

CAYMAN ISLANDS



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**A BILL FOR A LAW TO CREATE THE OFFICE OF OMBUDSMAN
CHARGED WITH RESPONSIBILITY FOR INVESTIGATING AND
RESOLVING COMPLAINTS MADE BY MEMBERS OF THE PUBLIC
AGAINST POLICE OFFICERS AND CHARGED WITH ADDITIONAL
RESPONSIBILITIES UNDER PRESCRIBED LAWS; TO CREATE THE
OFFICE OF DEPUTY OMBUDSMAN FOR THE PURPOSE OF
ASSISTING THE OMBUDSMAN IN THE PERFORMANCE OF THOSE
RESPONSIBILITIES; AND TO MAKE PROVISION FOR RELATED
MATTERS**

THE OMBUDSMAN BILL, 2016

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to create the office of Ombudsman charged with responsibility for investigating and resolving complaints made by members of the public against police officers and charged with other responsibilities under specified Laws.

Clause 1 of the Bill provides for the short title and commencement of the legislation.

Clause 2 defines various expressions for the purposes of the legislation.

Clause 3 provides for the appointment of the Ombudsman. The appointment shall be for a period of seven years and shall be made by the Governor, acting after consultation with the Premier and the Leader of the Opposition. The clause also makes provision for the circumstances in which the appointment of the Ombudsman may be revoked (for example, if the office holder brings the office of Ombudsman into disrepute).

Clause 4 and Schedule 1 of the Bill prescribe the Oath of office that is to be taken by the Ombudsman before entering upon the duties of office.

Clause 5 makes provision in respect of the salary and emoluments receivable by the Ombudsman. These benefits are protected - they cannot be altered to the Ombudsman's disadvantage.

Clause 6 contains provisions protecting the independence of the Ombudsman. Thus, for example, for the purpose of establishing the budget of the office of the Ombudsman, the Ombudsman is accountable for expenditure to the Oversight Committee of the Legislative Assembly.

Clauses 7, 8 and Schedule 2 of the Bill enable the appointment of the Ombudsman's staff, including Deputy Ombudsmen who are empowered to assist the Ombudsman in the performance of functions under various specified Laws (for example, the Freedom of Information Law (2015 Revision)).

Clause 9 empowers the Ombudsman to use mediation as an alternative method of resolving disputes.

Clause 10 enables the Ombudsman to obtain advice that will assist in the discharge of the Ombudsman's various functions.

Clause 11 requires an annual report to be tabled in the Legislative Assembly in respect of the discharge of the Ombudsman's functions.

Clauses 12 and 13 are immunity and indemnity provisions relating to the Ombudsman, the Deputy Ombudsmen and the Ombudsman's staff.

Clause 14 prohibits the use of the term "Ombudsman" by persons other than the Ombudsman.

Clause 15 empowers the Cabinet to make regulations to give effect to the legislation. The regulations are subject to an affirmative resolution of the Legislative Assembly.

Clause 16 contains transitional provisions.

THE OMBUDSMAN BILL, 2016

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ENACTED by the Legislature of the Cayman Islands.

PART 1 - PRELIMINARY

1. (1) This Law may be cited as the Ombudsman Law, 2016. Short title and commencement

(2) This Law shall come into force on such date as may be appointed by Order made by the Cabinet and different dates may be appointed for different provisions of this Law and in relation to different matters.

2. (1) In this Law - Interpretation

“Deputy Ombudsman (Freedom of Information)” means the person appointed by the Ombudsman under section 7(a);

“Deputy Ombudsman (Maladministration)” means the person appointed by the Ombudsman under section 7(b);

“functions” includes responsibilities, powers and duties;

“Ombudsman” means the person appointed by the Governor under section 3;

“political party” means a group of persons who have united to contest election for membership of the Legislative Assembly; and

Schedule 2

“scheduled Laws” means the Laws set out in Schedule 2.

Appointment of
Ombudsman

3. (1) The Ombudsman shall be appointed by the Governor, acting after consultation with the Premier and the Leader of the Opposition.

(2) The Ombudsman shall be appointed for a period of seven years and shall not be eligible for re-appointment.

(3) No person shall be qualified to be appointed as Ombudsman if the person is or has been within the preceding three years -

- (a) an elected member of the Legislative Assembly; or
- (b) the holder of any office in any political party.

(4) The appointment of a person as Ombudsman is not valid if the person is disqualified under subsection (3).

(5) The validity of anything done by a person appointed as the Ombudsman is not affected by the fact that the person is or becomes disqualified under subsection (3).

(6) The Ombudsman may at any time resign office by instrument in writing addressed to the Governor and the resignation shall take effect as from the date of receipt by the Governor.

(7) The Governor may revoke the appointment of the Ombudsman if the Ombudsman -

- (a) becomes of unsound mind or becomes permanently unable to perform the functions of Ombudsman by reason of ill health;
- (b) becomes bankrupt or compounds with or suspends payment to creditors;
- (c) fails to carry out the functions conferred on the Ombudsman by this Law or a scheduled Law; or
- (d) brings the office of Ombudsman into disrepute.

(8) In the event that the Ombudsman is temporarily unable to perform the functions of Ombudsman, by reason of illness, temporary absence from the Islands, leave or any other reason the Governor considers appropriate, the Governor may appoint by instrument in writing one of the Deputy Ombudsmen to act as Ombudsman.

4. The Ombudsman shall not enter upon the duties of office until the Ombudsman has taken and subscribed the Oath of Office set out in Schedule 1.

Oath of Office
Schedule 1

5. (1) There shall be paid to the Ombudsman such annual salary, emoluments and benefits as are established under the Public Service Management Law (2013 Revision).

Salary and emoluments
(2013 Revision)

(2) The salary, emoluments and benefits of the Ombudsman shall not be altered to the disadvantage of the Ombudsman during the period of the Ombudsman's appointment, except by mutual agreement.

6. (1) Subject to the provisions of the Constitution relating to the powers of the Director of Public Prosecutions, in the exercise of the functions of Ombudsman, the Ombudsman shall not be subject to the direction or control of any other person or authority.

Independence

(2) Except as otherwise provided in this Law, the Ombudsman shall be subject to the Public Service Management Law (2013 Revision), and the Ombudsman may adopt such policies and directions by the Deputy Governor as the Ombudsman sees fit to the extent that these do not, in the opinion of the Ombudsman, compromise the Ombudsman's independence.

(2013 Revision)

(3) For the purpose of establishing the budget of the office of the Ombudsman, the Ombudsman shall report and be accountable for expenditure to the Oversight Committee of the Legislative Assembly.

Staff
(2013 Revision)

7. The officers of the Ombudsman shall be public officers appointed by the Ombudsman in accordance with the Public Service Management Law (2013 Revision), and shall include -

- (a) a Deputy Ombudsman (Freedom of Information);
- (b) a Deputy Ombudsman (Maladministration); and
- (d) such other officers as are necessary to enable the Ombudsman to carry out the functions of Ombudsman.

Functions of
Ombudsman and Deputy
Ombudsmen

8. (1) The Ombudsman shall perform the functions of the Ombudsman that are specified in this Law and in the scheduled Laws.

(2) In the performance of the functions of the Ombudsman that are specified in the scheduled Laws, the Ombudsman shall be assisted as follows -

Part 1 of Schedule 2

(a) where the function is specified in Part 1 of Schedule 2, the Ombudsman shall be assisted by the Deputy Ombudsman (Maladministration); and

Part 2 of Schedule 2

(b) where the function is specified in Part 2 of Schedule 2, the Ombudsman shall be assisted by the Deputy Ombudsman (Freedom of Information).

(3) Notwithstanding subsection (2), the Ombudsman may delegate to any suitably qualified person by instrument in writing any function of the Ombudsman under this Law or the scheduled Laws to the extent so delegated, other than the power to delegate under this section.

(4) The Cabinet may by Order subject to affirmative resolution, amend Schedule 2.

Alternative methods for
resolution of matter

9. (1) The Ombudsman may use mediation, conciliation or any other alternative dispute resolution process with a view to resolving a matter under any scheduled Law.

(2) Any process used under this section shall be conducted with due regard to the privacy and confidentiality of the parties.

10. (1) The Ombudsman may obtain advice from any person who, in the Ombudsman's opinion, is qualified to give it, to assist in the discharge of the Ombudsman's functions. Advisers

(2) The Ombudsman may pay to any person from whom advice under subsection (1) is obtained, such reasonable fees or allowances as the Ombudsman may determine.

(3) Any fees or allowances paid under subsection (2) shall be paid out of the funds appropriated to the office of the Ombudsman.

11. (1) The Ombudsman -

Annual and
extraordinary reports

- (a) shall annually prepare a report to be tabled in the Legislative Assembly on the discharge of the Ombudsman's functions; and
- (b) may prepare any other report with respect to the Ombudsman's functions that the Ombudsman thinks appropriate .

(2) A report prepared under this section may include any general recommendations which the Ombudsman may have arising from the discharge of the Ombudsman's functions.

(3) The Ombudsman shall cause a copy of each report prepared under this section, to be laid before the Legislative Assembly.

(4) The Ombudsman may send a copy of any report prepared under this section to any other persons the Ombudsman thinks appropriate.

(5) The Ombudsman shall publish any report laid before the Legislative Assembly under this section.

(6) If a report prepared under this section -

- (a) mentions the name of any person in respect of which a complaint has been made or referred under a scheduled Law; or
- (b) includes any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in the Ombudsman's opinion, can be omitted without impairing the effectiveness of the report,

that information shall not be included in a version of the report laid before the Legislative Assembly under subsection (3), sent to a person under subsection (3) or (4) or published by the Ombudsman under subsection (5), subject to subsection (7).

(7) Subsection (6) does not apply in relation to a version of the report if, after taking account of the interests of any persons the Ombudsman thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in that version of the report.

Immunity	12. Neither the Ombudsman, any Deputy Ombudsman, any person employed, engaged or appointed by the Ombudsman nor any person delegated any function under this Law or any scheduled Law, shall be liable in damages for anything done or omitted in the discharge of their respective functions unless it is shown that the act or omission was negligent or in bad faith.
Indemnity	13. The Government shall indemnify the Ombudsman, a Deputy Ombudsman, a person employed, engaged or appointed by the Ombudsman and a person delegated any function under this Law or any scheduled Law against all claims, damages, costs, charges or expenses incurred by those respective persons in the discharge or purported discharge of their functions under this Law or any scheduled Law, except claims, damages, costs, charges or expenses caused by the negligence or bad faith of those persons.
Use of title "Ombudsman"	14. No private entity or Government department shall use the term "Ombudsman" or "Office of the Ombudsman" to describe itself in any capacity.
Regulations	15. The Cabinet may make regulations subject to affirmative resolution for giving effect to the provisions of this Law.
Transitional provisions	16. The Governor may make any transitional arrangements for the appointment of the first Ombudsman as may be appropriate for the establishment of the office of Ombudsman.

SCHEDULE 1

OATH FOR THE DUE EXECUTION OF THE OFFICE OF
OMBUDSMAN

(Section 4)

Oath

I,appointed Ombudsman of the Cayman Islands in accordance with the Ombudsman Law, 2016, do swear that I will faithfully and impartially perform the duties of my office and that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors in such office. So help me God.

Affirmation

In the form above respectively set forth, for the word “swear” there shall be substituted the words “solemnly and sincerely affirm and declare”, and the words “So help me God” shall be omitted.

SCHEDULE 2

(Section 8(1) and (2))

LAWS IN RESPECT OF WHICH THE OMBUDSMAN HAS
RESPONSIBILITY

PART 1

The Complaints (Maladministration) Law, 2016

PART 2

The Freedom of Information Law (2015 Revision)

The Whistleblower Protection Law, 2015

PART 3

The Police Public Complaints Law, 2016

Passed by the Legislative Assembly the day of , 2017.

Speaker.

Clerk of the Legislative Assembly.