which it is empowered to act. The authority can be expected to be as responsible as the courts in reaching a decision.
- (4) Not only are the courts less expert and less familiar with the policy of the statute to be interpreted but sometimes they show hostility towards the official actions of public authorities.
- (5) Judicial review by the courts of official actions causes delay, expense and formality which may frustrate the policy of the statute.⁴²

51. Arguments against restricting judicial review are—

- (1) Where Parliament enacts a statute conferring on a public authority limited powers to affect the rights or status of individuals, it should be open to an individual so affected to have it determined, by an independent and impartial body, whether an official action taken falls within the powers conferred by Parliament.
- (2) The courts are pre-eminently suited for this purpose. They have the required independence, impartiality, expertness in law and familiarity with just procedures.

⁴¹ Factories, Shops and Industries Act, 1962, s. 76 (4) (b).

⁴² See Ontario Royal Commission, "Inquiry into Civil Rights", Report No. 1, Vol. 1 (1968), p. 276.

- (3) A public authority charged with furthering a social programme embodied in legislation is not a suitable body to determine the limits of its own power. Authorities are not inclined to take the same objective view of policy as that taken by the courts.⁴³

The arguments noted in this paragraph are, to us, more persuasive than those noted in para. 50.

52. Shortly stated, we believe—

- (a) the law relating to judicial review is complex, technical and lacking in consistency;⁴⁴
- (b) the Supreme Court is an inappropriate forum in which to challenge most official actions;⁴⁵ and
- (c) even if the law relating to judicial review can be reformed, objection (b) will remain.

53. Parliament supports the view expressed in para. 52 whenever, instead of relying on judicial review, it accompanies the establishment of a public authority with provision for special appeals from the official actions of that authority. We turn now to "appeals", as distinct from "review".

DIVISION 5.—Appeals from Official Actions

54. As stated,⁴⁶ our research convinces us that in New South Wales the official actions from which there are no rights of appeal far outnumber the official actions from which there are such rights. Our general view is that more rights of appeal should be granted. We hold this view because—

- (1) Human judgment is fallible and means for the correction of error must exist.
- (2) Existing means for correcting wrong official actions are not adequate.
- (3) A society which allows the possibility of wrong to a citizen through human error in a public authority, without adequate means of correction, is in that respect a backward society. In other respects, the society of New South Wales is not a backward society. Better means of relief against wrong to the citizen at the hands of a public authority can be established and should be established.
- (4) Appeals properly so called were not known in English law until the nineteenth century.⁴⁷ But proceedings in the nature of appeals have been favoured by most legal

⁴³ *Id.*, p. 277.

⁴⁴ See, generally, Annexure E.

⁴⁵ See para. 24.

⁴⁶ See para. 9.

⁴⁷ See Holdsworth, *A History of English Law*, Vol. 1, 213 et seq. See Pollock and Maitland, *The History of English Law*, Vol. 2, 664.

systems⁴⁸ and are part of our legal inheritance.⁴⁹ Gradually, however, appeals have supplemented or supplanted proceedings in the nature of appeals. The process is illustrated by the English experience resulting in the granting of rights of appeal under the Supreme Court of Judicature Act 1875⁵⁰ and the Criminal Appeal Act 1907.⁵¹

- (5) Rights of appeal are granted in civil and criminal proceedings on the plain and simple ground that the practice is essential to justice, for the purpose of correcting errors and miscarriages in its administration.⁵² But errors and miscarriages cannot be confined to civil and criminal proceedings; they occur inevitably in the administrative process where the claims of justice are no less demanding.
- (6) We see no reason why a right of appeal should not be as effective in the field of administrative law as it is in other fields of law, or that granting a right of appeal would be more disturbing to the administrative process than it is to the judicial process, or that disturbance of the administrative process would cause greater public harm than the disturbances now caused to the judicial process by the judicial appeal system.

55. It is clear, however, that questions whether there should be an appeal, the nature of the appeal, the appropriate body to hear the appeal and the procedure to be followed in the appeal cannot be answered generally for every official action of every public authority.

56. When considering whether a right of appeal should be granted from a particular official action of a particular public authority, each of the following matters is relevant⁵³—

- (1) Whether a right of appeal would too seriously impede the purpose of a statute.
- (2) The nature of the power conferred on the public authority—whether, in the sense we have indicated in Division 2 of this Part, it adjudicates, legislates or does both.
- (3) Whether an appeal should be as of right, or conditional upon the obtaining of leave to appeal from the public authority or an appellate body.

⁴⁸ See Buckland, *A Manual of Roman Private Law*, (1939), 392, 393. See Burn, *The Ecclesiastical Law*, (1842), Vol 1, 57a.

⁴⁹ See Sayers, *The Medieval Foundations of England*, (1964), 176.

⁵⁰ 38 and 39 Vict. c. 27.

⁵¹ 7 Edw. 7, c. 23.

⁵² See Eighth Report of Her Majesty's Commissioners on Criminal Law, (1845), p. 20.

⁵³ See Ontario Royal Commission, "Inquiry into Civil Rights", Report No. 1, Vol. 1 (1968), pp. 227, 228.

(4) The ambit of the appeal—

- (a) whether it should be one where the appellate body starts afresh as if there had been no initial official action;
- (b) whether it should be limited to arguments based upon the record if any, of any proceedings before the public authority;
- (c) whether the record, if any, should be supplemented by further material;
- (d) whether it should take the form of an appeal by way of "stated case"—the argument being confined to the case stated and the facts as stated being accepted as correct findings of fact.

(5) The grounds of the appeal: whether an appeal should—

- (a) relate to all matters of law or fact decided by the public authority;
- (b) be confined to decisions on matters of law only;
- (c) be confined to the question whether the matters involved fall within the powers of the public authority to decide;
- (d) relate to official actions taken by the public authority in the exercise of discretion.

(6) The powers of the appellate body: should it be empowered, if it concludes that the initial official action was wrong—

- (a) to substitute a new official action for the initial official action;
- (b) to annul the initial official action or to remit the case back to the public authority;
- (c) to adopt (a) or (b) in whole or in part;
- (d) if the consequences of the official action are irrevocable or it is otherwise desirable to let them stand, to award compensation.

(7) The nature and composition of the appellate body: should the appeal be made to the courts, to a public authority, to an existing tribunal or to a new tribunal.

(8) The procedure on the appeal.

(9) Whether the expense of an appeal, to the appellant and to the public authority, bears a proper proportion to the importance of the matter in dispute.

57. Each of the matters enumerated in para. 56 should be considered in relation to the following classes of public authorities—

- (1) Those which legislate.
- (2) Those which adjudicate.
- (3) Those which legislate and adjudicate.
- (4) Special classes of public authorities such as—
 - (a) those which are empowered to take emergency action, e.g., to control floods or bush fires;
 - (b) those which determine the application of scientific standards, e.g., in the testing of milk;
 - (c) those which use expert opinion in arriving at their conclusions, e.g., a Minister acting on the recommendation of the Poisons Advisory Committee.

58. We are unable to determine the criteria by reference to which existing rights of appeal from official actions have been granted or withheld or those which have governed the nature of the appeal or the choice of the appellate body. Relevant factors may have included the philosophy of the Government when the legislation was enacted, the representations that were made to that Government by interested parties, and the prevailing attitude of the Department within which the legislation was to be administered. It seems clear, however, that the granting or withholding of a right of appeal has usually been an ad hoc decision.

59. Questions incidental to our terms of reference include whether existing rights of appeal from official actions accord with modern conditions and requirements, and, if not, whether they should be systematically reformed. For example, an accounting officer dissatisfied with a disallowance in his accounts made by the Auditor-General may appeal to the Governor,⁵⁴ and a director of a Pastures Protection Board surcharged by the Auditor-General and called upon to pay the amount of the surcharge, may appeal to a court of petty sessions or to a district court.⁵⁵ Is it desirable that such variations be perpetuated? We think not. But, again the question cannot be answered generally; each existing right of appeal should be examined.

60. We return to the question of appeals in para. 148. Before doing so, we consider, first, the ombudsman as a person to whom a citizen may complain about an official action and, secondly, the experience of some other countries and states. We are satisfied, from information available to us about official actions in New South Wales and from our studies, that the experience of other places provide relevant fields of inquiry: allowance must, of course, be made for social and constitutional histories different from our own.

⁵⁴ Audit Act, 1902, s. 49.

⁵⁵ Pastures Protection Act, 1934, s. 19A (1) (c), (2) and (3).

PART IV

OMBUDSMAN

61. Our knowledge of the ideas embodied in the ombudsman concept is gained from reading and discussion and not from experience. Books, pamphlets, articles and bibliographies abound on the subject.⁵⁶ We acknowledge our special indebtedness to the papers collected in *"The Ombudsman"*, published in 1965 under the editorship of Professor Donald C. Rowat, and to Professor Walter Gellhorn who wrote, in 1966, *"Ombudsmen and Others"*.

62. We repeat⁵⁷ that we read the word "ombudsman" as referring to an impartial person who deals with specific complaints about official actions of public authorities and investigates, assesses and reports upon, but does not reverse or modify those actions. We stress that though an ombudsman may, by persuasion, secure the reversal or modification of an official action he is not empowered himself to reverse or modify it.

63. The office of ombudsman has its origin in Sweden where the word means simply an agent or attorney. In that country's Constitution of 1809 an office of Justitieombudsman (loosely translated—"the representative of the people") was established. The concept of the office ante-dated that Constitution by nearly 100 years for an office with a similar title had existed in Sweden since 1713.

64. Although Sweden's system of government is different from that which we have inherited, the ombudsman concept has been adapted to forms of government different from that of Sweden's and to parliamentary systems similar to our own.

65. In Annexure F,⁵⁸ we list some countries and states where the ombudsman concept has been adopted or where its adoption is proposed. Relevant activity since the material in Annexure E was collected includes the defeat of the Tasmanian Parliamentary Commissioner Bill, 1971, the enactment of the Western Australian Parliamentary Commissioner Act, 1971 (the latter Act being based substantially upon the former Bill) and the enactment of the South Australian Ombudsman Act, 1972.

66. In Annexure G, we compare the details of the New Zealand Parliamentary Commissioner (Ombudsman) Act 1962, the United Kingdom Parliamentary Commissioner Act 1967, and the Western Australian Parliamentary Commissioner Act, 1971, and here we make more general comments.

⁵⁶ For example, Stanley V. Anderson in *Ombudsman Papers: American Experience and Proposals* (1969) takes twenty-seven pages of text (pp. 381-407) merely to list some selected writings.

⁵⁷ See para. 2.

⁵⁸ The contents of Annexure F are taken from a Report made in April, 1971, by the Ombudsman Committee of the American Bar Association.

67. Professor Gellhorn states that before writing "*Ombudsmen and Others*" he first studied what had been written on the subject and then devoted fifteen months to observations and interviews in Denmark, Finland, Japan, New Zealand, Norway, Poland, Sweden, the Soviet Union and Yugoslavia. An abstract of his conclusions follows:

- (1) Among public officials in all nations that count themselves well-developed, professionalism and probity are normal though not invariable.
- (2) The responsibilities committed to administrators have everywhere been enlarged. Sophisticated societies are seeking governmental equivalents of what industrialists call quality control. That is to say, they are trying to maintain output at a desired level of quality without adding inordinately to costs. Quality controls tend to be cumulative, not mutually exclusive but, taken together, may still leave need for something more. In one guise or another the nine countries mentioned above have sought to fill that need. They have empowered readily accessible, professionally qualified, wholly detached critics to enquire objectively into asserted administrative shortcomings. Institutionalizing the giving of expert criticism has contributed to strengthened public administration.
- (3) There is nothing magical about an ombudsman. The mere existence of the office means little. The man in the office is what counts. Those who select him must themselves fully believe in the critic's importance and must wish him to succeed. Also, the officials with whom he works must, in general, be moved by the governmental ideals his appointment reflects. Recommendations by an ombudsman are significant, precisely because the same officials are already committed to sound principles.

68. According to Professor Gellhorn, matters of concern common to the countries mentioned in para. 67 include:

(1) *Personal issues*

- (a) the critic must command the respect of administrators as well as of the public at large. How to find the right man has been a major concern everywhere. The emphatic preference for lawyers has been well-warranted but a critic's personal attributes are more important than his past training. He need not be widely known when he begins his work though he cannot be a nonentity. A Swedish Legislator has said: "The man we select does not lend distinction to the office; the office distinguishes him";

- (b) typically, administrative critics have been selected by legislative bodies. They seem to have been notably free of partisan entanglements, past or in prospect, and have been regarded in their respective countries as persons selected not because of "politics" but solely because thought to be well qualified—as has been entirely true;
- (c) the officers are expected to be independent, untroubled by political pressures or personal insecurities. None of those examined, however, had an assured career in his post. Limited terms are probably preferable to lifetime appointments. The salary has been at a high level in all countries as a tangible indicator of the importance attached to the critic's office. Only in New Zealand has the salary been fixed a little below that of the most important judges and a few other officials of high stature. A critic's independence could be undermined also by interfering with his choice of subordinates. This has been avoided everywhere. All subordinates are the Ombudsman's personal choice.
- (2) *Jurisdiction.* No single jurisdictional pattern emerges. Each of the external critics has had to devote much thought and energy to ascertaining whether a grievance does or does not touch upon matters within the scope of his assigned responsibilities.
- (3) *Complaints.* General experience supports the view that complaints should be generously received with an absolute minimum of formality, but that a reasonably short limitation period serves the desirable purpose of sifting out cases no longer suitable for investigation. Critics should be empowered to decline to act.
- (4) *Exhaustion of remedies.* A tendency may be discerned to limit critics to matters that are not elsewhere reviewable. Containing a matter within prescribed decisional channels is, in general, a sound move; it takes advantage of specialized organizations which have been established to consider specified categories of cases. But some discretionary authority to proceed, notwithstanding the theoretical availability of unexhausted remedies, is desirable if access to an external critic is to be fully meaningful.
- (5) *Action on own initiative.* All the countries mentioned above have conferred authority on the critic to act without receiving a complaint if his concern about official affairs has been aroused by other means.

- (6) *Inspection and general supervision.* Other than in Sweden, external critics have not stressed the importance of personal inspection of government establishments. Visits to penal institutions, however, are a special category to which a Swedish ombudsman gives a high rating.
- (7) *Review of rules and regulations.* Other than in Poland and the Soviet Union, the external critics do not ordinarily concern themselves with the validity of administrative rules until a question of validity is raised by a complaint.
- (8) *Conducting inquiries.* Hearings that resemble trials are almost never used by external critics as a fact finding technique. In every country mentioned, the critic has statutory power to examine official files, call for further investigation and report by officials, and summon persons for direct interviewing. By and large the basic method of inquiring is, very simply, to ask for an explanation of whatever has been complained about and, if the explanation does not remove all doubts, to look at the materials in the administrator's files. Personal conversations with the complainant or with the officials sometimes occur but they are less likely to influence the critic than are the official papers in the matter.
- (9) *Negotiated settlements.* Finding out what has happened is not the end but, in a way, the beginning of the external critic's task. He is as much concerned with advising about what should be done next time as with allocating praise or blame for what has already been done. All such critics have sometimes sought informally to change official determinations not illegal or otherwise subject to criticism. An altogether permissible exercise of discretion may needlessly hurt. In these instances the Ombudsman and others have served as mediators between aggrieved citizens and officials, helping negotiate adjustments that all can accept.
- (10) *Review of discretion.* Theoretically, an external critic does not criticise the exercise of administrative discretion simply because he himself might have decided otherwise. Criticism is appropriate only when the discretion is found to have been exercised for insupportable reasons. But this difference is hard to formulate in words and even harder to preserve in action. In some countries it is almost entirely ignored.
- (11) *Pursuing the implications.* On the whole, the external critics have pursued the implications and not merely the immediacies of the matters that have come before them. A

critic's report may state explicitly that though the complaint itself has been found to be groundless, a refinement in case handling technique has been proposed for use should similar problems arise again. Often, too, a critic's analysis reveals that an administrator has acted blamelessly because he has simply obeyed a blameworthy statute. Proposals for legislative change reflect a critic's awareness that his responsibilities do not end when he has passed upon the merits of an aggrieved citizen's complaint. Work of this character may be even more important, in its forward projection, than the redress of current grievances.

- (12) *Explanatory decisions.* Most Ombudsmen have been diligent and successful in explaining their conclusions. Their opinions, marked by closely reasoned analysis of the law and a careful summation of the pertinent facts, have had strong appeal. Even more significant in some ways than opinions that induce officials to remedy errors are opinions that explain to complainants why their complaints are ill-founded. Most of the external critic's work consists of matters he finds to be free from fault or for some other reason not subject to criticism by him. This explanatory labour, taxing and time consuming though it be, accounts in considerable measure for the public confidence enjoyed by the external critic.
- (13) *Enforcing the critic's views.* External critics are advisers, not commanders. They rely on recommendation, not on compulsion. To buttress their own persuasiveness these critics rely heavily on public opinion. They make annual reports to their creators and may report additionally when they wish. But more is accomplished by continuing efforts to persuade than by enlisting the forces of Parliament on their side.

69. It is argued that the appointment of an ombudsman in Commonwealth countries does violence to the constitutional concepts of "parliamentary supremacy", "the rule of law" and "ministerial responsibility."⁵⁹ It is also argued that such an appointment interferes seriously with the prompt and efficient dispatch of public business.⁶⁰

70. In our view, a competent ombudsman in this State would be an aid, not a hindrance, to Parliament and the case work of its members; through him Parliament and its members should be able to supervise effectively many official actions which now it is impracticable for

⁵⁹ See A. S. Abel "Commonwealth Constitutional Complications" in Rowat (ed.), *The Ombudsman*, 2nd ed. (1968), pp. 281-285.

⁶⁰ See 666 H.C. Deb. 1125 (Nov. 8, 1962).

it, or them, to supervise. We do not see that hurt would be done to any concept of "parliamentary supremacy" by the appointment of an officer whose function would be to assist Parliament to discharge its duty of supervising the administration. Indeed, in New Zealand, the Ombudsman's presence seems to have caused no drop in the number of cases referred to parliamentarians and there publicity about the Ombudsman may have caused that number to increase.⁶¹

71. We have pointed to the difficulties of having official actions reviewed by the courts.⁶² We do not say that the existence of an ombudsman would make that position any better or worse; they are unrelated issues. An ombudsman need not be given any jurisdiction over the judicature, and judicial review and appeals to the courts need not be curtailed if he is appointed. In such circumstances, violence would not be done to any interpretation of "the rule of law".

72. If an ombudsman were appointed in this State, a Minister would still have a responsibility to Parliament for his actions and for the actions of those who are subject to his control and direction. In our view, if a Minister were to speak to Parliament against a background provided by the report of an independent and impartial investigator, the doctrine of ministerial responsibility would be made more meaningful, not less so.

73. As far as we can determine, the experience of other countries does not support arguments that the appointment of an ombudsman interferes seriously with the dispatch of public business or that increased or unnecessary attention is given to keeping detailed records in case the ombudsman asks questions. The latter proposition implies that existing records are inadequately kept and we do not believe that this is so in New South Wales. The former proposition, however, needs closer examination.

74. In the case of New Zealand, Professor Gellhorn notes "Among administrators, a few described him [the Ombudsman] in biting language. At least two Department chiefs actively desire to be excluded from his jurisdiction. Many more of the Departments, however, appear genuinely to admire the Ombudsmen's accomplishments. While almost all were perturbed by his having occasionally concerned himself with general administration as distinct from particularized grievances, they thought his judgments on the whole had been balanced and constructive. Temperamental differences have created irritations felt in some quarters and not in others. 'Our work would be faster, cheaper, and better all around if we could keep that fellow out of our hair,' grumbled one chief official. 'Some Heads think the Ombudsman is a nuisance because

⁶¹ See Stanley v. Anderson (ed.), *Ombudsman for American Government?* (1968), p. 68.

⁶² See generally, Annexure E.

he makes them justify themselves all the time. What's wrong with that? It's a good idea to keep us on our toes,' another Permanent Head cheerily remarked. 'The man is an empire builder, and his empire isn't really worth building. He repeats work that has already been done carefully or, if a complaint does involve something new, the complaint that went to him should have come to us,' said a hostile official. 'When the Ombudsman began, we wondered whether he was going to be a blasted thorn in our side; but now we are glad to have him,' said a friendly official. 'For one thing, people will complain to him when for one reason or another they won't complain to me, and this gives me an added opportunity to police my own Department. And for another thing, when he goes over something we have done and says he finds nothing wrong, he takes the wind out of the sails of the Doubting Thomases.'⁸³

75. Sir Guy Powles, the first New Zealand Ombudsman, has said: "The State Services Commission welcomed the institution at the outset and has continued to give it full support and co-operation. Recently a member of the Commission said, in an article in the *Journal of the New Zealand Institute of Public Administration*, that the Ombudsman has himself done much to induce a harmony between public servant and citizen, and this has often improved the social efficiency of a department's operations. The attitude of the Public Service Association, the main association of state employees, was initially hostile but the Association's official journal published, in July 1965, a favourable review of the last Ombudsman Report to Parliament, concluding as follows: 'It is becoming increasingly clear that the office of Ombudsman is not necessarily the trap for public servants which many of us feared when it was first established. Indeed the present incumbent is making it probable that public servants will make more and more use of the office for settlement of otherwise unappealable grievances.'⁸⁴

76. In the case of the United Kingdom, Sir Edmund Compton, the first Parliamentary Commissioner, has said: "On the effects of the office on Whitehall . . . I do not think it is all good, I do not think it is all bad, I think it is a mixture. The good things that result from the office in terms of the effect on Whitehall are first and obviously, the mistakes that are detected and remitted. Secondly, . . . the good effect for Whitehall of complaints which are refuted and put paid to, in other words, those cases which would otherwise go on for ever but the department is able to say, 'Here at last an independent investigator has said that we were right and the complainant was wrong, and that is that'. But I am sure the most important favourable effect on Whitehall of the Commissioner is the so-called presence factor. The fact that the Commissioner is there and that Whitehall is liable to be

⁸³ *Ombudsmen and Others* (1966), pp. 152-153.

⁸⁴ "The Search for Administrative Justice", (1966) *Canadian Public Administration*, p. 133 at p. 152.

independently investigated must improve the quality of administration, this being the same presence of the Commissioner as an administrative auditor as is felt in the financial sphere by the presence of the Comptroller and Auditor-General as a financial auditor. On the adverse side—one must not neglect that there is an adverse side—there is the big use of resources involved in investigation. Investigation is expensive both in men and time and the amount of time involved in an investigation is several times more in the department investigated than it is in the investigating office. There are . . . effects that have to be guarded against, that the consequence of an investigation is that desirable delegation is curtailed in the Department or that undue caution is exercised. If 'bad' advice has been given and there is criticism for that, then next time the public do not get any advice at all. This is the sort of inhibiting effect which is liable to result from investigation. So the Office has a mixed effect, but I still hope the most important effect is the favourable one, that is the improvement of the quality of administration because of the presence factor."⁶⁵

77. We attach importance to Sir Guy Powles's reported comment: "I would not for a moment suggest that the Ombudsman is a complete answer to all the problems of administrative justice. He is only just one tool . . . and mankind needs many tools in this technological age."⁶⁶ Likewise we attach importance to the views of the Law Commission in England: "We regard the Parliamentary Commissioner as a valuable supplement to, rather than as a substitute for a comprehensive and coherent system of administrative law".⁶⁷

78. We agree that: "Much that has been said and written about the Ombudsman as a protection of the rights of the individual is misleading to the public and goes far beyond any claims that are put forward for the office by those who occupy it in any country".⁶⁸

79. We agree too that the ombudsman concept may distract attention from the real substantive and procedural problems of administrative law; it may temporarily satisfy but may cause other and better reforms to be postponed.⁶⁹ For this reason, amongst others, we look at the experiences of others.

⁶⁵ Second Report of the Select Committee on the Parliamentary Commissioner for Administration, Session 1970-71, pp. 11-12.

⁶⁶ Address to the Canadian Bar Association, quoted in Report, No. 2, Vol. 4 (1969), of the Ontario Royal Commission, "Inquiry into Civil Rights" at p. 1386.

⁶⁷ Law Com. No. 20 (Cmd. 4059) para. 8.

⁶⁸ Ontario Royal Commission, "Inquiry into Civil Rights", Report No. 2, Vol. 4 (1969), p. 1383.

⁶⁹ See Mitchell, "Administrative Law and Parliamentary Control" (1967) 38 Political Quarterly 360.

PART V

EXPERIENCE OF SOME OTHER COUNTRIES AND STATES

England

80. Notwithstanding the Report of the Committee on Ministers' Powers,⁷⁰ the Report of the Franks Committee,⁷¹ the Tribunals and Inquiries Act 1958, and the Parliamentary Commissioner Act 1967, there is still dissatisfaction with English administrative law. The Law Commission, in 1967, published an Exploratory Working Paper on the subject⁷² and, in 1969, it concluded that an inquiry by a Royal Commission or by a committee of comparable status was necessary and that any realistic review of administrative law should take into account the organization and personnel of reviewing bodies.⁷³ The Society of Conservative Lawyers, in 1970, advocated the establishment of an Administrative Court, separate from the ordinary courts.⁷⁴ And, in 1971, a Report by JUSTICE, "Administration under Law" advocated, amongst other things, the creation of a new Administrative Division of the High Court of Justice with its own procedure and with power to grant new remedies.

81. The Law Commission's submission that a Royal Commission be set up was answered by the Lord Chancellor, in 1969, to the effect that it was not then an appropriate time for such an investigation. The Law Commission was requested, however, to review existing remedies for control of administrative actions and that work is continuing. Working Papers "Remedies in Administrative Law" were published in 1971 by both the Law Commission and the Scottish Law Commission.⁷⁵

82. Broadly stated, expressed reasons for dissatisfaction are that the existing agencies of redress (the courts, members of Parliament, the Parliamentary Commissioner and the ad hoc tribunal) leave a substantial gap in the protection of the citizen who has suffered, or thinks he has suffered, injustice at the hands of public administration. It is claimed that the remedies of the courts are restricted and over-technical, parliamentarians' resources are inadequate, the Parliamentary Commissioner for Administration too severely limited in his scope and the multiplication of ad hoc tribunals results in an untidy and obscure system of patchwork redress.⁷⁶

⁷⁰ Cmd. 4060 (1932).

⁷¹ Cmnd. 218 (1957). (See footnote 4.)

⁷² Published Working Paper No. 13.

⁷³ Law Com. No. 20 (Cmnd. 4059), paras. 9, 10.

⁷⁴ *Your Rights* (1970), p. 12.

⁷⁵ The Law Commission—Published Working Paper No. 40 and the Scottish Law Commission—Memorandum No. 14.

⁷⁶ *Your Rights*, Society of Conservative Lawyers (1970), p. 11.

83. The themes of the criticisms vary. Professor de Smith partly blames the court system. Professors Griffith and Street, together with Professor Waue, speak of a denial of justice because of narrowness of vision about the real nature of administrative law. And Lord Devlin has indicated that the common law system which produced the faults lacks the strength to remedy them.⁷⁷ Proposals for reform vary as much as the reasons given for the need for reform. Professor Wade argues that detailed reforms can make the English system something to be proud of.⁷⁸ Professor Mitchell sees no alternative to a dual system of administrative courts and ordinary courts. He argues that specialization is necessary and that it cannot be had in a mixed jurisdiction.⁷⁹ Professor Garner and others state that the High Court should have a special Division to which all administrative cases should be referred and that Judges of that Division might be assisted by assessors from the Civil Service and from private industry and business so that an expertise in these matters can be developed.⁸⁰ The one matter upon which all critics appear to agree is that the work of the Council on Tribunals and the Parliamentary Commissioner touches part only of a real problem.

84. In Annexure G we have indicated the nature and scope of the jurisdiction of the United Kingdom's Parliamentary Commissioner for Administration. Because the work of the Council on Tribunals is relevant to our later recommendations we comment briefly on that Council.

85. The Tribunals and Inquiries Act 1958 was enacted as a direct result of the work of the Franks Committee.^{80a} It created the Council on Tribunals and instituted direct appeals on law from certain tribunals to the courts.

86. The Council on Tribunals has no real powers though it must make annual reports and it may, if it thinks fit, make other reports. It is an advisory and a consultative body only. It is in no sense a super tribunal or a court of appeal from tribunals. Its duties are:

- “(a) to keep under review the constitution and working of the tribunals specified in the First Schedule to this Act . . . and, from time to time, to report on their constitution and working;
- (b) to consider and report on such particular matters as may be referred to the Council under this Act with respect to tribunals other than the ordinary courts of law, whether or not specified in the First Schedule to this Act, or any such tribunal;

⁷⁷ See Mitchell, (1968) “Public Law” 201 at 202-203.

⁷⁸ See “Crossroads in Administrative Law”, (1968) 21 *Current Legal Problems* 75 at 93.

⁷⁹ See (1967) 38 *Political Quarterly* 366-372.

⁸⁰ See (1968) *Public Law* 216.

^{80a} See footnote 4.

- (c) to consider and report on such matters as may be referred as aforesaid, or as the Council may determine to be of special importance, with respect to administrative procedures involving, or which may involve, the holding by or on behalf of a Minister of a statutory inquiry, or any such procedure."⁸¹

87. The Council consists of not more than fifteen members (and the Parliamentary Commissioner for Administration) who are appointed by the Lord Chancellor. The most successful of the work undertaken by the Council has been that connected with the drafting of rules of procedure for various tribunals. Frequently the rules are the result of consultations between the Council and its officers, government departments and associated bodies.

88. Section 9 of the Tribunals and Inquiries Act 1958 provides that any party to proceedings before a specified tribunal, who is dissatisfied in point of law with a decision of that tribunal, may appeal therefrom to the High Court or require the tribunal to state and sign a case for the opinion of the High Court. The provisions for direct appeal are, however, limited; appeals lie only from a set list of tribunals. Even if those tribunals are added to those from which appeals already lay under previous Acts of Parliament, there are still tribunals from which there is no appeal to the courts. Decisions made by administrative officers are untouched by the Act.

89. Section 12 of the Tribunals and Inquiries Act 1958 provides that reasons for the decisions of Ministers, after the holding of statutory inquiries, and of most tribunals must be given if requested. The section also expressly provides that any such statement of reasons becomes a part of the decision and of the record. Thus, errors of law (if any) are likely to appear on the face of the record. Most parties to disputes before these tribunals do not ask for detailed reasons for decisions but any person who in any way feels aggrieved has a means to discover whether there is any substance in his disquiet. The spirit of s. 12 has, however, caused most tribunals to give reasons for their decisions as a matter of course.⁸²

90. It is clear that in the United Kingdom the search for a system of administrative law which covers the whole field of public authorities and official actions has so far been unsuccessful.

France

91. In France, administrative law is considered as an autonomous branch of the law and the administrative courts are autonomous courts, completely separate from the ordinary courts. Decisions of the administrative courts do not rest on any code of general principles but on

⁸¹ Tribunals and Inquiries Act 1958, s. 1.

⁸² Yardley, *A Source Book of English Administrative Law*, (1970), p. 267.

principles formulated by administrative judges; they are decisions based on experience and practice. To some extent the administrative courts have functioned in a way not unlike the common law courts of the United Kingdom.

92. The Conseil d'Etat was established, in 1799, to assist the Premier Consul in drafting new laws and administrative regulations and to "resolve difficulties which might occur in the course of administration". It was the last-mentioned function that provided the constitutional foundation for the Conseil's eventual development.

93. The functions of the Conseil d'Etat are now twofold: to act as an adviser to the government and to adjudicate on claims against the administration. The Conseil is divided into two sections, the administrative section which performs the advisory function, and the judicial section which deals with claims. The members who perform advisory functions are not the same as those who perform judicial functions.

94. In its advisory capacity, the Conseil d'Etat takes an active part in the preparation of decrees, which generally correspond to regulations in our system.

95. The Conseil d'Etat is now a court of first instance for the limited original jurisdiction reserved to it and at the same time it is a court of appeal to hear appeals from lower administrative courts. It is also a court of appeal from some official actions of public authorities which are not within the jurisdiction of the lower administrative courts.

96. The Conseil d'Etat exercises increasing supervision and control over public authorities and it has gained a high reputation in France and elsewhere. It has not allowed itself to be controlled by a rigid system of precedent and it has obtained a marked degree of success in adapting itself to the constantly changing circumstances of public life.

97. In the exercise of their judicial power, the administrative courts are concerned with two main types of remedies. The first remedy is available whenever the citizen-plaintiff seeks an official recognition of his rights; the court is asked to declare that his rights have been infringed and to state what measures are necessary to redress the wrong. The second remedy is available when a remedy is sought quashing an official action: the judge being asked to decide if the action conforms with the public law.

98. In general, proceedings before the administrative courts are simple and cheap. Before an action may be commenced, the plaintiff must first request the public authority concerned to answer his complaint. With certain exceptions, the authority is obliged to reply within four

months. The plaintiff must commence proceedings within two months from the date of service of notification of the dismissal of his claim. As a general rule, the commencement of proceedings does not prevent the official action from being effective pending the hearing. In exceptional cases, however, when the execution of the decision challenged would create special prejudice or hardship, the Conseil d'Etat may order the suspension of its execution until final judgment is issued. There are no restrictions on the evidence which can be adduced before the Conseil d'Etat, but rules of evidence are enforced in the lower administrative courts.

99. Three special features of procedures before the Conseil d'Etat are that they are inquisitorial, adversarial and basically in writing. The procedures are inquisitorial in the sense that once the Conseil d'Etat is seized of a complaint, it addresses, through its own officers, such inquiries as it thinks fit to the public authority concerned and to the complainant; the Conseil d'Etat, of its own initiative, ascertains such facts as it regards as relevant to the determination of the complaint; it may order each party to serve on the other his complete statement of fact and law and it may order that particular witnesses be heard and that written reports be made by specialists; and, it may compel the public authority concerned to produce evidence and thus relieve the complainant from doing so. The procedures are adversarial in the sense that a party may reply in writing to the case of another party and they are basically in writing in the sense that parties are allowed to make only short verbal comments on their written statements and only in so far as they arise out of the written text; with limited exceptions, developing a new argument is not permitted. Documents produced are available only to the parties and only the parties are present in the court.

100. In summary, the merits of the French system are said to include:

- (1) *The composition of the administrative courts.* Their members are not only judges but they are also expert administrators. Full confidence in their expertise has prevented the proliferation of ad hoc tribunals and as new issues arise in the field of public administration they automatically come within the jurisdiction of the administrative courts.
- (2) *The flexibility of the law.* Although the courts seek logic and consistency in their decisions, they are not bound by their previous decisions. They have proved successful in balancing the needs of public administration in times of economic and social change with the rights of individuals.
- (3) *The simplicity of the remedies available in the administrative courts.* The few conditions to which the private plaintiff must conform compare more than favourably with the complexities of common law judicial review.

- (4) *The special procedures evolved by the administrative courts.* Proceedings are inexpensive for the plaintiff.
- (5) *The character of the substantive law applied by the administrative courts.* Administrative judges have been able to demarcate between legality and policy without trespassing on the latter, and in doing so to penetrate to the core of an administrative decision in a way hardly possible under the common law. The law has a systematic and cohesive quality which contrasts with the disconnected character of the corresponding common law.

101. Defects of the French system are said to include—

- (1) The jurisdictional conflicts caused by the existence of two separate court systems.
- (2) The persistent slowness of the process (an average of eighteen months is required for each case).
- (3) The difficulties of ensuring obedience to a judgment when it is delivered.

102. The summary contained in paras 100 and 101 is taken from *French Administrative Law* by Professors L. N. Brown and J. F. Garner.⁸³ Professor H. W. R. Wade⁸⁴ disagrees with the views of Professors Brown and Garner and contends that, with limited exceptions, the common law can exercise a power of control over official actions of public authorities that is equal to that of the Conseil d'Etat.⁸⁵

103. It is pertinent to note the observation of one French commentator: "Judicial control would be all the more efficient if it were not the sole safeguard accorded to the citizens . . ."⁸⁶

104. Our short treatment of this complex subject leads, of course, to over-simplification and the omission of important principles and qualifications. Our observations are intended, first, to indicate some features of a famous system of administrative law which has been largely adopted by Belgium, The Netherlands, Greece, Turkey, some States of the near East, and of Latin America; and, secondly, to point to two of the factors which contribute to that fame, namely, the appointment of expert administrators to administrative appeals tribunals and the mixing of inquisitorial and adversary procedures.

⁸³ (1967) pp. 132-140.

⁸⁴ "Crossroads in Administrative Law", (1968) 21 *Current Legal Problems* 75.

⁸⁵ *Id.*, p. 76.

⁸⁶ Professor P. Weil, "The Strength and Weakness of French Administrative Law", (1964-65) *Camb. L.J.* 242, 259.

Sweden

105. The JUSTICE report *The Citizen and the Administration* (1961) suggested that a General Tribunal should be established to deal with miscellaneous appeals from discretionary decisions of administrative authorities.⁸⁷ The suggestion was prompted by the Committee's consideration of the Swedish "General Tribunal" or Supreme Administrative Court. It commented on that Tribunal in the following terms: "It is said that this Tribunal possessing these two special characteristics, namely, the definition of its jurisdiction by an enumeration which is revised annually and the authority to substitute its own discretionary decision for the original decision, has no equivalent in any other country. The Swedish authorities consider that the appeal facilities provided by this Tribunal are one of the reasons for the comparatively small number of complaints submitted to the Ombudsman since persons aggrieved by a discretionary decision on the ground of maladministration frequently prefer to seek their remedy before this Tribunal than to make a complaint to the Ombudsman."⁸⁸

106. Professor Gellhorn's observations on Swedish review procedures support the views expressed in para. 105:

"Swedes do like the idea behind the Ombudsman and are happy to have his office as a protection in reserve. But a general bureau of complaints is an inefficient means of dealing with modern government's many complexities. Sweden's sophisticated citizenry chooses to use sophisticated review procedures when they are available."⁸⁹

107. Sweden's Supreme Administrative Court was established, in 1909, for two main reasons. First, from the middle of the 19th century it was felt in Sweden that government was overburdened by administrative appeals. Secondly, as the stamp of politics imprinted itself more and more on governmental activity it was believed that a considerable number of administrative appeals should be handed over to an agency that could decide legal issues independent of political considerations.

108. All cases before the Supreme Administrative Court are in the form of appeals against official actions of public authorities. No appeal lies however to the Court against decisions reached by the King in Council. The Court's powers conform to those of an administrative reviewing authority. It may consider questions of fact as well as issues of law. It is not limited to reversing an official action or remitting an official action to a public authority; it can modify an official action directly.

⁸⁷ *The Citizen and the Administration* (1961), para. 68.

⁸⁸ *Id.*, para. 67.

⁸⁹ *Ombudsmen and Others* (1966), p. 217.

109. Another feature of the Court deserves emphasis. Its procedure conforms on the whole with that used by public authorities. It is at this point that the Court diverges sharply from the general concept of a court; its judicial character stems not from its procedure but from the independence of its members. Cases are presented solely in writing and in closed court. The appellant cannot submit oral arguments and no witnesses are heard on oath. Litigation is uncomplicated. The appellant need not be represented and often he is not; his submissions do not have to be in any special form. To some extent the Court is expected to examine the issues on its own motion and to consider arguments that the appellant may not have presented. Appeals are frequent and because of its somewhat summary procedure the Court disposes of some 4,000 cases each year.

110. The Court and its functions are not without critics. It is said that a greater requirement of general judicial procedure is desirable for some difficult cases and that the Court might well rid itself of a mass of cases of minor importance and so overcome backlogs.

111. Our comments on Sweden's Supreme Administrative Court are taken from Professor Herlitz's paper "Legal Remedies in Nordic Administrative Law."⁹⁰

The United States of America

112. From 1930 to 1940 government organization and administrative law were intensively studied by officially established commissions and committees and by bodies such as the American Bar Association. Results of these studies included the Federal Administrative Procedure Act of 1946 and, in the same year, the approval of a Model State Administrative Procedure Act by the National Conference of Commissioners on Uniform State Laws. A Revised Model State Administrative Procedure Act was adopted in 1961. Legislation based largely on the model Acts has been passed in some twenty-five States.

113. The basic difference between the law relating to public authorities in New South Wales and the United States of America arises from the different presumptions which are applied to the interpretation of statutes conferring powers. Under our law, the presumption of interpretation is that only such powers are conferred as are given by the statute. Under the law in the United States, the presumption of interpretation appears to be that within certain limitations full powers are conferred on the agency ("agency" corresponding generally to our larger governmental enterprises) to determine all questions of law or fact necessary for the performance of its function.⁹¹

⁹⁰ (1966-1967) 15 American Journal of Comparative Law, pp. 687-708.

⁹¹ See Jaffe, *Judicial Control of Administrative Action* (1965), Ch. 16 (referred to in Report of Ontario Royal Commission "Inquiry into Civil Rights" Report No. 1, Vol. 1, p. 282.

114. In applying the doctrine of ultra vires our courts ask the basic question: What does the statute authorize the public authority to do? Our courts will look at official actions to see if they are within power. In this context no distinction is made between questions of law or of fact. If the official action is authorized, the courts will not usually consider the matter further. Under the law of the United States, reviewing courts appear to act more as appellate bodies and will override official actions of agencies even though they would be treated as authorized official actions under our law. A distinction is drawn, however, between "conclusions of law" and "findings of fact". The courts readily review questions of law but the agencies are said to be the experts on matters of fact and "findings of fact" will not be reviewed unless they are "clearly erroneous" or there is no "substantial evidence" to support them.

115. The principle that questions of law are for the courts and questions of fact are for the agencies has required that tests be adopted for distinguishing the two questions. The appropriate test to be adopted in any particular case appears to be a matter of uncertainty under American case law and is one of controversy among American legal commentators.

116. If the courts decide that a question of law is involved, they will usually reopen matters relating to the agency's official action and treat them as if they were arising for the first time. But, alternatively, they may determine merely that there is "warrant in the record and a reasonable basis in law". Various explanations for these apparently different standards of review are given.⁹²

117. As indicated in para. 114, the courts will review findings of fact only in a limited way. Controversy exists as to the most suitable limitation in this regard. Should the courts override findings of fact where they are not supported by "substantial evidence" or where they are "clearly erroneous"? It is considered that the "substantial evidence" rule provides a more limited review than the "clearly erroneous" test. Under the former, the courts will not overrule a finding of fact if the finding could have been reached by "reasoning from the evidence" even though the court might think the finding was wrong. Under the latter, the courts may overrule if they think the finding was wrong even though it could have been reached by "reasoning from the evidence". Legislation is not uniform and more extensive review is sometimes given than that provided by the "substantial evidence" or the "clearly erroneous" rules. The former rule was adopted by the Federal Administrative Procedure Act of 1946 but the Revised Model State Administrative Procedure Act of 1961 adopts a different test.⁹³ These

⁹² See Davis, *Administrative Law Treatise* (1958), Ch. 30; Cooper, *State Administrative Law* (1965), p. 665 and Jaffe, *Judicial Control of Administrative Action* (1965), Ch. 14 (referred to in Report of Ontario Royal Commission "Inquiry into Civil Rights" Report No. 1, Vol. 1, p. 285).

⁹³ See para. 119.

two Acts differ also in the terminology used to refer to an official action. The Administrative Procedure Act of 1946 used the term "agency action" while the Revised Model State Administrative Procedure Act of 1961 refers to "decisions" of agencies.

118. The Administrative Procedure Act of 1946 sets out the grounds for judicial review and also prescribes a code of procedure for administrative agencies and for review of their decisions. This Federal Act provides, amongst other things:

"10. Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion . . . the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error."

119. The Revised Model State Administrative Procedure Act of 1961 provides, amongst other things:

"Section 15. (Judicial Review of Contested Cases) . . .

(g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of facts. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) in violation of constitutional or statutory provisions;
- (2) in excess of the statutory authority of the agency;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;

- (5) clearly erroneous in view of the reliable probative, and substantial evidence on the whole record; or
- (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

120. For reasons related to constitutional differences and to different common law development, the experience of the United States is frequently not relevant to the situation in New South Wales. Our observations are intended to indicate that in the United States judicial deference is given to the fact finding capacity of agencies and there emphasis is given to enacting grounds for judicial review and to prescribing procedures to be followed by public authorities.

121. We note that an Administrative Conference of the United States was established in 1968 for the main purpose of initiating proposals for improving administrative procedure. Its functions are in part similar to those of the United Kingdom's Council on Tribunals.⁹⁴ We note too that the ombudsman concept is receiving increasing attention in the United States.⁹⁵

Ontario

122. The Hon. J. C. McRuer, a former Chief Justice of the High Court of Ontario, was appointed, in 1964, as a Royal Commissioner under the designation "Inquiry into Civil Rights". Report No. 1 was submitted by the Commissioner in 1968 and Report No. 3, the final Report, was submitted in 1971. Many of the Commissioner's 976 recommendations are relevant to our terms of reference.⁹⁶

123. Consequent upon the making of the recommendations referred to in para. 122, Bills were presented to the Ontario Legislature, in June, 1971, which "represent the virtual accomplishment of approximately 500 of the 549 recommendations presented to the government in the first report of the McRuer commission".⁹⁷ These Bills are now Acts and the Ontario Government has undertaken a programme to amend all Acts which confer statutory powers in the light of the principles developed in the McRuer Reports.⁹⁸

124. We do not try to summarize the recommendations contained in the McRuer Reports but the following are significant:

⁹⁴ See Garner (1970), Public Law, 110-119.

⁹⁵ See Annexure F.

⁹⁶ For the recommendations generally see Report No. 1, vol. 3, pp. 1257 ff., Report No. 2, vol. 4, pp. 1655 ff., and Report No. 3, vol. 5, pp. 2219 ff.

⁹⁷ Official Report of the Legislature of Ontario Debates, 4th June, 1971, p. 2374.

⁹⁸ *Id.*, p. 2376.

“31. A Statutory Powers Procedure Act should be enacted to establish:

- (i) Minimum rules of procedure applicable to all tribunals exercising a statutory power of decision,⁹⁹ whether judicial or administrative, unless the power is exercised for emergency purposes, the scientific determination of standards, in circumstances in which the rules would frustrate the object of the statute conferring the power, or the application of the rules is excluded by statute.
- (ii) A Statutory Powers Rules Committee with power to make appropriate additional detailed rules for each tribunal, having regard to the nature and purpose of the powers exercised by it.

“61. Subject to [limited exceptions], the courts should have power to set aside a decision based on the purported exercise of any statutory power to which the rules apply if there is a failure to follow them, unless in the opinion of the court, notwithstanding that the rules have not been followed, there has been no real or substantial miscarriage of justice. In such case the court should have power to validate a decision.

“65. An appeal should be provided from the decision of every judicial tribunal, except where an appeal would defeat the purpose of the statute.

“66. Appeals from judicial tribunals should be taken to the ordinary courts unless circumstances render this impractical.

“67. Where circumstances require that the appeal from a judicial tribunal should not be taken to the ordinary courts, the appeal tribunal should be established with the appropriate characteristics of a judicial tribunal to ensure independence and impartiality. An appeal should not lie from a judicial tribunal to the Lieutenant Governor in Council or to a minister.

“68. No appeal should lie from . . . [a policy]¹⁰⁰ decision made by a minister, except in appropriate cases to the Lieutenant Governor in Council.

“69. No appeal should lie from . . . [a policy]¹⁰¹ decision to the courts.

“70. . . . [Policy]¹⁰² decisions made by persons other than a minister should be subject to appeal, preferably to a minister or to senior administrative officers close to the minister.

⁹⁹ For the sense in which the terms “statutory power of decision” and “statutory power” are used in the McRuer Reports see *The Judicial Review Procedure Act, 1971, of Ontario, s. 1 (f) and (g)*.

¹⁰⁰ See Ontario Royal Commission, “Inquiry into Civil Rights”, Report No. 1, vol. 1 (1968), p. 28.

¹⁰¹ *Id.*

¹⁰² *Id.*

"72. Where officials are empowered to take emergency action based on inspections or views, there should be a summary form of appeal to senior officials for a further inspection.

"73. Where a tribunal consists of expert personnel who apply statutory, technical or scientific standards by objective tests, provision should be made for an appeal by way of a second test by different experts.

"76. Judicial review in Ontario should be based on two principles:

- (a) Retention of the doctrine of *ultra vires* providing for full review by the courts of decisions of all tribunals, whether judicial or administrative, to determine whether the decision is within the powers conferred on them.
- (b) Extension of the power of the courts in certain cases to review decisions within the powers of tribunals, to safeguard against errors of law on the face of the record or findings of fact unsupported by evidence.

"560. The creation of the office of Parliamentary Commissioner or Ombudsman should not be considered as a substitute for a proper legal framework which provides adequate substantive and procedural safeguards for the rights of the individual.

"561. A Commissioner or Ombudsman for local government with powers similar to the Parliamentary Commissioner in New Zealand should be appointed by the Lieutenant Governor in Council in each municipal region on the request of local governments within a region representing 50 per cent of the population of a region.

"562. When effective legislation has been enacted and become operative to provide the substantive and procedural safeguards for the rights of the individual recommended in Report Number 1, the situation in Ontario should be reviewed and consideration should be given in the light of experience gained to the establishment of a bureau to be presided over by a Commissioner appointed by the Legislature with powers similar to those of the Parliamentary Commissioner of New Zealand to consider complaints with regard to maladministration in provincial government affairs, including alleged conflict of interest.

"576. A system of administrative courts patterned on the French system should not be adopted in Ontario.

"577. A court hearing an application for judicial review should be given power to require the tribunal whose decision is under review to produce for the information of the court all documents and material which it had before it or considered in relation to the decision."

New Zealand

125. "New Zealand developments have differed from those in Australia mainly because, particularly in recent years, the New Zealanders have been prepared to experiment in methods of providing for the redress of grievances of citizens affected by governmental action."¹⁰³

126. The developments referred to in para. 125, as we understand it, are:

- (1) The appointment, in 1962, of an Ombudsman.
- (2) The establishment, in 1966, of a Public and Administrative Law Reform Committee.
- (3) The establishment, in 1968, of an Administrative Division of the Supreme Court to hear and determine:

"(a) such appeals as are, under or by virtue of any enactment for the time being in force, to be heard and determined by the Division;

(b) such proceedings, other than appeals, as are, under or by virtue of any enactment for the time being in force, to be heard and determined by the Division;

(c) such applications or classes of applications to the Supreme Court for writs of certiorari, prohibition, or mandamus, and such applications or classes of applications to the court for declaratory judgments or orders or injunctions, as may from time to time be referred to the Division by the Chief Justice."¹⁰⁴

127. We quote at length from the First Report of the Public and Administrative Law Reform Committee of New Zealand (1968) because it expresses differing views on matters which are within our terms of reference; views which merit careful consideration in the New South Wales context. The Report deals with appeals from administrative tribunals, not with appeals from administrative officers. Extracts from the majority opinion follow:

"32. In reviewing the merits of the present system of administrative justice at the appellate level, the Committee considered a number of alternatives. One was the preservation of the status quo . . .

"33. The second alternative considered by the Committee was the giving of a general right of appeal from administrative tribunals to the Supreme Court . . . This was considered to have certain disadvantages. Primarily the disadvantages centre on the questions of expertise and of specialization . . .

"34. A third alternative was the creation of an Administrative Court, separate from the Supreme Court but intended to have in its own field a status akin to that of the Supreme Court . . . After careful consideration, however, we find ourselves unable to accept them [arguments for this alternative] . . .

¹⁰³ Report of the Commonwealth Administrative Review Committee (1971) para. 146.

¹⁰⁴ Judicature Amendment Act 1968, s. 2.

"35. Consideration of the various alternatives has led us . . . to the firm conclusion that an Administrative Division of the Supreme Court is the logical and acceptable solution in New Zealand. We think that anything that might be achieved by a separate Administrative Court is more likely to be achieved by an Administrative Division. The Division would hear appeals from certain administrative tribunals, and we shall indicate hereinafter particular rights of appeal which we recommend. It would also exercise the present jurisdiction of the Supreme Court in administrative law. It would have the desirable attributes of status and specialization . . .

"36. It is important to make clear what we regard as implicit in our recommendation of an Administrative Division.

Membership of Administrative Division

- (i) The judges of the Administrative Division of Supreme Court should be assigned by the Governor-General to the Division, and as Supreme Court judges they would also perform other Supreme Court work when required. . .

Qualifications of Judges

- (ii) Persons appointed to the Administrative Division should have a full appreciation of the need to give effect to the economic and social policies the legislation was designed to implement. . .

Lay Members

- (iii) There should be no bar to the appointment of lay members or assessors to sit with the Court if and when desirable.

Expense

- (iv) The proceedings in the Administrative Division should not be more expensive than proceedings before the present appellate administrative tribunals.

Informality

- (v) The atmosphere should not be more formal than that of appellate administrative tribunals.

Consistency

- (vi) It is clearly desirable that there should be a degree of specialization among the judges so that the virtue of consistency is not lost. The judges would handle throughout New Zealand the matters assigned to the Division and would when necessary travel to appropriate hearing places. . .

"37. In these ways we are aiming to retain the advantages of the present appellate structure while adding advantages which we deem crucial, namely, the greater consistency, coherence

and authority an Administrative Division would bring. In our view the synthesis of these virtues is perfectly feasible and would fit New Zealand conditions ideally”.

128. Extracts from Mr G. S. Orr’s dissenting opinion follow—

“1. While being whole-heartedly in favour of a rationalization of the present system I consider the setting up of an Administrative Division of the Supreme Court to be unwise. Such a Division will inevitably take on the colour of the Supreme Court substantially as it now exists. Yet the widely acknowledged unsuitability of courts such as the Supreme Court as an appellate body from administrative tribunals has been the main reason over the years for setting up special courts and other appellate authorities both here and throughout the Commonwealth.

“3. Among the reasons for my apprehension of the majority’s proposal are the following:

(a) *Over-Judicialization*

The establishment of an Administrative Division would lead to over-judicialization of the various matters at present deliberately excluded from the Supreme Court’s jurisdiction. Thus, proceedings would tend to be assimilated more closely to the adversary system which is not always suited to the adjudication of matters of social and economic policy. Procedures and evidentiary rules would tend to be stricter and relevant statutes less likely to be adequately construed and applied.

(b) *Less Constructive Decisions*

Judges of the Supreme Court would understandably be less inclined to make decisions which on occasions are necessarily controversial. Instead they would tend to adopt a more passive role in keeping with the tradition of the Supreme Court rather than implement social economic or industrial policy in a constructive way.

(c) *Loss of Impartiality of the Supreme Court*

With relatively few exceptions all the powers likely to be vested in the Administrative Division would involve value judgments on matters of social or economic policy. This is at variance with the traditional and invaluable role of the Supreme Court of disinterestedness and impartiality which should be preserved unimpaired.

(d) *Loss in Informality*

There would be a marked loss in informality and freedom of access to the court and a likely increase in costs to litigants, more of whom would feel obliged to instruct counsel or not appear at all.

(e) Less Specialization

There is less likelihood of specialization in particular areas and of the development of consistency in approach.

(f) Loss of Flexibility

The proposal for an Administrative Division is made after an examination of some only of the existing appellate bodies. The Committee has yet to consider how suitable the proposed Division will be for the remaining jurisdictions. Its relative inflexibility limits its usefulness in the wide field of administrative justice."

129. The opinions quoted in para. 128 are to us more persuasive and more relevant to the New South Wales situation than the opinions quoted in para. 127. But the Supreme Court (Administrative Division) Rules 1969 were made only in July of that year and it is too early for us to draw lessons from the work of the Administrative Division of the New Zealand Supreme Court.

Victoria

130. The Statute Law Revision Committee in Victoria was requested, in 1964, to investigate and report on, amongst other things, "whether the existing provisions for appeal from decisions of [administrative] tribunals are satisfactory and, if not, what improvements thereof are desirable". The Committee reported in 1968. Because their recommendations differ from those made, in the same year, by the majority of the New Zealand Public and Administrative Law Reform Committee,¹⁰⁵ we quote at length from the Victorian Report—

"29. The vast and growing area of administrative activity in which discretionary powers are exercised would seem to call for some more comprehensive appeal procedure, where questions of the legality and also of the merits of the particular decision can be considered side by side. This suggests that, ideally, there should be a combination of legal review and a consideration of natural justice.

"30. It is questionable whether such all-embracing review could be provided adequately by a person skilled in the law alone. Most decisions which are the subject of review will have been made by administrative officers or bodies with special qualifications or experience to guide them, and to disregard this aspect in any review would appear to ignore vital considerations bearing on what is the correct decision.

"31. [T]he Committee has concluded that appeals as to legality, fairness and fact of an administrative decision are not appropriate to a regular courtroom presided over by a judge

¹⁰⁵ See para. 127.

sitting alone, for there must be considered administrative features of which a judge could not be expected to have an intimate knowledge.

“32. It was proposed to the Committee that the position could be met effectively by having administrative appeals determined by a special Administrative Appeals Court, consisting of a Supreme Court Judge as President and two assessors or commissioners selected from a panel of persons specially qualified in some sphere or spheres of public administration or government . . .

“36. The Honourable the Chief Justice, commenting upon the proposal for an Administrative Appeals Court, pointed out that although some functions akin to judicial may be involved, the substantial body of determinations would be concerned with policy or administration. At most, its functions would be quasi-judicial in the area of administration. His Honour commented that as the court would operate in the Executive field of government, the wisdom of giving it the form and garb of a judicial body may be open to doubt, particularly as confidence in the Judicial arm of government may be threatened if the Judiciary is brought into an area of administration where public controversy often runs high.

“37. The fragmentation of the Supreme Court into specialist fields was said to have little to commend it, as the proposed Appeals Court would be virtually separate from and not part of the Supreme Court. Presumably the idea of providing for a Supreme Court Judge as Chairman is to endow the body with the standing and esteem of the Supreme Court, but there is a danger to the Court here in that whatever shortcomings, real or imagined, the new appeal body may possess are likely to be identified in the public mind with the Supreme Court generally.

“38. The alternative suggestion is to establish an Administrative Appeals Tribunal in its own right, without attempting to give it the appearance of a court of law . . .

“39. The Committee is convinced that until some specialized body is established to deal with appeals, it is inevitable that administrative justice will be dispensed unevenly . . .

“40. It is recommended that steps be taken to establish an Administrative Appeals Tribunal . . . The Committee accepts the objections put by the Honourable the Chief Justice to the

concept of embracing such a body within the Supreme Court framework, and believes that the Tribunal should be independent of the Court but should be presided over by a person qualified for appointment as a judge . . .

"45. . . . Although an Ombudsman or Parliamentary Commissioner could not perform the duties which the Committee has recommended to be entrusted to an Administrative Appeals Tribunal, such an office could be complementary to the work of the Tribunal. The function of the office is to supplement, rather than to replace, existing remedies. His work could be a valuable safeguard to the citizen who entertains doubts as to the exercise of administrative power by individual officials, as distinct from a tribunal, and the office could be useful in cases where the monetary value of the issue is small, but the sense of grievance is large.

"47. [T]he Member of Parliament has not the wide powers generally vested in an Ombudsman. Members virtually have to take an answer from a department or instrumentality, whereas the Ombudsman has a right to demand books and documents and to investigate personally. Although no accurate statistics are available, the personal problems of constituents relating to discretionary decisions referred to Members of Parliament for further representations constitute a very small percentage of the average Member of Parliament's work load for his electors and the experience in New Zealand indicates that the activities of the Ombudsman are supplementary to and do not in any way limit or replace the traditional role of Parliamentarians in that country. The right of a citizen to approach his local Member is in no way impaired by the existence of an Ombudsman.

"50. A proposal was put to the Committee for the setting up of a body to be known as the 'Tribunals Committee'. It was suggested that the functions of such body would be—

- (a) The review and regulation of the constitution and procedures of all existing tribunals; and
- (b) Advising the Government in connexion with the constitution and procedure of new tribunals which it or the Government considers should be set up in particular cases.

The Committee considered the proposal as possibly having some merit, but, in view of the terms of the current Inquiry being undertaken by the Committee, it was felt that no recommendation should be made at this stage."

131. The Committee's recommendations (with which, as regards like problems in New South Wales, we are in substantial agreement) have not been adopted to date.

PART VI

CONCLUSIONS AND RECOMMENDATIONS

132. As government becomes more complex and public authorities grow in number so, it seems, bodies to supervise public authorities grow in complexity and number. Countries with dissimilar constitutional histories have developed, or are developing, systems containing complementary parts for supervising the official actions of public authorities. Under the British pattern of government, parliament, the courts and various tribunals have complemented each other for this purpose for centuries. Yet in the United Kingdom, New Zealand and elsewhere, new parts have been added or their addition is under consideration. Parliamentary commissioners, administrative divisions of the ordinary courts, administrative courts and bodies such as the United Kingdom's Council on Tribunals are no longer novel concepts. In Belgium and the Netherlands, an ombudsman is suggested as a necessary complement of the ordinary courts and the French-styled administrative courts. In some Scandinavian countries, where an ombudsman was first in the field, administrative courts came later and where the administrative courts came first an ombudsman followed. People in many countries are asking how best can alleged administrative shortcomings be inquired into quickly, cheaply and fairly, and the answers are diverse.

133. Unlike the United Kingdom, New South Wales has not had any public inquiries into the work of administrative tribunals or the powers of Ministers. Unlike New Zealand and Ontario, no review of statutory powers has previously been undertaken in this State; and here, unlike the United States, government organization and administrative law have not been intensively studied for many years. Advantages can, however, flow from this circumstance; the strengths and weaknesses of the experiments of others can be assessed against the New South Wales background and the patchwork approach of many can be avoided.

RECOMMENDATIONS

134. Put shortly, we recommend—

- (1) That a Commissioner for Public Administration (hereafter referred to as "the Commissioner") be appointed and an Advisory Council on Public Administration (hereafter referred to as "the Advisory Council") be constituted.
- (2) That a Public Administration Tribunal (hereafter referred to as "the Tribunal") be constituted.
- (3) That an Ombudsman be appointed.

135. Detailed particulars of the recommendations made in para. 134 appear in our proposed Bills and the notes thereon. Here we make only general comments.

COMMISSIONER FOR PUBLIC ADMINISTRATION AND ADVISORY COUNCIL ON PUBLIC ADMINISTRATION

136. The Commissioner and the Council are indispensable parts of the scheme we propose: we attach great importance to their respective functions. The Commissioner should, in our view, be responsible to Parliament and be charged with two duties: first, to review and keep under review all powers now or hereafter exercisable by public authorities; and, secondly, to recommend such changes in the law and procedures relating to those powers as, in the opinion of the Commissioner, are necessary or desirable. The Advisory Council, consisting of members representing wide public interests, should, in our view, be charged with the responsibility of making recommendations to the Commissioner, either of its own motion or on reference made by the Minister or the Commissioner, on matters relating to the work and activities of the Commissioner.

137. We recommend that the Commissioner be appointed and that the Advisory Council be constituted because there is no body in this State concerned only with the law and procedure relating to official actions of public authorities and, in our view, there is need for such a body. Public authorities range from antenatal clinics to those supervising cemeteries and between these extremes official actions touch most daily activities of every man. The number of public authorities is increasing; during the years 1969 and 1970 statutes enacted in this State constituted or reconstituted almost fifty such bodies. We do not question the necessity for public authorities, but the number and variety of the powers exercisable by them is such that there is need to ensure that the needs of Government are not met to the avoidable detriment of the needs of the citizen. All modern States are much governed but laws have not fully adjusted to the consequences of that situation. Our present recommendation, if adopted, will assist not only in catching up with an evolutionary process but also in producing solutions to future demands.

138. The United Kingdom has a Council on Tribunals, the United States has an Administrative Conference and New Zealand has a Public and Administrative Law Reform Committee; each body being concerned generally with the relationships between citizen and State. In Ontario, the work between 1964 and 1971 of the Royal Commission "Inquiry into Civil Rights" has resulted in the enactment, amongst other Acts, of the Civil Rights Statute Law Amendment Act, 1971; an Act which amends some ninety statutes of Ontario for the purpose of safeguarding rights of citizens and which is part of a programme to review all Acts of that Province which confer statutory powers. Our study of the powers exercisable by public authorities in New South Wales convinces us that a like programme, extended to include rules, regulations and by-laws, is needed here if the answer to the main question asked in our terms of reference is to be fully developed and kept up to date. Any such programme will demand much time and effort. It will involve locating, analysing and making recommendations about thousands of powers

exercisable by hundreds of public authorities. Indeed, any such programme can never be completed for each year new legislation will be enacted and new subordinate legislation will be promulgated which will require analysis.

139. Later in this Report,¹⁰⁶ we propose—

- (a) that a person who is adversely and substantially affected by an official action may—
 - (i) in some cases, as of right;
 - (ii) in other cases, only by leave of the Tribunal, have the Tribunal inquire into the official action; and
- (b) that the jurisdiction of some existing tribunals to hear appeals against official actions be transferred to the Tribunal.

It will be a function of the Commissioner to recommend, in relation to particular powers, that official actions taken under them shall not be inquired into by the Tribunal or may be inquired into only if leave is given by the Tribunal or shall, on proper application, be inquired into as of right. It will also be a function of the Commissioner to recommend, in relation to the jurisdiction of particular existing tribunals, that the whole or part of that jurisdiction be, or be not, transferred to the Tribunal. The Commissioner will need to form and express opinions as to how the matters enumerated in para. 56 should be applied to differing public authorities and to differing official actions. Recommendations and opinions of this kind will need to be preceded by factual investigations and consultations with relevant public authorities and other persons.

140. Government policy must, of course, play a dominant part in any final decision on recommendations made by the Commissioner. Policy considerations include—

- (1) *Whether the purpose of a power will be too seriously impeded if a right of appeal is granted.* Such a result would follow from granting a right of appeal, operating as a stay, to a person claiming to be aggrieved by the Chief Secretary prohibiting the lighting of a fire in the open air.¹⁰⁷ It is doubtful if the same result would follow from granting a right to an inquiry, whether operating as a stay or not, from a decision of the Chief Secretary to cancel a poker machine licence.^{107a}

¹⁰⁶ See para. 148.

¹⁰⁷ Bush Fires Act, 1949, s. 16.

^{107a} Gaming and Betting Act, 1912, s. 50b (3) (a).

- (2) *Whether an official action is so much part of government policy that to grant a right to an inquiry by a public authority other than a Minister is to abdicate collective ministerial responsibility.* Such a result might follow from granting a right to an inquiry by the Tribunal into a declaration that an area is to be a housing area within the meaning of the Housing Act, 1912.¹⁰⁸ A like result need not follow from granting a right to an inquiry by the Tribunal against a decision of the Minister for Health to revoke a licence to keep an authorized hospital within the meaning of the Mental Health Act, 1958.¹⁰⁹
- (3) *Whether an official action can affect a person so materially that to deny him a right to an inquiry is to do serious injustice.* Such a result might follow if there is no right to an inquiry into an official action affecting livelihood; for example, a revocation by the Commissioner of Motor Transport of a licence under the Air Transport Act, 1964,¹¹⁰ or a cancellation of a licence to keep an Animal Boarding Establishment.¹¹¹ Such a result could also follow from a refusal of the Minister for Social Welfare to give a person food relief under the Government Relief Administration Act, 1930. The same result need not follow if the Minister for Agriculture refuses a person permission to fly model aircraft in Centennial Park.¹¹²

141. Because the task we propose for the Commissioner is so great and involves making recommendations about which honest and well informed minds may differ, we believe that the assistance of the Advisory Council is necessary and desirable.

142. Parliament is, of course, concerned with matters such as we propose should become the concern of the Commissioner and the Advisory Council. Parliamentary time is, however, limited and detailed debate on questions such as those listed in paras 56 and 57 is impracticable; and particularly is this so in the case of legislation already enacted. Moreover the objectivity of an impartial Commissioner need not be present in a parliamentary debate conducted on party lines. The Parliamentary Counsel is concerned too with the matter with which we are now dealing, but his primary, full-time and onerous duty is to turn policy into legislative language.

¹⁰⁸ Section 4D.

¹⁰⁹ Section 11.

¹¹⁰ Section 8.

¹¹¹ Regulations made under the Prevention of Cruelty to Animals Act, 1901.

¹¹² Regulations made under the Centenary Celebrations Act, 1887.

PUBLIC ADMINISTRATION TRIBUNAL

143. "We agree . . . that tribunals have certain characteristics which often give them advantages over the courts. These are cheapness, accessibility, freedom from technicality, expedition and expert knowledge of their particular subject. It is no doubt because of these advantages that Parliament, once it has decided that certain decisions ought not to be made by normal executive or departmental processes, often entrusts them to tribunals rather than to the ordinary courts. But as a matter of general principle we are firmly of the opinion that a decision should be entrusted to a court rather than to a tribunal in the absence of special considerations which make a tribunal more suitable."¹¹³

144. The words of the Franks Committee quoted in para. 143 apply in New South Wales. Here Government, through Parliament, has entrusted many important decisions to tribunals. We have the Crown Employees Board, the Local Government Appeals Tribunal and numerous others.

145. To us, most official actions of public authorities are inappropriate for adjudication by the ordinary courts. An insistence on first-hand evidence, the necessity for formal proof of almost every relevant document and fact, and the requirement that issues be formulated formally are all advantageous in many ways, but often they contribute to slowness and expense. And for centuries the civil courts have been concerned mainly with transactions of a private nature; their work has largely centred on contracts, property and torts. In the administrative law field private rights are important but the public interest is no less important and the techniques by which a balance must be struck between public and private interests differ from those appropriate as between two private individuals.¹¹⁴ Despite the increasing willingness of the civil courts to enter public law areas, the courts are, to us, more suited to resolving specific issues between individuals than deciding, for example, how general standards should be enforced in the public interest; we see a need for a body which will innovate and which is not restricted by the private law outlook of the ordinary judiciary. Lord Denning expressed our view when he said—"It should be recognized that they [administrative tribunals] are a separate set of courts dealing with a separate set of rights and duties. Just as in the old days there were the ecclesiastical courts dealing with matrimonial causes and the administration of estates—and just as there was the Chancellor dealing with the enforcement and administration of trusts—so in our day there are the new tribunals dealing with the new rights and duties as between man and the State. The great need is to work out the principles and procedure which should govern these tribunals"¹¹⁵

¹¹³ Report of the Franks Committee (Cmd. 218 (1957), para. 38).

¹¹⁴ See Mitchell (1968), Public Law 201, 204.

¹¹⁵ *Freedom Under the Law* (1949), p. 81 and, generally, pp. 75-96.

146. The Tribunal we propose is novel. - When exercising the appellate jurisdiction assigned to it, it is an ordinary court except that it may have members who are not judges. But when holding an inquiry it is not like an ordinary court: it must, in some cases, give effect to Government policy stated for it:¹¹⁶ its procedures need not be those of an ordinary court:¹¹⁷ yet it has judges amongst its members,¹¹⁸ it may decide questions of law and it is for all its functions a court of record.¹¹⁹ On the other hand, the Tribunal is not an appendage of public authorities: it has power to give directions to public authorities¹²⁰ and it may set aside their official actions.¹²¹ In proposing the Tribunal, we seek to apply the propositions we stated in para. 35. Ordinary courts cannot be directed by Government on questions which are legislative in character without doing hurt to the conventional separation of the Judiciary from the Executive. And public authorities should not make final decisions on questions which are adjudicative in character. But, as indicated in para. 36, legislative and adjudicative questions are often so interwoven that separation in any but an analytical sense is impracticable. There is need for a new independent and impartial body before whom the respective claims of Government and governed can be put without conventional restriction.

147. Indeed, it is generally impracticable to separate the machinery for judging official actions from the administrative process.¹²² Official actions cannot be judged satisfactorily except by people who are aware of the needs of the public authorities who take those actions. To a substantial extent, this awareness must come from knowledge of the policies which control or guide public authorities. And, in judging official actions, weight must be given to policies, if the policies are within power. To do otherwise is to negate the convention of collective ministerial responsibility. Broadly stated, our Bill to constitute the Tribunal seeks, first, to give to Government the right of ultimate control of those aspects of official actions which are properly controllable by Government and, secondly, to give to the citizen an opportunity of having all other aspects of official actions inquired into by a competent, independent and impartial body.

148. As foreshadowed in para. 139, the Bill to constitute the Tribunal provides that a person who is adversely and substantially affected by an official action may, in some cases as of right and in other cases only by leave of the Tribunal, have the Tribunal inquire into the official action.¹²³ As mentioned in para. 139, we expect that the Commissioner will make specific recommendations about official actions

¹¹⁶ The Public Administration Tribunal Bill, s. 32.

¹¹⁷ *Id.*, s. 38.

¹¹⁸ *Id.*, s. 6 (1) (a) and (b).

¹¹⁹ *Id.*, s. 34 (1) (b) and (4).

¹²⁰ *Id.*, ss. 35 (2) (a) and 36 (1) (c) and (2).

¹²¹ *Id.*, s. 36 (1) (a) and (b).

¹²² See Mitchell (1968), Public Law, 201, 204.

¹²³ The Public Administration Tribunal Bill, s. 25.

which, in his opinion, should be within the "Inquiries" provisions we propose. Pending the making of those recommendations the inquiry "by leave" provisions of the Bill are intended to apply. If it were otherwise the jurisdiction of the Tribunal would, for some time, be so limited as to be worthless. In effect, we propose that until Parliament otherwise legislates, all official actions will be within the "by leave" category. The last statement is subject to the qualification that the Bill enables the Government to preclude any inquiry into a particular official action.¹²⁴ This power, although seemingly severe, recognizes that Government must have ultimate control of official actions. The doctrine of collective ministerial responsibility provides, in our view, a proper and sufficient safeguard against any unreasonable use of the power.

149. Implicit in our recommendations relating to the Tribunal is our view that the Tribunal should not be composed of lawyers only. We accept that "[T]he training of lawyers in many parts of the Commonwealth fails to impart to them any real understanding of the policy considerations implicit in the administrative process and of the social questions which are attempted to be solved by many legislative schemes; excessive concentration on analytical concepts and a too literal construction of statutory instruments do not really give the expertise which is necessary to an efficient and expeditious determination of administrative questions, whilst an intractable and emotional faith in the technique of cross-examination as the ultimate touchstone of most legal disputes tends to divert attention from the real policy considerations which it is the function of administrative tribunals to apply."¹²⁵ On the other hand, public confidence in the competence, independence and impartiality of the Tribunal could not, in our view, be secured or maintained unless it was presided over by a Supreme Court Judge. We believe that members of the Tribunal, other than the judicial members, should be selected from a panel of persons having special experience in administration, commerce, industry or administrative law to which panel they should be appointed for a term of years.

150. Traditional objections to the establishment of general administrative appeals tribunals are not, in our view, sound in general nor do they apply to the proposed Tribunal in particular. In this connection, the Report of the Franks Committee says—

"We have much sympathy with the desire to provide machinery for hearing appeals against administrative decisions generally . . . [H]owever, our terms of reference do not cover all administrative decisions but only those reached after a special statutory procedure involving an enquiry or hearing. It is therefore in relation to our limited terms of reference

¹²⁴ *Id.*, p. 26.

¹²⁵ The Hon. Mr Justice R. Else-Mitchell, "The Place of the Administrative Tribunal in 1965", Papers of the Third Commonwealth and Empire Law Conference (1965), p. 65 at p. 74.

that any proposal for a general administrative appeal tribunal must be considered. On this basis the proposal seems to us to have several disadvantages. First, a general tribunal could not have the experience and expertise in particular fields which, it is generally accepted, should be a characteristic of tribunals. Appeals would thus lie from an expert tribunal to a comparatively inexperienced body, and we see little advantage in this. If, to meet this objection, it were proposed that the general administrative appeal tribunal should sit in several divisions corresponding to the main subjects within the jurisdiction of tribunals, the general effect would in practice, we think, differ little from the existing arrangements, and the essence of the proposal, a unified appellate body, would be largely lost.

A second disadvantage is that the establishment of a general appellate body would seem inevitably to involve a departure from the principle whereby all adjudicating bodies in this country, whether designated as inferior courts or as tribunals, are in matters of jurisdiction subject to the control of the superior courts. This unifying control has been so long established and is of such fundamental importance in our legal system that the onus of proof must lie clearly upon the advocates of change. We are satisfied that the case for change has not been made out.

There is a third disadvantage. Quite apart from questions of jurisdiction, final determinations on points of law would be made by the general administrative appeal tribunal in relation to tribunals but by the superior courts in relation to matters decided by the courts. Thus two systems of law would arise, with all the evils attendant on this dichotomy.¹²⁶

151. We do not see that the proposed Tribunal would be a "relatively inexperienced body". While it might not have expert knowledge of the technical details of every field of administration it should have experience in, and understanding of, the nature of the administrative process and the basic problems of those who take official actions and those who are affected by them. We reject any assumption that judges of the ordinary courts have more expertise to deal with technical problems arising on an administrative appeal than would a tribunal such as that which we propose. And we do not suggest that the "unifying control" of the superior courts be abandoned: judicial review, notwithstanding its defects, is an essential part of our legal system and it will be available in respect of decisions of the Tribunal; in addition, the Bill makes provision for some decisions of the Tribunal to be put before the Supreme Court by way of stated case.¹²⁷ To be concerned that "two systems of law" would follow the establishment of the Tribunal is to ignore the fact that two systems of law already exist; the

¹²⁶ Cmd. 218 (1957), paras 121-123.

¹²⁷ The Public Administration Tribunal Bill, ss. 42, 68 and 69 (8) (d) and 9 (b).

dichotomy between civil and administrative law has been with us for many years, though the separation is ill-defined. Our proposal recognizes that a systematic development of administrative law is needed; it recognizes too that that development must be supervised by Parliament, Government and the superior courts.

152. In recommending the establishment of the Tribunal, we are in opposition not only to the views of the Franks Committee but also to those, amongst others, of the Ontario Royal Commission "Inquiry into Civil Rights" and the majority of the New Zealand Public and Administrative Law Reform Committee.¹²⁸ We are not, however, in opposition to the general views, amongst others, of the minority of the last mentioned Committee, the Victorian Statute Law Revision Committee or the Commonwealth Administrative Review Committee.¹²⁹

153. We appreciate that objections may be made by public authorities to the scope of our proposals: objections based primarily on the possibility of the Tribunal concerning itself to too great an extent with exercise of discretionary powers. Objections of this nature are proper objections and we seek to answer them as follows—

- (1) There can be no "as of right" inquiries into official actions until the Attorney General or the Government so decides.¹³⁰ We expect that any such decision will be made only after recommendations are received from the Commissioner. If a public authority demonstrates to the Commissioner that an official action of his should be excluded, in whole or in part, from the jurisdiction of the Tribunal, we anticipate that it will be so excluded.
- (2) In the case of "by leave" inquiries, the Tribunal can be expected to be responsible in granting leave.¹³¹
- (3) The powers of the Tribunal are not unlimited—
 - (a) the Tribunal may act only if it is satisfied that an official action has substantially and adversely affected the person who is objecting to it,¹³² and—
 - (i) the official action is beyond power;¹³³ or
 - (ii) the official action is within power but is harsh, discriminatory or unjust.¹³⁴
 - (b) the Tribunal may not act unless the public authority is given an opportunity of reconsidering the official action the subject of an inquiry.¹³⁵

¹²⁸ See paras. 124 and 127.

¹²⁹ See paras. 128, 130 and the Report of the Commonwealth Administrative Review Committee (1971), para. 233.

¹³⁰ The Public Administration Tribunal Bill, s. 25.

¹³¹ *Id.*, s. 30.

¹³² *Id.*, s. 34 (1) (a).

¹³³ *Id.*, s. 34 (4).

¹³⁴ *Id.*, s. 34 (1) (b).

¹³⁵ *Id.*, s. 35.

- (4) The Tribunal must give effect to some policy statements and must have regard to other policy statements put before it.¹³⁶

Moreover proceedings before the Tribunal do not operate to stay an official action.¹³⁷

154. In our view, the matters referred to in para. 153 make a reasonable balance between the needs of public authorities and the rights of persons affected by official actions.

155. We turn to the question whether any existing appellate jurisdictions should be transferred to the Tribunal. To us, a fragmented administrative appeals system is undesirable: there is little chance of any unifying influence entering the administrative process and decisions must lack consistency. There is no apparent system in selecting the bodies which can hear appeals against official actions. In some cases the body is an existing authority, tribunal, or court; in other cases a new body is constituted. Appeals now lie to the Governor, Ministers of the Crown and senior officials, the Supreme Court, the Industrial Commission, the Crown Employees Appeal Board, Districts Courts, Courts of Quarter Sessions, Courts of Petty Sessions, Land Boards and miscellaneous Appeals Boards. The exact number of persons who may determine appeals is not known to us but it must be some hundreds. We doubt that the work load resulting from existing or foreseeable appeals against official actions is or is likely to be sufficient to enable the majority of this number to develop administrative appeal expertise—especially is this so in the case of newly constituted ad hoc bodies. There should, in our view, be only two classes of bodies dealing with appeals against official action; a limited number of specialist bodies (e.g., the Crown Employees Appeal Board) and the proposed Tribunal.

156. We do not see why the jurisdiction of the Supreme Court to hear and determine appeals against, for example, a cancellation of the registration of a business name,¹³⁸ an alleged error or defect in the register kept under the Pipelines Act, 1967,¹³⁹ or a dispute under the Superannuation Act, 1916,¹⁴⁰ should not be transferred to the Tribunal. Also, there is no reason apparent to us why the jurisdiction of twenty-six judges of the District Court to hear appeals against certain official actions taken under Acts such as the Architects Act, 1921,¹⁴¹ the Private Hospitals Act, 1908,¹⁴² the Radioactive Substances Act, 1957,¹⁴³ or the Theatres and Public Halls Act, 1908,¹⁴⁴ should not be trans-

¹³⁶ *Id.*, s. 36.

¹³⁷ *Id.*, s. 31.

¹³⁸ Business Names Act, 1962, s. 19 (3).

¹³⁹ Pipelines Act, 1967, s. 52.

¹⁴⁰ Superannuation Act, 1916, s. 85.

¹⁴¹ Architects Act, 1921, ss. 16–17.

¹⁴² Private Hospitals Act, 1908, ss. 16A, 16C.

¹⁴³ Radioactive Substances Act, 1957, s. 11.

¹⁴⁴ Theatres and Public Halls Act, 1908, ss. 13B, 13D.

ferred to the Tribunal. And, if the Tribunal is constituted, we do not see why it should not hear and determine the appeals that may now be dealt with by, for example, the Charity Referees¹⁴⁵ and the separate Boards constituted under Acts such as the Clean Waters Act, 1971,¹⁴⁶ and the Land Aggregation Tax Management Act, 1971.¹⁴⁷ A desirable rationalization of existing administrative appeals would, in our view, result from transfers of jurisdiction of the kind we have mentioned.

157. Our Bill to constitute the Tribunal makes provision for the Tribunal to hear and determine appeals in addition to conducting inquiries into official actions. The extent of the Tribunal's appellate jurisdiction will, we anticipate, depend largely upon recommendations made by the Commissioner. Questions touching the present day appellate role in the administrative law field of, for example, Local Land Boards, Magistrates and District Courts can be answered only after many factual situations are considered. Desirable goals of rationalization and consistency of decisions may have to give way to the exigencies of man-power, money or a need for local appellate bodies—a need which may not be met by periodical visits from the Tribunal.

OMBUDSMAN

158. We recommend the appointment of an ombudsman for four reasons—

- (1) The presence of the Auditor-General is, in our view, a factor contributing to the correctness in money matters which characterises public authorities in this State and the existence of an ombudsman may reasonably be expected to have a like effect on the administrative function generally.
- (2) If the percentage of complaints found by an ombudsman to be justified is low, most people will have strengthened confidence in the efficiency and objectivity of public authorities. If that percentage is high and government acts upon recommendations made by an ombudsman, a desire to secure efficiency and objectivity in public authorities will be demonstrated. In either event an objective of government will be attained.
- (3) The experience of other countries indicates that a report to an aggrieved person by a highly qualified and independent investigator, whether it discloses administrative error or concludes that the complaint was ill-founded, gives satisfaction.

¹⁴⁵ Dormant Funds Act, 1942, s. 5.

¹⁴⁶ Clean Waters Act, 1970, s. 9.

¹⁴⁷ Land Aggregation Tax Management Act, 1971, s. 50.

- (4) Although the appointment of an ombudsman may result in administrative difficulties and inconveniences, the real questions are whether the advantages will not, on the whole, be greater than the inconveniences. We do not see any insurmountable difficulties and we believe that the advantages are likely to be greater than the inconveniences.

159. We agree that there are three special advantages of an ombudsman—"Firstly, he costs the complainant little or nothing; his services are provided by the community, and even to the community those services are remarkably cheap in comparison with the cost of courts and their paraphernalia. Secondly, the Ombudsman has immediate and speedy access to all official files and the officials themselves relating to or concerned with the matter of complaint. Thus he penetrates through the great mass of both procedural and substantive law which, in the working of our ordinary courts, stands between the tribunal and the discovery—so far as humanly possible—of what has actually happened in the matter of complaint. Thirdly, the Ombudsman's basis of action is always stated in broad general terms, such that he is not only able but compelled to apply conceptions of fairness and justice which are almost completely rule-free, and which are constantly kept in line with the values of contemporary society . . ." ¹⁴⁸

160. We recommend that if an ombudsman is appointed he should be obliged to report to Parliament in much the same way as the Auditor-General now reports to the Legislative Assembly. It would be for Parliament to determine whether it would follow the example of the United Kingdom and appoint a Select Committee to examine the work and reports of the Ombudsman, or that of New Zealand, where the Ombudsman merely presents his annual report to the House of Representatives. If, however, Ministers did not, in principle, fully support the work of the Ombudsman and if the Ombudsman lacked integrity, competence or status, the potential of the office could never be realized.

161. No one can say with certainty that an ombudsman in New South Wales will improve the situation relating to the detection and correction of wrong official actions or that he will not improve it. Nevertheless, the office can be created and be retained, with or without modification, or ultimately be abandoned according to how its worth in practice is evaluated.

162. As in the case of the Tribunal, policy must play an important part in the determination of the jurisdiction to be conferred upon an ombudsman. Factors to be considered here include—

- (1) An ombudsman investigates privately and not publicly.
- (2) An ombudsman is bound by secrecy provisions and though he may disclose matters in his Reports to establish grounds

¹⁴⁸ Sawyer, "The Jurisprudence of Ombudsmen" (1971) *Public Administration* Vol. XXX, No. 3, 221, 222-223.

for his conclusions and recommendations he usually does so in a way which prevents identification of complainants or individuals within the public authority concerned.

- (3) An ombudsman cannot command; he may only recommend and persuade.

163. In our view, a decision to exclude any official action of any public authority from investigation by an ombudsman can be justified only where compelling policy reasons for exclusion exist. Our proposed Bill to appoint an ombudsman lists few exclusions.¹⁴⁹

RELATIONSHIP BETWEEN COMMISSIONER, TRIBUNAL AND OMBUDSMAN

164. Stated generally, we see the relationship between the Commissioner, the Tribunal and the Ombudsman as follows—

- (1) The Commissioner is concerned—
 - (a) to determine whether an official action can be taken by a public authority in a way that could constitute an unjustified encroachment upon the rights of any person; and
 - (b) if so, to recommend such changes in law and procedure as will, in his opinion, provide safeguards against the official action.
- (2) The Tribunal is concerned and *empowered* to give redress to a person whose rights have been unjustifiably encroached upon by an official action of a public authority.
- (3) The Ombudsman is more concerned with (2) than (1). He may investigate more actions and do so on a broader basis than the Tribunal but he is *not empowered* to order that redress be given. And the time within which a person may go to the Ombudsman is not strictly limited.
- (4) Conciliation is the primary object of the Ombudsman and arbitration is the primary object of the Tribunal. By persuasion, the Ombudsman may incidentally achieve the effect of arbitration and the Tribunal may incidentally achieve the effect of conciliation. Each of them may intervene in disputes between Government and citizen but their procedures and powers are different.

The jurisdiction of the Tribunal and the Ombudsman will partly overlap but this will not, we think, cause any difficulty. We anticipate that “where the monetary value of an issue is small but the sense of grievance is large,”^{149a} an aggrieved person will prefer to approach the Ombudsman; and, where the monetary value of an issue is not small and the issue is within the jurisdiction of the Tribunal, an aggrieved person will prefer to approach the Tribunal.

¹⁴⁹ The Ombudsman Bill, s. 13 and the Schedule to the Bill.

^{149a} See para. 130 (45).

PART VII

GENERAL

165. We are required to consider "the effect of . . . [our] proposals upon judicial review including the Prerogative Writs and Crown Privilege."¹⁵⁰

JUDICIAL REVIEW

166. Our proposals do not affect the law relating to judicial review. We decided against proposing a Bill to amend that law because, in 1970, its procedural aspects were usefully reformed¹⁵¹ and the substantive law, though still complex and technical, is rapidly changing and developing. It is not, in our view, an opportune time to modify, restate or codify the substantive law. Indeed, legislative intervention at this stage may deny the courts in New South Wales the benefit of developments referred to in Annexure E.¹⁵² Moreover, our present and primary concern is with appeals, not review. We expect, however, that the existence of the Tribunal will reduce the number of proceedings commenced for judicial review of official actions.

Crown Privilege

167. We consider "Crown Privilege"¹⁵³ in relation to our recommendations concerning—

- (a) the Commissioner and the Advisory Council;
- (b) the Tribunal; and
- (c) the Ombudsman.

168. We note, by way of explanation, that in *Conway v. Rimmer*¹⁵⁴ the House of Lords restored to the judiciary "its inherent residual power, denied by an earlier House of Lords in the *Thetis* case to overrule a formally unimpeachable objection made on behalf of the Crown, in the name of the public interest, to the disclosure of documentary or oral evidence in legal proceedings".¹⁵⁵

169. In *Conway v. Rimmer*, Lord Morris said: "[W]henever an objection is made to the production of a relevant document it is for the court to decide whether or not to uphold the objection";¹⁵⁶ Lord Upjohn added: "[T]hese procedures [*scil.* requirement of further particulars of objection and direction for the attendance of the minister for cross-examination, in addition to private inspection and authority to order disclosure] are, in my opinion, equally available in the inferior courts but if the judge orders disclosure and the Crown intimates its intention to appeal from that order then, in my opinion, the matter should be adjourned so that the matter may be tested . . . before actual

¹⁵⁰ See para. 1.

¹⁵¹ See Annexure E, paras. 4-7.

¹⁵² See Annexure E, para. 88.

¹⁵³ See para. 2.

¹⁵⁴ [1968] A.C. 910.

¹⁵⁵ Clark, "The Last Word on the Last Word" (1969), 32 M.L.R. 142.

¹⁵⁶ [1968] A.C. 910. 971.

disclosure",¹⁵⁷ and Lord Morris noted: "I see no reason to envisage friction and tension as between the courts and the executive. They both operate in the public interest".¹⁵⁸

The Commissioner and the Advisory Council

170. Our Bill providing for the appointment of the Commissioner has no special provision relating to Crown Privilege. It states that the Commissioner shall have the powers of a Royal Commissioner.¹⁵⁹ A witness summoned to attend or appearing before a Royal Commission is not compelled to answer any question or produce any book, document or writing if he has a reasonable excuse for refusing. And he has the same protection as a witness in a case tried in the Supreme Court.¹⁶⁰

171. The function of the Advisory Council is to make recommendations to the Commissioner on matters relating to the latter's work and activities and we do not see any question of Crown privilege arising in relation to its work.

The Tribunal

172. As in the case of judicial review, our Bill relating to the Tribunal does not seek to affect any claim of Crown privilege that may be made in any proceedings within the application of the Bill. We provide that the Tribunal may make any inquiry or inspection which appears to be necessary or expedient for the purposes of any proceedings before it.¹⁶¹ In practice, if a claim of Crown privilege is made in proceedings before the Tribunal, the Tribunal will be required to consider the claim in the light of the existing law.

The Ombudsman

173. Our Ombudsman Bill expressly provides that the Crown shall not be entitled to any such privilege in respect of the production of documents or the giving of information as is allowed by law in legal proceedings.¹⁶² It also provides that a public authority shall not maintain secrecy or observe any other restriction upon the disclosure of information obtained by or furnished to the authority.¹⁶³ Exceptions are proposed in the case of proceedings of Cabinet and of any Committee of Cabinet and of documents relating to any such proceedings.¹⁶⁴ Subject to these exceptions, it is, to us, essential that the Ombudsman should not be denied access to documents or information: public confidence in his power to investigate complaints thoroughly could not be secured if his powers in this regard were curtailed. The Auditor-General may cause search to be made in and extracts to be taken from any book, document, or record in any public office¹⁶⁵ and the Ombudsman,

¹⁵⁷ *Id.*, 996, and see *Ex parte Attorney General; Re Cook* (1967) 86 W.N. (Pt 2) (N.S.W.) 222.

¹⁵⁸ [1958] A.C. 910, 955.

¹⁵⁹ The Commissioner for Public Administration Bill, s. 6 (2).

¹⁶⁰ Royal Commissions Act, 1923, s. 11.

¹⁶¹ The Public Administration Tribunal Bill, ss. 38, 63 and 64.

¹⁶² The Ombudsman Bill, s. 20 (2) (a) and (b).

¹⁶³ *Id.*, s. 20 (2) (c).

¹⁶⁴ *Id.*, s. 21.

¹⁶⁵ Audit Act, 1902, s. 14.

in our view, should have a like power. A comparable provision was welcomed when the United Kingdom's Parliamentary Commissioner Act 1967 was before Parliament and evoked no amendment in the Committee Stage in the Commons.¹⁶⁶ Legislation in New Zealand and Western Australia contains similar provisions.¹⁶⁷

174. Any person appointed to the office of Ombudsman will, we assume, be a responsible person of high standing and we do not believe that the public interest will be prejudiced as a result of the Crown not being entitled to claim, against the Ombudsman, the privilege now being considered.

175. The exceptions in the case of Cabinet proceedings mentioned in para. 173 are proposed because, in our view, any decision to make any part of the proceedings of Cabinet available to scrutiny should be a decision of Cabinet and of no other person or body. Similar legislative provisions exist in other places.¹⁶⁸

REASONS FOR OFFICIAL ACTIONS

176. We do not recommend that public authorities should be obliged to give reasons for official actions, even when requested to do so. A requirement that reasons be given where practicable is sound and productive of good effects. In cases involving licences needed for livelihood purposes, the absence of reasons can give rise to hardship or feelings of hardship. But to impose a general requirement to this effect must so add to work loads and so interfere with the efficiency of public authorities that the disadvantages of adopting such a course of action must outweigh the advantages. When the Commissioner is appointed, he will, we anticipate, recommend that reasons must be given in specified instances. When the Tribunal is constituted and the Ombudsman is appointed, persons approaching either of them will not be prejudiced by the absence of expressed reasons; our proposed Bills confer powers on each body sufficient, in our view, to ascertain the reasons.¹⁶⁹

COMPENSATION

177. We have indicated in para. 4 that we do not read our terms of reference as entitling us to consider whether compensation should be payable to a person adversely affected by an official action of a public authority. Yet in the absence of power to compensate, any review or appellate body is limited in its capacity to do right. A public authority taking an official action for the public good may make a mistake which enables its intentions to be frustrated or a public authority taking an official action may inflict private hurt for which there is no right of

¹⁶⁶ See Stacey, *The British Ombudsman* (1971), p. 127.

¹⁶⁷ (N.Z.) Parliamentary Commissioner Act 1962, ss. 17 (1) (c), 18 (4). (W.A.) Parliamentary Commissioner Act, 1971, s. 22 (1).

¹⁶⁸ (U.K.) Parliamentary Commissioner Act 1967, s. 8 (4). (N.Z.) Parliamentary Commissioner Act 1962, ss. 17 (1) (c), 18 (4). (W.A.) Parliamentary Commissioner Act, 1971, s. 22 (1).

¹⁶⁹ The Public Administration Tribunal Bill, s. 63; The Ombudsman Bill, ss. 12 and 5 (2) (e).

reparation under existing law. It can be argued, in the first case, that the authority's intentions should not be frustrated if there is power in some body to validate the official action and to order the authority to make reparation for its mistake and, in the second case, that the public good should not be attained without compensation for private loss or hurt thereby occasioned. These are complex and important matters which might well be the subject of a separate inquiry.

CONCLUSION

178. In 1969, the Law Commission in England recommended unsuccessfully that a Royal Commission or a committee of comparable status should be constituted to investigate the administrative law of that country.¹⁷⁰ Between 1964 and 1971, a Royal Commission in Ontario made such an investigation.¹⁷¹ We have the powers and authorities conferred on a commissioner by the Royal Commission Act, 1923, but we have not considered it necessary to exercise those powers for the purpose of this Report. We are satisfied that the diversity in character, nature and purpose of public authorities is such that definitive proposals can be made only after consultations are had with public authorities and representative citizens: consultations which may require years of work. The Ontario experience seems to support our view; there the Royal Commission worked for nearly seven years with the aid of special assistants, consultants, counsel and researchers and its Report is now being supplemented by a full review of statutes which confer power on public authorities.¹⁷²

179. In this Report, we have tried to relate our terms of reference to some of the major problems in administrative law and to state how, in our view, those problems might best be solved in New South Wales. Laws affecting the relationship between citizen and State should be fair and should be applied fairly. To assist in attaining fairness we propose a three part system which is capable of working immediately. Two parts, the Ombudsman and the Public Administration Tribunal, will from time to time require work-area changes. The third part, the Commissioner for Public Administration, is, through Government and Parliament, the agent for change. Some of our proposals are new. But so too are some of the rights and duties as between man and the State.

14th December, 1972.

(signed) C. L. D. MEARES,
Chairman.

(signed) D. G. BENJAFIELD,
Member.

(signed) D. GRESSIER,
Member.

¹⁷⁰ Law Com. No. 20 (Cmd. 4059), para. 10.

¹⁷¹ See Ontario Royal Commission, "Inquiry into Civil Rights".

¹⁷² See para. 123.

PART VIII**PROPOSED BILLS**

1. The Commissioner for Public Administration Bill
2. The Public Administration Tribunal Bill
3. The Ombudsman Bill

No. , 197

A BILL

To appoint a Commissioner for Public Administration; to constitute an Advisory Council on Public Administration; to define the powers, authorities, duties and functions to be exercised by them respectively; and for purposes connected therewith.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Commissioner for Public Administration Act, 1972". Short title and commencement.

5 (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. This Act is divided as follows :—

Division of Act.

PART I.—PRELIMINARY—SS. 1-3.

10 PART II.—COMMISSIONER FOR PUBLIC ADMINISTRATION—SS. 4-6.

PART III.—ADVISORY COUNCIL ON PUBLIC ADMINISTRATION—SS. 7-12.

PART IV.—GENERAL—SS. 13-14.

15 3. In this Act, except in so far as the context or subject matter otherwise indicates or requires— Interpretation.

"Commissioner" means the Commissioner for Public Administration.

20 "Council" means the Advisory Council on Public Administration constituted under section 7.

PART II.

COMMISSIONER FOR PUBLIC ADMINISTRATION.

4. (1) There shall be a Commissioner for Public Administration who shall have and may exercise the powers, authorities, duties and functions conferred and imposed upon him by this Act. Commissioner for Public Administration.

(2) The Commissioner shall be appointed by the Governor and shall, subject to this Act, hold office for such term, not exceeding seven years, as may be specified in the instrument of appointment, but shall be eligible for re-appointment from time to time.

(3)

(3) The salary and allowances of the Commissioner shall be fixed by the Governor.

(4) The provisions of the Public Service Act, 1902, shall not apply to or in respect of the appointment of the Commissioner and the Commissioner shall not in his capacity as such be subject to the provisions of that Act during his term of office.

(5) A person who is of or above the age of sixty-five years shall not be appointed as Commissioner.

(6) The Commissioner shall cease to hold office as Commissioner—

- (a) if he dies;
- (b) if he resigns his office by writing under his hand addressed to the Governor and delivered to the Minister;
- (c) if he becomes a bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors, or makes any assignment of his salary, remuneration, allowances or estate for their benefit;
- (d) if he becomes a mentally ill person, a protected person or an incapable person within the meaning of the Mental Health Act, 1958;
- (e) if he is convicted in New South Wales of a crime or offence which is punishable by imprisonment for twelve months or upwards, or if he is convicted elsewhere than in New South Wales of a crime or offence which if committed in New South Wales would be a crime or offence so punishable;
- (f) if he is removed from office by the Governor for inability, misbehaviour or failure to comply with the terms and conditions of his appointment; or
- (g) on the day on which he attains the age of sixty-five years.

(7)

(7) Any person who, at the date of his appointment as Commissioner, is an officer of the Public Service and who ceases to be Commissioner from any cause whatsoever, otherwise than in pursuance of subsection (6) (paragraph (b) 5 excepted) shall, if he is under the age of sixty years, be appointed to some office in the Public Service not lower in classification and salary than that which he held immediately before his appointment as Commissioner.

(8) Nothing contained in this Act shall affect the 10 rights accrued or accruing under the Public Service Act, 1902, the Superannuation Act, 1916, or the Local Government and Other Authorities (Superannuation) Act, 1927, to any person appointed as Commissioner who is at the time of his appointment, or has been at any time previous thereto, an officer of 15 the Public Service, an employee within the meaning of the Superannuation Act, 1916, or a permanent servant within the meaning of the Local Government and Other Authorities (Superannuation) Act, 1927.

(9) Any officer of the Public Service or person who 20 is an employee within the meaning of the Superannuation Act, 1916, or permanent servant within the meaning of the Local Government and Other Authorities (Superannuation) Act, 1927, appointed as Commissioner shall continue to contribute to any fund or account and be entitled to receive 25 any deferred or extended leave and any payment, pension or gratuity as if he were an officer, employee or permanent servant within the meaning of the Public Service Act, 1902, the Superannuation Act, 1916, or the Local Government and Other Authorities (Superannuation) Act, 1927, as the case 30 may be, and for such purpose his service as Commissioner shall be service for the purpose of such Acts.

In respect of a Commissioner who contributes to a fund or account as aforesaid, the Minister shall pay to the State Superannuation Board or the Local Government Superannua- 35 tion Board, as the case may be, such amounts as would have been payable to that Board if such Commissioner had remained

remained an employee or permanent servant as aforesaid and had continued to be employed at the same salary or wage and allowances as the salary or wage and allowances as is or are being paid to him as Commissioner.

5 **5.** (1) The Governor may under and subject to the provisions of the Public Service Act, 1902, appoint and employ such officers and servants as may be necessary for the administration of this Act. Officers and servants.

10 (2) For the purposes of this Act the Minister or the Commissioner may, with the approval of the public authority concerned, on such terms as may be arranged, make use of the services of any of the officers, employees or servants of any public authority.

15 **6.** (1) The Commissioner, in accordance with any reference to him made by the Minister— Duties and powers of Commissioner.

20 (a) shall review and keep under review the law relating to public authorities and the powers exercisable by public authorities and shall recommend such changes in that law as are, in the opinion of the Commissioner, necessary or desirable; and

(b) may, for the purposes of this Act—

 (i) hold and conduct such inquiries as he *thinks* fit; and

25 (ii) make references to the Council on matters relating to his work and activities.

(2) For the purposes of any inquiry under this section the Commissioner shall have the powers, authorities, protections and immunities conferred on a Commissioner by Division 1 of Part II of the Royal Commissions Act, 1923, and that Act (section 13 and Division 2 of Part II excepted) shall, *mutatis mutandis*, apply to any witness summoned by or appearing before the Commissioner.

PART III.

ADVISORY COUNCIL ON PUBLIC ADMINISTRATION.

7. (1) There shall be an Advisory Council on Public Administration which shall consist of—

Advisory
Council on
Public Ad-
ministration.

- 5 (a) the Commissioner;
- (b) the Ombudsman;
- (c) the President of the Public Administration Tribunal;
- 10 (d) a member of the Public Service Board appointed by the Governor; and
- (e) three other members appointed by the Governor, each of whom has, in the opinion of the Minister, special knowledge of or experience in public administration or public law.

15 (2) The Commissioner shall be the chairman of the Council.

(3) (a) The members appointed under this section shall, subject to this section, hold office for such term not exceeding three years as may be specified in the respective instruments of appointment and shall be eligible for reappointment from time to time.

(b) A person of or above the age of sixty-five years shall not be eligible for appointment as a member of the Council under this section.

25 (4) (a) The Governor may for any cause which to him seems sufficient remove from office any of the members appointed under this section.

(b)

(b) A member of the Council shall cease to hold office as such a member and as a member of any committee to which he has been appointed—

- (i) if he dies;
- 5 (ii) if he resigns his office by an instrument in writing under his hand addressed to the Governor;
- (iii) if he becomes a bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors, or makes any assignment of his salary, remuneration, allowances or estate for their benefit;
- 10 (iv) if he is convicted in New South Wales of a crime or offence which is punishable by imprisonment for twelve months or upwards, or if he is convicted elsewhere than in New South Wales of a crime or offence which if committed in New South Wales would be a crime or offence so punishable;
- 15 (v) if he becomes a mentally ill person, a protected person or an incapable person within the meaning of the Mental Health Act, 1958;
- 20 (vi) if he is removed from office by the Governor;
- (vii) if, in the case of a member appointed under section 7 (1) (d), he ceases to be a member of the Public Service Board; or
- 25 (viii) on the day on which he attains the age of sixty-five years.

8. (1) The Council shall meet at least once in each four Meetings of
the Council. months.

30 (2) (a) The chairman shall preside at all meetings of the Council at which he is present and in the absence of the chairman the members may elect one of their number to preside as chairman.

(b)

(b) The chairman or member presiding shall have a deliberative vote, and, in the event of an equality of votes, shall have a second or casting vote.

(3) Four members shall form a quorum at any meeting of the Council and any duly convened meeting at which a quorum is present shall be competent to transact any business of the Council.

(4) At any meeting of the Council at which a quorum is present the decision of a majority of votes shall be the decision of the Council.

(5) The procedure for the calling of meetings of the Council and for the conduct of business at such meetings shall be as determined by the Council.

9. (1) The Council shall make recommendations to the Commissioner, either of its own motion or on reference made by the Minister or the Commissioner, on matters relating to the work and activities of the Commissioner.

Functions
of Council.

(2) The Commissioner shall furnish to the Council full information in relation to any matter arising out of the work and activities of the Commissioner which the Council may require.

10. (1) The Council may appoint such committees of the Council as it thinks fit to assist and advise it in connection with the carrying out of its functions under this Act.

Committees
of the
Council.

(2) Any such committee may consist of members of the Council, persons who are not members or partly of persons who are, and partly of persons who are not, members of the Council.

11. A member of the Council or of a committee of the Council shall, in the performance of his duties as such a member, act solely in the public interest and not as the representative of any particular person or body.

Members of
Council
and
committee
to act in
public
interest.

12.

12. A member of the Council and a member of any committee of the Council— Expenses
and fees.

- 5 (a) shall be entitled to be reimbursed his expenses, not exceeding an amount calculated according to a scale approved by the Minister, incurred by him for attending meetings, and transacting the business of the Council or of any such committee, as the case may be; and
- 10 (b) shall, where he is a member of the Council referred to in section 7 (1) (e), be entitled to receive such remuneration, whether by way of fee or allowance or otherwise for acting as a member of the Council or of any such committee as may from time to time be determined by the Minister.

15 **PART IV.**

GENERAL.

13. (1) The Commissioner and the Council may from Reports.
time to time and shall, upon direction by the Minister, each make an interim report on work done under any reference.

20 (2) The Commissioner shall upon the conclusion of his work under any reference make a final report of his work under that reference.

25 (3) The Commissioner and the Council shall, as soon as practicable after the thirtieth day of June in each year, make a report on the exercise of their respective functions during the period of twelve months ending on that day.

30 (4) In any report made by the Commissioner under subsection (3), the Commissioner shall give particulars of any statement made to the Public Administration Tribunal under section 32 of the Public Administration Tribunal Act, 197 , of which a copy has been forwarded to him under section 77 (2) of that Act.

(5)

(5) The Commissioner and the Council shall furnish their respective reports to the Minister.

(6) The Minister shall lay or cause to be laid any report under subsection (2) or (3) before both Houses of Parliament as soon as practicable after the receipt by him of the report.

14. The provisions of the Defamation Act, 1958, shall ^{Privilege.} extend and apply to any inquiry, and report as a result of an inquiry, made by the Commissioner under the authority of this Act and to the proceedings of the Commissioner, the Council and any committee of the Council under the authority of this Act and to reports of those proceedings as if those proceedings were an inquiry made by the Commissioner under the authority of this Act.

No. , 197 .

A BILL

To establish a Public Administration Tribunal; to define its powers, authorities, duties, functions and discretions; and for purposes connected therewith.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Public Administration Tribunal Act, 1972". Short title and commencement.

5 (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. This Act is divided as follows :—

Division of Act.

PART I.—PRELIMINARY—ss. 1-5.

10 PART II.—ESTABLISHMENT OF THE TRIBUNAL—ss. 6-15.

PART III.—OBJECTIONS AND INQUIRIES—ss. 16-43.

PART IV.—APPEALS TO THE TRIBUNAL—ss. 44-48.

PART V.—CONTEMPT—ss. 49-58.

15 PART VI.—PROCEDURE—ss. 59-71.

PART VII.—GENERAL—ss. 72-80.

SCHEDULE.

3. The Supreme Court Act, 1970, is amended—

Amendment of Act No. 52, 1970.

20 (a) by omitting from section 48 (1) (a) (vii) the words "person; or" and by inserting in lieu thereof the word "person;"

(b) by omitting from section 48 (1) (a) (viii) the word "Committee." and by inserting in lieu thereof the words "Committee; or"; and

25 (c) by inserting in section 48 (1) (a), after paragraph (viii), the following new paragraph—

“(ix) the Public Administration Tribunal.”

4. This Act binds the Crown not only in right of New The Crown. South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

5. (1) In this Act, except in so far as the context or Interpretation subject matter otherwise indicates or requires—

“corporation” includes any artificial person.

“judge” means—

- 5 (a) a judge of the Supreme Court of New South Wales;
- (b) a member of the Industrial Commission of New South Wales;
- (c) a judge of a District Court; and
- 10 (d) a member of the Workers' Compensation Commission of New South Wales.

“person” includes a public authority.

15 “President” means the President of the Tribunal appointed under section 10 (1), and includes a person appointed under section 10 (4) to act as President.

“public authority” includes—

- 20 (a) the Governor;
- (b) any Minister of the Crown;
- (c) any person appointed to office by the Governor;
- (d) any statutory body representing the Crown;
- (e) any officer of the Public Service;
- 25 (f) any person in the service of the Crown or of any statutory body representing the Crown;
- (g) any person in relation to whom or to whose function an account is kept of administration or working expenses, where the account—
- 30 (i) is part of the accounts prepared pursuant to the Audit Act, 1902;
- (ii) is required by or under any Act to be audited by the Auditor-General;

(iii)

-
- (iii) is an account with respect to which the Auditor-General has powers under any law relating to the audit of accounts; or
- 5 (iv) is an account with respect to which the Auditor-General may exercise powers under a law relating to the audit of accounts where requested so to do by a Minister of the Crown;
- 10 (h) any person entitled to be reimbursed his expenses, from a fund of which an account mentioned in paragraph (g) is kept, of attending meetings or carrying out the business of any body constituted by or under an Act;
- 15 (i) any person declared by the regulations to be a public authority for the purposes of this Act;
- (j) any holder of an office declared by the regulations to be an office of a public authority for the purpose of this Act; and
- 20 (k) any person acting for or on behalf of, or in the place of, or as deputy or delegate of, any person described in any of the foregoing paragraphs.

25 "regulations" means regulations made under this Act.

"Tribunal" means the Public Administration Tribunal.

(2) In this Act, "official action" means—

"Official action."

- (a) an act of a public authority, which act does, or if valid would, affect the position of a person;
- 30 (b) a refusal or failure by a public authority to do an act, which act if done would affect the position of a person;

(c)

5 (c) the taking by a public authority of a step which is, or if valid would be, a material preliminary step to an act, which act if done by that or another public authority would affect the position of a person; or

(d) a refusal or failure by a public authority to take a material preliminary step to an act, which act if done by that or another public authority would affect the position of a person.

10 (3) For the purposes of subsection (2)—

(a) an act affects the position of a person if —

(i) the act creates, declares or affects any right, privilege, obligation or liability of his;

15 (ii) the act grants to or confers on him any license, permit, certificate, approval, registration or other permission required or authorised by law or any pecuniary or other benefit or advantage;

20 (iii) the act affects any license, permit, certificate, approval, registration or other permission required or authorised by law granted to or conferred on him or any pecuniary or other benefit or advantage granted to or conferred on him;

25 (iv) the act requires him to do or not to do any thing which, but for the requirement, he would not be required by law to do or not to do; or

30 (v) the act is a breach of his rights or would, but for statutory or other special authorisation by law, be a breach of his rights;

(b)

(b) "a material preliminary step" to an act means a proposal, recommendation, report, consent, approval or other step—

5 (i) required by law as a condition precedent to the act; or

(ii) required or authorised by law as a preliminary to the act;

10 (c) there is a failure by a public authority to do an act or take a step if the public authority, being lawfully authorised so to do, does not do the act or take the step within forty days after service on the public authority, by a person interested, of a notice requiring the public authority to do the act or take the step.

15 (4) Paragraph (c) of subsection (3) does not affect the operation of a failure arising otherwise than by virtue of of that paragraph.

(5) For the purposes of this Act, a person is affected ^{"Person affected."} by an official action if he is, in relation to the official action, ^{affected."} such a person as it mentioned in subsection (2).

20

(6) Where, by this Act or the regulations, the Supreme ^{Terms.} Court or the Tribunal may make any order or do any other ^{Act No. 52, 1970, s. 21.} thing on terms, the Supreme Court or the Tribunal, as the case may be, may make the order or do the thing on such terms ^{and conditions (if any) as it thinks fit.}

25

PART II.

ESTABLISHMENT OF THE TRIBUNAL.

30 6. (1) There shall be a Public Administration Tribunal ^{Public Administration Tribunal.} which shall consist of—

(a) a President;

(b) one or more members who are judges in addition to the President;

(c)

(c) ten or more members who have, in the opinion of the Minister, special knowledge or experience in—

- (i) government;
- (ii) administration;
- 5 (iii) the law;
- (iv) the Public Service;
- (v) trade, commerce or industry;
- (vi) a branch of the social sciences; or
- (vii) a branch of any other science; and

10 (d) any person appointed as a member, on the recommendation of the President, for the purposes of any proceedings before the Tribunal.

(2) The Tribunal shall be a court of record, and shall have an official seal, which shall be judicially noticed. Act No. 10, 1924, s. 4 (1).

15 (3) A member shall be appointed by the Governor and shall, subject to this Act, hold office as a member until the expiry of such term, not exceeding seven years, as the Governor shall by the instrument of appointment of that member specify and shall be eligible for re-appointment.

20 (4) A member may, by the instrument of his appointment, be required to give his whole time or part only of his time to his duties as a member.

(5) A member shall be entitled to be reimbursed such travelling and out-of-pocket expenses as the Minister may 25 from time to time determine.

(6) The provisions of the Public Service Act, 1902, shall not apply to or in respect of the appointment of any member and a member shall not in his capacity as member be subject to the provisions of that Act during his term of office.

30 7. (1) This section applies to a member who is a judge. Judge as member: further provisions.
(2)

(2) His appointment as a member shall not, nor shall his service as a member, affect his tenure of office as a judge, or his rank, title, status, precedence, salary or other rights or privileges as a judge.

5 (3) Notwithstanding section 6 (4), he may discharge his function as a judge, but while he is a member he shall not (unless otherwise provided by the instrument of his appointment as a member) be required to discharge his function as a judge.

10 (4) His service as a member shall, for all purposes, be taken to be service as a judge.

8. (1) This section applies to a member who is not a judge. Other members: further provisions.

(2) If, by the instrument of his appointment, he is
15 required to give his whole time to his duties as a member, he shall be paid an annual salary of _____ dollars.

(3) If, by the instrument of his appointment, he is
20 required to give part only of his time to his duties as a member, he shall be entitled to receive such remuneration (whether by way of salary, fee, allowance or otherwise) as the Minister may from time to time determine.

(4) (a) Where he—

(i) is, by the instrument of his appointment, required to
25 give his whole time to his duties as a non-judicial member;

(ii) was, immediately before his first appointment as a member, an officer of the Public Service; and

(iii) ceases to be a member, otherwise than pursuant to section 9 (2) (b) (subparagraph (v) excluded),

he

he shall, if he is under the age of sixty years, be appointed to some office in the Public Service not lower in classification and salary than that which he held immediately before that appointment.

5 (b) Nothing contained in this Act shall affect the rights accrued or accruing under the Public Service Act, 1902, the Superannuation Act, 1916, or the Local Government and Other Authorities (Superannuation) Act, 1927, to any person appointed as a member who is at the time of his appointment, 10 or has been at any time previous thereto, an officer of the Public Service, an employee within the meaning of the Superannuation Act, 1916, or a permanent servant within the meaning of the Local Government and Other Authorities (Superannuation) Act, 1927.

15 (c) Any officer of the Public Service or person who is an employee within the meaning of the Superannuation Act, 1916, or permanent servant within the meaning of the Local Government and Other Authorities (Superannuation) Act, 1927, appointed as a member shall continue to contribute 20 to any fund or account and be entitled to receive any deferred or extended leave and any payment, pension or gratuity as if he were an officer, employee or permanent servant within the meaning of the Public Service Act, 1902, the Superannuation Act, 1916, or the Local Government and Other Authorities 25 (Superannuation) Act, 1927, as the case may be, and for such purpose his service as a member shall be service for the purpose of such Acts.

In respect of a member who contributes to a fund or account as aforesaid, the Minister shall pay to the State 30 Superannuation Board or the Local Government Superannuation Board, as the case may be, such amounts as would have been payable to that Board if the member had remained an employee or permanent servant and had continued to be employed, at the same salary or wage and allowances as the 35 salary or wage and allowances as is or are being paid to him as a member.

9. (1) A person who is over the age of sixty-five years shall not be appointed a member. Disqualification;
cesser
of office.

(2) A member shall cease to hold office as a member—

- 5 (a) in the case of a member who is a judge—
- (i) if he dies;
 - (ii) if he ceases to hold office as a judge; or
 - 10 (iii) if he resigns his office as a member by an instrument in writing under his hand addressed to the Governor and delivered to the Minister;
- (b) in the case of a member who is not a judge—
- (i) if he dies;
 - 15 (ii) if he becomes a bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors, or makes any assignment of his salary, remuneration, allowances or estate for their benefit;
 - 20 (iii) if he becomes a mentally ill person, a protected person or an incapable person within the meaning of the Mental Health Act, 1958;
 - 25 (iv) if he is convicted in New South Wales of a crime or offence which is punishable by imprisonment for twelve months or upwards, or if he is convicted elsewhere than in New South Wales of a crime or offence which if committed in New South Wales would be a
 - 30 crime or offence so punishable;
 - (v) if he resigns his office as a member by an instrument in writing under his hand addressed to the Governor and delivered to the Minister;

(vi)

(vi) if he is removed from office by the Governor for inability, misbehaviour or failure to comply with the terms and conditions of his appointment; or

5 (vii) on the day on which he attains the age of sixty-five years.

10 10. (1) The Governor may appoint a judge of the President Supreme Court to be President.

(2) A judge of the Supreme Court may be appointed 10 to be president at the time of his appointment as a member or at any time afterwards.

(3) The President may resign his office as President without resigning his office as a member.

15 (4) Where there is a vacancy in the office of President or the President is absent from his duties, the Governor may appoint any judge of the Supreme Court to act as President and that judge may discharge all the functions which may lawfully be discharged by the President.

20 11. (1) The Tribunal shall act under the general superintendence of the President. General powers of the President.

(2) The President may give directions for the constitution and chairmanship of the Tribunal for any matter coming before the Tribunal.

25 (3) No person, other than a member, shall be concerned to see, or entitled to inquire, whether anything done by the Tribunal, or by a member, is done in pursuance of the superintendence or direction of the President under this section.

30 12. More than one sitting of the Tribunal may be held at the same time. Sittings.

Act No. 10,
1921, s. 7.

13.

13. (1) Subject to this Act and the regulations, the Constitution Tribunal may be constituted by any one or more members in ^{for particular} respect of any matter arising in any proceedings before the ^{matters.} Tribunal.

8 (2) Where the Tribunal is constituted by two or more members, one of them shall be chairman.

(3) The Tribunal may be constituted differently for separate matters arising in any proceedings.

10 14. (1) This section applies where a member, having ^{Member} been the member or one of the members constituting the ^{ceasing} Tribunal in respect of any matter arising in any proceedings ^{to act.} before the Tribunal, ceases to act as member in respect of that matter before its conclusion, whether by reason of death or other termination of office, or for any other reason.

15 (2) Where the Tribunal was constituted by two or more members, and one or more of them cease to act as mentioned in subsection (1), but one or more of them are available to continue to act, then, with the consent of the parties, the matter may be continued and concluded before 20 the Tribunal constituted by the member or members so available, either with or without another member in the place of any member so ceasing to act.

25 (3) Where the Tribunal was constituted by a member sitting alone, and he ceases to act as mentioned in subsection (1), or where the parties do not consent as mentioned in subsection (2), the matter shall be commenced anew.

15. Where two or more members constituting the ^{Disagree-} Tribunal disagree— ^{ment.}

- 30 (a) if there is a majority, the decision of the majority shall be the decision of the Tribunal; and
- (b) if the members are equally divided, the decision of the chairman shall be the decision of the Tribunal.

PART

PART III.
OBJECTIONS AND INQUIRIES.

16. This Part does not apply—

Application.

5 (a) to an official action taken before the commencement of this Act;

(b) to an official action of a kind described in the Schedule; or

(c) to an official action of a kind prescribed.

17. (1) The Attorney General may, by virtue of his office, object to an official action of a public authority. *Standing to object.*

(2) A person who claims to be adversely and substantially affected by an official action of a public authority may object to the official action.

18. (1) Where a person proposes to object to an official action arising by a failure by a public authority to do an act or take a step, and he has served on the public authority a notice requiring the public authority to do the act or take the step as mentioned in section 5 (3) (c), an objection by him to the official action must be made after forty days but before eighty days after service of the notice. *Time for objection.*

(2) In a case to which subsection (1) does not apply, an objection to an official action must be made not more than forty days after the official action.

19. An objection to an official action of a public authority must be made by serving notice in writing of the objection on the public authority. *Manner of objection.*

20. (1) A notice of objection to an official action— *Notice of objection.*

(a) must describe the official action;

(b)

(b) must, except where the Attorney General is objector, state how the objector claims to be affected by the official action; and

(c) must state—

- 5 (i) the grounds of the objection;
- (ii) the action (if any) of the public authority which the objector seeks; and
- 6 (iii) the matters prescribed.

(2) A notice of the objection may be amended at 10 any time with the leave of the Tribunal.

21. (1) An objector to an official action of a public authority may request the Tribunal to inquire into the official action. Request for inquiry.

(2) The request must be made in the manner and 15 form prescribed.

22. (1) In a case to which section 18 (1) applies, a request for an inquiry into an official action must be made after forty days but before ninety days after service of the notice mentioned in section 5 (3) (c). Time for request.

20 (2) In a case to which section 18 (1) does not apply, a request by an objector for an inquiry into an official action must be made after forty days after the making of the objection but before ninety days after the official action.

23. Upon a request being made to the Tribunal for an inquiry into an official action of a public authority, the Tribunal shall notify the public authority of the request. Notification to public authority.

24. Upon being notified by the Tribunal of a request by an objector to an official action of a public authority for an inquiry into the official action, the public authority shall give 30 to the Tribunal a copy of the notice of objection. Copy of notice of objection for Tribunal.

25.

25. (1) Where, pursuant to section 21, the Attorney General requests the Tribunal to inquire into an official action of a public authority, the Tribunal shall inquire into the official action. Inquiry by right or at discretion.

5 (2) Where, pursuant to section 21, a person other than the Attorney General requests the Tribunal to inquire into an official action of a public authority—

(a) in the cases prescribed, the Tribunal shall inquire into the official action;

10 (b) in other cases, the Tribunal may inquire into the official action.

(3) Sections 28, 29 and 30 do not apply to a case to which subsection (1) or subsection (2) (a) applies.

26. (1) At any time after the taking of any official action, the Governor may, by order published in the Gazette, direct that the Tribunal shall not inquire, or continue inquiring, into the official action. Preclusion of inquiry.

(2) The Tribunal shall give effect to the direction.

20 (3) This section has effect notwithstanding section 25.

(4) An order under this section—

(a) shall take effect from the date of publication of the order or a later date specified in the order; and

25 (b) shall be laid before each House of Parliament within fourteen sitting days of that House after the date of publication.

30 (5) If either House of Parliament passes a resolution, of which notice has been given within fifteen sitting days of that House after an order has been laid before it, disallowing the order or any part thereof, the order or part thereupon ceases to have effect.

(6)

(6) Any time specified in or prescribed under this Act or fixed by the Tribunal in relation to anything arising out of an official action is suspended between the making of an order under this section in respect of the official action and the disallowance of the order or part thereof pursuant to subsection (5).

(7) For the purposes of subsections (4) and (5) sitting days shall be counted, whether or not they occur during the same session.

10 27. (1) Where, pursuant to section 21, a request is made to the Tribunal to inquire into an official action of a public authority, the Tribunal may order that the public authority give notice of the request to any person who may, in the opinion of the Tribunal, be affected by any decision or order of the Tribunal in an inquiry pursuant to the request.

Notice of request.

(2) Where the Tribunal is of the opinion that it is impracticable to give notice under subsection (1) to all persons individually the Tribunal may order that the public authority give notice of the request to specified persons and notify other persons by public advertisement.

28. (1) Where a request to inquire into an official action of a public authority is before the Tribunal, the Tribunal—

Preliminary decision.

(a) shall inform itself of the subject matter and circumstances of the request in such manner as it thinks fit;

25 (b) shall make a preliminary decision to inquire or not to inquire into the official action; and

30 (c) shall give notice of its preliminary decision to the objector and to the public authority and to any person to whom notice of the request has been given under section 27.

(2) The Tribunal shall give effect to subsection (1) without hearing the parties, unless it appears to the Tribunal that there is special reason to hear them.

29.

29. Where the Tribunal makes a preliminary decision not to inquire into an official action of a public authority— **Review of preliminary decision.**

- 5 (a) the Tribunal shall, in the notice to the objector under section 28 (c), tell him that he may, within the time specified in the notice, apply to the Tribunal for review of the preliminary decision;
- (b) upon application made pursuant to paragraph (a)—
- 10 (i) the Tribunal shall give notice of the application to the public authority and to any person to whom notice of the request has been given under section 27; and
- 15 (ii) the Tribunal shall hear the objector and the public authority, and may hear any other person, on the question whether the Tribunal should inquire into the official action; and
- (c) the Tribunal shall either, by order—
- (i) set aside its preliminary decision and decide to inquire into the official action; or
- 20 (ii) confirm its preliminary decision.

30. In deciding whether to inquire into an official action of a public authority, the Tribunal shall have regard to— **Discretionary inquiry: relevant matters.**

- (a) the public interest;
- 25 (b) the extent to which the objector is affected by the official action;
- (c) the nature, constitution, special knowledge and experience of the public authority;
- (d) the importance, complexity or difficulty of any matter the subject of the objection;
- 30 (e) where money or other property is involved, its amount or value or estimated amount or value;
- (f)

-
- (f) whether the Ombudsman has investigated the official action or, if not, whether the case is more fitted for investigation by the Ombudsman than for inquiry by the Tribunal;
- 5 (g) the nature and extent of any means of appeal from, or other review of, the official action, otherwise than under this Part;
- (h) whether there is a reasonable case for inquiry; and
- (i) such other matters as the Tribunal thinks relevant.

10 31. (1) Subject to this section, an objection to an official action, a request to inquire into an official action or an inquiry into an official action shall not affect the official action or anything done or to be done in consequence of the official action. Stay etc. of official action.

15 (2) Where an objection to an official action of a public authority is before the Tribunal, the Tribunal may recommend to that or any other public authority that the operation of the official action and anything done in consequence of the official action be suspended and that anything

20 to be done in consequence of the official action be deferred pending disposal of the objection and of any inquiry arising out of the objection.

(3) A public authority to whom a recommendation is made under subsection (2) may adopt the recommendation

25 to the extent, but only to the extent, to which it has power to do so.

(4) A public authority, in considering a recommendation under subsection (2), shall have regard to its opinion as to—

- 30 (a) the public interest; and
- (b) whether adoption of the recommendation may affect any right, privilege, obligation or liability of any person or may cause hardship to any person.

(5) This section does not affect the operation of

35 sections 34 and 36.

32. (1) Where, in an inquiry, there is put before the Tribunal a statement of policy of the Government on a matter relevant to the inquiry, the Tribunal shall, to the extent to which the policy is within power, give effect to the policy.

5 (2) For the purposes of subsection (1) "a statement of policy of the Government" means a statement—

(a) in writing and signed by a Minister of the Crown; and

(b) expressed to state a policy of the Government.

10 (3) Where, in an inquiry, there is put before the Tribunal a statement of policy of a public authority on a matter relevant to the inquiry, the Tribunal shall, to the extent to which the policy is within power, have regard to the policy.

15 (4) For the purposes of subsection (3), "a statement of policy of a public authority" means a statement—

(a) in writing and signed or otherwise authenticated by or on behalf of the public authority; and

(b) expressed to state a policy of the public authority.

20 (5) Where a statement of policy is put before the Tribunal—

(a) the Tribunal shall disclose that fact to the parties; and

25 (b) except to the extent that the Premier certifies to the Tribunal that disclosure of the terms of the statement is against the public interest, the Tribunal shall disclose the terms of the statement to the parties.

(6) The Tribunal shall not disclose any statement of policy to the extent that the Premier certifies as mentioned in subsection (5).

33. (1) Where, in an inquiry, the Tribunal is satisfied— Dismissal of inquiry.

- (a) that an objector to an official action has abandoned his objection;
- (b) that an objector is not adversely and substantially affected by an official action; or
- (c) that the Tribunal will not make an order under section 34 or 36,

the Tribunal may make an order dismissing the inquiry.

(2) Subsection (1) (b) does not apply where the Attorney General is the objector.

34. (1) Where, in an inquiry into an official action of a public authority, the Tribunal is satisfied, upon the findings of the Tribunal on the facts and on the law— Allowance of objection.

- (a) that the public authority was not required by law to take the official action, and that the official action was harsh, discriminatory or otherwise unjust; or
- (b) that the official action was beyond the power of the public authority,

the Tribunal may make an order allowing the objection.

(2) Subsection (1) is subject to subsection (3), and subject to section 32.

(3) Except where the Attorney General is an objector, the Tribunal shall not make an order allowing an objection unless the Tribunal is satisfied that the objector (or if there are two or more objectors, one or more of them) is adversely and substantially affected by the official action.

35. (1) Where, in an inquiry, the Tribunal is satisfied that there is a case for making an order allowing an objection to an official action of a public authority, the Tribunal— Remission to public authority.

(a) shall, before making the order, inform the public authority accordingly; and

(b)

(b) shall, if requested by the public authority, remit the official action to the public authority for reconsideration.

5 (2) Where the Tribunal remits an official action to a public authority pursuant to subsection (1), the Tribunal—

(a) may give to the public authority such directions, including directions on matters of law or fact, as to the Tribunal seem appropriate;

10 (b) may order the public authority to report in writing to the Tribunal, within a time specified by the Tribunal, on the reconsideration of the official action.

(3) Where a public authority reports to the Tribunal pursuant to an order under subsection (2) (b) the Tribunal—

15 (a) shall give to each party to the proceedings—

(i) a copy of the report; and

(ii) an opportunity to answer the report; and

20 (b) shall before making an order disposing of the inquiry take into account the report and any answer to the report.

(4) Where a public authority fails to report to the Tribunal pursuant to an order under subsection (2) (b), the Tribunal shall make an order allowing the objection.

25 36. (1) Where, in an inquiry, the Tribunal makes an order allowing an objection to an official action of a public authority, the Tribunal may, by order—

Objection
allowed:
powers of
Tribunal.

30 (a) in the case of an order made under section 34 (1), set aside, from the beginning or from such later date as the Tribunal thinks fit, the official action and any act done by the public authority in consequence of the official action;

(b)

(b) in the case of an order made under section 34 (1) (b), set aside the official action and any act done by the public authority in consequence of the official action; and

5 (c) in either case, remit the matter to the public authority for action in accordance with the directions of the Tribunal.

(2) For the purposes of subsection (1) (c), the Tribunal may, by order, direct the public authority to take
10 any action which the public authority might have taken instead of taking the official action under inquiry.

(3) The Tribunal may make an order under this section on terms.

37. (1) The parties to proceedings under this Part shall **Parties.**
15 be—

- (a) the objector;
- (b) the public authority; and
- (c) any person added as a party pursuant to subsection (2), (3) or (4).

20 (2) The Tribunal shall, upon application by the Minister concerned, order that the Minister concerned be added as a party.

(3) The Tribunal may, upon application by any party, order that any person be added as a party.

25 (4) The Tribunal may, upon application by any person, order that that person be added as a party.

(5) For the purposes of subsection (2), "Minister concerned" means the Minister of the Crown, if any, under whose administration the public authority functions, or who
30 is charged with the administration of the enactment, if any, under which the public authority functions.

38. (1) The Tribunal may, at any stage of proceedings under this Part— Procedure generally.

- 5 (a) inquire into and inform itself of any matter relevant to the proceedings in such manner as it thinks fit, whether in the presence or in the absence of the parties;
- (b) order any party to present a statement of his case in such form and with such particulars as the Tribunal may direct;
- 10 (c) make orders on the steps to be taken by any party in the proceedings;
- (d) make orders on the manner of adducing evidence, including orders that all or any of the evidence be given in writing or orally;
- 15 (e) order that evidence be given on oath or by statutory declaration, or order that evidence may be given without oath or statutory declaration;
- (f) fix by order the sequence in which evidence is to be given;
- 20 (g) order to attend for examination any person whose evidence the Tribunal thinks may be relevant;
- (h) make orders for the production before the Tribunal of any document or thing which the Tribunal thinks may be relevant;
- 25 (i) order the parties to make submissions orally or in writing or partly orally and partly in writing; and
- (j) proceed without an oral hearing.

(2) This section does not limit the operation of section 59 (1).

30 39. The Tribunal may, in proceedings under this Part— Evidence.

- (a) receive and act upon as evidence such oral, documentary or other matter as the Tribunal thinks relevant, whether or not admissible by the law of evidence;

(b)

- (b) by order restrict or exclude the examination of witnesses, including cross-examination and re-examination, so as to allow examination only to the extent to which the Tribunal thinks necessary;
- 5 (c) by order exclude any evidence or other matter put before the Tribunal which the Tribunal thinks has insufficient probative value or is unduly repetitious, unduly offensive, or otherwise vexatious.
- 10 40. (1) Where a person fails to comply with any order, direction or requirement of the Tribunal in proceedings under this Part, the Tribunal— Enforcement of orders, etc.
- (a) may, where the person is an objector, dismiss his objection;
- 15 (b) may, where the person is a public authority, make a report to the Minister for presentation to Parliament; and
- (c) may, where the person is a party other than an objector or a public authority, dismiss him from the inquiry.
- 20 (2) Subsection (1) does not limit the powers of the Tribunal under Part V.
41. (1) Unless the Tribunal otherwise orders, proceedings under this Part shall be conducted in the absence of the public. Privacy and publicity.
- 25 (2) Subsection (1) has effect subject to subsections (3) and (4).
- (3) Subject to subsection (4), the Tribunal shall make public its decision or order disposing of proceedings under this Part.

42. (1) Where, in proceedings under this Part, the Tribunal makes a decision or order disposing of the proceedings, the Tribunal may, on application by a party, and shall, on direction by the Supreme Court, state a case for the decision of the Supreme Court on any question of law arising in the proceedings, except a question already decided on a case stated under section 68 or 69. Case stated on disposal of proceedings.

(2) An application to the Tribunal for a case to be stated under this section must be made within twenty-eight days after the making of the decision or order disposing of the proceedings.

(3) An application to the Supreme Court for a direction that a case be stated under this section on any question of law may not be made unless—

(a) an application for the statement of a case on that question of law has been made in due time to the Tribunal; and

(b) the Tribunal—

(i) does not, within fourteen days after the date of the application, state a case in accordance with the application; or

(ii) refuses the application.

(4) An application to the Supreme Court for a direction that a case be stated under this section must be made—

(a) in a case to which subsection (3) (b) (i) applies— within twenty-eight days after the date of the application to the Tribunal; or

(b) in a case to which subsection (3) (b) (ii) applies— within fourteen days after the date of the refusal.

(5) The Supreme Court may, on terms, extend any time limited by subsection (4), and may do so as well after as before the time expires, whether or not an application for the extension is made before the time expires.

(6)

(6) Upon the Supreme Court deciding a question of law on a case stated under this section, the Tribunal shall vary its decision or order disposing of the proceedings so far as is necessary to give effect to the decision of the Supreme Court, and may make such further or other decisions or orders in the proceedings as the nature of the case requires.

43. (1) Where the Tribunal makes a decision or order disposing of proceedings under this Part, the Tribunal or the Supreme Court may, with a view to allowing due and convenient operation to section 42, order, on terms, that the operation of the decision or order disposing of the proceedings be stayed. Stay of operation of decision or order.

(2) The Supreme Court may discharge or vary an order of the Supreme Court or of the Tribunal under this section.

(3) The Tribunal may discharge or vary an order of the Tribunal under this section.

PART IV.

APPEALS TO THE TRIBUNAL.

44. Where, by or under an Act, an appeal lies to the Tribunal, then, subject to that Act, this Act (except Part III) applies to the appeal. Application of this Act.

45. An appeal—

- (a) shall be made in the manner and time prescribed; Manner and nature of appeal.
 and
 (b) shall be by way of re-hearing.

46. In an appeal—

- (a) the Tribunal shall have all the powers and duties of the person whose decision is under appeal; Powers of the Tribunal.
 (b) the Tribunal may receive further evidence, but where the decision under appeal is a decision after a hearing on the merits, the Tribunal shall not receive

PART V.

CONTEMPT.

49. In this Part, "contemnor" means a person guilty, or "Contemnor".
alleged to be guilty, of contempt of the Tribunal.

5 50. The Tribunal may, in accordance with this Part, deal with as contempt conduct of the following descriptions, but no other conduct— Conduct contemptuous.

(a) contempt of the Tribunal committed in the face of the Tribunal or in its hearing;

10 (b) wilfully and without sufficient cause—

(i) disobeying an order of the Tribunal, or an undertaking given to the Tribunal;

(ii) abetting, counselling or procuring disobedience to an order of the Tribunal, or an undertaking given to the Tribunal; or

15 (iii) preventing or obstructing the performance of an order of the Tribunal or the doing of anything authorised by an order or warrant of the Tribunal.

20 51. The powers of the Tribunal under this Part may be exercised only by a member who is a judge. Exercise of the powers of the Tribunal.

52. Proceedings under this Part shall be heard and determined in public. Publicity.

25 53. Where it is alleged, or appears to the Tribunal of its own view, that a person is guilty of contempt, the Tribunal may— Arrest.

(a) by oral order, direct that the contemnor be arrested and brought before the Tribunal forthwith;

30 (b) issue a warrant for the arrest of the contemnor and for bringing him before the Tribunal; or

(c)

- (c) order the contemnor to attend before the Tribunal to answer a charge specified in the order.

54. Where the contemnor is, or is brought, before the Tribunal, the Tribunal shall—

Charge, defence and determination.

- 5 (a) cause him to be informed orally of the contempt with which he is charged;
- (b) require him to make his defence to the charge;
- (c) hear any evidence and determine the matter of the charge; and
- 10 (d) make an order for the punishment or discharge of the contemnor.

55. (1) The Tribunal may, pending disposal of a charge of contempt—

Interim custody or release.

- 15 (a) order that the contemnor appear before the Tribunal at a time and place specified by the Tribunal;
- (b) order that the contemnor be kept in custody; or
- (c) order that the contemnor be released.

(2) The Tribunal may make an order under subsection (1) (c) on terms, which may include a requirement

20 that the contemnor give security, in such sum as the Tribunal directs, for his appearance in person to answer the charge.

56. (1) Where the contemnor is not a corporation, the Tribunal may punish contempt by order of committal to prison for a term of not more than twelve months or a fine of one

25 thousand dollars or both.

Punishment.

(2) Where the contemnor is a corporation, the Tribunal may punish contempt by ordering the contemnor to pay a fine of five thousand dollars.

(3) A fine payable pursuant to subsection (1) or

30 (2) shall be paid to the prescribed officer of the Tribunal.

(4)

(4) The Tribunal may make an order for punishment on terms, including a suspension of punishment or a suspension of punishment in case the contemnor gives security in such manner and in such sum as the Tribunal may approve for good behaviour and performs the terms of the security.

(5) Where a contemnor is committed to prison for a term, the Tribunal may order his discharge before the expiry of the term.

10 57. An appeal shall lie to the Supreme Court from an order of the Tribunal under this Part. Appeal to the Supreme Court.

15 58. This Part does not affect the powers of the Supreme Court in cases of contempt, nor the law relating to the prosecution of contemnors on indictment or information and the punishment of those convicted. Saving of general law.

PART VI.

PROCEDURE.

20 59. (1) Subject to this Act and the regulations, the Tribunal shall, in any proceedings, from time to time as occasion requires, by order regulate and direct the course of the proceedings in the manner which seems to the Tribunal best adapted to the just, quick and cheap disposal of the proceedings. General.
S.C.R., 1970,
Pt. 26 r. 4
(1) (c).

25 (2) It shall be a sufficient compliance with any requirement of this Act or the regulations concerning the form or content of any document if the document is substantially in accordance with the requirement, or has only such variations as the nature of the case requires.

30 60. A person may act for himself before the Tribunal or may be represented by barrister or solicitor or, with order of leave of the Tribunal, by any person. Audience and representation.

61. Any member or officer of the Tribunal may administer an oath to any person appearing before the Tribunal or any officer of the Tribunal. Oaths.

62. (1) The Tribunal may, for the purposes of any proceedings under this Act, make all such orders for the taking of evidence by deposition as might be made by the Supreme Court for the purpose of proceedings in that Court. Evidence by deposition.

(2) Subsection (1) does not limit any other power of the Tribunal under this Act.

63. (1) The Tribunal may, in any proceedings, order any person, including a party— Compulsion to testify, to produce, etc.

(a) to attend before the Tribunal to give evidence;

15 (b) to attend before an officer of the Tribunal or other person specified in the order for the purpose of taking evidence by deposition pursuant to section 62;

20 (c) to attend before the Tribunal or an officer of the Tribunal or other person specified in the order to produce any document or other thing in his possession, custody or power specified in the order;

(d) to send to the Tribunal in a form specified in the order, a copy of any document or a photograph of anything in his possession, custody or power specified in the order.

25 (2) A person who has complied with an order under subsection (1) shall be entitled to be paid by the prescribed officer his reasonable expenses of compliance in a sum assessed by that officer.

30 (3) Where an order is made to a person under subsection (1), the prescribed officer may cause to be tendered to him his estimated expenses of compliance in a sum assessed by that officer.

(4)

(4) Where a party applies for an order to be made under subsection (1), the Tribunal may require the party to pay to the prescribed officer, before the order is made, the estimated expenses of compliance as assessed by that officer.

(5) Where an order is made under subsection (1) upon the application of a party, and a sum is paid by the prescribed officer pursuant to subsection (2), a like sum shall be a debt due by the party to that officer.

64. (1) The Tribunal, for the purpose of enabling the ^{Inspection of property, etc.} proper determination of any matter in question in any proceedings, may order any person, including a party, to permit or do anything necessary to enable—

- (a) the inspection of any property;
- (b) the taking of samples of any property;
- 5 (c) the making of any observation of any property;
- (d) the trying of any experiment on or with any property; or
- (e) the observation of any process,

as may be specified in the notice.

0 (2) The Tribunal may, by order, authorise any person to enter any land or to do any other thing for the purpose of getting access to the property or to a place for observation of the process.

5 (3) The Tribunal shall, so far as practicable, before making an order under subsection (1) or (2), give an opportunity to be heard orally or in writing to each person who would be affected by the order if made.

(4) The Tribunal may, by order, direct by whom and in what amounts the expenses of compliance with an order under subsection (1) or (2) shall be paid.

(5)

(5) In this section, "property" includes any land and any document or other thing whether in the ownership, possession, custody or power of a party or not.

5 **65.** (1) The Tribunal shall, at such stage of any proceedings as it thinks appropriate, supply or cause to be supplied to each party a copy of all documentary evidence and other documentary material before the Tribunal which is relevant to the proceedings. Copies of evidence, etc., for the parties.

10 (2) Where, from the nature of any documentary evidence or documentary material before the Tribunal, it is impracticable or inconvenient to comply with subsection (1), the Tribunal may, instead of complying with that subsection order that the parties be at liberty to inspect that evidence or material.

15 (3) This section has effect subject to section 32 (6).

66. The Tribunal may, for the purpose of determining any matter arising in any proceedings, obtain the assistance of an expert and act on his certificate. Expert assistance. Act No. 10, 1921, s. 9A (1).

20 **67.** The Tribunal may, at any stage of any proceedings, order the parties to confer, either with or without a member or officer of the Tribunal, for the purposes of reaching agreement on any matter in question in the proceedings. Compulsory conference.

25 **68.** Where a question of law arises in any matter before the Tribunal constituted by a member who is a judge sitting alone, or by two or more members one or more of whom are judges, the Tribunal may— Question of law: Tribunal with judicial member.

(a) decide the question of law; or

(b) state a case on the question of law for the decision of the Supreme Court.

30 **69.** (1) This section applies where a question of law arises in any matter before the Tribunal constituted by a member who is not a judge sitting alone, or by two or more members none of whom is a judge. Question of law: Tribunal without judicial member.

(2)

(2) The Tribunal so constituted, and before which the question of law so arises, is in this section referred to as the Tribunal as at first constituted.

5 (3) In this section, "Presidential Tribunal" means the Tribunal constituted by the President sitting alone.

(4) Subject to this section, the Tribunal as at first constituted may decide the question of law.

10 (5) (a) With the consent of the parties, the Tribunal as at first constituted may be reconstituted so as to include a member who is a judge.

(b) The Tribunal so reconstituted may decide the question of law and the matter may be continued and concluded before the Tribunal so reconstituted.

15 (6) The Tribunal as at first constituted may, of its own motion or on application by a party, refer the matter to the Presidential Tribunal.

(7) The Presidential Tribunal may, of its own motion or on application by a party, take the matter to itself.

20 (8) Where a matter is referred or taken to the Presidential Tribunal under subsection (6) or (7), the Presidential Tribunal may—

(a) refer the matter back to the Tribunal as first constituted for decision of the question of law and continuance and conclusion;

25 (b) decide the question of law and refer the matter back to the Tribunal as at first constituted for continuance and conclusion;

(c) refer the matter to the Tribunal constituted by a member who is a judge sitting alone or by two or more members one or more of whom are judges; or

30

(d)

(d) state a case on the question of law for the decision of the Supreme Court.

(9) Where the Presidential Tribunal refers the matter to the Tribunal constituted as mentioned in subsection 5 (8) (c), the Presidential Tribunal shall either—

(a) order that the question of law shall be decided by the Tribunal so constituted, with or without liberty to state a case on the question of law for the decision of the Supreme Court; or

10 (b) order that a case shall be stated by the Tribunal so reconstituted on the question of law for the decision of the Supreme Court.

(10) Where a question of law is decided on a case stated under this section, and where a question of law is 15 decided by the Tribunal pursuant to an order under subsection (9) (a), the matter shall be continued and concluded before the Tribunal as at first constituted.

(11) This section does not affect the operation of section 14.

20 70. (1) The Tribunal shall give its decision disposing of any proceedings before it in writing and shall state, in writing, its reasons for the decision. Form of decision; reasons; correction of errors.

(2) The Tribunal may correct any clerical mistake in its decision or an error in its decision arising from any 25 accidental slip or omission.

71. (1) The Tribunal may, of its own motion or on application by any person interested, confirm, for the purposes of enforcement pursuant to this section, any order of the Tribunal. Enforcement of orders.

30 (2) For the purposes of subsection (1), the Tribunal shall be constituted by the President sitting alone.

(3)

(3) Where an order of the Tribunal has been confirmed for the purposes of enforcement pursuant to this section, the order shall, upon request by the Tribunal or by any person interested, be entered in the records of the Supreme Court.

5 (4) An order so entered shall be enforceable as if it were an order of the Supreme Court.

PART VII.

GENERAL.

10 72. Except to the extent that other provision is made by Time.
or under an Act— S.C.R., 1970,
Pt. 2 r. 3.

(a) the Tribunal may, on terms, extend or abridge any time specified in this Act or the regulations, or fixed by an order of the Tribunal;

15 (b) time may be extended under paragraph (a) as well after as before the time expires, whether or not an application for the extension is made before the time expires; and

20 (c) the period within which a person is required to do any thing in or in connection with any proceedings before the Tribunal may be extended or abridged by consent without an order.

25 73. (1) Such officers as may be necessary for the purpose of carrying out the provisions of this Act shall be appointed by the Governor under and subject to the Public Service Act, 1902. Officers.

(2) The officers of the Tribunal shall have such powers (except powers of the Tribunal) and perform such duties as are prescribed. Act No. 10, 1921, s. 6 (4).

(3)

(3) An officer of the Tribunal may exercise such powers of the Tribunal as are prescribed, except powers exercisable by the Tribunal only when constituted by the President or by a member who is a judge sitting alone or by two or more members one or more of whom are judges.

(4) An order made by an officer of the Tribunal may be set aside or varied by order of the Tribunal. Act No. 52, 1970, s. 121 (3).

(5) Subject to subsection (4), an order made by an officer of the Tribunal shall have effect as an order of the Tribunal, whether or not the order is within the powers of the officer under subsection (3). Act No. 52, 1970, s. 121 (4).

(6) An officer of the Tribunal shall constitute the Tribunal for the purpose of the exercise of powers of the Tribunal pursuant to subsection (3). Act No. 52, 1970, s. 121 (5).

74. The sheriff, his deputy and assistants, and every officer of the police force and gaoler, shall obey every warrant or order of the Tribunal to arrest or apprehend, and to detain and bring before the Tribunal, or to keep in any gaol or other place of detention, any person liable on the order of the Tribunal to be so dealt with. Execution of warrants, etc. Act No. 10, 1921, s. 14 (2).

75. All courts shall take judicial notice of the signature of a member or officer of the Tribunal on a document issuing out of the Tribunal. Judicial notice of signatures of members and officers. Act No. 10, 1921, s. 13 (2).

76. For the purposes of the law of defamation, any publication to or by the Tribunal, or a member or officer of the Tribunal, for the purposes of this Act, is absolutely privileged. Privilege as regards defamation.

77. (1) The President may from time to time report to the Commissioner for Public Administration on any matter which is, in the opinion of the President, relevant to the work of the Tribunal or the Commissioner. Report of President.

(2) The Tribunal shall forward to the Commissioner for Public Administration a copy of any statement of policy made to the Tribunal under section 32.

78. (1) Where a corporation is convicted of an offence against this Act, every director and every officer concerned in the management of the corporation shall be guilty of the like offence if he knowingly and wilfully authorised or permitted the commission of the offence.

Offence by corporation-
Act No. 14,
1972, s. 55.

(2) In subsection (1), "director", in relation to a corporation, includes any holder of an office by virtue of which he is entitled to direct or take part in the direction of the affairs of the corporation.

79. Proceedings for an offence against this Act may be taken before—

Proceedings for offences.

- (a) the Tribunal constituted by one or more members who are judges; or
- (b) a court of petty sessions held before a stipendiary magistrate.

80. The Governor may make regulations, not inconsistent with this Act for or with respect to—

Regulations.

- (a) any matter which by this Act is required or permitted to be prescribed or which is necessary or convenient to be prescribed for carrying out or giving effect to this Act;
- (b) the service of documents for the purpose of this Act;
- (c) regulating and prescribing the practice and procedure to be followed in the Tribunal and in the offices of the Tribunal or in respect of proceedings before the Tribunal or the enforcement of its orders;
- (d) fixing the fees to be taken in the Tribunal or in the offices of the Tribunal;
- (e) fixing the fees to be charged in the sheriff's office in respect of matters pending in the Tribunal; and
- (f) the allowance of fees to experts for assistance to the Tribunal.

SCHEDULE.

SCHEDULE.

EXCLUDED OFFICIAL ACTIONS.

1. An official action of—
 - (a) The Queen.
 - 5 (b) The Governor, where not acting on the advice of the Executive Council.
 - (c) (i) Parliament;
 - (ii) the Houses of Parliament;
 - (iii) either House of Parliament;
 - 10 (iv) a committee of either or both Houses of Parliament;
 - (v) a member of either House of Parliament where acting as such;
 - (vi) an officer of Parliament or of either House of Parliament where acting as such.
 - 15 (d) A judicial body or holder of judicial office, and associated persons where acting as such, that is to say—
 - (i) a court and an officer of a court;
 - (ii) a judge;
 - 20 (iii) the Crown Employees Appeal Board, a member of the Board, and an officer of the Board;
 - (iv) a master of the Supreme Court of New South Wales;
 - (v) a magistrate or justice of the peace;
 - (vi) a coroner; and
 - 25 (vii) a body or holder of an office before whom witnesses may be compelled to appear and to give evidence.
2. An official action of a body which is required by or under an Act to have as its presiding member a judge.
3. An official action of a public authority, relating to the making of any rule, regulation or by-law.
- 30 4. An official action of a public authority of the Commonwealth or of any State of the Commonwealth other than New South Wales.
5. An official action of a public authority constituted pursuant to an arrangement between—
 - (a) the State of New South Wales and the Commonwealth;
 - 35 (b) the State of New South Wales and any other State of the Commonwealth; and
 - (c) the State of New South Wales, the Commonwealth and any other State of the Commonwealth.

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6. An official action of a public authority where acting as a legal adviser to a public authority or as legal representative of a public authority.
- 5 7. An official action of a public authority, relating to the commencement, carrying on, or termination of any proceedings before any court, including a coronial inquiry and committal proceedings before a magistrate.
8. An official action of a public authority relating to an exercise of the prerogative of mercy.
- 10 9. An official action of a public authority where acting as a Commissioner under the Royal Commissions Act, 1912.
10. An official action of a public authority where acting pursuant to any power, authority, duty or function conferred or imposed by or under the Local Government Act, 1919.
- 15 11. An official action of a public authority relating to crime or the preservation of the peace.
12. An official action of public authority relating to the regulation and control of prisons or prisoners.
- 20 13. An official action of a public authority relating to the making, performance or termination of a contract by the public authority.
14. An official action of a public authority relating to the employment by the public authority of any person or relating to the terms and conditions of employment by the public authority of any person.
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No. , 197 .

A BILL

To provide for the appointment of an Ombudsman; to define his powers, authorities, duties and functions; and for purposes connected therewith.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Ombudsman Act, 1972".

Short title
and com-
mencement.

(2)

(2) This Act shall commence on a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. This Act is divided into Parts as follows:—

Division
into Parts.

5 PART I.—PRELIMINARY—ss. 1–5.

PART II.—THE OMBUDSMAN—ss. 6–10.

PART III.—INVESTIGATIONS—ss. 11–24.

PART IV.—REPORTS—ss. 25–30.

PART V.—GENERAL—ss. 31–38.

10 SCHEDULE.

3. The Defamation Act, 1958, is amended—

Amendment
of Act No.
39, 1958.

(a) by inserting immediately after section 13 the following new section—

15 13A. (1) A person does not incur any liability as for defamation by publishing to the Ombudsman as Ombudsman any defamatory matter.

(2) The Ombudsman does not incur any liability as for defamation by publishing, as Ombudsman, any defamatory matter.

20 (3) Subsections (1) and (2) of this section apply in relation to an acting Ombudsman and a special officer of the Ombudsman as they apply in relation to the Ombudsman.

25 (4) A Minister of the Crown does not incur any liability as for defamation by making public, under section 30 of the Ombudsman Act, 1972, any defamatory matter in a report under that Act.

30 (5) A person does not incur any liability as for defamation by publishing, under the authority of a Minister of the Crown, any defamatory matter in a copy of a report under the Ombudsman

Ombudsman Act, 1972, being a report previously made public by that Minister under section 30 of that Act.

5 (b) by inserting in section 14 (1), immediately after paragraph (c), the following new paragraph—

(c) a copy of, or an extract from or a fair Report of abstract of, a report under the Ombudsman Ombudsman Act, 1972, being a report previously made public under section 30 of that Act.

10 4. This Act binds the Crown not only in right of New The Crown South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

5. (1) In this Act, except in so far as the context or Interpretation subject matter otherwise indicates or requires—

15 "conduct" includes any action or inaction, and includes alleged conduct.

20 "head", in relation to a public authority (not being the Governor or a Minister of the Crown), means the person prescribed or, subject to the regulations, means the Under Secretary of the Department of the responsible Minister.

"person" includes a public authority.

"public authority" includes—

- 25 (a) the Governor;
- (b) any Minister of the Crown;
- (c) any person appointed to an office by the Governor;
- (d) any statutory body representing the Crown;
- (e) any officer of the Public Service;
- 30 (f) any person in the service of the Crown or of any statutory body representing the Crown;

(g)

(g) any person in relation to whom or to whose function an account is kept of administration or working expenses, where the account—

- (i) is part of the accounts prepared pursuant to the Audit Act, 1902;
- (ii) is required by or under any Act to be audited by the Auditor-General;
- (iii) is an account with respect to which the Auditor-General has powers under any law relating to the audit of accounts; or
- (iv) is an account with respect to which the Auditor-General may exercise powers under a law relating to the audit of accounts where requested to do so by a Minister of the Crown;

(h) any person entitled to be reimbursed his expenses, from a fund of which an account mentioned in paragraph (g) is kept, of attending meetings or carrying out the business of any body constituted by an Act;

(i) any holder of an office declared by the regulations to be an office of a public authority for the purposes of this Act; and

(j) any person acting for or on behalf of, or in the place of, or as deputy or delegate of, any person described in any of the foregoing paragraphs.

“regulations” means regulations made under this Act.

“responsible Minister”, in relation to a public authority, means the Minister of the Crown prescribed or, subject to the regulations, means the Minister of the Crown who, in the opinion of the Ombudsman, is most nearly concerned with the conduct in question of the public authority.

(2) For the purposes of this Act, conduct of a public authority is wrong if it is—

- (a) contrary to law;
- 5 (b) unreasonable, unjust, oppressive or improperly discriminatory, whether or not it is in accordance with any law or established practice;
- (c) based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations;
- (d) based wholly or partly on a mistake of law or fact;
- 10 (e) conduct for which reasons should be given but are not given; or
- (f) otherwise wrong.

PART II.

THE OMBUDSMAN.

15 6. (1) There shall be an Ombudsman who shall have Office and may exercise the powers, authorities, duties and functions generally conferred and imposed upon him by this Act.

(2) The Ombudsman shall be appointed by the Governor and shall, subject to this Act, hold office for such 20 term not exceeding seven years as may be specified in the instrument of his appointment.

(3) Subject to this Act, the Ombudsman shall be eligible for re-appointment.

(4) The Ombudsman shall vacate his office on the day 25 on which he attains the age of sixty-five years.

(5) The Ombudsman may resign his office by writing under his hand addressed to the Governor.

(6)

(6) The Ombudsman may, at any time, be removed from his office by the Governor upon the address of both Houses of Parliament.

(7) The Ombudsman shall devote the whole of his 5 time to the duties of his office.

(8) The Ombudsman shall receive an annual salary of dollars and such allowances as the Governor may determine.

(9) The salary and allowances payable to the 10 Ombudsman under this Act shall be paid out of the Consolidated Revenue Fund which, to the extent necessary, is hereby appropriated accordingly.

(10) A member of the Parliament of the Commonwealth or any State shall not be appointed as Ombudsman 15 and if the Ombudsman is nominated for election as a member of a House of any of those Parliaments he shall forthwith cease to hold office as Ombudsman.

(11) The provisions of the Public Service Act, 1902, do not apply to the appointment of the Ombudsman and the 20 Ombudsman is not subject to those provisions.

7. (1) The Governor may appoint an acting Ombudsman ^{Acting} to act as Ombudsman during the absence of the Ombudsman. ^{Ombudsman.}

(2) An acting Ombudsman shall be entitled to such salary and allowances as the Governor may from time to time 25 determine.

(3) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising an acting Ombudsman to act as Ombudsman.

(4) This Act, section 6 (2) and (8) excepted, applies 30 to and in respect of an acting Ombudsman as it applies to and in respect of the Ombudsman.

8. The Ombudsman may, with the concurrence of the Minister, appoint an officer of the Ombudsman to be a special officer of the Ombudsman. ^{Special officer.}

9. (1) Subject to subsection (2), the Ombudsman may ^{Delegation.} delegate to a special officer of the Ombudsman the exercise or performance of any powers, authorities, duties or functions of the Ombudsman.

(2) The Ombudsman may not delegate the exercise or performance of—

- 10 (a) any power, authority or duty to make any report under this Act (other than a report under section 27);
- (b) any power or authority conferred by section 18 (2); or
- 15 (c) the power and authority conferred by subsection (1).

(3) A delegation under this section may be made subject to conditions or limitations as to the exercise or performance of any of the powers, authorities, duties or
20 functions delegated, or as to time or circumstances.

(4) A delegation under this section must be made by instrument in writing.

(5) An instrument of delegation must specify—

- 25 (a) the powers, authorities, duties or functions the exercise or performance of which is delegated; and
- (b) any conditions or limitations on the delegation.

(6) The Ombudsman may revoke a delegation under this section at any time.

(7) A delegation under this section is not revoked by
30 the happening of a vacancy in the office of Ombudsman or by an absence or disability of the Ombudsman, except to the extent that the instrument of delegation so provides.

(8)

(8) During a vacancy in the office of Ombudsman, if there is no acting Ombudsman, the Minister may revoke a delegation under this section.

5 (9) Notwithstanding any delegation made under this section, the Ombudsman may continue to exercise or perform all or any of the powers, authorities, duties or functions delegated.

10. Any act or thing done, suffered or omitted—

(a) by an acting Ombudsman; or

10 (b) by a delegate under section 9,

Effect of
acts etc. of
acting
Ombudsman
or delegate.

shall have the same force and effect as if done, suffered or omitted by the Ombudsman.

PART III.

INVESTIGATIONS.

15 11. (1) Any person may complain to the Ombudsman about the conduct of a public authority. Right to
complain.

(2) Where—

(a) any person is detained by or in the custody of any public authority; and

20 (b) that person wishes to make a complaint to the Ombudsman,

the public authority and any person having superintendence of that person shall—

25 (c) take all steps necessary to facilitate the making of the complaint; and

(d) immediately send any written complaint, unopened to the Ombudsman.

12. (1) Subject to section 13, where it appears to the Ombudsman that any conduct of a public authority may be wrong, the Ombudsman may, whether or not any person has complained to him about the conduct, make the conduct the subject of an investigation under this Act. Decision for investigation.

(2) Subsection (1) has effect notwithstanding anything in any Act passed before the passing of this Act.

(3) The Ombudsman may discontinue an investigation.

10 (4) Where any person has complained to the Ombudsman about the conduct of a public authority, the Ombudsman, in deciding whether to make that conduct the subject of an investigation under this Act or whether to discontinue an investigation commenced by him under this
15 Act—

(a) may have regard to such matters as he thinks fit; and

(b) without limiting paragraph (a), may have regard to whether, in his opinion—

- 20 (i) the complaint is frivolous, vexatious or not in good faith;
- (ii) the subject matter of the complaint is trivial;
- 25 (iii) the subject matter of the complaint relates to the discharge by a public authority of a function which is substantially a trading or commercial function;
- (iv) the conduct complained of occurred at too remote a time to justify investigation;
- 30 (v) in relation to the conduct complained of, there is or was available to the complainant an alternative and satisfactory means of redress; or
- 35 (vi) the complainant has no interest or an insufficient interest in the conduct complained of.

13. (1) Conduct of a public authority of a class described in the Schedule shall not be made the subject of an investigation under this Act. Excluded
conduct.
Schedule.

5 (2) The Governor may, by proclamation published in the Gazette, amend the Schedule so as to add to it, or to take from it, any class of conduct of a public authority.

10 (3) Where the Ombudsman has made any conduct of a public authority the subject of an investigation under this Act, and afterwards the Schedule is amended by adding to it any class of conduct of a public authority, and the conduct the subject of the investigation is or includes conduct of the added class, the Ombudsman shall, so far as concerns conduct of the added class, discontinue the investigation and shall not make any report concerning conduct of the added class.

15 (4) A proclamation under subsection (2) shall—

- (a) take effect from the date of the publication of the proclamation or a later date specified in the proclamation; and
- 20 (b) be laid before each House of Parliament within fourteen sitting days of that House after the date of proclamation.

25 (5) If either House of Parliament passes a resolution, of which notice has been given within fifteen sitting days of that House after a proclamation has been laid before it, disallowing the proclamation or any part thereof, the proclamation or part thereupon ceases to have effect.

(6) For the purposes of subsections (4) and (5) sitting days shall be counted, whether or not they occur during the same session.

30 14. Where—

- (a) a complaint is made to the Ombudsman about the conduct of a public authority; and Reasons for
refusal to
investigate,
etc.

(b)

(b) the Ombudsman—

- (i) refuses to investigate the conduct complained of; or
- (ii) discontinues an investigation of that conduct,

5

the Ombudsman shall inform the complainant in writing of his decision and the reasons for his decision.

15 **15.** (1) Upon the Ombudsman deciding to make the conduct of a public authority the subject of an investigation under this Act, he shall give notice of his decision—

Notice of investigation.

- (a) where there is a complainant, to him;
- (b) where the public authority is the Governor, to the Under Secretary of the Department of the responsible Minister;
- 15 (c) where the public authority is a Minister of the Crown, to the Under Secretary of the Department of that Minister;
- (d) where the public authority is not the Governor or a Minister of the Crown, to the head of the public authority and, if practicable, to the public authority;
- 20 (e) as prescribed.

(2) A notice under this section must be in writing, must describe the conduct the subject of the investigation and must, so far as practicable, identify the public authority.

16. An investigation under this Act shall be made in the absence of the public.

Privacy.

17. For the purposes of an investigation under this Act, the Ombudsman may require a public authority—

- 30 (a) to give him a statement of information;
- (b) to produce to him any document or other thing; or
- (c) to give him a copy of any document.

Public authority to give information, etc.

(2)

(2) A requirement under this section must be in writing, must specify or describe the information, document or thing required, and must fix a time for compliance.

5 18. (1) In an investigation under this Act, the Ombudsman may make or hold inquiries.

10 (2) For the purposes of any inquiry under this section, the Ombudsman shall have the powers, authorities, protections and immunities conferred on a commissioner by Division 1 of Part II of the Royal Commissions Act, 1923, and that Act (section 13 and Division 2 of Part II excepted) shall, mutatis mutandis, apply to any witness summoned by or appearing before the Ombudsman, but section 11 (2) of that Act shall have effect subject to section 20 of this Act.

15 19. In an investigation under this Act, the Ombudsman may, at any time— Entry on premises, etc.

(a) enter and inspect any premises occupied or used by a public authority; and

(b) inspect any document or thing in or on the premises.

20 20. (1) Subsections (2) and (3) apply where, in an investigation under this Act, the Ombudsman requires any person— Limits on secrecy and privilege.

(a) to give any statement of information;

(b) to produce any document or other thing;

(c) to give a copy of any document; or

25 (d) to answer any question.

(2) The person so required must comply with the requirement notwithstanding—

30 (a) any rule of law which in proceedings in a court of law might justify an objection to compliance with a like requirement on grounds of public interest;

(b)

- (b) any privilege of a public authority; or
- (c) if the person so required is a public authority, any duty of secrecy or other restriction on disclosure applying to that public authority.

5 (3) Subject to subsection (2), the Ombudsman shall set aside the requirement if it appears to him that any person has a ground of privilege whereby, in proceedings in a court of law, he might resist a like requirement and it does not appear to the Ombudsman that that person consents to compli-
10 ance with the requirement.

(4) Subsections (1), (2) and (3) apply to a requirement made under section 17 or made in an inquiry under section 18.

(5) The Ombudsman may exercise his powers under
15 section 19 notwithstanding—

- (a) any rule of law which, in proceedings in a court of law might justify an objection to an inspection of the premises or to production of the document or thing, as the case requires, on grounds of public
20 interest;
- (b) any privilege of a public authority; or
- (c) any duty of secrecy or other restriction on disclosure applying to a public authority.

(6) Subject to subsection (5) the Ombudsman shall
25 not exercise his powers under section 19 to enter or inspect any premises or to inspect any document or thing, where it appears to the Ombudsman that any person has a ground of privilege whereby, in proceedings in a court of law, he might resist inspection of the premises or production of the document
30 or thing, as the case requires and it does not appear to the Ombudsman that that person consents to the inspection or production.

21. (1) This Act does not enable the Ombudsman—

- (a) to require any person—
 - (i) to give any statement of information;
 - (ii)

Cabinet
proceedings.

(ii) to produce any document or other thing;

(iii) to give a copy of any document; or

(iv) to answer any question,

which relates to confidential proceedings of cabinet or any committee of cabinet; or

(b) to inspect any document or thing which so relates.

(2) For the purposes of subsection (1), a certificate of the Under Secretary of the Premier's Department that any information, document, thing or question relates to confidential proceedings of cabinet or of a committee of cabinet is conclusive that it does so relate.

22. In an investigation under this Act, the Ombudsman may engage the services of any person for the purpose of getting expert assistance.

23. (1) In an investigation under this Act, the Ombudsman shall give an opportunity to make submissions on the conduct the subject of the investigation—

(a) if practicable, to the public authority whose conduct it is; and

(b) to any other person given notice under section 15.

(2) Where, in an investigation under this Act, the Ombudsman considers that there are grounds for censure of any person, the Ombudsman, before censuring him in any report, shall, so far as practicable—

(a) inform him of the substance of the grounds of censure; and

(b) give him an opportunity to make submissions.

(3) Subsection (2) does not apply in relation to a report under section 27.

24. In an investigation under this Act, the Ombudsman shall, on request by the responsible Minister, consult him on the conduct the subject of the investigation.

PART

PART IV.

REPORTS.

25. (1) Where, in an investigation under this Act, the Ombudsman finds that the conduct the subject of the investigation, or any part of the conduct, is wrong, the Ombudsman shall make a report accordingly, giving his reasons.

(2) In a report under this section, the Ombudsman may recommend—

- 10 (a) that the conduct be considered or reconsidered by the public authority whose conduct it is, or by any person in a position to supervise or direct the public authority in relation to the conduct, or to review, rectify, mitigate or change the conduct or its consequences;
- 15 (b) that action be taken to rectify, mitigate or change the conduct or its consequences;
- (c) that reasons be given for the conduct;
- (d) that any law or practice relating to the conduct be changed; or
- 20 (e) that any other step be taken.

(3) The Ombudsman shall give a report under this section—

- 25 (a) where the public authority to whose conduct the report relates is the Governor, to the responsible Minister;
- (b) where the public authority is a Minister of the Crown, to that Minister; or
- 30 (c) where the public authority is not the Governor or a Minister of the Crown, to the head of the public authority.

(4)

(4) The Ombudsman may give a copy of a report under this section—

- (a) where the investigation arises out of a complaint to the Ombudsman, to the complainant;
- 5 (b) to the responsible Minister; or
- (c) to the public authority to whose conduct the report relates.

(5) The person to whom a report is given under subsection (3) may, and shall on request by the Ombudsman, 15 notify him of any action taken or proposed in consequence of a report under this section.

26. Where the Ombudsman is not satisfied that sufficient steps have been taken in due time in consequence of a report by him under section 25, he may make a report to the 15 Minister for presentation to Parliament. Default in consequent action.

27. (1) Where the Ombudsman is of the opinion that a public authority is or may be guilty of misconduct in the course of his functions to such an extent as may warrant dismissal, removal or punishment, the Ombudsman shall 20 report his opinion to the responsible Minister, giving his reasons. Serious misconduct.

(2) This section does not apply in relation to the Governor or a Minister of the Crown as public authority.

28. Where the Ombudsman investigates the conduct of a 25 public authority pursuant to a complaint made to him, the Ombudsman— Report to complainant.

- (a) may from time to time report to the complainant on the progress of investigation;
- 30 (b) shall report to the complainant on the results of the investigation; and
- (c) may make such comments to the complainant on the investigation and its consequences as he thinks fit.

29. (1) The Ombudsman shall, as soon as practicable after the thirtieth day of June in each year, prepare and submit to the Minister a report of his work and activities for the twelve months preceding that date. Annual report.

5 (2) The Minister shall lay that report or cause it to be laid before both Houses of Parliament as soon as practicable after the receipt by him of the report.

30. (1) The Ombudsman may, at any time, make a special report to the Minister for presentation to Parliament on any matter arising in connection with the discharge of his functions. Special report to Parliament.

(2) The Ombudsman may include in a report under subsection (1) or under section 26 a recommendation that the report be made public forthwith.

15 (3) Where a report under subsection (1) or under section 26 contains a recommendation by the Ombudsman that the report be made public forthwith the Minister may make it public before it is presented to Parliament.

PART V.

20 GENERAL.

31. (1) The Ombudsman may, with the concurrence of the Minister, appoint such persons to be his officers as may be necessary for the purposes of this Act. Officers.

(2) An officer of the Ombudsman shall be for all purposes a person employed by the Government of New South Wales in the service of the Crown.

(3) The provisions of the Public Service Act, 1902, do not apply to the appointment of an officer of the Ombudsman and an officer of the Ombudsman is not subject to those provisions.

(4)

(4) An officer of the Ombudsman is subject, in the performance of his duties, to the superintendence and direction of the Ombudsman and may be dismissed from his office by the Ombudsman.

5 (5) Subsection (4) does not abrogate or restrict the right or power of the Crown to terminate the employment of an officer of the Ombudsman.

10 **32.** (1) This section applies to a person appointed to an office under this Act as Ombudsman or as an officer of the Ombudsman. Rights in the Public Service; superannuation.

(2) Where, at the date of his appointment as such, he is an officer of the Public Service, he shall, if he ceases to hold office under this Act otherwise than—

- 15 (a) in the case of the Ombudsman, pursuant to section 6 (6); and
 (b) in the case of any other officer by dismissal for misconduct,

and if he is under the age of sixty years, be appointed to some office in the Public Service not lower in classification and **20** salary than that which he held immediately before his appointment under this Act.

(3) Nothing contained in this Act shall affect the rights accrued or accruing to him under the Public Service Act, 1902, the Superannuation Act, 1916, or the Local **25** Government and Other Authorities (Superannuation) Act, 1927, where he is at the time of his appointment, or has been at any time previous thereto, an officer of the Public Service, an employee within the meaning of the Superannuation Act, 1916, or a permanent servant within the meaning of the Local **30** Government and Other Authorities (Superannuation) Act, 1927.

(4) Any officer of the Public Service, any person who is an employee within the meaning of the Superannuation Act, 1916, or any permanent servant within the meaning of the **35** Local Government and Other Authorities (Superannuation)

Act,

- Act, 1927, appointed to an office under this Act shall continue to contribute to any fund or account and be entitled to receive any deferred or extended leave and any payment, pension or gratuity as if he were an officer, employee or permanent servant within the meaning of the Public Service Act, 1902, the Superannuation Act, 1916, or the Local Government and Other Authorities (Superannuation) Act, 1927, as the case may be, and for such purpose his service as an officer under this Act shall be service for the purpose of such Acts.
- 5
- 10 In respect of an officer under this Act who contributes to a fund or account as aforesaid, the Minister shall pay to the State Superannuation Board or the Local Government Superannuation Board, as the case may be, such amounts as would have been payable to that Board if he had remained an
- 15 employee or permanent servant as aforesaid and had continued to be employed at the same salary or wage and allowances as the salary or wage and allowances as is or are being paid to him as an officer under this Act.

33. The Ombudsman shall not, nor shall an officer of the Ombudsman, disclose any information obtained by him in the course of his office, unless the disclosure is made—

20

Disclosure
by Ombuds-
man or
officer.

- (a) where the information is obtained from a public authority, with the consent of the head (if any) of that authority or of the responsible Minister;
- 25 (b) where the information is obtained from any other person, with the consent of that person;
- (c) for the purpose of any proceedings under section 37 or under Part III of the Royal Commissions Act, 1923; or
- 30 (d) for the purpose of discharging his functions under this Act.

Penalty : One thousand dollars.

34. (1) The Ombudsman shall not, nor shall an officer of the Ombudsman, be competent or compellable to give evidence in any legal proceedings in respect of any information obtained by him in the course of his office. Ombudsman or officer as witness.

5 (2) Subsection (1) does not apply to any legal proceedings under section 37 or under Part III of the Royal Commissions Act, 1923.

10 35. A statement given on requirement under section 17 shall not, if the person giving the statement objects, at the time of giving it, to doing so on the ground that it might tend to incriminate him, be admissible in evidence in any prosecution against that person for any offence. Incriminating statement.

36. A person shall not— Offences.

15 (a) without lawful excuse, wilfully obstruct, hinder or resist the Ombudsman or an officer of the Ombudsman in the exercise of his powers under this Act;

20 (b) without lawful excuse, refuse or wilfully fail to comply with any lawful requirement of the Ombudsman or an officer of the Ombudsman under this Act; or

(c) wilfully make any false statement to or mislead, or attempt to mislead, the Ombudsman or an officer of the Ombudsman in the exercise of his powers under this Act.

25 Penalty : One thousand dollars.

37. A penalty imposed by this Act may be recovered in a summary manner before a Stipendiary Magistrate sitting in petty sessions alone. Proceedings for offences.

30 38. The Governor may make regulations under this Act for or with respect to prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for the purpose of carrying out or giving effect to this Act. Regulations.

SCHEDULE.

SCHEDULE.

EXCLUDED CONDUCT OF PUBLIC AUTHORITIES.

1. Conduct of a public authority occurring before the commencement of this Act.
- 5 2. Conduct of—
 - (a) The Queen.
 - (b) The Governor, where not acting on the advice of the Executive Council.
 - (c) (i) Parliament;
 - 10 (ii) the Houses of Parliament;
 - (iii) either House of Parliament;
 - (iv) a committee of either or both Houses of Parliament;
 - (v) a member of either House of Parliament where acting as such;
 - 15 (vi) an officer of Parliament or of either House of Parliament where acting as such.
 - (d) A judicial body or holder of judicial office, and associated persons where acting as such, that is to say—
 - (i) a court and an officer of a court;
 - 20 (ii) a judge;
 - (iii) the Crown Employees Appeal Board, a member of the Board, and an officer of the Board;
 - (iv) a master of the Supreme Court of New South Wales;
 - (v) a magistrate or justice of the peace;
 - 25 (vi) a coroner; and
 - (vii) a body before whom witnesses may be compelled to appear and to give evidence.
3. Conduct of a body which is required by or under an Act to have as its presiding member a judge.
- 30 4. Conduct of a public authority relating to the making of any rule, regulation or by-law.
5. Conduct of a public authority of the Commonwealth or of any State of the Commonwealth other than New South Wales.
6. Conduct of a public authority constituted pursuant to an
 - 35 arrangement between—
 - (a) the State of New South Wales and the Commonwealth;
 - (b) the State of New South Wales and any other State of the Commonwealth; and
 - (c) the State of New South Wales, the Commonwealth and any
 - 40 other State of the Commonwealth.

7. Conduct of a public authority where acting as a legal adviser to a public authority or as legal representative of a public authority.
8. Conduct of the Attorney General, or of the Solicitor General, relating to the commencement, carrying on, or termination of any proceedings before any court, including a coronial inquiry and committal proceedings before a magistrate.
9. Conduct of a public authority relating to the carrying on of any proceedings before any court, including a coronial inquiry and committal proceedings before a magistrate.
10. Conduct of a public authority relating to an exercise of the prerogative of mercy.
11. Conduct of a public authority where acting as a Commissioner under the Royal Commissions Act, 1912.
12. Conduct of a public authority where acting pursuant to any power, authority, duty or function conferred or imposed by or under the Local Government Act, 1919.
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PART IX

NOTES ON PROPOSED BILLS

1. The Commissioner for Public Administration Bill.
2. The Public Administration Tribunal Bill.
3. The Ombudsman Bill.

NOTES ON PROPOSED COMMISSIONER FOR PUBLIC ADMINISTRATION BILL

1. Sections 6, 7 (1), 9 and 13 (4) of the Bill need comment. The other provisions are of a formal nature and are, we think, self-explanatory.

Section 6

2. The Law Reform Commission Act, 1967, provides that the Commission, *in accordance with any reference to it made by the Minister*, shall do certain things (s. 10). The words emphasized are used in section 6 of this Bill (see Hansard 1970, page 962).

3. We do not define "public authority". An exclusive definition may limit the references which the Minister may make to the Commission and an inclusive definition would serve no useful purpose. The expression is well understood in a general sense and, in this context, no greater precision is called for.

4. Section 6 (1) (a) is a short but comprehensive statement of the duties of the Commissioner. In brief, we propose that those duties should be of the kind mentioned in paras 136 and 139 of our report.

5. Section 6 (1) (b) (i) gives to the Commissioner the powers of a royal commissioner. Like powers are given to, for example, the Law Reform Commission (Law Reform Commission Act, 1967 (s. 10 (2))) and the Development Corporation of New South Wales (State Development and Country Industries Assistance Act, 1966 (s. 8 (4))). We expect that the powers of a royal commissioner will seldom, if ever, be used by the Commissioner but they are not, in our view, inappropriate powers for him to have.

6. Section 6 (1) (b) (ii) enables the Commissioner to draw on the Advisory Council for assistance. As stated in paragraph 141 of our report, the Commissioner will be required to make recommendations on matters about which honest and well informed minds may differ. A consensus may often be difficult to get but an exchange of views can only be helpful.

Section 7

7. We propose that membership of the Advisory Council on Public Administration be limited to seven persons. Our reason is that we believe small committees work better than large committees. In section 10, we provide for committees of the Council which may include persons who are not members of the Council. Use of that section should overcome difficulties if experience indicates that the Council is undermanned.

8. The Ombudsman and the President of the Public Administration Tribunal should soon know where the administrative shoe pinches and their membership of the Council is, we think, necessary and desirable. The opinions of a member of the Public Service Board should often be of special assistance to the Commissioner and we provide that a Board member shall be a member of the Council. The remaining three members will, we expect, be chosen by the Minister on the basis of the contribution they can be expected to make to the work of the Council.

Section 9

9. We propose that the Council may make unsolicited recommendations to the Commissioner. Also that the Minister may have the Council make recommendations to the Commissioner. We seek to ensure that there will be a working partnership between the Commissioner and the Council.

Section 13 (4)

10. Section 13 (4) is proposed because we think that Parliament should know the extent to which section 32 of the Public Administration Tribunal Bill is used. That section permits policy considerations to dictate or influence the course of some proceedings before the Tribunal: it is a somewhat novel provision to apply to an independent body and it is justified only if the convention of collective ministerial responsibility can be relied upon to prevent abuse. The present provision seeks to achieve that end.

NOTES ON THE PUBLIC ADMINISTRATION TRIBUNAL BILL

INTRODUCTION

1. The Public Administration Tribunal Bill proposes the establishment of the Public Administration Tribunal. The Tribunal is intended to have two functions, namely, to hold inquiries into official actions of public authorities and to hear appeals. Part III deals with inquiries and Part IV with appeals. When holding an inquiry, the Tribunal is neither distinctly a court nor distinctly a public authority; it is an independent part of the administration, yet it has judges amongst its members and it may decide questions of law. When hearing an appeal, the Tribunal is distinctly a court; it deals with cases where a right of appeal to the Tribunal is given by other legislation (see para. 146 of our Report).

Inquiries

2. Shortly stated, we propose that—

- (1) Where a public authority takes an official action, objection may be made to the official action—
 - (a) by the Attorney General; or
 - (b) by any person who claims to be adversely and substantially affected by the official action.¹
- (2) The objection must be made by serving written notice of the objection on the public authority.²
- (3) The public authority will have forty days to consider the objection.³
- (4) At the end of the forty days, the Attorney General or other objector may request the Tribunal to inquire into the official action.⁴ The request must be made within ninety days of the official action.⁵
- (5) In some cases, the Tribunal must inquire into the official action. In other cases, the Tribunal may, in its discretion, decide that it will or will not inquire. The Tribunal must inquire where the Attorney General requests the inquiry or where regulations made under the Act so provide.⁶
- (6) In the cases where the Tribunal has a discretion to inquire or not to inquire into an official action, the Tribunal will, as a rule, exercise its discretion without hearing the parties.⁷ But where the Tribunal decides that it will not inquire, it must tell the objector that he may apply to the Tribunal for review of that decision.⁸ Upon application for review the Tribunal must hear the parties and either confirm the decision or set it aside.⁹
- (7) The Tribunal may allow an objection to an official action where the official action was beyond the power of the public authority concerned or where the Tribunal is satisfied that the official action (whether or not beyond power) was harsh, discriminatory or otherwise unjust. But, in either case, the Tribunal must first be satisfied that an objector, other than the Attorney General, is adversely and substantially affected by the official action.¹⁰

¹ S. 17.² S. 19.³ S. 22.⁴ S. 21.⁵ S. 22.⁶ S. 25.⁷ S. 28 (2).⁸ S. 29 (a).⁹ S. 29 (b).¹⁰ S. 34.

- (8) Where the Tribunal is satisfied that there is a case for allowing an objection, it must, if requested by the public authority concerned, remit the matter to the authority for further consideration. In that event the Tribunal has power to give appropriate directions to the public authority.¹¹
- (9) After the steps mentioned have been taken, the Tribunal may set aside the official action or remit it to the public authority concerned for action in accordance with the directions of the Tribunal.¹² The Tribunal has power to direct the public authority to take any action which the public authority might have taken instead of taking the official action under inquiry.¹³
- (10) The procedures of the Tribunal in conducting an inquiry will in general be determined by the Tribunal and may be inquisitorial.¹⁴
- (11) Inquiries are to be conducted in the absence of the public unless the Tribunal otherwise orders.¹⁵ But decisions and reasons for decisions must be made public unless the parties agree to the contrary or the Tribunal otherwise orders.¹⁶
- (12) In an inquiry, the Tribunal must give effect to a matter of government policy, where the policy is relevant to the official action under inquiry, and is within power. In similar circumstances the Tribunal must have regard to, but is not bound to give effect to, a matter of policy of a public authority other than the Government.¹⁷
- (13) The Governor, subject to disallowance by either House of Parliament, may direct that the Tribunal shall not inquire, or continue inquiring, into a particular official action.¹⁸

3. In conducting an inquiry, the Tribunal is intended to function, not as an appellate body in the accustomed sense of that term, but as a senior part of the administrative process. Hence we propose the inclusion of sections 41, 32 and 26 (see para. 2 (11), (12) and (13)).

Appeals

4. Part IV does not provide for any appellate jurisdiction to be immediately conferred on the Tribunal. It provides that the Tribunal may hear and determine appeals only where a right of appeal to the Tribunal is conferred by another Act.

¹¹ S. 35.

¹² S. 36 (1).

¹³ S. 36 (2).

¹⁴ Ss 38, 39.

¹⁵ S. 41 (1).

¹⁶ S. 41 (3), (4).

¹⁷ S. 32.

¹⁸ S. 26.

5. Where exercising appellate jurisdiction, the Tribunal will act according to the provisions of the Act which confers the right of appeal. Subject to those provisions the Tribunal will be an appellate body of an orthodox kind and its procedures will conform accordingly.

6. We note that where there is a right of appeal to the Tribunal against an official action of a public authority, there may also be a right to request the Tribunal to inquire into the official action. Our proposals do not try to stop a person using both rights. Sometimes the use of both rights may be justified. For example, where an appeal limited to questions of law is dismissed by the Tribunal, the appellant may still wish the Tribunal to inquire into a question of fact. On the other hand, few people will proceed with an appeal against an official action where the Tribunal, in an inquiry, has already dismissed an objection to the same official action. Indeed the situation is likely to occur only where there is a right to an inquiry. In the discretionary cases the existence of a right of appeal to the Tribunal will be a factor considered by the Tribunal in deciding whether to hold an inquiry.

THE BILL

7. Where in these notes we give a short description of the intended operation of a provision of the Bill, the description will often be incomplete and must yield to the terms of the provision in question.

Section 3: Amendment of Supreme Court Act, 1970

8. Section 48 of the Supreme Court Act, 1970, assigns to the Court of Appeal the supervisory and appellate jurisdictions of the Supreme Court in respect of proceedings before any "specified tribunal" mentioned in that section. Section 3 of the Bill proposes that the Tribunal be included within the definition of "specified tribunal". We think it right that appeals from a tribunal which must include a judge of the Supreme Court amongst its members should be heard and determined by the Court of Appeal.

Section 5: Interpretation

9. "*person*". "Person" is defined to include a public authority. The definition makes it clear, for example, that a public authority may make an objection to an official action of another public authority.

"*public authority*". Paras (a) to (f) of this definition refer to persons by descriptions which are well known in law, though the descriptions are sometimes difficult to apply in particular cases.

Para. (g) is included, first, because it provides criteria by reference to which difficulties of the kind just mentioned may be avoided; secondly, because some persons, for example, State Marketing Boards, do not readily fall within paras (a) to (f); and, thirdly, because of

our general view that if the Auditor-General must, or may, audit any books of account relating to a person, official actions of that person should be within the jurisdiction of the Tribunal, subject to exclusion of specific classes of official action by or under section 16.

Para. (h) is included because some persons, for example, advisory committees such as the Aboriginal Relics Advisory Committee, do not readily fall within paras (a) to (g).

Paras (h) and (i) are included as a matter of caution but occasion for their use should be rare.

Our definition of "public authority" is wide. The application of the Act to public authorities is restricted, however, by the operation of sections 16 and 26 and by the definition of "official action".

10. "*official action*". If an action of a public authority is not an "official action" within the meaning of that expression as it is defined in this section, the action is outside the scope of the inquiry provisions of the Bill. To be an official action, any action must satisfy two tests: first, the action must be of a particular kind, and, secondly, it must affect a person in a particular way. Subsection (2), when read with subsection (3) (b) and (c), states the first test and subsection (3) (a) states the second test. The statement of the first test is of a general nature: an act or a refusal or failure to act, or the taking or refusing or failing to take a material preliminary step to an act. The statement of the second test is, however, more detailed. The expression "right, privilege, obligation or liability" used in section 5 (3) (a) (i) is a short description of the things characteristic of legal relationships (see, for a comparable use of the expression, the Interpretation Act, 1898, s. 8 (b)). The words "creates, declares or affects" used in the same subparagraph are not analytically separate. They are used as a general description of the ways in which an official action of a public authority may affect a "right, privilege, obligation or liability" of a person. It is probable that subpara. (i) is of sufficiently general application to include all the matters mentioned in subparas (ii) to (v). Caution alone prompts the inclusion of those subparagraphs.

Section 5 (3) (c) is proposed because it may often be difficult for a person to show that a public authority has failed to do an act or to take a step and, even if he can show such a failure, to fix the time when it occurred. The provision is relevant to the operation of section 18 (time for objection) and section 22 (time for request).

Section 6: Public Administration Tribunal

11. (a) Subsection (1): Together with section 10 (1), the subsection states the qualifications of members of the Tribunal. It also fixes the minimum number of members: twelve. The qualification requirements make it clear that the Tribunal is to be a body of experts

whose knowledge or experience cover fields relevant to the activities of government. If, for a particular case, no member is available who has appropriate knowledge or experience, subpara. (d) may be used to meet the situation.

(b) Subsection (2): Where the Tribunal acts as an appellate body, it is appropriate that it be a court of record. We think it appropriate also that the Tribunal should be a court of record where holding an inquiry.

(c) Subsections (3) to (6) inclusive: Provisions similar to these are contained in comparable legislation (see, for example, the Local Government Act, 1919, Part XII B).

Section 7: Judge as a Member

12. The proposed section is based on section 4 of the Law Reform Commission Act, 1967.

Section 8: Other Members

13. (a) Subsection (2): In our view, the Tribunal is a senior part of Government and it is right that the salary of a full-time member be fixed by Parliament and be not subject to change except by Parliament.

(b) Subsection (3): Machinery provisions of this kind are commonly used in the legislation of this State (see, for example, Local Government Act, 1919, s. 342BD). Whether they are apt in this Bill is a question which may require consideration by others.

Section 10: President

14. The tasks of the President require the appointment of a person of high status and ability. We propose that the President must be a judge of the Supreme Court. The general control of the activities of the Tribunal is vested in him. Specific provisions require that he deal with particular matters (see, for example, sections 69 and 71). Section 11 provides that the Tribunal shall act under his general superintendence and that he may give directions for the constitution and chairmanship of the Tribunal for any matter coming before it.

Section 13: Constitution of the Tribunal for Particular Matters

15. Where directing how the Tribunal will be constituted for particular proceedings before it, we anticipate that the President will have regard to the nature of the matter to be considered and the special knowledge or experience of the members of the Tribunal.

Section 14: Member Ceasing to Act

16. The section permits a matter to be continued before the Tribunal, with the consent of the parties, where a member of the Tribunal, other than a single member considering a matter, ceases to act. The section sets at rest any doubt which may arise as to the jurisdiction of the Tribunal, as constituted for a particular matter, to continue with that matter.

Section 16: Application of Part III (Inquiries)

17. (a) Paragraph (b): In paras 52–68 of these notes, we comment on the official actions of public authorities which, by virtue of the operation of the Schedule to the Bill, are excluded from the jurisdiction of the Tribunal.

(b) Paragraph (c): Official actions of public authorities may, by regulation, be excluded from the jurisdiction of the Tribunal. We contemplate (see para. 139 of our Report) that regulations of this kind will be made following recommendations of the Commissioner for Public Administration.

Section 17: Standing to Object

18. (a) Subsection (1): The provision gives recognition, in a new context, to the ancient function of the Attorney General as guardian of the public good. We propose that where the Attorney General requests an inquiry into an official action of a public authority, the Tribunal must make that inquiry (s. 25 (1)).

(b) Subsection (2): A person other than the Attorney-General may object to an official action of a public authority only if he claims to be “adversely and substantially affected” by the official action. In the case of the Ombudsman Bill, we do not propose any requirement of standing. Here we depart from that approach. We do so because the Tribunal, but not the Ombudsman, has power in some cases to impose its will on public authorities and thereby to change official actions of government. In our view, this is a power which should not be exercised at the instance of a person who has little or no personal interest in an official action. The test we propose of “adversely and substantially affected” is a new expression of old ideas. For example, “a person aggrieved” is an expression which embodies similar concepts but it is so often used in the law that rules have developed in relation to it. We see the Tribunal as a body which should break new ground. Hence we seek to depart from familiar expressions which carry inbuilt restrictions. At the same time we propose a somewhat severe test of standing. “Affected” means affected in his legal position.¹⁹ Although at the objection stage it is enough that a private objector *claims* to be so affected²⁰ in an ensuing inquiry it must appear that he is so affected.²¹

Section 18: Time for Objection

19. Public authorities must often act quickly and even if speed is not required undue delay in administration is to be avoided. If an official action is to be disturbed it should, so far as practicable, be disturbed before the action and the consequences of the action are irreversible. For this reason the section provides a relatively short

¹⁹ S. 5 (2), (3), (5).

²⁰ S. 17 (2).

²¹ Ss. 33 (1) (b), 34 (1) (a).

time, forty days, for objection to an official action. Section 72 provides for the hardship case. Under that section time may be abridged or enlarged on application made to the Tribunal by either the public authority or an objector.

Section 22: Time for Request

20. If objection is made to an official action, the public authority concerned has forty days during which it may either do nothing about the objection or seek to arrive at some satisfactory agreement with the objector. At the end of that forty days, the objector has fifty days within which he may request the Tribunal to inquire into the official action. Again we propose a short time limit. We do so for the reasons mentioned in para. 19 above.

Section 26: Preclusion of Inquiry

21. We propose the section for two reasons. First, section 16 (c) permits the making of regulations to exclude from the application of the Act official actions described in the regulations. Cases may arise, however, concerning an official action which should be excluded before the Commissioner for Public Administration has had occasion to consider the matter, or before regulations have been made carrying out a recommendation made by the Commissioner. Secondly, there may be cases where the holding of an inquiry would be contrary to the public interest. For example, an inquiry may prejudice relations with other States or it may result in the disclosure to the parties of information which could lead to improper financial speculation. It is proper that the Government should be able to act promptly in such cases. A proclamation by the Governor must be preceded by advice given by the Executive Council and the Government will bear political and public responsibility in the matter.

Section 28: Preliminary Decision

Section 29: Review of Preliminary Decision

22. We are concerned here that the Tribunal should not needlessly be engaged in formal hearings. When a request for an inquiry is made, an examination of the official papers by the Tribunal may clearly indicate that the objection cannot be allowed. In such cases the Tribunal can decide not to hold an inquiry but it must notify the objector accordingly. There may, however, be cases where the objector wishes to argue that the Tribunal should hold an inquiry. We propose that in those circumstances the objector shall have the right to argue the matter before the Tribunal.

Section 30: Discretionary Inquiry: Relevant Matters

23. The section proposes that the Tribunal should have a general discretion to decide whether or not it will inquire into official actions which are not within the application of section 25 (1) or 2 (b). The detailed matters mentioned in paras (a) to (g) are included for the general guidance of the Tribunal and potential objectors.

Section 31: Stay, etc., of Official Action

24. We believe that a power in the Tribunal to direct the stay of an official action is inconsistent with reasonable efficiency in government. We think it proper, however, that the Tribunal should be able, in its discretion, to recommend that an official action be stayed. The Tribunal will not make such a recommendation without carefully considering all relevant matters but, in our view, the ultimate decision in the matter must be left to the public authority.

Section 32: Policy

25. In paras 31-37 of our Report we distinguish between functions of a public authority which are adjudicative in character and functions which are legislative in character. Section 32 deals with the legislative aspects of an official action. The section permits the Government or a public authority to make a statement of policy to the Tribunal. The statement will, in effect, set forth the legislative aspects of the official action. If the policy so stated is within power, the Tribunal is to be bound by the statement where it is made by the Government and is to have regard to the statement where it is made by a public authority other than the Government. Government must be able, if authorized by law, to have the final say about the legislative aspects of any official action: it is responsible to Parliament for the action and it must be in a position to accept that responsibility. On the other hand, most public authorities are not directly linked with Parliament and their policies do not carry the weight of Government policies. We propose, therefore, that the Tribunal shall have regard to those policies but be not bound by them. Where a public authority feels so strongly about a policy that it wishes the Tribunal to be bound by it, the authority may seek the intervention of the responsible Minister. If the Minister is persuaded to the viewpoint of the authority, and the matter is one by law susceptible of control by Government policy, the way is open to him to have the authority's policy stated as a policy of the Government.

Section 34: Allowance of Objection

26. The section is directed to two situations where the Tribunal is satisfied that an official action of a public authority has adversely and substantially affected a person: first, where the public authority had a choice as to the action it would take but it chose to take an action which was harsh, discriminatory or otherwise unjust; and, secondly, where the public authority took an action which it had no power to take. In either case the Tribunal may allow an objection to the official action.

27. As to the first situation, the words "harsh, discriminatory or otherwise unjust" are descriptive but imprecise. The Tribunal will evolve its own tests. We do not seek precision because precision may result in rigidity and the Tribunal should, in our view, be able to develop its own principles, subject, of course, to supervision by the Supreme Court and, if experience shows the need, by Parliament.

28. As to the second situation, the concept of power is, as we note in para. 23 of Annexure E to our Report, a developing concept and the Tribunal will be bound by developments.

29. Section 34 does not extend to an official action of a public authority which is within power where the public authority had no choice but to take the action. If, in such a case, a person is adversely and substantially affected, the law, not the public authority, may be at fault. The Commissioner for Public Administration may make recommendations about the law and the Ombudsman may make recommendations about the consequences flowing from its use. But, in our view, the matter is not properly within the jurisdiction of the Tribunal.

Section 35: Remission to Public Authority

30. The section states that, before the Tribunal makes an order allowing an objection to an official action, the public authority shall be given an opportunity of reconsidering the action. We think that, where there may be more than one way of taking an official action consistent with the Tribunal's findings of fact and law, the public authority, and not the Tribunal, should make the choice.

Section 36: Objection Allowed: Powers of the Tribunal

31. Where the Tribunal allows an objection to an official action its powers are as stated in subsection (1): it may set aside the action and its consequences, and it may direct that the public authority take other action. The Tribunal has no other power. It cannot, for example, award damages or compensation. In the case of an official action which is beyond power, the Tribunal has no discretion as to the date from which the action is set aside: the action is a nullity from the beginning. But, in other cases, the Tribunal may choose the date from which the action is set aside and may, in effect, make an order which produces, in its opinion, a just result. For example, where an official action gives to a person a right to enter the land of another, setting aside the official action from the beginning may subject the person to a civil action in respect of an entry already made by him. This result could be avoided by setting aside the official action as from a future date.

Section 38: Procedure Generally

Section 39: Evidence

32. We intend that the Tribunal, when conducting an inquiry, shall, though a court, act not in the orthodox way as an appellate court, but as a senior and independent administrator. Procedures appropriate to an appeal are therefore not necessarily appropriate to an inquiry. An appellate body takes little part in the selection of material which is put before it: the parties to the appeal prepare their cases and present them. Section 38 (1) (a) provides that in an inquiry the Tribunal may inform itself of any relevant matter: the subsection is to be read with section 65 which provides that the Tribunal must make relevant docu-

mentary evidence and material available to the parties. Section 38 (1) (b) to (j) and section 39 will enable the Tribunal not only to control the conduct of an inquiry, but also to receive and act upon as evidence such matter as it thinks relevant and to restrict or exclude the examination of witnesses and to exclude evidence.

33. Section 38 (1) (a) enables the Tribunal to overcome the difficulty experienced by the ordinary courts of investigating a question about which witnesses called by the parties have not told, or have been unable to tell, the whole story. Section 38 (1) (b) to (j) and section 39 enable the Tribunal to save time and money by controlling the proof of facts, the admissibility and relevance of evidence, and the manner of presenting argument. We do not think that these provisions are incompatible with the Tribunal doing justice to the parties before it.

Section 40: Enforcement of Orders

34. Where a person does not comply with an order, direction or requirement of the Tribunal—

- (a) if he is not a public authority, his objection may be dismissed or, if he is not an objector, he may be dismissed from the proceeding;
- (b) if he is a public authority, the Tribunal may make a report to the Minister for presentation to Parliament.

In most cases, no other action by the Tribunal will be necessary. But section 71 enables the President to deal with any case in which he considers the use of section 40 to be inapt.

Section 41: Privacy and Publicity

35. The Tribunal is a final stage in the administrative process. It is appropriate, in the interests both of an objector and of the public authority concerned, that its proceedings, in general, be in private, unless the Tribunal otherwise orders. But the decisions of the Tribunal, and the reasons for them, are of public interest to other persons, including other public authorities. The present section therefore provides that decisions and reasons shall be made public unless (subsection (4)) the parties consent or there are reasonable grounds for avoiding publicity.

Section 42: Case Stated on Disposal of Proceedings

Section 43: Stay of Operation of Decision or Order

36. We believe that the Supreme Court should remain the ultimate authority, within this State, for the decision of questions of law. Under section 42, the Tribunal, on disposal of proceedings, may state a case for the decision of the Supreme Court and shall state such a case where ordered to do so by the Supreme Court. This avoids any chance of the development of two systems of law, feared by the Franks Committee (see para. 150 of our Report).

37. Section 43 contains ancillary provisions. We mention also sections 68 and 69, which deal with questions of law arising during proceedings before the Tribunal but before the disposal of those proceedings.

Section 44: Application of this Act

38. In relation to appeals, as distinct from inquiries under Part III, the Act does not confer jurisdiction on the Tribunal. Section 44 envisages that rights of appeal to the Tribunal will be conferred by other legislation. It will be the function of the Commissioner for Public Administration to consider existing and future legislation and to recommend whether an appeal (if any) against an official action of a public authority under that legislation should be to the Tribunal or to another body (see para. 139 of our Report).

Sections 45–48

39. Sections 45–48 contain ancillary provisions relating to appeals. Section 44 ensures that these provisions (and other provisions of the Bill) apply subject to the Act by or under which an appeal lies to the Tribunal.

Sections 49–58: Contempt

40. The Tribunal is a court of record (s. 6 (2)). Contempt of the Tribunal may, as in the case of other courts of record, be dealt with by the Supreme Court (s. 58). In addition, the Tribunal may deal with contempt committed in the face of the Tribunal or in its hearing, and with contempt concerning the performance of orders made by or undertakings given to the Tribunal. The exercise of the powers of the Tribunal concerning contempt may affect the liberty of a person or may impose a pecuniary penalty on a person. It is therefore provided that the powers may be exercised only by a member who is a judge (s. 51) and in public (s. 52). There is an appeal to the Supreme Court (s. 55).

41. The procedure and powers of the Tribunal in dealing with contempt (ss. 53–56) are similar to those of the Supreme Court (compare Supreme Court Rules, Part 55, rules 2, 3, 4, 13 and 14).

Section 59: General

42. As to procedure generally, the Tribunal will act with as little formality as it can to achieve “the just, quick and cheap” disposal of proceedings (s. 57 (1)): it need not adhere strictly to the requirements of the Act or the regulations about the form or content of any document (s. 57 (2)). Especially in inquiries under Part III, we regard flexibility and lack of technicality as necessary.

*Section 63: Compulsion to Testify, to Produce etc.**Section 64: Inspection of Property etc.*

43. Section 63 gives power to the Tribunal to order a person to attend before it to give evidence or to produce documents or things. Section 64 contains similar provisions regarding the inspection, etc., of any land, document or other thing. Powers of this nature are, in our view, appropriate powers for the Tribunal to have. Indeed, without them the Tribunal could not adequately discharge its functions.

*Section 68: Question of Law: Tribunal With Judicial Member**Section 69: Question of Law: Tribunal Without Judicial Member*

44. These sections apply where a question of law arises in the course of proceedings before the Tribunal but before the end of the proceedings.

45. Where the Tribunal, as constituted for the matter, has a judge as a member, it is proper that the Tribunal should decide the question of law or, if it thinks fit, state a case thereon for the decision of the Supreme Court. Section 68 so provides.

46. Where the Tribunal, as constituted for the matter, does not have a judge as a member, the Tribunal should continue with the matter (s. 69 (4)) unless some other step is taken. Other steps which may be taken are: first, the Tribunal may, with the consent of the parties, be reconstituted so as to include a judge as a member and it may then continue with the matter (s. 69 (5))—section 68 would thereafter apply to the Tribunal as reconstituted: and, secondly, the matter may be removed for consideration by the Tribunal constituted by the President alone (s. 69 (6) and (7)). The President may then refer the matter back to the Tribunal as originally constituted with or without a decision on the question of law (s. 69 (8) (a) and (b)); or refer the matter to the Tribunal reconstituted by him so as to include a judge as a member (s. 69 (8) (c)) with appropriate directions (s. 69 (9)). Section 69 permits flexibility in dealing with questions of law. The President may exercise his powers to control proceedings having regard to the nature and circumstances of particular matters. He will exercise those powers in the manner which seems to him best suited to the just, quick and cheap disposal of the proceedings.

Section 71: Enforcement of Orders

47. In ordinary cases, section 40 gives sufficient power to secure obedience to orders of the Tribunal. Cases may occur where this is not sufficient. For example, the Tribunal may order that land resumed by a public authority be transferred back to the person from whom it was resumed. If this order were not obeyed, section 71 would permit entry of the order in the records of the Supreme Court and the execu-

tion of the transfer by a person appointed for that purpose.²² A case of this kind is not likely to occur but, if it does, it is desirable that the Tribunal have power to deal with the matter. An order confirmed under this section for the purposes of enforcement is equivalent to a Supreme Court judgment and it is therefore appropriate that the power be exercised only by the President who, if it will be recalled, must be a Supreme Court Judge.

Section 73: Officers

48. The powers and duties of officers of the Tribunal are determined by regulation. Powers of the Tribunal may not be delegated to an officer where they are powers which may be exercised by the Tribunal only when constituted to include a judge (s. 73 (3)).

Section 76: Privilege as Regards Defamation

49. The Tribunal is a court of record and its proceedings are, in general, absolutely privileged under the law of defamation. However, there may be doubts concerning the nature of the activities of the Tribunal, and of its officers, in conducting an inquiry under Part III. The present section is intended to set these doubts at rest.

Section 77: Report of the President

50. It is a duty of the Commissioner for Public Administration to keep under review the law relating to public authorities (s. 6 (1) (a) of the Commissioner for Public Administration Bill). The Commissioner will be assisted by a knowledge of the activities of the Public Administration Tribunal. For that reason the President is a member of the Advisory Council on Public Administration (s. 7 (1) (c) of the Commissioner for Public Administration Bill). Subsection (1) of the present section provides that the President may make reports about the work of the Tribunal to the Commissioner. Further, a statement of policy of the Government, given under section 32, affects the rights of an objector and subsection (2) of the present section provides that the statement be sent to the Commissioner. The Commissioner shall give particulars of the statement in his annual report under section 13 of the Commissioner for Public Administration Bill.

Section 80: Regulations

51. In the case of a court such as the Supreme Court or the District Court, extensive powers are conferred to make rules of court. The Public Administration Tribunal is, however, a new body and it will be much involved with matters of serious concern to the Government. We think it appropriate, at least at the outset of its operations, that the regulation of procedure should be by the Governor rather than by some or all of the members of the Tribunal.

²² Supreme Court Act, 1970, s. 100.

The Schedule

52. Section 16 (b) excludes from the operation of Part III (Objections and Inquiries) an official action of a kind described in the Schedule.

53. Item 1 of the Schedule refers to official actions of persons who are outside the scope of our terms of reference. We would not in any event propose their inclusion. The legislature controls persons within its jurisdiction. The Judiciary controls persons within its jurisdiction and there is in existence a system of appeals and reviews by which the decisions of courts and similar bodies are controlled. We think this system should be left untouched.

54. Item 2 refers to bodies which are akin to ordinary courts and are therefore, we think, not within the spirit of our terms of reference. We instance the disciplinary tribunal constituted under the Medical Practitioners Act, 1938 (s. 28).

55. Item 3 refers to official actions which are outside the scope of our terms of reference. In any event we would make the same proposal. The validity of rules, regulations and by-laws is, however, a matter which the Tribunal may consider in an inquiry into some other official action, in the same way as a court may do, in the course of proceedings before the court.

56. Item 4 refers to official actions which are, at first sight, beyond the legislative power of the Parliament of this State. We are concerned, however, about statutory provisions such as section 26c of the Theatres and Public Halls Act, 1908 (see para. 37 of the Notes to the Ombudsman Bill).

57. Item 5 is proposed because a New South Wales official should not, we think, be able to investigate conduct for which the Government of the Commonwealth or of another State may be partly responsible. See again para. 37 of the Notes to the Ombudsman Bill. Experience may enable the dropping or narrowing of this item.

58. Item 6 is proposed because it involves a matter of legal professional privilege. The importance of that privilege is such that it should stand between the Tribunal and official actions of the kind mentioned in the item.

59. Item 7 is proposed because the proceedings mentioned in it are properly controllable under the existing law relating to judicial bodies.

60. The exercise of Her Majesty's prerogative of mercy has long been regarded as a special power and we think it should not be subject to any external review. Hence we propose Item 8.

61. Item 9 is proposed because a person acting as a commissioner under the Royal Commissions Act, 1912, is discharging a function closely akin to the function of a judicial body within the intendment of Item 1 (d).

62. Item 10 is proposed with a view to keeping down the initial work load of the Tribunal.

63. Item 11 is included because of the special requirements of speed and secrecy sometimes arising in relation to crime and the preservation of the peace. We think that experience should be gained of the working of the Tribunal before its powers are extended to this sensitive area.

64. Item 12 is included because of the occasional need for swift and positive action in the management of prisons. We think that existing avenues of complaint, supplemented by an approach to the Ombudsman, are more appropriate than would be an extension of the jurisdiction of the Tribunal to official actions in the management of prisons.

65. Items 11 and 12 require special consideration by the Government and we invite that consideration. Reasons for and against the inclusion of Items 11 and 12 can readily be found but, in each case, they are difficult to formulate.

66. Item 13 is proposed on the simple ground that the law relating to contracts between private persons on the one hand and the Crown or public authorities on the other hand is part of the general law of contracts. There is no reason why such matters should not be left to the ordinary courts.

67. Most official actions affecting the employer-employee relationship are within the jurisdiction of special tribunals such as the Industrial Commission and the Crown Employees Appeal Board of this State. In Item 14 we seek to avoid unnecessary duplication of remedies. Conduct touching the relationship mentioned is not, however, excluded from investigation by the Ombudsman which may lead to recommendation by him.

Costs

68. In an appeal, the Tribunal's powers are determined by the Act which creates the right of appeal, not by an Act founded on this Bill: the former Act will determine whether the Tribunal may award costs. In an inquiry, the Tribunal's powers are determined by the Act founded on this Bill: the Bill is silent on the subject of costs and hence the Tribunal may not award costs. Where holding an inquiry the Tribunal is part of the administrative process. In most inquiries there will be much that can be said in favour of allowing an objection and much that can be said against allowing it. We think it unfair to place the burden of costs on the losing party. If costs were to follow the event, an objector could not know what an inquiry might cost him: reluctance to use the Tribunal would be an inevitable result.

NOTES ON THE OMBUDSMAN BILL

GENERAL

1. The Bill we propose is based on the Parliamentary Commissioner (Ombudsman) Act 1962¹ of New Zealand, the Parliamentary Commissioner Act, 1971,² of Western Australia and, in part, on the Parliamentary Commissioner Act 1967³ of the United Kingdom.

2. A comparison of the working of the New Zealand Act and the United Kingdom Act is not favourable to the latter.⁴ The British Parliamentary Commissioner serves more than fifty-three million people and has a staff of fifty-eight. The New Zealand Ombudsman serves a population of two millions and a half and has a staff of six.⁵ Yet the cases handled by the Ombudsman exceed those handled by the Parliamentary Commissioner. For example—

	U.K.	N.Z.
Period	1970	y.e. 31-3-70
Cases dealt with	657	663
Found outside jurisdiction or discontinued after partial investigation	392	297
Cases investigated	259	366
Complaints found justified ..	59	78

3. Three reasons are given for the British Commissioner receiving proportionally fewer complaints than the New Zealand Ombudsman. First, in Britain members of the public do not have direct access to the Parliamentary Commissioner⁶ but in New Zealand they have that access.⁷ Secondly, the Parliamentary Commissioner may look only at "mal-administration"⁸ but the Ombudsman may investigate, amongst other things, "unreasonable" actions of Government.⁹ And, thirdly, the Parliamentary Commissioner is excluded from more areas of Government than is the Ombudsman.¹⁰

¹ Hereafter referred to in the footnotes as "N.Z. Act". For text of Act see Annexure G to our Report.

² Hereafter referred to in the footnotes as "W.A. Act". For text of Act see Annexure G to our Report.

³ Hereafter referred to in the footnotes as "U.K. Act". For text of Act see Annexure G to our Report.

⁴ See Stacey, *The British Ombudsman* (1971), p. 307 ff. Paras 2-4 of these notes are based on Stacey's work.

⁵ See *Report of the [New Zealand] Ombudsman 1972*, p. 126.

⁶ U.K. Act, s. 5 (1).

⁷ N.Z. Act, s. 11 (2).

⁸ U.K. Act, s. 5 (1) (a).

⁹ N.Z. Act, s. 19 (1) (b).

¹⁰ See Stacey, *op. cit.*, p. 308.

4. A comparison of the British and New Zealand Acts is not, in every respect, favourable to the latter. The Ombudsman can investigate recommendations made to Ministers, but he cannot investigate the decisions of Ministers.¹¹ The Parliamentary Commissioner is not so inhibited.¹²

5. We turn, before commenting on particular sections of the Bill, to the recommendation of the Commonwealth Administrative Review Committee that an office of General Counsel for Grievances be established.¹³ The Committee sees the General Counsel as an official having functions similar to those of an ombudsman. It proposes that the General Counsel be located within the system of administrative review rather than in the parliament-executive context. It proposes too that the General Counsel may commence proceedings for review and, with leave of the tribunal before whom the proceedings are commenced, intervene in the proceedings. We do not make similar recommendations. In our view the proper function of a grievance officer is to complement the work done on administrative complaints by Parliament and Members of Parliament; he should be a parliamentary aid and should not have formal ties with any other part of government. It is also our view that the success of such an officer will depend, in part, on full and frank exchange of information and views with public authorities. We think that public authorities may be justifiably reluctant to co-operate with an officer who is able to commence court-like proceedings about their conduct. Co-operation is, in our view, more likely to be given to a person who can disclose information given to him only in few circumstances and who is neither a competent nor compellable witness in legal proceedings.¹⁴

6. Our recommendations are, of course, what seem to us best for New South Wales. What we have said in para. 5 is directed to considering whether we should recommend that New South Wales should follow the course recommended by the Commonwealth Administrative Review Committee for the Commonwealth. We do not question the fitness of those recommendations in the somewhat different environment of Commonwealth administrative arrangements.

7. Hereafter we comment only on those sections of the Bill which, in our view, require comment or which, again in our view, are not self-explanatory. Where we give a short description of the intended operation of any provision of the Bill, the description will often be incomplete and must yield to the terms of the provision in question. We do not seek in all cases to justify departures from the Acts of other places. The Ombudsman concept is one of changing content and application¹⁵ and we try to express principles with as few qualifications and details as possible.

¹¹ *Ibid.*, p. 310 and N.Z. Act, s. 11 (1).

¹² See Fry, *The Sachsenhausen Concentration Camp Case and the Convention of Ministerial Responsibility* (1970), Public Law 336.

¹³ Report of the Commonwealth Administrative Review Committee (1971), paras 312-318.

¹⁴ See the Ombudsman Bill, ss. 33, 34.

¹⁵ See para. 159 of our Report.

Section 1: Short Title

8. We propose the title "Ombudsman", and not "Parliamentary Commissioner for Public Administration" or any other like description. The English language contains many foreign expressions and the word "Ombudsman" is commonly used and understood. To us, the word evokes the nature of the office more clearly than does any alternative.

Section 3: Amendment of Defamation Act, 1958

9. We propose amendments of the Defamation Act, 1958, to provide that, for the purposes of the law of defamation—

- (a) absolute privilege attaches to—
 - (i) publications to and by the Ombudsman and his "special officers" (see section 8 of the Bill);
 - (ii) publications, in restricted circumstances, of reports of the Ombudsman (and copies of his reports) before presentation to Parliament (proposed section 13A of the Defamation Act, 1958); and
- (b) qualified privilege attaches to publications of copies, extracts from or abstracts of a report of the Ombudsman where the report has been made public before presentation to Parliament (proposed section 14 (1) (c1) of the Defamation Act, 1958).

Comparable Acts elsewhere contain provisions relating to the law of defamation.¹⁶ Without them, we doubt that an Ombudsman Act could be administered satisfactorily.

Section 5: Interpretation

10. (a) "public authority": As in the case of the Public Administration Tribunal Bill, we do not enumerate the public authorities to whom this Bill is intended to apply. We propose that it shall apply to all public authorities but that classes of conduct of public authorities be excluded by or under section 13. That section will allow the executive to watch the operation of the Act and, subject to disallowance by either House of Parliament, to make jurisdictional changes thought to be necessary. We recognize, of course, that section 13 and the Schedule to the Bill call for detailed consideration. Their effect is that specified classes of conduct (in some cases all conduct of a specified public authority) are immediately excluded from the operation of the Act and other conduct may later be so excluded. Some people may see in this arrangement an undesirable opportunity for the activities of the Ombudsman to be limited by executive action. But we think it is better to confer on the Ombudsman a wide jurisdiction which may later be curtailed than to confer a narrow jurisdiction which may or may not later be enlarged.

¹⁶ N.Z. Act, s. 22 (3).
U.K. Act, s. 10 (5).
W.A. Act, s. 25 (7).

(b) "head" and "responsible Minister" in relation to a public authority: These definitions are relevant to section 15 (notice of investigation), section 23 (persons to be heard), section 24 (consultations), section 25 (3) (c) and (4) (b) (reports of wrong conduct), section 27 (1) (reports of serious misconduct) and section 33 (disclosure of information by Ombudsman). We attach importance to this group of sections because they stress the role that the doctrine of ministerial responsibility plays in the activities of the Ombudsman.

(c) "conduct of a public authority [which] is wrong": When read with the definition of "conduct" in subsection (1), this concept becomes one of wide application. It is, in substance, the approach that is adopted in New Zealand and Western Australia, but not in the United Kingdom.¹⁷ The United Kingdom's experience does not lead us to follow that example.¹⁸

Section 6: The Office of Ombudsman

11. (a) Subsection (2): Senior officials in this State are usually appointed to office by the Governor¹⁹ and we propose that this be so in the case of the Ombudsman. We reject the alternative of having the Ombudsman appointed by or on the recommendation of either or both Houses of Parliament.²⁰ We think that the high status of the office may be reduced by public debate on the merits or demerits of persons nominated for the office.^{20a} We propose that the Ombudsman be appointed for a term not exceeding seven years and that he be eligible for re-appointment. This too is a legislative provision commonly used in New South Wales.²¹ It satisfies the criterion of independence mentioned in para. 68 (1) (c) of our Report.

(b) Subsection (6): Subject to the proposal contained in subsection (2) that the Ombudsman hold office for a fixed term, we believe that an ombudsman should have the security of tenure of a judge of the Supreme Court.²² See again para. 68 (1) (c) of our Report.

(c) Subsection (8): We do not recommend specific amounts for the salary and allowances payable to the Ombudsman, but we envisage them as exceeding those payable to all but a few public authorities and to be in the order of those payable to a judge of the Supreme Court. We provide for the salary to be specified in the Act as a public mark of the status of the office, and to enforce the security of his office.

¹⁷ N.Z. Act, s. 11 (1). W.A. Act, s. 14 (1).

¹⁸ See paras 3 and 4 of these notes.

¹⁹ See, for example, the Public Transport Commission Act, 1972, s. 5.

²⁰ See N.Z. Act, s. 2 (2).

^{20a} Consider the debates in recent years in the United States Senate on the fitness of candidates for the Supreme Court of the United States.

²¹ See, for example, the Public Transport Commission Act, 1972, s. 7.

²² See Supreme Court Act, 1970, s. 27 (2).

(d) Subsection (10): This subsection stresses that an ombudsman should not be actively engaged in party politics. It does not preclude the appointment of former parliamentarians.²³

Section 11: Right to Complain

12. (a) Subsection (1): Complaints should, in our view, be made to the Ombudsman with a minimum of formality. We do not propose that they must be made in writing²⁴ or in any particular form or that complainants should satisfy any requirements relating to standing²⁵ or that they should pay any fee.²⁶ Section 12 (4) (b) enables the Ombudsman to sort the worthy complaints from the unworthy and, in our view, he will be better able to do this in the light of his experience than anyone else who tries to predict that experience. Moreover, no one can determine the nature or extent of the Ombudsman's work load. Perhaps he may have to impose procedural and other requirements but until the position becomes clear we prefer flexibility to rigidity.

We have not included any provision which enables Parliament to direct the Ombudsman to make an investigation. Provisions of this kind appear in the comparable New Zealand and Western Australia legislation.²⁷ We have not adopted these provisions because we think an ombudsman should be able to decide himself what work he will undertake. Parliament can appoint Select Committees to investigate matters of special concern to Parliament and an individual Parliamentarian will, on our proposals, be able to approach the Ombudsman either on his own behalf or on behalf of another. Moreover to provide, in effect, that an Ombudsman must interrupt current investigations for the purpose of making a particular investigation is to build in a potential source of frustration to private complainants. We do not think that such a provision is justified.

(b) Subsection (2): The subsection is directed to such situations as those where a person is detained in custody on a charge or after a conviction or under the provisions of the Mental Health Act, 1958.²⁸ It would, for example, oblige a public authority to make writing materials available to a person for the purpose of making a complaint to the Ombudsman.

Section 12: Decision for Investigation

13. (a) Subsection (1): We propose that the Ombudsman may investigate any conduct of a public authority (except conduct excluded by or under section 13) where it appears to him that the conduct may be wrong, whether or not he has received a complaint. Conduct may

²³ Compare N.Z. Act, s. 3 and W.A. Act, s. 5 (8).

²⁴ Compare N.Z. Act, s. 13 (1) and W.A. Act, s. 17 (1).

²⁵ Compare N.Z. Act, s. 11 (1) and W.A. Act, s. 14 (1) and s. 17 (1).

²⁶ Compare N.Z. Act, s. 13 (3).

²⁷ See N.Z. Act, s. 11 (3) and W.A. Act, s. 15.

²⁸ Compare N.Z. Act, s. 13 (2) and W.A. Act, s. 17 (3).

attract his attention in many ways—Parliamentary debates, personal observations, reports of the press, radio and television and so on. If he were powerless to act except on complaint, the legislation would be defective. The proposal is not novel.²⁹

(b) Subsection (2): This subsection ensures that no legislative provision enacted before the passing of the Ombudsman Act shall preclude the Ombudsman from investigating the conduct of a public authority which may be wrong.³⁰ We would hope that legislation enacted after the passing of the Ombudsman Act would not save that legislation from the operation of the Ombudsman Act: if this were to happen the purpose of the proposed Bill would be frustrated.

(c) Subsection (4): Paragraph (a) confers wide discretionary power on the Ombudsman³¹ and paragraph (b) is intended to provide guidelines useful both to the Ombudsman and to complainants.

Paragraph (b) (iii) is included because of the wide range of public authorities within the scope of the Bill. For example, the Rural Bank of New South Wales is a public authority:³² the Ombudsman may decide to investigate a complaint about the Bank's Government Agency Department but we think it unlikely that he would investigate a complaint about the Bank's General Banking Department.

Paragraph (b) (iv) indicates that we do not propose that complaints should be made to the Ombudsman within any fixed time.³³ Time limits often cause hardship and we think it better that questions of time be answered by the Ombudsman without reference to arbitrary or immutable standards.

Paragraph (b) (vi), though not imposing any requirement of standing, nonetheless points out that the Ombudsman need not heed an intermeddler.

Section 13: Excluded Conduct

14. (a) Subsections (1), (2), (4), (5) and (6): In para. 10 (a) of these notes we referred to conduct of public authorities which, on our proposals, will be excluded from the operation of an Ombudsman Act. Subsection (1) provides a means of exclusion, namely, listing matters in the Schedule to the Bill. Subsection (2) provides another means of exclusion, namely, amending the Schedule by proclamation published in the Gazette. Exclusion by proclamations are made subject to disallowance by either House of Parliament.

(b) Subsection (3): If our proposed Bill listed all the public authorities whose conduct is within its application, we would not propose this subsection: Parliamentary approval of such a list would, in our view, justify exclusion of the subsection. But we think that it is neither

²⁹ See N.Z. Act, s. 11 (2) and W.A. Act, s. 16 (1).

³⁰ Compare N.Z. Act, s. 14 (2) and W.A. Act, s. 14.(8).

³¹ See N.Z. Act, s. 14 (1) (b) and W.A. Act, s. 14 (5).

³² See Government Savings Bank Act, 1906, s. 29 and this Bill, s. 5.

³³ Compare N.Z. Act, s. 14 (2) and W.A. Act, s. 17 (5) and (6).

practical nor desirable to list in the Schedule all the public authorities whose conduct should be within the application of the Bill. We touched upon these matters in para. 10 (a) above. Annexure A to our Report shows that such a list would be of far greater length than the Schedules contained in the New Zealand, United Kingdom and Western Australia Acts:³⁴ also, the listing would require constant changes if it were to keep pace with the legislative programmes of this State: and we doubt that the completeness of any listing could be vouched for. In the circumstances, the subsection is proposed as a realistic alternative. It overcomes objections to our general proposals based on the possibility that the Schedule may not exclude from the operation of the Act conduct of public authorities which should be excluded. A proclamation under subsection (2) will result in the application of subsection (3) to conduct specified in the proclamation and the Ombudsman's jurisdiction in relation to that conduct will be ousted.

Section 15: Notice of Investigation

15. We think it necessary that the Ombudsman give notice of his decision to investigate any conduct of a public authority. This section specifies the persons to be notified and the form of the notice. Sometimes it may not be possible to identify the particular authority whose conduct is complained of (for example, "a ticket collector", "a traffic policeman" or "the man on the counter"). At other times, it may not be possible to give notice to that person (for example, in the case of death, retirement or absence overseas). But we provide that so far as practicable notice must be given to those concerned. We do not think that it is necessary for the Ombudsman to give notice to the responsible Minister: it can be assumed that where the situation warrants it the Minister will be notified by his Under Secretary.³⁵

Section 16: Privacy

16. The section provides that any investigation by the Ombudsman shall be made in the absence of the public.³⁶ We think that no argument can justify any contrary provision: the Ombudsman has access to information which may be confidential to the complainant or to the public authority or to both. Public investigations could destroy the informality and mutual trust upon which the success of an ombudsman's work turns.

Section 17: Public Authority to Give Information, etc.

17. The section confers powers on the Ombudsman without which he could not effectively discharge his functions. Similar powers are contained in the New Zealand, United Kingdom and Western Australia legislation.³⁷

³⁴ Parts I-III of Schedule to N.Z. Act; Schedule 2 to U.K. Act and Schedule to W.A. Act.

³⁵ See N.Z. Act, s. 15 (1) and W.A. Act, s. 19 (1).

³⁶ See N.Z. Act, s. 15 (2) and W.A. Act, s. 19 (2).

³⁷ See N.Z. Act, s. 16 (1); U.K. Act, s. 8 (1) and W.A. Act, s. 20 (1).

Section 18: Inquiries

18. We apply to section 18 the comments we made in para. 5 of the notes on the Commissioner for Public Administration Bill.

Section 19: Entry of Premises, etc.

19. As noted in relation to section 17, this section confers powers on the Ombudsman without which he could not effectively discharge his functions. Similar powers are given in comparable legislation.³⁸

Section 20: Limits on Secrecy and Privilege

20. This section is concerned with matters which may arise out of the use by the Ombudsman of the powers conferred on him by sections 17, 18 and 19. Subsections (2) and (5) take away the privileges and duties specified in those subsections; privileges and duties which attach to public authorities. But subsections (3) and (4) operate to save any other privilege which is available and is not waived. For example, a solicitor could resist a demand of the Ombudsman on the ground of a legal professional privilege which has not been waived by his client. The comments we make about Crown privilege, in paras 173-175 of our Report, apply to this section. Similar provisions are contained in comparable legislation.³⁹

Section 21: Cabinet Proceedings

21. As noted in para. 175 of our Report, confidential proceedings of Cabinet are commonly excluded from the operation of Ombudsman legislation.

Section 22: Expert Assistance

22. This section is novel. We include it because of comments made to us by the New Zealand Ombudsman to the effect that he would welcome a like provision in the Act under which he functions. We do not think it right that the Ombudsman should, for example, be restricted to obtaining legal advice from legal officers of public authorities or that the Ombudsman should have to ask for free expert advice.

Section 23: Persons to be Heard

23. Section 23 is concerned to apply principles of natural justice to dealings between the Ombudsman, public authorities and other persons. It proposes that, so far as practicable, the public authority concerned in an investigation, the head of that authority and a complainant must be given an opportunity to comment on the conduct being investigated.⁴⁰ If the Ombudsman decides to censure any person the section will operate to give further opportunity for comment. In

³⁸ See N.Z. Act, s. 23 (1) and W.A. Act, s. 21 (1).

³⁹ See N.Z. Act, s. 16; U.K. Act, s. 8 and W.A. Act, s. 20 (2), (3).

⁴⁰ See N.Z. Act, s. 15 (3) and s. 19 (6) and W.A. Act, s. 19 (4) and s. 25 (7).

the latter case, the comment is directed to the grounds of censure as distinct from the conduct investigated. In our view, these provisions are proper provisions.⁴¹ Section 35 (incriminatory statements) is also relevant.

Section 24: Consultations with Responsible Minister

24. Although an ombudsman is an independent person, his function is that of an aid to Parliament and its members. Our general recommendations rest substantially upon the convention of collective ministerial responsibility and, if a Minister wishes to consult the Ombudsman, the Ombudsman must, in our view, meet that wish. Hence we propose section 24.⁴² We do not propose that the Ombudsman must comply with ministerial directions, though we recognize that Government policy as expressed by a Minister will decide many issues.

Section 25: Conduct Wrong

25. We do not depart from the common concept of the Ombudsman being an adviser, not a commander.⁴³ Section 25 (2) states the nature of the recommendations which the Ombudsman may make. We follow comparable legislation to a substantial extent.⁴⁴

Section 26: Default in Consequent Actions

26. Section 26 enables the Ombudsman to make a report which will come before Parliament if any recommendation made by him is not implemented.⁴⁵ Parliament, not the Ombudsman, then determines further action, if any. This section emphasizes that the Ombudsman cannot implement his own recommendations: without supporting action from Parliament, his recommendations are persuasive only.

Section 27: Serious Misconduct

27. An ombudsman may become aware of conduct on the part of a public authority which warrants the making of disciplinary or criminal inquiries. Section 27 is directed to that situation and it casts a duty on the Ombudsman to advise the responsible Minister when it occurs.⁴⁶ Section 34 precludes the Ombudsman and his staff from being witnesses in most legal proceedings. Where proceedings may result from serious misconduct it is better, we think, that necessary inquiries be made by persons who are capable of being witnesses.

⁴¹ See N.Z. Act, s. 15 (6) and W.A. Act, s. 19 (3), (4).

⁴² Compare N.Z. Act, s. 15 (5) and W.A. Act, s. 19 (6).

⁴³ See para. 162 of our Report.

⁴⁴ N.Z. Act, s. 19 (3) and W.A. Act, s. 25 (2).

⁴⁵ Compare N.Z. Act, s. 19 (4), (5) and W.A. Act, s. 25 (5), (6).

⁴⁶ Compare N.Z. Act, s. 15 (6) and W.A. Act, s. 19 (7).

Section 28: Report to Complainant

28. This section places a duty upon the Ombudsman to report the results of his work to his complainants. The section seeks to achieve results of the kind mentioned in paragraph 68 (12) of our Report.⁴⁷

Section 30: Special Reports to Parliament

29. Section 30 enables prompt publication to be made of special reports of the Ombudsman.⁴⁸ The section may seldom be used but we see it having a useful application where disquiet is aroused about an issue of public interest: an authoritative report of the Ombudsman may help to quell public controversy.

*Section 31: Officers**Section 32: Rights in the Public Service*

30. The proposals we make here are based on legislation affecting other officers in the service of the Crown. They are tentative proposals which will require consideration by the appropriate Departments.

Section 33: Disclosure by Ombudsman

31. The section⁴⁹ is prompted by the special features of an ombudsman's usual manner of working: he works privately and with free access to confidential information and documents. We think that complainants and public authorities must both be able to communicate with him without fear of their communications becoming public property or open to public scrutiny. A successful ombudsman will be trusted by the persons with whom he deals and part of this trust will come from the knowledge that whatever is disclosed to him is disclosed on a confidential basis. For these reasons, we specify the only circumstances in which information may be disclosed. For the same reasons we propose section 34.

The Schedule

32. Section 13 excludes from the operation of the Bill conduct of a public authority of a class described in the Schedule. Item 1 of the Schedule is proposed because we are unable to predict how many grievances have accumulated in a population exceeding four millions. If the number is great the Ombudsman, when he is appointed, should not be overborne by burdens from the past. Furthermore he will require time to develop his organization and system of work and too many complaints too soon could be fatal to the early success of his efforts. And, administrative procedures within public authorities may require change to adapt to the existence of an ombudsman.

⁴⁷ Compare N.Z. Act, s. 20 and W.A. Act, s. 26.

⁴⁸ Compare N.Z. Act, s. 25 and W.A. Act, s. 27.

⁴⁹ Compare N.Z. Act, s. 18 and s. 22 (1) (b) and W.A. Act, s. 23 and s. 30 (4).

33. Item 2 excludes from the operation of the Bill conduct which is, in our view, outside the scope of our terms of reference. We would not in any event propose its inclusion. In our political system, the Legislature and the Judiciary themselves supervise the conduct of persons within their respective jurisdictions. To the best of our knowledge, no Ombudsman or Parliamentary Commissioner in any common law country has power to investigate such conduct. Paragraph (d) (vii) is a statement of a characteristic which is common to most judicial bodies. We include it for the purpose of making clear that conduct of bodies such as the Local Government Appeals Tribunal is excluded from the operation of the Bill.

34. Item 3 excludes from the operation of the Bill the conduct of such bodies as the disciplinary tribunal constituted under the Medical Practitioners Act, 1938. We think that the comments made in para. 33 apply to such a body.

35. Items 4 to 12 will prompt debate. We propose few exceptions from the jurisdiction of the Ombudsman because we think compelling reasons of policy or expediency are required to justify exclusion (see para. 162 of our Report). The scope of our proposals is indicated if these items and the public authorities mentioned in Annexure A to our Report are compared.

36. Item 4 is proposed because the making of rules, regulations and by-laws is outside the scope of our terms of reference. In any event we would make the same proposal. An ombudsman may investigate how a rule, regulation or by-law is applied in practice and he may express opinions on the question whether it is a good or a bad law. But we think that he should not be permitted to intervene in the process of making the law.

37. Items 5 and 6 are proposed because a New South Wales official should not, we think, be able to investigate conduct for which the Government of the Commonwealth or of another State may be partly responsible. Moreover, that Government may properly object to a New South Wales official having access to information which it regards as confidential to it. Item 5 is directed to situations such as may arise under section 26c of the Theatres and Public Halls Act, 1908. Subsection (1) of that section states: "The Governor may arrange with the Governor-General of the Commonwealth for the exercise and discharge by officers or authorities of the Commonwealth on behalf of the Government of the State of the powers, authorities, duties and functions of the censor." Items 6 (a), (b) and (c) are directed to bodies such as the Joint Coal Board constituted in pursuance of the Coal Industry Act, 1946, the Dumaresq-Barwon Borders Rivers Commission appointed under an agreement ratified in the New South Wales-Queensland Border Rivers Act, 1947, and the River Murray Commission appointed for the purposes of the River Murray Waters Act, 1915. In time to come, experience may justify the dropping or narrowing of these items.

38. Item 7 is proposed as being a matter within the application of the doctrine of legal professional privilege. The importance of that privilege is such that it should stand between the Ombudsman and the conduct mentioned in the item.

39. We consider Items 8 and 9 together. Item 8 is prompted because of the special functions discharged by the senior law officers in relation to legal proceedings commenced by or on behalf of the Crown. The Attorney General's power concerning the commencement and termination of criminal proceedings is an ancient prerogative and its exercise should not, in our view, be subject to investigation by the Ombudsman. The Attorney General may, under the Solicitor General Act, 1969, (s. 4) delegate the exercise of his powers to the Solicitor General and that officer, under section 3 of the Act, has other special powers and duties. For the purposes of the Bill we extend the special position of the Attorney General to the Solicitor General. Item 9 is not as wide in its application as Item 8: it is limited to conduct relating to the "carrying on" of legal proceedings; it does not extend to conduct relating to the "commencing" or "termination" of those proceedings. Conduct of the former kind is properly controllable by the tribunal before whom the proceedings are taken. Conduct of the latter kind should, except in the case of the Attorney General or the Solicitor General, be within the jurisdiction of the Ombudsman. Discriminatory treatment of persons (for example, a decision to prosecute or not to prosecute for an offence) can occur in relation to legal proceedings as in other areas of public administration.

40. The exercise of Her Majesty's prerogative of mercy has long been regarded as a special power and we think its exercise should not be subject to any external investigation. Hence we propose Item 10.

41. Item 11 is proposed because a person acting as a commissioner under the Royal Commissions Act, 1923, is discharging a function which is predominantly judicial. The convention of judicial independence from executive supervision should, in our view, extend to such a person.

42. In Item 12 we propose the exclusion of local government authorities. They are not within the Ombudsman's jurisdiction in New Zealand or in the United Kingdom, but they are within the Ombudsman's jurisdiction in Western Australia.⁵⁰ In New Zealand their inclusion is under discussion⁵¹ and in the United Kingdom a new system is proposed which is "essentially an adaptation of the [Parliamentary Commissioner for Administration] system to conform with the different constitutional position of local government".⁵² We see practical difficulties arising if the initial jurisdiction of an ombudsman in New South Wales includes local government authorities. State Government

⁵⁰ See Schedule to W.A. Act.

⁵¹ See *Report of the [New Zealand] Ombudsman 1972*, pp. 8-9.

⁵² "Proposals for the creation of a Commissioner for Local Administration in England" issued by the U.K. Department of the Environment on 16th May, 1972, para. 3.

activities are, in the main, controlled from Sydney but local government activities are controlled from many different cities and towns. Access by an ombudsman to senior public officials, files and information in Sydney should be easy. The same access in country areas must, however, give rise to problems which the Ombudsman should not, in our view, be asked to face at the outset.

43. Conduct not mentioned in the Schedule, and therefore conduct within the Ombudsman's jurisdiction, includes, for example, conduct of a public authority—

- (a) where acting pursuant to or in relation to a prerogative other than the prerogative of mercy;
- (b) where acting in relation to crime or the preservation of the peace;
- (c) where acting in relation to the regulation and control of prisons and prisoners;
- (d) where acting in relation to the making, performance or termination of a contract by the public authority;
- (e) where acting in relation to the employment by the public authority of any person, or pursuant to the terms and conditions of employment of any person employed by the public authority.

44. Our reason for including the matters mentioned in para. 39 within the jurisdiction of the Ombudsman, and excluding them from the jurisdiction of the Public Administration Tribunal,⁵³ is that the Ombudsman can only recommend, the Tribunal can command. In some cases government may properly refuse to subject public authorities to outside directions, but a recommendation made after consultations and exchanges of information are not directions. Government often orders an inquiry to be made into aspects of public administration; some times the report arising from the inquiry is adopted and sometimes it is not adopted. The Ombudsman can be considered to be a standing committee of inquiry of special importance.

⁵³ See Schedule to Public Administration Tribunal Bill.

ANNEXURE A

PUBLIC AUTHORITIES

1. In preparing this annexure we examined many Acts and regulations and extracted the titles of the public authorities named in them. Some authorities appear in the annexure more than once because they are mentioned in more than one Act.

2. With few exceptions, legislative references are to legislation enacted before the 30th June, 1972. Acts marked with an asterisk are Acts the commencing dates of which have not been proclaimed.

<i>Act</i>	<i>Public Authority</i>
Aborigines Act, 1969	Director of Aboriginal Welfare (s. 5). The Minister, Aborigines Act, 1969 (s. 6). Aborigines Advisory Council (s. 8). Chairman of the Aborigines Advisory Council (s. 8). Acting Chairman of the Aborigines Advisory Council (s. 8).
Regulations.	The prescribed person (reg. 8). Scrutineer (reg. 33). Secretary to the Aborigines Advisory Council (reg. 41).
Adoption of Children Act, 1965.	Director of Child Welfare (s. 11). Person acting on behalf of Director (s. 51).
Aerial Spraying Control Act, 1969.*	Director-General of Department of Agriculture (s. 4). Officer of the Department authorized by Director-General (s. 9). Regional Supervisor of Agriculture (s. 9). Delegate of Director-General (s. 11).
Agricultural Holdings Act, 1941.	Agricultural Committee (s. 17 and Second Schedule). Chairman of Committee (Second Schedule).
Agricultural Seeds Act, 1921.	Agrostologist of Department of Agriculture (s. 9). Inspector (s. 8). Person authorized by Minister (s. 9). Department of Agriculture (s. 9).
Air Transport Act, 1964.	Commissioner for Motor Transport (s. 5). Authorized person (s. 4). Officer for time being in charge of records kept under Act (s. 11).
Ambulance Service Act, 1972.*	New South Wales Ambulance Board (s. 5). Chairman of Board (s. 5). Secretary of Board (s. 9). Servants of Board (s. 10). Delegate of Board (s. 20). District committees (s. 22). Chairman of a committee (s. 25).
Anatomy Act, 1901.	Inspectors of schools of anatomy (s. 7). Governing authorities of any authorized school of anatomy (s. 22).
Annual Holidays Act, 1944.	Inspector (s. 10).
Apiaries Act, 1916	Inspectors (s. 3). Under Secretary, Department of Agriculture (s. 12A).

<i>Act</i>	<i>Public Authority</i>
Apprentices Act, 1969.	Apprenticeship Commissioner (s. 11). Deputy Apprenticeship Commissioner (s. 13). Special Commissioner (s. 14). Apprenticeship Committees (s. 17). Chairman of each Apprenticeship Committee (s. 15). Director of Technical Education (s. 22). Apprenticeship Council (s. 9). Chairman of the Apprenticeship Council (s. 9). Director of Apprenticeship (s. 23). Deputy Director of Apprenticeship (s. 23). Apprenticeship Supervisors (s. 68).
Architects Act, 1921.	Board of Architects of New South Wales (s. 4). President of Board of Architects (s. 5). Registrar of Board of Architects (s. 8).
Regulations.	Chairman of Board (reg. 45).
Archives Act, 1960.	Archives Authority of New South Wales (s. 3). Chairman of Archives Authority (s. 6). Deputy Chairman of Archives Authority (s. 6). Principal Archivist (s. 12).
Argentine Ant Eradication Act, 1962.	Argentine Ant Eradication Committee (s. 4). Chairman of Committee (s. 4).
Art Gallery of New South Wales Act, 1958.	Trustees of the Art Gallery of New South Wales (ss. 3-4).
By-laws.	Senior Education Officer of the Art Gallery of New South Wales (by-law 1).
Auctioneers and Agents Act, 1941.	Council of Auctioneers and Agents (s. 6). Official member of Council of Auctioneers and Agents (s. 8). Deputy official member (s. 12). Chairman of Council of Auctioneers and Agents (s. 8). Registrar (s. 17). Deputy Registrar (s. 17). Superintendent of Licences (s. 23). Member of the Police Force (s. 23). Authorized officer of the Council of Auctioneers and Agents (s. 38B).
Audit Act, 1902.	Auditor-General (s. 6). Deputy of Auditor-General (s. 11). Inspectors (s. 12). Accounting officers (s. 22).
Regulations.	Under Secretary and Comptroller of Accounts, The Treasury (reg. 6). Departmental officer who incurs expenditure (reg. 14). Officer specially nominated by any Permanent Head (reg. 24). Permanent Heads (reg. 28). Any officer or employee in any office where an accounting officer receives or disburses public money (reg. 31).
Australian Museum Act, 1902.	The Trustees of the Australian Museum (s. 4). Officers and servants of Museum (s. 7A).
Banana Industry Act, 1969.	Banana Marketing Control Committee (s. 7). Chairman of Committee (s. 8).

<i>Act</i>	<i>Public Authority</i>
Regulations.	Chief of Division of Horticulture of Department of Agriculture (reg. 2). Deputy returning officer (reg. 2). Returning officer (reg. 2).
Billiards and Bagatelle Act, 1902.	Officer authorized (s. 6).
Board of Teacher Education Act, 1969.*	Board of Teacher Education (s. 3). Chairman of Board of Teacher Education (s. 5). Deputy Chairman of Board of Teacher Education (s. 5). Advisory Committees of Board of Teacher Education (s. 11). Delegate of Board of Teacher Education (s. 12).
Bookmakers (Taxation) Act, 1917.	Bookmakers Revision Committee (s. 35). Chairman of Committee (s. 35).
Bread Act, 1969.	Under Secretary of the Department of Labour and Industry (s. 12). Industrial Commission (s. 13). Committee to prescribe standards of quality of making bread (s. 17). Inspector (s. 19). Bread Industry Advisory Committee (s. 21). Chairman of Advisory Committee (s. 21). Persons appointed by Minister (s. 21). Weights and Measures Inspector (s. 24). Inspector having special warrant (s. 26). Bakers Examination Board (s. 32).
Broken Hill Water and Sewerage Act, 1938.	The Broken Hill Water Board (s. 4). President of the Board (s. 4). Vice-President of the Board (s. 4). Workmen of the Board (s. 20). Secretary of the Board (s. 20). Person authorized by Board (s. 30). Officer acting under authority of Board (s. 31). Officer of the Board (s. 85). Officer prescribed to issue certificates (s. 88).
Builders Licensing Act, 1971.	Builders Licensing Board (s. 4). Chairman of the Board (s. 4). Delegate of the Board (s. 50).
Bursary Endowment Act, 1912.	Bursary Endowment Board (s. 2). Chairman of the Board (s. 4).
Bush Fires Act, 1949.	Emergency fire controllers (s. 17). Bush fire brigade captain (s. 20). Bush fire brigade group captain (s. 20). Fire control officer (s. 26). Bush Fire Council of New South Wales (s. 39). Chairman of the Bush Fire Council (s. 39). Acting Chairman of the Bush Fire Council (s. 39). Finance Committee of the Bush Fire Council of New South Wales (s. 39A). Chairman of the Finance Committee of the Bush Fire Council (s. 39A). Co-ordinating Committee of the Bush Fire Council of New South Wales (s. 39B). Chairman of the Co-ordinating Committee of the Bush Fire Council of New South Wales (s. 39B).

*Act**Public Authority*

- Bush Fires Act, 1949—cont.** Regional officers (s. 41B).
Chief Co-ordinator of Bush Fire Fighting (s. 41D).
Delegate of Co-ordinating Committee of the Bush Fire Council of New South Wales (s. 41H).
Fire patrol officers (s. 42).
Any officer of the Forestry Commission of New South Wales (s. 51).
- Cattle Slaughtering and Diseased Animals Meat Act, 1902.** Inspectors of slaughterhouses (s. 4).
Any constable (s. 12).
Local authority (s. 20).
Person authorized by Minister (s. 23).
Inspector of nuisances (s. 41).
Inspector or sergeant of police (s. 41).
Assistant (s. 41).
Inspector or examiner of meat (s. 50).
- Regulations.** Qualified meat inspector (reg. 17).
- Cattle Compensation Act, 1951.** Approved person (s. 5).
Arbiter of compensation (s. 7).
Person authorized to destroy cattle (s. 8).
Chief of Division of Animals Industry (s. 8).
Inspector re stamp duty (s. 16).
Pastures Protection Board (s. 16C).
Secretary of a Pastures Protection Board (s. 16G).
Other authorized officer of Board (s. 16G).
Inspector of stock (s. 16I).
Veterinary officer of Department of Agriculture (s. 16I).
Person authorized by Minister (s. 16I).
- C. B. Alexander Foundation Incorporation Act, 1969.** C. B. Alexander Foundation (s. 3).
Chairman of the Foundation (s. 3).
- Census Act, 1901.** Government Statistician (s. 3).
Enumerators (s. 4).
Collectors (s. 4).
Officers appointed to collect information (s. 16).
Person duly authorized by Government Statistician (s. 19).
Person otherwise employed under Act (s. 24).
- Charitable Collections Act, 1934.** Inspector (s. 8).
Inspector (s. 10).
Auditor-General (s. 11).
- Child Welfare Act, 1939.** Director of the Child Welfare Department (s. 5).
Visitors (s. 6).
Honorary welfare officers (s. 7).
Honorary lady visitors (s. 7).
Advisory council (s. 8).
Secretary of advisory council (s. 8).
Inspector (s. 22).
Delegate of Minister (s. 23).
Officer conducting inquiry (s. 27A).
Principal medical officer of Department of Education (s. 45).
Officer supervising licences (s. 70).
Secretary, Child Welfare Department (s. 129).
Authorized officers (s. 144).

<i>Act</i>	<i>Public Authority</i>
Child Welfare Act, 1939.—cont.	Welfare Services Training Council (s. 182)*. Subcommittees under Welfare Services Training Council (s. 183) Chairman of the Welfare Services Training Council (s. 185) Intellectually Handicapped Persons Review Tribunal (s. 44) Chairman of Intellectually Handicapped Persons Review Tribunal (s. 44) Deputy Chairman of Intellectually Handicapped Persons Review Tribunal (s. 44)
Chiropodists Registration Act, 1962.	Chiropodists Registration Board (s. 3). President of the Board (s. 11). Secretary to the Board (s. 19).
Cinematograph Films (Australian Quota) Act, 1935.	Theatres and Films Commission (s. 11). Chairman of Commission (s. 11). Deputy Chairman (s. 11). Person authorized by Commission (s. 11D).
Clean Air Act, 1961.*	Air Pollution Advisory Committee (s. 6). Chairman of the Committee (s. 6). Subcommittee of Air Pollution Advisory Committee (s. 7). Under Secretary of Department of Public Health (s. 11). Department of Public Health (s. 22). Authorized officer (s. 27).
Regulations.	Air Pollution Control Branch (reg. 9, Form 1, Part B, etc.). Principal air pollution control engineer (reg. 18).
Clean Waters Act, 1970.*	Clean Waters Advisory Committee (s. 6). Chairman of Clean Waters Advisory Committee (s. 6). Advisory Subcommittees established by Committee (s. 7). Clean Waters Appeals Board (s. 9). Chairman of Clean Waters Appeals Board (s. 9). Deputy Chairman of Clean Waters Appeals Board (s. 9). Under Secretary.
Closer Settlement Acts	
Closer Settlement Act, 1904.	Crown Solicitor (s. 21). Under Secretary for Lands (s. 54).
Closer Settlement (Amendment) Act, 1907.	Closer Settlement Advisory Boards (s. 2). Chairman of Closer Settlement Advisory Boards (s. 2). Deputy Chairman of Closer Settlement Advisory Boards (s. 2). Person authorized by Chairman of Closer Settlement Advisory Boards (s. 3).
Closer Settlement (Amendment) Act, 1918.	Delegate of Minister (s. 5).
Closer Settlement Acts Regulations.	The offices in the Department of Lands of: Under Secretary. Assistant Under Secretary. Surveyor-General.

* Authorities constituted under legislation not proclaimed to come into force as at 30/6/72.

<i>Act</i>	<i>Public Authority</i>
Closer Settlement Acts Regulations—cont.	Deputy Surveyor-General. Chief Inspector. Chief Draftsman. Chief Clerk. Legal Officer. Accountant. Administrator, Parks and Reserves. Officer-in-Charge, Closer Settlement Branch. Officer-in-Charge, Tenure Branch. Officer-in-Charge, Transfer Branch. Officer-in-Charge, Arrears Branch. Officer-in-Charge, Land Board Offices. First Clerk, Tenure Branch. First Clerk, Transfer Branch. First Clerk, Arrears Branch (reg. 54).
Coal and Oil Shale Mine Workers (Superannuation) Act, 1941.	Coal and Oil Shale Mine Workers Superannuation Tribunal (s. 15). Chairman of Tribunal (s. 15). Registrar (s. 16).
Coal Industry Act, 1946.	Joint Coal Board (constituted by agreement with Commonwealth) (s. 5). Chairman of the Board (s. 5). Delegate of Board (s. 9). Officers and employees of Board (s. 18). Coal Industry Tribunal (s. 36). Two assessors appointed by Tribunal (s. 41). Local Coal Authority (s. 43). Chairman of Local Coal Authority (s. 43A). Mine Conciliation Committees (s. 48).
Coal Mines Regulation Act, 1912.	Coal Mining Qualification Board (s. 6). Examiners (ss 6 and 21). Chief Inspector of Coal Mines (s. 23). Deputy Chief Inspector of Coal Mines (s. 23). Senior Inspectors of Collieries (s. 23). Inspector of a district (s. 24). Inspector of collieries (s. 24). Check inspector (s. 54 (gen. rule 39)). District check inspector (s. 54 (gen. rule 39)). Electrical check-inspector (s. 54 (gen. rule 39)). Under Secretary for Mines (s. 35A). Deputy Chief Inspector (s. 54 (gen. rule 39)).
Coal Mining Industry Long Service Leave Act, 1950.	Administrator of the Coal Mining Industry Long Service Leave Trust Fund (s. 6).
Cobar Water Supply Act, 1963.	Cobar Water Board (s. 3). President of Board (s. 3). Secretary to Board (s. 11).
Commercial Agents and Private Inquiry Agents Act, 1963.	Inspector (s. 34). Prescribed officer of Police Department (s. 42).
Commons Regulation Act, 1898.	Trustees of a common (s. 4). Chairman of commoners (s. 6). Senior Trustee (s. 6). Delegate of Minister (s. 28A).

<i>Act</i>	<i>Public Authority</i>
Regulations (cf. s. 28A).	Under Secretary, Department of Lands. Assistant Under Secretary. Surveyor-General. Deputy Surveyor-General. Chief Draftsman. Chief Clerk. Administrator, Parks and Reserves. Officers-in-Charge, Tenure Branch, Parks and Reserves Branch and Land Board Offices. First Clerks, Tenure Branch and Parks and Reserves Branch.
Companies Act, 1961.	Corporate Affairs Commission (s. 5) (cf. Acts Nos 35, 1970, and 11, 1971). Companies Auditors Board (s. 8). Secretary of Companies Auditors Board (s. 8). Auditor-General (s. 9). Investigating Inspector (s. 169). Delegate of investigating inspector (s. 177). Official liquidator appointed by Corporate Affairs Com- mission (s. 231). (Cf. generally Securities Industry Act, 1970.)
Conservation Authority of New South Wales Act, 1949.	The Conservation Authority of New South Wales (s. 4). Chairman of Authority (s. 4). Deputy Chairman of Authority (s. 4).
Consumer Protection Act, 1969.	Consumer Affairs Bureau (s. 15). Commissioner for Consumer Affairs (s. 13). Acting Commissioner for Consumer Affairs (s. 14). Consumer Affairs Council (s. 7). Chairman of Consumer Affairs Council (s. 8). Commissioner for Trade Practices (s. 45). Acting Commissioner for Trade Practices (s. 46). Inspector (s. 16A). Investigating officer (s. 16B). Officer of the Consumer Affairs Bureau (s. 55A).
Conveyancing Act, 1919.	Deputy Registrar of Deeds (s. 51). President of Law Society of New South Wales (ss. 206- 211). Council of Law Society of New South Wales (ss. 206-211).
Co-operation Act, 1923.	Advisory Council of Co-operative Societies (s. 114). Presiding Member of Advisory Council (s. 114). Co-operative Building Advisory Committee (s. 114A). Co-operative Farms Purchase Promotion Committee (s. 114B). Chairman of Co-operative Farms Purchase Promotion Com- mittee (s. 114B). Co-operative Advisory Committees (s. 114C). Chairman of respective Co-operative Advisory Committees (s. 114C). Registrar of Co-operative Societies (s. 115). Deputy Registrar (s. 115). Chairman of Co-operative Building Advisory Committee (s. 114A).
Copeton Dam Act, 1967.	Constructing Authority (Water Conservation and Irrigation Commission) (s. 2).

<i>Act</i>	<i>Public Authority</i>
Courts of Petty Sessions (Civil Claims) Act, 1970.	Registrar (s. 8). Deputy Registrar (s. 8). Bailiff (s. 9).
Credit Union Act, 1969.	Registrar of Credit Unions (s. 94). Deputy Registrar of Credit Unions (s. 94). Delegate of registrar (s. 94). Inspectors (s. 99). Credit Union Advisory Committee (s. 101). Chairman of Credit Union Advisory Committee (s. 101). Executive member of Credit Union Advisory Committee (s. 101).
Regulations.	Person deputed by registrar to hear dispute (reg. 37).
Crown Employees Appeal Board Act, 1944.	Crown Employees Appeal Board (s. 3). Chairman of Board (s. 3). Additional temporary chairman (s. 3). Secretary to the Board (s. 8). Officers and employees of Board (s. 8).
Crown Lands Consolidation Act, 1913.	Crown land agent (s. 9). Assistant Crown land agent (s. 9). Acting Crown land agent (s. 9). District surveyors (s. 10). Land district officers (s. 10). Local Land Boards (s. 11). Chairman of a local Land Board (s. 11). Acting Chairman of a local Land Board (s. 11). Chairman acting on behalf of local Land Board (s. 15). Under Secretary for Lands (s. 17A). Prescribed officer acting on Minister's behalf (s. 17A). Trustees of lands reserved or dedicated (s. 26). Surveyor-General (s. 35). Surveyor (s. 197). Person authorized to enter land to be resumed (s. 197). Closer Settlement Advisory Board (s. 197).
Regulations.	Officer-in-Charge, General Drafting Branch (reg. 4). Officer-in-Charge, Reserves Branch (reg. 4). Officer-in-Charge, Deeds Branch (reg. 4). First Clerk, Reserves Branch (reg. 4). First Clerk, Deeds Branch (reg. 4). Offices in Department of Lands of: Assistant Under Secretary. Deputy Surveyor-General. Chief Inspector. Chief Draftsman. Chief Clerk. Legal Officer. Accountant. Administrator, Parks and Reserves. Officer-in-Charge, Tenure Branch. Officer-in-Charge, Transfer Branch. Officer-in-Charge, Arrears Branch. Officer-in-Charge, Land Board Offices. First Clerk, Tenure Branch. First Clerk, Transfer Branch. First Clerk, Arrears Branch (reg. 4).

<i>Act</i>	<i>Public Authority</i>
Council of Law Reporting Act, 1969.	The Council of Law Reporting for New South Wales (s. 3). President of the Council of the New South Wales Bar Association (s. 3). President of the Law Society of New South Wales (s. 3). Chairman of Council of Law Reporting (s. 6). Deputy Chairman of Council of Law Reporting (s. 6).
Dairy Industry Act, 1915.	Dairy Produce Factories Advisory Committee (s. 5A). Chairman of Advisory Committee (s. 5A). Board of Appeal (s. 24). Chairman of Board of Appeal (s. 24).
Dairy Industry Authority Act, 1970.	Dairy Industry Authority of New South Wales (s. 8). Chairman of the Authority (s. 8). Deputy Chairman of the Authority (s. 8). Delegate of Dairy Industry Authority of New South Wales (s. 21). Dairy Industry Prices Tribunal (s. 42). Chairman of Tribunal (s. 42). Deputy Chairman of Tribunal (s. 42). Dairy Industry Artificial Breeding Advisory Board (s. 61). Chairman of Advisory Board (s. 61).
Regulations.	Secretary of Dairy Industry Authority (reg. 15). Chief of Division of Animal Industry of Department of Agriculture (reg. 17).
Dairy Products Act, 1933.	New South Wales Dairy Products Board (s. 3). Secretary to Board (s. 4). Chairman of Board (s. 15).
Dentists Act, 1934.	Dental Board (s. 3). President of Board (s. 4). Registrar of Dental Board (s. 5). Dentists Charges Committee (s. 12A). Chairman of Dentists Charges Committee (s. 12A). Inspector (s. 5).
Department of Agriculture Act, 1907.	Department of Agriculture (s. 3). Minister of Agriculture (s. 2).
Dividing Fences Act, 1951.	Local land board (s. 9).
Dog Act, 1966.	Member of the Police Force (s. 10).
Domain Leasing Act, 1961.	Trustees of the Domain (s. 2).
Dormant Funds Act, 1942.	Commissioner for Dormant Funds (s. 4). Charity Referees (s. 5). Chairman of Charity Referees (s. 5).
Dried Fruits Act, 1939.	New South Wales Dried Fruits Board (s. 5). Chairman of Board (s. 5). Returning officers (s. 6). Secretary to Board (s. 14).

<i>Act</i>	<i>Public Authority</i>
Education Act, 1961.	<p>Secondary Schools Board (s. 7). Chairman of Secondary Schools Board (s. 7). Deputy Chairman of Secondary Schools Board (s. 7). Board of Senior School Studies (s. 9). Deputy Chairman of Board of Senior School Studies (s. 9). Chairman of Board of Senior School Studies (s. 9).</p>
Registration of Schools Regulations.	<p>Secretary, Department of Education (reg. 4). Director of Secondary Education (reg. 6). Nominee of Director of Secondary Education (reg. 6). Appeals Tribunal (reg. 12). Chairman of Tribunal (reg. 12).</p>
Egg Stabilization Act, 1971.	<p>Poultry Farmer Licensing Committee (s. 8). Chairman of Poultry Farmer Licensing Committee (s. 9). Review Committee (s. 31). Chairman of Review Committee (s. 33).</p>
Electricity Commission Act, 1950.	<p>The Electricity Commission of New South Wales (s. 5). Chairman of Commission (s. 5). Vice-Chairman (s. 5). Deputy Vice-Chairman (s. 5). Deputy Commissioner (s. 5). Electricity supply authority (s. 8). Technical Joint Committees (s. 22). Finance Joint Committees (s. 22). Committee of Review (s. 36). Joint Committees (s. 59). Appeal Board (s. 69). Secretary of Appeal Board (s. 69). Chairman of Appeal Board (s. 69). Deputy Chairman of Appeal Board (s. 72). Delegate of Commission (s. 99). Representative of Commission (s. 100). Chairman of Technical Joint Committee (s. 22). Presiding member of Finance Joint Committee (s. 22). Chairman of the Committee of Review (s. 36). Respective chairmen of three joint committees (s. 59). Servants of Commission (s. 64). Delegate of Commission as to objections to promotions (s. 67). Person appointed commissioner by Minister to determine disputes (s. 98).</p>
Electricity Development Act, 1946.	<p>The Electricity Authority of New South Wales (s. 5). Chairman of Authority (s. 5). Deputy Chairman (s. 6). Delegate of Authority (s. 35). Person authorized by Minister (s. 25). Person authorized by Chairman of Authority.</p>
Regulations (Electrical Contractors and Electricians Licensing Regulations, 1958).	<p>Electrical Contractors and Electricians Licensing Advisory Committee (reg. 4).</p>
(Approval of Prescribed Electrical Articles Regulations, 1952).	<p>Electrical Approvals Advisory Committee (reg. 4).</p>

<i>Act</i>	<i>Public Authority</i>
Explosives Act, 1905.	Superintendent of the Explosives Department (s. 28). Inspectors (s. 38). Collector or subcollector (s. 42). Customs (s. 41).* Officer of Customs (s. 26).* Special constables (s. 37).
	* Commonwealth legislation.
Factories, Shops and Industries Act, 1962.	Factory and Industrial Welfare Board (s. 62). Chairman of Board (s. 62). Welfare committees (s. 64). Safety committees (s. 64). Hairdressers Council (s. 105). Retail Trade Advisory Committee (s. 91A). Chairman of Retail Trade Advisory Committee (s. 91A). Chief Inspector of Factories, Shops and Industries (s. 7). Inspectors (s. 7). Under Secretary of Department of Labour and Industry (s. 11). Board of Fire Commissioners of New South Wales (s. 42).
Regulations (Hairdressers Licensing Regulations.)	Examiners.
(Boiler and Pressure Vessel Regulations.)	Boiler inspector (reg. 32). Board of Reference (reg. 78). Chairman of Board of Reference (reg. 78).
(Electroplating Regulations.)	Inspector (reg. 16).
(Engine Drivers and Boiler Attendants Certification Regulations.)	Engine Drivers and Boiler Attendant Examination Board (reg. 3).
(Timber Industry Regulations.)	Chief Inspector (reg. 3).
Farm Produce Agents Act, 1926.	Registrar (s. 4). Deputy Registrar (s. 4). Officers carrying out provisions of Act (s. 4). Person authorized by registrar (s. 13).
Farmers Relief Act, 1932.	Rural Assistance Board (s. 7A). Chairman of Board (s. 7A). Director of Board (s. 7A). Deputy Director of Board (s. 7A). (Two) Assistant Directors (s. 7A). Delegate of Board (s. 7F). Delegate of Director (s. 7F).
Farrer Memorial Research Scholarship Fund Act, 1930.	Trustees of the Fund (s. 3).

<i>Act</i>	<i>Public Authority</i>
Fauna Protection Act, 1948.	Director of National Parks and Wildlife (s. 6). Collectors of royalty (s. 8). Public school teachers (s. 24). Field officers of the Department of Lands (s. 24). Officers and employees of National Parks and Wildlife Service (s. 24). Officers and employees of Forestry Commission of New South Wales on State forests (s. 24). Stock inspectors (s. 24). Field officers of the Department of Agriculture (s. 24). Inspectors of fisheries (s. 24). Rangers appointed under Metropolitan Water, Sewerage and Drainage Act, 1924 (s. 24). Honorary rangers (s. 24).
Regulations.	Fauna Protection Panel (reg. 3). Chairman of Panel (reg. 3). Deputy Chairman of Panel (reg. 3). Field Officer of Panel (reg. 3A). Collector (reg. 5). Officer-in-Charge of Police Station (reg. 10). Person authorized by Minister (reg. 10). Authorized ranger (reg. 13). Delegate of Director of National Parks and Wildlife (reg. 3B). Clerk of Petty Sessions (reg. 3B). Officer of Police Force (reg. 3B).
Fertilizers Act, 1934.	Analysts (s. 9). Inspectors (s. 9). Chief Chemist of Department of Agriculture (s. 26).
Fire Brigades Act, 1909.	Board of Fire Commissioners of New South Wales (s. 7). President of Board (s. 8). Representative of Board (s. 26). Officers and servants of Board (s. 27). Chief officer of fire brigades (s. 27). Superior fire brigade officer (s. 29). Officers authorized by Board (s. 30). Member of an "interstate fire brigade" (s. 32A). Appeal Committee (s. 40A). Chairman of Appeal Committee (s. 40A). Authorized fire brigade (s. 41). Authorized salvage corps (s. 41).
By-laws.	Motor officers (by-law 58). Medical officer designated by Director-General of Public Health (by-law 62).
Fisheries and Oyster Farms Act, 1935.	Fish Marketing Authority (s. 41A). Chairman of Authority (s. 41A). Deputy Chairman (s. 41A). Vigilante committees (s. 7). Acclimatization societies (s. 44). Delegate of Minister (s. 8A). Delegate of Under Secretary of the Chief Secretary's Department (s. 8A).
Regulations.	Under Secretary of the Chief Secretary's Department (reg. 3). Any clerk of petty sessions (reg. 51). Director of Fisheries (reg. 178). Deputy Director of Fisheries (reg. 178).

<i>Act</i>	<i>Public Authority</i>
Fish River Water Supply Administration Act, 1945.	The Administrator of the Fish River Water Supply (s. 3). Acting Administrator (s. 3).
Fluoridation of Public Water Supplies Act, 1957.	Fluoridation of Public Water Supplies Advisory Committee (s. 4). Chairman of Advisory Committee (s. 4). Board of Health (s. 6). Under Secretary, Department of Public Health (s. 7).
Forestry Act, 1916.	Forestry Commission of New South Wales ("Commissioner" is the Commission) (s. 5). (Two) Assistant Commissioners (s. 5). Secretary to Commission (s. 9A). Delegate of Commissioner (s. 10A). Person authorized by Commission to impound (s. 36). Person authorized by Commission to inspect (s. 38). Person authorized by Commission to seize and forfeit (s. 43).
Regulations.	Forest officer (reg. 93).
Friendly Societies Act, 1912.	Registrar of Friendly Societies (s. 5). Deputy Registrar of Friendly Societies (s. 5). Delegate of Registrar (s. 5). Actuary attached to office of Registrar (s. 30).
Gaming and Betting Act, 1912.	Advisory board (s. 55) Greyhound Racing Control Board (s. 56c). Chairman of Board (s. 56c). Secretary to Board (s. 56E). Stewards (s. 56HA).
Rules of the Greyhound Racing Control Board.	Executive Officer of Board (rule 20). Deputy Executive Officer of Board (rule 20). Authorized member, officer or employee of Board (rule 21). Other executive officer of Board (rule 21). Person authorized to conduct investigation (rule 23). Officer authorized by Board (rule 25).
Geographical Names Act, 1966.	Geographical Names Board of New South Wales (s. 3). Secretary to Board (s. 4). Counsellor to Board (s. 6).
Government Insurance Act, 1927.	Government Insurance Office of New South Wales (s. 3). General Manager of Office (s. 3). Deputy General Manager (s. 3B). Delegate of General Manager (s. 3B). Committee to determine reserve funds (s. 15). Auditor-General (s. 15).
Government Railways Act, 1912.	Commissioner for Railways.* Collector of tolls (s. 27). "Other officer" of the Commissioner (s. 30). Committee of Review (s. 41J). Officers investigating accidents (s. 61). Assessors holding investigation (s. 63). Examiners (s. 69). Board of examiners (s. 71). Officer at head of branch (s. 75). Promotions Committee (s. 76A).

* Cf Transport (Division of Functions) Act, 1932.

<i>Act</i>	<i>Public Authority</i>
Government Railways Act, 1912—cont.	Chairman of promotions committee (s. 76A). Chief staff officer (s. 76A). Senior officer (s. 76A). Officer-in-charge of railway station (s. 83). Officer-in-charge of workshop, etc. (s. 83). Appeals Board (s. 87). Chairman of Appeals Board (s. 87). Vice-Chairman of Appeals Board (s. 87). Secretary to Appeals Board (s. 90). Board administering Government Railways Superannuation Account (s. 110). Chairman of Board administering superannuation account (s. 110). Actuary to Board administering superannuation account (s. 115). Authorized officer (s. 134B).
Government Relief Administration Act, 1930.	Director of Government Relief (s. 2).
Grafton-Kyogle to South Brisbane Railway Agreement Ratification Act, 1924. Schedule.	Railway Council (cl. 4). Commissioner for Railways (cl. 4). Chairman (from Commonwealth, New South Wales and Queensland) (cl. 4). Deputy Chairman (cl. 4).
Grain Elevators Act, 1954.	The Grain Elevators Board of New South Wales (s. 7). Chairman of Board (s. 7). Deputy Chairman (s. 7). Committee of Review (s. 31). Chairman of Committee of Review (s. 31). Delegate of Grain Elevators Board of New South Wales (s. 55).
Loan Certificate Regulations.	Registrar of Securities (reg. 6). Secretary of Board (reg. 6).
Grain Elevators (Election) Regulations.	Returning officer (reg. 6). Scrutineer (reg. 31). Person authorized by Returning Officer (reg. 33).
Habitual Criminals Act, 1957.	Adult Probation Service (s. 9).
Height of Buildings (Metropolitan Police District) Act, 1912.	Height of Building Advisory Committee (s. 4A). Chairman of Committee (s. 4B). Deputy Chairman (s. 4B). Height of Buildings Advisory Panel (s. 4B).
Higher Education Act, 1969.	New South Wales Advanced Education Board (s. 5). Chairman of Advanced Education Board (s. 5). Advisory committees established by Advanced Education Board (s. 7). New South Wales Universities Board (s. 9). Advisory Committees established by Universities Board (s. 11).

<i>Act</i>	<i>Public Authority</i>
Higher Education Act, 1969 —cont.	New South Wales Higher Education Authority (s. 13). Corporate college of advanced education (s. 16). Principal officer of a college of advanced education (s. 16). College of advanced education within a Government Department (s. 17). Delegate of corporate college of advanced education (s. 21).
Horse-Breeding Act, 1940.	Chief Veterinary Surgeon of Department of Agriculture (s. 4). Veterinary officer employed in Department of Agriculture (s. 5). Veterinary surgeons (s. 9). Appeal Board (s. 9). Panel of referees (s. 9). Inspectors under Stock Diseases Act, 1923 (s. 15).
Horticultural Stock and Nurseries Act, 1969.	Director-General of Department of Agriculture (s. 8). Deputy Director-General of Department of Agriculture (s. 22). Chief of the Division of Horticulture of Department of Agriculture (s. 11).
Housing Act, 1912 and Housing Act, 1941.	The Housing Commission of New South Wales (s. 5). Chairman of the Commission (s. 5). Deputy Chairman of the Commission (s. 5). Commissioners (s. 5).
Housing Improvement Act, 1936.	Secretary to Body Corporate (s. 8).
Housing Indemnities Act, 1962.	Administrator of Housing Indemnities (s. 10). Deputy Administrator of Housing Indemnities (s. 10).
Housing of the Unemployed Act, 1934.	Homes for Unemployed Advisory Committee (s. 14A). Chairman of Committee (s. 14A). Acting Chairman of Committee (s. 14A).
Hunter District Water, Sewerage and Drainage Act, 1938.	The Hunter District Water Board (s. 7). President of Board (s. 7). Vice-President of Board (s. 7). Deputy Chairman (s. 21). Secretary to Board (s. 26).
Hunter Valley Conservation Trust Act, 1950.	The Hunter Valley Conservation Trust (s. 4). Chairman of the Trust (s. 4). Deputy Chairman of the Trust (s. 4). Trustees (s. 4). Acting Chairman (s. 5). Secretary to Trust (s. 6). Assessment Board (s. 7). Chairman of Assessment Board (s. 7). Commissioner of Soil Conservation Service (s. 11). Local Land Board (s. 13). Forestry Commission (s. 31).
Hunter Valley Flood Mitigation Act, 1956.	Assessment Board (s. 17). Chairman of Board (s. 17).

<i>Act</i>	<i>Public Authority</i>
Industrial Arbitration Act, 1940.	Industrial Registrar (s. 125). Deputy Industrial Registrar (s. 125). Senior conciliation commissioner (s. 15). Conciliation commissioners (s. 15). Special commissioners (s. 17A). Conciliation committees (s. 18). Chairman of each committee (s. 15). Special Board (Demarcation Board) (s. 37). Chairman of Special Board (s. 37). Accountant to Commission (s. 33). Inspectors (s. 127). Electoral Commissioner for New South Wales (s. 111J). Returning Officer (s. 111J).
Regulations.	Poll clerks (reg. 19). Scrutineers (reg. 19). Officer of Department of Labour and Industry (reg. 127). Registrar of Metropolitan District Court (reg. 129).
Inebriates Act, 1912.	Director of State Psychiatric Services (s. 24). Person deputed by Director of State Psychiatric Services (s. 24). Commissioner of Corrective Services (s. 13). Visiting Justice (s. 13). Supervising Board of inebriates (s. 29).
Inflammable Liquid Act, 1915.	Chief inspector of inflammable liquids (s. 21). Inspectors (s. 21).
Inscribed Stock Act, 1902.	Agent-General of New South Wales in London (s. 14). Agents for purpose of this Act (s. 14).
Irrigation Act, 1912.	The Water Conservation and Irrigation Commission (s. 4) Chairman of the Commission (s. 4). Deputy Chairman of Commission (s. 4). Commissioners (s. 4). Deputy Commissioners (s. 4). Secretary to Commissioner (s. 8A). Board constituted for purposes of s. 11E. Chairman of Board under s. 11E. Commission of Inquiry (s. 20). President of Commission of Inquiry (s. 20). Executive Board (s. 20). Any prescribed officer (s. 8A).
Junee Water Supply Administration Act, 1915.	Administration of the Junee Water Supply (s. 3). Deputy administrator of Junee Water Supply (s. 3).
King George V and Queen Mary Maternal and Infant Welfare Foundation (Amendment) Act, 1968.	Trustees of Foundation (s. 3). Chairman of Foundation (s. 4).
Ku-ring-gai Chase Act, 1961.	Trustees of Ku-ring-gai Chase (s. 4).

<i>Act</i>	<i>Public Authority</i>
Land Aggregation Tax Management Act, 1971.*	Commissioner of Land Aggregation Tax (s. 4). Delegate of Commissioner (s. 6). Board constituted under s. 50.
	* Act No. 18, 1971, proclaimed to come into effect only as to ss. 1-7 and Parts I and II of Schedule
Land and Valuation Court Act, 1921.	Registrar of Court (s. 6). Assistant registrar (s. 6).
Land Development Contribution Management Act, 1970.	State Planning Authority of New South Wales (s. 13). Valuer-General (s. 40). Official valuer (s. 40). Officer appointed under Valuation of Land Act, 1916 (s. 40). Prescribed servant of State Planning Authority (s. 56). Servant of Authority who is holder of or person acting in a prescribed office (s. 56). Secretary of Authority (s. 57). Appeals Board (s. 59). Person acting in administration of Act (s. 64). Person appointed or employed in administration of Act (s. 64).
Regulations.	Accountant (reg. 8). Second-in-Charge, Land Development Contribution Section (reg. 8). Senior inquiry clerk (reg. 8). Senior investigation and examination clerk (reg. 8).
Landlord and Tenant (Amendment) Act, 1948.	Fair Rents Boards (s. 9). Rent Controller (s. 11). Clerk of a Fair Rents Board (s. 13).
Land Tax Management Act, 1956.	Commissioner of Land Tax (s. 4). Assistant Commissioner of Land Tax (s. 4). Board constituted under s. 50.
Law Reform Commission Act, 1967.	Law Reform Commission (s. 3). Chairman of Law Reform Commission (s. 3). Deputy Chairman of Law Reform Commission (s. 5). Commissioners (s. 3). Executive member (s. 6).
Legal Assistance Act, 1943.	Public Solicitor (s. 3).
Legal Practitioners Act, 1898.	Barristers Admission Board (s. 4). Examiners (s. 7). Taxing officer (s. 22). The Law Society of New South Wales (s. 3). The Council of the Law Society (s. 82A). The Solicitors' Statutory Committee (s. 75). Chairman of Solicitors' Statutory Committee (s. 75). Board of Governors of Law Foundation (fund) (s. 44B). Chairman of Board of Governors (s. 44B). Legal Aid Committee (s. 4). Regional committees (s. 4). Local Committees (s. 4). Other committees (s. 4). Legal Aid Manager (s. 4). Delegate of any committee (s. 4).

<i>Act</i>	<i>Public Authority</i>
Library Act, 1939.	Library Board of New South Wales (s. 3). Principal Librarian of New South Wales (s. 3). Executive member of Board (s. 3). Chairman of Board (s. 3). Deputy Chairman of Board (s. 3).
Regulations.	The Secretary, Ministry of Cultural Activities (reg. 2).
Library of New South Wales Act, 1969.	The Council of the Library of New South Wales (s. 5). President of Council (s. 6). Deputy President of Council (s. 6). Principal Librarian (s. 7).
Regulations.	Authorized officer (reg. 2). Standing Committee (reg. 11). Other committees (reg. 13). Subcommittees (reg. 13). Accounting officer of library (reg. 16). Officer or employee of library (reg. 24). Officer authorized by Council (reg. 25).
Liquefied Petro- leum Gas Act, 1961.	Testing officers (s. 4).
Regulations.	Liquefied Petroleum Gas Installers' Licensing Committee (reg. 6). Chairman of Committee (reg. 6). Acting Chairman of Committee (reg. 11).
Liquor Act, 1912.	District licensing inspectors (s. 119). District licensing subinspectors (s. 119). Superintendent of Licenses (s. 119 (1c)). Special Inspectors (s. 121A).
Liquor (Amend- ment) Act, 1919.	Licenses Reduction Board (s. 8). Chairman of Licenses Reduction Board (s. 8). Secretary to Licenses Reduction Board (s. 8).
Local Govern- ment Act, 1919.	Local Government Boundaries Commission (Pt IIa). Chairman of Commission (s. 15A). Acting Chairman (s. 15A). Boundaries Commission Panel (s. 15B). Local Government Grants Commission (s. 218A). Chairman of Grants Commission (s. 218A). Acting Chairman of Grants Commission (s. 218A). Grants Commission Panel (s. 218B). Parking Advisory Committee (s. 270D). Chairman of Parking Advisory Committee (s. 270D). Deputy Chairman of Parking Advisory Committee (s. 270D). Local Government Appeals Tribunal (s. 342AV). Senior Chairman of Tribunal (s. 342AW). Acting Senior Chairman of Tribunal (s. 342AW). Board of Appeal (s. 342AX). Chairman of Board of Appeal (ss. 342AX and 342BB).
Local Govern- ment Ordinance No. 4, clause 32 "Staff Matters".	Local Government Building Inspectors' Qualification Com- mittee. Chairman of Local Government Building Inspectors' Quali- fication Committee.

<i>Act</i>	<i>Public Authority</i>
Local Government Ordinance No. 4, Clause 32 "Staff Matters". —cont.	Local Government Clerks and Auditors' Examination Committee. Local Government Electrical Engineering Examination Committee. Local Government Engineering Examination Committee. Local Government Gas Engineering Examination Committee. Local Government Health Inspectors' Examination Committee. Local Government Town and Country Planning Committee. Local Government Valuers' Committee. Chairman of Local Government Valuers' Committee.
Ordinance No. 28 Local Government Grants Commission (cf. s. 218A of Act).	Under Secretary, Department of Local Government (cl. 2). Local Government Association of New South Wales (cl. 2). Person authorized by governing body of Local Government Association (cl. 2). Shires Association of New South Wales (cl. 2). Person authorized by governing body of Shires Association (cl. 2).
Local Government and Other Authorities (Superannuation) Act, 1927.	Local Government Superannuation Board (s. 16). President of Board (s. 16). Deputy President of Board (s. 16).
Lord Howe Island Act, 1953.	Island Committee (s. 7). Chairman of Committee (s. 7). Electoral officers (s. 8). Lord Howe Island Board (s. 4). Chairman of Board (s. 4). Vice-Chairman of Board (s. 4). Minister for Lands (s. 19). Minister for Lands (s. 20).
Lord Howe Island (Elections) Regulations.	Returning officer (reg. 8). Substitute returning officer (reg. 9). Deputy returning officer (reg. 10). Poll clerk (reg. 10). Scrutineers (reg. 13).
Lord Howe Island (General) Regulations.	Person appointed by Board (reg. 23).
Lotteries and Art Unions Act, 1901.	Delegate of Minister (s. 15A). Auditor-General (s. 12).
Macquarie University Act, 1964.	The Macquarie University (s. 6). Council of University (s. 10). Chairman of Council (s. 13). Chairman of any committees of Council (s. 13). Convocation (s. 14). Standing Committee of Convocation (s. 14). Other committees of Convocation (s. 14). Chancellor of University (s. 15). Deputy Chancellor (s. 16). Vice-Chancellor (s. 17). Delegate of Council (s. 22). Visitor of university (s. 30).

Act**Public Authority**

- By-laws.** Finance Committee of Council (ch. III).
Buildings and Grounds Committee of Council (ch. III).
Council (ch. III).
Registrar (ch. V).
Deputy Vice-Chancellors (ch. VI).
Bursar (ch. VI).
Deputy Registrar (ch. XVI).
Professors, other teaching staff and other staff and officers (ch. VII).
College of Arts and Sciences (ch. X).
Librarian (ch. XV).
Discipline Committee (ch. XV).
Residential colleges (ch. XVI).
- Regulations governing the Academic Senate.** Academic Senate (reg. 1).
Chairman of Academic Senate (reg. 4).
- Regulations governing the organization of schools.** Schools within the College of Arts and Sciences (reg. 1).
Head of a school (reg. 2).
Standing committee of each school (reg. 12).
Chairman of standing committee of a school (reg. 12a).
- McGarvie Smith Institute Incorporation Act, 1928.** McGarvie Smith Institute (s. 3).
Chairman of trustees and members (s. 7).
Secretary of McGarvie Smith Institute (s. 15).
Treasurer of McGarvie Smith Institute (s. 15).
- Main Roads Act, 1924.** Commissioner for Main Roads.*
- * Cf. Transport (Division of Functions) Act, 1932.
- Maintenance Act, 1964.** Collector of Maintenance (s. 67).
Deputy Collector of Maintenance (s. 67).
Assistant Collectors of Maintenance (s. 67).
Delegate of Collector (s. 69).
- Marginal Dairy Farms Reconstruction Scheme Agreement Ratification Act, 1971.** The Authority (agreement with Commonwealth in Schedule to Act).
- Maritime Services Act, 1935.** The Maritime Services Board of New South Wales (s. 3).
President of Board (s. 3).
Vice-President of Board (s. 3).
Deputy Vice-President (s. 3).
Commissioners (s. 3).
Delegate of Board (s. 3).
Port of Newcastle Advisory Committee (s. 4).
Chairman of Port of Newcastle Advisory Committee (s. 4).
Advisory Committees for ports other than Port of Newcastle (s. 4A).
Joint committee as to transfer of works, etc., in Port of Newcastle (s. 13B).
Chairman of joint committee as to transfer of works, etc., in Port of Newcastle (s. 13B).
Joint committees (similar to that under s. 13B) (s. 13G).
Joint committee as to transfer of works, etc., in Port of Botany Bay (s. 13I).

<i>Act</i>	<i>Public Authority</i>
Maritime Services Act, 1935—cont.	Chairman of joint committee as to transfer of works, etc., in Port of Botany Bay (s. 131). Secretary of Maritime Services Board (s. 13T). Harbour master (s. 36A). Appointee of harbour master (s. 36A). Committee of Review (s. 24G). Persons appointed to enter into agreements (s. 24N). Authorized officer or employee of Board (s. 30B).
Water Traffic Regulations —N.S.W.	Officer of Board appointed to inspect vessel (reg. 11). Officer of Board (reg. 13). Officer (reg. 13). Member of Police Force (reg. 13). Secretary of Board (reg. 20). Deputy Secretary of Board (reg. 20). Assistant Secretary of Board (reg. 20). Acting Deputy Secretary (reg. 20). Acting Assistant Secretary (reg. 20).
Marketing of Primary Products Act, 1927.	State Marketing Bureau (s. 25).
Regulations.	Returning officer (reg. 1). Scrutineers (reg. 20). Egg Marketing Board for the State of New South Wales (reg. 42). Chairman of Egg Marketing Board (reg. 42). Deputy Chairman of Egg Marketing Board (reg. 42). Secretary to Egg Marketing Board (reg. 42). Chief Accountant to Egg Marketing Board (reg. 42). Assistant Accountant to Egg Marketing Board (reg. 42). Internal Auditor to Egg Marketing Board (reg. 42). General Manager to Egg Marketing Board (reg. 42). Assistant General Manager to Egg Marketing Board (reg. 42). Rice Marketing Board for the State of New South Wales (reg. 43). Chairman of Rice Marketing Board (reg. 43). Committee of Rice Marketing Board (reg. 43). Wine Grapes Marketing Board for the Shires of Willimbong, Wade and Carrathool (reg. 45). Chairman of Wine Grapes Marketing Board (reg. 45). Committee of Wine Grapes Marketing Board (reg. 45). Banana Marketing Board for the State of New South Wales (reg. 46). Chairman of Banana Marketing Board (reg. 46). Committee of Banana Marketing Board (reg. 46). Lemon Marketing Board for the State of New South Wales (reg. 56). Committee of Lemon Marketing Board (reg. 56). Chairman of Lemon Marketing Board (s. 7 (2) of Act). Tobacco Leaf Marketing Board for the State of New South Wales (reg. 57). Chairman of Tobacco Leaf Marketing Board (reg. 57). Committee of Tobacco Leaf Marketing Board (reg. 57). Central Coast (New South Wales) Citrus Marketing Board (reg. 58). Chairman of Central Coast (New South Wales) Citrus Marketing Board (reg. 58). Committee of Central Coast (New South Wales) Citrus Marketing Board (reg. 58).

<i>Act</i>	<i>Public Authority</i>
Marketing of Primary Products Act, 1927—cont.	
Regulations (as to the Barley Marketing Board).	Barley Marketing Board for the State of New South Wales (reg. 1). Chairman of Barley Marketing Board (reg. 3). Deputy Chairman of Barley Marketing Board (s. 5). Secretary of Barley Marketing Board (reg. 6).
Regulations made upon the recommendation of the Grain Sorghum Marketing Board for the State of New South Wales.	Grain Sorghum Marketing Board for the State of New South Wales (reg. 1). Chairman of Grain Sorghum Marketing Board (reg. 3). Deputy Chairman of Grain Sorghum Marketing Board (reg. 5). Secretary of Grain Sorghum Marketing Board (reg. 6).
Meat Industry Act, 1915.	The Metropolitan Meat Industry Board (s. 8). Chairman of Board (s. 8). Officers and servants of Board (s. 9). Inspector of Board (s. 9A). Veterinary officers (s. 9A). Officer authorized by Board (s. 21). Person approved by Minister (s. 21C). Person authorized by Board (s. 22G). Member of Police Force (s. 28). Special constable (s. 28). Officer within meaning of Pure Food Act, 1908 (s. 28).
By-laws re the Public Abattoir and the Meat Hall at Homebush Bay and the Public Saleyards at Flemington and Homebush Bay.	Officer authorized by the Board (by-law 19).
Meat Industry Authority Act, 1970.	New South Wales Meat Industry Authority (s. 7). Chairman of New South Wales Meat Industry Authority, (s. 7). Deputy Chairman of New South Wales Meat Industry Authority (s. 7). Inspectors (s. 14).
Regulations.	Meat Inspector approved by Chief of Division of Animal Industry in Department of Agriculture (reg. 15).
Medical Practitioners Act, 1938.	New South Wales Medical Board (s. 5). President of Board (s. 6). Secretary to Board (s. 13). Investigating Committee (s. 27A). Chairman of Investigating Committee (s. 27A). Disciplinary tribunal (s. 28). Chairman of tribunal (s. 28). Deputy Chairman of tribunal (s. 28). Director of State Psychiatric Services (s. 30). Medical Practitioners Charges Committee (s. 34).
Mental Health Act, 1958.	Director-General of State Psychiatric Services (s. 7). Director of State Psychiatric Services (s. 7).

<i>Act</i>	<i>Public Authority</i>
Mental Health Act, 1958—cont.	Deputy Director of State Psychiatric Services (s. 7). Medical superintendent (s. 8). Deputy medical superintendent (s. 8). Member of Police Force (s. 12). Mental health tribunals (s. 13). Welfare officers (s. 34). Official visitors (s. 35). Consultative Committee to make recommendations as to subjection of patients to operation, etc., of leucotomy (s. 108). Chief Clerk in the Protective Division of the Supreme Court of New South Wales (s. 51).
Metropolitan Traffic Act, 1900.	Commissioner for Motor Transport.* Commissioner of Police (s. 6). Members of the Police Force (s. 6). Superintendent of Traffic (s. 6). * Cf. State Transport (Co-ordination) Amendment Act, 1954.
Metropolitan Water, Sewerage and Drainage Act, 1924.	The Metropolitan Water Sewerage and Drainage Board (s. 7). President of Board (s. 8). Vice-President of Board (s. 8). Temporary (Deputy) Chairman (s. 20A). Secretary to Board (s. 26). Committee of review to investigate financial position of Board (s. 68).
By-law 13.	Medical Officer of the Board (cl. 31). Deputy Secretary (cl. 31). Assistant Secretary (cl. 31). Chief Clerk (cl. 31). Assistant Chief Clerk (cl. 31).
By-law 14.	Engineer-in-Chief (cl. 1). Inspector (cl. 1). Assistant Secretary of the Board (cl. 1A). Chief Clerk of Board (cl. 1A). Assistant Chief Clerk of Board (cl. 1A). N.S.W. Examining Board for Plumbers, Gasfitters and Drainers (cl. 5).
Mines Inspection Act, 1901.	Board of Examiners of Managers (s. 6). Board of Examiners of Engine Drivers (s. 13). Warden (s. 19). Assessor (s. 19). Chief Inspector of Mines (s. 32). Deputy Chief Inspector of Mines (s. 32). Senior Inspector of Mines (s. 32). Electrical inspector of mines (s. 32). Inspectors of mechanical engineering (s. 32). Other inspectors of mines (s. 32). Government Geologist (s. 77). Geological surveyors (s. 77). Under Secretary for Mines (s. 78).
Rules for the Conduct of Examinations and the Qualifications of Applicants for Mine Managers' Certificates of Competency.	Officer of the Department of Mines (rule 13). Board of Examiners (rule 17). Chairman of Board of Examiners (rule 17).

<i>Act</i>	<i>Public Authority</i>
Mines Rescue Act, 1925.	Committee of district (s. 11). Superintendent of central rescue station (s. 12). Instructors (s. 13). Permanent rescue corps (s. 14). Member of rescue corps (s. 14). Mines Rescue Board (s. 4A). Chairman of Board (s. 4B). Delegate of Board (s. 4G). Committee of a district (s. 11). Superintendent (s. 12).
Mine Subsidence Compensation Act, 1961.	Mine Subsidence Board (s. 5). Chairman of Board (s. 5). Delegate of Board (s. 7). Secretary of Board (s. 12).
Mining Act, 1906.	Warden (s. 6). Wardens' courts (s. 131). Registrar, Department of Mines, Sydney (s. 6). Deputy Registrar, Department of Mines, Sydney (s. 109). Mining Registrar (s. 6). Mining engineers (s. 6). Mining appraisers (s. 6). Clerks, bailiffs, etc. (s. 6). Prospecting Board (s. 40). Officer appointed to inquire and report (s. 116). Mining surveyor (s. 120). Person authorized to inspect (s. 120).
Ministry of Transport Act, 1932.	Minister of Transport (an office of the Executive Government) (s. 5). Commissioner of Police (s. 11). Delegate of Commissioner (s. 11).
Motor Traffic Act, 1909.	Commissioner for Motor Transport.* Traffic Branch of Police Department (s. 2B). Commissioner of Police (s. 2c). Members of the Police Force (s. 2c). * Cf. State Transport (Co-ordination) Amendment Act, 1954.
Regulations.	Prescribed officer (s. 12). Person authorized for testing of drivers (reg. 34). Authorized officer (reg. 42). Officer-in-charge of place where vehicle is impounded (reg. 58). Officer authorized to inspect vehicles (reg. 93). Person authorized to examine log book (reg. 132B).
Motor Vehicle Driving Instructors Act, 1961.	Department of Motor Transport.* Commissioner for Motor Transport.† Commissioner of Police (s. 2). Delegate of Commissioner of Motor Transport (s. 12). Prescribed persons (s. 14). * Cf. Transport (Division of Functions) Further Amendment Act, 1952, s. 4. † State Transport (Co-ordination) Amendment Act, 1954, s. 5.
Motor Vehicles (Third Party Insurance) Act, 1942.	Nominal defendant (s. 29).

<i>Act</i>	<i>Public Authority</i>
Museum of Applied Arts and Sciences Act, 1945.	The Trustees of the Museum of Applied Arts and Sciences (s. 3). President of the Trustees of the Museum of Applied Arts and Sciences (s. 8). Delegates of trustees (s. 13). Advisory committees for branches of Museum (s. 13).
National Fitness Act, 1971.	National Fitness Council of New South Wales (s. 3). Director of National Fitness (s. 3). Chairman of Council (s. 8). Deputy Chairman of Council (s. 8). Advisory Committees (s. 12).
National Parks and Wildlife Act, 1967.	Director of National Parks and Wildlife (s. 4). Officers and employees administering— (a) this Act; (b) Fauna Protection Act, 1948; and (c) Wild Flowers and Native Plants Protection Act, 1927 (s. 5). National Parks and Wildlife Service (s. 5). Delegate of Minister (s. 7). Delegate of Director of National Parks and Wildlife Advisory Council (s. 9). Chairman of National Parks and Wildlife Advisory Council (s. 9). Local committees (s. 11). Aboriginal Relics Advisory Committee (s. 33A). Park ranger (s. 33M). National Parks Advisory Committee of Architects (s. 40). The Government Architect (s. 40). An architect employed in Government Architect's Branch of Department of Public Works (s. 40). Prescribed person (s. 41B).
Regulations as to pounds, impounding and related matters.	Pound-keeper (reg. 3). Impounding officer (reg. 3).
Regulations as to procedure for calling of meetings of a local committee, etc.	Local committee (reg. 2). Chairman of committee (reg. 2). Deputy chairman of committee (reg. 2). Secretary of committee (reg. 2).
National Relief Fund Act, 1914.	National Relief Board of New South Wales (s. 2). President of Board (s. 2). Public Trustee (s. 3).
The National Trust of Australia (New South Wales) Act, 1960.	The National Trust of Australia (New South Wales) (s. 3). Council of the National Trust (s. 6). Under Secretary, Department of Local Government (s. 9). Director-General of Education (s. 9). Executive of Council (s. 12). President of the National Trust (s. 13). Vice-Presidents of the National Trust (s. 13). Secretary of the National Trust (s. 13). Treasurer of the National Trust (s. 13).

<i>Act</i>	<i>Public Authority</i>
Navigation Act, 1901.	The Maritime Services Board of New South Wales. Secretary of Board (s. 8). Inspectors (s. 16). Shipwright surveyors (s. 17). Engineer surveyors (s. 17). Assessors (s. 18). Examiners (qualified masters, etc.) (s. 74). Examiners (qualified engineers) (s. 78). Committees of advice to recommend special exemptions (s. 109c). Chief officer of customs (s. 125).* Harbour Master (s. 145). Licensed pilot employed by State (s. 149).
	* Commonwealth legislation.
New South Wales Government Engineering and Ship Building Undertaking Act, 1943.	State Dockyard Board of New South Wales (s. 5). Chairman of Board (s. 5). Vice-Chairman of Board (s. 5). Deputy Director of Board (s. 5). Delegate of Board (s. 13).
New South Wales State Cancer Council Act, 1955.	New South Wales State Cancer Council (s. 3). Chairman of Council (s. 8). Deputy chairman of Council (s. 8). Advisory committees (s. 10). Cancer Investigation Committee (s. 10A).
New South Wales Institute of Psychiatry Act, 1964.	The New South Wales Institute of Psychiatry (s. 3). The New South Wales Institute of Psychiatry House Committee (s. 15). Chairman of Institute (s. 5). Deputy chairman of Institute (s. 5).
New South Wales State Con- servatorium of Music Act, 1965.	The Board of Governors of the New South Wales State Conservatorium of Music (s. 3).
New South Wales- Queensland Border Rivers Act, 1947.	The Dumaresq-Barwon Border Rivers Commission (Agreement in Schedule to Act). Commissioner of that Commission. Secretary of that Commission.
Noxious Insects Act, 1934.	Pastures protection board (s. 5). Person authorized by Minister or board (s. 8). Officer, servant, agent or contractor of Minister or Board (s. 8).
Noxious Microbes Act, 1900.	Person authorized by Minister (s. 18).
Noxious Trades Act, 1902.	Board of Health (s. 4). Officer of the Board (s. 9). Any person authorized by Board (s. 9).

<i>Act</i>	<i>Public Authority</i>
Nurses Registration Act, 1953.	Nurses Registration Board (s. 4). Chairman of Board (s. 5). Registrar of Board (s. 13). Delegate of Board (s. 19). Officer of the Public Service (s. 19). Assistant Registrar (s. 13).
Regulations.	Examination Committee (reg. 17). Director of Maternal and Baby Welfare, Department of Public Health, Sydney (reg. 30).
Obscene and Indecent Publications Act, 1901.	State Advisory Committee on Publications (s. 31). Chairman of Committee (s. 31). Deputy-chairman of Committee (s. 31). Certain officers of police force (s. 14). National Literature Board of Review.*
	* Cf. Commonwealth Customs (National Literature Board of Review) Regulations made under Commonwealth Customs Act 1901.
Optical Dispensers Act, 1963.	Optical Dispensers Licensing Board (s. 4). Chairman of Board (s. 12). Secretary to Board (s. 18).
Optometrists Act, 1930.	Board of Optometrical Registration (s. 5). Chairman of Board (s. 5). Under Secretary, Department of Public Health (s. 5). Registrar (s. 12).
Parliamentary Electoralates and Elections Act, 1912.	Electoral Commissioner for New South Wales (s. 21A). Electoral Districts Commissioners (s. 6). Chairman of any meeting of Commissioners (s. 8). Electoral inspector (s. 25). Electoral registrar (s. 25). Divisional returning officer (s. 36). Returning officers (s. 77). Assistant returning officer (s. 75A). Deputy returning officer (s. 75). Substitute returning officer (s. 75A). Poll clerk (s. 87). Scrutineer (s. 90).
Parole of Prisoners Act, 1966.	Parole Board (s. 3). Chairman of Board (s. 3). Deputy Chairman of Board (s. 3).
Pastures Protection Act, 1934.	Pastures protection boards (s. 5). Chairman of pastures protection board (s. 5). Deputy chairman of a board (s. 5). Veterinary inspectors (s. 21). Temporary inspector (s. 22). Permit officer (s. 23). Secretary to a board (s. 24). Ranger (s. 24). Rabbit inspector and other officers (s. 24). Local land board (s. 42). Controlling authority of a public watering-place (s. 69). Caretaker of a public watering-place (s. 71). Dingo destruction board (s. 97). Chairman of dingo destruction board (s. 97). Secretary of dingo destruction board (s. 98). Registrar of Brands (s. 148). Delegate of Minister (s. 170A).

<i>Act</i>	<i>Public Authority</i>
Pay-roll Tax Act, 1971.	Commissioner of Pay-roll Tax (s. 4). Assistant Commissioner of Pay-roll Tax (s. 4). Deputy Commissioner of Pay-roll Tax (s. 4). Delegate of Commissioner (s. 4). Officer of the Public Service (s. 40).
Periodic Detention of Prisoners Act, 1970.	Commissioner of Corrective Services (s. 6). Community Committees (s. 10). Chairman of a Community Committee (s. 10).
Permanent Building Societies Act, 1967.	Registrar of Permanent Building Societies (s. 107). Deputy Registrar (s. 107). Inspectors (s. 114). Permanent Building Societies Advisory Committee (s. 117). Chairman of committee (s. 117).
Petroleum Act, 1955.	Registrar, Department of Mines, Sydney (s.38). Warden's court (s. 57). Secretary of the Water Conservation and Irrigation Commission (s. 63). Government Geologist (s. 72). Geologist of Department of Mines (s. 72). Inspector (s. 74). Other officer authorized by Minister (s. 74).
Petroleum Products Subsidy Act, 1965.	Authorized officers (s. 6). Delegate of Minister (s. 16).
Petroleum (Submerged Lands) Act, 1967.	Designated Authority (s. 16). Delegate of Designated Authority (s. 16). Inspector (s. 125).
Physiotherapists Registration Act, 1945.	Physiotherapist Registration Board (s. 3). President of Board (s. 10). Secretary to Board (s. 18).
Pipelines Act, 1967.	Registrar, Department of Mines, Sydney (s. 41). Inspectors (s. 59).
Pilotage Act, 1971.*	Board of Review (s. 44). Chairman of that Board (s. 44). Prescribed person (s. 50).
Poisons Act, 1966.	Poisons Advisory Committee (s. 6). Chairman of Committee (s. 6). Director-General of Public Health (s. 29). Authorized medical officer of Department of Public Health (s. 29). Medical Committee (s. 30). Analyst (s. 40).
Regulations.	Health surveyor (reg. 32). Authorized officer of an animal welfare organization (reg. 32). Person approved by Under Secretary to approve storage facilities for drugs of addiction (reg. 55). Member of the Police Force (reg. 59).
Police Offences Act, 1901.	Special constables (s. 101).

<i>Act</i>	<i>Public Authority</i>
Police Offences (Amendment) Act, 1908.	Special constables (s. 15).
Police Regulation Act, 1899.	Commissioner of Police (s. 4). Deputy Commissioner of Police (s. 4A). Senior Assistant Commissioner of Police (s. 4B). (Other) Assistant Commissioners of Police (s. 4B). Superintendents of Police (s. 5). Inspectors of Police (s. 5). Sergeants of Police (s. 6). Constables of Police (s. 6). Women police employed as special constables (s. 27M).
Potato Growers Licensing Act, 1940.	Director-General of Agriculture (s. 3). Inspector (s. 5).
Poultry Processing Act, 1969.	
Regulations.	Inspector (reg. 10).
Prevention of Cruelty to Animals Act, 1901.	Special constable (s. 3).
Regulations re Livery Stables.	Officer-in-charge of police station (reg. 1). Health inspector (reg. 1). Persons authorized by Minister (reg. 1). An officer (reg. 4).
Regulations re Riding Schools.	Officer-in-charge of police station (reg. 1). Health inspector (reg. 1). Person authorized by Minister (reg. 1). An officer (reg. 4).
Prevention of Cruelty to Animals (Kennels) Regulations.	Officer-in-charge of police station (reg. 3). Health inspector (reg. 3). Person authorized by Minister (reg. 3). An officer (reg. 6).
Prevention of Cruelty to Animals (Animal Boarding Establishment) Regulations.	Officer-in-charge of police station (reg. 3). Health inspector (reg. 3). Person authorized by Minister (reg. 3). An officer (reg. 6).
Prices Regulation Act, 1948.	Prices Commissioner (s. 4). Assistant Prices Commissioner (s. 5). Delegate of Commissioner (s. 55).
Prickly-pear Act, 1924.	Prickly-pear Destruction Commissioner (s. 4). Deputy Commissioner (s. 4).
Regulations.	Prescribed person (s. 7A). Crown Solicitor (reg. 28B). Offices in the Department of Lands of: Under Secretary. Assistant Under Secretary. Surveyor-General. Deputy Surveyor-General. Chief Inspector.

<i>Act</i>	<i>Public Authority</i>
Prickly-pear Act, 1924. Regulations— cont.	Chief Clerk. Legal Officer. Officer-in-Charge, Transfer Branch. Officer-in-Charge, Arrears Branch. Officer-in-Charge, Tenure Branch. First Clerk, Transfer Branch. First Clerk, Arrears Branch. First Clerk, Tenure Branch (reg. 26).
Prisons Act, 1952.	Commissioner of Corrective Services (s. 6). Deputy Commissioner of Corrective Services (s. 6). Prison medical officer (s. 9). Government medical officer (s. 9). Visiting justice (s. 10). Governor of Prison (s. 18). Department of Corrective Services (s. 48A). Person in charge of any lock-up or police station (s. 42).
Regulations.	Any prison officer (reg. 13). Prison officer authorized by Governor of prison (reg. 23). Chaplains to the prisoners (reg. 55). Assistants of chaplain (reg. 57). Parole officer (reg. 69). Officers of the Crown (reg. 92). Persons nominated to conduct classes by Commissioner of Corrective Services (reg. 106).
Public Accountants Registration Act, 1945.	Public Accountants Registration Board (s. 3). Chairman of Board (s. 5). Secretary to Board (s. 15).
Public Defenders Act, 1969.	Public Defenders (s. 3). Under Secretary of Department of the Attorney-General and of Justice (s. 4). Assistant Under Secretary (s. 4). Prescribed officer (s. 4). Public Solicitor (s. 4). Solicitor employed in office of Public Solicitor (s. 4).
Public Health Act, 1902.	Board of Health (s. 6). President of Board (s. 7). Director General of Public Health (s. 7). Medical officer of health (s. 18). Assistant medical officer of health (s. 49A). Secretary to Board (s. 24). Chief medical officer of the Government (s. 30A).
Public Instruction Act, 1880.	District Council (s. 18A).
Public Instruction (Amendment) Act, 1916.	Inspector (s. 11). Medical officer (s. 11). Attendance officer (s. 15).
Public Parks Act, 1912.	Trustees of any park or place of public recreation, convenience, health or enjoyment (s. 4). Delegate of Minister (s. 14).
Regulations (cf. s. 14).	Under Secretary, Department of Lands. Assistant Under Secretary. Surveyor-General. Deputy Surveyor-General.

<i>Act</i>	<i>Public Authority</i>
Public Parks Act, 1912. Regulations— (cf. s. 14) cont.	Chief Draftsman. Chief Clerk. Administrator, Parks and Reserves. Officer-in-Charge, Parks and Reserves Branch. First Clerk, Parks and Reserves Branch.
Public Roads, Act, 1902.	Delegate of Minister (s. 6A). Persons authorized by Commissioner for Main Roads (s. 30). Specified officer (s. 19).
Regulations.	Under Secretary of Department of Lands (reg. 11). Assistant Under Secretary (reg. 11). Surveyor-General (reg. 11). Deputy Surveyor-General (reg. 11). Chief Draftsman (reg. 11). Chief Clerk (reg. 11). Officer-in-Charge, Roads Branch (reg. 11). Officer-in-Charge, Land Board Offices (reg. 11).
Public Service Act, 1902.	Public Service Board (s. 7). Chairman of Board (s. 7). Deputy Chairman of Board (s. 7). Public Service Inspector (s. 9). Delegate of Board (s. 11). Salaries Committees (s. 14A). Examiners (s. 27). Promotions committee (s. 49A). Permanent Head of a Department (s. 49A). The Paying Officer (s. 64).
Regulations— Department of Agriculture and Forestry Commission.	Committee to investigate applications for temporary employment (reg. 137). Lecturers and other officers at—Hawkesbury Agricultural College, Wagga Agricultural College, Yanco Agricultural Research Station (reg. 366A).
Regulations— Department of Education Teaching Service.	Classifiers' Committee (reg. 371). Chairman of Classifiers' Committee (reg. 371). Promotion Lists Committee (reg. 377). Chairman of Promotion Lists Committee (reg. 377).
Regulations— Department of Public Works.	Dredge Service (reg. 284–302). State Dockyard, Newcastle (reg. 304–305).
Regulations— Department of Technical Education.	Qualifications Committee (reg. 427B). Chairman of Qualifications Committee (reg. 427B).
Regulations— The Treasury Government Printing Office.	The Government Printer (reg. 187). Reading Staff (reg. 187). Parliamentary Night Staff (reg. 187).

<i>Act</i>	<i>Public Authority</i>
Public Service Act, 1902— cont. Regulations— The Treasury Stores, Plant and Requisites State Contracts Control Board and Government Stores Department.	State Contracts Control Board (reg. 199). Chairman, State Contracts Control Board (reg. 199). Manager, Government Stores Department (reg. 199). Deputy Manager, Government Stores Department (reg. 199). Tender Committee (reg. 206). Assistant Managers of Government Stores Department (reg. 206). Light, Heat and Power Committee (reg. 241). Clothing Factory Branch, Government Stores Department (reg. 258).
Public Trustee Act, 1913.	The Public Trustee (s. 5). Public Trust Office (s. 7). Deputy Public Trustee (s. 6). Agent of Public Trustee (s. 10).
The Public, Trusts Act, 1897.	Trustees of land temporarily reserved (s. 1). Trustees of land dedicated, etc. for public purpose (s. 3). Delegate of Minister (s. 10A).
Regulations (cf. s. 10A).	Under Secretary, Department of Lands. Assistant Under Secretary. Surveyor-General. Deputy Surveyor-General. Chief Draftsman. Chief Clerk. Administrator, Parks and Reserves. District Surveyor. Officer-in-Charge, Parks and Reserves Branch. First Clerk, Parks and Reserves Branch (reg. 2).
Public Works Act, 1912.	"The Minister" as constructing authority (s. 4). Sheriff (s. 65). Crown Solicitor (s. 103). Surveyor (s. 128). Valuator (s. 128).
Pure Food Act, 1908.	Board of Health (s. 16). President of Board of Health (s. 51). Person authorized (s. 22). Advisory committee (s. 6). President of advisory committee (s. 6). Chairman of advisory committee (s. 7). Government analysts (s. 27). Director-General of Public Health (s. 51A).
Radioactive Substances Act, 1957.	Radiological Advisory Council (s. 4). Chairman of Council (s. 4). Advisory committees (s. 5). Inspectors (s. 7). Under Secretary, Department of Public Health (s. 11).
Real Property Act, 1900.	Registrar-General.* Department of the Registrar-General (s. 5). Deputy registrars-general (s. 5). Examiners of Titles (s. 5). Sheriff (s. 105). Bailiff of District Court (s. 105).

* Cf Registration of Births, Deaths and Marriages Act, 1899.

<i>Act</i>	<i>Public Authority</i>
Regional Organisation Act, 1972.	Advisory council (s. 5). Chairman of council (s. 20). Executive officer of a region or district (s. 10). Advisory committees (s. 20). Executive officers (s. 23).
Registration of Births, Deaths and Marriages Act, 1899.	Registrar-General (s. 4). District registrars (s. 6). Assistant district registrars (s. 6). Deputy district registrar (s. 6). Officer-in-charge of police station (s. 27A). Coroner (s. 29). Justice or justices of the peace (s. 29).
Registration of Deeds Act, 1897.	Registrar-General's appointee or appointees as deputy or deputies (s. 4). Clerk (s. 15).
Registration of Stock Brands Act, 1921.	Registrar of brands (s. 4). Deputy registrars of brands (s. 4).
River Murray Waters Act, 1915.	Contracting government, authority or person (s. 23). Commissioner (s. 27). Deputy Commissioner (s. 27). Arbitrator (s. 30). The River Murray Commission and four Commissioners (agreement in First Schedule to Act). President of the Commission (agreement in First Schedule to Act).
River and Foreshores Improvement Act, 1948.	Rivers and Foreshores Improvement Board (s. 8). Chairman of Board (s. 8). Irrigation Agency of Rural Bank of New South Wales (s. 24).
Road Maintenance (Contribution) Act, 1958.	Commissioner for Motor Transport (s. 5). Authorized officer (s. 6). Officer for time being in charge of records under Act (s. 13). Officer for time being in charge of records under Motor Traffic Act, 1909 (a. 13).
Royal Commissions Act, 1923.	Royal Commission (s. 5). Chairman of commission (s. 5). Deputy chairman of commission (s. 5).
Rural Bank of New South Wales Act, 1932, and Government Savings Bank Act, 1906.	Rural Bank of New South Wales (s. 6 of Government Savings Bank Act, 1906). Commissioners (s. 4 of Rural Bank of New South Wales Act, 1932). President of the Bank (s. 42 of Rural Bank of New South Wales Act, 1932). Deputy President (s. 6 of Rural Bank of New South Wales Act, 1932). Deputy Commissioners (s. 6 of Rural Bank of New South Wales Act, 1932). Delegate of the Commissioners (s. 10 of Rural Bank of New South Wales Act, 1932).

<i>Act</i>	<i>Public Authority</i>
Rural Bank of New South Wales Act, 1932, and Government Savings Bank Act, 1906—cont.	<p>General Bank Department (s. 23 of Government Savings Bank Act, 1906).</p> <p>Government Agency Department (s. 70H of Government Savings Bank Act, 1906) conducting functions conferred under latter Act on Rural Bank in respect of following agencies—</p> <p>Advances to Settlers Agency (s. 70HH).</p> <p>Building Relief Agency (s. 70Z).</p> <p>Rural Reconstruction Agency (s. 70TT).</p> <p>Government Guarantee Agency (s. 70MM).</p> <p>Government Housing Agency (s. 70KK).</p> <p>Home Building Scheme Agency (s. 70X).</p> <p>Irrigation Agency (s. 70QQ).</p> <p>Rural Industries Agency (s. 70DD).</p> <p>Closer Settlement Agency (s. 70YY).</p> <p>Soldiers Families Housing Agency (s. 70ZZ).</p>
Rural Workers Accommodation Act, 1926.	<p>Rural Workers Accommodation Advisory Committee (s. 12A).</p> <p>Chairman of Committee (s. 12A).</p>
Scaffolding and Lifts Act, 1912.	<p>Chief Inspector of Scaffolding and Lifts (s. 5).</p> <p>Inspectors (s. 5).</p> <p>Boards of Reference (s. 5A).</p> <p>Chairman of each Board of Reference (s. 5A).</p>
Second-hand Motor Dealers Act, 1956.	<p>Commissioner for Motor Transport (s. 2).</p> <p>Commissioner of Police (s. 8).</p> <p>Delegate of Commissioner for Motor Traffic (s. 17).</p>
Securities Industry Act, 1970.	<p>Corporate Affairs Commission (being the Commissioner for Corporate Affairs) (s. 5).</p> <p>(Two) Assistant Commissioners for Corporate Affairs (s. 5).</p> <p>Inspectors (s. 5DA).</p>
Sheriff Act, 1900.	<p>Sheriff (s. 3).</p> <p>Deputy Sheriff (s. 8).</p> <p>Special bailiffs (s. 10).</p>
Softwood Forestry Agreement Act, 1968.	<p>Australian Forestry Council (cl. (a) in preamble to Agreement in Schedule to Act with Commonwealth).</p>
Soil Conservation Act, 1938.	<p>Commissioner of the Soil Conservation Service (s. 4).</p> <p>Deputy Commissioner of Soil Conservation Service (s. 4).</p> <p>Assessment Board (s. 18A).</p> <p>Chairman of Assessment Board (s. 18A).</p> <p>Advisory Committee (s. 23).</p> <p>Catchment Areas Protection Board (s. 32).</p> <p>Chairman of Catchment Areas Protection Board (s. 32).</p> <p>Deputy Chairman of Catchment Areas Protection Board (s. 32).</p>
Solicitor General Act, 1969.	<p>Her Majesty's Solicitor General (s. 2).</p> <p>Deputy Solicitor General (s. 2).</p>

<i>Act</i>	<i>Public Authority</i>
Solicitors Admission Rules (Supreme Court).	Solicitors Admission Board (rule 5). Secretary of Board (rule 8). Examiners (rule 8). Joint Examinations Board (rule 19).
South-west Tablelands Water Supply Act, 1941.	Administrator of the South West Tablelands Water Supply (s. 3). Delegate of administrator (s. 3).
Stamp Duties Act, 1920.	Commissioner of Stamp Duties (s. 8). Assistant Commissioner of Stamp Duties (s. 8). Deputy Commissioners of Stamp Duties (s. 8). Inspectors (s. 8). Registrar of Probate Division of Supreme Court (s. 117).
State Brickworks Act, 1946.	State Brickworks (s. 2). Officer-in-charge of State Brickworks (s. 9).
State Coal Mines Act, 1912.	State Mines Control Authority (s. 13). Chairman of Authority (s. 13). Director of State Coal Mines (s. 14A). Delegate of Minister (s. 14A). Delegate of State Mines Control Authority (s. 15). Committee constituted at each State coal mine (s. 14B). Chairman of Committee (s. 14B).
State Development and Country Industries Assistance Act, 1966.	Development Corporation of New South Wales (s. 4). Investigating committees (s. 6). Chairman of Committee (s. 6). "Minister for Decentralization and Development" (s. 9). Director, Department of Decentralization and Development (s. 4).
Inscribed Stock and Dehenture Regulations.	Department of Decentralization and Development (reg. 2). Registrar of Stock (reg. 2). Assistant Registrar of Stock (reg. 2). Deputy Registrars of Stock (reg. 2). Duly authorized official (reg. 15). Accredited officer of Auditor-General's Department (reg. 72).
State Emergency Services and Civil Defence Act, 1972.	Director of State Emergency Services and Civil Defence (s. 3). Local controller for any local government area (s. 8). Controller for any region, sub-region or other division (s. 7). Authorized officers (s. 9). Committees (s. 10). Delegate of Director (s. 11).
State Lotteries Act, 1930.	Director of State Lotteries (s. 7).
State Planning Authority Act, 1963.	The State Planning Authority of New South Wales (s. 4). Chairman of Authority (s. 4). Associate Chairman of Authority (s. 4). Director of Authority (s. 4). Servants of Authority (s. 4). Delegate of Authority (s. 6).

<i>Act</i>	<i>Public Authority</i>
State Planning Authority Act, 1963—cont.	Advisory committee (s. 15). Chairman of committee (s. 15). Subcommittee (s. 15). Chairman of subcommittee (s. 15). Regional planning committees (s. 23). Chairman of a regional planning committee (s. 23). Delegate of Authority (s. 69).
Regulations.	Delegates of specific powers (reg. 5).
State Planning Authority Loans Inscribed Stock and Debenture Regulations.	Registrar of Stock (reg. 2). Assistant Registrar of Stock (reg. 2). Secretary of the Authority (reg. 2). Accredited officer of the Auditor-General's Department (reg. 71). Authorized officer (reg. 71). Deputy Registrar of State Planning Authority of New South Wales. (Inscribed Stock (Form 29, etc.))
State Pollution Control Commission Act, 1970.	State Pollution Control Commission (s. 6). Director of State Pollution Control Commission (s. 6). State Pollution Control Technical Advisory Committee (s. 18).
State Tileworks Act, 1947.	State Tileworks (s. 2). Person authorized to manage tileworks (s. 2A). Officers, etc. (s. 3). Officer-in-charge of State Tileworks (s. 9).
State Transport (Co-Ordination) Amendment Act, 1954.	Commissioner for Motor Transport (s. 5).
Stock Diseases Act, 1923.	Board of Tick Control (s. 5). Chairman of Board (s. 5). Advisory committees (s. 5). Inspectors (s. 6). Veterinary surgeon inspectors (s. 17A). Chief of the Division of Animal Industry of Department of Agriculture (s. 19B). Director-General of Agriculture (s. 21B). Deputy Director-General of Agriculture (s. 21B). Examiners (s. 21A). Registrar of brands (s. 19c). Deputy registrar of brands (s. 3).
Regulations.	District Veterinary Officer (reg. 140). Veterinary officer employed in Department of Agriculture (reg. 26). Veterinary inspector under Pastures Protection Act, 1934 (reg. 26). Chief Veterinary Surgeon of Department of Agriculture (reg. 26). Government Veterinary Officer (reg. 94c). Approved person (reg. 105B). Inspector for purposes of reg. 75A. Approved tester (reg. 128c). Authorized tester (128c). Inspector for time being holding office of Chief of Division of Animal Industry (reg. 128P).

<i>Act</i>	<i>Public Authority</i>
Stock Foods and Medicines Act, 1940.	Under Secretary of Department of Agriculture (s. 5). Stock Medicines Board (s. 12). Chairman of Board (s. 5). Inspectors (s. 20). Analysts (s. 20). Bacteriologists (s. 20).
Suitors' Fund Act, 1951.	The Under Secretary of the Department of the Attorney-General and of Justice (s. 4).
Superannuation Act, 1916.	State Superannuation Board (s. 70). President of Board (s. 70). Deputy president (s. 73). Secretary to Board (s. 82). Delegate of Board (s. 82). Chief medical officer of the Government (s. 11A).
Survey Co-ordination Act, 1919.	Surveyor-General (s. 4). Person authorized by Surveyor-General (s. 11).
Surveyors Act, 1929.	Board of Surveyors of New South Wales (s. 4). President of Board (s. 4). Acting-president of Board (s. 6). Registrar of Board (s. 7). Examiners (s. 20). Chief Surveyor of the Department of Lands (s. 10). Officers to administer Act (s. 7). Persons authorized by Board (s. 18). Registrar of Land and Valuation Court (s. 26). Person duly authorized (s. 29).
Swine Branding Act, 1940.	Registrar (s. 3). Deputy registrar (s. 3). Inspector under Stock Diseases Act, 1924 (s. 13). Assistants (s. 13).
Swine Compensation Act, 1928.	Chief Veterinary Surgeon of Department of Agriculture (s. 8). Nominee of Minister (s. 7). Commissioner of Stamp Duties (s. 14).
Sydney Cove Redevelopment Authority Act, 1968.	Sydney Cove Redevelopment Authority (s. 4). Chairman of Authority (s. 4). Director of Authority (s. 4). Deputy Chairman of Authority (s. 4). Advisory committees (s. 26). Chairman of advisory committee (s. 27). Authorized person (s. 43). Delegate of Authority (s. 45).
Sydney Cove Redevelopment Authority Loan Certificate Regulations.	Authorized employee (reg. 2). Registrar of Securities (reg. 2).
Sydney Farm Produce Market Authority Act, 1968.	Sydney Farm Produce Market Authority (s. 4). Chairman of Authority (s. 4). Deputy Chairman of Authority (s. 4). Servants of Authority (s. 6). Advisory committees (s. 12). Staff joint committee (s. 16).

<i>Act</i>	<i>Public Authority</i>
Sydney Farm Produce Market Authority Act, 1968—cont.	Chairman of Staff Joint Committee (s. 16). Finance Joint Committee (s. 20). Chairman of Finance Joint Committee (s. 20). Delegate of Authority (s. 43).
Sydney Farm Produce Market Authority Loan Certificate Regulations.	Authorized employee (reg. 2). Registrar of Securities (reg. 2).
City Markets Regulations.	Authorized employee (reg. 6).
Sydney Harbour Bridge (Administration) Act, 1932.	Commissioner for Main Roads.* Officer of Commissioner for Main Roads (s. 13). Officer of Public Service (s. 13). Officer of Commissioner for Railways (s. 13). Officer of Commissioner for Government Transport (s. 13). Officer of Commissioner for Motor Transport (s. 13). Authorized member of Police Force (s. 13).
	* Cf Transport (Division of Functions) Act, 1932.
Regulations.	Officer of Department of Local Government and Highways (reg. 3).
Sydney Harbour Transport Act, 1951.	The Sydney Harbour Transport Board (s. 4). Chairman of Board (s. 4).
Sydney Harbour Trust Act, 1901.	Maritime Services Board of N.S.W. (s. 27). Committee of Review (s. 77B). Officers collecting tolls, etc. (s. 71).
Sydney Opera House Act, 1960.	Sydney Opera House Executive Committee (s. 3).
Sydney Opera House Trust Act, 1961.	The Sydney Opera House Trust (s. 3). Chairman of Trust (s. 10). Committees established by Trust (s. 12). Trustees (s. 6).
Sydney Sports Ground and Sydney Cricket Ground Amalgamation Act, 1951.	Trustees (s. 2).
Sydney University Settlement Incorporation Act, 1959.	The Sydney University Settlement (s. 3). Treasurer of Settlement (s. 5). Executive Committee (s. 6). Secretary of Settlement (s. 7).
Taronga Zoological Park Act, 1956.	Trustees of Taronga Zoological Park (s. 3).

<i>Act</i>	<i>Public Authority</i>
Teaching Service Act, 1970.	Education Advisory Commission of New South Wales (s. 4). Chairman of Education Advisory Commission of New South Wales (s. 10). Advisory committees appointed by Education Advisory Commission of New South Wales (s. 13). Director-General of Education (s. 16). Delegate of Director-General of Education (s. 18). Staff inspectors in the Teaching Service (s. 23). Inspectors of schools in the Teaching Service (s. 23). Supervisors in the Teaching Service (s. 23). Assistant supervisors in the Teaching Service (s. 23). Temporary employee in the Teaching Service (s. 24). Promotions committee for each division of the Teaching Service (s. 29).
Education Advisory Commission Regulations.	Electoral Commissioner (reg. 4). Secretary of the Commission (reg. 14).
Technical Education Act, 1949.	Director of Technical Education (s. 6). Deputy Director of Technical Education (s. 6). (Two or more) Assistant Directors of Technical Education (s. 6). Technical Education Advisory Council (s. 8). Chairman of Advisory Council (s. 8). Vocational Instruction Advisory Committee (s. 10). Chairman of Advisory Committee (s. 10). Technical Education District Council for Technical Education District of Newcastle (s. 11). Advisory committees (s. 13). Boards of study (s. 13). Technical Education district councils (s. 13).
Technical Education Trust Funds Act, 1967.	Statutory Trustees of Funds specified in Schedule to Act (s. 3).
Textile Products Labelling Act, 1954.	Analyst (s. 6).
Theatres and Public Halls Act, 1908.	Person appointed by Minister (s. 13A). Person authorized to inspect (s. 13B). Censor (s. 26C). Appeal authority (s. 26I). Member of Police Force (s. 26HA). Under Secretary of the Chief Secretary's Department (s. 26W). Inspector (s. 29).
Therapeutic Goods and Cosmetics Act, 1972.*	Therapeutic Goods and Cosmetics Advisory Committee (s. 7). Chairman of Committee (s. 9). Subcommittees (s. 11). Under Secretary of Department of Health (s. 19). Inspector (s. 29). Analyst (s. 39).
Tobacco Leaf Stabilization Act, 1967.	The State Board (i.e., Tobacco Leaf Marketing Board under Marketing of Primary Products Act, 1927) (s. 8). Chairman of the State Board (s. 11). Local land board (s. 20).

<i>Act</i>	<i>Public Authority</i>
Regulations.	District Surveyor (reg. 3). Chairman of local board (reg. 3).
Totalizator Act, 1916.	Any member, officer, agent or servant of a racing club (cf. s. 2) (ss. 9 and 9A). Committee or executive body of racing club (s. 9A). Secretary of racing club (s. 9A). Inspectors (s. 18). Under Secretary and Comptroller of Accounts, The Treasury (s. 16A).
Totalizator (Off- course Betting) Act, 1964.	Totalizator Agency Board (s. 3). Chairman of Board (s. 3). Committees constituted by Board (s. 7). Delegate of Board (s. 7). General Manager of Board (s. 9). Secretary of Board (s. 9). Officers and agents (s. 9). Permanent, temporary or casual employees (s. 9). Offices, branches or agencies (s. 14). Inspectors under Totalizator Act, 1916 (s. 19).
Tow-truck Act, 1967.	Delegate of Commissioner for Motor Transport (s. 19). Specified person (s. 21) (regulations).
Regulations.	Authorized officer (reg. 2). Prescribed officer (reg. 7). Senior Clerk in charge of records (reg. 7). Member of the Police Force (reg. 9). Commissioner for Motor Transport (reg. 4).
Trade Union Act, 1881.	Registrar of Registry of Trade Unions (s. 26).*
	* Cf. Industrial Arbitration Act, 1912, as to appointment of Industrial Registrar.
Traffic Safety Act, 1970.	Traffic Safety Council (s. 4). Chairman of Traffic Safety Council (s. 4). District traffic safety committees (s. 3). Executive Director of Traffic Safety (s. 7). Officers or servants (s. 7).
Transport Act, 1930	Officers investigating accidents (s. 63). Assessors (s. 63). Persons holding formal investigation (s. 63). Commissioner for Government Transport (s. 103). Commissioner for Motor Transport (s. 103). Selectors of candidates for admission to service under Act (s. 103). Examiners (s. 103). As to each of the respective Departments of Government Transport and of Motor Transport: Heads of Staff Branch. Heads of a branch. Promotions committees. Chairman of promotions committees (ss. 104, 104A, 104B, 104C). "Officer-in-charge for the time being" (s. 110). Appeal Board (s. 114). Chairman of Appeal Board (s. 114). Vice-Chairman of Appeal Board (s. 115E). Secretary to Appeal Board (s. 115B). Collector of Charges (s. 117). Superintendent of Police for Traffic (s. 149).

<i>Act</i>	<i>Public Authority</i>
Transport Act, 1930—cont.	Commissioner of Police (s. 149). Authorized inspector (s. 164). Transport Appeal Court (s. 167). Inspectors (s. 214). Officer, employee or agent of Commissioner for Government Transport (s. 219A). Special constable (s. 222). Assistants (s. 229). Secretary to the Commissioner for Government Transport (s. 251). Authorized officer (s. 243). Prescribed officers of the Public Service (s. 265). Traffic Advisory Committee (s. 266). Chairman of Traffic Advisory Committee (s. 266). Transport Advisory Committee (s. 270). Chairman of Transport Advisory Committee (s. 270). Other committees (s. 270). Chairman of those other committees (s. 270).
Transport (Division of Functions) Act, 1932.	Department of Railways (s. 3). Department of Main Roads (s. 3). The Commissioner for Railways (s. 7). Assistant Commissioner for Railways (s. 8). Deputy Commissioner for Railways (s. 13). Deputy Assistant Commissioner for Railways (s. 13).
[Cf. State Transport (Co-Ordination) Amendment Act, 1954.]	The Commissioner for Main Roads (s. 7). Assistant Commissioner for Main Roads (s. 8). Deputy Commissioner for Main Roads (s. 13).
Transport (Division of Functions) Amendment Act, 1952.	Deputy Commissioner of Government Transport (s. 10).
[Cf. State Transport (Co-Ordination) Amendment Act, 1954.]	
Transport (Division of Functions) Further Amendment Act, 1952.	Commissioner for Government Transport (s. 4). Department of Motor Transport (s. 4). Department of Government Transport (s. 4).
[Cf. State Transport (Co-Ordination) Amendment Act, 1954.]	
Transport Employees Retirement Benefits Act, 1967.	Transport Retirement Board (s. 32). Chairman of Board (s. 32). Deputy Chairman (s. 34). Delegate of Board (s. 43).

<i>Act</i>	<i>Public Authority</i>
University and Colleges Act, 1900.	The University of Sydney (s. 6). Senate (of twenty-six fellows) (s. 7). Chairman of Senate (s. 12). Chancellor of University (s. 10). Deputy Chancellor of University (s. 11). Vice-chancellor (being "the Principal") (s. 4). Visitor of the University (s. 17). Chairman of the Professorial Board (s. 9A). Examiners (s. 20). Professors, tutors, officers and servants of University (s. 14). College or educational establishment instituted for promotion of literature, science or art and authorised to issue degree or diploma certificates (s. 22). Treasurer of the University (s. 27). Licensed tutor or master of a boarding-house (s. 31). Board of Secondary School Studies (s. 32A). Chairman of Board of Secondary School Studies (s. 32A). Deputy Chairman of Board of Secondary School Studies (s. 32A). Advisory Council as to college established outside metropolitan area (s. 43).
University of Newcastle Act, 1964.	The University of Newcastle (s. 4). Council of the University (s. 8). Chairman of the Council (s. 13). Committees of the Council (s. 13). Chairman of committees of the Council (s. 13). Convocation (s. 14). Standing Committee of Convocation (s. 14). Other Committees of Convocation (s. 14). Chancellor of the University (s. 15). Deputy Chancellor of the University (s. 16). Vice-Chancellor of the University (s. 17). Delegate of Council of the University (s. 23). Visitor of the University (s. 31). Joint Committee (s. 34).
University of New England Act, 1953.	The University of New England (s. 4). Council of the University (s. 10). Chairman of Council of University (s. 13). Standing Committee of the Council (s. 14). Chairman of Standing Committee of the Council (s. 13). Convocation (s. 15). Standing Committee of Convocation (s. 15). Other Committees of Convocation (s. 15). Chancellor of University (s. 16). Deputy Chancellor of University (s. 17). Vice-Chancellor of the University (s. 18). Deans (s. 22). Professors (s. 22). Lecturers (s. 22). Examiners (s. 22). Other officers and servants (s. 22). Delegate of Council (s. 23). Department of External Studies (s. 31).
University of New South Wales Act, 1968.	The University of New South Wales (s. 5). The Council (s. 8). Chairman of Council (s. 11). Chancellor of the University (s. 10). Deputy Chancellor of the University (s. 10). Any committee of the Council (s. 16). Deans (s. 14). Professors (s. 14).

<i>Act</i>	<i>Public Authority</i>
University of New South Wales Act, 1968—cont.	Lecturers (s. 14). Other officers and employees of the University (s. 14). Vice-Chancellor (and principal) (s. 15). Delegate of the Council (s. 16). Branches, departments and colleges of University (s. 18). Authorized residential colleges or halls of residence within or residential colleges affiliated with the University (s. 18). Approved person conducting student hostels and residential accommodation (s. 18). Authorized college or educational establishment (s. 18). Treasurer to the university (s. 23). Members of faculties (s. 8). Members of board of studies (s. 8).
Valuation of Land Act, 1916.	Valuer-General (s. 8). Valuers (s. 9). Valuation Board of Review (s. 36A). Chairman of a Board of Review (s. 36A). Deputy Chairman of a Board of Review (s. 36A). Valuation Board of Review panel (s. 36B).
Veterinary Surgeons Act, 1923.	Board of Veterinary Surgeons of New South Wales (s. 4). President of Board (s. 5). Registrar of Board (s. 9). Inspector (s. 8).
Regulations.	Examiners appointed by Minister (reg. 46). Director-General of Agriculture (reg. 46).
War Service Land Settlement Act, 1941.	War Service Land Settlement Boards (s. 2A). Chairman of each board (s. 2A). Classification Committee (s. 4). Chairman of Classification Committee (s. 4). Under Secretary for Land (s. 8G). Prescribed officer (s. 8G). Delegate of Minister (s. 8DD).
Waste Disposal Act, 1970.	Metropolitan Waste Disposal Authority (s. 7). Director of Authority (s. 7). Deputy Director of Authority (s. 7). State Pollution Control Commission (s. 26). Authorized persons (s. 48).
Metropolitan Waste Disposal Authority Loan Certificate Regulations.	Authorized employee (reg. 2). Registrar of Securities (reg. 2).
Metropolitan Waste Disposal Authority Depot Contribution Regulations.	Authorized person (reg. 6).
Water Act, 1912.	Board under s. 30 (2). Trust constituted under s. 34. Trustees (s. 42). Returning officer (s. 48). Officers and servants of trustees (s. 53).
Weights and Measures Act, 1915.	Inspector (s. 8). Superintendent (s. 8). Deputy superintendent (s. 10).

<i>Act</i>	<i>Public Authority</i>
West Scholarships Act, 1930.	The West Scholarship Trustees (s. 3).
Western Lands Act, 1901.	Western Lands Commissioner (s. 4). (Two) Assistant Western Land Commissioners (s. 4). Chairman of local land board (s. 10). Officers (s. 11). Tribunal (s. 17c). Chairman of Tribunal (s. 17c). Assessors appointed to Tribunal (s. 17c). Local land boards (s. 9).
Regulations.	Secretary, Chief Draftsman and Senior Clerk (reg. 5). Crown Solicitor (reg. 64A).
Wheat Quotas Act, 1969.	Wheat Quota Review Committee (s. 11). Chairman of Committee (s. 11).
Wild Dog Destruction Act, 1921.	The Wild Dog Destruction Board (s. 3A). Chairman of Board (s. 3A). Acting Chairman of Board (s. 3A). Administrator (s. 3E). Delegate of Board (s. 3F).
Wild Flowers and Native Plants Protection Act, 1927.	Director of National Parks and Wildlife (s. 2A). Forestry Commission (s. 3). Authorized person (s. 5B). Ranger or caretaker of Crown land or State forest (s. 5B). Honorary rangers (s. 5c).
Workers' Compensation Act, 1926.	Registrar of Commission (s. 33). Deputy Registrar (s. 33). Assistant Registrar (s. 33). Insurance Premiums Committee (s. 30A). Chairman of Committee (s. 30A). Medical Referees (s. 50). Medical Board (s. 50).
Workmen's Compensation (Broken Hill) Act, 1920.	Medical Authority (s. 8). Chairman of Authority (s. 8). Deputy Chairman of Authority (s. 8). Joint Committee (para. 30 of Compensation Scheme in Schedule to Act). Chairman of Joint Committee (para. 31). Deputy Chairman of Joint Committee (para. 31B). Secretary appointed by Joint Committee (para. 34).
Workers' Compensation (Dust Diseases) Act, 1942.	Workers' Compensation (Dust Diseases) Board (s. 5). Chairman of Board (s. 5). Executive member of Board (s. 5). Medical authority (s. 7). Chairman of medical authority (s. 7). Inspectors (s. 8H).
Workers' Compensation (Lead Poisoning—Broken Hill) Act, 1922.	Medical Board (s. 3). Chairman of Board (s. 3).
Youth Welfare Act, 1940.	Advisory committee on youth welfare (s. 3).

ANNEXURE B

The Department of Lands kindly provided for us a list of official actions which may be taken by the Minister for Lands and his delegates under—

- (1) The Crown Lands Consolidation Act, 1913.
- (2) The Closer Settlement Acts.
- (3) The Public Roads Act, 1902.
- (4) The Prickly-pear Act, 1924.
- (5) General Administrative Matters.
- (6) Special Lease Conditions.
- (7) Quarry License Conditions.
- (8) Permissive Occupancy Conditions.

With minor alterations, this annexure is based on the list supplied to us. We express our gratitude to the Department.

THE CROWN LANDS CONSOLIDATION ACT, 1913

(as at July, 1971)

- (1) To deal with applications—
 - (a) for consent to transfer or otherwise deal with any purchase, homestead selection, lease or license;
 - (b) to convert any holding into another class of holding;
 - (c) to purchase any lease;
 - (d) to add an area under ss. 163 or 164;
 - (e) to exchange lands or holdings;
 - (f) to extend the term of any lease;
 - (g) for a special purchase;
 - (h) for an improvement purchase;
 - (i) for an after-auction purchase;
 - (j) for a special lease;
 - (k) for permission to take in stock on agistment or to allow stock not owned by the holder of any holding to depasture thereon;
 - (l) for a certificate under s. 93 that the obligations of a homestead grant have been duly performed;
 - (m) to have non-convertible conditional leases declared to be convertible;
 - (n) to subdivide holdings;
 - (o) for a certificate under the provisions of par. (k) of subsection (1) of s. 129B or of subsection (6A) of s. 272;
 - (p) for a certificate pursuant to subsection (1) of s. 75C, subsection (4) of s. 129, subpar. (i) or (ii) of par. (k) of subsection (1) of s. 129B, subsection (8) or (9) of s. 272, or s. 274A that a special lease, suburban holding, suburban holding purchase, conditional purchase, weekend lease, land within a grant of a suburban holding purchase or conditional purchase, or a parcel of land being part of that comprised in a grant of a conditional purchase on which a dwelling has been erected, may be transferred without consent;
 - (q) for tenant right in improvements;
 - (r) for approval or permission for a person to hold more than one residential lease purchase or town lands lease;

- (s) for consent or permission under ss. 114, 158, 258 or 267 to apply for an additional or original holding or to acquire an additional holding by transfer;
- (t) for consent to enter into possession under a mortgage or to foreclose the mortgage;
- (u) for a certificate under s. 123 that the conditions of a homestead farm grant have been duly performed;
- (v) for a certificate pursuant to subsection (2) of s. 129, subsection (3) of s. 265 or subsection (4) of s. 272 that a person upon whom a holding has devolved is entitled to hold the holding or is qualified to become a transferee.

(2) To direct a local land board or chairman to deal with any matter, question or inquiry that has arisen or shall arise without regard to the land board district or land district in which the land forming the subject of such matter, question or inquiry may be situated or the reference of any case or matter to a local land board or chairman for inquiry or recommendation.

(3) To direct a chairman of a local land board to act as chairman of any local land board for any land district or for several land districts.

(4) To direct any member, other than a chairman, of any local land board to sit or act as a member of any other local land board in pursuance of s. 13A.

(5) To deal with recommendations and reports by local land boards.

(6) To make references to the Land and Valuation Court.

(7) To accept determinations by a local land board or chairman of the price, capital value or rent of land and the capital value or rent of improvements.

(8) To sell or lease Crown land by auction or tender.

(9) To defer, postpone or fund any payments due to the Crown and to modify or revoke any such postponement.

(10) To grant approval to pay interest only in lieu of instalments of purchase money.

(11) To direct that interest be not charged, or to remit or to extend time to pay interest on overdue payments under s. 180 and s. 278.

(12) To forfeit, void or lapse any purchase, lease, license, homestead selection, application or authority or any right, title or interest in any land.

(13) To waive or reverse the forfeiture, voidance or lapsing of any purchase, lease, license, homestead selection, application or authority or any right, title or interest in any land.

(14) To approve that the forfeiture of a holding or the cancellation or variation of a road permit or the termination of a permissive occupancy or permission to occupy Crown lands or the expiration of the term of a lease shall operate to extinguish the whole or part of any debt to the Crown in respect of such holding, permit, occupancy or lease.

(15) To approve the condition of residence being deemed to be performed where an approved deputy of a mortgagee or execution creditor resides upon a holding.

(16) To extend the period during which a person upon whom a holding has devolved or a mortgagee who has entered into possession of a holding may hold the holding.

(17) To grant dispensation of any condition under s. 178.

(18) To vary the design, survey or measurement of a holding, and to allow the period within which moneys due for any excess of area or other reason shall be paid.

(19) To vary, modify or revoke or add to, any covenant, condition, reservation, provision or purpose of a lease, upon application by or with the consent of the lessee and upon the recommendation of the local land board, or to extend the time to comply with any covenant, condition or provision of the lease.

- (20) To be satisfied that the conditions in respect of a conditional purchase made before 1st January, 1885, have been performed.
- (21) To surrender the whole or part of a holding.
- (22) To define and set apart travelling stock routes and camping places under s. 34.
- (23) To reserve or dedicate Crown lands or add Crown lands to reserved or dedicated lands.
- (24) To revoke or modify any reservation or revoke any dedication.
- (25) To make any notification under ss. 84 or 85 and to correct, amend, modify or revoke any such notification.
- (26) To refuse registration of a transfer owing to a legal objection.
- (27) To sign any reference, certificate, consent or permit.
- (28) To appoint a person to act in the absence of a Crown Land Agent.
- (29) To sign any correspondence in respect of leases, the conditions of which require such correspondence to be under the hand of the Minister.
- (30) To withdraw any application at the request of or by the consent of the applicant, and refund a survey fee and the whole or part of any deposit lodged with any such application.
- (31) To direct the times at which any balance of survey fee, together with interest, shall be paid consequent upon the lodging of an application for a special lease.
- (32) To direct that a survey fee be reduced in accordance with subsection (2) of s. 161 or to waive the cost of survey or subdivision in accordance with subsection (3) of that section.
- (33) To waive the Crown's right to improvements under s. 219 and remit the value of improvements or permit their removal under s. 220.
- (34) To give a direction, upon adjustment of moneys after conversion of a holding, as to the manner in which any excess may be applied in or towards the satisfaction of any other debt of the applicant for the conversion to the Crown.
- (35) To grant permissions to occupy Crown lands for such purposes and upon such terms and conditions as may seem fit, or to refuse such permission.
- (36) To terminate permissions to occupy Crown lands or permissive occupancies of Crown lands, to direct the removal of structures or materials therefrom and to refund security deposits or release guarantees in respect of such permissions or occupancies.
- (37) To grant extensions of time within which to comply with a condition attaching to a holding requiring the erection of a dwelling thereon.
- (38) To direct a Crown Land Agent to act as Crown Land Agent for any additional land district or land districts.
- (39) To require officers to perform the duties connected with their respective offices in and for any land district in addition to that for which they have been appointed.
- (40) To grant leave of absence to members of local land boards.
- (41) To direct that a fresh determination of the license fee of an occupation license be made and that payments be required of the annual license fee on the basis of such fresh determination.
- (42) To make a complaint to a local land board under s. 202 in respect of permission to enclose a road or watercourse.
- (43) To cancel or vary permission to enclose a road or watercourse or to reverse such cancellation or variation.
- (44) To authorize the amalgamation of two or more permissions to enclose roads or watercourses.
- (45) To consent to a lessee paying the rental value of Crown improvements for the use thereof in lieu of paying the capital value of such improvements.

- (46) To alter boundaries between divisions under s. 7.
- (47) To establish, define and alter boundaries of land districts under s. 8.
- (48) To notify land office days and hours during which a Crown Land Agent is required to attend at any particular land office for the transaction of business and to amend or revoke any such notification.
- (49) To return a report or recommendation to a local land board or chairman for further consideration.
- (50) To set apart Crown lands as sites for cities, towns or villages and to define the limits of the suburban lands attached to cities, towns or villages.
- (51) To correct, alter or cancel the design or plan of any city, town or village or the limits of any suburban lands attached thereto.
- (52) To appoint and remove trustees under s. 26.
- (53) To give consent to a lease by trustees and to approve the purpose, terms and conditions of the lease.
- (54) To reclaim and purchase land beyond or below high water mark and other matters under ss. 68 or 313.
- (55) To cancel or terminate or refuse to renew any lease or license.
- (56) To alter the purpose and conditions of the residue of a special lease after part of such special lease has been converted into another class of holding.
- (57) To withdraw land from a lease or license under subsection (1) of s. 233.
- (58) To revoke or modify any withdrawal from lease or license under subsection (3) of s. 233.
- (59) To authorize an officer to approve plans of measurement under s. 245.
- (60) To grant a special authority to the holder of a quarry license under regulation 338.
- (61) To impose special conditions and rates on the holder of a quarry license under regulation 344.
- (62) To waive the requirements of subsection (1c) of s. 26.
- (63) To increase the rent of an annual lease and to give notice of such increase.
- (64) To declare the purposes for which Crown land may be leased in pursuance of ss. 74, 75 or 75b.
- (65) To alter due dates for recurring payments and any determination or direction in pursuance of s. 278A.
- (66) To extend the time for payment of any proportionate part of any sum made due and payable by virtue of a direction made in pursuance of s. 278A.
- (67) To approve that an application for extension of a settlement lease to a lease in perpetuity may be granted in respect of land reserved from sale, conditional sale, conditional purchase or other alienation under the Crown Lands Acts.
- (68) To require the production of the instrument of title of any lease for endorsement of any alteration of conditions effected under s. 182.
- (69) To approve that an application for conversion of a prickly-pear lease may be confirmed in respect of land reserved from sale, conditional sale, conditional purchase or other alienation under the Crown Lands Acts.
- (70) To be satisfied that reasonable means of access to a lease or license are provided for authorized persons and to direct or require the provision of gateways or openings where required for the purpose.
- (71) To bring any action or suit for the recovery of arrears of rent or of any other sums due to the Crown under the Crown Lands Act.
- (72) To require a quarry licensee to erect a sufficient fence or barrier around any excavation before it is 20 inches deep and failing compliance, to cause it to be erected at the cost of the licensee.

(73) To be satisfied that difficulties exist to the removal from Crown land of materials obtained under the authority of a quarry license, and to grant an extension of time for removal of the material.

(74) To direct the manner of disposal of materials in pursuance of regulation 346.

(75) To return any transfer to the parties for correction or amendment.

(76) To accept the surrender of any land or the whole or part of any holding or perpetual lease grant.

(77) To consent to the subdivision of a homestead grant or perpetual lease grant and to sign the form of consent.

(78) To consent under subsection (3) of s. 158, to a person being competent to apply for an original suburban holding.

(79) To direct a local land board to hold an inquiry and make a report and recommendation in connection with any application for exchange.

(80) To sign a certificate of approval of conversion of any holding.

(81) To sign certificates of conformity in respect of each portion of a subdivided Conditional Purchase.

(82) To require the furnishing, production or lodgment of proof or evidence in pursuance of subpars (b), (c) or (e) of regulation 310, or regulations 314, 315 or 315A.

(83) To be satisfied that a person was authorized to act for and on behalf of a company or corporation in pursuance of subpar. (d) of regulation 310.

THE CLOSER SETTLEMENT ACTS

(as at July, 1971)

(1) To deal with applications—

- (a) for consent to transfer or otherwise deal with any purchase or lease;
- (b) to permit taking in stock on ~~agreement~~ or to allow stock not owned by the holder of any holding to ~~depasture~~ thereon;
- (c) to subdivide a holding;
- (d) for permits to occupy any acquired land, or land within a settlement purchase area which remains undisposed of;
- (e) to purchase or lease land which has been offered for sale or lease by auction or tender and not disposed of;
- (f) for a certificate pursuant to subsection (4) of s. 31 of the Closer Settlement Act, 1904;
- (g) for a certificate under s. 12 of the Closer Settlement Amendment (Conversion) Act, 1943, that the conditions of a grant of a settlement purchase lease or group purchase lease or closer settlement lease have been duly performed;
- (h) for consent to transfer or otherwise deal with any land which is subject to a proclamation under ss. 4 or 5 of the Closer Settlement (Amendment) Act, 1907;
- (i) to convert a settlement purchase lease, group purchase lease or closer settlement lease into a settlement purchase;
- (j) to exchange;
- (k) to vary, modify or revoke, or add to, conditions or restrictions attached to a closer settlement lease or settlement purchase;
- (l) for a certificate under subsection (5) of s. 11 of the Closer Settlement Amendment (Conversion) Act, 1943, that a person upon whom a holding has devolved is qualified to hold the holding;
- (m) to permit residence on one of two holdings within reasonable working distance of each other.

(2) To direct a local land board to deal with any matter, question or inquiry that has arisen, without regard to the land board district or land district in which the land forming the subject of such matter, question or inquiry may be situated or to refer any matter to a local land board for inquiry or report.

(3) To deal with recommendations and reports by local land boards.

(4) To return decisions and recommendations to a local land board under s. 7 of the Closer Settlement (Amendment) Act, 1914.

(5) To make references to the Land and Valuation Court.

(6) To defer, postpone or fund any payments due to the Crown and to modify or revoke any such postponement.

(7) To grant approval to pay interest only in lieu of instalments of purchase money.

(8) To accept appraisements by a local land board or chairman under s. 2 of the Closer Settlement and Returned Soldiers Settlement (Amendment) Act, 1927.

(9) To direct that interest be not charged or to remit or to extend time to pay interest on overdue payments under s. 29 of the Closer Settlement Act, 1904, and s. 3 of the Closer Settlement (Amendment) Act, 1937.

(10) To forfeit, void or lapse any purchase, lease or application or to cancel any contract for sale or lease of land.

(11) To waive or reverse the forfeiture of any purchase or lease.

(12) To approve the condition of residence being deemed to be fulfilled where an approved nominee of a mortgagee or execution creditor resides upon a holding.

(13) To extend the period during which a person upon whom a holding has devolved or to a mortgagee who has entered into possession of a holding to hold the holding.

(14) To reserve or dedicate lands acquired under the Closer Settlement Acts or land within a settlement purchase area or closer settlement lease area.

(15) To revoke, alter or modify any reservation or the revocation of any dedication.

(16) To refuse registration of a transfer owing to a legal objection.

(17) To sign any reference, certificate, consent or permit.

(18) To make a reference to an Advisory Board of any matter in respect of which a report may be deemed advisable or necessary.

(19) To alter an area and value of a holding under s. 21 of the Closer Settlement (Amendment) Act, 1909, and s. 4 of the Closer Settlement (Amendment) Act, 1914.

(20) To add lands to a settlement purchase, settlement purchase lease, group purchase lease, closer settlement lease or to lands sold by way of after auction purchase or after tender purchase.

(21) To accept a surrender of the whole or part of a settlement purchase lease, group purchase lease, closer settlement lease or a perpetual lease grant.

(22) To withdraw any application at the request of or by the consent of the applicant, and to refund the whole or part of any deposit lodged with any such application.

(23) To make a complaint to a local land board under s. 46 of the Closer Settlement Act, 1904, in respect of a permission to enclose a road.

(24) To cancel or vary a permission to enclose a road and to reverse such cancellation or variation.

(25) To authorize the amalgamation of two or more permissions to enclose roads.

(26) To allow under s. 23 of the Closer Settlement Act, 1904, interest to bear on the price determined for acquired land for a further period.

(27) To consent to a person, who divests himself of any land for the purpose of applying for a settlement purchase, making such an application.

(28) To consent to a person, who has applied for and obtained a title to a settlement purchase and who no longer holds the same, applying for another settlement purchase.

(29) To consent, under paragraph (b1) of subsection (1) of s. 29 of the Closer Settlement Act, 1904, or paragraph (b) of subsection (2) of s. 9 of the Closer Settlement Amendment (Conversion) Act, 1943, to a person performing the condition of residence on a settlement purchase or closer settlement lease by residing either on that purchase or lease or on other land held or owned by that person.

(30) To grant ~~consent to transfer~~ under subsections (2) or (3) of s. 31 of the Closer Settlement Act, 1904, or subsection (IA) of s. II of the Closer Settlement Amendment (Conversion) Act, 1943.

(31) To approve the cancellation or variation of any permission to enclose wholly or in part any road operating to extinguish the whole or part of any debt to the Crown in respect of such permission.

(32) To approve the holder of a closer settlement lease making a demand upon the owner or holder of adjoining lands for a contribution towards the cost of erection and maintenance of common boundary fencing.

(33) To approve of costs, incurred by a vendor in respect of a purchase of land by the Crown under the Closer Settlement Acts, being paid by the Crown.

(34) To dispose of land or movable improvements in pursuance of subsection (6) of s. 21 of the Closer Settlement (Amendment) Act, 1909.

(35) To issue a warrant to the sheriff to deliver possession of land in pursuance of s. 45 of the Closer Settlement Act, 1904, or s. 9DA of the Closer Settlement Amendment (Conversion) Act, 1943.

(36) To alter due dates for recurring payments and any determination or direction in pursuance of subsection (2) of s. 3 of the Closer Settlement (Amendment) Act, 1937.

(37) To extend the time for payment of any proportionate part of any sum made due and payable by virtue of a direction made in pursuance of par. (b) of subsection (2) of s. 3 of the Closer Settlement (Amendment) Act, 1937.

(38) To certify that a charge created by s. 12 of the Closer Settlement (Amendment) Act, 1919, has been paid.

(39) To apportion a charge created by s. 12 of the Closer Settlement (Amendment) Act, 1919, on subdivision or transfer of part of the land or portion subject to such charge.

(40) To permit the withdrawal of an application for conversion in pursuance of s. 4A of the Closer Settlement Amendment (Conversion) Act, 1943, of a holding into another class of holding, subject to payment by the applicant of the costs incurred in dealing therewith.

(41) To give a direction, upon adjustment of moneys after conversion of a holding, as to the manner in which any excess may be applied in or towards the satisfaction of any other debt of the applicant for the conversion to the Crown.

(42) To grant permits to occupy land excluded from farms under par. (a) of subsection (1) of s. 9F of the Closer Settlement Amendment (Conversion) Act, 1943, upon such terms and conditions as seem fit.

(43) To consent to a mortgagee entering into possession of a holding or foreclosing a mortgage.

(44) To grant any dispensation under s. 178 of the Crown Lands Consolidation Act, 1913, as applied to settlement purchase leases, group purchase leases or closer settlement leases by s. 13 of the Closer Settlement Amendment (Conversion) Act, 1943.

(45) To sign certificates of fulfilment of conditions in respect of each portion of a subdivided holding.

(46) To appoint and remove trustees of lands reserved or dedicated under the Closer Settlement Acts.

(47) To waive the requirements of subsection (1c) of s. 26 of the Crown Lands Consolidation Act, 1913, as applied to lands under the Closer Settlement Acts by reg. 64 hereof.

(48) To give consent to a lease by trustees of lands reserved or dedicated for public purposes and to approve of the purpose, terms and conditions of the lease.

(49) To approve the areas and value per acre of proposed settlement purchases before disposal.

(50) To require the furnishing or lodgment of proof or evidence in pursuance of subpars (b), (c) or (e) of reg. 35 or regs 39, 40 or 40A.

(51) To be satisfied that a person was authorized to act for and on behalf of a company or corporation in pursuance of subpar. (d) of reg. 35.

THE PUBLIC ROADS ACT, 1902

(as at July, 1971)

(1) To cause the publishing of a notice of a proposal to consider the opening of a road together with a description, the publishing of an advertisement and the posting of a like notice and description, under s. 7.

(2) To approve the publication, under s. 8, of a notification in the *Gazette* declaring that the land referred to therein has been resumed.

(3) To consider objections in pursuance of ss. 8, 11, 20, 25 and 27.

(4) To allow a further period for lodgment of objections under ss. 8, 11, 20 and 27.

(5) To direct, under s. 10, either generally or in any particular case, that that section shall not apply to or in respect of the opening of a road.

(6) To approve a form of application for the opening of a road under s. 10.

(7) To cause the posting, under s. 11, of a notice of proposal to consider the opening of a road.

(8) To approve the publication, under s. 11, of a notification in the *Gazette* declaring that the land referred to therein has been withdrawn.

(9) To grant Crown land and to make arrangements in connection with the exchange of land, under s. 12.

(10) To notify in the *Gazette*, under s. 12, of withdrawal of land from a lease in connection with compensation.

(11) To negotiate agreement on matters referred to in ss. 13, 14, 16, 17 and 20A.

(12) To direct the recording of the addition of Crown land, surplus land or a closed road under ss. 12, 14, 17 and 20.

(13) To pay costs and interest on compensation money under s. 15A.

(14) To allow further time for making a claim, or to grant a sum of money towards the cost of fencing, under s. 16.

(15) To sell by public auction or private contract of surplus land under s. 17 or a closed road under s. 20A.

(16) To approve of the publication of a notification in the *Gazette* declaring a road to be a public road under s. 18.

(17) To cause the publishing of a notice of a proposal to consider the closing of a road or part thereof, the publishing of an advertisement and the posting of a like notice under s. 19.

- (18) To close a road or part thereof under s. 20.
- (19) To grant a closed road under s. 20.
- (20) To close temporarily a road or part of a road under s. 21.
- (21) To alter the position of a reserved road under s. 22.
- (22) To cause the remarking of a road under s. 23.
- (23) To approve of the plan of survey of the remarking of a road under s. 25.
- (24) To cause surveys to be made and a plan prepared and the approval of such plan under s. 27.
- (25) To publish a notice giving details of the action proposed to align or re-align a road or alter or remark the alignment of a road, to publish an advertisement and to post a like notice under s. 27.
- (26) To accept a determination by the local land board under ss. 13, 14, 16, 17 and 20A.
- (27) To make an appeal to the Land and Valuation Court by virtue of s. 34 (1) and to make a reference to the local land board under s. 34 (2).
- (28) To limit, correct or alter the terms of a notification under s. 35.
- (29) To withdraw, at the request of or by the consent of the applicant, and to refuse an application for the opening of a road under ss. 8, 10 or 11, for the closing and purchase or addition of an unnecessary road under s. 20, for the alteration of the position of a reserved road under s. 22, for the remarking of a road under s. 25, or for the alignment or re-alignment of a road or the alteration or remarking of the alignment of a road under s. 27, and the refund of any deposit lodged with such application, less the costs incurred in connection therewith.

THE PRICKLY-PEAR ACT, 1924

(as at July, 1971)

- (1) To deal with applications—
 - (a) for consent to transfer or otherwise deal with a lease;
 - (b) to extend the term of a lease or to extend a lease to a lease in perpetuity;
 - (c) for permission to assign a person's interests under an agreement made in accordance with the provisions of s. 16 of the Act;
 - (d) to subdivide leases;
 - (e) for prickly-pear lease.
- (2) To grant leave to the Commissioner.
- (3) To approve the Commissioner using the services of any officers of the Department of Lands.
- (4) To authorize expenditure from the Prickly-pear Destruction Fund.
- (5) To enter into an agreement with the owner or occupier of private land for the supply of poison or appliances or services for destroying prickly-pear on the land, and to extend or vary such an agreement.
- (6) To supply poison or appliances or services for destroying prickly-pear on private land or Crown land.
- (7) To waive or remit payment of any moneys due to the Crown.
- (8) To enter into an agreement to accept the surrender of land and improvements thereon under s. 14 of the Act.
- (9) To accept a surrender of the whole or part of a lease.
- (10) To require the capital value or rent of the residue of any holding after a surrender of part of such holding has been accepted to be determined by the local land board.
- (11) To improve special conditions on a holding reduced in area by surrender of part of such holding.

(12) To refer a report by the Commissioner under s. 15 of the Act back to the Commissioner for further information or modification.

(13) To refer to a local land board any matter.

(14) To approve the terms and conditions of a holding pursuant to subsection (4) of s. 15 of the Act and to give effect to such approval on acceptance by the holder.

(15) To approve of determinations by a local land board of the price, capital value or rent of land or the capital value or rent of improvements.

(16) To refer a determination of a local land board to the Land and Valuation Court.

(17) To consent, in pursuance of subsection (5) of s. 15 of the Act, to the price or capital value of any purchase, homestead selection or lease or the rent of any homestead selection or lease being subject to redetermination.

(18) To be satisfied under subsection (6) of s. 15 of the Act in respect of lands classified within class I or II (referred to in s. 6 of the Act).

(19) To lease land infested with prickly-pear.

(20) To consent to the payment of the annual rental value for use of Crown improvements and to determine such rental value.

(21) To enter into an agreement with a council for the eradication of prickly-pear on any Crown land within its area.

(22) To withdraw land from a prickly-pear lease for any public purpose.

(23) To forfeit any lease or holding.

(24) To sign a notice of intention to forfeit a lease or holding.

(25) To reverse the forfeiture of any lease or holding.

(26) To approve that the forfeiture of a lease shall operate to extinguish the whole or part of any debt to the Crown in respect of such lease.

(27) To compensate a pastures protection board for expenditure on prickly-pear destruction on land withdrawn from the board's control.

(28) To refuse registration of a transfer owing to a legal objection.

(29) To defer, postpone or fund any payments due to the Crown and to modify or revoke any such postponement.

(30) To direct that interest on deferred payments be not charged.

(31) To require the lodgment of evidence in pursuance of regs. 28, 28A or 28B.

GENERAL ADMINISTRATIVE MATTERS

(as at July, 1971)

(1) To determine requests by other Government Departments, semi-governmental authorities and councils for concurrence in the appropriation of Crown lands (including easements) or for concurrence in sites for transmission lines over Crown lands and to approve compensation, if any, to be claimed for the land or easement.

(2) To approve that no action be taken towards curtailment of a common following periodic review as to the need for retention.

(3) To determine requests for concurrence in the granting of Mining Special Leases by the Mines Department over Crown land.

(4) To approve the refund of security deposits or the release of guarantees upon the expiration, termination or forfeiture of Quarry Licenses.

(5) To approve the refund of security deposits or the release of guarantees in connection with Special Leases.

(6) To approve the sale by auction or tender of movable Crown improvements and to approve of advertising expenses in connection therewith, or to approve the disposal of movable Crown improvements by direct sale.

(7) To approve that the building condition attached to an Auction Purchase or After Auction Purchase has been complied with.

(8) To approve of the cancellation or temporary suspension of a Cream and/or Milk Assignment.

(9) To approve of plans of reserve structures and facilities and developmental plans for reserves.

(10) To mark Crown instruments "not liable for payment of registration fee".

(11) To determine requests for concurrence in the acquisition of roads by the Main Roads Department or other public authorities including the Commonwealth Government.

(12) To approve the purchase of signs used on reserved or dedicated areas.

(13) To give preliminary and final approvals in connection with Special Purchases under s. 65, Crown Lands Consolidation Act, 1913.

(14) To approve reservation and revocation action in pursuance of the provisions of s. 25A, Crown Lands Consolidation Act, 1913.

(15) To give preliminary and final approvals in connection with Exchanges under s. 195, Crown Lands Consolidation Act, 1913.

(16) To approve of the alteration of the sale list of Auction Purchases.

(17) To consent to further borrowing from the Rural Reconstruction Board by a Closer Settlement lessee and to the lessee executing further security in favour of the Board.

(18) To approve of the holder of a Closer Settlement Lease entering into a second mortgage.

(19) To approve of the notification in the *Gazette* of the election of trustees of a common under ss. 6 or 7, Commons Regulation Act, 1898, or the approving to seek the appointment of trustees of a common by the Governor under s. 10, Commons Regulation Act, 1898.

(20) Determine requests by the Forestry Commission for concurrence in the dedication of Crown lands as state forest.

(21) To consent to the holder of a Closer Settlement Lease using for stock feeding purposes, edible trees or scrub growing on the land leased.

(22) To give head office approval to the issue of Quarry Licenses over Crown lands.

(23) To refuse applications for Quarry License.

(24) To issue Quarry Licenses.

(25) To approve the seeking of Executive Council approval to the appointment of a trustee of a reserved or dedicated area, under the Public Trusts Act, 1897.

(26) To consent to the granting of a lease by the Maritime Services Board of land adjoining or adjacent to Crown lands or dedicated lands and to execute such consent.

(27) To approve the advertising of Crown land as being available for Special Lease.

(28) To approve the checking and charting of plans of transferred properties submitted by the Department of the Interior for issue of a Crown Grant, and of the issue of formal advice to the State Crown Solicitor.

(29) To approve the entry on to Crown land by the Postmaster-General's Department for laying of underground cables.

(30) To approve the taking or discharging of liens.

(31) To determine requests by Fisheries Branch of the Chief Secretary's Department for concurrence in the granting of oyster leases.

(32) To approve the issue of licenses for removal of material from Commons under s. 23 of the Commons Regulation Act, 1898, and the signing of the form of license.

(33) To approve of the withdrawal of land from a travelling stock or camping reserve; or the placing of a travelling stock or camping reserve under Pastures Protection Board control or the withdrawal of a travelling stock or camping reserve from Pastures Protection Board control. (Ss. 41 and 42, Pastures Protection Act, 1934.)

(34) To determine requests by the Forestry Commission for concurrence in the temporary reservation from sale of Crown land as a timber reserve. (S. 22, Forestry Act, 1916.)

(35) To determine requests by the Forestry Commission for concurrence in the dedication of Crown land as a flora reserve for the preservation of native flora. (S. 25A, Forestry Act, 1916.)

(36) To determine requests by the Mines Department for concurrence in the reservation from alienation and from all classes or any specified class of tenure under the Crown Lands Acts, of Crown land for mining or mining purposes or for concurrence in the alteration of the boundaries or the revocation of any such reservation. (S. 106, Mining Act, 1906.)

(37) To determine requests by the National Parks and Wildlife Service for concurrence in the dedication of Crown land as a nature reserve. (S. 9, Fauna Protection Act, 1948.)

(38) To determine requests by the National Parks and Wildlife Service for consent to the proclamation of a wildlife refuge or game reserve; the approving of a request being made to the National Parks and Wildlife Service to revoke the proclamation of a wildlife refuge or game reserve, or the approving of a working plan for a wildlife refuge or game reserve or amendment of any such plan. (S. 23A, Fauna Protection Act, 1948.)

(39) To sign "Notices of Resumption" to the Registrar General. (S. 196A, Conveyancing Act, 1919.)

(40) To approve the disposal of Crown land without public compensation where land is fenced in with an applicant or inquirer's land and is suitable only for use by him or the merits of the case strongly support his claim to the land.

(41) To approve of the establishment of residential subdivisions.

(42) To determine requests by the National Parks and Wildlife Service for concurrence in the inclusion of Crown lands in national parks, state parks and historic sites.

(43) To approve of the advertising of Crown lands as being available for permissive occupancy by way of tender and of the Officer-in-Charge, Land Board Office, accepting the highest tender.

(44) To determine requests by the Forestry Commission for concurrence in the granting of a permit under s. 31 of the Forestry Act, 1916.

(45) To approve of the construction of reticulation services on Crown land.

(46) To approve of land being shown on maps and plans as road.

(47) To approve of the issue of a Crown Grant to the purchaser of a Crown holding sold by a shire or municipal council for unpaid rates.

(48) To approve of funding of outstanding commitments on loans granted to trustees of reserves.

(49) To approve of approaches to councils to accept care, control, and management of reserves under s. 344, Local Government Act, 1919, or to accept trusteeship under the Public Trusts Act, 1898, in the event of resignation of private trustees and to approve in such cases of acceptance of resignations of private trustees.

(50) To sign contracts in respect of road construction works.

(51) To determine requests by the Local Government Department for agreement to reclamation and/or dredging in tidal waters by Councils under s. 494A, Local Government Act, 1919.

SPECIAL LEASE CONDITIONS

(as at July, 1971)

- (1) To give notice, in writing, to the lessee of the termination of the lease.
- (2) To permit or approve the former lessee removing any movable improvements from the land upon forfeiture, surrender, expiration or termination of the lease or from land withdrawn from the lease.
- (3) To direct in writing, the former lessee to remove any structure or material from the land upon forfeiture, surrender, expiration or termination of the lease.
- (4) To consent, in writing, to the removal by the lessee of fixed improvements from the land leased during the currency of the lease.
- (5) To determine that any timber, scrub, vegetable cover or any regeneration thereof on the land leased, is useful or necessary for soil conservation or erosion mitigation purposes or for shade and shelter.
- (6) To consent, in writing, to the lessee carrying out burning off on the land leased, subject to any conditions deemed necessary.
- (7) To decide whether the land leased is overstocked; to determine the maximum number of stock that may be depastured on the land by the lessee; to vary any such determination, or to require returns to be furnished by the lessee relative to the stocking of the land leased.
- (8) To direct the lessee to adopt and maintain on the land leased, such agricultural or pasture improvement practices and to instal such soil erosion control structures as may be deemed necessary in the interests of soil conservation and the mitigation or prevention of erosion, or the directing of the lessee to refrain from agricultural practices on the land leased, for such periods deemed necessary.
- (9) To allow the lessee to pay to the Crown the amount of any contribution made by the Crown towards the cost of kerbing and/or guttering and/or paving constructed along the frontage of the land leased, in equal annual instalments over such period deemed fit.
- (10) To consent to the transfer or other dealing with the lease.
- (11) To consent to the taking of stock on agistment on the land leased.
- (12) To require the lessee to provide and maintain gates of access for the use of miners and authorized persons.
- (13) To determine whether structures on the land leased are satisfactorily erected and kept in good order and repair and in efficient and sanitary condition.
- (14) To make a reference to the local land board for the purpose of reappraisalment of the rent of the lease.
- (15) To allow a further period in which to erect a dwelling on the land leased.

QUARRY LICENSE CONDITIONS

(as at July, 1971)

- (1) To apply the sum deposited as security deposit and interest accruing thereon in or towards the satisfaction of all claims, sums of money, debts, damages whether liquidated or unliquidated, costs, charges or expenses that are due or recoverable from the licensee by reason of default or failure of the licensee to observe or perform the conditions of the license.
- (2) To approve the acceptance of a bank guarantee instead of requiring the licensee to deposit a security deposit, to secure the due performance on the part of the licensee of the conditions of the license, and to approve the bank and form of guarantee.

(3) To be satisfied as to the keeping by the licensee of proper books and/or records showing from day to day, the quantity and class of material, removed from the premises and the sales of such material, or the directing of the keeping of such other books and/or records than those specifically required under the conditions of the license.

(4) To demand the driver of any loaded vehicle leaving the premises, to produce the original docket relating to the load or to demand the licensee to produce all relevant books and records containing information as to the removal and sale of all material on which royalty could be payable under the license or the inspecting of the premises and all other relevant property assets and things for the purpose of ascertaining the amount of royalty payable by the licensee and generally for ascertaining the performance or non-performance by the licensee of the conditions of the license.

(5) To terminate the license.

(6) To vary, modify or revoke or add to, any condition of the license to such extent and on such terms deemed desirable; or to review and alter the amount of the security deposit or the royalty rate and to give notice to the licensee of such review and alteration.

(7) To allow time for the licensee to complete reconditioning of lands disturbed during occupation, and to be satisfied that the premises are clear and free from rubbish and debris, upon expiration, termination or forfeiture of the license.

PERMISSIVE OCCUPANCY CONDITIONS

(as at July, 1971)

(1) To review and alter the rental of the permissive occupancy and to give notice to the tenant of such review and alteration.

(2) To direct a tenant to make good any damage occasioned to the land by his operations and to allow time to do so.

(3) To be satisfied as to the construction and good repair of all structures on the permissive occupancy.

(4) To decide whether the land held under the permissive occupancy is overstocked either wholly or in part.

(5) To permit, upon termination of the permissive occupancy, the tenant or council removing any movable improvements from the premises or to direct, in writing, the tenant or council to remove any structure or material from the premises within a specified time.

(6) To consent to the tenant or council subletting or parting with possession of the premises or any part thereof, or selling or transferring the permissive occupancy or using the premises for any purpose other than the purpose for which the permissive occupancy was granted.

(7) To apply the sum deposited as security deposit and interest accruing thereon in or towards the satisfaction of all claims, sums of money, debts, damages whether liquidated or unliquidated, costs, charges or expenses that are due or recoverable from the tenant by reason of default or failure of the tenant to observe or perform the conditions of the permissive occupancy.

(8) To approve the acceptance of a bank guarantee instead of requiring the tenant to deposit a security deposit, to secure the due performance on the part of the tenant or the conditions of the permissive occupancy, and to approve the bank and form of guarantee.

(9) To be satisfied as to the keeping by the tenant or council of proper books and/or records showing from day to day, the quantity and class of material removed from the premises and the sales of such material, or to direct the keeping of such other books and/or records than those specifically required under the conditions of the permissive occupancy.

(10) To demand the driver of any loaded vehicle leaving the premises, to produce the original docket relating to the load or the demanding of the tenant or council to produce all relevant books and records containing information as to the removal and sale of all material on which royalty could be payable under the permissive occupancy or the inspecting of the premises and all other relevant property, assets and things for the purpose of ascertaining the amount of royalty payable by the tenant or council and generally for ascertaining the performance or non-performance by the tenant or council of the conditions of the permissive occupancy.

(11) To require the tenant or council to erect and maintain a sufficient fence or protection around any excavation or machinery during the period of the permissive occupancy; to be satisfied as to the erection and maintenance of such fence or protection and to require any such fence or protection to be left on the premises after termination of the permissive occupancy.

(12) To be satisfied as to the disposal by the tenant or council of water after being used by the tenant or council and all waste products arising in the course of the tenants or council's operations on the premises.

(13) To allow time for the tenant or council to complete reconditioning of land disturbed during occupation and to be satisfied that the premises are clear and free from rubbish and debris upon termination of the permissive occupancy.

(14) To vary, modify or revoke or add to, any condition of the permissive occupancy to such extent and upon such terms deemed desirable; to review and alter the amount of the security deposit or the royalty rate and to give notice to the tenant or council of such review and alteration.

(15) To have a survey made of the premises for the purpose of checking the quantity of material removed therefrom.

(16) To give notice, in writing, to the tenant or council to cease using or refrain from using any process or processes for extraction or treatment of material which is considered to be causing or is likely to cause contamination of or otherwise affect the quality of the waters of any river or watercourse or other collection of water.

ANNEXURE C

The Chief Secretary's Department kindly provided for us a list of official actions which may be taken by the Chief Secretary, and other public authorities for whom the Chief Secretary is responsible, under—

- (1) The Bush Fires Act, 1949.
- (2) The Charitable Collections Act, 1934.
- (3) The Cinematograph Films Act, 1935.
- (4) The Fire Brigades Act, 1909.
- (5) The Fisheries and Oyster Farms Act, 1935.
- (6) The Gaming and Betting Act, 1918.
- (7) The Lotteries and Art Unions Act, 1901.
- (8) The Obscene and Indecent Publications Act, 1901.
- (9) The Pistol License Act, 1927.
- (10) The Prevention of Cruelty to Animals Act, 1901.
- (11) The Speedway Racing (Public Safety) Act, 1957.
- (12) The Sunday Entertainment Act, 1966.
- (13) The Theatres and Public Halls Act, 1908.

With minor alterations, this annexure is based on the list supplied to us. We express our gratitude to the Department.

THE BUSH FIRES ACT, 1949

The Minister may declare an area to be a special area whereby the council of that area before exercising power under s. 7 (2) (b) requires either the written concurrence of the Forestry Commission or, if the Commission's concurrence is not given within 3 days after notice, the Minister's written concurrence. (S. 7 (3) (a).)

The Minister may vary the statutory bushfire danger period (see s. 7 (1)) for Lord Howe Island or the Western Division. (S. 7 (4).)

The Governor may suspend the operation of s. 7 (2) (b) which empowers the council of an area to revoke the statutory bushfire danger period. (S. 7 (1).)

The Minister may prohibit the lighting of any fire or class of fire in the open air where he is of the opinion that it is necessary or expedient in the interests of public safety. (S. 16.)

The Minister, or in respect of the area mentioned in Schedule 3 the co-ordinating committee, may form or organize a bushfire brigade where the council has failed or refused to comply with a request to do so. (S. 19 (c) and (f).)

The Governor may, on the application of a council and recommendation of the Bush Fire Council, declare the area of such council or part thereof to be a bushfire district for the purposes of the Act. (S. 25.)

The person appointed by a council as Fire Control Officer for a bushfire district must be approved by the Minister. (S. 26.)

THE CHARITABLE COLLECTIONS ACT, 1934

The Minister may, by notice in writing, require any person concerned in making any appeal for support of a charity or charitable purpose to furnish various particulars in relation to the appeal and may direct that liabilities or expenses incurred be disallowed. (S. 3A.)

The Minister may, before granting registration or exemption from registration to any charity, make such enquiries as he thinks fit but shall not refuse registration or exemption except on specified grounds. He may refuse to grant exemption from registration if he is satisfied that the charity should be registered. He may also limit the registration or exemption in certain respects. (S. 4.)

The Minister may call on the committee or governing body to show cause why the charity should not be removed from the register or its exemption withdrawn in certain circumstances and may remove from the register or withdraw the exemption of a charity. (S. 6.)

The Minister may examine and inquire into any charity as to its condition and management and may examine and inquire into any organization or association to ascertain whether it is a charity. He may appoint inspectors for this purpose. (S. 8.)

The Minister may require the submission of audited accounts and production of books, documents, vouchers, etc., relating to a charity and he may require verification by statutory declaration. (S. 9.)

An inspector may require persons to attend and be examined in relation to a charity. (S. 10.)

THE CINEMATOGRAPH FILMS ACT, 1935

The Minister may at any time, on the recommendation of the [Theatres and Films] Commission, apply the Act to any specified Australian film of any of the classes mentioned in s. 3 (1). (S. 3 (2).)

The Minister may, on the recommendation of the Commission, modify the prescribed requirements or exempt an exhibitor therefrom to such extent as he considers reasonable. (S. 6 (3).)

After considering the report of the Commission, the Governor shall fix quotas for distributors and exhibitors. (S. 6A.)

If the Minister has reason to believe that any particular of a quota film is incorrectly registered he may cause inquiries to be made and if necessary correct the register. For this purpose he may call such evidence he thinks necessary or require the film to be submitted for examination and if default is made by any person he may cancel the registration of the film. (Reg. 8.)

THE FIRE BRIGADES ACT, 1909

The Board of Fire Commissioners, with the consent of the Minister, may by notification in the *Gazette* apply the Act to parts of the shires mentioned in Schedule 1. The Governor, on the recommendation of the Board, may by proclamation apply the Act to any other municipality or shire and may take any locality out of operation of the Act but may amend or revoke any such proclamation. (S. 4.)

The Board may do various things as specified in the section for the purpose of carrying out the provisions of the Act. (S. 20.)

The Board may make by-laws for carrying out the purposes of the Act and in particular in respect of various aspects as specified in the section. (S. 21.)

The Board may recover charges as specified in Schedule 2 from the owner of the building or property or the master or owner of a vessel for the services of the fire brigade in attending any fire which occurs outside the area to which the Act applies. (S. 22.)

THE FISHERIES AND OYSTER FARMS ACT, 1935

The Governor may appoint honorary vigilance committees in places where constant supervision by inspectors is unnecessary or impracticable or where considered desirable for effective supervision of the fisheries. (S. 7.)

An inspector may enter lands adjacent to any water and may enter or pass along any waters with boats or otherwise in connection with his duties under the Act. (S. 12.)

An inspector may for the purpose of searching for undersize fish or oysters or fish taken in contravention of the Act enter business premises used in connection with fish storage or treatment, examine receptacles suspected of containing undersize fish or fish taken in contravention of the Act and stop and search any vehicle, enter and search any premises and search any receptacle. (S. 13.)

An inspector may:

- (a) board any boat and search it for fish, engines, nets or other articles;
- (b) examine any nets, engines or other articles in use for fishing or in possession of, or under the control of any person and intended or adopted for fishing;
- (c) seize any fish, engine, net, etc., which he believes is liable to be forfeited under this Act;
- (d) require the master or other person in charge to produce the licence for a boat and may copy all or part of such licence;
- (e) require the master or other person in charge of a boat required to be licensed under the Act to give any explanation concerning the boat or its occupants;
- (f) require certain persons to state their name and place of abode;
- (g) require certain persons to produce any licence, authority or evidence of registration required under the Act. (S. 14.)

The Minister may direct the institution of experiments and investigations into various aspects of fisheries and establish and maintain or assist in establishing or maintaining biological stations where such studies may be carried out. For the purposes of this section the Minister may reserve Crown lands for experiments in culture and propagation of fish. (S. 16.)

The Minister may approve the erection of fish hatcheries, races and spawning ponds on any tidal or inland waters, and may authorize any person, society or association to carry out practical operations in connection with the hatching of any named species of fish and do all things necessary for the successful propagation of such fish. (S. 17.)

The Minister may prohibit the taking of fish from tidal or inland waters for any period not exceeding 12 consecutive months and may rescind or alter any such prohibition. (S. 18 (1).)

The Governor may prohibit the taking of fish from tidal or inland waters for any period specified and may rescind or alter any such prohibition. (S. 18 (2).)

The Governor may prohibit or restrict either absolutely or during specified periods the bringing into the State or landing from any boat, of any live fish whether taken in territorial waters or elsewhere. (S. 20.)

An application for an inland angling licence may be granted or refused and an inland angling licence may be suspended or cancelled by the Minister in the circumstances prescribed. Regulation 51 (3) empowers the Minister to suspend or cancel a licence upon conviction of the holder for a breach of the Act, regulations, proclamation or notice relating to fishing in inland waters. (S. 25B (6).)

The Minister may issue a permit for the use of any net for investigation and experiment or as *bona fide* naturalists' net for catching scientific specimens. (S. 27 (6).)

The Minister may suspend or cancel the licence of a fisherman convicted of an offence against this section and such a conviction shall be a sufficient ground for the refusal of a licence. (S. 37.)

The Minister may suspend for a period not exceeding 1 month the licence of a fisherman convicted of a second or subsequent offence against this section. (S. 38 (3).)

The Minister may grant a consent to sell fish and may grant a certificate of registration as a canner of fish. The Minister may cancel any such consent or certificate of registration for any cause he considers sufficient. (S. 40A (2).)

The Minister may on the recommendation of the Authority issue a licence to sell fish by wholesale and may cancel any such licence for any cause he considers sufficient. (S. 40c.)

The Minister may require persons engaged in various operations specified in s. 42 (2) to furnish returns in the prescribed form. (S. 42.)

The Minister shall determine the rental of every oyster lease in accordance with this section. (S. 59.)

The Minister may offer by public tender or public auction the lease of any area classified as special lands for a term not exceeding 15 years and on the application of the lessee, shall, if he is satisfied that the lessee has substantially observed and performed the covenants and conditions of the lease, grant a further lease for a like term. (S. 61.)

The Minister may lease any area classified as average lands for any term not exceeding 15 years and on the application of the lessee shall, if satisfied that the lessee has substantially observed and performed the covenants and conditions of the lease, grant a further lease for a like term. (S. 62.)

The Minister may lease any area classified as inferior lands for any term not exceeding 10 years. The Minister's approval is required to take oysters from such a lease during the first year of the term of the lease. An area leased under this section may be reclassified as average lands during the last year of the lease. On the application of the lessee the Minister shall, if he is satisfied that the lessee has substantially observed and performed the covenants and conditions of the lease, grant a further lease for 10 years when the classification is not altered or for a term of 15 years when the area is reclassified as average lands. (S. 63.)

The Minister may accept the surrender of a lease in the second year of its currency in any case where it appears to him that oyster culture cannot be carried out on the area with any reasonable hope of success or where for any other reason he considers such surrender should be accepted. (S. 73.)

The Minister may determine a way of access to adjoining land over a portion of the foreshore of a leased area. (S. 74.)

The Minister may withdraw from leases whole or part of a leased area where in his opinion such land is required for any public purpose. Compensation is payable as agreed between the Minister and the lessee or in default of agreement as determined by the local land board. (S. 76.)

Where an inspector reports that the lessee, within 1 year of the commencement of the lease, has not taken the proper measures to carry out the conditions of the lease and cultivate the leased area the Minister may call upon the lessee to show cause why the lease should not be cancelled and after consideration of any representations made by the lessee may cancel the lease. (S. 78.)

The Minister may call on a lessee to take remedial action where an inspector reports that the lease is being mismanaged or to show cause why the lease should not be cancelled and after consideration of any representations from the lessee may cancel the lease. (S. 79.)

The Minister may prohibit the taking of oysters from a leased area where he is satisfied that as a result of overdredging or any other causes the area has been reduced to such state that the taking of oysters should be suspended or the oysters are unfit for consumption as foods and he may rescind such prohibition. The Minister may release the lessee from payment of rent during any period of suspension where in his opinion such reduction resulted from natural causes only. (S. 80.)

When any leased area is affected with disease the Minister or an inspector may require the lessee to take within a specified time such steps as are specified in a written notice to rid the leased area of disease. (S. 81 (2).)

The Minister may declare that any leased area, area of Crown lands or public oyster reserve is infected or likely to be infected to such an extent as to render oysters unfit for human consumption and may prohibit the taking of oysters therefrom for the period specified. In the case of a leased area the Minister may release the lessee from payment of rent for the period specified. (S. 82 (1).)

The Minister may cancel an oyster lease if the lessee is convicted of an offence under s. 87 (1). (S. 87 (5).)

The Minister may cancel the lease of any lessee convicted of stealing oysters or unlawfully receiving stolen oysters. (S. 89.)

An inspector may sell any fish or article of a perishable nature seized under the Act as forfeited. (S. 98.)

The Minister may authorize any articles seized to be delivered to the person disputing the forfeiture on his giving security to pay their value in case of their condemnation. (S. 99.)

The Minister may sell oysters or spat from Crown lands, training walls or public oyster reserves to any lessee under such conditions as he may see fit. (S. 111.)

The Minister may by order in writing require the provision of a fishway in any dam, weir or reservoir constructed on any tidal or inland river or creek or over any flowing water. Where a person fails to comply with an order under this section the Minister may cause the work to be carried out and recover the cost thereof from the person to whom the order was addressed. (S. 117.)

The Minister may require the last lessee of an expired lease to remove the posts and cultivation from the area. In default the Minister may cause the posts and cultivation to be removed and may sell same by public auction or otherwise and may recover the outstanding costs of such auction from such lessee. (S. 118.)

The Minister may cancel or suspend the licence of a territorial boat used by the licensee for the commission of an offence under the Act or regulations. (Reg. 3 (4) and s. 23.)

The Minister may cancel or suspend the licence of an extra territorial boat used by the licensee for the commission of an offence under the Act or regulations. (Reg. 4 (5) and s. 24.)

The Under Secretary may transfer the licence in respect of a boat licensed under s. 23 or s. 24 to the purchaser of such boat. (Reg. 5.)

The Minister may cancel or suspend the licence of a fisherman convicted of an offence under the Act and regulations. (Reg. 7 (4) and s. 25.)

The Minister may cancel a fisherman's licence bearing an endorsement that the holder is permitted to take fish for sale if he is satisfied that the endorsement was obtained by any false or misleading statement. (Reg. 7 (5).)

The Under Secretary may grant any application for a licence under regs 3, 4, and 7 if he is satisfied that all requirements have been met. Any such application may be refused where the licence has been suspended or cancelled or the applicant has been convicted of the offences referred to in regs 3, 4, and 7. (Reg. 8.)

The local inspector shall determine the number of set prawn nets to be used and the size of the crew in respect of certain waters and shall determine by lot in accordance with the regulation, the right of priority as between fishermen or crews. (Reg. 10.)

The Minister may cancel or suspend an inland angling licence where the holder has been convicted of a breach of the Acts or regulations. (Reg. 51 (3).)

The Minister or an authorized officer may approve of the withdrawal of an oyster lease application. (Reg. 63.)

The Minister may refuse any application for a lease of an oyster-farm. (Reg. 64.)

The Minister may issue a special authority to remove oysters to the former lessee following the expiration of a lease and the lodgment of an application of a new lease of the area. The Minister may also issue a special authority to remove oysters to an applicant for a lease of an area classified as an average lands pending the issue of a lease. (Reg. 71.)

The Minister may at any time modify the boundaries of a leased area to rectify error of measurement. (Reg. 87.)

An inspector may issue permits to cut mangrove growing below highwater mark on any Crown lands. (Reg. 98.)

The Minister may cancel or suspend an oyster vendor's licence of a person convicted of unlawfully removing oysters or of having oysters in his possession or on his premises which may reasonably be suspected of having been stolen or unlawfully obtained. The Minister may refuse to issue any further licence to any person so convicted. (Reg. 103.)

The Minister may forthwith sell or otherwise dispose of any net, engine or other thing seized or forfeited or condemned under the Act or any net found in any closed waters without an owner or unclaimed and may sell or otherwise dispose of any net found in any waters other than closed waters without an owner, at the expiration of 1 month from the date of seizure. (Reg. 107.)

The Minister may grant a permit to take fish from tidal or inland waters wherein the taking of fish is prohibited or during any close season, where such fish is required for hospital patients or sick persons and is not otherwise obtainable and he may attach to the permit such conditions he may think fit. (Reg. 110.)

THE GAMING AND BETTING ACT, 1912

The Minister, or an officer of the Chief Secretary's Department so authorized, may issue poker machine licences except in certain circumstances. (S. 50b (1) and (1A).)

The Minister may refuse to issue to a club not registered as at 1st March, 1968, a licence or renewal of a licence for more than the number of 20c poker machines approved by the Minister from time to time. (S. 50b (1B) (d).)

The Minister may suspend for such period he may deem fit or may cancel a licence. (S. 50b (3) (a).)

The Minister may require information to be furnished as to the ownership or the terms and conditions upon which poker machines are being acquired by a club. The determination of the Minister as to reasonable terms and conditions shall be final. (S. 50b (4) (c) and (d).)

The Minister may relieve a club of the obligation to pay all or part of supplementary licence tax if he is satisfied that the aggregate net revenue for the 12 month period ending 30th November next ensuing will probably be less than \$40,000. (S. 50E (1a) (b).)

Certain police officers and persons authorized by the Minister may enter licensed premises at any hour of the day or night and examine the premises and records of the club to ascertain whether the provisions of the Act and regulations are being complied with. (S. 50F (1).)

A racecourse licence issued under s. 52 (1) may be cancelled by the Minister for any good cause. (S. 52 (2).)

The Minister may refuse to license a racecourse for a particular class of meeting where the racecourse has not been licensed for that class of meeting in the previous 5 years or where it has been so licensed, meetings of that class have not been held in the previous 2 years. (S. 52 (2A).)

Where the Minister or his delegate issues a licence which the Minister could have refused under s. 52 (2A) that licence or any subsequent licence for the same racecourse for the same class of meeting may be issued subject to such terms and conditions as the Minister thinks fit. (S. 52 (2B).)

The Minister or his delegate may issue greyhound racing licences on such terms and conditions as may be prescribed by regulations. (S. 52A (2).)

A greyhound racing licence may be cancelled by the Minister for any good cause. (S. 52A (3).)

The Minister or his delegate shall not issue a greyhound licence unless satisfied that the applicant is a non-proprietary association and may require documents to be produced or information to be furnished to enable a determination to be made in this regard. (S. 52B.)

The Minister may cancel a greyhound racing licence if he is satisfied that the holder has ceased to be a non-proprietary association. (S. 52c.)

Where a licensed racecourse is temporarily unfit for use, the Minister or his delegate may authorize a race meeting to be held on another racecourse and the meeting so held is deemed to have been held on the unfit course for the purposes of computation of the number of meetings allowed. (S. 53A.)

No licence for a racecourse shall be issued under s. 52 unless the Minister or his delegate is satisfied that the applicant is a non-proprietary association and is to be the holder of the licence. (S. 53c.)

The Governor may permit a non-proprietary association to hold more than one class of licence. (S. 53d (2).)

The Governor may declare that the Minister may issue additional licences in any district or town or the maximum number of days on which race meetings may be held on a racecourse may be increased to a specific number. (S. 53E.)

The Board may in accordance with the rules:

- (a) register, refuse to register or cancel the registration of clubs, greyhound trial tracks, local or district associations, clubs or persons associated with greyhound racing or any greyhound trial track;
- (b) impose the prescribed fees for such registration;
- (c) disqualify greyhound or persons associated with greyhound racing from participating in, or associating with, greyhound racing;
- (d) exclude from participation any greyhound not registered under the N.S.W.N.C.A.;
- (e) prohibit registered persons from participating in unregistered greyhound meetings. (S. 56G (1) (c).)

The Board may grant or advance on loan moneys from the fund to increase stake moneys and prizes at meetings, improve racecourses, to assist greyhound clubs and for any other purpose conducive to the advancement and development of greyhound racing. (S. 56g (1) (d).)

The Board may make rules for the control and regulation of greyhound racing and may alter or repeal such rules. (S. 56h.)

The Board may make rules governing the operations of stewards appointed by the Board. (S. 56ha.)

The Board may make rules for and with respect to greyhound trial tracks. (S. 56hb.)

Rules made by the Board are subject to the Governor's approval and may be repealed by the Governor. (S. 56i.)

The Board may suspend payments to the Greyhound Racing Control Board Fund where it determines that the fund is sound enough to permit such payments to be suspended. (S. 56k (4).)

THE LOTTERIES AND ART UNIONS ACT, 1901

The Minister may, if he is satisfied that circumstances of an unusual nature arose, determine a percentage less than 50 per centum for the purposes of s. 4 (3) (e) (ii). (S. 4 (4).)

The Minister may issue permits for games of chance. (S. 4A (5).)

The Minister may, if he is satisfied that circumstances of an unusual nature arose in connection with a game of chance, determine a percentage less than 50 per centum for the purposes of s. 4A (3) (g) (ii). (S. 4A (6).)

The Minister may issue permits for trade competitions. (S. 4B (5).)

The Governor or the Minister may grant or refuse applications for the formation of voluntary associations. (S. 6A.)

The Minister may require voluntary associations to lodge balance sheets and to produce books, documents and vouchers relating to the lottery conducted by the association. (S. 10.)

The Minister may require balance sheets to be lodged in connection with lotteries and games of chance conducted under s. 4 and s. 4A and require the production of books, documents and vouchers relating thereto. (S. 11.)

THE OBSCENE AND INDECENT PUBLICATIONS ACT, 1901

The Minister may refer any publication or class of publication to the State Advisory Committee on Publications for consideration and report in terms of s. 32 (1). The Minister may also refer to the Committee any other matter arising out of the administration of the Act for its report thereon. (S. 32.)

Where the Committee has made a report to the Minister for the purposes of s. 32 (1) (c) the Minister, on consideration of the report, may determine that a publication or class of publication shall be classified as restricted. If the Minister so determines the classification shall extend to all subsequent editions or issues. The Minister may vary or revoke any such determination. (S. 33.)

The Minister, on the recommendation of the Committee, may determine that any book, magazine or periodical proposed to be published, sold or distributed shall not be the subject of proceedings under section 5 or 16 of the Act. The Minister may revoke any such determination. (S. 35.)

No proceedings may be instituted in respect of any book, magazine or periodical without the approval of the Minister except those taken under s. 34. (S. 36.)

THE PISTOL LICENSE ACT, 1927

The officer of police in charge of the police station nearest to the applicant's usual residence may issue a pistol license if he is satisfied that the applicant has a good reason for requiring a license and can be permitted to have, use and carry a pistol without danger to the public. (S. 5 (2).)

The Minister may exempt an applicant from payment of the prescribed fee if satisfied that the pistol is for scientific, historical or educational purposes. Any such exemption may be cancelled by the Minister. (S. 5 (7).)

The Commissioner of Police may approve of a pistol club and may attach to such approval such terms and conditions relating to control, administration or management of the club or the preservation of public safety or peace as he thinks fit and may revoke any such terms and conditions. Any such approval may be revoked by the Commissioner for the reasons specified or for any other reason he considers sufficient. (S. 5A (1) (a).)

Any shooting range proposed to be used by an approved club shall be of a type, construction and at a location approved by the Commissioner of Police and the Commissioner may attach to the use of any approved range such terms and conditions relating to the use, control, administration and management thereof or the preservation of public safety or peace as he thinks fit and may revoke any such terms and conditions. Any such approval may be revoked by the Commissioner for the reasons specified or for any other reason he considers sufficient. (S. 5A (1) (b).)

A pistol license may be issued in the name of the secretary of an approved club but the maximum number of such licenses are restricted to the number determined by the issuing officer. (S. 5A (3).)

A pistol license may be revoked by the officer-in-charge of the police station nearest to the holder's usual residence if he is satisfied that the holder is prohibited from holding or has ceased to be entitled to hold a license under the Act or is of unsound mind or intemperate habits or otherwise unfitted to be entrusted with a pistol. (S. 8.)

A pistol dealer's license may be issued by the officer-in-charge of the police station nearest to the applicant's place of business. (S. 11 (4).)

Such officers may decline to issue a pistol dealer's license unless the applicant satisfies him that he is a fit and proper person to be licensed. He may also decline to issue a pistol dealer's license if he is satisfied that any other person, directors of a corporation or members of a firm or partnership on whose behalf the license is to be held, would not be fit and proper persons to be licensed pistol dealers. (S. 11 (5).)

The officer-in-charge of the police station may revoke a pistol dealer's license if he is satisfied that the holder or the person, any directors of a corporation or members of a firm or partnership on whose behalf the license is held are prohibited from holding a license or that the holder is of unsound mind, intemperate habits or otherwise unfitted to carry on the trade or business of a pistol dealer. (S. 11 (7).)

The officer-in-charge of any police station may issue a permit to carry a pistol to an interstate visitor who holds a license to carry a pistol in his own State. (Reg. 10.)

The officer-in-charge of any police station may issue a permit to carry a pistol in this State to a member of an approved club permanently resident in another State and who holds a license to carry a pistol in his own State. The issuing officer may revoke such permit if satisfied that any condition specified in reg. 10A (3) has been breached or the holder has otherwise become an unfit person to be entrusted with a pistol. (Reg. 10A.)

An Inspector of Police may issue a permit to an overseas tourist if satisfied that the applicant would, if permanently residing in this State, be entitled to a pistol license. (Reg. 11.)

THE PREVENTION OF CRUELTY TO ANIMALS ACT, 1901*Animal Boarding Establishment Regulations*

Animal Boarding Establishment licences are issued on behalf of the Minister by a person authorized by him. The Minister may refuse to grant a licence if he is of the opinion that the premises are unsuitable for the purposes and may refuse or cancel a licence upon proof being given to him that the applicant or licensee has been convicted of an offence against the Act or twice convicted of a breach of these regulations or the application is not accompanied by the required certificate and fee. (Reg. 3.)

Kennel Regulations

Similar provisions to the Animal Boarding Establishment Regulations above. (Reg. 3.)

Riding School Regulations

Riding School licences are issued on behalf of the Minister by a person authorized by him. The Minister may refuse or cancel a licence upon proof being given to him that the applicant or licensee has been convicted of an offence against the Act or twice convicted of a breach of these regulations or the application is not accompanied by the required certificates and fee. (Reg. 1.)

Livery Stable Regulations

Similar provisions to the Riding School Regulations above. (Reg. 1.)

THE SPEEDWAY RACING (PUBLIC SAFETY) ACT, 1957

The Minister may issue speedway licences subject to such terms and conditions as may be prescribed or as the Minister may determine. (s. 4.)

The Minister may suspend or cancel a speedway licence or vary the terms and conditions during the currency of the licence. (s. 6.)

The Minister's approval to transfer a speedway licence is required. (Reg. 6.)

The Minister's approval to structural or other additions to or alteration of a licensed speedway is required. (Reg. 7.)

Where so directed by the Minister fences shall be constructed between the track and spectator areas. (Reg. 8.)

Where so directed by the Minister, a safety fence shall be constructed around the whole or such portion of the track as the Minister may consider necessary. These fences shall be constructed in accordance with the specifications prescribed but the Minister may, on the recommendation of the Commissioner of Police, authorize or require safety fences to be constructed of any other dimensions or materials. (Reg. 9.)

The Minister may specify the locations and types of steel hawsers, earthen banks, sandbags or any other devices considered necessary for the protection of life and property. (Reg. 10.)

The Minister may specify the location and type of any gate in any safety fence. (Reg. 11.)

Unless authorized by the Minister, no gate in any safety fence shall be of lesser strength than the fence itself. (Reg. 12.)

Unless otherwise authorized by the Minister, a speedway shall be equipped with a communication system to enable the starter to be informed that it is safe for a race to start. (Reg. 13.)

A parking area shall be provided to the satisfaction of the Minister. (Reg. 14.)

Unless otherwise authorized by the Minister the pit enclosure shall be outside the track circuit. (Reg. 16.)

The senior officer of police on duty at a speedway meeting may instruct the promoter or any official to cease racing if satisfied that competitors or spectators are in danger. (Reg. 25.)

A speedway may be inspected at any time by certain members of the police force or persons authorized by the Minister. (Reg. 30.)

THE SUNDAY ENTERTAINMENT ACT, 1966

The Minister may by order under his hand exempt any person or persons or class of persons from the provisions of subsection 1 or 3 of section 4. (S. 4 (5).)

The Minister may prohibit the holding or conducting on any Sunday after 12.30 p.m. of a public entertainment or public meeting or class of public entertainments or public meetings where it appears to him that such action is necessary to prevent interference with religious worship or to obviate any public disturbance or for any other reason the Minister may deem sufficient. (S. 5 (1).)

THE THEATRES AND PUBLIC HALLS ACT, 1908

The Minister may direct that an additional fee is not payable on a late application. (S. 7 (4) (b).)

The Minister's decision as to the grade to which a building belongs shall be final. (S. 8.)

The Minister may issue a licence for a theatre or public hall. (S. 9 (1) (d).)

The Minister may refuse a licence if it appears that the provisions of the Act or regulations have not been complied with, alterations or additions are necessary for public safety, health or convenience or the building or site is unsuitable. He may grant a temporary licence during alterations or additions. (S. 11.)

A licence is subject to such terms and conditions as the Minister may determine from time to time. (S. 12A.)

A substitute licence may be issued in the place of specified licences. (S. 12B.)

Films may not be exhibited in any theatre or public hall unless the licence bears the prescribed endorsement. The Minister may cancel the licence issued in respect of the theatre or public hall where a film is exhibited in contravention of this section except on a first offence. (S. 13A.)

The Minister may cancel the prescribed endorsement on a licence if the Theatres and Films Commission makes a determination to this effect or if the licensee so requests in writing. (S. 13B (1A).)

The Theatres and Films Commission shall, having regard to the reasons given by the person authorized by the Minister under s. 13B (2) (a) and the licensee's statement of facts and circumstances, determine whether or not the prescribed endorsement on the licence for a theatre or public hall should be cancelled. (S. 13B (2) (d).)

The Commission, in dealing with those applications which must be referred to it under this section, may receive objections and in accordance with the section shall determine whether or not the application shall be granted. The Minister may approve of the extension of the period specified by the Commission in accordance with s. 13D (9) (b). (S. 13D.)

Additions or alterations to any building requires the Minister's approval. (S. 15.)

The Minister may suspend or cancel a licence for the reasons specified and may cancel or restore a licence so suspended. (S. 16.)

The Minister may issue a licence to conduct public entertainment in temporary and unlicensed structures and may cancel any such licence for any breach of the terms and conditions. (S. 23.)

The Minister, whenever he is of the opinion that it is fitting for the preservation of good manners and decorum may prohibit or regulate the holding of any public entertainment on any day other than Sunday. He may similarly prohibit or regulate entertainment, including boxing or wrestling where he is of the opinion that it is desirable to do so, on premises for which a licence permit or certificate of registration under the Liquor Act, 1912, is held. (S. 27.)

A person appointed by the Minister or a police officer of or above the rank of sergeant may inspect every theatre and public hall and every place in which a public entertainment or public meeting is being held. (S. 29.)

ANNEXURE D

Official actions of public authorities against which there are rights of appeal or rights in the nature of an appeal to—

- (1) The Governor.
- (2) The Minister.
- (3) The Supreme Court.
- (4) The Land and Valuation Court.
- (5) The Industrial Commission of New South Wales.
- (6) The Crown Employees Appeal Board.
- (7) The District Court or Courts of Quarter Sessions.
- (8) Courts of Petty Sessions or Magistrates.
- (9) Local Land Boards.
- (10) Miscellaneous Tribunals.

PART 1.—GOVERNOR

Act	Authority	Power	Appellate Body
Audit Act, 1902 ..	Auditor-General	To surcharge certain amounts upon accounting officers, etc. (s. 47 (1)).	Governor (s. 49).
Gas and Electricity Act, 1935.	Auditor-General	To surcharge upon servants of Sydney County Council amounts of certain disallowances of expenditure (s. 75 (2), (3)).	Governor (s. 75 (8)).

PART 2.—MINISTER

Act	Authority	Power	Appellate Body
Coal Mines Regulation Act, 1912.	Minister.. ..	To limit, by order, number of mines for which a person may act as manager (s. 5 (5)).	Minister, who may withdraw the order or refer matter to Court of Coal Mines Regulation (s. 5 (7)).

PART 2.—MINISTER—continued

Act	Authority	Power	Appellate Body
Crown Lands Consolidation Act, 1913.	Water Conservation and Irrigation Commission.	To refuse to consent to transfer of area of land in irrigation area on grounds of excess living area (s. 145A (5), (6)).	Minister, after reference to special land board (s. 145A (6)).
	Governor ..	To resume land for canal irrigation purposes (s. 256).	Minister (s. 256 (a)).
Egg Industry Stabilization Act, 1971.	Poultry Farmer Licensing Committee.	To cancel licence for keeping of hens by poultry farmer (s. 21).	Minister (s. 22).
Electricity Development Act, 1946.	Electricity Authority of N.S.W.	To formulate proposals relating to electricity undertakings, e.g., as to plant and equipment in power station, supply of electricity to public etc. (s. 11 (1)).	Minister (s. 11 (6)).
Explosives Act, 1905	Superintendent of the Explosives Department.	To require factory occupant to ensure public safety by remedying situation where factory may contain dangerous or defective explosives (s. 40).	Minister (s. 40).
Factories, Shops and Industries Act, 1962.	Under-Secretary	To refuse to register premises as a factory (s. 11 (3)).	Minister (s. 11 (10)).
	Chief Inspector	To direct occupier of registered factory, reported by inspector as not continuing to comply with previously existing requirements, to render factory fit for occupation (s. 12 (1)).	Minister (s. 12 (2)).
	Under-Secretary	To approve commencement of erection of, alterations or additions to building intended for use as a factory (s. 13 (1)).	Minister (s. 13 (4)).
	Under-Secretary	To approve erection of premises used for industrial purposes but not intended for use as a factory (s. 14 (1)).	Minister (s. 14 (4)).
	Under-Secretary	To require particulars to enable determination of class of shop for registration purposes (s. 76 (3)).	Minister (s. 76 (4) (b)).

PART 2.—MINISTER—continued

Act	Authority	Power	Appellate Body
Fauna Protection Act, 1948.	Director of National Parks and Wildlife.	To issue licences to kill fauna, etc., (s. 27 (2)), and to cancel same (s. 27 (5)).	Minister (s. 27 (6)).
Geographical Names Act, 1966.	Geographical Names Board.	To assign, approve, alter, etc., recorded names of places in N.S.W. as geographical names (s. 5).	Minister (s. 9 (3) (b), (5)).
Government Railways Act, 1912.	Commissioner for Railways, with approval of Governor.	To close level crossings, bridges, etc., over or under railways (s. 15A (1)).	Minister (s. 15A (1)) (as regards objections by councils).
Hunter District Water, Sewerage and Drainage Act, 1938.	Hunter District Water Board.	To consent to taking of water from subterranean source for industrial purposes (s. 150 (1)).	Minister (s. 150 (2)).
Hunter Valley Conservation Trust Act, 1950.	Hunter Valley Conservation Trust.	To direct remedial action in soil erosion areas (s. 11 (2) (b)).	Minister, to whom Trust may refer matter after a hearing by local land board (s. 13 (3)).
	Hunter Valley Conservation Trust.	To make provisional determination limiting stock capacity of holdings (s. 17 (3)).	Minister, after reference to local land board (s. 17 (10) and (11)).
	Hunter Valley Conservation Trust.	To review annually determination under s. 17 (3) on application of owner (s. 18).	Minister (s. 18).
	Hunter Valley Conservation Trust.	To recommend that Minister declare area an erosion risk (s. 24 (1), (2)).	Minister (s. 24 (3) (d), (e)).
	Hunter Valley Conservation Trust.	To prohibit grazing in areas of erosion risk (s. 25 (1)).	Minister (s. 25 (4) (a)).
	Hunter Valley Conservation Trust.	To prohibit or restrict cultivation of lands within areas of erosion risk (s. 29 (1)).	Minister (s. 29 (3), (4)).
Local Government Act, 1919.	Local Government Boundaries Commission.	To submit proposal to Minister that Governor, by proclamation, alter boundaries of certain areas under s. 16 (s. 19 (1A)).	Minister (s. 19 (3)) (who may refer matter to Boundaries Commission).
	A public body ..	To furnish to council list of parcels of land allegedly entitling public body to rate rebate (s. 139A (4)).	Council may make objection to Minister (s. 139A (5), (6)).

PART 2.—MINISTER—continued

Act	Authority	Power	Appellate Body
Local Government Act, 1919. —continued.	Parking Advisory Committee.	To approve management, etc., by council of a parking station (s. 270j (1)).	Minister (s. 270b (2)).
	Council	To grant conditionally or to refuse interim development application (s. 342v (1A)).	Minister, following making of recommendation to him by State Planning Authority (s. 342v (5) (a)).
	Council	To gather materials to improve any public place other than, inter alia, site of improved pasture (s. 524 (1) (f) and (2) (a)).	Minister (s. 524 (2)) (as to whether land is improved pasture).
Main Roads Act, 1924.	Commissioner for Main Roads.	To direct removal within or adjacent to main road of sign or hoarding (s. 39 (6) (a)).	Minister (s. 39 (6) (b), (c)).
	Commissioner for Main Roads.	To notify statutory body, Government Department, etc., proposing to construct new road, etc., to cost over \$40,000, for use of road traffic, to alter or postpone that construction (s. 41A (2)).	Minister (s. 41A (3)).
	Commissioner for Main Roads.	To proclaim road as main road, cancel any such proclamation, etc. (s. 44 (1)).	Minister (s. 44 (4), (5)).
Meat Industry Authority Act, 1970.	N.S.W. Meat Industry Authority.	To refuse application for licence to operate slaughterhouse, etc., or to suspend or cancel such a licence (ss. 21, 23).	Minister (s. 24 (1)).
Mining Act, 1906..	Minister on recommendation of warden or prospecting board.	To grant application for authority to prospect for minerals after notifying holder of exploration licence relating to same land (s. 17 (2b)).	Minister, following making of investigation and report by Chief Inspector of Mines, etc. (s. 17 (2d) (b)).
	Governor	To grant mining or mineral lease over Crown land after notifying holder of exploration licence over same land (s. 27 (5)).	Minister, following making of investigation and report by Chief Inspector of Mines, etc. (s. 27 (7)).
	Governor	To grant mineral lease over Crown land where certain minerals are not owned by Crown but are allegedly owned by third party, etc. (s. 27 (6)).	Minister, following inquiry and report by warden (s. 27 (6)).

PART 2.—MINISTER—continued

Act	Authority	Power	Appellate Body
Mining Act, 1906 —continued.	Warden ..	To grant, to holder of miner's right, authority to enter private lands to search for minerals reserved to Crown under s. 50 after notifying holder of exploration licence over same property (s. 46 (5)).	Minister, following investigation and report by Chief Inspector of Mines, etc. (s. 46 (7)).
	Warden ..	To grant authority to enter private lands to mark out that land (s. 48A) after notifying holder of exploration licence over same property (s. 46 (5)).	Minister, following investigation and report by Chief Inspector of Mines, etc. (s. 46 (7)).
	Governor ..	To grant or refuse lease (s. 58 (1), (4)) after notifying holder of exploration licence over same property (s. 58 (1), (7)).	Minister, following investigation and report by Chief Inspector of Mines, etc. (s. 58 (9)).
	Warden ..	To grant to holder of miner's right authority to enter private lands to search for minerals not reserved to Crown (s. 70A (1)) unless owner is carrying out thereon bona fide mining operations (s. 70D).	Minister, after inquiry and report by warden as to question relating to such bona fide mining operations. (s. 70D (1).)
	Warden ..	To grant authority to enter to holder of exploration licence after notifying any holder of exploration licence over same land (s. 83BA (1)).	Minister, following inquiry and report by warden (s. 83BA (4)).
	Governor ..	To grant leases for purposes of mining by dredges, etc., over Crown land affected by s. 86 (1) exploration licence (s. 86B (2)).	Minister, following investigation and report by Chief Inspector of Mines, etc. (s. 86B (4)).
	Warden ..	To make report to Minister recommending cancellation of lease, etc. (s. 124A (4)).	Minister (s. 124A (6), (7)).
Poultry Processing Act, 1969.	Inspector ..	To give directions to person controlling poultry processing establishment as to weight gain of poultry carcasses (s. 12).	Minister (s. 13).
Scaffolding and Lifts Act, 1912.	Inspector ..	To give written safety instructions to owner of apparently dangerous lift (s. 15 (1)).	Minister, following reference to Board of Reference (s. 15 (4)).

PART 2.—MINISTER—*continued*

Act	Authority	Power	Appellate Body
Scaffolding and Lifts Act, 1912 — <i>continued</i> .	Chief Inspector..	To issue certificate of competency to driver of power crane (s. 17 (4)).	Minister, following reference to Board of Reference (s. 17 (6)).
	Chief Inspector..	To issue certificate of competency to rigger, dogman, scaffolder or crane chaser (s. 17A (2)).	Minister, following reference to Board of Reference (s. 17A (4)).
Soil Conservation Act, 1938.	Minister.. ..	To notify proposal to notify tract of land as an "area of erosion hazard" (s. 17 (1)).	Minister (s. 17 (5)).
	Commissioner of the Soil Conservation Service.	To direct owner of land within area of erosion hazard to carry out remedial works (s. 18 (2)).	Minister, following reference to Commission and local land board (s. 18 (9)).
Transport Employees Retirement Benefit Act, 1967.	Transport Retirement Board.	To require employer to furnish returns as to his employees (s. 32 (1)).	Minister, who shall thereupon refer the matter for opinion to a judge of the Supreme Court, and shall decide the point in accordance with that decision (s. 60 (2)).

PART 3.—SUPREME COURT

Act	Authority	Power	Appellate Body
Adoption of Children Act, 1965.	Director of Child Welfare Department.	To refuse, revoke or suspend application by charitable organization for approval as a private adoption agency (ss. 11, 13).	Supreme Court (s. 14 (1)).
Business Names Act, 1962.	Corporate Affairs Commission.	To cancel the registration of a business name (s. 19 (1)).	Supreme Court (s. 19 (3)).
Companies Act, 1961.	Companies Auditors Board.	To register either as a company auditor (s. 9 (2)), or as a liquidator (s. 9 (4)) a person resident outside the State or the Commonwealth; to refuse to renew registration of a registered company auditor or liquidator (s. 9 (8)); to	Supreme Court (s. 9 (16)).

PART 3.—SUPREME COURT—*continued*

Act	Authority	Power	Appellate Body
Companies Act, 1961— <i>continued</i> .	Corporate Affairs Commission. Corporate Affairs Commission.	inquire into conduct, character, and ability of a registered company auditor or registered liquidator (s. 9 (9)); to cancel his registration, etc. (s. 9 (11)); to require payment by him of costs of inquiry under s. 9 (11) where registration is cancelled (s. 9 (13)).	Supreme Court (s. 12 (6)). Supreme Court (s. 161B (9)).
	Corporate Affairs Commission.	To refuse to register corporation (s. 12 (5)). To make an order granting or refusing application for financial year of subsidiary company of non-foreign holding company not to coincide with that of the latter company (s. 161B (8)).	Supreme Court (s. 162c (8)).
	Companies Auditors Board.	To grant or refuse consent to retirement or resignation of auditor (s. 166B (6)).	Supreme Court (s. 166B (8)).
	Minister	To make orders restraining dealings with shares (s. 179B (1)).	Supreme Court (s. 179B (3)).
	Corporate Affairs Commission.	To strike defunct company off register (s. 308 (4)).	Supreme Court (s. 308 (5)).
	Co-operation Act, 1923.	Registrar of Co- operative Societies.	To refuse to register a society or any of its rules (s. 122 (1)).
Credit Union Act, 1969.	Registrar of Cred- it Unions.	To register a credit union (s. 21 (3)).	Supreme Court (s. 32 (2)).
Friendly Societies Act, 1912.	Registrar of Friendly Societies.	To register certain author- ised societies (s. 11 (1)).	Supreme Court (s. 16).
	Registrar of Friendly Societies.	To register an amendment of a rule (s. 18 (2)).	Supreme Court (s. 18 (3) and s. 16).
	Registrar of Friendly Societies.	To cancel the registry of a society or branch (s. 25 (1)).	Supreme Court (s. 25 (6)).
	Registrar of Friendly Societies.	To register amended rules of society converted into branch of another regis- tered society (s. 62 (4)).	Supreme Court (s. 62 (4)).

PART 3.—SUPREME COURT—continued

Act	Authority	Power	Appellate Body
Gas and Electricity Act, 1935.	Auditor-General	To surcharge upon servants, etc. of Sydney County Council amounts of certain disallowances of expenditure in books of Council (s. 75 (2), (3)).	Supreme Court (s. 75 (8)) (if amount of surcharge exceeds \$1,000).
Land Aggregation Tax Management Act, 1971.*	Commissioner of Land Aggregation Tax.	To make assessment of tax pursuant to return, etc. (s. 13).	Supreme Court (s. 35 (5)).
Land Tax Management Act, 1956.	Commissioner of Land Tax.	To make assessment of tax pursuant to return, etc. (s. 14).	Supreme Court (s. 35 (5)).
Landlord and Tenant (Amendment) Act, 1948.	Fair Rents Board	To determine fair rent of prescribed premises (s. 18 (11)).	Supreme Court (s. 41 (2)) (as to question of law only).
Legal Practitioners Act, 1898.	The Law Society of New South Wales.	To permit employment of certain disqualified solicitors, etc. (s. 40g (1)).	Supreme Court (s. 40g (2)).
	The Solicitors Statutory Committee.	To grant leave to employ persons convicted of indictable offences (s. 40j (2)).	Supreme Court (s. 40j (3)).
	The Solicitors Statutory Committee.	To order that certain solicitors' clerks be not employed by any solicitor (s. 40k (2)).	Supreme Court (s. 40k (4)).
	Council of The Law Society of New South Wales.	To refuse application for or to cancel solicitor's practising certificate (s. 71).	Supreme Court (s. 72).
	The Solicitors Statutory Committee.	To make orders as to suspension of solicitor from practice, etc. (s. 77 (1)).	Supreme Court (s. 78).
Liquor (Amendment) Act, 1919.	Licences Reduction Board.	To determine which of licensed publican's premises are to be deprived of a licence, etc. (s. 9).	Supreme Court (s. 28) (as to questions of law only).
Local Government Act, 1919.	Commissioner for Railways.	To receive contribution from council for provision of public road across railway line (s. 273).	Supreme Court (s. 273 (3)).
	Local Government Appeals Tribunal.	To constitute a Board of Appeal to deal with an appeal to the Tribunal (s. 342AX).	Supreme Court (s. 342BK) (as to questions of law).

* Not proclaimed to commence as at 1st September, 1972 (except ss. 1—7, and Parts I and II of Schedule).

PART 3.—SUPREME COURT—continued

Act	Authority	Power	Appellate Body
Medical Practitioners Act, 1938.	New South Wales Medical Board.	To refuse or adjourn application for registration under Act (s. 18 (7)).	Supreme Court (s. 19 (1)).
	New South Wales Medical Board.	To amend register if person wrongfully registered, etc. (s. 25 (1)).	Supreme Court (s. 25 (4)).
	The disciplinary tribunal constituted under s. 28.	To suspend or deregister medical practitioner on reference from investigating committee (s. 27A, s. 28, s. 29).	Supreme Court (s. 29 (4)).
	New South Wales Medical Board.	To deregister person for certain mental health reasons (s. 30 (1)).	Supreme Court (s. 30 (4)) (following application to Board for restoration of name to register).
Mental Health Act, 1958.	A member of the Police Force (s. 12 (1)).	To instigate admission or detention of a person in an admission centre, etc. (s. 12 (1)).	Supreme Court (s. 18).
Motor Vehicles (Third Party Insurance) Act, 1942.	Minister.. ..	To approve application of person to be an authorized insurer (s. 14 (2)).	Supreme Court (s. 14 (8)).
Pay-roll Tax Act, 1971.	Commissioner of Pay-roll Tax.	To grant applications for exemption from tax (s. 9).	Supreme Court (s. 33 (1)).
Permanent Building Societies Act, 1967.	Registrar of Permanent Building Societies.	To refuse to register a society, or any of its rules, or to direct alteration of name (s. 38 (1)).	Supreme Court (s. 38 (2)).
Petroleum (Submerged Lands) Act, 1967.	Designated Authority (the Minister).	To direct changes be made to design construction, etc., of pipeline (s. 72 (1)).	Supreme Court (s. 72 (3)).
	Designated Authority (the Minister).	To make entries in register of permits, licences, etc. (s. 76 (1)).	Supreme Court (s. 88 (1)).
	Designated Authority (the Minister).	To determine amount of relevant registration fee (s. 91 (1)).	Supreme Court (s. 91 (2)).
Pipelines Act, 1967	Governor	To cancel licence relating to pipeline (s. 33 (1)).	Supreme Court (s. 33 (4)).
	Registrar, Department of Mines, Sydney.	To make entries in register of permits and licences, (s. 41 (1)).	Supreme Court (s. 52 (1)).

PART 3.—SUPREME COURT—continued

Act	Authority	Power	Appellate Body
Public Accountants Registration Act, 1945.	Public Accountants Registration Board.	To conduct inquiry as to complaint or charge against registered public accountant, to suspend his registration, etc. (s. 25 (3), (5)).	Supreme Court (s. 25 (7), s. 26).
Real Property Act, 1900.	Registrar General.	To grant or refuse a primary application (s. 17 (5)).	Supreme Court (s. 121 (1)).
Securities Industry Act, 1970.	Minister.. ..	In course of investigation under s. 5DA, to order restraint of exercise of certain voting rights, etc. (s. 5DD (1)).	Supreme Court (s. 5DD (3)).
	Committee of the Stock Exchange.	To determine that innocent partner is not party to defalcation of his guilty partner in a member firm (s. 60 (1)).	Supreme Court (s. 60 (2)).
	Committee of the Stock Exchange.	To grant leave to commence proceedings against the Stock Exchange for settlement of claim against fidelity fund of Stock Exchange (s. 62 (2)).	Supreme Court (s. 62 (3)).
Stamp Duties Act, 1920.	Commissioner of Stamp Duties.	To require evidence of value of property as to the conveyance of which ad valorem duty is payable (s. 68 (1)).	Supreme Court (s. 68 (3)).
Surveyors Act, 1929.	Board of Surveyors of New South Wales.	To hold inquiry into charges against surveyor for offences under s. 14 (s. 15).	Supreme Court (s. 16 (1)).
Transport Employees Retirement Benefits Act, 1967.	Transport Retirement Board.	To determine any disputes under the Act (s. 60 (1)).	Supreme Court, following reference to Minister (s. 60 (2)).

PART 4.—LAND AND VALUATION COURT

Act	Authority	Power	Appellate Body
Broken Hill Water and Sewerage Act, 1938.	Broken Hill Water Board.	To cause valuation of land to be made (s. 84 (4)).	Land and Valuation Court (s. 84 (4)).
Closer Settlement Act, 1904.	Local land board.	To hold inquiry as to compliance with conditions and covenants imposed under Act (s. 35).	Land and Valuation Court (s. 35).

PART 4.—LAND AND VALUATION COURT—continued

Act	Authority	Power	Appellate Body
Closer Settlement (Amendment) Act, 1907.	Closer Settlement Advisory Board.	To assess fair market value on resumption of closer settlement land (s. 3 (1)).	Land and Valuation Court (s. 9 (1)).
Closer Settlement Amendment (Conversion) Act, 1943.	Closer Settlement Advisory Board.	To determine fair market value of land for purpose of fixing rent on settlement purchase lease (s. 3 (1) (b)).	Land and Valuation Court, following appeal to local land board (s. 3 (1)).
	Closer Settlement Advisory Board.	To determine fair market value of settlement purchase lease, etc., the subject of a proposed transfer (s. 11 (3)).	Land and Valuation Court (s. 11 (3)).
Coal Industry Act, 1946.	Joint Coal Board	To provide compensation for land resumed under Act (s. 26 (3)).	Land and Valuation Court (s. 26 (9)).
	Joint Coal Board	To determine value of coal acquired under s. 27 (s. 27 (5)).	Land and Valuation Court (s. 27 (6)).
Cobar Water Supply Act, 1963.	Cobar Water Board.	To agree upon compensation if claim be made therefore (s. 13 (3)).	Land and Valuation Court (s. 13 (3)).
Crown Lands Consolidation Act, 1913.	Local land board	To make order requiring payment of money as compensation, etc. (s. 14 (8)).	Land and Valuation Court (s. 14 (8)).
	Local land board (after reference from Minister).	To make inquiry or recommendation for due administration of this and other Acts including boundary disputes and report to Minister (s. 17 (1)).	Land and Valuation Court (s. 17 (1)).
Crowns Lands Consolidation Act, 1913.	Local land board (after reference from Minister).	To decide questions of lapse, voidance or forfeiture arising out of the Crown Lands Acts (s. 18).	Land and Valuation Court (s. 18).
	Local land board	To reconsider initial report or recommendation made to Minister, pursuant to reference under s. 17 (cf. supra), or otherwise (s. 20 (2)).	Land and Valuation Court (s. 20 (2)).
	Local land board	To consider applications for additional holdings of classified areas of Crown lands (s. 114 (2)).	Land and Valuation Court, only where if appeal would be successful, it would not affect another person having made successful simultaneous conflicting application to board (s. 114 (3)).

PART 4.—LAND AND VALUATION COURT—continued

Act	Authority	Power	Appellate Body
Crown Lands Consolidation Act, 1913— <i>continued.</i>	Special land board.	To determine annual rental or purchase money of Crown land within any irrigation area failing agreement with Irrigation Commission (s. 147A (2)).	Land and Valuation Court (s. 147A (3)).
	Local land board	To determine any rent, licence fee, price, etc., under any of the Crown Lands Acts (s. 166).	Land and Valuation Court (s. 166).
	Western Lands Commissioner.	To make or alter valuation of unimproved value of certain land (s. 173D, s. 173F (1)).	Land and Valuation Court (s. 173F (1)).
	Local land board	To determine price of land resumed, purchased or exchanged for public purposes (s. 197 (1)).	Land and Valuation Court (s. 197 (1)).
	Closer Settlement Advisory Board.	To determine price or compensation for land acquired under War Service Land Settlement Act, 1941, etc. (s. 197 (3) (b)).	Land and Valuation Court (s. 197 (3) (b) (ii)).
	Local land board	To determine whether purchase or lease of certain Crown lands before 1st June, 1895, is voidable (s. 280).	Land and Valuation Court (s. 280).
Dairy Industry Authority Act, 1970.	Dairy Industry Authority of New South Wales.	To cause valuation to be made of milk undertaking business to be purchased by Authority (s. 56 (1)).	Land and Valuation Court (s. 57 (1)).
Fisheries and Oyster Farms Act, 1935.	Local land board	To determine compensation for leased Crown lands withdrawn from lease for public purposes (s. 76 (2)).	Land and Valuation Court (s. 76 (6)).
Hunter Valley Conservation Trust Act, 1950.	Local land board	To determine amount of loss to occupier following notification of prohibition re grazing on area of erosion risk land (s. 28 (5) (a)).	Land and Valuation Court (either Trust or objector may appeal) (s. 28 (6)).
Hunter Valley Flood Mitigation Act, 1956.	Assessment Board.	To determine amount of compensation payable under Act failing agreement between claimant and constructing Authority (s. 22 (2)).	Land and Valuation Court (s. 22 (2), s. 32, s. 33).

PART 4.—LAND AND VALUATION COURT—continued

Act	Authority	Power	Appellate Body
Hunter Valley Flood Mitigation Act, 1956	Assessment Board.	To determine whether severance of land due to river diversion work results in constitution of less than a home maintenance area (s. 30 (2)).	Land and Valuation Court (s. 30 (2)).
	Assessment Board.	To determine adequacy of bores where river work causes deprivation of riparian rights (s. 31 (3) (c) (i)).	Land and Valuation Court (s. 31 (3) (c) (ii)).
Irrigation Act, 1912	Advisory board constituted under Closer Settlement (Amendment) Act, 1907.	To determine compensation for land resumed for constitution as an irrigation area (s. 5G (2) (c)).	Land and Valuation Court (s. 5G (2) (c) (i)).
	Board constituted under s. 11E (3) (a).	To determine purchase money or annual rental of irrigated lot (s. 11E (2)).	Land and Valuation Court (s. 11E (4)).
Land Aggregation Tax Management Act, 1971*.	Western Lands Commissioner.	To make and alter valuations of land within the Western Division (s. 57, s. 59).	Land and Valuation Court (s. 59 (1)).
Land Development Contribution Management Act, 1970.	The State Planning Authority of New South Wales.	To consider objection to its decision as to assessment of contribution (s. 22 (3)).	Land and Valuation Court (s. 22 (5)).
	Valuer-General.	To alter its valuation of land on objection by owner or State Planning Authority (s. 47 (1)).	Land and Valuation Court (s. 48 (1)).
Land Tax Management Act, 1956.	Western Lands Commissioner.	To alter valuation of land made by him on objection by owner (s. 59 (1)).	Land and Valuation Court, following consideration of objection by Western Lands Commissioner (s. 59 (1)).
Liquor (Amendment) Act, 1919.	Licences Reduction Board.	To determine compensation payable as to unexpired tenancy of lessee of premises deprived of licence (s. 23 (1)).	Land and Valuation Court (s. 24 (1)). (Board may state case for Supreme Court on question of law s. 28).
Local Government Act, 1919.	Council	To determine for rating purposes status of land as urban farm land (s. 118 (2)).	Land and Valuation Court (s. 118 (2)).
	Council	To levy rates on land (s. 117, s. 132).	Land and Valuation Court (s. 133 (3)).

* No. proclaimed to commence as at 1st September, 1972, (except ss. 1-7 and Parts I and II of Schedule).

PART 4.—LAND AND VALUATION COURT—continued.

Act	Authority	Power	Appellate Body
Local Government Act, 1919— <i>continued.</i>	Valuer-General..	To apportion values as to mine in two or more areas (s. 154).	Land and Valuation Court (s. 154).
	Council	To make fair annual charge on rating basis for a rail, pipe, etc., on, over or under a public place (s. 171 (1)).	Land and Valuation Court (s. 171 (3)).
	Council	To approve demolition of residential building (s. 317BA (2) (3)).	Land and Valuation Court (s. 317BA (4)).
	Council	To compensate owner of minerals under land resumed by council where working of mine would damage land (s. 536DA (3)).	Land and Valuation Court (s. 536DA (4)).
Lord Howe Island Act, 1953.	Lord Howe Island Board.	To determine rent of lease or fair market value of improvements of lessee thereon (ss. 22, 23, 25).	Land and Valuation Court (s. 24).
Main Roads Act, 1924.	Commissioner for Main Roads.	To agree to compensate person affected by proclamation of a motorway (s. 27c (5) (b)).	Land and Valuation Court (s. 27c (5) (b)).
Metropolitan Water, Sewerage, and Drainage Act, 1924.	Metropolitan Water, Sewerage, and Drainage Board.	To adopt alternative valuation of subdivided land or of improvements affected by fire, etc. (s. 97 (4)).	Land and Valuation Court (s. 97 (4)).
Mine Subsidence Compensation Act, 1961.	Mine Subsidence Board.	To determine compensation as to improvements damaged by subsidence (s. 12 (2), (3)).	Land and Valuation Court (s. 12 (4)).
Pastures Protection Act, 1934.	Local land board	To certify that fence is rabbitproof, dogproof, etc. (s. 118).	Land and Valuation Court (s. 137).
Prickly-pear Act, 1924.	Local land board	To determine price or capital value of holding under Closer Settlement Acts, etc. (s. 15 (3A)).	Land and Valuation Court (s. 15 (4)).
	Minister.. ..	To forfeit lease if lessee fails to comply with terms thereof (s. 22 (1)).	Land and Valuation Court (s. 22 (3)).
Public Roads Act, 1902.	Council or Minister.	To agree upon compensation payable to owner of land resumed under s. 12 (s. 13 (1)).	Land and Valuation Court (s. 13 (1A)).

PART 4.—LAND AND VALUATION COURT—continued

Act	Authority	Power	Appellate Body
Reclamation Act, 1930.	Reclamation Trust.	To vary reclamation plan following objection thereto (s. 12).	Land and Valuation Court (s. 12).
Returned Soldiers Settlement Act, 1916.	Local land board	To confirm or disallow applications for blocks of Crown land, etc. (s. 4 (7)).	Land and Valuation Court (s. 5).
	Local land board or board appointed by Governor under s. 19 (2).	To determine price or capital value of Crown, etc. land acquired by discharged soldier (s. 19 (2)).	Land and Valuation Court (s. 19 (3a)).
Rivers and Foreshores Improvement Act, 1948.	Minister or Water Conservation and Irrigation Commission (as Constructing Authority).	To specify contribution payable by owner to ensure that flow of water in river not obstructed (s. 6 (2) (b)).	Land and Valuation Court (s. 6 (2) (c)).
	Water Conservation and Irrigation Commission.	To estimate contribution payable for construction of additional work to benefit lands within the district (s. 11).	Land and Valuation Court (s. 14).
Soil Conservation Act, 1938.	Catchment Areas Protection Board.	To report on objection to notice requiring owners etc. to permit act to avoid damage to work for storage of water (s. 22 (2)).	Land and Valuation Court (s. 22 (2)).
State Brickworks Act, 1946.	Minister (as Constructing Authority).	To agree upon compensation payable to owner of resumed land (s. 8 (4)).	Land and Valuation Court (s. 8 (4)).
State Coal Mines Act, 1912.	Nominee of Minister (s. 4).	To determine value of land privately owned but proposed to be resumed (s. 6 (1)).	Land and Valuation Court (s. 7 (4), (5)).
State Tileworks Act, 1947.	Minister (as Constructing Authority).	To agree to compensate owner for land resumed for tileworks (s. 8 (3)).	Land and Valuation Court (s. 8 (3)).
Valuation of Land Act, 1916.	A valuation board.	To determine certain objections to valuations (s. 36G).	Land and Valuation Court (s. 36M).
Water Act, 1912 ..	Water Conservation and Irrigation Commission.	To grant or refuse application for licence to use water conservation, etc. works on land— (i) of owner—(s. 11 (3) (a)); (ii) not occupied by applicant (s. 13A).	Land and Valuation Court (s. 11 (4)).

PART 4.—LAND AND VALUATION COURT—continued

Act	Authority	Power	Appellate Body
Water Act, 1912 .. <i>continued.</i>	Water Conservation and Irrigation Commission.	To refuse to renew licence to use water conservation etc. works (s. 14 (2)).	Land and Valuation Court (s. 14 (2)).
	Water Conservation and Irrigation Commission.	To grant authority to construct a joint water supply scheme so as to obtain water therefrom (s. 20CA (1)).	Land and Valuation Court, following public inquiry by local land board or stipendiary magistrate (s. 20CA (4) (j)).
	Local land board	To furnish report to Commission describing land to receive benefit of water from a proposed artesian well (s. 107 (2)).	Land and Valuation Court (s. 126).
	Water Conservation and Irrigation Commission.	To agree as to amount of compensation payable to a council for damage by flooding by Commission of a public road (s. 152 (3)).	Land and Valuation Court (s. 152 (3)).
Western Lands Act of 1901.	Local land board	To investigate question of lapse, voidance or forfeiture arising under Crown Lands Acts (s. 103).	Land and Valuation Board (s. 10B).
	Local land board	To determine disputes as to fencing (s. 18C).	Land and Valuation Court (s. 18C).
	Local land board	To determine appeal from Minister who has refused consent to transfer of lease on basis of fair market value (s. 18G (1A) (d)).	Land and Valuation Court (s. 18G (1A) (d)).
	Local land board	To recommend granting of application for lease of Crown lands (s. 25 (3)).	Land and Valuation Court, where, if appeal would be successful, it would not affect person having made successful simultaneous conflicting application to board (s. 26 (4)).

PART 5.—INDUSTRIAL COMMISSION

Act	Authority	Power	Appellate Body
Apprenticeship Act, 1969.	Apprenticeship Commissioner.	To authorise suspension of apprentice (s. 16 (1) (e)).	Industrial Commission (s. 24).
	Apprenticeship Committee for an industry.	To prescribe standard form of indenture (s. 18 (3) (d)).	Industrial Commission (s. 24).
	Director of Apprenticeship.	To approve assignment of indenture of apprenticeship (s. 23 (4) (g), (j)).	Industrial Commission (s. 24).

PART 5.—INDUSTRIAL COMMISSION

Act	Authority	Power	Appellate Body
Board of Teacher Education Act, 1969.	Board of Teacher Education.	To register person as a teacher (s. 15), or to remove his name from Register (s. 16).	Industrial Commission (s. 17 (1)).
Bread Act, 1969 ..	Under-Secretary of Department of Labour and Industry.	To grant application for a licence to carry on business as bread manufacturer (s. 12 (5)).	Industrial Commission (s. 14 (1)).
Factories, Shops and Industries Act, 1962.	Under-Secretary of Department of Labour and Industry.	To grant certificate of registration to shop-keeper of a "small shop" (s. 76A (3)), or to terminate same (s. 76A (6)).	Industrial Commission (s. 76A (7)).
	Industrial Registrar.	To vary terms of any state award relating to weekly half-holiday in town of Tweed Heads (s. 80 (3)).	Industrial Commission, for directions (s. 80 (3)).
	Under-Secretary	To grant, cancel, etc., licence to act as a hair-dresser (s. 109 (1)).	Industrial Commission (s. 109 (3)).
	Under-Secretary	To determine qualifications for licence to act as hair-dresser (s. 110 (1)).	Industrial Commission (s. 110 (2)).
	Under-Secretary	To refuse to register a shop, or renew registration, etc., where home delivery commodities requirements are not complied with (s. 139 (1)).	Industrial Commission (s. 139 (3)).
Industrial Arbitration Act, 1940.	Industrial Registrar.	To refuse to register trade union of employees (s. 8 (3)).	Industrial Commission (s. 8 (7)).
	Special Commissioner.	To compel conference on industrial dispute and if necessary to decide matters in dispute (s. 17A).	Industrial Commission (s. 17A (4)).
	Conciliation Committee.	To review conditions of an industry, upon application for a new award (s. 21, etc.).	Industrial Commission (s. 24 (8) (a)).
	Conciliation Commissioner.	To summon compulsory conference and make order or award (s. 25).	Industrial Commission (s. 25).
	Special Board ..	To determine demarcation of callings dispute (s. 37 (1)).	Industrial Commission (s. 37 (2)).
	Registrar ..	To grant permit to aged, infirm or slow, etc., worker to work for under award wage (s. 89 (2)).	Industrial Commission, on ground that particular trade is not one where such permit should be granted (s. 89 (5)).

PART 5.—INDUSTRIAL COMMISSION

Act	Authority	Power	Appellate Body
Industrial Arbitration Act, 1940. —continued.	Registrar ..	To revoke authority of officer of an industrial union of employees to enter premises of employer (s. 129A (1A) (c)).	Industrial Commission (s. 129A (1B)).
	Registrar ..	To issue certificate of exemption from membership of industrial union to conscientious objector where award provides employment preference to unionists (s. 129B (2) (b)).	Industrial Commission (s. 129B (2) (e)).

PART 6.—CROWN EMPLOYEES APPEAL BOARD

Act	Authority	Power	Appellate Body
Crown Employees Appeal Board Act, 1944.	Employer or "other person" (as defined by s. 2 (1) of Act; cf. accompanying list, as examples of bodies included in Schedule 2 to the Act). Metropolitan Water, Sewerage and Drainage Board. Hunter District Water Board. Water Conservation and Irrigation Commission. Dairy Industry Authority of New South Wales. Board of Fire Commissioners of New South Wales. Commissioner for Main Roads. Maritime Services Board of New South Wales. Metropolitan Meat Industry Board. Commissioner of Police. Grain Elevators Board of N.S.W. Board of Tick Control. State Planning Authority. Sydney Farm Produce Market Authority. Sydney Cove Redevelopment Authority. Printing and Kindred Industries Union, N.S.W. Branch. Federated Municipal and Shire Council Employees' Union of Australia, N.S.W. Division.	To make decisions and determinations with respect to promotions, salaries, rank, dismissals, etc., alleged by officer to affect him adversely (see s. 10 (1)).	Crown Employees Appeal Board (s. 10 (1)).

PART 6.—CROWN EMPLOYEES APPEAL BOARD—continued

Act	Authority	Power	Appellate Body
Police Regulation Act, 1899.	Commissioner of Police.	To recommend that allowance, compensation, remuneration, etc., or superannuation be forfeited in certain circumstances (s. 33 (1)).	Chairman of the Crown Employees Appeal Board (s. 33 (3) (a)).
Police Regulation (Appeals) Act, 1923.	Commissioner of Police.	To grant or refuse promotion or to impose punishment (s. 6 (1)).	Crown Employees Appeal Board (s. 6 (1)).

PART 7.—DISTRICT COURT, OR COURTS OF QUARTER SESSIONS

Act	Authority	Power	Appellate Body
Aerial Spraying Control Act, 1969.	Director-General of Department of Agriculture.	To refuse, etc. application for certificate pertaining to agricultural chemical sprayed from aircraft in flight (s. 5 (1)).	District Court (s. 5 (2)).
Architects Act, 1921.	Board of Architects of New South Wales.	To refuse to register person as architect (s. 16).	District Court (s. 16).
	Board of Architects of New South Wales.	To remove name of architect from register (s. 17 (1)).	District Court (s. 17 (3)).
Auctioneers and Agents Act, 1941.	Member of police force.	To object to grant by Court of Petty Sessions of application for restoration, etc. of auctioneer's licence, etc. (s. 23 (7), s. 23A, s. 24).	District Court (s. 31 (1)).
	Member of police force or council.	To object to grant of application to register trainee auctioneer, etc. (s. 57 (7)).	District Court (s. 61 (1)).
Builders Licensing Act, 1971.	Builders Licensing Board.	To make determination as to application for, or suspension, etc. of, licence or permit to carry out building work (s. 11, s. 30).	District Court (s. 31 (1)).
Charitable Collections Act, 1934.	Minister.. ..	To refuse to register a charity, or to grant to it exemption from Act (s. 4 (2)), etc.	District Court (s. 4 (3)).

PART 7.—DISTRICT COURT, OR COURTS OF QUARTER SESSIONS—continued

Act	Authority	Power	Appellate Body
Charitable Collections Act, 1934,— <i>continued</i> .	Minister.. ..	To remove any registered charity from register (s. 6 (1)).	District Court (s. 6 (1)).
Chiropodists Registration Act, 1962.	Chiropodists Registration Board.	To remove name of chiropodist from register or reprimand him, etc. (s. 26 (1)).	District Court (s. 26 (6)).
Clean Air Act, 1961	Under-Secretary of Department of Public Health.	To grant application for licence to occupier of certain industrial, etc. premises (s. 11 (2)); to approve certain work likely to increase air pollution (s. 16); or to require occupier to minimize emission of air impurities (s. 20 (3)).	District Court (s. 26 (1)).
Commercial Agents and Private Inquiry Agents Act, 1963.	Officer in charge of Police.	To object to grant or renewal of application for licence as commercial or private inquiry agent (s. 10 (5) (c)).	District Court (s. 14).
	Member of Police Force of or above the rank of sergeant.	To make complaint to Court of Petty Sessions that licensee be disqualified (s. 11 (1)).	District Court (s. 14).
Farm Produce Agents Act, 1926.	Registrar ..	To refuse to grant a farm produce agent's licence or to cancel same (s. 11 (1)).	District Court (s. 11 (2)).
Fisheries and Oyster Farms Act, 1935.	Minister.. ..	To issue, suspend or cancel licences as to fishing boats, fishermen, inland angling, etc. (s. 23, s. 25, s. 25b).	A Court of Quarter Sessions (s. 119).
Gas and Electricity Act, 1935.	Auditor-General	To surcharge upon servants, etc. of Sydney County Council (s. 75 (2), (3)).	Metropolitan District Court (s. 75 (8)).
Horticultural Stock and Nurseries Act, 1969.	Director-General of the Department of Agriculture.	To grant, refuse, etc. application for registration as nurseryman or reseller (s. 8).	District Court (s. 10 (1)).
Local Government Act, 1919.	Inspector of Local Government Accounts.	To surcharge upon servants, etc. of council disallowances of expenditure (s. 213 (3)).	District Court, appeal also lies to Court of Petty Sessions (s. 213 (7)).

PART 7.—DISTRICT COURT, OR COURTS OF QUARTER SESSIONS—continued

Act	Authority	Power	Appellate Body
Motor Vehicles (Third Party Insurance) Act, 1942.	Government Insurance Office (as authorized insurer—s. 14 (1)).	To refuse to issue, or notify holder of intention to cancel, third party policy of insurance (s. 13 (1)).	District Court (s. 13 (1)).
Nurses Registration Act, 1953.	Nurses Registration Board.	To deregister or suspend nurse for misconduct, or refuse or fail to register nurse (s. 19 (1), s. 19 (8)).	District Court (s. 19 (8)).
Optical Dispensers Act, 1963.	Optical Dispensers Licensing Board or Secretary thereto.	To issue, suspend or cancel licences relating to practice as optical dispenser (s. 20); to remove name from register for misconduct, etc. (ss. 24, 25, 26).	District Court (s. 27 (1)).
Pastures Protection Act, 1934.	Auditor-General	To surcharge upon servants, etc. of board disallowances of expenditure (s. 19A (1) (b) and (c)).	District Court (s. 19A (3)).
Pest Destroyers Act, 1945.	Under-Secretary and Director of the Department of Agriculture.	To refuse application for registration of a pest destroyer (s. 5 (1)).	District Court, with optional advice of assessors (s. 5 (2), s. 5 (6)).
Pharmacy Act, 1964.	Pharmacy Board of New South Wales.	To deregister or suspend pharmacist (s. 20 (1)); or refuse or fail to register him (s. 22 (1)).	District Court (s. 22 (1)).
Physiotherapists Registration Act, 1945.	Physiotherapists Registration Board.	To deregister or suspend physiotherapist for misconduct (s. 24 (1)); or to refuse or fail to register him (s. 24 (6)).	District Court (s. 24 (6)).
Police Offences (Amendment) Act, 1908 and Regulations.	Minister . . .	To grant, withdraw, etc. licence or authority of pharmacists, etc. to manufacture drugs, etc. (s. 20 (1)).	District Court (s. 20 (1) and regulation 26).
Private Hospitals Act, 1908.	The Hospital Commission of New South Wales.	To revoke licence granted to hospital (s. 16, s. 16A).	District Court (s. 16c (1)).

PART 7.—DISTRICT COURT, OR COURTS OF QUARTER SESSIONS—continued

Act	Authority	Power	Appellate Body
Public Health Act, 1902.	Board of Health or local authority.	To make a "closing order" declaring house or building unfit for human habitation (s. 58 (1)); or to order demolition of such a house, etc. (s. 61 (1)).	Quarter Sessions (s. 63 (1)).
Pure Food Act, 1908.	Board of Health	To report to Minister its opinion as to uselessness or injurious nature of food, drugs or appliances advertised (s. 16), and to recommend prohibition of sale or advertisement thereof or of disinfectants, preservatives, etc. (s. 17, s. 18).	District Court (s.20).
Radioactive Substances Act, 1957.	Minister on recommendation of Radiological Advisory Council.	To grant, refuse, suspend, etc. licence authorizing possession of substances with prescribed concentration of radio-active chemical element (s. 11 (2)).	District Court (s. 12 (1)).
Securities Industry Act, 1970.	Corporate Affairs Commission.	To grant or renew licences to dealer, investment adviser or representative (s. 14, s. 15); or to impose conditions on grant (s. 16).	District Court (s. 20 (1)).
Stock Foods and Medicines Act, 1940.	Under-Secretary of Department of Agriculture on recommendation of Stock Medicines Board.	To refuse to register stock medicine (s. 16 (1)).	District Court (s. 16 (2)), with optional advice of assessors (s. 16 (6)).
Surveyors Act, 1929.	Board of Surveyors of New South Wales.	To conduct inquiry into charges against surveyor (s. 15).	Metropolitan District Court, or appeal lies to Supreme Court (s. 16 (1)).
Theatres and Public Halls Act, 1908.	Theatres and Films Commission.	To determine whether prescribed endorsement authorizing exhibition of cinematograph films should be renewed upon renewal of licence as to theatre or hall (s. 13B (2) (d)).	District Court (s. 13B (f) (i)).

PART 7.—DISTRICT COURT, OR COURTS OF QUARTER SESSIONS—continued

Act	Authority	Power	Appellate Body
Theatres and Public Halls, Act 1908 —continued	Theatres and Films Commission.	To determine applications for prescribed endorsement on current licence or for alterations to licensed building (s. 13D (7)) and objections thereto (s. 13D (8) (d)).	District Court (s. 13D (1) (a)).
Traffic Safety (Lights and Hoardings) Act, 1951.	Minister, upon recommendation of a public authority.	To require removal of signs, hoardings, etc. which interfere with traffic safety (s. 3 (1)).	District Court (s. 3 (1)).
Veterinary Surgeons Act, 1923.	Board of Veterinary Surgeons of New South Wales.	To refuse application for registration on grounds other than non-compliance with prescribed examination requirements (s. 14).	District Court (s. 14).
	Board of Veterinary Surgeons of New South Wales.	To deregister or suspend veterinary surgeon on grounds of misconduct (s. 18A (1)).	District Court (s. 18A (8)).
Wool, Hide and Skin Dealers Act, 1955.	Officer in charge of police.	To report to Clerk of Petty Sessions as to character of applicant and for licence, etc. to buy wool, etc. (s. 5 (2)).	Quarter Sessions (s. 13 (1)).

PART 8.—COURTS OF PETTY SESSIONS, MAGISTRATES, ETC.

Act	Authority	Power	Appellate Body
Child Welfare Act, 1939.*	Minister.. ..	To order that a certain ward be dealt with as an intellectually handicapped person (s. 46 (1)).	A justice exercising jurisdiction as Children's Court (s. 48c).
Commons Regulation Act, 1898.	Trustees of any common.	To determine rights of commoners to depasture cattle and stock (s. 13 (1)).	Petty Sessions (s. 13 (2)).
Dairy Industry Authority Act, 1970.	Dairy Industry Authority.	To refuse to issue a certificate of registration to dairyman or milk vendor (s. 34 (1)).	Petty Sessions (s. 34 (3)).

* Not proclaimed to commence as at 30th June, 1972, as to ss. 46, 48c, etc.

PART 8.—COURTS OF PETTY SESSIONS, MAGISTRATES, ETC.—continued

Act	Authority	Power	Appellate Body
Drainage Act, 1939	Returning Officer	To prepare a roll of voters for general meeting of drainage union or trust or for election of director thereof (s. 29 (1)).	Stipendiary or Police magistrate constituting a "revision court" (s. 29 (4)).
Egg Industry Stabilisation 1971.	Egg Marketing Board for New South Wales.	To disregard application of person entitled to vote among producers of eggs in compiling list of those persons prior to taking poll (s. 7 (1)).	Petty Sessions (s. 7 (2)).
Explosives Act, 1905.	Inspector or member of Police Force.	To seize and detain explosive suspected to be liable to forfeiture under Act (s. 42).	A court of summary jurisdiction—determination as to liability to forfeiture (s. 42).
Fauna Protection Act, 1948.	The Director, or any officer or employee of National Parks and Wildlife Service.	To enter non-residential building, etc. to seize fauna or poison in breach of Act (s. 34).	Stipendiary magistrate or any two justices of peace, sitting in Petty Sessions (as to return of property seized—not as to conviction) (s. 40 (1)).
Filled Milk Act, 1960.	Inspector ..	To seize filled milk if offence suspected (s. 10 (1)).	Petty Sessions holden at the Central Police Office (s. 10 (3)).
Gas and Electricity Act, 1935.	Auditor-General	To surcharge upon servants, etc. of council disallowances of expenditure (s. 75 (2), (3)).	Petty Sessions (s. 75 (8)).
Horticultural Stock and Nurseries Act, 1969.	Minister.. ..	To order destruction of certain horticultural stock offered for sale, etc. contrary to Act (s. 13 (1)).	Petty Sessions (s. 13 (3)).
Hunter District Water, Sewerage and Drainage Act, 1938.	Hunter District Water Board.	To define drainage area so as to include land in basin served by storm-water channel (s. 66 (1) (a)).	Stipendiary magistrate (s. 66 (1) (c)).
Local Government Act, 1919.	Shire, town or county Clerk.	To determine alleged elector's objection as to his inclusion in list of electors (s. 65 (4), (5)).	Petty Sessions (s. 65 (6)).
	Council	To determine, for rating purposes, status of land as urban farm land (s. 118 (1), (2)).	Petty Sessions (s. 118 (2)).

PART 8.—COURTS OF PETTY SESSIONS, MAGISTRATES, ETC.—continued

Act	Authority	Power	Appellate Body
Local Government Act, 1919. —continued.	Council Inspector of local government accounts. Council Responsible authority under prescribed planning scheme. Council	To levy rates on land (ss. 117, 132). To surcharge upon servants, etc. of council disallowances of expenditure (s. 213 (3)). To direct owner to reduce height of fence obstructing view of traffic (s. 249D (1)). To agree to grant compensation to person entitled as a result of prescribed scheme (s. 342AC). To grant licence with respect to public vehicles on non-government bus routes (s. 507 (1)).	Petty Sessions (s. 133 (3)). Petty Sessions (s. 213 (7)). Stipendiary magistrate or two justices in Petty Sessions (s. 249D (4)). Petty Sessions (s. 342AC (5)). Petty Sessions (s. 507 (2) (a)).
Marketing of Primary Products Act, 1927.	Minister	To cause compilation of list of producers to vote on any poll (s. 5 (6)).	Stipendiary or Police magistrate (s. 5 (7A)).
Meat Industry Act, 1915.	Officer of the Metropolitan Meat Industry Board, authorized inspector, member of the police force, special constable or officer within the meaning of Pure Food Act, 1908.	To seize meat not marked in accordance with Act (s. 28 (1)).	Stipendiary or Police magistrate or any two justices (s. 28 (2)).
Metropolitan Water, Sewerage, and Drainage Act, 1924.	Metropolitan Water, Sewerage, and Drainage Board.	To define drainage area so as to include therein land in basin served by stormwater channel vested in Board (s. 65 (1) (a)).	Stipendiary magistrate (s. 65 (1) (c)).
Motor Traffic Act, 1909.	Commissioner of Police.	To grant approval to holding of race between motor vehicles on public street, etc. (s. 4B (1) (a)); or to impose conditions on that approval (s. 4B (1) (c)).	Petty Sessions (s. 4B (3)).

PART 8.—COURTS OF PETTY SESSIONS, MAGISTRATES, ETC.—continued

Act	Authority	Power	Appellate Body
Motor Vehicle Driving Instructors Act, 1961.	Commissioner for Motor Transport.	To grant application for a licence (s. 5 (4)); or cancel or suspend same (s. 6 (1)).	Petty Sessions (s. 7 (1) (b)).
Motor Vehicles (Third Party Insurance) Act, 1942.	Authorized insurer, e.g. Government Insurance Office.	To refuse to issue, or to cancel a third party policy (s. 13 (1)).	Petty Sessions (s. 13 (1)).
Parliamentary Electorates and Elections Act, 1912.	Divisional Returning Officer.	To decide that claimant for enrolment or transfer of enrolment is not entitled thereto (s. 36 (4)); or to determine objection as to name on electoral roll and to direct registrar to remove name of objector from register (s. 47 (1)).	Petty Sessions (s. 36 (4); s. 48 (1)).
Pistol Licence Act, 1927.	Commissioner of Police.	To approve a pistol club, or revoke approval (s. 5A (1) (a)).	Petty Sessions (s. 5A (1) (c)).
	Officer in charge of Police station.	To issue pistol licence (s. 5 (2)).	Petty Sessions (s. 6).
	Officer in charge of Police station.	To decline application for issue of pistol dealer's licence (s. 11 (5)).	Petty Sessions (s. 11 (5), s. 6).
Public Health Act, 1902.	Inspector of Board of Health.	To notify publican of requirement that he put premises in sanitary condition (s. 26F).	Police or stipendiary magistrate or any two justices sitting as Court of Petty Sessions (s. 27 (1)).
	Local Authority or Board of Health.	To make reasonable allowance to tenant for expenses in quitting dwelling house as to which closing order made (s. 60 (2)).	Stipendiary or Police magistrate (s. 60 (2)).
Second-hand Motor Dealers Act, 1956.	Commissioner for Motor Transport.	To refuse grant of licence to deal in used cars (s. 8); or cancel or suspend same (s. 9).	Petty Sessions (s. 10 (1) (b)).
Tow-Truck Act, 1967.	Commissioner for Motor Transport.	To grant application for licence or driver's certificate (s. 12); or to cancel or suspend same (s. 13).	Petty Sessions (s. 14 (1) (b)).

PART 8.—COURTS OF PETTY SESSIONS, MAGISTRATES, ETC.—continued

Act	Authority	Power	Appellate Body
Transport Act, 1930.	Commissioner for Motor Transport.	To refuse, suspend or cancel, etc. privately owned omnibus service licence or registration certificate (s. 134, s. 140 (1), etc.).	Petty Sessions (s. 169).
Water Act, 1912 ..	Water Conservation and Irrigation Commission.	To classify licences and authorities for joint water supply scheme (s. 18B (1)).	Police magistrate or local land board (s. 18B (8)).
	Water Conservation and Irrigation Commission.	To reclassify licences and authorities for joint water supply scheme (s. 18D (8) (a)).	Police magistrate (s. 18B (8), s. 18D (8) (b)).
	Water Conservation and Irrigation Commission.	To grant application for authority to construct and use joint water supply scheme (s. 20 (1)).	Police magistrate or local land board (s. 20A (2)).
	Trustees of trust constituted to maintain, administer and extend water conservation works, etc. within the Murray basin.	To fix and levy rates upon lands within trust district (s. 20 (1)).	Police magistrate (s. 55 (3)).
Water Conservation and Irrigation Commission.	To classify holdings as pastoral or other than pastoral for rating purposes (s. 138A (2)).	Police magistrate (s. 138A (7)).	

PART 9.—LOCAL LAND BOARD

Act	Authority	Power	Appellate Body
Closer Settlement (Amendment) Act, 1912.	Minister	To agree as to compensation on resumption for closer settlement of Crown land in improvement lease or scrub lease (s. 4 (2)).	Local land board (s. 4 (3)).
Closer Settlement Amendment (Conversion) Act, 1943.	Advisory Board	To determine fair market value for calculation of rent of settlement purchase lease or group purchase lease (s. 3 (1)).	Local land board (s. 3 (1)).
	Advisory Board	To determine fair market value on transfer of closer settlement lease (s. 11 (3)).	Local land board (s. 11 (3)).

PART 9.—LOCAL LAND BOARD—continued

Act	Authority	Power	Appellate Body
Crown Lands Consolidation Act, 1913.	Local land board	To authorize erection of give and take fences on boundaries of any holding required to be fenced (s. 201).	Local land board (s. 201).
Drainage Act, 1939	Board of directors of drainage union or trust.	To determine compensation for damage to land caused by exercise of board's powers (s. 33 (2)).	Local land board (s. 33 (2)).
Farmers' Relief Act, 1932.	Rural Assistance Board.	To assess value of farmer's plant, lands, etc., after granting of a stay order (s. 26 (1)).	Local land board (s. 26 (9)).
	Rural Assistance Board.	To assess value of property and assets of farmer where stay order in operation but no voluntary adjustment can be concluded (s. 34EB (1) (b)).	Local land board (s. 34EB (1) (k)).
Fisheries and Oyster Farms Act, 1935.	Minister.. ..	To determine rental of lease of land having frontage to high-water mark, etc., in oyster farm area (s. 59 (2)).	Local land board (s. 59 (3), (4)).
	Minister.. ..	To value improvements on expiry of lease of oyster farm lease area (s. 66 (3) (a)).	Local land board (s. 66 (3) (b), (c)).
	Minister.. ..	To agree with lessee as to amount of compensation on withdrawal of land comprised in leased area required for public purposes (s. 76 (2)).	Local land board (s. 76 (2)).
Hunter Valley Conservation Trust Act, 1950.	Hunter Valley Conservation Trust.	To direct owner to carry out remedial work on lands on which serious soil erosion is occurring (s. 11 (2) (b)).	Local land board (s. 13 (1), (2)).
	Hunter Valley Conservation Trust.	To make determination limiting number of livestock to mitigate soil erosion (s. 17 (8)).	Local land board (s. 17 (9), (10)).
	Assessment Board.	To assess loss attributable to prohibition of grazing of livestock on lands within an area of erosion risk (s. 28 (1), (2)).	Local land board following objection made to Trust (s. 28 (5) (a)).
Local Government Act, 1919.	Council.. ..	To determine rental payable by occupier of enclosed public roads (s. 251B (2) (a)).	Local land board (s. 251B (2) (b), (c)).

PART 9.—LOCAL LAND BOARD—continued

Act	Authority	Power	Appellate Body
Pastures Protection Act, 1934.	Pastures Protection Board.	To determine number of stock otherwise depasturised, i.e., carrying capacity of land for rating purposes (s. 32).	Local land board (s. 33 (1)).
	Minister.. ..	To agree with owner as to value to his land of cancellation of notification as to barrier fence erected or made rabbit-proof within or on boundary of his land (s. 129 (3)).	Local land board (s. 129 (3)).
Soil Conservation Act, 1938.	Commissioner of Soil Conservation Service on authority of Minister.	To notify owner of land within area of erosion hazard, etc., to perform remedial work (s. 18 (1)).	Local land board (s. 18 (7), (8)).
Tobacco Leaf Stabilisation Act, 1967.	Tobacco Leaf Marketing Board for the State of New South Wales.	To determine application for allocation of grower's basic quota (s. 11); cancel a quota (s. 13 (3)); approve of transfer of quota (s. 14), etc.	Local land board (s. 20 (1)).
Water Act, 1912 ..	Water Conservation and Irrigation Commission.	To classify licence or authority for joint water supply scheme (s. 18B (1)).	Local land board (s. 18B (8)).
	Water Conservation and Irrigation Commission.	To reclassify licence or authority for joint water supply scheme (s. 18D (2), (3)).	Local land board (s. 18D (8) (b)).
	Water Conservation and Irrigation Commission.	To grant applications for authority to construct and use joint water supply scheme (s. 20 (1)).	Local land board (s. 20A (2)).
Western Lands Act of 1901.	Minister.. ..	To refuse consent to transfer of lease under Act on certain grounds (s. 18G (1A) (b)).	Local land board (s. 18G (1A) (d)).

PART 10.—MISCELLANEOUS

Act	Authority	Power	Appellate Body
Bush Fires Act, 1949 ✓	Minister.. ..	To fix percentage of premium subject to contribution payable by insurance companies to Eastern and Central Divisions Bush Fire Fighting Fund (s. 34 (4) (a)).	Appeal Committee (s. 36A).

PART 10.—MISCELLANEOUS—continued

Act	Authority	Power	Appellate Body
Child Welfare Act, 1939*	Minister.. ..	To refuse application to discharge intellectually handicapped person (s. 48A (1) and (3)).	Intellectually Handicapped Persons Review Tribunal (s. 48B (3)).
Clean Waters Act, 1970†	Under-Secretary	To grant, revoke, suspend or impose conditions on application for licence to pollute certain waters, etc. (s. 20 (2), (4)).	Clean Waters Appeal Board (s. 25 (1)).
Coal Industry Act, 1946.	Local Coal Authority.	To deal with disputes (s. 44).	Coal Industry Tribunal (s. 47 (1)).
Coal Mines Regulation Act, 1912.	Minister.. ..	To make order limiting number of mines for which a particular person may act as manager (s. 5 (5)).	Court of Coal Mines Regulation (s. 5 (7)).
	Inspector of Collieries.	To notify owner that mine is defective and require remedial action, etc. (s. 28 (1)).	Court of Coal Mines Regulation (s. 28 (2)).
	Minister.. ..	To consent to method of working in mine other than bord-and-pillar system (s. 53BA (1)).	Court of Coal Mines Regulation (s. 53BA (4)).
Crown Lands Consolidation Act, 1913.	Minister.. ..	To consider modification, etc., of general rules as to any mine and adoption of special rules (s. 57 (2)).	Court of Coal Mines Regulation (s. 57 (5)).
	Water Conservation and Irrigation Commission.	To grant application to suspend or remit, etc., residence condition attached to a holding (s. 145A (1)).	Special land board (s. 145B (2)).
" Dairy Industry Act, 1915.	Western Lands Commissioner.	To value estate or interest in certain holdings in Crown lands for purpose of transfer otherwise prohibited without consent of Minister (s. 173A).	Western Lands Commissioner (s. 173F (1))—following lodgment of objection to Minister under s. 173E (2).
	Inspector	To order remedial measures under s. 10 following inspection and examination (s. 9).	Board of appeal (s. 24).
Dormant Funds Act, 1942.	Commissioner of Dormant Funds.	To determine bona fide utilization of fund for purposes for which it was collected, etc. (s. 2 (2)).	Charity Referees (s. 2 (3)).
Drainage Act, 1939	Returning officer.	To prepare roll of voters (s. 29 (1)).	Revision Court (s. 29 (4)).

* Amendment not proclaimed to commence as at 30th June, 1972.

† Not proclaimed to commence as at 1st September, 1972.

PART 10.—MISCELLANEOUS—continued

Act	Authority	Power	Appellate Body
Electricity Commission Act, 1950.	Electricity Commission of New South Wales. Head of branch	To dismiss, suspend, fine, etc., servant of Commission (s. 66 (1)). To make recommendation affecting right of promotion of any servant of Commission (s. 67 (1)).	Appeal Board (s. 66 (1)). Electricity Commission of New South Wales (s. 67 (1)).
Farmers' Relief Act, 1932.	Director..	To make protection order on application of farmer who has applied for assistance to effect scheme of arrangement (s. 34N (1)).	Rural Assistance Board (s. 34N (11))
Fire Brigades Act, 1909.	Board of Fire Commissioners of New South Wales.	To fix percentage of total premiums subject to contribution payable on certain classes of insurance policies (s. 36 (1) (a)).	Appeal Committee (s. 40A (1), (2)).
Geographical Names Act, 1966.	Geographical Names Board of New South Wales.	To assign, approve, alter, etc., recorded names of places in N.S.W. as geographical names (s. 5, s. 7).	Geographical Names Board (s. 9 (1), (3)) followed by reference to Minister (s. 9 (5)).
Government Railways Act, 1912.	Commissioner for Railways.	To promote officer on basis other than seniority (s. 86).	Appeals Board (ss. 86, 87).
Horsebreeding Act, 1940.	Veterinary officer	To report stallion as unsound (s. 8 (2)).	Appeal Board (s. 9 (1), (4)).
Housing Improvement Act, 1936.	Housing Improvement Board.	To notify proposal for housing improvement scheme on tract of land in lieu of unsatisfactory state of repair of existing dwelling houses thereon (s. 11 (1)).	Housing Improvement Board (s. 11 (4), s. 12 (1)).
Hunter Valley Flood Mitigation Act, 1956.	Water Conservation and Irrigation Commission or Minister for Public Works as Constructing Authority. Water Conservation and Irrigation Commission or Minister for Public Works as Constructing Authority.	To agree upon compensation for damage or injury to land, buildings, etc., affected by construction work, etc., under s. 9 (s. 24). To sink bores or wells on land of riparian owner (s. 31 (3) (a)).	Assessment Board (s. 24). Assessment Board (as to adequacy as to number, location or capacity of bores or wells) (s. 31 (3) (c) (i)).

PART 10.—MISCELLANEOUS—continued

Act	Authority	Power	Appellate Body
Hunter Valley Flood Mitigation Act, 1956— <i>continued</i> .	Water Conservation and Irrigation Commission or Minister for Public Works as Constructing Authority.	To notify claimant of agreement or disagreement with amount claimed as compensation (s. 32 (2)).	Assessment Board (s. 32 (3)).
Land Aggregation Tax Management Act, 1971*.	Commissioner of Land Aggregation Tax.	To make assessments of tax on basis of returns, etc., or amend assessments by alteration or additional thereto (s. 13, s. 15).	Commissioner (appeal then lies to Supreme Court) (s. 35 (1)).
Land Development Contribution Management Act, 1970.	State Planning Authority of New South Wales.	To determine whether whole or part of contribution should be postponed where minor development approved (s. 15 (1)).	Appeals Board (s. 15 (2)).
	State Planning Authority of New South Wales.	To determine whether whole or part of contribution payable where illegal development is carried out (s. 61 (2)).	Appeals Board (s. 61 (3)).
Land Tax Management Act, 1956.	Commissioner of Land Tax.	To make assessment of taxable value of land and of land tax, and amend by altering or adding thereto (s. 14, s. 16).	Commissioner (appeal then lies to Supreme Court) (s. 35 (1)).
Landlord and Tenant (Amendment) Act, 1948.	Rent Controller	To determine fair rent of shared accommodation within metropolitan area (s. 27 (5)).	Fair Rents Board (s. 30 (1)).
Local Government Act, 1919.	Council	To keep accounts (s. 206).	Mayor, president or auditor (on objection of any elector) (s. 216).
	Council	To refuse to grant licence to use land as site for movable dwelling (s. 288A (6)).	Court of summary jurisdiction (s. 288A (6)).
	Council	To grant approval to application plans and specifications to erect a building (s. 314 (1)).	Local Government Appeals Tribunal (s. 317L).
	Council	To control and regulate erection of buildings (s. 305).	Local Government Appeals Tribunal (s. 317L, s. 317M).

* Not proclaimed to commence as at 1st September, 1972 (except ss. 1-7 and Parts I and II of Schedule).

PART 10.—MISCELLANEOUS—continued

Act	Authority	Power	Appellate Body
Local Government Act, 1919— <i>continued.</i>	Council	To approve or disapprove of opening public road or of subdivision of land (s. 341).	Local Government Appeals Tribunal (s. 341).
	State Planning Authority of New South Wales.	To prepare scheme with respect to land (s. 342GA (2)).	State Planning Authority (s. 342GB (4)).
	Council	To make recommendations as to objections to planning schemes (s. 342J).	Council (s. 342J (5)).
	State Planning Authority of New South Wales and Minister.	To make recommendations as to objections to planning scheme (s. 342KC).	State Planning Authority (s. 342KC (5)).
	A responsible authority.	To exercise and discharge powers and duties conferred or imposed on it under prescribed planning scheme (s. 342N (1)).	Local Government Appeals Tribunal (s. 342N (2)).
	Council	To permit erection of buildings prohibited or restricted under prescribed scheme but after giving notice conditionally or unconditionally (s. 342R (a)).	State Planning Authority (s. 342R (d)).
	Council	To refuse, etc., application to erect building under s. 342R (a) (s. 342R (g)).	State Planning Authority (s. 342R (g)).
	Council	To notify applicant of postponement of consideration of interim development application (s. 342V (2)).	Local Government Appeals Tribunal (s. 342V (2) (a)).
	Council	To refuse interim development application or impose conditions (s. 342V (1A), (1B)).	State Planning Authority (s. 342V (a)) or Local Government Appeals Tribunal (s. 342V (5) (b)).
	Council	To approve, consent to or permit interim development application where compliance with minimum requirements is unreasonable or unnecessary (s. 342VA (2)).	Local Government Appeals Tribunal (s. 342VA (3)) (on reference from Council).
Responsible authority or Council.	To notify possible objectors of application for consent to erection of residential flat buildings, etc., under prescribed scheme or interim development order (s. 342AZ (1)).	Responsible authority or Council (s. 342ZA (5)).	

PART 10.—MISCELLANEOUS—continued

Act	Authority	Power	Appellate Body
Local Government Act, 1919— <i>continued.</i>	Council (with Minister's written approval).	To lease to non-profit organization land reserved for parks, recreation areas, etc. (s. 519A (3)).	Minister following reference to him by Council of objections, etc. (s. 519A (5) (c), (6)).
Local Government (Regulation of Flats) Act, 1955.	Council ..	To refuse application for approval to alter and add to existing buildings (s. 2 (1), (3)).	Local Government Appeals Tribunal (s. 3 (1)).
Mental Health Act, 1958.	Superintendent of mental hospital, admission centre, etc.	To refuse application for discharge of patient (s. 17).	Director of State Psychiatric Services or any two or more official visitors (s. 17).
Pay-roll Tax Act, 1971.	Commissioner of Pay-roll Tax.	To make decision, determination or assessment affecting liability of person to pay tax under Act (s. 32 (1)).	Commissioner (s. 32 (1)) (appeal then lies to Supreme Court (s. 33 (1))).
Pilotage Act, 1971*.	Maritime Services Board.	To withdraw, suspend, etc., pilot's licence or certificated person's pilotage exemption certificate or certificate of local knowledge on finding him guilty of default (s. 40 (3)).	Board of Review (s. 42 (3)).
Public Service Act, 1902.	Public Service Board.	To make decision or determination as to salary, seniority, grade or classification of work of public service officer (s. 19).	Public Service Board (s. 19).
Soil Conservation Act, 1938.	Commissioner of the Soil Conservation Service, as authorized by Minister. Minister..	To notify owner of land to carry out certain remedial work, etc. within an area of erosion hazard (s. 18 (2)). To notify owner, etc. to carry out acts likely to mitigate or avoid, etc. damage to utility of proclaimed work within catchment area, etc. (s. 22 (1)).	Commission (s. 8 (7)) (who refers matter to local land boards 18 (8)). Catchment Areas Board (s. 22 (2)) (after reference by the Minister).

* Not proclaimed to commence as at 1st September, 1972.

PART 10.—MISCELLANEOUS—continued

Act	Authority	Power	Appellate Body
State Transport (Co-ordination) Act, 1931.	Commissioner for Motor Transport.	To cancel licence in respect of privately owned public motor vehicle whose holder fails to comply with Act (s. 21 (1)).	Transport Appeal Court (see s. 167 of Transport Act, 1930) (s. 24).
Teaching Service Act, 1970.	Director-General of Education.	To make decision or determination with respect to seniority, promotion, etc., of an officer (s. 28 (1)).	Director-General of Education (s. 28 (1)) (who refers appeal to promotions committee (s. 29)).
Theatres and Public Halls Act, 1908.	Censor (officer of Commonwealth authorized to exercise duties on behalf of State Government—s. 26c).	To register or refuse to register a film or register it conditionally, etc. (s. 26H (1) etc.).	Appeal authority (also appointed and authorized by s. 26c to exercise duties on behalf of State Government) (s. 26f (1)).
Transport Act, 1930	Officer for the time being in charge of any officer or employee of Department of Motor Transport or Department of Government Transport.	To suspend temporarily officer or employee (s. 110 (1)).	Appeal Board (s. 110 (1A)).
	Commissioner for Government Transport.	To promote officer on ground other than seniority (s. 113).	Appeal Board (s. 113).
	Commissioner for Motor Transport.	To determine alterations to private omnibus routes (s. 157 (1)).	Transport Appeal Court (s. 157 (5)).
Valuation of Land Act, 1916.	Valuer-General.	To disallow objection to valuation (s. 35 (1)).	A valuation board (s. 35 (2)).
Waste Disposal Act, 1970.	Metropolitan Waste Disposal Authority.	To grant, conditionally or unconditionally, or refuse, revoke, suspend, etc., certificate of registration of waste treatment, etc., depot, or licence to transport waste for reward (s. 23 (3), (4)).	State Pollution Control Commission (s. 26 (1)).
Water Act, 1912 ..	Water Conservation and Irrigation Commission.	To grant or refuse application by owner, etc., for licence to utilize water construction works under s. 10 (s. 11 (3)).	Commission (s. 11 (2)) (who refers matter to Land and Valuation Court (s. 11 (4)).

Public Administration Act

PART 10.—MISCELLANEOUS—continued

Act	Authority	Power	Appellate Body
Western Lands Act of 1901.	Minister	To determine boundaries of maximum area to be withdrawn from lease upon extension of lease (s. 17c (6)).	Tribunal constituted under s. 17c (7) (c).
	Minister	To determine boundaries of area proposed to be withdrawn (as constituting two home maintenance areas) from lease and of carrying capacity of residue of lease (s. 17ccc (4)).	Tribunal constituted under s. 17ccc (5) (c).
Workers' Compensation (Broken Hill) Act, 1920.	Joint Committee (established under Part IV of Schedule to Act).	To take certain factors into account on making awards of compensation (s. 10 (3), s. 13).	Workers' Compensation Commission (s. 14 (1)).

ANNEXURE E**JUDICIAL REVIEW OF OFFICIAL ACTIONS OF PUBLIC AUTHORITIES**

1. We consider—

- (1) The procedure by which review is sought (pars 2-7).
- (2) The grounds on which review is granted (pars 8-51).
- (3) The remedies available on review (pars 52-70).
- (4) The persons who may seek review (pars 71-77).
- (5) The discretionary powers of the reviewing court (pars 78-84).
- (6) Privative clauses (pars 85-87).

PROCEDURE BY WHICH REVIEW IS SOUGHT

2. Review may be sought either directly (in proceedings brought primarily for that purpose) or indirectly (in proceedings commenced for another purpose but which incidentally involve a matter of review—"collateral" proceedings such as actions in tort or contract). In the absence of special legislation, direct review is available only in the Supreme Court. Direct review is described as the exercise of the "supervisory jurisdiction" of the Court and it is based on the common law as modified by statute. Indirect review may arise in any court where it is asserted that an official action is void or a nullity: the public authority concerned need not be a party to the proceedings. Under the Supreme Court Act, 1970, proceedings against a public authority seeking direct review may be joined with collateral proceedings: thus a plaintiff may seek, against a public authority, an order quashing or vacating an official action and, at the same time, damages in tort.

3. Before the Supreme Court Act, 1970, review of official actions of public authorities was sought in the Supreme Court through the prerogative writs of *mandamus*, prohibition and *certiorari* (and certain other writs which we do not consider) or in the equity jurisdiction, by suit for injunction or declaration. In some circumstances the equitable remedy of injunction could be sought in the common law jurisdiction¹ and power to give declaratory judgments in the same jurisdiction was also conferred in limited classes of cases.²

4. The Supreme Court Act, 1970, and the Rules, substantially alter procedures. Section 69 of the Act provides that where formerly the Court had jurisdiction to grant any relief or remedy by way of writ, whether of prohibition, *mandamus* or *certiorari*, or of any other description, the appropriate relief or remedy shall now be given not by way of writ but by way of judgment or order under the Act and Rules. Subsection (2) preserves, among other things, the writ of *habeas corpus ad subjiciendum*.

5. Under division 2 of part 54 of the Rules, r. 4 provides for the commencement of proceedings by summons in a number of cases which include, under r. 3 (1), proceedings for any relief or remedy which formerly would have been granted by one of the writs mentioned above. In other matters, r. 1 of part 4 of the Rules provides that proceedings shall be commenced either by statement of claim or by summons.

6. Before the Supreme Court Act, 1970, a major problem was the selection by the applicant of the appropriate remedy. This is now simplified by r. 1 of part 40 of the Rules: "The Court may . . . direct the entry of such judgment or make such order as the nature of the case requires, notwithstanding that the applicant does not make a claim for relief extending to that judgment or order in any originating process."

7. The 1970 Act and Rules achieved reforms of the kind included in the Ontario Judicial Review Procedure Act, 1971³ and of a kind suggested by the Law Commission in England⁴ and by the New Zealand Public and Administrative Law Reform Committee.⁵ But many of the problems which arise in this field are not procedural in character.

GROUND ON WHICH REVIEW IS GRANTED

8. A general consideration of the grounds of review of official actions of public authorities may be grouped under the headings—

- (1) *Ultra vires* and jurisdictional error.
- (2) The rules of natural justice.
- (3) Error of law and error of fact.
- (4) Failure to take official actions.

ULTRA VIRES AND JURISDICTIONAL ERROR

9. An official action of a public authority may be reviewed because it is *ultra vires* or beyond power or because it is beyond "jurisdiction". Analytically, it is not possible to frame a distinction between these two concepts. Historically, they are of different origin, both in relation to the procedures by which they are raised in a superior court and in relation to the nature of the public authorities which may be controlled.

10. A "legal person" created by the law can have only such powers as the law confers upon it. The application of the doctrine of *ultra vires* to any legal person involves a consideration, first, of the rules of law derived from statute or from the common law defining the person and its capacity; secondly, an examina-

¹ Common Law Procedure Act, 1899, s. 176.

² Commercial Causes Act, 1903, s. 7A and s. 7B.

³ See Judicial Review Procedure Act, 1971 (Ontario) ch. 48, s. 3.

⁴ See Law Commission, Published Working Paper No. 40, para. 75.

⁵ See Fifth Report of the Public and Administrative Law Reform Committee (New Zealand) (1972): cl. 3 of Proposals for a Bill.

tion of the legal nature of any act alleged to be attributable to the person; and, thirdly, a decision whether or not that act falls within the capacity or power of the person: if it falls within power, the act is valid—if it does not, it is *ultra vires* and void.

11. At the same time as the courts were developing the doctrine of *ultra vires* they were also questioning whether certain bodies of "judicial" character had exceeded their powers and, apart from collateral attack, the most common processes employed were the prerogative writs of prohibition and *certiorari*. In both these writs, a concept of "jurisdiction" was used: if a decision of the body was not within "jurisdiction" it could be reviewed. Cases under these prerogative remedies seem to have developed originally in regard to ordinary courts and bodies which were looked upon as being like the ordinary courts or as having a "judicial" function. In review of this kind, it was not sufficient to put before the superior court an argument that the decision below was simply "wrong"—it was repeatedly emphasized that "jurisdiction" to decide a question included, in some circumstances, jurisdiction to decide it wrongly. However, the superior courts seem always to have taken the view that a decision may be so "wrong" that it will be beyond "jurisdiction". The concept of "jurisdiction" appears therefore to be a reference to the power of the body of which control is sought and to involve a recognition that the power is not simply a power to be "right"—it includes latitude to make error, although the error must not be too great.

12. If the doctrines of *ultra vires* and excess of jurisdiction are regarded in this light, there is no analytical distinction between the two. Both are concerned with excess of power but differ in approach as to determining the extent of the power. If the court is prepared to classify the public authority exercising the power as "judicial" there is greater latitude for error than in the case of a public authority which is not so classified. Bearing the above comments in mind, the present stage of the development of the law is still such that it is convenient to consider *ultra vires* and defect of jurisdiction under separate headings.

ULTRA VIRES

13. The doctrine of *ultra vires* is used both in a narrow sense and in a wider sense. In the narrow sense the doctrine means that a public authority constituted by statute may do only those things which are expressly authorized by its statute and perhaps things which may fairly be regarded as incidental. This sense of the doctrine goes beyond the substantive law and relates also to the procedural requirements (if any) imposed upon a public authority by its statute. In so far as procedure is concerned, the courts distinguish between mandatory requirements and requirements which are merely "directory". There is a tendency to hold that prescribed procedures are mandatory where they relate to powers to interfere with personal liberty, the right of employment, the obligation to consult another body before action is taken, and similar matters. By contrast, the courts are inclined to hold that prescribed procedures are merely "directory" where failure to carry them out will not prejudice persons affected. Failure to carry out mandatory procedures renders an official action void. Failure to carry out merely directory procedures has no effect on the validity of an official action.

14. Decided cases have extended the doctrine of *ultra vires* beyond the narrow sense just discussed and the process of expansion has been rapid in the present century. In present-day legislation, a public authority is often given discretionary power, which is free from any express limiting standards, to take action in situations where the conflicting claims of the private person must be balanced against considerations arising out of the needs of the public at large. In such situations, the courts have often held that powers of this nature must be exercised in good faith and not with a view to achieving ends or objects outside the purpose for which the power is conferred. The considerations which the courts have regarded as relevant in this connection cannot be stated exhaustively but it is useful to group some of the situations under a number of general headings.

Improper purpose

15. A power may not be exercised to achieve purposes other than the purposes for which the power was granted. Thus a vegetable seeds committee, established to ensure the maintenance of the general supply of seeds during an emergency, could not offer to release a company from an order restricting its sales of seeds provided that it purchased a quantity of deteriorated seeds from the committee.⁶

Relevant and irrelevant considerations.

16. In exercising a power, an authority must have regard to all matters which it is bound by statute, expressly or impliedly, to consider and must disregard all matters which are, in the same way, irrelevant. Sometimes a statute will set out some at least of the relevant considerations and this will be of assistance in determining what matters are irrelevant. More often, the statute is silent and the decision as to what is relevant and what is irrelevant, is left largely to the courts.⁷

Self-created rules of policy

17. A public authority may not adopt an arbitrary rule by which it will exercise a discretion irrespective of the merits of the particular case before it, although it may adopt rules by which it will act in all ordinary cases in the absence of special considerations. A more recent view is that such a public authority may adopt a firm policy, and apply it without exception, provided it remains prepared to entertain an argument that the policy as a whole should be changed.⁸

Reasonableness

18. Cases have been decided on the basis that a public authority must act "reasonably". Many such cases can be explained on the basis that the authority had sought to achieve an improper purpose or that it had taken into account irrelevant consideration. But perhaps "reasonableness" has some value for it can be said that a decision on a matter was "so unreasonable that no reasonable authority could ever have come to it"⁹ or that conditions imposed are "so unreasonable as to go beyond anything that Parliament can have intended, or that any reasonable authority could properly have imposed".¹⁰

Acting by reference to rules of policy laid down by another public authority

19. A public authority must make its own decision and must not act at the direction of any other public authority. The authority may take the views of another authority but must itself consider all factors which are relevant to any particular matter before it and make its own decision. There is, however, a recent suggestion that, at least in some instances, a public authority may base its action on government policy communicated to it.¹¹

Vagueness

20. Vagueness or uncertainty is not a general ground of invalidity but it is sometimes called in aid by the courts, especially where a grant of power involves in its very terms a requirement as to certainty.¹²

⁶ *Arthur Yates & Co. Pty Ltd v. The Vegetable Seeds Committee* (1945) 72 C.L.R. 37. See also, for example, *Municipal Council of Sydney v. Campbell* [1925] A.C. 338; *Brownells Ltd v. Ironmongers' Wages Board* (1950) 81 C.L.R. 108.

⁷ See, for example, *Roberts v. Hopwood* [1925] A.C. 578; *Prescott v. Birmingham Corporation* [1955] Ch. 210.

⁸ *British Oxygen Co. Ltd v. Minister of Technology* [1971] A.C. 610, at 625.

⁹ *Associated Provincial Picture Houses v. Wednesbury Corporation* [1948] 1 K.B. 223, at 233-234.

¹⁰ *Hail & Co. Ltd v. Shoreham-by-Sea U.D.C.* [1964] 1 W.L.R. 240, at 249.

¹¹ *R. v. Anderson; Ex parte Ipswich Pty Ltd* (1965) 113 C.L.R. 177.

¹² See, for example, *Frazer Henleins Pty Ltd v. Cody* (1945) 70 C.L.R. 100, at 128, per Dixon J.

JURISDICTIONAL ERROR

21. An indicated in par. 4 of this annexure, the concept of jurisdictional error was used by the courts to control the activities of bodies regarded as judicial or quasi-judicial. If a public authority is given the task of deciding certain matters but purports to decide other matters, it makes a jurisdictional error. The courts have distinguished between errors made by an authority which relate to the extent of its jurisdiction and errors made within jurisdiction. Unless such a distinction is drawn, review for jurisdictional error approximates appeal on the merits.

22. It is not possible to state any principles by which a distinction can be drawn between errors within jurisdiction and errors resulting in excess of jurisdiction. In establishing a public authority, Parliament may say that, if a certain state of facts exists and is shown to exist, the authority shall have jurisdiction but not otherwise. In such a case, it is not for the authority conclusively to determine the existence of the state of facts and, if the facts do not exist, the authority has acted without jurisdiction. On the other hand, Parliament may entrust a public authority with a jurisdiction which includes jurisdiction to determine whether the preliminary facts exist—in this case, the authority's finding as to the existence of the facts is conclusive.¹³ This proposition extends beyond questions of fact and includes questions of law. Erroneous decision on a question of fact or a question of law may lead to wrongful refusal of jurisdiction as well as a wrongful assumption of jurisdiction.

23. Recently there has been some tendency to encompass the concept of jurisdictional error within the broad doctrine of *ultra vires*—for example, by holding that decisions based on irrelevant considerations or which fail to take account of relevant considerations, etc., involve jurisdictional error.¹⁴ In the House of Lords in *Ridge v. Baldwin*¹⁵ and *Anisminic Ltd v. Foreign Compensation Commission*:¹⁶ "[T]he Lords were saying . . . that tribunals always exercise a derived power, a power limited and defined by law, and that after taking into account all the legal limitations on that power (the rules as to procedure, natural justice, fraud, qualifications, reaching a decision, subject matter, etc.), then what is left is what the tribunal may legally do, what it may do within the law, what it has jurisdiction to do".¹⁷

THE RULES OF NATURAL JUSTICE

24. The rules of "natural justice" requires that, in some cases, where an official action may affect the rights of a person, a public authority shall not take the action until "fair hearing" has been given to the person concerned. The concept of "natural justice" therefore raises two questions; first, in what cases are public authorities bound by the rules of natural justice; and, secondly, what are the requirements of those rules?

PUBLIC AUTHORITIES TO WHICH THE RULES OF NATURAL JUSTICE APPLY

25. Courts, in the ordinary sense of that term, are bound by the rules of natural justice. Sometimes legislation constituting a public authority and vesting power in it expressly provides that, where it takes an official action and that action may affect the rights of a person, it must give that person an opportunity to be heard. More often the legislation does not expressly give such a right. Sometimes a public authority will voluntarily adopt a procedure comparable with that applying in the ordinary courts and sometimes there is implied in the legislation a legal duty on the part of the public authority to give an opportunity to be heard.

¹³ *R. v. Commissioners for Special Purposes of the Income Tax* (1888) 21 Q.B.D. 313, at 319.

¹⁴ For example, in *Anisminic Limited v. Foreign Compensation Commission* [1969] 2 A.C. 147, the majority of the House of Lords has taken the view that a broad sense of jurisdictional error should replace the "narrow and original" sense.

¹⁵ [1964] A.C. 40.

¹⁶ [1969] 2 A.C. 147.

¹⁷ Gould, "*Anisminic and Jurisdictional Review*" (1970) Public Law 358, at 366.

26. There have been two opposed views as to the implication of duty to observe the rules of natural justice. One view was that an obligation to observe those rules arose where the legislation vesting power in a public authority so provided, expressly or by implication arising otherwise than from the granting of the power.¹⁸ The other view was that in some circumstances an obligation to observe the rules arose by implication from the grant of a power where an official action might affect the rights of a person.¹⁹ Recent decisions of the courts tend strongly to the second view. The courts often hold that a public authority having power to affect the rights of a person must act "fairly" and "fairness" requires that, before the power is exercised, an opportunity to be heard must be given to a person likely to be affected.

27. The concept of "fairness" has, on the second view mentioned in par. 26, two aspects: it is relevant in determining, first, whether the rules of natural justice apply to a particular public authority and, secondly, the nature and extent of any "hearing" which must be given. We deal with the hearing aspect of fairness in paras. 36-38 of this annexure. Any determination that the rules of natural justice apply to a particular public authority must be made by reference to the law under which the authority is constituted and to the circumstances in which it operates. On current case law, it is difficult to say whether all public authorities must act "fairly" but that the requirements of "fairness" vary from requirements akin to those binding an ordinary court to quite minimal requirements or that only some public authorities are obliged to act in accordance with the requirements of "fairness" while other public authorities are not bound by any justiciable requirements of "fairness" at all. Whichever view is adopted, the public authority and the person concerned are left in doubt, a doubt which can be resolved only by a decision of a superior court.

28. We have tried, in paras 26-27 of this annexure, to state in general terms what we believe is a modern tendency in the case law. Our statement disregards the fact that the law reports contain a great number of earlier decisions dealing with particular types of authorities: decisions which will be binding or strongly persuasive in future cases relating to similar authorities.

29. An examination of decisions of the courts, even recent decisions, indicates no coherent pattern. The rules of natural justice have been held to bind bodies such as the following: a Board of Trade inspector making a report on the conduct of a trading body,²⁰ rent assessment committees,²¹ the Gaming Board of Great Britain,²² local government bodies,²³ arbitrators,²⁴ trade unions,²⁵ and both statutory and non-statutory bodies such as political party organizations,²⁶ bodies controlling professions,²⁷ universities,²⁸ schools,²⁹ greyhound racing clubs,³⁰ and football associations.³¹ The courts in England frequently scrutinize the activities of any body, whether statutory or non-statutory, associated with the control of a "right to work".³²

18 E.g., *R. v. Legislative Committee of the Church Assembly; Ex parte Haynes-Smith* [1928] 1 K.B. 411, at 416; *R. v. The Commonwealth Rent Controller; Ex parte National Mutual Life Association of Australasia Limited* (1947) 75 C.L.R. 361, at 368; *Nakkuda Ali v. M. F. De S. Jayarame* [1951] A.C. 66.

19 *Cooper v. Wandsworth Board of Works* (1863) 14 C.B. (N.S.) 180, at 188, 190, 194; *Ridge v. Baldwin* [1964] A.C. 40; *Banks v. Transport Regulation Board* (1968) 119 C.L.R. 222.

20 *In re Pergamon Press Ltd* [1971] 1 Ch. 388, at 399.

21 *Metropolitan Properties Co. (F.G.C.) Ltd v. Lannon* [1969] 1 Q.B. 577.

22 *R. v. Gaming Board for Great Britain; Ex parte Benaim* [1970] 2 All E.R. 528, at 533.

23 *Brettingham-Moore v. St Leonards Municipality* (1960) 121 C.L.R. 509.

24 *Van Dongen v. Cooper* (1967) W.A.R. 143—in this context, the concept of "misconduct" by the arbitrator is involved.

25 *Barnes v. Oliver* (1970) 16 F.L.R. 366; *Leary v. National Union of Vehicle Builders* [1971] 1 Ch. 34; *Breen v. Amalgamated Engineering Union* [1971] 2 Q.B. 175.

26 *John v. Rees* [1970] 1 Ch. 345; *Howshall v. Evans* [1969] C.L.Y. Para. 354.

27 E.g., *Lau Lit Meng v. Disciplinary Committee* [1968] A.C. 391.

28 *Glynn v. Keele University* [1971] 2 All E.R. 89; [1971] 1 W.L.R. 487; *R. v. Senate of the University of Aston; Ex parte Roffey and Another* [1969] 2 All E.R. 964.

29 E.g., *Malloch v. Aberdeen Corporation* [1971] 2 All E.R. 1278; [1971] 1 W.L.R. 1578.

30 *Pett v. Greyhound Racing Association Ltd* (No. 1) [1968] 2 W.L.R. 1471 but see *Pett v. Greyhound Racing Association Ltd* (No. 2) [1970] 1 Q.B. 46.

31 *Enderby Town Football Club Ltd v. The Football Association Ltd and Another* [1971] 1 All E.R. 215.

32 E.g., *Edwards v. Society of Graphical and Allied Trades* [1970] 3 All E.R. 689.

30. In contrast to the examples given in par. 29, there are many decisions where the courts have been held that the principles of natural justice do not apply: for example, the Governor-in-Council acting under the Local Government Act, 1919 (N.S.W.) to remove members of a shire council,³³ a traffic engineer regulating traffic in a way which might effect local businessmen,³⁴ a local council resuming land,³⁵ an architect giving a notice under a building contract as to delay by the builder,³⁶ and a master dismissing his servant.³⁷

THE CONTENT OF THE RULES OF NATURAL JUSTICE

31. We discuss the requirements of "fairness" under the traditional heads of natural justice—

- (1) A public authority must not be "biased" in any way which may prevent it from giving an impartial decision—*nemo debet esse iudex in propria causa*.
- (2) Some public authorities must give a hearing to the party or parties before them—*audi alteram partem*.

Although the rules just stated are not exhaustive of the current notion of "fairness", they are, for present purposes, a convenient grouping.

32. Before dealing with the bias rule and the rules as to the nature of a hearing, we consider fraud and collusion as grounds for challenging official actions. Fraud or collusion may result in either bias or lack of a proper hearing, depending upon the persons involved in the fraud or collusion. In the case of fraud on the part of the person conducting a hearing or his collusion with a party to the hearing the result may be bias or both bias and lack of a proper hearing. If, however, the fraud or collusion involves only a party or parties, then the ground may be either an aspect of the rules as to proper hearing or an independent ground for interference by a superior court. Whatever type of case is involved, an official action of a public authority may be set aside where it has been induced by fraud or collusion.

THE BIAS OR INTEREST RULE

33. A public authority who is bound by the rules of natural justice will be disqualified from taking an official action if he has an "interest" in the matter under consideration. Rules of disqualification are applied not only to avoid the possibility of biased official actions but also to ensure public confidence as to impartiality. Thus a public authority should not take an official action if he is a party to the matter under consideration or has a pecuniary or specific interest in it. Even when an "interest" in this sense does not exist, rules of disqualification will apply if a person shows that the official action was affected by *actual* bias towards him, as where personal hostility has been shown.

34. Many decisions indicate that "mere suspicion" of bias is sufficient: "Justice should not only be done, but should manifestly and undoubtedly be seen to be done".³⁸ Recent decisions indicate, however, that "mere suspicion" is not enough but that it is necessary to show "real likelihood" of bias.³⁹ Perhaps the difference between the two tests is not great but the "real likelihood" notion is likely to be accepted, especially in the context of government control of common activities where great difficulty would often be experienced in finding a public authority who could not conceivably be influenced by policy matters beyond the simple merits of the case before him—for example, an expert committee with significant views as to the policies underlying the development or redevelopment of a particular area of land.

³³ *Ex parte The Queen (ex rel. Warringah Shire Council); Re Barnett* (1967) 87 W.N. (Pt 2) (N.S.W.) 12.

³⁴ *BP (Australia) Limited v. The Council of the City of the Gold Coast* [1967] Qd R. 307.

³⁵ *Amstad v. Brisbane City Council* (No. 2) [1968] Qd R. 343.

³⁶ *Hounslow London Borough Council v. Twickenham Garden Developments Ltd* [1971] 1 Ch. 233.

³⁷ *M. Vasudevan Pillai v. City Council of Singapore* [1963] 1 W.L.R. 1278.

³⁸ *Per Lord Hewart C.J. in R. v. Sussex JJ.; Ex parte McCarthy* [1924] 1 K.B. 256, at 259.

³⁹ *Metropolitan Properties Co. (F.G.C.) Ltd v. Lannon* [1969] 1 Q.B. 577, per Lord Denning M.R., at 599; contrast per Edmund Davies L.J., at 606.

35. Closely similar to bias is the rule (considered in par. 17 of this annexure) that a public authority taking an official action must not approach his task with preconceived notions as to how the action should be taken: while an authority may adopt a general policy, he must always be prepared to entertain an argument that the policy as a whole should be changed.⁴⁰

THE RULE THAT EACH PARTY MUST BE HEARD

36. Where a person is entitled to be "heard" by a public authority, he must be given a "fair" hearing. "Fairness" in this context is a criterion of uncertain content and therefore of great complexity. What is "fair" in relation to a particular public authority depends upon the relevant legislation, the nature of the function and the circumstances in which the function is to be carried out. It depends also on the nature and status of the public authority concerned: "What a minister ought to do in considering objections to a scheme may be very different from what a watch committee ought to do in considering whether to dismiss a chief constable".⁴¹ Criticism of the uncertainty of the concept of "fairness" has been condemned as "tainted by the perennial fallacy that because something cannot be cut and dried or nicely weighed or measured therefore it does not exist".⁴²

37. Since the content of the concept of fairness is variable, we can do no more than refer to some of the matters which have been considered by the courts; whether prior notice that a public authority proposed to take an official action must be given to persons potentially affected,⁴³ whether such a person has a right to appear in person or by representative before the public authority,⁴⁴ whether the person is entitled to cross-examine other persons giving evidence before or information to the public authority,⁴⁵ to what extent the public authority may use material which is within its own knowledge but is not available to the citizen, and whether the public authority must give reasons for his official actions.

38. It was possible, until 1969, to say that fairness did not require the giving of reasons in New South Wales. In England, the Tribunals and Inquiries Act 1958 (s. 12) imposes a duty on many statutory tribunals, and on ministers (in certain instances) to state reasons when requested to do so. Here, there is now a possibility that such a duty may be developed under the common law. In 1969, in *Giris Pty Ltd v. Commissioner of Taxation*,⁴⁶ Windeyer, J., said that he thought the Commissioner could be asked by a taxpayer to state the grounds of an opinion reached in making his decision and that, if asked, the Commissioner should do so.

THE EFFECT OF A BREACH OF THE RULES OF NATURAL JUSTICE

39. The Privy Council has indicated that failure to meet the requirements of the rules of natural justice renders a decision of a public authority voidable but not void.⁴⁷ However, there are now strong dicta in the House of Lords⁴⁸ in favour of voidness and there has been at least one decision in the Chancery Division taking this view.⁴⁹ Questions of voidness and voidability are discussed in pars 45-50 of this Annexure.

40 *British Oxygen Co. Ltd v. Minister of Technology* [1971] A.C. 610, at 625.

41 *Ridge v. Baldwin* [1964] A.C. 40, at 65, per Lord Reid.

42 *Ibid.*, at 64-65.

43 E.g. *Hoggard v. Worsbrough Urban District Council* [1962] 2 Q.B. 93.

44 *Pett v. Greyhound Racing Association Ltd (No. 1)* [1968] 2 W.L.R. 1471; contrast *Pett v. Greyhound Racing Association Ltd (No. 2)* [1970] 1 Q.B. 46. See also *R. v. Board of Appeal; Ex parte Kaye* (1916) 22 C.L.R. 183.

45 *R. v. War Pensions Entitlement Appeal Tribunal; Ex parte Bott* (1933) 50 C.L.R. 228; *R. v. Brighton and Area Rent Tribunal; Ex parte Marine Parade Estates (1936) Ltd*, [1950] 2 K.B. 410, at 420; *University of Ceylon v. Fernando* [1960] 1 W.L.R. 223, at 235-236.

46 (1969) 119 C.L.R. 365, at 384.

47 *Durayappah v. Fernando* [1967] 2 A.C. 337.

48 *Antismic Ltd v. Foreign Compensation Commission* [1969] 2 A.C. 147.

49 *Leary v. National Union of Vehicle Builders* [1971] 1 Ch. 34.

ERROR OF LAW AND ERROR OF FACT

40. In review proceedings, the courts are not usually concerned with errors of law or errors of fact.⁵⁰ Exceptions to this general proposition are errors which are jurisdictional⁵¹ and errors of law on the face of a record. The distinction between law and fact involves the drawing of an almost arbitrary line. For example, when a public authority has to decide whether a particular set of facts falls within a statutory term it is sometimes said that the determination of primary facts (meaning thereby facts observed by witnesses and proved in evidence) is always a question of fact but that conclusions from those facts (that is, their restatement in summary form preparatory to the application to them of statutory or other standards) may be questions of law or questions of fact. So where the statutory provision consists of "an ordinary English word or phrase" or involves a "question of degree" questions of fact will be raised. On the other hand, where the words used in a statute do not have an ordinary or common meaning, so that their meaning needs to be determined by a trained lawyer, a question of law is presented.⁵² A particular case may, of course, involve both these processes. Indeed, in some instances, it may not be possible to analyse the separate applications of the processes and such a matter is often regarded as involving "a mixed question of fact and law."⁵³

41. It may be that, between questions of fact and questions of law, there is a third category involving discretion, the exercise of which presupposes the existence of certain primary facts and of certain rules of law but which leaves an element of discretion in the public authority on the category into which a particular matter will be placed. The decision of the public authority may be open to challenge if it has erred on the primary facts or on the law to be applied but if no such error has been made it has a relatively free discretion in reaching its decision.⁵⁴

42. Even where a particular question is classified as one of fact, the courts may still find error of law where the public authority is limited to acting on the evidence before it and may not act on other information even that drawn from its own specialized knowledge. In these circumstances, an error of law arises where the public authority's findings was based upon a view of the facts which (in the opinion of the reviewing court) could not reasonably be entertained.⁵⁵ In a similar way, other factors may lead to an error of law, for example, a failure to take into account all relevant considerations or a taking into account of irrelevant considerations, a misunderstanding of the nature of the power, and, where the rules of evidence apply, improper admission or rejection of evidence.

FAILURE TO TAKE OFFICIAL ACTIONS

43. Where a power is vested in a public authority, it is sometimes accompanied by a duty on the part of the authority to exercise the power. This concept of duty is not simple. In some cases, there may be a duty which obliges a public authority, if specified circumstances exist, to perform a particular act. In other cases, there may be a duty, if specified circumstances exist, to consider what action, if any, will be taken out of a number of possible alternative actions. Examples of the former cases are: a public authority may be compelled to issue a licence,⁵⁶ to state a case for the opinion of a superior court,⁵⁷ assess the value

⁵⁰ See par. 46 of the Report.

⁵¹ See pars 21 and 22 of this Annexure.

⁵² *Bracegirdle v. Oxley* [1947] K.B. 349, at 358, per Denning J.

⁵³ See, for example, the conflict of judicial opinion in *Federal Commissioner of Taxation v. Broken Hill South Ltd* (1941) 65 C.L.R. 150, at 154, 155 and 159.

⁵⁴ This approach is well illustrated by the attitude of the Court of Appeal in England to the classification of employees under the Standard Industrial Classification provided under the U.K. Selective Employment Payments Act 1966: See *C. Maurice & Co. Ltd v. Minister of Labour* [1968] 2 All E.R. 1030; and *Esso Petroleum Co. Limited v. Ministry of Labour* [1969] 1 Q.B. 98.

⁵⁵ E.g., *Edwards (Inspector of Taxes) v. Bairstow* [1956] A.C. 14.

⁵⁶ *R. v. Mahony; Ex parte Johnson* (1931) 46 C.L.R. 131.

⁵⁷ *Ex parte Greenwell; Re Williams* (1963) 81 W.N. (Pt 1) (N.S.W.) 39.

of imported goods,⁵⁸ or to give effect to a planning approval.⁵⁹ In the other cases, a public authority may be subject to a duty to consider whether to take some official action, but, having ordered it to do so, a court cannot direct what particular action it is to take. There is a "ministerial" duty to embark upon a function but having done so, the public authority has a discretion as to subsequent action.

44. The courts hold that there has been a failure to take official action either where there has been a failure by total refusal or where there has been a purported action on grounds which are, in law, unjustifiable. In regard to an unjustifiable purported official action, it is difficult to enumerate the factors which may have a vitiating effect. "Discretion" means something to be "done according to the rules of reason and justice, not according to private opinion . . . according to law, and not humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular".⁶⁰ The public authority must take into account relevant factors and disregard irrelevant factors;⁶¹ it must determine the question submitted to it and not some other question;⁶² it must not delegate its function;⁶³ and so on.

VOID AND VOIDABLE

45. It is convenient to consider here whether an official action in respect of which review has been granted is void or merely voidable.

46. In natural justice cases, the courts have held that breach of the bias rule renders an official action merely voidable and not void, with the result that such a breach is not regarded as jurisdictional error. In regard to the requirement of a fair hearing, however, there is substantial conflict. Writers are in conflict and it is easy to produce, from different contexts, decided cases which support either view. The earlier cases rarely considered the question and one must draw from the nature of the remedy afforded inferences on whether the challenged action was regarded as void or voidable. Thus cases are common in which remedies, e.g., damages in tort, were granted on the tacit assumption of voidness and, occasionally, on the express finding of voidness. On the other hand, *mandamus* and declaratory judgments have been refused on the basis that official actions affected by breach of the rules of natural justice are voidable only.

47. The distinction between voidness and voidability involves more than matters of terminology. On the one hand, there are those who say that the concept of "voidability" has no useful place in administrative law and an official action of a public authority must be either "void" (or "null") or "valid". Those who adopt this view appear, however, to consider that a "void" official action has consequences if people and public authorities conduct themselves in accordance with it, without challenging or ignoring it. These consequences are, at the outset, consequences of fact (that is, conduct) but may harden into consequences of law if, through lapse of time or for any other reason, the appropriate legal remedies are lost. On the other hand, there are those who say that, in many cases, an official action of a public authority may be valid in its inception and have legal consequences but still be "voidable" if appropriate proceedings are taken to secure avoidance—with the result, if the proceedings are successful, that not only the official action but also those legal consequences are rendered void. The practical effects of the two views differ. If an official action of a public authority is void, its voidness may be raised in any proceedings in any court and even in the absence of court proceedings. If the official action is voidable, two questions must be asked. First, how may it be avoided? Secondly, may the right to avoid be lost—for example, by undue delay, by the possibility of prejudicing the rights of third parties, and so on?

48. In *Ridge v. Baldwin*,⁶⁴ the House of Lords examined the problem of voidness versus voidability in connection with the "natural justice" requirement of a fair hearing. Lord Reid and Lord Hodson considered that failure to give a

⁵⁸ *R. v. Comptroller-General of Customs; Ex parte Woolworths Ltd* (1935) 53 C.L.R. 308.

⁵⁹ *Ex parte Little; In re Council of Municipality of Fairfield* (1962) 80 W.N. (N.S.W.) 93; *R. v. City of Preston; Ex parte Sandringham Drive-In Theatre Pty Ltd* [1965] V.R. 10.

⁶⁰ *Sharpe v. Wakefield* [1891] A.C. 173, at 179, per Lord Halsbury.

⁶¹ *Reg. v. Vestry of St Pancras* (1890) 24 Q.B.D. 371, per Esher M.R. at 377.

⁶² E.g., *Board of Education v. Rice* [1911] A.C. 179, at 182.

⁶³ E.g., *Barnard v. National Dock Labour Board* [1953] 2 Q.B. 18; *Vine v. National Dock Labour Board* [1957] A.C. 488.

⁶⁴ [1964] A.C. 40.

fair hearing rendered an official action of a public authority void. Lord Evershed and Lord Devlin considered that such a failure resulted in the official action being voidable, while Lord Morris thought the word voidable was "apposite". In later decisions of the House of Lords there have been dicta in favour of voidness.⁸⁵ In *Anisminic Ltd v. Foreign Compensation Commission*,⁸⁶ the House of Lords decided that a decision of the Commission was void, but on grounds not related to the requirement of fair hearing. Moreover, several members of the House regarded the grounds of voidness as being extensive and including bad faith, lack of power, defect of natural justice, decision of a question other than the question submitted to the public authority, failure to take into account relevant circumstances and taking into account irrelevant circumstances.

49. By contrast, the Privy Council took the view in *Durayappah v. Fernando*⁸⁷ that defect of natural justice resulted in voidability, not voidness. There are also conflicts of opinion and differing dicta in Australian cases.⁸⁸

50. At present, therefore, the case law is inconclusive on an issue of practical importance. An official action which is void (or a "nullity") is of no effect in law: no proceedings are necessary to overcome it, an order in the nature of *mandamus* (where appropriate) is available against the public authority to direct it to deal with the matter "according to law" and the voidness may be set up in collateral proceedings. Even clauses expressly excluding judicial review (privative clauses) do not protect void or null official action (see paras 86-88 of this Annexure). On the other hand, if an official action is voidable, it may remain valid and effective until avoided by an appropriate order of a competent court. Further, the right to avoid may be lost by lapse of time or for other reasons relating to the discretion of the court.

COMMENTS ON GROUNDS OF REVIEW

51. The principle upon which the superior courts will review the official actions of public authorities cannot be so stated that the result of their application to a given official action can be readily predicted. They leave considerable discretion to the superior courts. But in advance of actual decisions by those courts, both persons aggrieved by official actions and public authorities must have doubts as to the applicability of any ground of review to any given situation. For example—

- (1) There are no criteria by reference to which it can be said that a particular public authority is bound by the rules of natural justice; and, even if it is so bound, the content of the concept of fairness is flexible and varies according to the nature of the public authority and the circumstances in which it operates from time to time.
- (2) When dealing with a challenge to an official action based upon the broad doctrine of *ultra vires*, the courts can extend or limit the scope of review according to how they are prepared to interpret the relevant power to act. A discretion which, on the terms of a statute, appears to be wide and unlimited, can be limited, unpredictably, by the spelling out of limitations based upon factors such as we have mentioned in paras 15-20 of this Annexure. Likewise, the courts can decrease or increase the impact of judicial control for jurisdictional error by, as a matter of interpretation, narrowing or broadening matters relevant to the existence of jurisdiction. In this context the superior courts show differences of attitude according to the status of the public authority concerned, the type of error involved, the distinction between substance and procedure, where relevant, the weight of evidence and the admissibility or rejection of evidence, and so on.

⁸⁵ E.g., *Royal Government of Greece v. Brixton Prison Governor* [1969] 3 All E.R. 1337, 88 [1969] 2 A.C. 147.

⁸⁷ [1967] 2 A.C. 337.

⁸⁸ E.g., *Posner v. Collector for Inter-State Destitute Persons (Victoria)* (1946) 74 C.L.R. 461; *Banks v. Transport Regulation Board (Victoria)* (1968) 119 C.L.R. 222, at 239; *R. v. Chairman of General Sessions at Hamilton; Ex parte Atterby* [1959] V.R. 800; *R. v. Will and Toon; Ex parte Visona* [1960] Qd.R. 123; *Ex parte Northern Rivers Rutile Pty Ltd; Re Claye* (1965) 82 W.N. (Pt 1) (N.S.W.) 514.

- (3) Where a distinction between law and fact is relevant for the purposes of review the superior courts have considerable discretion. If, to a court, review appears desirable, reasons and authority can readily be found to support a finding that error of law is involved. If, to a court, review appears to be undesirable, reasons and authority can be found, as readily, to support a finding that only a question of fact is involved.⁶⁹
- (4) Where failure by a public authority to take an official action is in issue, there is uncertainty both as to the relevant principles to be applied and as to the application of those principles. Variation in the application of principles occurs according to the status and type of the public authority concerned, the relevant statute and the surrounding circumstances.

THE REMEDIES AVAILABLE ON REVIEW

52. We consider the redress which may be sought against a public authority under the following headings—

- (1) A direction that a public authority shall take an official action.
- (2) The prevention of further action where a public authority has commenced to take action.
- (3) A consideration by a superior court of the quashing of an official action of a public authority.
- (4) The making of a declaration as to the legal validity of an official action of a public authority.

A DIRECTION THAT A PUBLIC AUTHORITY SHALL TAKE AN OFFICIAL ACTION

53. At common law, the writ of *mandamus* originated as a means by which the Crown might order an official to carry out his duties. Under present law, an order in the nature of *mandamus* may be granted to direct the doing of any act lying within the powers of a public authority and amounting to a public duty. As we have previously indicated (par. 43 of this Annexure), an order in the nature of *mandamus* may be sought against a public authority to direct the authority to take a particular official action or, where it has a duty to do so, to entertain an application where an applicant seeks the exercise of a discretion by the public authority. The law requires the existence of a public duty but it is not essential that that duty be one imposed by or under statute. Generally, the order will not be available unless the Court is prepared to hold that the duty is "public" in nature—for example, the remedy is not available in respect of a private arbitrator.⁷⁰ And even if a public duty does exist, it must be owed to the applicant. Thus a Minister for Education may have a duty in regard to the conduct of the State education system yet it may not be owed to and enforceable by any individual parent in respect of that parent's child.⁷¹ The object of the duty may be not only the doing of an act which operates of its own force but also the giving of advice or the making of a recommendation which requires confirmation or further action to put it into operation.⁷²

54. The remedies originating in equity include the injunction, directing the doing of or refraining from acts, and the declaration, which merely declares the law and has no compulsive effect. Injunctions are of two types: prohibitory (forbidding an action) and mandatory (ordering the doing of an action or the restoration of a position interfered with by unlawful action).

⁶⁹ See par. 40 of this Annexure.

⁷⁰ *R. v. National Joint Council for the Craft of Dental Technicians (Disputes Committee)*; *Ex parte Neate* [1953] 1 Q.B. 704.

⁷¹ *Ex parte Cornford*; re *Minister for Education* [1962] S.R. (N.S.W.) 220.

⁷² *Banks v. Transport Regulation Board (Victoria)* (1968) 119 C.L.R. 222, noting pp. 241-242; *Brettingham-Moore v. St Leonards Municipality* (1969) 121 C.L.E. 509.

55. An injunction is available to prevent official actions of a public authority either where the private rights of a person are directly infringed or threatened or where a private person suffers or may suffer special damage, over and above that suffered by the public at large. Where the private rights of a person are involved in circumstances where injunction could be obtained against another private citizen, the same relief will generally be available against a public authority. But where a public right is involved a member of the public may seek injunctive relief only where he shows that, although there is no interference with a private right of his, he nevertheless will suffer special damage peculiar to himself.⁷³

56. In cases where what has just been said does not apply, a private person cannot sue alone. The Attorney General may, however, always seek an injunction and the private person who cannot sue alone may "move" the Attorney General to seek relief on his behalf. The Attorney General has a discretion whether he will permit his name to be used in this fashion. The courts are more willing to grant an injunction at the suit of the Attorney General than at the suit of a private person because the Attorney General is regarded as having a special function of protecting both the public at large and the government against improper action by public authorities.

57. The test of a "public right" is whether the right is enjoyed by the public at large or a considerable number of them—for example, matters related to public health, comfort, safety, orderly arrangement of cities and towns, and like matters.⁷⁴ It is not possible to list such matters exhaustively and each new case will be dealt with by the courts on its merits.

THE PREVENTION OF FURTHER ACTION WHERE A PUBLIC AUTHORITY HAS COMMENCED TO TAKE ACTION

58. Where a public authority has commenced to take some official action, the remedies available to a person are the remedies derived from the common law writ of prohibition and the equitable remedy of prohibitory injunction.

59. The writ of prohibition was an order to an inferior court not to enter upon, or not to continue with, the hearing of a matter in which it had no jurisdiction, or not to carry into effect a decision which the court had reached in such a matter. In its later development, the writ was used to control bodies which were not courts in the ordinary sense but were regarded as sufficiently like courts. For convenience, we use the words "inferior court" as including such bodies. If the inferior court had already reached a decision, the writ of *certiorari* lay to bring up the record of the proceedings for review. The rules as to the bodies to which prohibition and *certiorari* lie are closely similar but we limit our remarks here to those particularly relevant to prohibition.

60. A prohibitory remedy may be sought, no matter how early in the proceedings below, where it is manifest that the inferior court is about to embark upon a matter which, by law, cannot be within its jurisdiction or power—for example, where the public authority has jurisdiction to deal with rents of dwelling houses and it proposes to deal with rents of business premises. However, if there is dispute as to whether the premises are a dwelling house or business premises, prohibitory relief will rarely be granted until it is known what decision is reached below on the disputed issue.

61. If the inferior court has ceased to have any further functions to carry out, it is too late for prohibitory relief and some other kind of relief must be sought. The public authorities which may be controlled by prohibitory relief, and the grounds upon which the relief may be sought, appear to be common to this kind of relief and to remedies in the nature of *certiorari*. These matters are dealt with in par. 64 of this Annexure.

⁷³ See, e.g., de Smith, *Judicial Review of Administrative Action*, 2nd ed. (1968), 466 ff.; Sykes, "The Injunction in Public Law" (1953) *Univ. of Q.L.J.* 114, at 130.

⁷⁴ See, e.g., *Cooney v. Ku-ring-gai Corporation* (1963) 114 C.L.R. 582, at 605.

62. Prohibitory injunction, of equitable origin, may be used to prevent a public authority from proceeding with an official action which it has commenced, or proposes to commence. The difference in availability of the relief founded on the common law writ of prohibition and the availability of the equitable remedy in the nature of injunction related more to the nature of the bodies to which the remedies could be applied than to the principles upon which an official action might be reviewed. Both prohibitory relief and injunction are, in proper circumstances, available in respect of official actions of judicial or quasi-judicial bodies. Prohibitory relief is limited to bodies of this nature; injunction is subject to no such limitation. Further, prohibitory relief is available only against the judicial or quasi-judicial body or the opposing party before that body; injunction is also available against other persons, including officials of the public authority charged with the carrying out of any order made by the judicial or quasi-judicial body.

A CONSIDERATION BY A SUPERIOR COURT OF THE QUASHING OF AN OFFICIAL ACTION OF A PUBLIC AUTHORITY

63. Apart from statute, the only remedy available for the actual "quashing" or vacating of an official action is an order in the nature of *certiorari*. Quashing is available in respect only of the decisions of public authorities regarded as "judicial" or "quasi-judicial". This extends beyond courts in any strict sense. A classic statement of the availability of *certiorari* (and of prohibition) was made by Atkin, L. J., in *R. v. Electricity Commissioners*⁷⁵—

"Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

At first, this dictum was regarded as laying down strictly analytical criteria—"legal authority", "affecting rights" and "a duty to act judicially". More recent decisions have regarded the dictum as expressing a general approach rather than analytical criteria. Past decisions are now regarded as mainly illustrative and the modern attitude tends to be that, if a public authority must act "fairly", the remedy by way of quashing will be available.

64. The grounds upon which an order of an inferior judicial or quasi-judicial public authority may be quashed are—

- (a) jurisdictional error (see pars 21–23 of this annexure);
- (b) denial of natural justice (see pars 24–39 of this annexure);
- (c) error of law (see pars 40–42 of this annexure) appearing "on the face of the record".

65. Special problems arise in regard to challenge for error of law because quashing, as developed under the writ of *certiorari*, is not available in respect of all errors of law made by a public authority. Such an error can be challenged in only two situations: first, where the error of law goes to jurisdiction; and secondly, where the error of law appears "on the face of the record" made by the public authority. Review is not available for any error of law which is within jurisdiction and does not appear on the face of the record.

66. In the context of modern case-law, it is difficult to determine what is meant by "the record". The legislation setting up a public authority rarely contains relevant provisions. It has been said that the record comprises the documents initiating any proceedings, the pleadings, if any, and the adjudication but not the evidence before the public authority or its reason unless the public authority chooses to incorporate them in a record.⁷⁶ It has been said too that a

⁷⁵ [1924] 1 K.B. 171, at 205.

⁷⁶ *R. v. Northumberland Compensation Appeal Tribunal; Ex parte Shaw* [1952] 1 K.B. 338, at 352, per Denning L. J.

public authority may throw a matter open to review by choosing to incorporate in the written statement of its proceedings material which would normally not be incorporated.⁷⁷ On the other hand, it has been said that material will not form part of the record unless the public authority is obliged by law to include the material concerned.⁷⁸

THE MAKING OF A DECLARATION AS TO THE LEGAL VALIDITY OF AN OFFICIAL ACTION OF A PUBLIC AUTHORITY

67. The flexibility and lack of technicality in the remedy of declaratory judgment (with or without injunction) has led to a great increase in its use as a remedy in administrative law. The Supreme Court Act, 1970, provides—

"No proceedings shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby and the Court may make binding declarations of right whether any consequential relief is or could be claimed or not" (s. 75).

This section makes declaratory relief available throughout the Supreme Court.

68. The grant of declaratory relief lies in the Court's discretion but of recent years the courts have shown increasing willingness to grant the relief. Thus, it has been used in relation to the decisions of statutory tribunals, the validity of official actions of public authorities, and the existence of duties imposed upon such authorities. It can be used too by a public authority when it seeks, as plaintiff, to set at rest doubts about the extent of its own powers.

69. It can be argued that the lack of coercive force in a declaratory judgment is a disadvantage but we accept that a public authority will not disregard an authoritative declaration as to its powers and duties. Moreover, in many instances, an injunction or an order in the nature of *mandamus* will be available by way of coercive ancillary relief.

70. We mention two possible limitations on the use of declaratory judgments—

- (1) The court requires that there be a real dispute between the parties. Although this requirement may be an aspect of the court's discretion to grant relief (see pars 79–85 of this annexure) it is relevant in the present context. In some instances the absence of a justiciable dispute arises because the plaintiff has no *locus standi* but the requirement mentioned here appears to be independent. There must be "a real and not a fictitious or academic question"⁷⁹ and the court will not give what, in substance, are merely advisory opinions.⁸⁰
- (2) It may be that the court will not declare that a public authority has made an error of law if the error does not go to jurisdiction: a declaration has no compulsive force and if the error is within jurisdiction the result of making a declaration could be a conflict between the decision of the Superior Court and the decision of the public authority.⁸¹

⁷⁷ *R. v. Nat Bell Liquors, Limited* [1922] 2 A.C. 128, at 155, per Lord Sumner.

⁷⁸ For example, *R. v. The District Court of The Northern District of The State of Queensland*; *Ex parte Thompson* (1968) 118 C.L.R. 488, at 496 per McTiernan J. *Semble*, per Menzies J. at 501.

⁷⁹ *Russian Commercial and Industrial Bank v. British Bank for Foreign Trade, Limited* [1921] 2 A.C. 438, at 452.

⁸⁰ For example, Kitto J. in *The Australian Boot Trade Employees' Federation v. The Commonwealth of Australia* (1954) 90 C.L.R. 24, at 50, referring to the danger of attempting to interpret a statute "in the air".

⁸¹ *Punton v. Ministry of Pensions and National Insurance (No. 2)* [1964] 1 W.L.R. 226, at 237, per Sellers L.J.

WHO MAY APPLY FOR REVIEW

71. Whatever remedy is sought, the applicant must show at the outset that he is entitled to apply—that he has the requisite *locus standi* or standing. It is often difficult to determine whether a plaintiff is refused relief by a court because he has no standing or because, in the exercise of its discretion, the court takes the view that relief should not be granted. We consider here the rules relating to standing and we consider the rules relating to discretion in pars 79–85 of this annexure.

72. Standing raises two conflicting matters of public policy: the first is the desirability of settling any unresolved dispute; the second is the policy of discouraging intermeddling. The conflict could be resolved by giving standing to everyone in all cases and by the court, in the exercise of its discretion, refusing relief where the applicant is regarded as an officious intermeddler. The law has, however, not adopted this simple approach. Moreover, different judicial attitudes have developed to each available remedy.

73. In cases involving *mandamus*, it has been asserted, at one extreme, that the courts may, in their discretion, grant the remedy to any member of the public. At the other extreme, it has been held that an applicant may not obtain the remedy unless he has a "legal specific right" to enforce.⁸² Even adopting the latter test, the courts have tended to treat "legal right" as including a substantial personal interest notwithstanding the lack of an enforceable legal right.

74. Different rules have developed as to prohibition and *certiorari* and these rules differ even as between prohibition and *certiorari*. As to prohibition, if a jurisdictional defect is apparent on the face of the challenged proceedings the remedy may be sought not only by a party but also by a complete stranger. If the defect is not so apparent, the court has a discretion and will refuse an application by a stranger in the absence of a very strong case. As to *certiorari*, the courts require that the applicant shall be "aggrieved" by the challenged decision but have applied liberal tests as to what "aggrieved" means. Thus the remedy has been granted not only to a party but also to any other person who can show that his rights have been infringed or that a substantial interest of his had been prejudiced.⁸³ But in 1967, the Privy Council cast doubt on the liberal view as to standing.⁸⁴

75. As to the remedies of equitable origin, the rules relating to standing appear to depend in part on whether the remedy sought is injunction or declaration. The rules tend to be more strict in regard to injunction than in regard to declaration. Perhaps this is explained in part by the fact that the extensive use of declaration in administrative law cases is a relatively recent development and the matter of standing is therefore less restricted by earlier decisions of the courts.

76. As to injunction, the Attorney-General may apply as of right to restrain unlawful acts by public authorities or to force them to carry out duties; but the Attorney-General's standing does not eliminate the court's discretion whether to grant or not to grant the remedy. By contrast, a private person can seek an injunction against a public authority only where there is interference with some right of his own; or where, although no private right is thus involved, an interference with a public right causes special damage peculiar to him.⁸⁵

⁸² *R. v. The Guardians of the Lewisham Union* [1897] 1 Q.B. 498.

⁸³ See, e.g., *R. v. The Justices of Surrey* (1870) L.R. 5 Q.B. 466 (land owner inconvenienced by closing of public road); *R. v. Hendon R.D.C.; Ex parte Chorley* [1933] 2 K.B. 696 (land owner affected by planning permission in respect of neighbouring land); *R. v. Public Vehicles Licensing Appeal Tribunal; Ex parte Gray's Transport Pty Ltd* (1968)—Tax. Supreme Court—not yet reported.

⁸⁴ *Durayappah v. Fernando* [1967] 2 A.C. 337, at 352–353.

⁸⁵ *Boyce v. Paddington Borough Council* [1903] 1 Ch. 109. See paras 55–57.

77. As to declaration, it may be that the plaintiff need show only that he is "peculiarly affected" and it seems that this phrase will generally be interpreted to give standing on a broader basis than in the case of injunction. "If a substantial question exists which one person has a real interest to raise, and the other to oppose, then the court has a discretion to resolve it by a declaration, which it will exercise if there is good reason for so doing".⁸⁶ In New South Wales standing is usually granted liberally but sometimes a strict view, in the exercise of the court's discretion, is taken of the existence of an appropriate alternative remedy.⁸⁷

THE DISCRETION OF THE REVIEWING COURT

78. Broadly stated, no matter which remedy is sought the court has a discretion to grant or refuse it. But, as in the case of standing, it is necessary to consider the rules which have developed in relation to each remedy.

79. If there is no other specific remedy available, the court will generally grant *mandamus*. It will not do so, however, where there is another remedy no less convenient, beneficial and effective.⁸⁸ The court will take into account such matters as the conduct of the applicant, delay on his part, improper motives and the futility of the remedy if granted.

80. As to prohibition, there appears to be no discretion where there is a patent defect of jurisdiction. In all other cases, and as to *certiorari* generally there is a discretion.⁸⁹ In exercising its discretion, the court will pay regard to such matters as acquiescence; unreasonable delay; and other conduct disentiing the applicant. The existence of an alternative remedy is also relevant. If jurisdictional error is involved, an official action of a public authority is a nullity and the withholding of prohibition or *certiorari* will not prevent the applicant from raising that nullity in other proceedings.

81. As in the case of standing, the rules relating to discretion in the grant of the equitable remedies appear to differ in their strictness in relation to injunction and in relation to declaration.

82. As to injunction, a distinction must be made between applications made by the Attorney-General, of his own motion or at the relation of a private person, and applications made by a private person. On the application of the Attorney-General, an injunction will apparently be refused only in exceptional circumstances. On the application of a private person, the attitude of the court is more strict. The courts have, over many years, laid down, in general terms, a number of factors to be taken into account: for example, triviality, unlikelihood of repetition of unlawful action, the existence of another remedy, adequacy of damages as a remedy, the undertaking by the defendant not to continue or repeat his conduct and impossibility of performance of the act directed. The general grounds upon which a court of equity will exercise its discretion are also applicable: he who comes to equity must come with clean hands; he who seeks equity must do equity; undue delay defeats equities; and so on.

⁸⁶ *Pyx Granite Co. Ltd v. Minister of Housing and Local Government* [1958] 1 Q.B. 554 at 571, per Lord Denning.

⁸⁷ See particularly the judgment of Mason J.A. in *Salmar Holdings Pty Ltd v. Hornsby Shire Council* [1971] 1 N.S.W.L.R. 192, at 203-204. Contrast the possibly more liberal view adopted by Street J. in *Sutherland Shire Council v. Leyendekkers* [1970] 1 N.S.W.R. 356, n: 365 ff.

⁸⁸ *In re Barlow, Rector of Ewhurst* (1861) 30 L.J.Q.B. 271; *Ex parte Mullen*; *Re Wigley* [1970] 2 N.S.W.R. 297.

⁸⁹ See e.g., *Honnery v. Smith* (1957) 57 S.R. (N.S.W.) 598; *Ex parte Wurth*; *Re Tully* (1954) 55 S.R. (N.S.W.) 47; *Ex parte Thomas*; *Re Arnold* [1966] 2 N.S.W.R. 197; *Ex parte Hoban*; *Re Davey* (N.S.W. Court of Appeal, 28th February, 1972, not yet reported).

83. As to declaration, the factors mentioned in relation to injunction are relevant but the present tendency seems to be to exercise the court's discretion in a more liberal fashion. Perhaps, as noted in par. 76, this is so because the discretion is less confined by long standing case law. Thus the existence of an alternative remedy is relevant but there are some recent New South Wales decisions⁹⁰ where factors of convenience have been taken into account as justifying the grant of a declaration even where there is a well-settled alternative remedy. In England, it has been said that the availability of declaration is not to be whittled down except by clear words.⁹¹

84. One more factor requires specific mention: a declaration will not be awarded as an interim measure in the same way that an interlocutory injunction may be used, the view being taken that a declaration is a final statement as to the rights of the parties.

PRIVATIVE CLAUSES

85. "Privative clauses"⁹² take a variety of forms such as a provision that "the decision" or "the determination" of the public authority shall be final, or shall not be called in question in any court, or shall not be subject to control by the prerogative writs. This phraseology is open to the interpretation that it is only an official action which is within jurisdiction, or is otherwise not void or a nullity, which is protected. If an official action of a public authority is a nullity, there is, in law, nothing for the privative clause to protect and the question of nullity can be raised in review proceedings or in collateral proceedings.⁹³

86. Not only have privative clauses been given a restricted interpretation but, more recently, their existence seems to have been partly productive of judicial extension of the grounds upon which official actions may be held to be void.

87. It is possible that privative clauses are given a wider effect in Australia than in England. While the High Court has consistently held that a privative clause cannot eliminate the review jurisdiction vested in the High Court by s. 75 (v) of the Commonwealth Constitution, it has tended in other matters to give such clauses the wide effect of excluding judicial review where there has been a bona fide attempt to exercise a power in a matter relating to the subject dealt with by the relevant legislation.⁹⁴

CONCLUSION

88. The law relating to judicial review has developed, not according to any general theory, but by empirical consideration of particular problems and types of problems. For this reason, the existence of defects in that law is not surprising. But now that the procedural law has been reformed (see pars 4-6 of this annexure) the substantive law should develop more freely. In particular, prospects of development are provided by the *Anisminic* case.⁹⁵ There the House of Lords extended the concept of error of law which goes to jurisdiction. Lord Diplock says:

⁹⁰ See cases cited in footnote 87.

⁹¹ *Pyx Granite Co. Ltd v. Minister of Housing and Local Government* [1960] A.C. 260, at 286, per Viscount Simonds.

⁹² See paras 48-51 of the Report.

⁹³ A recent statement of this view may be found in *Anisminic Ltd v. Foreign Compensation Commission* [1969] 2 A.C. 147.

⁹⁴ *R. v. Murray; Ex parte Proctor*, (1949) 77 C.L.R. 387, at 398, per Dixon J.; see also *R. v. The Commonwealth Rent Controller; Ex parte National Mutual Life Association of Australasia Ltd* (1947) C.L.R. 361, at 369, per Latham C.J. and Dixon J.; *R. v. The Members of the Central Sugar Cane Prices Board; Ex parte The Maryborough Sugar Factory Limited* (1959) 101 C.L.R. 246; *The Coal Miners' Industrial Union of Workers of Western Australia v. Amalgamated Collieries of Western Australia Limited* (1960) 104 C.L.R. 437.

⁹⁵ [1969] 2 A.C. 147.

"This extended concept . . . has great potentialities. It can be expressed in a number of different ways such as: that the decision-maker took into consideration matters which he ought not to have taken into consideration or failed to take into consideration matters which he should have taken into consideration, or, more tersely, that he asked himself the wrong question.

"These formulations have the advantage not only of avoiding technical distinctions between what is the 'record' which the court may examine for the purpose of detecting errors of law, but also of escaping from the familiar dichotomy between questions of law and questions of fact which, though adequate to embrace the issues which arise in most decisions which the legislature had confided to special administrative tribunals, does not comprehend another kind of question which is ultimately determinative of many administrative decisions once the law has been correctly applied and the facts accurately ascertained by the decision-maker.

"This kind of question, sometimes described as a question of policy or as a matter of discretion for the decision-maker, leaves to him a choice of answers. In the comparatively narrow form of the discretionary powers of the judge in making interlocutory orders or granting alternative remedies such as injunctions or damages, appellate courts are accustomed to dealing with questions of this kind in the course of ordinary civil and criminal litigation. There is thus an existing technique which can be developed to control the exercise by an administrative authority of a choice of permissible answers to a question which he has to decide."⁹⁶

One commentator says:

"It can be argued, then, that the decision in *Anisminic* has not only encouraged a more rational approach to jurisdictional review but has also done much to provide an all-purpose remedy which our administrative law at present so sorely lacks. The case is, of course, notable for other reasons. There is the careful and comprehensive consideration of the effect of preclusive clauses on the courts' jurisdiction and the decision that such clauses are unable to protect decisions and actions which are made without jurisdiction. There is the clear suspicion of the alleged distinction between 'void' and 'voidable' decisions. And there is the welcome repudiation of the view expressed in the Court of Appeal that the Foreign Compensation Commission would have been wiser not to have given reasons for its decision. There is the express inclusion by Lords Reid and Pearce of the breach of *either* principle of natural justice in the category of jurisdictional error."⁹⁷

But we are mindful of Professor Wade's comment: "In one case an important general principle is proclaimed in the widest terms, in another, it is tossed aside in favour of minor technicalities."⁹⁸ It is too early to judge the impact of *Anisminic* and, in our view, legislative intervention in the field of judicial review is presently undesirable.

⁹⁶ *Judicial Control*, Current Legal Problems 1971, pp. 13-14.

⁹⁷ Gould, "Anisminic and Jurisdictional Review" (1970) Public Law 358 at 370-371.

⁹⁸ See paragraph 23 of our Report.

ANNEXURE F¹

OMBUDSMAN IN OTHER PLACES

1. *National Ombudsman:*

Denmark	Mauritius
Finland	New Zealand
Great Britain and Northern Ireland	Norway
Guyana	Sweden
Israel	Tanzania

2. *Military Ombudsman:*

Norway	West Germany
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3. *Provinces of Canada:*

Alberta	Manitoba—enabling legislation enacted
New Brunswick	
Québec	

4. *States of the United States of America:*

Hawaii	Nebraska—enabling legislation enacted
Oregon	

5. *States of the United States of America in which legislation has been introduced or is pending:*

Alaska	Nevada
Arkansas	New Jersey
Arizona	New York
California	New Mexico
Connecticut	Rhode Island
Delaware	Texas
Georgia	Washington
Iowa	West Virginia
Kansas	Wisconsin
Maryland	Wyoming
Minnesota	

6. *Ombudsman legislation under consideration or an Ombudsman in course of being selected:*

Belgium	Eire
Fiji	Jamaica
Ghana	The Netherlands
Hong Kong	Trinidad
India	Uganda

7. *Ombudsman-like officials, that is, officials who deal with specific complaints from members of the public against governmental action but who do not have the characteristic features mentioned in par. 2 of our report:*

Greece	Sudan
Indonesia	Republic of Vietnam
Iran	Nationalist Republic of China

8. *Ombudsman or Ombudsman-like proposals rejected:*

Iceland	Malaysia
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¹ The material in this Annexure is taken from a Report made, in April, 1971, by the Ombudsman Committee of the American Bar Association.

ANNEXURE G

"THE PARLIAMENTARY COMMISSIONER" IN NEW ZEALAND, THE UNITED KINGDOM AND WESTERN AUSTRALIA

1. The schedule to this annexure sets out the Acts relating to Parliamentary Commissioners in—

- New Zealand (the Parliamentary Commissioner (Ombudsman) Act, 1962).
- The United Kingdom (the Parliamentary Commissioner Act 1967).
- Western Australia (the Parliamentary Commissioner Act, 1971).

2. Here we compare the main provisions of the Acts referred to.

APPOINTMENT

3. In the United Kingdom Act (s. 1 (2)) and the Western Australian Act (s. 5 (2)), provision is made for the appointment by the Crown. The New Zealand Act (s. 2 (2)) more closely associates appointment with the notion of responsibility to Parliament by providing that the appointment shall be by the Governor-General on the recommendation of the House of Representatives.

STATUS AND QUALIFICATIONS FOR EMPLOYMENT

4. Both the New Zealand Act (s. 2 (3)) and the Western Australian Act (s. 10) make it clear that the Parliamentary Commissioner is not a public servant but an independent officer. In New Zealand, that officer is not covered even by the public service superannuation provisions (s. 2 (3)) though the opposite is the case in Western Australia (s. 10 (2)). In the United Kingdom, there are no comparable provisions.

5. The legislation in all three countries contains provisions ensuring independence. In New Zealand, the Commissioner may not be a member of Parliament and may not, without the approval of the Prime Minister, hold any office of trust or profit or engage in any other occupation for reward (s. 3). The United Kingdom Act (s. 1 (4)) disqualifies members of the House of Commons (or of the Senate or House of Commons of Northern Ireland) and contains a further provision (s. 1 (5)) that the Commissioner shall, by virtue of his office, be a member of the Council on Tribunals under the Tribunals and Inquiries Act 1958—the latter provision reduces the possibility of inconsistent action by the Commissioner and the Council. In Western Australia the Commissioner may not have been a member of either House of Parliament of a State or of the Commonwealth within the 3 years preceding his appointment, or hold any office of profit or trust or engage in any occupation for reward outside his duty as Commissioner, unless authorized to do so by resolutions of both Houses of Parliament (s. 5 (8), (9)).

Term of Office

6. The New Zealand Commissioner (s. 4) holds office (subject to resignation) until his successor is appointed. He is appointed and a successor may be appointed in the first or second session of any Parliament. By contrast, the Commissioner in the United Kingdom (s. 1 (2)) holds office during good behaviour and the Western Australian Commissioner is to hold office for a period of 5 years (s. 5 (3)).

REMOVAL OR SUSPENSION

7. In all three countries, the Commissioner may be removed from office by the Crown on parliamentary address. In New Zealand, s. 5 does not simply permit removal but specifies that grounds must exist of disability, bankruptcy, neglect of duty or misconduct. If Parliament is not in session the Governor-General may suspend the Commissioner but such suspension is not to continue

beyond the next session of Parliament. The Western Australian Act contains similar but more detailed provisions; under s. 6 (2) the Governor may suspend the Commissioner for incapacity, incompetence, neglect, bankruptcy or misconduct but (s. 6 (3)) he shall be restored to office unless a statement of the grounds of suspension are laid before Parliament and each House passes an address praying for his removal.

STAFF

8. In New Zealand (s. 9) the Commissioner's staff are appointed by the Commissioner though the Prime Minister fixes the total number who may be employed. Salaries are fixed by the Minister of Finance but the employees are not deemed to be employed under the Public Service Act, etc. In the United Kingdom (s. 3) the Commissioner appoints his officers with the approval of the Treasury. Under the Western Australian Act (s. 9) members of the staff are appointed by the Governor on the Commissioner's recommendation and are not public servants except for the purpose of the Superannuation and Family Benefits Act, 1938 (s. 10).

METHOD OF APPROACH TO THE COMMISSIONER

9. The procedure by which the Commissioner may be approached in the United Kingdom differs from the procedure in New Zealand and in Western Australia. Under the United Kingdom Act, a complaint must be made to the Commissioner through a member of the House of Commons (s. 5)—a citizen must first make his complaint to a member of the House of Commons and that member (or another member) may then decide whether or not the complaint will be sent on to the Commissioner. There is no right of direct approach to the Commissioner nor is there any right to insist that the member of the House of Commons shall refer a matter to the Commissioner. By contrast, the New Zealand Act (s. 11 (2)) provides that matters may come before the Commissioner—

- (a) by virtue of a complaint by a citizen;
- (b) of the Commissioner's own motion;
- (c) by reference to the Commissioner by a Committee of the House of Representatives.

The Western Australian Act (ss. 15 and 16) contains provisions similar to the New Zealand Act.

JURISDICTION OF THE COMMISSIONER

10. The legislation in the three countries differs in the definition of the kinds of cases with which the Commissioner may deal. The New Zealand Act and the Western Australian Act do not differ greatly. In New Zealand, the Commissioner may "investigate any decision or recommendation made . . . or any act done or omitted, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity" in or by any of the departments or organizations named in the schedule to the Act, or by any officer, etc., of such a department or organization in the exercise of any power or function conferred on him by any enactment (s. 11). This general provision is followed by a number of specific exclusions, which are mentioned below.

11. Under the Western Australian Act (s. 14) the Commissioner shall investigate any decision or recommendation made or any act done or omitted, in or by any government department or other authority to which the Act applies relating to a matter of administration arising in the exercise of any power or function conferred by or arising under any enactment, and effecting any person or body or persons in his or its personal capacity. The phrase "the taking of any action" is (by subsec. (2)) given an extended meaning to include refusal to act, the formulation of any proposal or intention and the making of any recommendation. These provisions are also followed by specific exclusions.

12. By contrast, the United Kingdom Act (s. 5) permits the Commissioner to investigate any action taken by or on behalf of a Government Department or other authority to which the Act applies, being action taken in the exercise of an administrative function, but indicates in s. 5 (1) (a) that the initiating complaint made to a member of the House of Commons must allege "injustice" occurring "in consequence of maladministration" in connection with the action concerned. The Commissioner then has a discretion whether to initiate, continue or discontinue the investigation and is given power to determine whether a complaint has been duly made under the Act. The term "maladministration" is not defined. It appears that it is intended to prevent the Commissioner acting as a kind of court of appeal from administrative discretionary decisions. The view was initially taken that the Commissioner was able to interfere with administrative decisions only if they involved such things as bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude, arbitrariness and so on (Stacey, *The British Ombudsman* (1971), 75, quoting Richard Crossman in the debate in the House of Commons). Under this approach the Commissioner did not regard himself as at liberty to consider the merits of administrative action which was brought before him. This narrow approach was criticized and it was thought that certain decisions might be such as to justify an inference that they could have been reached only as a result of maladministration. More recently, the Commissioner has adopted a wider approach of this nature (Stacey, *ibid.*, pp. 277 ff.). Nevertheless, the tendency seems to be for the Commissioner to take a narrower view of his powers than does his New Zealand counterpart.

13. As indicated above, the provisions in New Zealand, Western Australia and the United Kingdom all contain lists of exclusions following upon the general description of the powers of the Parliamentary Commissioner.

14. In New Zealand, subsec. (5) of s. 11 excludes any decision, etc., where statute gives a right of appeal, objection, or review on the merits to any court or statutory tribunal and there are also express exceptions in regard to decisions of trustees, legal advisers to the Crown, and certain matters relating to medical and dental treatment, to school teachers and trainee teachers and (subsec. (6)) to the armed services.

15. In the United Kingdom Act, s. 5 (2) takes a different approach to exclusions from the Commissioner's jurisdiction. The Commissioner may not act in respect of matters as to which the person aggrieved has a remedy by way of proceedings in any court of law, or by reference or review to a tribunal constituted by or under any enactment or prerogative power. The subsection, however, contains the proviso that the Commissioner may nevertheless conduct an investigation if he is satisfied that in the particular circumstances it is not reasonable to expect the citizen concerned to resort to his other remedy. In addition to limits contained in s. 5 (2), subsec. (3) of that section contains further and absolute limitations on the Commissioner's jurisdiction, which are enumerated in Schedule 3: international matters, actions taken outside the United Kingdom and any actions in relation to British possessions; actions under the Extradition Act 1870, or the Fugitive Offenders Act 1881; actions in respect of crime and security of the State; civil or criminal proceedings before any court of law or proceedings under the Naval Discipline Act 1957, Army Act 1955, Air Force Act 1955, or before any international court; the exercise of the prerogative of mercy and similar matters; actions in relation to hospitals and health; certain specified contracts; actions in regard to appointments, removals, pay, discipline, superannuation, etc., in relation to service in the armed forces, in the Civil Service or in similar employment; the grant of honours, etc.

16. In the Western Australian Act, subsecs (4) and (5) of s. 14 contain provisions identical with those contained in s. 5 (2) of the United Kingdom Act, excluding cases where the complainant has a remedy in a court of law, before a tribunal or under the prerogative, with a proviso permitting the Commissioner to act where it is not reasonable to expect the complainant to resort to his other remedy. The Western Australian Act provides further exceptions—actions taken by any person as legal adviser (subsec. (6)); questioning the merits

of a decision made by Cabinet or a Minister subsec. (3)). The Act does not contain provisions similar to s. 5 (3) and Schedule 3 of the United Kingdom Act. Subsection (7) of s. 14 provides that the Commissioner may exercise his powers in regard to any particular authority notwithstanding the fact that the action of that authority was taken on behalf of, or in the exercise of any functions conferred on, any authority to which the Act does not apply (but without questioning the merits of any decision by the latter authority).

17. Finally, both the New Zealand Act and the Western Australian Act deal with the matter of the determination of jurisdictional questions. In the New Zealand Act, s. 11 (7) provides for the making of a declaration by the Supreme Court for which the Commissioner "may, if he thinks fit", apply—there is no provision in the Act permitting a similar application by the applicant or the government authority but perhaps this is covered by the general jurisdiction of the courts in regard to declaratory relief. The Western Australian Act (s. 29) permits both the Commissioner and "the party the subject of the investigation" to take jurisdictional questions to the Supreme Court but makes no mention of the position of the applicant and his position may fall (as mentioned above) within the remedy of declaratory relief.

18. In the United Kingdom Act, there is no express provision for the determination of jurisdictional questions. However, s. 5 (5) provides, *inter alia*, that "any question whether a complaint is duly made under this Act shall be determined by the Commissioner". This provision probably relates only to the question whether the complaint is "duly made" in a procedural sense and would not preclude external review of the Commissioner's jurisdiction although it has been held that the courts cannot direct the Commissioner to continue with a matter which, in his discretion, he has decided not to pursue.

THE BODIES TO WHICH THE COMMISSIONER'S JURISDICTION EXTENDS

19. Under the New Zealand Act, s. 11 (1) provides that the Commissioner may exercise his powers in respect of "the departments or organizations named in . . . the Schedule to this Act, or by an officer, employee or member thereof in the exercise of any function conferred on him by any enactment". The Schedule lists in Part I most of the major Government Departments, including the Crown Law Office, the Legislative Department and the Police Department but it does not include any of the fields of local government. Part II of the schedule includes a number of other organizations". The Police and the major organizations in respect of the Army, the Air Force and the Navy are included.

20. Under the Western Australian Act, s. 13 (1) provides that the Act applies to Government Departments and authorities specified in the Schedule and permits the Schedule to be added to by Rules of Parliament. Subsection (2) specifically provides, however, that the Bill does not apply to the Supreme Court, or any other court of law and certain other judicial officers. The Schedule includes, among others, the Police Department and the Public Service Board and, by contrast with the Schedule to the New Zealand Act, includes local government authorities. Apart from these matters, the Western Australian Schedule is generally wider than the Schedule to the New Zealand Act. Probably for greater assurance, s. 13 (3) extends the meaning of "departments" to include officers thereof and subsecs (4) and (5) define who are officers.

21. Under the United Kingdom Act, s. 4 applies the provisions to the government departments and other authorities listed in Schedule 2 and subsec. (2) permits additions to be made to the schedule by order in council. Under subsec. (4), any reference to a Government Department or other authority includes reference to Ministers, members and officers. Schedule 2 lists a number of important departments, but omits local government authorities, public corporations and police. While the Act was under consideration in the House of Commons, an unsuccessful attempt was made to include a number of other departments and there have been subsequent criticism of omissions from the Schedule.

22. In dealing with the three Acts no attempt has been made to compare in detail the ambit of the relevant Schedules which are set out in the Schedule hereto. However, the general comment may be made that the narrowest is probably the United Kingdom Schedule, and the widest is contained in the Western Australian Schedule, with the New Zealand Schedule falling in between.

INSTITUTION OF COMPLAINTS

23. Under the New Zealand Act, s. 11, the Commissioner may act—

- (a) on complaint by a citizen (subsec. (2));
- (b) of his own motion (subsec. (2));
- (c) on petition referred to him by a committee of the House of Representatives (subsec. (3)) (the Commissioner has no discretion to investigate such a matter (as he has, under s. 14, in relation to (a) and (b)) nor does he have the same obligations as to procedure (s. 19) or the same duty to report (under s. 20) to a complainant).

The Western Australian Act, under ss. 15 and 16, contains similar provisions. By contrast, s. 5 (1) of the United Kingdom Act permits the Commissioner to entertain a complaint only if it is made through a Member of the House of Commons.

RULES FOR GUIDANCE

24. Section 10 of the New Zealand Act permits general rules for the guidance of the Ombudsman to be made by the House of Representatives. Section 12 of the Western Australian Act contains similar provisions. There is no equivalent provision in the United Kingdom Act.

PROCEDURE AS TO INITIATION OF COMPLAINTS

25. Under the New Zealand Act, there are only outline provisions as to initiation of complaints. Under s. 13, writing is required and special provision is made as to the forwarding unopened to the Ombudsman of letters from convicts and inmates of mental institutions. Section 13 (3) provides for a nominal fee of \$2.00 to accompany any application, though the Ombudsman may direct that no fee be payable. Although this nominal fee was intended merely as a minor discouragement of frivolous use of the mechanism, the existence of any fee at all has been the subject of adverse comment.

26. In England, as indicated above, complaint is made through a member of the House of Commons. Under s. 5, a complaint must be in writing and addressed to the member and may be referred to the Commissioner by a member only with the consent of the complainant. Section 6 (2) permits a complaint to be made by a representative where the person, who would otherwise have been complainant, has died or is unable to act for himself and s. 6 (3) imposes a time limit of 12 months from the date on which the person aggrieved first had notice of the matters of which complaint is made—in exceptional cases, the Commissioner may entertain a matter where the complaint is made out of time.

27. In the Western Australian Act, apart from matters referred by a House of Parliament under s. 14, s. 16 (1) provides that the Commissioner may conduct an investigation either of his own motion or on a complaint made under s. 17. Under s. 17 (1), a complaint must be in writing. It may be made by the person or corporation affected or (under subsec. (2)) by a representative where a complainant has died or is unable to act for himself. Subsection (3) preserves the right of any person to make a complaint notwithstanding prohibitions of or restrictions on communication otherwise applicable. Subsection (5) provides a time limit of twelve months after first notice of the matter complained of, though the Commissioner is given a discretion, in special circumstances, to entertain later complaints. Subsection (6) permits the making of a complaint within 6 months of commencement of the Act where the matter complained of occurred at any time prior to the commencement of the Act.

COMMISSIONER'S DISCRETION AS TO COMMENCEMENT AND CONTINUANCE OF INVESTIGATION

28. In the New Zealand Act, s. 14 provides that the Commissioner *may* refuse to investigate—

- (a) where the investigation is commenced but it appears—
 - (i) that there is adequate remedy or right of appeal other than petition to Parliament; or
 - (ii) that further investigation is unnecessary;
- (b) whether or not investigation has commenced—
 - (i) where the matter to the knowledge of the complainant arose more than twelve months beforehand;
 - (ii) where the complaint is trivial;
 - (iii) where the complaint is frivolous, vexatious or not made in good faith;
 - (iv) where the complainant has no sufficient personal interest.

The provisions of s. 14 do not apply to a reference by a Committee of the House of Representatives (s. 11 (3)).

29. In the Western Australian Act, s. 18 gives the Commissioner a discretion not to entertain a complaint, or to refuse to continue an investigation, where he is of the opinion—

- (a) that the matter is trivial;
- (b) that it is frivolous, vexatious or not in good faith;
- (c) that the person aggrieved has not a sufficient personal interest; or
- (d) that, in all the circumstances, the investigation or its continuance is unnecessary or unjustifiable.

The Act, however, does not contain (as in the New Zealand Act) a discretion where there is another remedy—on the contrary s. 14 (4) provides that the Commissioner *shall* not investigate a matter where there is a right of appeal, etc., to a tribunal under any Act or the prerogative (although this limitation does not, under s. 15 (3), apply in the case of a reference by either House of Parliament).

30. In the United Kingdom (as mentioned above), s. 5 (2) excludes the jurisdiction of the Commissioner where there is a right of appeal to any tribunal constituted under any enactment or the prerogative where there is a remedy by proceedings in any court of law unless he is satisfied that it would not be reasonable for the person aggrieved to resort to his other remedy.

PROCEDURE IN DEALING WITH COMPLAINTS

31. The procedure for dealing with complaints is closely similar in the New Zealand Act (s. 15) and the Western Australian Act (s. 19). The following steps are involved—

- (1) Before investigating a complaint, the Commissioner informs the department head or other proper officer.
- (2) Investigation is in private.
- (3) The Commissioner—
 - (a) may, but need not, hold a hearing;
 - (b) obtains information in such manner as he thinks fit;
 - (c) is not obliged to hear any person as of right but if he thinks an adverse report may be warranted a right of hearing is given to the department or person affected;

- (d) is not, in New Zealand, obliged to allow a person to be represented—in Western Australia, any person concerned may be represented by counsel or otherwise (s. 19 (3));
- (e) may consult any Minister;
- (f) before forming a final opinion, shall consult the relevant Minister—
 - (i) on request by that Minister; or
 - (ii) where investigation relates to a recommendation made to the Minister;
- (g) shall refer to the principal officer any evidence of breach of duty or misconduct;
- (h) subject to the relevant Act and Rules, may regulate his own procedure.

32. In England, the provisions of s. 7 (1) are similar to the provisions in New Zealand and Western Australia, but substantially differently arranged.

EVIDENCE AND WITNESSES

33. Relatively detailed provisions as to evidence, competence and compellability of witnesses and production of documents, etc., are made in the New Zealand Act in s. 16 and in the Western Australian Act in s. 20.

34. Apart from the general provisions, special provision is made as to the power of the Commissioner to summon and examine on oath officers and employees of departments and organizations. The Acts also—

- (a) permit witnesses to be compelled to answer notwithstanding enactments preventing disclosure in judicial proceedings;
- (b) but provide that—
 - (i) where there is prejudice to security, etc., disclosure is not enforceable;
 - (ii) disclosure does not apply in relation to proceedings of Cabinet or any committee of Cabinet (although, in New Zealand, this is limited to such proceedings as are secret or confidential and disclosure of which would be injurious to the public interest);
 - (iii) and contain stringent provisions as to maintenance of secrecy (these provisions are dealt with under the next heading).

Similar provisions are made in the English Act (s. 8).

SECRECY

35. The Western Australian Act (s. 23) provides that information obtained by the Commissioner shall not be disclosed except in investigations under the Act and in proceedings with respect to perjury.

36. The New Zealand Act (s. 18) contains similar, but more detailed, provision as to secrecy and non-disclosure except so far as is necessary to establish grounds for conclusions and recommendations in the Commissioner's report. Even this disclosure may not be made in any matter which may prejudice security, defence, international relations, investigation or detection of offences and deliberations of Cabinet.

37. The United Kingdom Act (s. 11 (2)) forbids disclosure of information obtained by the Commissioner except in investigations under the Act, proceedings for perjury and proceedings for obstruction and contempt. Documents, classes of documents, and information, disclosure of which, in the opinion of the Minister, would be prejudicial to the safety of the State or otherwise contrary to public interest shall not be inquired into by the Commissioner if a certificate to that effect is given by the Minister (s. 11 (3)).

PROCEDURE AND POWERS OF COMMISSIONER AFTER INVESTIGATION

38. The provisions of the three Acts under this heading are of basic importance since they describe the type of case in which action may be taken by or recommendations made by the Commissioner and they will therefore be dealt with in some detail.

39. In the New Zealand Act, the relevant provisions are made in ss. 19 and 20 (by s. 11 (3), these provisions do not apply to a reference to the Commissioner by a Committee of the House of Representatives). Under s. 19, the Commissioner may make recommendations for the alteration of action where—

- (a) it appears to have been contrary to law (subsec. (1) (a));
- (b) it was unreasonable, unjust, oppressive or improperly discriminatory or was in accordance with a rule of law or of practice which is unreasonable or improperly discriminatory (subsec. (1) (b));
- (c) it was based on a mistake of law or of fact (subsec. (1) (c));
- (d) it "was wrong" (subsec. (1) (d));
- (e) discretionary power has been exercised for an improper purpose or on irrelevant grounds or on taking into account irrelevant considerations or reasons should have been given but have not (subsec. (2)).

Where the Commissioner feels that one of these grounds exists, subsec. (3) provides that he shall report any opinion of his that—

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

This report by the Commissioner is made to the Department, etc., concerned and a copy is sent to the relevant Minister. The Commissioner may request the department to notify him, within a specified time, of the steps (if any) that it proposes to take to give effect to his recommendations.

Under subsec. (4), if no action is taken within a reasonable time, the Commissioner may send the report and recommendations to the Prime Minister and make a report to Parliament, including any comments made by the Department, etc.

Under subsec. (5), the Commissioner may make no adverse comment on any person unless that person has been given an opportunity to be heard.

Finally, s. 20 provides that the complainant is to be informed of the result of the investigation, together with additional comments which the Commissioner may choose to make if no action is taken.

40. In the Western Australian Act, s. 25 makes closely similar provisions, including a provision that the Commissioner may take into account the view that the action of which complaint was made "was wrong". Section 26 is similar to s. 20 of the New Zealand Act. Where no steps have been taken to give effect to recommendations made by the Commissioner, he may send a report to the Premier and may lay a copy before each House of Parliament (s. 25 (5), (6)). By s. 27, the Commissioner is to inform the complainant of the results of the investigation.

41. In England, the procedure after investigation is necessarily different since the Commissioner conducts an investigation only when the matter is referred to him by a member of Parliament. Whether he conducts an investigation or not, he shall send a report to the relevant member (s. 10 (1)), and also, where an investigation is conducted, to the departmental officer or person concerned (s. 10 (2)). He may also report to each House of Parliament cases where injustice has been done to the complainant and this injustice has not or will not be remedied (s. 10 (3)). There is no provision permitting the Commissioner to send a report direct to the complainant.

REVIEW OF THE COMMISSIONER'S PROCEEDINGS AND PRIVILEGE OF SUCH PROCEEDINGS

42. Section 21 of the New Zealand Act provides that no proceeding of the Commissioner shall be held bad for want of form and, except on the ground of lack of jurisdiction, no proceeding or decision shall be liable to be challenged, reviewed, quashed or called in question by any court.

43. The approach in Western Australia is different in form. Under s. 29, questions of jurisdiction may be taken to the Supreme Court either by the Commissioner or by the authority which is subject to the Commissioner's investigation—no mention is made of the decision of any such question at the suit of the applicant. This provision is complemented by s. 30 (3), which prevents the use of any prerogative writ to compel the Commissioner to carry out any investigation.

44. The New Zealand Act (s. 22) deals with privilege of proceedings by the Commissioner, both as to the Commissioner and his officers and as to persons providing information for the Commissioner. In regard to the Commissioner and his officers, except in relation to offences under the New Zealand Official Secrets Act 1951—

- (a) no proceedings, civil or criminal, shall lie against the Commissioner or his officers in respect of the exercise or intended exercise of their functions unless bad faith is shown;
- (b) the Commissioner and his officers shall not be called to give evidence in any proceedings;
- (c) the Commissioner's report is classified as an "official report" gaining protection under the New Zealand Defamation Act 1954.

As to persons stating matters to the Commissioner or giving information or producing documents, etc., they have the same privilege as they would have in a court.

45. The Western Australian Act (s. 30) contains similar provisions, with the addition that no proceedings in respect of an act alleged to have been done negligently or in bad faith shall be commenced without leave of the Supreme Court, which is to be given only if that court is satisfied of the existence of substantial ground.

46. In the United Kingdom Act, s. 10 (5) provides for absolute privilege in defamation in relation to reports by the Commissioner to a member of the Commons, to a department or to both Houses of Parliament. The Commissioner does not make any report to the complainant.

MISCELLANEOUS PROVISIONS

47. All three schemes contain a number of miscellaneous provisions relating to such matters as powers of entry and inspection of premises, delegation of powers, reports, offences, etc.

ANNEXURE G

THE SCHEDULE

The Parliamentary Commissioner (Ombudsman) Act 1962 of
New Zealand

The Parliamentary Commissioner Act 1967 of the United Kingdom

The Parliamentary Commissioner Act, 1971 of Western Australia

Parliamentary Commissioner (Ombudsman) 1962, No. 10



ANALYSIS

Title	
1. Short Title	15. Proceedings of Commissioner
	16. Evidence
<i>Parliamentary Commissioner (Ombudsman)</i>	17. Disclosure of certain matters not to be required
2. Parliamentary Commissioner (Om- budsman)	18. Commissioner and staff to main- tain secrecy
3. Commissioner to hold no other office	19. Procedure after investigation
4. Term of office of Commissioner	20. Complainant to be informed of result of investigation
5. Removal or suspension from office	21. Proceedings not to be questioned or to be subject to review
6. Filling of vacancy	22. Proceedings privileged
7. Salary and allowances of Com- missioner	
8. Oath to be taken by Commissioner	<i>Miscellaneous Provisions</i>
9. Staff of Commissioner	23. Power of entry on premises
10. Superannuation or retiring allow- ances of Commissioner and staff	24. Delegation of powers by Com- missioner
<i>Functions of Commissioner</i>	25. Annual report
11. Functions of Commissioner	26. Offences
12. House of Representatives may make rules for guidance of Commissioner	27. Money to be appropriated by Parliament for purposes of this Act
13. Mode of complaint	28. Power to amend Schedule by Order in Council on abolition or creation of Department, etc.
14. Commissioner may refuse to in- vestigate complaint	29. Savings Schedule

1962, No. 10

An Act to provide for the appointment of a Commissioner to investigate administrative decisions or acts of Departments of State and certain other organisations, and to define the Commissioner's functions and powers

[7 September 1962

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1962, No. 10 *Parliamentary Commissioner (Ombudsman)*

1. Short Title—This Act may be cited as the Parliamentary Commissioner (Ombudsman) Act 1962.

Parliamentary Commissioner (Ombudsman)

2. Parliamentary Commissioner (Ombudsman)—(1) There shall be appointed, as an officer of Parliament, a Commissioner for investigations, to be called the Ombudsman.

(2) Subject to the provisions of section 6 of this Act, the Commissioner shall be appointed by the Governor-General on the recommendation of the House of Representatives.

(3) No person shall be deemed to be employed in the service of Her Majesty for the purposes of the Public Service Act 1912 or the Superannuation Act 1956 by reason of his appointment as Commissioner.

3. Commissioner to hold no other office—The Commissioner shall not be capable of being a member of Parliament, and shall not, without the approval of the Prime Minister in each particular case, hold any office of trust or profit, other than his office as Commissioner, or engage in any occupation for reward outside the duties of his office.

4. Term of office of Commissioner—(1) The recommendation for the appointment of the Commissioner shall be made in the first or second session of every Parliament.

(2) Unless his office sooner becomes vacant, every person appointed as Commissioner shall hold office until his successor is appointed. Every such person may from time to time be reappointed.

(3) The Commissioner may at any time resign his office by writing addressed to the Speaker of the House of Representatives, or to the Prime Minister if there is no Speaker or the Speaker is absent from New Zealand.

5. Removal or suspension from office—(1) The Commissioner may at any time be removed or suspended from his office by the Governor-General, upon an address from the House of Representatives, for disability, bankruptcy, neglect of duty, or misconduct.

(2) At any time when Parliament is not in session, the Commissioner may be suspended from his office by the Governor-General in Council for disability, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Governor-General; but any such suspension shall not continue in force beyond the end of the next ensuing session of Parliament.

6. Filling of vacancy—(1) If the Commissioner dies, or retires, or resigns, or is removed from office, the vacancy thereby created shall be filled in accordance with this section.

(2) If any vacancy in the office of Commissioner occurs at any time while Parliament is in session, it shall be filled by the appointment of a Commissioner by the Governor-General on the recommendation of the House of Representatives:

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

(3) If any such vacancy occurs at any time while Parliament is not in session, the following provisions shall apply:

- (a) The Governor-General in Council may appoint a Commissioner to fill the vacancy, and the person so appointed shall, unless his officer sooner becomes vacant, hold office until his appointment is confirmed by the House of Representatives:

Parliamentary Commissioner (Ombudsman) 1962, No. 10

- (b) If the appointment is not so confirmed within two months after the commencement of the next ensuing session, the appointment shall lapse and there shall be deemed to be a further vacancy in the office of Commissioner.

7. Salary and allowances of Commissioner—(1) There shall be paid to the Commissioner out of the Consolidated Revenue Account, without further appropriation than this section, a salary at such rate as the Governor-General, by Order in Council, from time to time determines.

(1A) The salary of the Commissioner is not to be diminished by an Order in Council under this section during the continuance of his appointment.

(1B) Any Order in Council under this section, and any provision of any such order, may be made so as to come into force on a date to be specified in that behalf in the order, being the date of the making of the order or any other date, whether before or after the date of the making of the order or the date of the commencement of this section. [Amended, 1970, Act No. 96, s. 2.]

(1C) Every Order in Council under this section, and every provision of any such order, in respect of which no date is specified as aforesaid shall come into force on the date of the making of the order.

(1D) The provision of section 8 of the Regulations Act 1936 (which relates to the laying of regulations before Parliament) shall extend and apply to every Order in Council made under this section.

8. Oath to be taken by Commissioner—(1) Before entering upon the exercise of the duties of his office the Commissioner shall take an oath that he will faithfully and impartially perform the duties of his office, and that he will not, except in accordance with section 18 of this Act, divulge any information received by him under this Act.

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

9. Staff of Commissioner—(1) Subject to the provisions of this section, the Commissioner may appoint such officers and employees as may be necessary for the efficient carrying out of his functions under this Act.

(2) The number of persons that may be appointed under this section, whether generally or in respect of any specified duties or class of duties, shall from time to time be determined by the Prime Minister.

(3) The salaries of persons appointed under this section, and the terms and conditions of their appointments, shall be such as are approved by the Minister of Finance.

(4) No person shall be deemed to be employed in the service of Her Majesty for the purposes of the Public Service Act 1912 or the Superannuation Act 1956 by reason of his appointment under this section.

10. Superannuation or retiring allowances of Commissioner and staff—There may from time to time be paid sums by way of contributions or subsidies to the National Provident Fund or any Fund or scheme approved by the Governor-General in Council for the purpose of providing superannuation or retiring allowances for the Commissioner and any officer or employee appointed under this Act.

1962, No. 10. *Parliamentary Commissioner (Ombudsman)**Functions of Commissioner*

[Amended,
1968, Act No.
138, s. 1 (2).]

11. Functions of Commissioner—(1) The principal function of the Commissioner shall be to investigate any decision or recommendation made (including any recommendation made to a Minister of the Crown), or any act done or omitted, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by any of the Departments or organisations named in Parts I and II of the Schedule to this Act, or by any officer, employee, or member thereof in the exercise of any power or function conferred on him by any enactment.

[Amended,
1968, Act No.
138, s. 2 (4).]

(1A) It shall also be the function of the Commissioner to investigate any decision or recommendation made, or any act done or omitted, affecting any person or body of persons in his or its personal capacity, by any officer or employee of any organisation named in Part III of the Schedule to this Act (in his capacity as such officer or employee), including any recommendation made to any such organisation.

(2) The Commissioner may make any such investigation either on a complaint made to him by any person or of his own motion; and where a complaint is so made he may commence any such investigation notwithstanding that the complaint may not on its face be against any such decision, recommendation, or act as aforesaid.

(3) Without limiting the foregoing provisions of this section, it is hereby declared that any Committee of the House of Representatives may at any time refer to the Commissioner, for investigation and report by him, any petition that is before that Committee for consideration, or any matter to which the petition relates. In any such case the Commissioner shall, subject to any special directions of the Committee, investigate the matters so referred to him, so far as they are within his jurisdiction, and make such report to the Committee as he thinks fit. Nothing in section 14 or section 19 or section 20 of this Act shall apply in respect of any investigation or report made under this subsection.

[Amended,
1968, Act No.
138, s. 2 (3).]

(3A) Without limiting the foregoing provisions of this section, any organisation named in Part III of the Schedule to this Act may refer to the Commissioner for investigation and report by him any matter that is within his jurisdiction by virtue of subsection (1A) of this section.

[Amended,
1968, Act No.
138, s. 2 (2).]

(4) The powers conferred on the Commissioner by this Act may be exercised notwithstanding any provision in any enactment to the effect that any such decision, recommendation, act, or omission shall be final, or that no appeal shall lie in respect thereof, or that no proceeding or decision of the person or organisation whose decision, recommendation, act, or omission it is shall be challenged, reviewed, quashed, or called in question.

(5) Nothing in this Act shall authorise the Commissioner to investigate—

(a) Any decision, recommendation, act, or omission in respect of which there is, under the provisions of any enactment, a right of appeal or objection, or a right to apply for a review, on the merits of the case, to any Court, or to any tribunal constituted by or under any enactment, whether or not that right of appeal or objection or application has been exercised in the particular case, and whether or not any time prescribed for the exercise of that right has expired:

(b) Any decision, recommendation, act, or omission of any person in his capacity as a trustee within the meaning of the Trustee Act 1956:

Parliamentary Commissioner (Ombudsman) 1962, No. 10

- (c) Any decision, recommendation, act, or omission of any person acting as legal adviser to the Crown pursuant to the rules for the time being approved by the Government for the conduct of Crown legal business, or acting as counsel for the Crown in relation to any proceedings.
- (d) Any decision, recommendation, act, or omission of any medical practitioner or dentist, being an officer or employee of a Hospital Board, in respect of the medical, surgical, or dental treatment of a particular patient: [Added, Act No. 138, s. 2 (5).]
- (e) Any decision, recommendation, act, or omission of any teacher (as defined in the Education Act 1964), or probationary assistant teacher, or junior assistant teacher in a Maori school, or student at a teachers' college being an employee of an Education Board.
- (6) Nothing in this Act shall authorise the Commissioner to investigate any matter relating to any person who is or was a member of or provisional entrant to the New Zealand Naval Forces, the New Zealand Army, or the Royal New Zealand Air Force, so far as the matter relates to—
- (a) The terms and conditions of his service as such member or entrant; or
- (b) Any order, command, decision, penalty, or punishment given to or affecting him in his capacity as such member or entrant.
- (7) If any question arises whether the Commissioner has jurisdiction to investigate any case or class of cases under this Act, he may, if he thinks fit, apply to the Supreme Court for a declaratory order determining the question in accordance with the Declaratory Judgments Act 1908, and the provisions of that Act shall extend and apply accordingly.

12. House of Representatives may make rules for guidance of Commissioner—(1) The House of Representatives may from time to time, if it thinks fit, make general rules for the guidance of the Commissioner in the exercise of his functions, and may at any time in like manner revoke or vary any such rules.

(2) Any such rules may authorise the Commissioner from time to time, in the public interest or in the interests of any person or Department or organisation, to publish reports relating generally to the exercise of his functions under this Act or to any particular case or cases investigated by him, whether or not the matters to be dealt with in any such report have been the subject of a report to Parliament under this Act.

(3) All rules made under this section shall be printed and published in accordance with the Regulations Act 1936.

13. Mode of complaint—(1) Every complaint to the Commissioner shall be made in writing.

(2) Notwithstanding any provision in any enactment, where any letter written by any person in custody on a charge or after conviction of any offence, or by any inmate of any institution within the meaning of the Mental Health Act 1911, is addressed to the Commissioner it shall be immediately forwarded, unopened, to the Commissioner 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 an inmate.

(3) On every complaint to the Commissioner there shall be paid to the Commissioner, on behalf of the Crown, a fee of two dollars, unless, having regard to any special circumstances, the Commissioner directs that no fee shall be payable.

(4) The Commissioner shall cause all fees paid to him under this section to be paid into the Public Account.

1962, No. 10 *Parliamentary Commissioner (Ombudsman)*

14. Commissioner may refuse to investigate complaint—(1) If in the course of the investigation of any complaint within his jurisdiction it appears to the Commissioner—

- (a) That under the law or existing administrative practice there is an adequate remedy or right of appeal, other than the right to petition Parliament, for the complainant (whether or not he has availed himself of it); or
- (b) That, having regard to all the circumstances of the case, any further investigation is unnecessary—

he may in his discretion refuse to investigate the matter further.

(2) Without limiting the generality of the powers conferred on the Commissioner by this Act, it is hereby declared that the Commissioner may in his discretion decide not to investigate, or, as the case may require, not to further investigate, any complaint if it relates to any decision, recommendation, act, or omission of which the complainant has had knowledge for more than twelve months before the complaint is received by the Commissioner, or if in his opinion—

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

(3) In any case where the Commissioner decides not to investigate or further investigate a complaint he shall inform the complainant of that decision, and may if he thinks fit state his reasons therefor, and may also, if he thinks fit, direct that the fee paid by the complainant under this Act be refunded to him.

15. Proceedings of Commissioner—(1) Before investigating any matter under this Act, the Commissioner shall inform the Permanent Head of the Department affected, or, as the case may require, the organisation affected, of his intention to make the investigation.

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

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

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

(4) The Commissioner may in his discretion, at any time during or after any investigation, consult any Minister who is concerned in the matter of the investigation.

(5) On the request of any Minister in relation to any investigation, or in any case where any investigation relates to any recommendation made to a Minister, the Commissioner shall consult that Minister after making the investigation and before forming a final opinion on any of the matters referred to in subsection (1) or subsection (2) of section 19 of this Act.

(6) If, during or after any investigation, the Commissioner is of opinion that there is evidence of any breach of duty or misconduct on the part of any officer or employee of any Department or organisation, he shall refer the matter to the appropriate authority.

(7) Subject to the provisions of this Act and of any rules made for the guidance of the Commissioner by the House of Representatives and for the time being in force, the Commissioner may regulate his procedure in such manner as he thinks fit.

16. Evidence—(1) Subject to the provisions of this section and of section 17 of this Act, the Commissioner 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 Commissioner to furnish to him any such information, and to produce any documents or papers or things which in the Commissioner's opinion relate to any such matter as aforesaid and which may be in the possession or under the control of that person. This subsection shall apply whether or not the person is an officer, employee, or member of any Department or organisation, and whether or not such documents, papers, or things are in the custody or under the control of any Department or organisation.

(2) The Commissioner may summon before him and examine on oath—

(a) Any person who is an officer or employee or member of any Department or organisation named in the Schedule to this Act and who in the Commissioner's opinion is able to give any such information as aforesaid; or

(b) Any complainant; or

(c) With the prior approval of the Attorney-General in each case, any other person who in the Commissioner's opinion is able to give any such information—

and for that purpose may administer an oath. Every such examination by the Commissioner shall be deemed to be a judicial proceeding within the meaning of section 108 of the Crimes Act 1961 (which relates to perjury).

(3) Subject to the provisions of subsection (4) of this section, no person who is bound by the provisions of any enactment, other than the Public Service Act 1912 and the Official Secrets Act 1951, to maintain secrecy in relation to, or not to disclose, any matter shall be required to supply any information to or answer any question put by the Commissioner in relation to that matter, or to produce to the Commissioner any document or paper or thing relating to it, if compliance with that requirement would be in breach of the obligation of secrecy or non-disclosure.

(4) With the previous consent in writing of any complainant, any person to whom subsection (3) of this section applies may be required by the Commissioner to supply information or answer any question or produce any document or paper or thing relating only to the complainant, and it shall be the duty of the person to comply with that requirement.

(5) Every person shall have the same privileges in relation to the giving of information, the answering of questions, and the production of documents and papers and things as witnesses have in any Court.

(6) Except on the trial of any person for perjury within the meaning of the Crimes Act 1961 in respect of his sworn testimony, no statement made or answer given by that or any other person in the course of any inquiry by or any proceedings before the Commissioner shall be admissible in evidence against any person in any Court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Commissioner shall be given against any person.

1962, No. 10 *Parliamentary Commissioner (Ombudsman)*

(7) No person shall be liable to prosecution for an offence against the Official Secrets Act 1951 or any enactment, other than this Act, by reason of his compliance with any requirement of the Commissioner under this section.

(8) Where any person is required by the Commissioner to attend before him for the purposes of this section, the person shall be entitled to the same fees, allowances, and expenses as if he were a witness in a Court, and the provisions of any regulations in that behalf made under the Summary Proceedings Act 1957 and for the time being in force shall apply accordingly. For the purposes of this subsection the Commissioner shall have the powers of a Court under any such regulations to fix or disallow, in whole or in part, or increase the amounts payable thereunder.

17. Disclosure of certain matters not to be required—(1) Where the Attorney-General certifies that the giving of any information or the answering of any question or the production of any document or paper or thing—

- (a) Might prejudice the security, defence, or international relations of New Zealand (including New Zealand's relations with the Government of any other country or with any international organisation), or the investigation or detection of offences; or
- (b) Might involve the disclosure of the deliberations of Cabinet; or
- (c) Might involve the disclosure of proceedings of Cabinet, or of any committee of Cabinet, relating to matters of a secret or confidential nature, and would be injurious to the public interest—

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

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

18. Commissioner and staff to maintain secrecy—(1) The Commissioner and every person holding any office or appointment under him shall be deemed for the purposes of the Official Secrets Act 1951 to be persons holding office under Her Majesty.

(2) The Commissioner and every such person as aforesaid shall maintain secrecy in respect of all matters that come to their knowledge in the exercise of their functions.

(3) Every person holding any office or appointment under the Commissioner shall, before he begins to perform any official duty under this Act, take an oath, to be administered by the Commissioner, that he will not divulge any information received by him under this Act except for the purpose of giving effect to this Act.

(4) Notwithstanding anything in the foregoing provisions of this section, the Commissioner may disclose in any report made by him under this Act such matters as in his opinion ought to be disclosed in order to establish grounds for his conclusions and recommendations. The power conferred by this subsection shall not extend to any matter that might prejudice the security, defence, or international relations of New Zealand (including New Zealand's relations with the Government of any other country or with any international organisation) or the investigation or detection of offences, or that might involve the disclosure of the deliberations of Cabinet.

Parliamentary Commissioner (Ombudsman) 1962, No. 10

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

- (a) Appears to have been contrary to law; or
- (b) Was unreasonable, unjust, oppressive, or improperly discriminatory, or was in accordance with a rule of law or a provision of any enactment or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory; or
- (c) Was based wholly or partly on a mistake of law or fact; or
- (d) Was wrong.

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

(3) If in any case to which this section applies the Commissioner 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 Commissioner shall report his opinion, and his reasons therefor, to the appropriate Department or organisation, and may make such recommendations as he thinks fit. In any such case he may request the Department or organisation to notify him, within a specified time, of the steps (if any) that it proposes to take to give effect to his recommendations. The Commissioner shall (except where the investigation related to an officer or employee of an organisation named in Part III of the Schedule to this Act) also send a copy of his report and recommendations to the Minister concerned.

[Amended,
1968, Act No.
138, s. 3 (1).]

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

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

(5A) Subsections (4) and (5) of this section shall not apply in the case of an investigation that related to an officer or employee of an organisation named in Part III of the Schedule to this Act.

[Added,
1968, Act No.
138, s. 3 (2).]

1962, No. 10 *Parliamentary Commissioner (Ombudsman)*

(6) Notwithstanding anything in this section, the Commissioner 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.

20. Complainant to be informed of result of investigation—(1) Where on any investigation following a complaint, the Commissioner makes a recommendation under subsection (3) of section 19 of this Act, and no action which seems to the Commissioner to be adequate and appropriate is taken thereon within a reasonable time, the Commissioner shall inform the complainant of his recommendation, and may make such comments on the matter as he thinks fit.

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

21. Proceedings not to be questioned or to be subject to review—No proceeding of the Commissioner shall be held bad for want of form, and, except on the ground of lack of jurisdiction, no proceeding or decision of the Commissioner shall be liable to be challenged, reviewed, quashed, or called in question in any Court.

22. Proceedings privileged—(1) Except in the case of proceedings for an offence against the Official Secrets Act 1951,—

(a) No proceedings, civil or criminal, shall lie against the Commissioner, or against any person holding any office or appointment under the Commissioner, for anything he may do or report or say in the course of the exercise or intended exercise of his functions under this Act, unless it is shown that he acted in bad faith:

(b) The Commissioner, and any such person as aforesaid, shall not be called to give evidence in any Court, or in any proceedings of a judicial nature, in respect of anything coming to his knowledge in the exercise of his functions.

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

(3) For the purposes of clause 5 of the First Schedule to the Defamation Act 1954, any report made by the Commissioner under this Act shall be deemed to be an official report made by a person holding an inquiry under the authority of the legislature of New Zealand.

Miscellaneous Provisions

23. Power of entry on premises—(1) For the purposes of this Act, but subject to the provisions of this section, the Commissioner may at any time enter upon any premises occupied by any of the Departments or organisations named in the Schedule to this Act and inspect the premises and, subject to the provisions of sections 16 and 17 of this Act, carry out therein any investigation that is within his jurisdiction.

(2) Before entering upon any such premises the Commissioner shall notify the Permanent Head of the Department or, as the case may require, the organisation by which the premises are occupied.

(3) The Attorney-General may from time to time by notice to the Commissioner exclude the application of subsection (1) of this section to any specified premises or class of premises, if he is satisfied that the exercise of the power conferred by this section might prejudice the security, defence, or international relations of New Zealand, including New Zealand's relations with the Government of any other country or with any international organisation.

24. Delegation of powers by Commissioner—(1) With the prior approval in each case of the Prime Minister, the Commissioner may from time to time, by writing under his hand, delegate to any person holding any office under him any of his powers under this Act, except this power of delegation and the power to make any report under this Act.

(2) Any delegation under this section may be made to a specified person or to the holder for the time being of a specified office or to the holders of offices of a specified class.

(3) Every delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Commissioner.

(4) Any such delegation may be made subject to such restrictions and conditions as the Commissioner thinks fit, and may be made either generally or in relation to any particular case or class of cases.

(5) Until any such delegation is revoked, it shall continue in force according to its tenor. In the event of the Commissioner by whom it was made ceasing to hold office, it shall continue to have effect as if made by his successor.

(6) Any person purporting to exercise any power of the Commissioner by virtue of a delegation under this section shall, when required to do so, produce evidence of his authority to exercise the power.

25. Annual report—Without limiting his right to report at any other time, but subject to the provisions of subsection (6) of section 19 of this Act and to any rules for the guidance of the Commissioner made by the House of Representatives and for the time being in force, the Commissioner shall in each year make a report to Parliament on the exercise of his functions under this Act.

26. Offences—Every person commits an offence against this Act and is liable on summary conviction to a fine not exceeding one hundred dollars who—

- (a) Without lawful justification or excuse, wilfully obstructs, hinders, or resists the Commissioner or any other person in the exercise of his powers under this Act;
- (b) Without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Commissioner or any other person under this Act;
- (c) Wilfully makes any false statement to or misleads or attempts to mislead the Commissioner or any other person in the exercise of his powers under this Act.

27. Money to be appropriated by Parliament for purposes of this Act—Except as otherwise provided in this Act, all salaries and allowances and other expenditure payable or incurred under or in the administration of this Act shall be payable out of money to be appropriated by Parliament for the purpose.

28. Power to amend Schedule by Order in Council on abolition or creation of Department, etc.—Where any Department or organisation named in the Schedule to this Act is abolished, or its name is altered, or where any new Department of State is created, the Governor-General may by Order in Council make such amendments to the said Schedule as may be necessary to give effect to the abolition or alteration, or to include the name of the new Department therein.

29. Savings—The provisions of this Act are in addition to the provisions of any other enactment or any rule of law under which any remedy or right of appeal or objection is provided for any person or any procedure is provided for the inquiry into or investigation of any matter, and nothing in this Act shall limit or affect any such remedy or right of appeal or objection or procedure as aforesaid.

1962, No. 10 *Parliamentary Commissioner (Ombudsman)*

Section 11 (1).

SCHEDULE

DEPARTMENTS AND ORGANISATIONS TO WHICH THIS ACT APPLIES

Part I—Government Departments

* * * * *	(Amended, Act No. 67, 1964, s. 26, (1)).
* * * * *	(Amended, Act No. 67, 1964, s. 26 (1)).
The Audit Department.	
The Crown Law Office.	
The Customs Department.	
* * * * *	(Amended, Act No. 3, 1967, s. 3 (5)).
* * * * *	(Added, Act No. 68, 1964, s. 33 (3); Amended, Act No. 39, 1968, s. 16 (1)).
The Department of Education.	
* * * * *	(Amended, Act No. 78, 1969, s. 2 (2)).
The Department of Health.	
* * * * *	(Amended, Act No. 107, 1972, s. 2 (5)).
The Department of Internal Affairs.	
* * * * *	(Amended, Act No. 14, 1968, s. 8 (1)).
The Department of Justice.	
The Department of Labour.	
The Department of Lands and Survey.	
* * * * *	(Amended, Act No. 14, 1968, s. 8 (1)).
The Department of Scientific and Industrial Research.	
The Department of Social Welfare.	(Added, Act No. 60, 1971, s. 28.)
The Department of Statistics.	
The Department of Trade and Industry.	(Added, Act No. 107, 1972, s. 2 (5)).
The Export Guarantee Office.	(Added, Act No. 50, 1964, s. 24).
The Government Life Insurance Office.	
The Government Printing Office.	
The Inland Revenue Department.	
The Law Drafting Office.	
The Legislative Department.	
The Maori and Inland Affairs Department.	(Added, Act No. 14, 1968, s. 8 (1)).
The Maori Trust Office.	
* * * * *	(Amended, Act No. 4, 1972, s. 6 (1)).
The Mines Department.	
The Ministry of Agriculture and Fisheries.	(Added, Act No. 3, 1972, s. 3 (5)).
The Ministry of Defence.	(Added, Act No. 67, 1964, s. 26 (1)).
The Ministry of Energy Resources.	(Added, Act No. 12, 1972, s. 13).
The Ministry of Foreign Affairs.	(Added, Act No. 18, 1969, s. 2 (2)).
The Ministry of Transport.	(Added, Act No. 39, 1968, s. 16 (1)).
The Ministry of Works.	
* * * * *	(Amended, Act No. 67, 1964, s. 26 (1)).
The New Zealand Electricity Department.	
The New Zealand Forest Service.	
The New Zealand Government Railway Department.	
The Office of the Public Service Commission.	

Parliamentary Commissioner (Ombudsman) 1962, No. 10

SCHEDULE—continued

DEPARTMENTS AND ORGANISATIONS TO WHICH THIS ACT APPLIES—cont.

Part I—Government Departments—continued

The Police Department.	
The Post Office.	
The Prime Minister's Department.	
The Public Trust Office.	
* * * * *	(Amended, Act No. 60, 1971, s. 28).
The State Advances Corporation of New Zealand.	
The State Insurance Office.	
* * * * *	(Amended, Act No. 38, 1963, s. 36 (4)).
The Tourist and Publicity Department.	
* * * * *	(Amended, Act No. 39, 1968, s. 16 (1)).
The Treasury.	
The Valuation Department.	

Part II

The Accident Compensation Commission.	(Added, Act No. 43, 1972, s. 184).
* * * * *	(Amended, Act No. 67, 1964, s. 26 (4); Act No. 52, 1971, s. 89 (1)).
* * * * *	(Amended, Act No. 67, 1964, s. 26 (3); Act No. 52, 1971, s. 89 (1)).
* * * * *	(Amended, Act No. 47, 1965, s. 45 (1)).
The Board of Maori Affairs.	
The Decimal Currency Board.	(Added, Act No. 124, 1965, s. 10).
The Earthquake and War Damage Commission.	
The Government Stores Board.	
The Government Superannuation Board.	
The Land Settlement Board.	
The Maori Purposes Fund Board.	
The National Parks Authority.	
The National Provident Fund Board.	
The National Roads Board.	
The National Water and Soil Conservation Authority.	(Added, Act No. 135, 1967, s. 39).
* * * * *	(Amended, Act No. 67, 1964, s. 26 (2); Act No. 62, 1971, s. 89 (4)).
The New Zealand Army.	
The New Zealand Defence Council.	(Added, Act No. 67, 1964, s. 26 (1)).
The New Zealand Naval Forces.	
The Police.	
The Public Service Commission.	
The Rehabilitation Board.	
The Royal New Zealand Air Force.	
The Social Security Commission.	
The Soil Conservation and Rivers Control Council.	
The State Fire Insurance Board.	
The Water Resources Council.	(Added, Act No. 154, 1971, s. 23).

Part III

Education Boards.	(Added, Act No. 138, 1968, s. 2 (6)).
Hospital Boards.	(Added, Act No. 138, 1968, s. 2 (6)).

This Act is administered in the Legislative Department.



Parliamentary Commissioner Act 1967

1967 CHAPTER 13

An Act to make provision for the appointment and functions of a Parliamentary Commissioner for the investigation of administrative action taken on behalf of the Crown, and for purposes connected therewith.

[22nd March 1967]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

The Parliamentary Commissioner for Administration

Appointment
and tenure
of office.

1.—(1) For the purpose of conducting investigations in accordance with the following provisions of this Act there shall be appointed a Commissioner, to be known as the Parliamentary Commissioner for Administration.

(2) Her Majesty may by Letters Patent from time to time appoint a person to be the Commissioner, and any person so appointed shall (subject to subsection (3) of this section) hold office during good behaviour.

(3) A person appointed to be the Commissioner may be relieved of office by Her Majesty at his own request, or may be removed from office by Her Majesty in consequence of Addresses from both Houses of Parliament, and shall in any case vacate office on completing the year of service in which he attains the age of sixty-five years.

(4) The Commissioner shall not be a member of the House of Commons, or of the Senate or House of Commons of Northern Ireland, and accordingly—

1957 c. 20.

(a) in Part III of Schedule 1 to the House of Commons Disqualification Act 1957 there shall be inserted, at the appropriate point in alphabetical order, the entry "The Parliamentary Commissioner for Administration"; and

(b) the like amendment shall be made in the Part substituted for the said Part III by Schedule 3 to that Act in its application to the Senate and House of Commons of Northern Ireland.

[Repealed,
1971, c. 62,
s. 18 (2).]

(5) * * * * *

Salary and
pension.

2.—(1) There shall be paid to the holder of the office of Commissioner a salary at the rate of (subject to subsection (2) of this section) of £8,600 a year.

(2) The House of Commons may from time to time by resolution increase the rate of the salary payable under this section, and any such resolution may take effect from the date on which it is passed or such other date as may be specified therein.

(3) The provisions of Schedule 1 to this Act shall have effect with respect to the pensions and other benefits to be paid to or in respect of persons who have held office as Commissioner.

(4) The salary payable to a holder of the office of Commissioner shall be abated by the amount of any pension payable to him in respect of any public office in the United Kingdom or elsewhere to which he had previously been appointed or elected; but any such abatement shall be disregarded in computing that salary for the purposes of the said Schedule 1.

(5) Any salary, pension or other benefit payable by virtue of this section shall be charged on and issued out of the Consolidated Fund.

3.—(1) The Commissioner may appoint such officers as he may determine with the approval of the Treasury as to numbers and conditions of service. Administrative provisions.

(2) Any function of the Commissioner under this Act may be performed by any officer of the Commissioner authorised for that purpose by the Commissioner.

(3) The expenses of the Commissioner under this Act, to such amount as may be sanctioned by the Treasury, shall be defrayed out of moneys provided by Parliament.

Investigation by the Commissioner

4.—(1) Subject to the provisions of this section and to the notes contained in Schedule 2 to this Act, this Act applies to the government departments and other authorities listed in that Schedule. Departments and authorities subject to investigation.

(2) Her Majesty may by Order in Council amend the said Schedule 2 by the alteration of any entry or note, the removal of any entry or note or the insertion of any additional entry or note; but nothing in this subsection authorises the inclusion in that Schedule of any body or authority not being a department or other body or authority whose functions are exercised on behalf of the Crown.

(3) Any statutory instrument made by virtue of subsection (2) of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Any reference in this Act to a government department or other authority to which this Act applies includes a reference to the Ministers, members or officers of that department or authority.

5.—(1) Subject to the provisions of this section, the Commissioner may investigate any action taken by or on behalf of a government department or other authority to which this Act applies, being action taken in the exercise of administrative functions of that department or authority, in any case where— Matters subject to investigation.

- (a) a written complaint is duly made to a member of the House of Commons by a member of the public who claims to have sustained injustice in consequence of maladministration in connection with the action so taken; and
- (b) the complaint is referred to the Commissioner, with the consent of the person who made it, by a member of that House with a request to conduct an investigation thereon.

CH. 13 *Parliamentary Commissioner Act 1967*

(2) Except as hereinafter provided, the Commissioner shall not conduct an investigation under this Act in respect of any of the following matters, that is to say—

- (a) any action in respect of which the person aggrieved has or had a right of appeal, reference or review to or before a tribunal constituted by or under any enactment or by virtue of Her Majesty's prerogative;
- (b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law:

Provided that the Commissioner may conduct an investigation notwithstanding that the person aggrieved has or had such a right or remedy if satisfied that in the particular circumstances it is not reasonable to expect him to resort or have resorted to it.

(3) Without prejudice to subsection (2) of this section, the Commissioner shall not conduct an investigation under this Act in respect of any such action or matter as is described in Schedule 3 to this Act.

(4) Her Majesty may by Order in Council amend the said Schedule 3 so as to exclude from the provisions of that Schedule such actions or matters as may be described in the Order; and any statutory instrument made by virtue of this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) In determining whether to initiate, continue or discontinue an investigation under this Act, the Commissioner shall, subject to the foregoing provisions of this section, act in accordance with his own discretion; and any question whether a complaint is duly made under this Act shall be determined by the Commissioner.

Provisions
relating to
complaints.

6.—(1) A complaint under this Act may be made by any individual, or by any body of persons whether incorporated or not, not being—

- (a) a local authority or other authority or body constituted for purposes of the public service or of local government or for the purposes of carrying on under national ownership any industry or undertaking or part of an industry or undertaking;
- (b) any other authority or body whose members are appointed by Her Majesty or any Minister of the Crown or government department, or whose revenues consist wholly or mainly of moneys provided by Parliament.

(2) Where the person by whom a complaint might have been made under the foregoing provisions of this Act has died or is for any reason unable to act for himself, the complaint may be made by his personal representative or by a member of his family or other individual suitable to represent him; but except as aforesaid a complaint shall not be entertained under this Act unless made by the person aggrieved himself.

(3) A complaint shall not be entertained under this Act unless it is made to a member of the House of Commons not later than twelve months from the day on which the person aggrieved first had notice of the matters alleged in the complaint; but the Commissioner may conduct an investigation pursuant to a complaint not made within that period if he considers that there are special circumstances which make it proper to do so.

(4) A complaint shall not be entertained under this Act unless the person aggrieved is resident in the United Kingdom (or, if he is dead, was so resident at the time of his death) or the complaint relates to action taken in relation to him while he was present in the United Kingdom or on an installation in a designated area within the meaning of the

Continental Shelf Act 1964 or on a ship registered in the United Kingdom or an aircraft so registered, or in relation to rights or obligations which accrued or arose in the United Kingdom or on such an installation, ship or aircraft. 1964 c. 29.

7.—(1) Where the Commissioner proposes to conduct an investigation pursuant to a complaint under this Act, he shall afford to the principal officer of the department or authority concerned, and to any other person who is alleged in the complaint to have taken or authorised the action complained of, an opportunity to comment on any allegations contained in the complaint. Procedure in respect of investigations.

(2) Every such investigation shall be conducted in private, but except as aforesaid the procedure for conducting an investigation shall be such as the Commissioner considers appropriate in the circumstances of the case; and without prejudice to the generality of the foregoing provision the Commissioner may obtain information from such persons and in such manner, and make such inquiries, as he thinks fit, and may determine whether any person may be represented, by counsel or solicitor or otherwise, in the investigation.

(3) The Commissioner may, if he thinks fit, pay to the person by whom the complaint was made and to any other person who attends or furnishes information for the purposes of an investigation under this Act—

(a) sums in respect of expenses properly incurred by them;

(b) allowances by way of compensation for the loss of their time, in accordance with such scales and subject to such conditions as may be determined by the Treasury.

(4) The conduct of an investigation under this Act shall not affect any action taken by the department or authority concerned, or any power or duty of that department or authority to take further action with respect to any matters subject to the investigation; but where the person aggrieved has been removed from the United Kingdom under any Order in force under the Aliens Restriction Acts 1914 and 1919 or under the Commonwealth Immigrants Act 1962, he shall, if the Commissioner so directs, be permitted to re-enter and remain in the United Kingdom, subject to such conditions as the Secretary of State may direct, for the purposes of the investigation. 1962 c. 21.

8.—(1) For the purposes of an investigation under this Act the Commissioner may require any Minister, officer or member of the department or authority concerned or any other person who in his opinion is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document. Evidence.

(2) For the purposes of any such investigation the Commissioner shall have the same powers as the Court in respect of the attendance and examination of witnesses (including the administration of oaths or affirmations and the examination of witnesses abroad) and in respect of the production of documents.

(3) No obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to persons in Her Majesty's service, whether imposed by any enactment or by any rule of law, shall apply to the disclosure of information for the purposes of an investigation under this Act; and the Crown shall not be entitled in relation to any such investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.

CH. 13 *Parliamentary Commissioner Act 1967*

(4) No person shall be required or authorised by virtue of this Act to furnish any information or answer any question relating to proceedings of the Cabinet or of any committee of the Cabinet or to produce so much of any document as relates to such proceedings; and for the purposes of this subsection a certificate issued by the Secretary of the Cabinet with the approval of the Prime Minister and certifying that any information, question, document or part of a document so relates shall be conclusive.

[See amendments, 1968, c. 64, ss. 16, 17.]

(5) Subject to subsection (3) of this section, no person shall be compelled for the purposes of an investigation under this Act to give any evidence or produce any document which he could not be compelled to give or produce in proceedings before the Court.

Obstruction and contempt.

9.—(1) If any person without lawful excuse obstructs the Commissioner or any officer of the Commissioner in the performance of his function under this Act, or is guilty of any act or omission in relation to an investigation under this Act which, if that investigation were a proceeding in the Court, would constitute contempt of court, the Commissioner may certify the offence to the Court.

(2) Where an offence is certified under this section, the Court may inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, deal with him in any manner in which the Court could deal with him if he had committed the like offence in relation to the Court.

(3) Nothing in this section shall be construed as applying to the taking of any such action as is mentioned in subsection (4) of section 7 of this Act.

Reports by Commissioner.

10.—(1) In any case where the Commissioner conducts an investigation under this Act or decides not to conduct such an investigation, he shall send to the member of the House of Commons by whom the request for investigation was made (or if he is no longer a member of that House, to such member of that House as the Commissioner thinks appropriate) a report of the results of the investigation or, as the case may be, a statement of his reasons for not conducting an investigation.

(2) In any case where the Commissioner conducts an investigation under this Act, he shall also send a report of the results of the investigation to the principal officer of the department or authority concerned and to any other person who is alleged in the relevant complaint to have taken or authorized the action complained of.

(3) If, after conducting an investigation under this Act, it appears to the Commissioner that injustice has been caused to the person aggrieved in consequence of maladministration and that the injustice has not been, or will not be, remedied, he may, if he thinks fit, lay before each House of Parliament a special report upon the case.

(4) The Commissioner shall annually lay before each House of Parliament a general report on the performance of his functions under this Act and may from time to time lay before each House of Parliament such other reports with respect to those functions as he thinks fit.

(5) For the purposes of the law of defamation, any such publication as is hereinafter mentioned shall be absolutely privileged, that is to say—

(a) the publication of any matter by the Commissioner in making a report to either House of Parliament for the purposes of this Act;

- (b) the publication of any matter by a member of the House of Commons in communicating with the Commissioner or his officers for those purposes or by the Commissioner or his officers in communicating with such a member for those purposes;
- (c) the publication by such a member to the person by whom a complaint was made under this Act of a report or statement sent to the member in respect of the complaint in pursuance of subsection (1) of this section;
- (d) the publication by the Commissioner to such a person as is mentioned in subsection (2) of this section of a report sent to that person in pursuance of that subsection.

11.—(1) It is hereby declared that the Commissioner and his officers hold office under Her Majesty within the meaning of the Official Secrets Act 1911.

Provision for
secrecy of
information.
1911 c. 28.

(2) Information obtained by the Commissioner or his officers in the course of or for the purposes of an investigation under this Act shall not be disclosed except—

- (a) for the purposes of the investigation and of any report to be made thereon under this Act;
- (b) for the purposes of any proceedings for an offence under the Official Secrets Acts 1911 to 1939 alleged to have been committed in respect of information obtained by the Commissioner or any of his officers by virtue of this Act or for an offence of perjury alleged to have been committed in the course of an investigation under this Act or for the purposes of an inquiry with a view to the taking of such proceedings; or
- (c) for the purposes of any proceedings under section 9 of this Act;

and the Commissioner and his officers shall not be called upon to give evidence in any proceedings (other than such proceedings as aforesaid) of matters coming to his or their knowledge in the course of an investigation under this Act.

(3) A Minister of the Crown may give notice in writing to the Commissioner, with respect to any document or information specified in the notice, or any class of documents or information so specified, that in the opinion of the Minister the disclosure of that document or information, or of documents or information of that class, would be prejudicial to the safety of the State or otherwise contrary to the public interest; and where such a notice is given nothing in this Act shall be construed as authorising or requiring the Commissioner or any officer of the Commissioner to communicate to any person or for any purpose any document or information specified in the notice, or any document or information of a class so specified.

(4) The references in this section to a Minister of the Crown include references to the Commissioners of Customs and Excise and the Commissioners of Inland Revenue.

Supplemental

12.—(1) In this Act the following expressions have the meanings hereby respectively assigned to them, that is to say—

Interpretation.

“action” includes failure to act, and other expressions connoting action shall be construed accordingly;

“the Commissioner” means the Parliamentary Commissioner for Administration;

CH. 13 *Parliamentary Commissioner Act 1967*

"the Court" means, in relation to England and Wales the High Court, in relation to Scotland the Court of Session, and in relation to Northern Ireland the High Court of Northern Ireland;

"enactment" includes an enactment of the Parliament of Northern Ireland, and any instrument made by virtue of an enactment;

"officer" includes employee;

"person aggrieved" means the person who claims or is alleged to have sustained such injustice as is mentioned in section 5 (1) (a) of this Act;

"tribunal" includes the person constituting a tribunal consisting of one person.

(2) References in this Act to any enactment are references to that enactment as amended or extended by or under any other enactment.

(3) It is hereby declared that nothing in this Act authorises or requires the Commissioner to question the merits of a decision taken without maladministration by a government department or other authority in the exercise of a discretion vested in that department or authority.

Application
to Northern
Ireland.

13.—(1) Subject to the provisions of this section, this Act extends to Northern Ireland.

(2) Nothing in this section shall be construed as authorising the inclusion among the departments and authorities to which this Act applies of any department of the Government of Northern Ireland, or any authority established by or with the authority of the Parliament of Northern Ireland; but this Act shall apply to any such department or authority, in relation to any action taken by them as agent for a department or authority to which this Act applies, as it applies to the last-mentioned department or authority.

(3) In section 6 of this Act the references to a Minister of the Crown or government department and to Parliament shall include references to a Minister or department of the Government of Northern Ireland and to the Parliament of Northern Ireland.

(4) In section 8 of this Act the references to the Cabinet shall include references to the Cabinet of Northern Ireland, and in relation to that Cabinet for the reference to the Prime Minister there shall be substituted a reference to the Prime Minister of Northern Ireland.

Short title
and com-
mencement.

14.—(1) This Act may be cited as the Parliamentary Commissioner Act 1967.

(2) This Act shall come into force on such date as Her Majesty may by Order in Council appoint.

(3) A complaint under this Act may be made in respect of matters which arose before the commencement of this Act; and for the purposes of subsection (3) of section 6 of this Act any time elapsing between the date of the passing and the date of the commencement of this Act (but not any time before the first of those dates) shall be disregarded.

SCHEDULES

SCHEDULE 1

Section 2.

PENSIONS AND OTHER BENEFITS

1. A person appointed to be the Commissioner may, within such period and in such manner as may be prescribed by regulations under this Schedule, elect between the statutory schemes of pensions and other benefits applicable respectively to the judicial offices listed in Schedule 1 to the Judicial Pensions Act 1959 and to the civil service of the State (in this Schedule referred to respectively as the judicial scheme and the civil service scheme), and if he does not so elect shall be treated as having elected for the civil service scheme. ^{1959 c. 9} (8 & 9 Eliz. 2).

2. Where a person so appointed elects for the judicial scheme, a pension may be granted to him on ceasing to hold office as Commissioner if he has held that office for not less than five years and either—

- (a) has attained the age of sixty-five years; or
- (b) is disabled by permanent infirmity for the performance of the duties of that office;

and (subject to regulations under this Schedule) the provisions of the Judicial Pensions Act 1959, other than section 2 (retiring age), and of sections 2 to 8 of the Administration of Justice (Pensions) Act 1950 (lump sums and widows and dependants pensions), shall apply in relation to him and his service as Commissioner as they apply in relation to the holders of judicial offices listed in Schedule 1 to the said Act of 1959 and service in any such office, this paragraph being the relevant pension enactment for the purposes of that Act. ^{1950 c. 11} (14 & 15 Geo. 6).

3. Where a person so appointed elects for the civil service scheme, the Superannuation Act 1965 shall (subject to regulations under this Schedule) apply as if his service as Commissioner were service in an established capacity in the civil service of the State. ^{1965 c. 74.}

4. The Treasury may by statutory instrument make regulations for purposes supplementary to the foregoing provisions of this Schedule; and such regulations may, without prejudice to section 38 of the Superannuation Act 1965 (employment in more than one public office), make special provision with respect to the pensions and other benefits payable to or in respect of persons to whom the judicial scheme or the civil service scheme has applied or applies in respect of any service other than service as Commissioner, including provision—

- (a) for aggregating other service falling within the judicial scheme with service as Commissioner, or service as Commissioner with such other service, for the purpose of determining qualification for or the amount of benefit under that scheme;
- (b) for increasing the amount of the benefit payable under the judicial scheme, in the case of a person to whom that scheme applied in respect of an office held by him before appointment as Commissioner, up to the amount which would have been payable thereunder if he had retired from that office on the ground of permanent infirmity immediately before his appointment; ^{SCR. 1.}
- (c) for limiting the amount of benefit payable under the judicial scheme, in the case of a person to whom the civil service scheme applied in respect of service before his appointment as Commissioner, by reference to the difference between the amount of the benefit granted in his case under the civil service scheme and the amount which would be payable under the judicial scheme if that service had been service as Commissioner.

CH. 13 *Parliamentary Commissioner Act 1967*

5. Any statutory instrument made by virtue of this Schedule shall be subject to annulment in pursuance of a resolution of the House of Commons.

Section 4.

SCHEDULE 2

DEPARTMENTS AND AUTHORITIES SUBJECT TO INVESTIGATION

Ministry of Agriculture, Fisheries and Food.	
Charity Commission.	
Civil Service Commission.	
Commonwealth Office.	
Crown Estate Office.	
Customs and Excise.	
Decimal Currency Board.	(Added, S.I., 1968, No. 1859).
Ministry of Defence.	
Department of Economic Affairs.	
Department of Education and Science.	
Export Credits Guarantee Department	
Foreign Office.	
Ministry of Health.	
Home Office.	
* * * * *	(Amended, S.I., 1970, No. 1681).
Central Office of Information.	
Inland Revenue.	
Ministry of Labour.	
* * * * *	(Amended, 1971, c. 18, s. 6 (2)).
Land Registry.	
Lord Chancellor's Department.	
Lord President of the Council's Office.	
National Debt Office.	
Department of National Savings.	(Added, 1969, c. 48, s. 93 (3)).
* * * * *	(Amended, S.I., 1970, No. 1682).
Ministry of Posts and Telecommunications.	(Added, 1969, c. 48, s. 2 (6)).
* * * * *	(Amended, 1969, c. 48, s. 2 (6)).
* * * * *	(Amended, S.I., 1969, No. 1498).
* * * * *	(Amended, S.I., 1970, No. 1681).
Public Record Office.	
Public Trustee.	
Department of the Registrars of Scotland.	
General Register Office.	
General Register Office, Scotland.	
Registry of Friendly Societies.	
Royal Mint.	
Scottish Office.	
Scottish Record Office.	
Ministry of Social Security.	
Social Survey.	
Stationery Office.	
Ministry of Technology.	
Board of Trade.	
Department of Trade and Industry.	(Added, S.I., 1970, No. 1537).
* * * * *	(Amended, S.I., 1970, No. 1681).
Treasury.	
Treasury Solicitor.	
Welsh Office.	

NOTES

1. The reference to the Ministry of Defence includes the Defence Council, the Admiralty Board, the Army Board and the Air Force Board.

2. The reference to the Lord President of the Council's Office does not include the Privy Council Office.

3. * * * * *

4. The reference to the Registry of Friendly Societies includes the Central Office, the Office of the Assistant Registrar of Friendly Societies for Scotland and the Office of the Chief Registrar and the Industrial Assurance Commissioner.

5. * * * * *

6. The reference to the Treasury does not include the Cabinet Office, but subject to that includes the subordinate departments of the Treasury and the office of any Minister whose expenses are defrayed out of moneys provided by Parliament for the service of the Treasury.

7. The reference to the Treasury Solicitor does not include a reference to Her Majesty's Procurator General.

8. In relation to any function exercisable by a department or authority for the time being listed in this Schedule which was previously exercisable on behalf of the Crown by a department or authority not so listed, the reference to the department or authority so listed includes a reference to the other department or authority.

SCHEDULE 3

Section 5.

MATTERS NOT SUBJECT TO INVESTIGATION

1. Action taken in matters certified by a Secretary of State or other Minister of the Crown to affect relations or dealings between the Government of the United Kingdom and any other Government or any international organisation of States or Governments.

2. Action taken, in any country or territory outside the United Kingdom, by or on behalf of any officer representing or acting under the authority of Her Majesty in respect of the United Kingdom, or any other officer of the Government of the United Kingdom.

3. Action taken in connection with the administration of the government of any country or territory outside the United Kingdom which forms part of Her Majesty's dominions or in which Her Majesty has jurisdiction. SCH. 3

4. Action taken by the Secretary of State under the Extradition Act 1870 or the Fugitive Offenders Act 1881. 1870 c. 52.
1881 c. 69.

5. Action taken by or with the authority of the Secretary of State for the purposes of investigating crime or of protecting the security of the State, including action so taken with respect to passports.

6. The commencement or conduct of civil or criminal proceedings before any court of law in the United Kingdom, of proceedings at any place under the Naval Discipline Act 1957, the Army Act 1955 or the Air Force Act 1955, or of proceedings before any international court or tribunal. 1957 c. 53.
1955 c. 18.
1955 c. 19.

CH. 13 *Parliamentary Commissioner Act 1967*

7. Any exercise of the prerogative of mercy or of the power of a Secretary of State to make a reference in respect of any person to the Court of Appeal, the High Court of Judicature or the Courts-Martial Appeal Court.

[See amendments, 1972, c. 58, s. 64.]

8. Action taken on behalf of the Minister of Health or the Secretary of State by a Regional Hospital Board, Board of Governors of a Teaching Hospital, Hospital Management Committee or Board of Management, or by the Public Health Laboratory Service Board.

9. Action taken in matters relating to contractual or other commercial transactions, whether within the United Kingdom or elsewhere, being transactions of a government department or authority to which this Act applies or of any such authority or body as is mentioned in paragraph (a) or (b) of subsection (1) of section 6 of this Act and not being transactions for or relating to—

- (a) the acquisition of land compulsorily or in circumstances in which it could be acquired compulsorily;
- (b) the disposal as surplus of land acquired compulsorily or in such circumstances as aforesaid.

10. Action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters, in relation to—

- (a) service in any of the armed forces of the Crown, including reserve and auxiliary and cadet forces;
- (b) service in any office or employment under the Crown or under any authority listed in Schedule 2 to this Act; or
- (c) service in any office or employment, or under any contract for services, in respect of which power to take action, or to determine or approve the action to be taken, in such matters is vested in Her Majesty, any Minister of the Crown or any such authority as aforesaid.

11. The grant of honours, awards or privileges within the gift of the Crown, including the grant of Royal Charters.

WESTERN AUSTRALIA.

PARLIAMENTARY COMMISSIONER.No. 64 of 1971.

AN ACT to provide for the appointment of a Parliamentary Commissioner for Administrative Investigations for the investigation of administrative action taken by or on behalf of certain government departments and other authorities and for incidental purposes.

[Assented to 22nd December, 1971.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Parliamentary Commissioner Act, 1971*. Short title.
2. This Act shall come into operation on a date to be fixed by Proclamation. Commencement.
3. This Act is arranged as follows— Arrangement of Act.

PART I.—PRELIMINARY. Ss. 1–4.

PART II.—THE PARLIAMENTARY COMMISSIONER FOR ADMINISTRATIVE INVESTIGATIONS. Ss. 5–12.

PART III.—JURISDICTION AND FUNCTIONS OF THE COMMISSIONER.

Division 1—Extent of jurisdiction. Ss. 13–14.

Division 2—Initiation of investigations. Ss. 15–18.

Division 3—Conduct of investigations. Ss. 19–24.

Division 4—Action on investigations. Ss. 25–26.

Division 5—Annual and other reports of the Commissioner. Ss. 27–28.

PART IV.—MISCELLANEOUS. Ss. 29–32.

4. In this Act, unless the contrary intention appears— Definitions.
 - “Acting Commissioner” means the Acting Parliamentary Commissioner for Administrative Investigations appointed under this Act;
 - “appropriate authority”, in relation to an investigation under this Act, means the government department or other authority by which or on behalf of which the action that is the subject of such investigation was taken;
 - “Commissioner” means the Parliamentary Commissioner for Administrative Investigations appointed under this Act;
 - “department of the Public Service” means any department constituted by or under the Public Service Act, 1904, or constituted by or under any other enactment as a department within the meaning of that Act;
 - “officer of the Commissioner” means an officer appointed under subsection (1) of section 9;

- "officer of the Public Service" means a person employed in the Public Service as that expression is defined in the Public Service Act, 1904;
- "permanent head", in relation to a department of the Public Service, means the permanent head thereof for the purposes of the Public Service Act, 1904;
- "person aggrieved", in relation to a complaint under this Act, means the person who appears from the complaint to be the person personally affected by the action to which the complaint relates;
- "principal officer" means, in relation to—
- (a) a department of the Public Service or similar organization, the permanent head or other principal officer thereof; and
 - (b) any other authority, the president, chairman, or other principal or presiding member thereof or, if the authority is constituted of a single person, that person;
- "responsible Minister" means, in relation to action taken by any government department or other authority, the Minister charged with the administration of that department or the enactment in relation to the functions conferred by, or arising under which, the action was taken;
- "section" means a section of this Act;
- "tribunal" includes the person constituting a tribunal consisting of one person.

PART II.—THE PARLIAMENTARY COMMISSIONER FOR ADMINISTRATIVE INVESTIGATIONS.

**Appoint-
ment, etc.,
of Commis-
sioner.**

5. (1) For the purpose of conducting investigations in accordance with this Act there shall be appointed a Commissioner, to be known as the Parliamentary Commissioner for Administrative Investigations.

(2) The Commissioner shall be appointed by the Governor, and shall hold office in accordance with the provisions of this Act.

(3) The Commissioner shall be appointed to hold office for a term of five years, but he may, at any time, by writing under his hand, addressed to the Governor, resign his office, and on receipt of his resignation by the Governor, he shall vacate office as Commissioner.

(4) The Commissioner shall vacate his office on completing the year of service in which he attains the age of sixty-five years.

(5) The Commissioner shall be paid a salary at such rate as the Governor may determine; and the rate of that salary shall not, without the consent of the Commissioner, be reduced during his term of office.

(6) The salary payable to the holder of the office of Commissioner under this section shall be paid out of the Consolidated Revenue Fund which, to the necessary extent, is hereby appropriated accordingly.

(7) The Commissioner is entitled to such leave of absence and such travelling and other allowances as the Governor determines.

(8) No person who is or has been within the preceding three years a member of the Parliament of the Commonwealth or any State shall be appointed as Commissioner, and if the Commissioner is nominated for election for any of such Houses of Parliament he shall vacate office as Commissioner.

1971.]

Parliamentary Commissioner. [No. 64.]

(9) The Commissioner shall not, except in so far as he is authorised so to do by resolutions of both Houses of Parliament, hold any office of profit or trust (other than his office as Commissioner) or engage in any occupation for reward outside the duties of his office, and if the Commissioner contravenes this subsection he shall be regarded, for the purposes of section 6, as being guilty of misconduct.

(10) Section 34 of the Interpretation Act, 1918 does not apply to the Office of Commissioner.

6. (1) The Commissioner may, at any time, be suspended or removed from his office by the Governor on addresses from both Houses of Parliament. Removal or suspension of Commissioner.

(2) Where the Governor is satisfied that the Commissioner—

- (a) is incapable of properly performing the duties of his office;
- (b) has shown himself incompetent properly to perform, or has neglected, those duties;
- (c) has applied to take, or has taken, advantage of any law relating to bankruptcy, or has compounded, or entered into any arrangement, with his creditors; or
- (d) has been guilty of misconduct,

he may suspend the Commissioner from his office.

(3) When the Commissioner has been suspended from his office under subsection (2) of this section he shall be restored to office unless—

- (a) a statement of the grounds of his suspension is laid before each House of Parliament during the first seven sitting days of that House following the suspension; and
- (b) each House of Parliament, during the session in which the statement is so laid, and within thirty sitting days of that statement being so laid, passes an address praying for his removal from his office.

7. (1) The Governor may appoint a person to act in the office of the Commissioner in such cases or in such circumstances as may be provided for under this section, and the person so appointed shall be known as the Acting Parliamentary Commissioner for Administrative Investigations. Acting Parliamentary Commissioner.

(2) In such cases or in such circumstances as may be specified in Rules of Parliament the Acting Commissioner may exercise the functions of the Commissioner, and anything done by the Acting Commissioner in so exercising those functions has the like effect as if it were done by the Commissioner.

(3) The Acting Commissioner is entitled to such remuneration, such travelling and such other allowances as the Governor may determine.

8. (1) Before entering upon the exercise of the duties of their respective offices the Commissioner and the Acting Commissioner shall each take an oath or affirmation that he will faithfully and impartially perform the duties of his office, and that he will not, except in accordance with this Act, divulge any information received by him under this Act. Oath of Commissioner and Acting Commissioner.
Cf. 55 Vict. No. 14.

(2) The oath or affirmation shall be administered by the Speaker of the Legislative Assembly.

Staff of the
Commissioner.

9. (1) The Governor may, on the recommendation of the Commissioner, appoint such officers as he considers necessary for the purpose of enabling the functions of the Commissioner properly to be carried out.

(2) Subject to this Act, the terms and conditions of service of officers of the Commissioner shall be such as the Governor determines.

Cf. 55 Vict.
No. 14.

(3) An officer of the Commissioner shall, before he commences his duties as such, take an oath or affirmation, to be administered by the Commissioner, that, except in accordance with this Act, he will not divulge any information received by him under this Act.

Supple-
mentary
provisions
as to Com-
missioner
and other
officers.

10. (1) The Public Service Act, 1904, does not apply to the Commissioner, the Acting Commissioner, or the officers of the Commissioner.

(2) The Commissioner and each officer of the Commissioner shall, for the purposes of the Superannuation and Family Benefits Act, 1938, be deemed to be an employee within the meaning of that Act.

(3) When an officer of the Public Service is appointed to the office of Commissioner or Acting Commissioner or becomes an officer of the Commissioner he is entitled to retain all his existing and accruing rights as if his service in that office or as such an officer as the case may be, were a continuation of his service as an officer of the Public Service.

(4) When a person ceases to hold the office of Commissioner or Acting Commissioner or to be an officer of the Commissioner and becomes an officer of the Public Service his service in that office or as an officer of the Commissioner shall be regarded as service in the Public Service for the purposes of determining his rights as an officer of the Public Service.

Delegation
of functions
of Commis-
sioner.

11. (1) In so far as he is authorised so to do by Rules of Parliament made under this Act, or a resolution of both Houses of Parliament, the Commissioner may, by instrument in writing under his hand, delegate to any officer of the Commissioner the exercise of any powers conferred on the Commissioner under this Act, except the powers conferred on him by this subsection and the power to make any report or recommendations under this Act.

(2) A delegation under this section may be made to a specified person or to the holder for the time being of a specified office or to the holders of specified offices.

(3) Every delegation under this section may be revoked or varied at any time by the Commissioner by instrument in writing under his hand, and no such delegation prevents the exercise of any power by the Commissioner.

(4) A delegation under this section may be made subject to conditions and restrictions, and may be made generally or in relation to any particular case or class of cases.

(5) When a Commissioner by whom a delegation is made dies, or ceases to hold, or is suspended from, office, the delegation shall be deemed to continue in force according to its tenor until it is revoked or varied under this section.

(6) Any act done by an officer of the Commissioner in the exercise of the powers delegated to him under this section has the like effect as if it were done by the Commissioner.

Rules of
Parliament.

12. (1) Rules of Parliament may be made for the guidance of the Commissioner in the exercise of his functions and for the other purposes for which Rules of Parliament may be made under this Act.

1971.]

Parliamentary Commissioner. [No. 64.]

(2) Subject to this Act the functions of the Commissioner shall be exercised in accordance with the Rules of Parliament made under this Act.

(3) The Rules of Parliament referred to in this section are rules that have been agreed upon by each House of Parliament in accordance with the rules and orders thereof.

(4) Rules of Parliament made under this Act shall be published in the *Government Gazette*.

(5) Section 36 of the Interpretation Act, 1918 does not apply to Rules of Parliament made under this Act.

PART III.—JURISDICTION AND FUNCTIONS OF THE COMMISSIONER.

Division 1.—Extent of jurisdiction.

13. (1) Subject to subsection (2) of this section, this Act applies to the government departments and other authorities specified in The Schedule to this Act, and to any other government departments or other authorities to which this Act is declared to apply by Rules of Parliament. Departments and authorities subject to investigation.

(2) This Act does not apply to—

- (a) the Supreme Court, The District Court of Western Australia or any other court of law;
- (b) a Judge of the Supreme Court or of The District Court of Western Australia or any person acting in the office, or executing the functions of the Master of the Supreme Court or of the Registrar of The District Court of Western Australia;
- (c) a commissioner of any court or a stipendiary magistrate;
- (d) a coroner;
- (e) the Auditor General; or
- (f) the Parliamentary Privileges Act, 1891.

(3) For the purposes of this Act—

- (a) references to a government department or authority shall be construed as including references to each of the members, officers, and employees thereof;
- (b) references to an officer of an authority shall be construed as including references to an officer appointed by that authority under any enactment; and
- (c) references to a member of an authority shall be construed as including references to the holder of any office created by an enactment who by virtue of his holding that office is a member of that authority.

(4) For the purposes of this Act, but subject to subsection (5) of this section, the following persons shall be deemed to constitute the officers and employees of a department of the Public Service, namely—

- (a) the permanent head of the department;
- (b) officers of the Public Service employed in the department;
- (c) officers appointed by the Governor under the provisions of any Act administered in that department; and

- (d) officers appointed by the Minister of the Crown administering the department or the permanent head of the department, being either—
- (i) officers who are so appointed under any enactment; or
 - (ii) officers whose remuneration as such is defrayed in whole or in part out of moneys provided by Parliament.

(5) A member of a board, committee, or similar body constituted by any enactment or by virtue of Her Majesty's prerogative, or of any tribunal so constituted, shall not, as such, be regarded, for the purposes of this Act, as an officer or employee of a department of the Public Service.

Matters
subject to
investigation.

14. (1) Subject to this Act, the Commissioner shall investigate any decision or recommendation made, or any act done or omitted, that relates to a matter of administration and affects any person or body of persons in his or its personal capacity in or by any government department or other authority to which this Act applies in the exercise of any power or function conferred by, or arising under, any enactment.

(2) References in this Act to the taking of any action shall be construed as including references to—

- (a) a failure or refusal to perform any act;
- (b) the formulation of any proposal or intention; and
- (c) the making of any recommendation (including a recommendation to a Minister of the Crown).

(3) This section does not authorise or require the Commissioner to investigate under this Act any decision made by Cabinet or by a Minister of the Crown or question the merits of any such decision.

(4) Subject to subsection (5) of this section, the Commissioner shall not conduct an investigation under this Act in respect of any of the following matters, that is to say—

- (a) any action in respect of which the person aggrieved has or had a right of appeal, reference, or review to or before a tribunal constituted under any enactment or by virtue of Her Majesty's prerogative; and
- (b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law.

(5) Notwithstanding anything in subsection (4) of this section, the Commissioner may conduct any investigation notwithstanding that the person aggrieved has or had such a right or remedy as is referred to in that subsection if he is satisfied that, in the particular circumstances, it is not reasonable to expect him to resort, or to have resorted, to it.

(6) The Commissioner shall not conduct an investigation into any action taken by a person acting as legal adviser or as counsel.

(7) The powers of the Commissioner under this Act in relation to any action taken by a government department or other authority may be exercised notwithstanding that that action was taken on behalf of, or in the exercise of any functions conferred on, an authority to which this Act does not apply, but nothing in this Act authorises or requires the Commissioner to question the merits of any decision made by such an authority.

(8) The powers of the Commissioner to investigate any action may, if in all the circumstances he considers it proper so to do, be exercised in respect of action taken before the coming into operation of this Act.

Division 2.—Initiation of investigations.

15. (1) Either House of Parliament, or any committee of either of those Houses, or a joint committee of both Houses of Parliament, may refer to the Commissioner, for investigation and report, any matter which that House or committee considers should be investigated by him. Investigations on reference by Parliament.

(2) On any matter being referred to him under this section the Commissioner shall, as soon as may be, carry out the investigation and submit his report thereon, in the case of a matter referred—

- (a) by a joint committee of both Houses of Parliament,—to the President of the Legislative Council and the Speaker of the Legislative Assembly;
- (b) by the Legislative Council, or a committee thereof,—to the President of the Legislative Council; or
- (c) by the Legislative Assembly, or a committee thereof,—to the Speaker of the Legislative Assembly.

(3) Subsection (4) of section 14 does not apply to a matter referred to the Commissioner under this section, but where, in relation to that matter any person aggrieved thereby has or had such a right or remedy as is referred to in that subsection, the Commissioner may refrain from commencing any investigation into that matter until he is satisfied that that right or remedy cannot or will not be exercised or sought or, if it has been exercised or sought, the proceedings thereon have been finally concluded or abandoned.

16. (1) Without prejudice to the provisions of section 15 any investigation that the Commissioner is authorised to conduct under this Act may be so conducted, either on his own motion or on a complaint made in accordance with section 17. Initiation of investigations in other cases.

(2) An investigation may be commenced as a consequence of a complaint notwithstanding that the complaint may not on its face be against any such action as is referred to in subsection (1) of section 14.

17. (1) Except as otherwise provided in this section a complaint under this Act shall be made in writing by any person or by any body of persons, whether incorporated or not. Complaints.

(2) When the person by whom a complaint might have been made under this Act dies or is for any reason unable to act for himself, the complaint may be made by his personal representative or by a member of his family or other individual suitable to represent him; but except as otherwise provided in this subsection a complaint shall not be entertained under this Act unless it is made by the person aggrieved himself.

(3) (a) The provisions of any enactment prohibiting or restricting or authorising or requiring the imposition of prohibitions or restrictions on communication to any other person do not apply to any communication made for the purpose of making a complaint under this Act.

(b) Any person having the right to keep in custody, or to detain in any place, a person who desires to make a complaint under this Act shall take all steps necessary to facilitate the making of the complaint.

(4) A person who contravenes subsection (3) of this section is guilty of an offence.

(5) Except where the Commissioner, in the special circumstances of a case, otherwise determines, a complaint shall not be entertained under this Act unless it is made not later than twelve months from the day on which the person aggrieved first had notice of the matters alleged in the complaint.

(6) Notwithstanding anything in subsection (5) of this section a complaint in respect of any action taken before the date of the coming into operation of this Act may be entertained if it is made within the six months following that date.

Refusal to investigate complaints.

18. (1) The Commissioner may refuse to entertain a complaint, or, having commenced to investigate a matter raised in a complaint, may refuse to continue the investigation if he is of the opinion that—

- (a) the matter raised in the complaint is trivial;
- (b) the complaint is frivolous or vexatious or is not made in good faith;
- (c) the person aggrieved has not a sufficient personal interest in the matter raised in the complaint; or
- (d) having regard to all the circumstances of the case, the investigation, or the continuance of the investigation of the matter raised in the complaint, is unnecessary or unjustifiable.

(2) Where, under this Act, the Commissioner is precluded from entertaining, or refuses to entertain, a complaint, or refuses to continue an investigation of any matter raised in a complaint, he shall inform the complainant of his decision and at the same time state the reasons therefor.

Division 3.—Conduct of Investigations

Proceedings on investigations.

19. (1) Before investigating under this Act any action taken by or on behalf of the government department or other authority the Commissioner shall notify the principal officer thereof and the responsible Minister in writing of his intention so to do, specifying the action in respect of which the investigation is to be conducted.

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

(3) Subject to any Rules of Parliament made under this Act, the Commissioner is not required to hold any hearing for the purposes of an investigation, and he may obtain information from such persons and in such manner, and make such inquiries as he thinks fit. Any person who is concerned or involved in the investigation may be represented by counsel or otherwise.

(4) If, at any time during the course of an investigation, it appears to the Commissioner that there may be grounds for making a report on that investigation that may affect or concern any government department or authority to which this Act applies he shall, before making that report, afford to the principal officer thereof an opportunity to comment on the subject matter of the investigation.

(5) The Commissioner may, at any time during or after an investigation consult any Minister of the Crown who is concerned in the subject matter of the investigation.

(6) In relation to any investigation, if a Minister of the Crown so requests or the investigation relates to any recommendation made to such a Minister, the Commissioner shall consult that Minister before forming a final opinion on any of the matters referred to in subsection (1) or subsection (2) of section 25.

1971.]

Parliamentary Commissioner. [No. 64.]

(7) If, during or after an investigation, the Commissioner is of opinion that there is evidence of any breach of duty or misconduct on the part of any member, officer, or employee of any government department or authority to which this Act applies—

- (a) he shall report that matter to the principal officer thereof; and
- (b) he shall furnish a copy of the report to the Minister charged with the administration of that department or the enactment by which the authority is constituted.

(8) Subject to this Act and any Rules of Parliament made thereunder the Commissioner may regulate his procedure on an investigation in such manner as he thinks fit.

20. (1) Where the Commissioner has decided to investigate any matter under this Act—

- (a) the Commissioner has all the powers, rights and privileges that are specified in the Royal Commissions Act, 1968, as appertaining to a Royal Commission and the Chairman thereof; and
- (b) all the provisions of that Act have effect as if they were enacted in this Act and in terms made applicable to the Commissioner and that matter as if the matter were one into which a Royal Commission was appointed to inquire under that Act.

Commissioner has power of Royal Commission and Chairman thereof. Evidence etc.

(2) (a) No obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to persons in the service of the Crown, whether imposed by any enactment or by any rule of law, applies to the disclosure of information for the purposes of an investigation under this Act.

(b) The Crown is not entitled in relation to any such investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.

(3) Subject to subsection (2) of this section, a person is not compelled for the purposes of an investigation under this Act to give any evidence or produce any document that he could not be compelled to give or produce in proceedings before a court.

21. (1) For the purposes of conducting an investigation under this Act, the Commissioner may, at anytime, enter any premises occupied or used by any government department or authority to which this Act applies, and inspect those premises or anything for the time being therein.

Entry of premises.

(2) The powers conferred by this section to enter any premises occupied or used by a government department or other authority shall not be exercised unless previous notice of the intention so to do has been given a reasonable time before the proposed entry to the principal officer thereof in writing.

22. (1) A person shall not be required or authorised by virtue of this Act—

- (a) to furnish any information or answer any question relating to proceedings of Cabinet or of any committee of Cabinet; or
- (b) to produce or inspect so much of any document as relates to any such proceedings.

Protection for proceedings in Cabinet.

(2) For the purposes of this section a certificate issued by the Under Secretary, Premier's Department, with the approval of the Premier of the State, certifying that any information or question, or any document or part of a document, relates to any such proceedings as are referred to in subsection (1) of this section is conclusive of the fact so certified.

Secrecy.

23. (1) Information obtained by the Commissioner or his officers in the course of, or for the purpose of, an investigation under this Act, shall not be disclosed, except—

- (a) for the purposes of the investigation and of any report or recommendations to be made thereon under this Act; or
- (b) for the purposes of any proceedings for any perjury or any offence under the Royal Commissions Act, 1968, or under this Act alleged to have been committed in any proceedings upon such an investigation.

(2) Any person who discloses information contrary to the provisions of this section is guilty of an offence.

Obstruction.

24. Any person who—

- (a) without lawful excuse, wilfully obstructs, hinders, or resists the Commissioner or any other person in the exercise of his powers under this Act;
- (b) without lawful excuse, refuses or wilfully fails to comply with any lawful requirement of the Commissioner or any other person under this Act; or
- (c) wilfully makes any false statement to or misleads, or attempts to mislead, the Commissioner or any other person in the exercise of his powers under this Act,

is guilty of an offence.

*Division 4.—Action on investigations.***Procedure on completion of investigation.**

25. (1) Where, as a result of an investigation conducted under this Act (not being an investigation conducted pursuant to section 15), the Commissioner is of the opinion that the action to which the investigation relates—

- (a) appears to have been taken contrary to law;
- (b) was unreasonable, unjust, oppressive, or improperly discriminatory;
- (c) was in accordance with a rule of law or a provision of an enactment or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory;
- (d) was taken in the exercise of a power or discretion, and was so taken for an improper purpose or on irrelevant grounds, or on the taking into account of irrelevant considerations;
- (e) was a decision that was made in the exercise of a power or discretion and the reasons for the decision were not, but should have been, given;
- (f) was based wholly or partly on a mistake of law or fact; or
- (g) was wrong,

he shall, as in the circumstances of the case he thinks fit, carry out the duties imposed on him by subsection (2) of this section.

1971.]

Parliamentary Commissioner. [No. 64.]

(2) Where in such a case as is referred to in subsection (1) of this section the Commissioner is of the opinion—

- (a) that the subject matter of the investigation should be referred to the appropriate authority for further consideration;
- (b) that action can be, and should be, taken to rectify, or mitigate or alter the effects of, the action to which the investigation relates;
- (c) that any practice in accordance with which the action was taken should be varied;
- (d) that any law in accordance with which, or on the basis of which, the action was taken should be reconsidered;
- (e) that reasons should be given for the action; or
- (f) that any other steps should be taken,

the Commissioner shall report his opinion, and his reasons therefor, to the principal officer of the appropriate authority, and may make such recommendations as he thinks fit.

(3) Where the Commissioner makes any report or recommendations to the principal officer of an authority under subsection (2) of this section, he shall send a copy thereof to the responsible Minister.

(4) If under subsection (2) of this section the Commissioner makes recommendations to the principal officer of an authority he may request that officer to notify him, within a specified time, of the steps that have been or are proposed to be taken to give effect to the recommendations, or, if no such steps have been, or are proposed to be taken, the reasons therefor.

(5) Where it appears to the Commissioner that no steps that seem to him to be appropriate have been taken within a reasonable time of his making any report or recommendations under subsection (2) of this section, the Commissioner, after considering the comments (if any) made by or on behalf of the principal officer to whom the report or recommendations were made, may, if he thinks fit, send to the Premier of the State a copy of the report and the recommendations together with a copy of any such comments.

(6) Where a copy of any report, recommendations, or comments has been sent to the Premier of the State under subsection (5) of this section, the Commissioner may lay before each House of Parliament such report on the matters to which they relate as he thinks fit.

(7) The Commissioner shall not in any report under this Act make any comment defamatory of or adverse to any person unless that person has been given an opportunity of being heard in the matter and his defence is fairly set forth in the report.

26. Where the Commissioner conducts an investigation on a complaint made under this Act he shall inform the complainant, in such manner and at such time as he thinks proper, of the result of the investigation, and, where the Commissioner has made any recommendation under subsection (2) of section 25 and it appears to him that steps which seem to him to be appropriate have not been taken within a reasonable time of the making of those recommendations, the Commissioner shall inform the complainant of those recommendations, making such comments thereon as he thinks proper.

Information to complainant on investigation.

Division 5.—Annual and other reports of the Commissioner.

Annual and other reports to Parliament.

27. Without limiting his right under any other provision of this Act to lay a report before either House of Parliament, the Commissioner, subject to any Rules of Parliament made under this Act, shall, as soon as practicable after each thirtieth day of June, lay before each House of Parliament a report on the exercise of his functions during the twelve months ending on that date, and, may, at any time, if he thinks fit, lay before each House of Parliament, a report on any matter arising in connection with the exercise of his functions.

Other reports on authority of Rules of Parliament.

28. Rules of Parliament made under this Act may authorise the Commissioner to publish, in the public interest or in the interests of any department, authority, organization, or person, reports relating generally to the exercise of his functions or to any particular case investigated by him, whether or not the matters to be dealt with in any such report have been the subject of a report laid before either House of Parliament under this Act.

PART IV.—MISCELLANEOUS.

Application to Supreme Court.

29. (1) Where, in the course of an investigation under this Act, the question arises as to whether the Commissioner has jurisdiction to conduct the investigation, the Commissioner, or the party the subject of the investigation, may make an application to the Supreme Court for a determination of that question, and, on the application, the Court may make such order as it considers proper.

(2) References in this section, in relation to an investigation into any action taken by or on behalf of an authority, to the party subject to the investigation shall be construed as references to that authority or the principal officer thereof.

Protection of Commissioner and officers.

30. (1) Neither the Commissioner nor any of his officers is liable, whether on the ground of want of jurisdiction or on any other ground, to any civil or criminal proceedings to which he would have been liable apart from this section in respect of any act purporting to be done in pursuance of this Act, unless the act was done negligently or in bad faith.

(2) No civil or criminal proceedings shall be brought against the Commissioner or any of his officers in respect of any such act as is referred to in subsection (1) of this section without the leave of the Supreme Court, and the Supreme Court shall not give leave under this section unless it is satisfied that there is substantial ground for the contention that the person to be proceeded against has acted negligently or in bad faith.

(3) Notwithstanding anything in the foregoing provisions of this section, no prerogative writ shall be issued compelling the Commissioner to carry out any investigation, and no proceedings shall be brought against the Commissioner whereby the issue of such a writ is sought.

(4) Neither the Commissioner nor any of his officers shall be called to give evidence in any court, or in any judicial proceedings, in respect of any matter coming to his knowledge in the exercise of his functions under this Act.

Penalties.

31. A person who is guilty of an offence under this Act is liable to a fine of two hundred and fifty dollars or imprisonment for twelve months, or to both the fine and the imprisonment.

1971.]

Parliamentary Commissioner. [No. 64.]

32. Except as otherwise expressly provided in this Act the expenses incurred in the administration of this Act shall be defrayed out of moneys to be provided by Parliament for that purpose. Expenses of Act.

THE SCHEDULE.

[Section 13.]

Government Departments and other Authorities to which this Act applies. All Departments of the Public Service, but excluding therefrom—

- (a) officers of the establishment of the Governor; and
- (b) the Agent-General and officers employed in his office.

Local Authorities, namely—

- (a) the council of each city, town or shire, and any committee of, or appointed by, any such council, and any County or Regional Council under the Local Government Act, 1960;
- (b) a commissioner of a municipality appointed under the Local Government Act, 1960;
- (c) any other body constituted under an enactment that has the power to levy, or cause to be levied, a rate on or with respect to, land.

The Midland Junction Abattoir Board constituted under the Abattoirs Act, 1909.

The Western Australian Art Gallery Board constituted under the Art Gallery Act, 1959.

Agriculture Protection Board constituted under the Agriculture Protection Board Act, 1950, and any advisory committee constituted thereunder.

Albany Port Authority constituted under the Albany Port Authority Act, 1926.

Artificial Breeding Board constituted under the Artificial Breeding Board Act, 1965.

Banana Industry Compensation Committee constituted under the Banana Industry Compensation Trust Fund Act, 1961.

Beekeepers Compensation Fund Committee constituted under the Bee Industry Compensation Act, 1953.

Totalisator Agency Board constituted under the Totalisator Agency Board Betting Act, 1960.

Bunbury Port Authority constituted under the Bunbury Port Authority Act, 1909.

Bush Fires Board and bush fire brigades constituted under the Bush Fires Act, 1954.

Coal Mine Workers' Pensions Tribunal established under the Coal Mine Workers (Pensions) Act, 1943.

The Trustees of a Public Cemetery under the Cemeteries Act, 1897.

Air Pollution Council and the Scientific Advisory Committee established under the Clean Air Act, 1964.

Inebriates Advisory Board established under the Convicted Inebriates Rehabilitation Act, 1963.

Country High School Hostels Authority established under the Country High School Hostels Authority Act, 1960.

- The Coal Miners' Welfare Board of Western Australia established under the Coal Miners' Welfare Act, 1947.
- Dairy Products Marketing Board constituted under the Dairy Products Marketing Regulation Act, 1934.
- Dried Fruits Board constituted under the Dried Fruits Act, 1947.
- Education Department and Board of Secondary Education constituted under the Education Act, 1928.
- Esperance Port Authority constituted under the Esperance Port Authority Act, 1968.
- Factory Welfare Board and Retail Trade Advisory and Control Committee established under the Factories and Shops Act, 1963.
- The Western Australian Wild Life Authority constituted under the Fauna Conservation Act, 1950.
- Western Australian Fire Brigades Board constituted under the Fire Brigades Act, 1942.
- Fremantle Port Authority constituted under the Fremantle Port Authority Act, 1902.
- Geraldton Port Authority constituted under the Geraldton Port Authority Act, 1968.
- Government Employees' Housing Authority established under the Government Employees' Housing Act, 1964.
- Western Australian Government Railways Commission constituted under the Government Railways Act, 1904.
- The Honey Pool of Western Australia constituted under the Honey Pool Act, 1955.
- Any Board within the meaning of the Hospitals Act, 1927.
- Advisory Committee established under section 6 of the Industrial Development (Kwinana Area) Act, 1952.
- The Land Resumption for Industries Committee established under section 4 of the Industrial Development (Resumption of Land) Act, 1945.
- Industries Assistance Board constituted under the Industries Assistance Act, 1915.
- Library Board of Western Australia constituted under the Library Board of Western Australia Act, 1951.
- The Land Surveyors Licensing Board constituted under the Licensed Surveyors Act, 1909.
- Lotteries Commission constituted under the Lotteries (Control) Act, 1954.
- Commissioner of Main Roads appointed under the Main Roads Act, 1930.
- The Western Australian Barley Marketing Board constituted under the Marketing of Barley Act, 1946.
- Western Australian Egg Marketing Board constituted under the Marketing of Eggs Act, 1945.
- Western Australian Linseed Board established under the Marketing of Linseed Act, 1969.
- Western Australian Potato Marketing Board constituted under the Marketing of Potatoes Act, 1946.
- Every Board of Visitors under the Mental Health Act, 1962.
- Metropolitan Market Trust constituted under the Metropolitan Market Act, 1926.
- Metropolitan (Perth) Passenger Transport Trust constituted under the Metropolitan (Perth) Passenger Transport Trust Act, 1957.
- The Metropolitan Region Planning Authority constituted under the Metropolitan Region Town Planning Scheme Act, 1959.

1971.] *Parliamentary Commissioner.* [No. 64.]

- Metropolitan Water Supply, Sewerage, and Drainage Board established under the Metropolitan Water Supply, Sewerage and Drainage Act, 1909.
- Milk Board of Western Australia constituted under the Milk Act, 1946.
- Mine Workers' Relief Board constituted under the Mine Workers' Relief Act, 1932.
- The Western Australian Museum Board constituted under the Museum Act, 1969.
- The Motor Vehicle Insurance Trust constituted under the Motor Vehicle (Third Party Insurance) Act, 1943.
- The Trustees of the Parliamentary Superannuation Fund under the Parliamentary Superannuation Act, 1970.
- Poisons Advisory Committee constituted under the Poisons Act, 1964.
- The Police Department.
- Port Hedland Port Authority constituted under the Port Hedland Port Authority Act, 1970.
- An authorised officer appointed under the Petroleum Products Subsidy Act, 1965.
- Potato Growing Industry Trust Fund Advisory Committee constituted under the Potato Growing Industry Trust Fund Act, 1947.
- Poultry Industry Trust Fund Committee constituted under the Poultry Industry (Trust Fund) Act, 1948.
- The Public Service Board established under the Public Service Act, 1904.
- The Transport Commission under the Transport Commission Act, 1966.
- State Electricity Commission of Western Australia established under the State Electricity Commission Act, 1945.
- The State Government Insurance Office constituted under the State Government Insurance Office Act, 1938.
- The State Housing Commission established under the State Housing Act, 1946.
- State Tender Board established under the State Tender Board Act, 1965.
- Superannuation Board constituted under the Superannuation and Family Benefits Act, 1938.
- The Swan River Conservation Board constituted under the Swan River Conservation Act, 1958.
- Town Planning Board established under the Town Planning and Development Act, 1928.
- Western Australian Tourist Development Authority constituted under the Tourist Act, 1959.
- Registrar of Trade Associations appointed under the Trade Associations Registration Act, 1959.
- Western Australian Coastal Shipping Commission constituted under the Western Australian Coastal Shipping Commission Act, 1965.
- Wheat Quotas Committee constituted under the Wheat Delivery Quotas Act, 1969.
- The Youth Council of Western Australia established under the Youth Service Act, 1964.
- Western Australian Institute of Technology.
- University of Western Australia.
- Workers' Compensation Board, constituted under the Workers' Compensation Act, 1912.
- The Junior Farmers' Movement Council under the Junior Farmers' Movement Act, 1955.

TABLE OF CASES

	Report paragraph	Annexure B paragraph
Amstad v. Brisbane City Council (No. 2) [1968] Qd. R. 343		30
Anisimic Limited v. Foreign Compensation Commission [1969] 2 A.C. 147		23, 39, 48, 85, 88
Arthur Yates & Co. Pty Ltd v. The Vegetable Seeds Committee (1945) 72 C.L.R. 37		15
Associated Provincial Picture Houses v. Wednesbury Corporation [1948] 1 K.B. 223		18
Attorney-General, Ex parte; Re Cook (1967) 86 W.N. (Pt 2) (N.S.W.) 222	169	
Australian Boot Trade Employees' Federation v. Commonwealth of Australia (1954) 90 C.L.R. 24		70
Banks v. Transport Regulation Board (Victoria) (1968) 119 C.L.R. 222		26, 49, 53
Barlow, <i>In re</i> , Rector of Ewhurst (1861) 30 L.J.Q.B. 271		79
Barnard v. National Dock Labour Board [1953] 2 Q.B. 18		44
Barnes v. Oliver (1970) 16 F.L.R. 366		29
Board of Education v. Rice [1911] A.C. 179		43
Boyce v. Paddington Borough Council [1903] 1 Ch. 109		76
B.P. (Australia) Limited v. Council of the City of the Gold Coast [1967] Qd. R. 307		30
Bracegirdle v. Oxley [1947] K.B. 349		40
Breen v. Amalgamated Engineering Union [1971] 2 Q.B. 175		29
Brettingham-Moore v. St Leonards Municipality (1969) 121 C.L.R. 509		29, 53
British Oxygen Co. Ltd v. Minister of Technology [1971] A.C. 610		17, 35
Brownells Ltd v. Ironmongers Wages Board [1950] 81 C.L.R. 108		15
Coal Miners' Industrial Union of Workers of Western Australia v. Amalgamated Collieries of Western Australia Limited (1960) 104 C.L.R. 437		87
Conway v. Rimmer [1968] A.C. 910	168	
Cooney v. Ku-ring-gai Corporation (1963) 114 C.L.R. 582		57
Cooper v. Wandsworth Board of Works (1863) 14 C.B. (N.S.) 180		26
Cornford, <i>Ex parte</i> ; Re Minister for Education [1962] S.R. (N.S.W.) 220		53
Durayappah v. Fernando [1967] 2 A.C. 337		39, 49, 74
Edwards (Inspector of Taxes) v. Bairstow [1956] A.C. 14		42
Edwards v. Society of Graphical and Allied Trades [1970] 3 All E.R. 689		29
Enderby Town Football Club Ltd v. The Football Association Ltd and anor. [1971] 1 All E.R. 215		29
Esso Petroleum Co. Limited v. Ministry of Labour [1969] 1 Q.B. 98		41
Federal Commissioner of Taxation v. Broken Hill South Ltd (1941) 65 C.L.R. 150		40
Frazer Henleins Pty Ltd v. Cody (1945) 70 C.L.R. 100		20
Giris Pty Ltd v. Commissioner of Taxation (1969) 119 C.L.R. 365		38
Glynn v. Keele University [1971] 2 All E.R. 89		29
Greenwell, <i>Ex parte</i> ; re Williams (1963) 81 W.N. (Pt 1) (N.S.W.) 39		43

TABLE OF CASES—*continued*

	Report paragraph	Annexure E paragraph
Hall & Co. Ltd v. Shoreham-by-Sea U.D.C. [1964] 1 W.L.R. 240		18
Hoban, Ex parte; Re Davey (N.S.W. Court of Appeal, 28 February, 1972—not yet reported)		80
Hoggard v. Worsborough Urban District Council [1962] 2 Q.B. 93		37
Honnery v. Smith (1957) 57 S.R. (N.S.W.) 598		80
Hounslow London Borough Council v. Twickenham Garden Developments Ltd [1971] 1 Ch. 233		30
Howshall v. Evans [1969] C.L.Y. para. 354		29
John v. Rees [1970] 1 Ch. 345		29
Lau Liat Meng v. Disciplinary Committee [1968] A.C. 391		29
Leary v. National Union of Vehicle Builders [1971] 1 Ch. 34		29, 39
Little, Ex parte; In re Council of Municipality of Fairfield (1962) 80 W.N. (N.S.W.) 93		43
Malloch v. Aberdeen Corporation [1971] 2 All E.R. 1278; [1971] 1 W.L.R. 1578		29
Maurice, C. & Co. Ltd v. Minister of Labour [1968] 2 All E.R. 1030		41
McNabb v. United States (1943) 318 U.S. 332	42	
Metropolitan Properties Co. (F.G.C.) Ltd v. Lannon [1969] 1 Q.B. 577		29, 34
Mullen, Ex parte; Re Wigley [1970] 2 N.S.W.R. 297		79
Nakkuda Ali v. M.F. De S. Jayaratne [1951] A.C. 66		26
Northern Rivers Rutile Pty Ltd, Ex parte; Re Claye (1965) 82 W.N. (Pt 1) (N.S.W.) 514		49
Pergamon Press Ltd, <i>In re</i> [1971] 1 Ch. 388		20
Pett v. Greyhound Racing Association Ltd (No. 1) [1968] 2 W.L.R. 1471		29, 37
Pett v. Greyhound Racing Association Ltd (No. 2) [1970] 1 Q.B. 46		29, 37
Posner v. Collector for Inter-State Destitute Persons (Victoria) (1946) 74 C.L.R. 461		49
Prescott v. Birmingham Corporation [1955] Ch. 210		16
Punton v. Ministry of Pensions and National Insurance (No. 2) [1964] 1 W.L.R. 226		70
Pyx Granite Co. Ltd v. Minister of Housing and Local Government [1958] 1 Q.B. 554		77, 83
Queen, Ex parte (ex. rel. Warringah Shire Council); Re Barnett (1967) 87 W.N. (Pt 2) (N.S.W.) 12		30
R. v. Anderson; Ex parte Ipec-Air Pty Ltd (1965) 113 C.L.R. 177		19
R. v. Board of Appeal; Ex parte Kaye (1916) 22 C.L.R. 183		37
R. v. Brighton and Area Rent Tribunal; Ex parte Marine Parade Estates (1936) Limited [1950] 2 K.B. 410		37
R. v. Chairman of General Sessions at Hamilton; Ex parte Atterby [1959] V.R. 800		49
R. v. City of Preston; Ex parte Sandringham Drive-in Theatre Pty Ltd [1965] V.R. 10		43
R. v. Commissioners for Special Purposes of the Income Tax (1888) 21 Q.B.D. 313		22
R. v. The Commonwealth Rent Controller; Ex parte National Mutual Life Association of Australia Ltd (1947) 75 C.L.R. 361		26, 87

TABLE OF CASES—continued

	Report paragraph	Annexure B paragraph
R. v. Comptroller-General of Customs; Ex parte Woolworths Ltd (1935) 53 C.L.R. 308		43
R. v. District Court of the Northern District of the State of Queensland; Ex parte Thompson (1968) 118 C.L.R. 488		66
R. v. Electricity Commissioners [1924] 1 K.B. 171		63
R. v. Gaming Board for Great Britain; Ex parte Benaim [1970] 2 All E.R. 528		29
R. v. The Guard of the Lewisham Union [1897] 1 Q.B. 498		73
R. v. Hendon R.D.C.; Ex parte Chorley [1933] 2 K.B. 696		74
R. v. The Justices of Surrey (1870) L.R. 5 Q.B. 466		74
R. v. Legislative Committee of the Church Assembly; Ex parte Haynes-Smith [1928] 1 K.B. 411		26
R. v. Mahony; Ex parte Johnson (1931) 46 C.L.R. 131		43
R. v. The Members of The Central Sugar Cane Prices Board; Ex parte The Maryborough Sugar Factory Limited (1959) 101 C.L.R. 246		87
R. v. Murray; Ex parte Proctor (1949) 77 C.L.R. 387		87
R. v. Nat Bell Liquors, Limited [1922] 2 A.C. 128	47	66
R. v. National Joint Council for the Craft of Dental Technicians (Disputes Committee); Ex parte Neate [1953] 1 Q.B. 704		53
R. v. Northumberland Compensation Appeal Tribunal; Ex parte Shaw [1952] 1 K.B. 338		66
R. v. Public Vehicles Licensing Tribunal; Ex parte Grey's Transport Pty Ltd (1968 Tasmanian Supreme Court—not yet reported)		74
R. v. Senate of the University of Aston; Ex parte Roffey and anor. [1969] 2 All E.R. 964		29
R. v. Sussex JJ.; Ex parte McCarthy [1924] 1 K.B. 256		34
R. v. War Pensions Entitlement Appeal Tribunal; Ex parte Bott (1933) 50 C.L.R. 228		37
R. v. Will and Toon; Ex parte Visona [1960] Qd.R. 123		49
Reg. v. Vestry of St Pancras (1890) 24 Q.B.D. 371		44
Ridge v. Baldwin [1964] A.C. 40	40	23, 26, 36, 48
Roberts v. Hopwood [1925] A.C. 578		16
Royal Government of Greece v. Brixton Prison Governor [1969] 3 All E.R. 1337		48
Russian Commercial and Industrial Bank v. British Bank for Foreign Trade, Limited [1921] 2 A.C. 438		70
Salmar Holdings Pty Ltd v. Hornsby Shire Council [1971] 1 N.S.W.L.R. 192		77
Sharp v. Wakefield [1891] A.C. 173		44
Sutherland Shire Council v. Leyendekkers [1970] 1 N.S.W.R. 356		77
Sydney Municipal Council v. Campbell [1925] A.C. 338		15
Thomas, Ex parte; Re Arnold [1966] 2 N.S.W.R. 197		80
University of Ceylon v. Fernando [1960] 1 W.L.R. 223		37
Van Dongen v. Cooper [1967] W.A.R. 143		29
Vasudevan Pillai (M.) v. City Council of Singapore [1968] 1 W.L.R. 1278		30
Vine v. National Dock Labour Board [1957] A.C. 488		44
Vukicevic v. Astley (1970) 92 W.N. (N.S.W.) 656	34	
Wurth, Ex parte; Re Tulley (1954) 55 S.R. (N.S.W.) 47		80

TABLE OF STATUTES

<i>Year and Chapter or Number</i>	<i>Short Title and Section New South Wales Acts</i>	<i>Report paragraph</i>	<i>Annexure E paragraph</i>
51 Vic. No. 9	Centenary Celebrations Act, 1887 Regulations ..	140	
1899 No. 21 (now repealed)	Common Law Procedure Act, 1899 s. 176		3
1901 No. 64	Prevention of Cruelty to Animals Act, 1901 Regulations ..	140	
1902 No. 26	Audit Act, 1902 s. 14 s. 49	173 9, 59	
1902 No. 30	Public Health Act, 1902 s. 32b (4) ..	36	
1903 No. 19 (now repealed)	Commercial Causes Act, 1903 s. 7A s. 7B		3 3
1906 No. 49	Mining Act, 1906	34	
1908 No. 13	Theatres and Public Halls Act, 1908 s. 16A s. 16C	156 156	
1908 No. 14	Private Hospitals Act, 1908 s. 13B s. 13D	156 156	
1909 No. 5	Motor Traffic Act, 1909 Reg. 94b	10	
1912 No. 7	Housing Act, 1912 s. 3 s. 4D s. 8 (4)	9 140 9	
1912 No. 25	Gaming and Betting Act, 1912 s. 50D (3) (a) s. 52A (3) s. 52C	140 9 36	
1912 No. 38	Scaffolding and Lifts Act, 1912 s. 17	9	
1916 No. 2	Valuation of Land Act, 1916 s. 5 s. 6 s. 7 s. 14	33 33 33 33	
1916 No. 28	Superannuation Act, 1916 s. 85	156	
1917 No. 15	Bookmakers (Taxation) Act, 1917 s. 35 s. 36	9 9	
1919 No. 41	Local Government Act, 1919		30
1921 No. 8	Architects Act, 1921 s. 16 s. 17	156 156	
1923 No. 9	Royal Commissions Act, 1923 s. 11	170	
1924 No. 24	Main Roads Act, 1924 s. 27c (4) (b)	9	
1924 No. 38	Plant Diseases Act, 1924 s. 14	36	
1927 No. 10	Pistol License Act, 1927 s. 5A (1) (a)	9	

TABLE OF STATUTES—*continued*

<i>Year and Chapter or Number</i>	<i>Short Title and Section New South Wales Acts</i>	<i>Report paragraph</i>	<i>Annexure E paragraph</i>
1930 No. 24	Government Relief Administration Act, 1930		
	Regulations ..	140	
1934 No. 35	Pastures Protection Act, 1934		
	s. 19A (1) (c) ..	9, 59	
	s. 19A (2) ..	9, 59	
	s. 19A (3) ..	9, 59	
1934 No. 59	Charitable Collections Act, 1934		
	s. 4	9	
1935 No. 58	Fisheries and Oyster Farms Act, 1935		
	s. 94	36	
	s. 98	36	
	s. 119	9	
1941 No. 65	Housing Act, 1941		
	s. 5	9	
1942 No. 25	Dormant Funds Act, 1942		
	s. 5	156	
1943 No. 17	Legal Assistance Act, 1943		
		24	
1945 No. 9	Physiotherapists Registration Act, 1945		
	s. 24 (6)	25	
1948 No. 11	Stock (Artificial Insemination) Act, 1948		
	s. 5	37	
1948 No. 25	Landlord and Tenant (Amendment) Act, 1948		
	s. 30 (4)	48	
1949 No. 31	Bush Fires Act, 1949		
	s. 16	140	
1953 No. 10	Nurses Registration Act, 1953		
	s. 15 (1)	9	
1956 No. 26	Land Tax Management Act, 1956		
	s. 18	9	
1957 No. 5	Radioactive Substances Act, 1957		
	s. 11	156	
1958 No. 45	Mental Health Act, 1958		
	s. 11	140	
1962 No. 11	Business Names Act, 1962		
	s. 19 (3)	156	
1962 No. 43	Factories, Shops and Industries Act, 1962		
	s. 11	9	
	s. 26	9	
	s. 51 (1)	36	
	s. 76 (4) (b)	49	
	s. 116	9	
1964 No. 36	Air Transport Act, 1964		
	s. 8	140	
1967 No. 18	Permanent Building Societies Act, 1967		
	s. 13	9	
1967 No. 90	Pipelines Act, 1967		
	s. 52	156	

TABLE OF STATUTES—*continued*

<i>Year and Chapter or Number</i>	<i>Short Title and Section New South Wales Acts</i>	<i>Report paragraph</i>	<i>Annexure E paragraph</i>
1969 No. 34	Rural Workers Accommodation Act, 1969		
	s. 12	9	
1969 No. 37	Apprentices Act, 1969		
	s. 18	9	
1969 No. 53	Wheat Quotas Act, 1969		
	s. 44 (1)	48	
	s. 44 (2)	48	
1969 No. 54	Bread Act, 1969		
	s. 15	9	
1970 No. 22	Land Development Contribution Management Act, 1970		
	s. 11	32	
	s. 15 (1) (c)	9	
	s. 59	9	
1970 No. 29	Dairy Industry Authority Act, 1970		
	s. 34	25	
1970 No. 37	Legal Practitioners (Legal Aid) Act, 1970		
	24	
1970 No. 52	Supreme Court Act, 1970		2, 3, 4, 5, 6, 7
	s. 69		4
	s. 75		67
	Rules—		
	Part 4 rule 1 ..		5
	Part 40 rule 1 ..	24	6
	Part 54 Division 2 rule 1 ..		5
	Part 54 Division 2 rule 3 (1) ..		5
1970 No. 78	Clean Waters Act, 1970		
	s. 9	156	
	s. 25	25	
1971 No. 18	Land Aggregation Tax Management Act, 1971		
	s. 50	156	
	<i>Imperial Acts</i>		
17 and 18 Vict. c. 125	Common Law Procedure Act 1854	54	
36 and 37 Vict. c. 66	Supreme Court of Judicature Act 1873	54	
38 and 39 Vict. c. 77	Supreme Court of Judicature Act 1875	54	
7 Edw. 7 c. 23	Criminal Appeal Act 1907..	54	
6 and 7 Eliz. 2 c. 66 (1958)	Tribunals and Inquiries Act 1958	80, 85	
	s. 1	86	
	s. 9	88	
	s. 12	89	
1967 c. 13	Parliamentary Commissioner Act 1967	80, 173, 175	38

TABLE OF STATUTES—*continued*

<i>Year and Chapter or Number</i>	<i>Short Title and Section New South Wales Acts</i>	<i>Report paragraph</i>	<i>Annexure E paragraph</i>
	<i>New Zealand Acts</i>		
1962, No. 10	Parliamentary Commissioner (Ombudsman) Act 1962	126	
	s. 17 (1) (c)	173, 175	
	s. 18 (4)	173, 175	
1968, No. 18	Judicature Amendment Act 1968	126	
	<i>Canadian Acts</i>		
	<i>Ontario</i>		
20 Eliz. II (1971) ch. 47	Statutory Powers Procedure Act, 1971	123-4	
20 Eliz. II (1971) ch. 48	Judicial Review Procedure Act, 1971	123-4	
	s. 3		7
20 Eliz. II (1971) ch. 50	Civil Rights Statute Law Amend- ment Act, 1971	138	
	<i>Western Australian Acts</i>		
No. 64 of 1971	Parliamentary Commissioner Act, 1971		
	s. 22	173, 175	

INDEX

	Page
Administrative Conference of United States (<i>See</i> "United States of America")	
Advisory Council on Public Administration—	
Bill to constitute	77
Commissioner for Public Administration	150
committees	151
Crown privilege	74
generally	61,63
membership	151
notes on Bill to constitute	150
Ombudsman	151
Public Service Board	151
reports	151
Appeal, right of—	
arguments for	29,30
examples	10,11,18,249
granting—	
government policy	62
matters to be considered	30
meaning	7,8
Ontario, in (<i>See</i> "Ontario")	
Public Administration Tribunal, to (<i>See</i> "Public Administration Tribunal")	
Victoria, in (<i>See</i> "Victoria")	
Appeals to Public Administration Tribunal (<i>See</i> "Public Administration Tribunal")	
Auditor-General	19,155
Commissioner for Public Administration—	
Advisory Council on Public Administration	150
Bill to appoint	77
Crown privilege	74
functions	61,150
generally	61
notes on Bill to appoint	150
relationship with Ombudsman and Public Administration Tribunal	72,167
Royal Commissioner, powers of	150
Committee on Administrative Tribunals and Enquiries (<i>See</i> "Franks Committee")	
Commonwealth Administrative Review Committee	18,168
Compensation	9,75
<i>Conseil d'Etat</i> (<i>See</i> "France")	
Council on Tribunals (England)	42,60,61
Courts, the role of an administrative law	17,26
(<i>And see</i> Annexure E, pages 284-302)	
Crown privilege—	
Advisory Council on Public Administration	74
Commissioner for Public Administration	73
<i>Conway v. Rimmer</i>	73
meaning of	8
Ombudsman	74
Public Administration Tribunal	74
Departments, investigations of complaints by	16
Federal Administrative Procedure Act of 1946 (<i>See</i> "United States of America")	

	Page
France, administrative law in—	
<i>Conseil d'Etat</i>	44
criticisms	46
generally	43
merits	45
procedures	45
Franks Committee (Committee on Administrative Tribunals and Inquiries), the—	
objections to administrative appeals tribunals	66
tribunals generally	64
Inquiries by Public Administration Tribunal—	
allowance of objection to an official action	152, 159
as of right	152
Attorney General as objector	152
case stated for Supreme Court	161
decisions, reasons for	153
discretionary, relevant matters	152, 158
enforcement of orders made in	161
evidence	160
excluded official actions	157
government policy	153
hearings	152
objection to official action—	
allowed	160
by Attorney General	152
by person other than Attorney General	152
official actions, generally	152
person other than Attorney General as objector	152
policy generally	153, 159
preclusion of	154, 158
preliminary decision	158
privacy	161
procedures	153, 160
public	153
publicity	161
questions of law	163
reasons for decisions	153
request for	152
remission of official actions to public authorities	153, 160
review of preliminary decision	158
standing to object to official actions	157
time	158
<i>Inquiry into Civil Rights (See "Ontario")</i>	
Judicial review—	
arguments against restricting	28
arguments for restricting	28
generally	26
meaning of	8
privative clauses	28
recommendations on	73
restrictions on	26
(And see "Courts" and Annexure E, page 284)	
McRuer Reports (See "Ontario—Inquiry into Civil Rights")	
Mass media, investigating complaints by	17
Members of Parliament—	
function of complaint	14, 16
Ombudsman	37, 59, 168
Ministerial responsibility—	
collective	14, 21, 63, 66
individual	13
Ombudsman	37, 38, 170, 175

	Page
Natural justice, rules of—	
criticism of law relating to	24
generally	24
meaning of	24
(And see Annexure E, page 288)	
New Zealand, administrative law in—	
Administrative Division of Supreme Court	54
Ombudsman	54, 167
Public and Administrative Law Reform Committee,	
First Report—	
majority opinion	54
minority opinion	56
Objections to official actions of public authorities	
(See "Inquiries")	
Official actions of public authorities—	
meaning of	9, 155
objections to	152
reasons for	75
stay of	159
variety of	13, 224
(And see "Inquiries")	
Ombudsman—	
Advisory Council on Public Administration	151
advantages of	71
Bill to appoint	128
cabinet proceedings	174
Commonwealth Administrative Review Committee	168
comparative legislation, notes on	304
complaints to	171
conduct of public authorities	170
conduct excluded from investigation by	172, 176
Crown privilege	74
decision to investigate complaint	171
defamation	169
disclosure by	176
expert assistance	174
Gellhorn on	34
generally	33
heads of public authorities	170
interference with government business	37, 38, 39
jurisdiction	71
Law Commission in England	40
ministerial responsibility	37, 38, 170, 175
misconduct	175
nature of	8
New Zealand experience	38, 167
notes on Bill to appoint	167
notice of investigation	173
objections to creation of office	37
office	170
officers	176
Parliament—	
parliamentary supremacy	37, 38
reports to	176
persons to be heard	174
powers	173
privacy of investigations	173
public authorities	169
reasons for recommending appointment	70
recommendations by	175

	Page
relationship with Commissioner for Public Administration and Public Administration Tribunal	72
reports by	175,176
reports to complainants	176
responsible minister	170,175
rule of law	37,38
secrecy	174
title	169
United Kingdom experience	39,167
United States of America	51
Victorian Statute Law Revision Committee	59
wrong conduct, investigation of	170
Ontario—	
<i>Inquiry into Civil Rights—</i>	
generally	51
Ombudsman	53
Parliament—	
petitions	15
place for ventilating grievances	14
questions	15
Powers, exercisable by public authorities—	
adjudicative	20
administrative	24
doctrine of separation of powers	19,21
legislative	20,21
nature of, generally	19
President of Public Administration Tribunal—	
Advisory Council on Public Administration	151
functions	156
reports	164
(And see "Public Administration Tribunal")	
Prerogative writs, meaning of	8
(And see "Judicial Review" and Annexure E)	
Privative clauses	27
Procedural requirements for official actions of public authorities, generally	24
(And see "Natural Justice")	
Public Administration Tribunal—	
appeals to	69,151,153
appeals from	67,154
Bill to establish	87
contempt of	162
constitution of	66,156
costs	166
Crown privilege	74
court	65,151,156
enforcement of orders	163
excluded official actions	165
functions	151
features	65
inquiries, generally	152
inquiries, excluded official actions	157
members ceasing to act	156
notes on Bill to establish	151
objections to	68
officers	164
powers	68,163
privilege as regards defamation	164
"public authority"	65,152
regulations	164

	Page
relationship with Commissioner for Public Administration and Ombudsman	72
(And <i>see</i> "Inquiries by Public Administration Tribunal")	
Public authority—	
appeals against official actions of (<i>See</i> "Public Administration Tribunal")	
Commissioner for Public Administration Bill, as in	150
conduct of (<i>See</i> "Ombudsman")	
inquiries into official actions of (<i>See</i> "Inquiries")	
Ombudsman Bill, as defined in	169
Public Administration Tribunal Bill, as defined in	154
Public Service Board—	
Advisory Council on Public Administration	151
investigation of complaints by	16
Reasons for official actions of public authorities	75
Recommendations in Report	61
Reference, terms of	7
Report, summary of	6
Reports—	
Advisory Council on Public Administration	151
Commissioner for Public Administration	151
Ombudsman	175, 176
Public Administration Tribunal	164
Requests (<i>See</i> "Inquiries")	
Revised Model State Administrative Procedure Act of 1961 (<i>See</i> "United States of America")	
Statute Law Revision Committee of Victoria (<i>See</i> "Victoria")	
Sweden, administrative law in—	
generally	47
Ombudsman	47
Supreme Administrative Court	47
Terms of reference—	
matters not within application of	9
text	7
Tribunals—	
courts, and	64
generally	64
objections to administrative appeals tribunals	66
United Kingdom, administrative law in—	
Council on Tribunals	42
criticisms of	41
generally	41
Ombudsman	167
Tribunal and Inquiries Act, 1958	42
United States of America, administrative law in—	
Federal Administrative Procedure Act of 1946	48, 50
generally	48
interpretation of statutes	48
Ombudsman	51
Revised Model State Administrative Procedure Act of 1961	48, 50
ultra vires, doctrine of	49
Victoria—	
Statute Law Revision Committee and Report upon appeals from administrative decisions	57
Administrative Appeals Tribunal	59
appeals from administrative decisions	57
Ombudsman	59