

CAYMAN ISLANDS



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THE COMPLAINTS COMMISSIONER LAW, 2003
(LAW 18 OF 2003)

THE COMPLAINTS COMMISSIONER LAW, 2003

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CAYMAN ISLANDS

Law 18 of 2003.

I Assent

B. H. Dinwiddie

Governor

Date: 31 October, 2003

**A LAW TO PROVIDE FOR THE APPOINTMENT AND FUNCTIONS OF
A COMPLAINTS COMMISSIONER FOR THE INVESTIGATION OF
ADMINISTRATIVE ACTION TAKEN ON BEHALF OF THE
GOVERNMENT AND STATUTORY AUTHORITIES, AND FOR
INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Complaints Commissioner Law, 2003.

Short title

2. (1) In this Law-

Interpretation

"Commissioner" means the Complaints Commissioner;

"government entity" includes a government Ministry, government company, government department, government portfolio, statutory board or authority;

"government company" means-

- (a) a company in which the Government has a controlling interest; and
- (b) in respect of each such company, includes all subsidiary entities of the company;

"Governor" means the person for the time being holding the office of Governor of the Islands, and includes any person for the time being lawfully performing the

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functions of that office under section 1 of Schedule 2 to the Cayman Islands (Constitution) Orders 1972 to 1993, and to the extent to which a Deputy appointed under section 4 of Schedule 2 to the Cayman Islands (Constitution) Orders 1972 to 1993 is authorised to act, that Deputy;

"maladministration" means inefficient, bad or improper administration and without prejudice to the generality of the foregoing, includes-

- (a) unreasonable conduct including delay;
- (b) abuse of any power (including any discretionary power) or authority including any action which -
 - (i) is unreasonable, unjust, oppressive or improperly discriminatory or which is in accordance with a practice which is or may be unreasonable, unjust, oppressive or improperly discriminatory; or
 - (ii) was based wholly or partly on a mistake of law or fact; and
- (c) unreasonable, unjust, oppressive or improperly discriminatory procedures;

"person" includes any corporation, either aggregate or sole, and any club, society, association or other body, of one or more persons;

"person aggrieved" means the person who claims or is alleged to have sustained an injustice in consequence of maladministration in connection with any action taken by any government entity to which this Law applies; and

"prescribed" means prescribed by any regulation made under this Law.

(2) Nothing in this Law authorises or requires the Commissioner to question the merits of a decision taken without maladministration by a government entity in the exercise of a discretion vested in that government entity.

(3) A complaint under this Law shall not be made in respect of matters which arose before the commencement of this Law.

Appointment of
Commissioner

3. (1) The Governor, acting in his discretion, after consultation with the Cabinet, may appoint a qualified person to be Commissioner and may remove the Commissioner from his office in accordance with the Constitution and, on any vacancy of the office by such removal or for any other cause, may appoint another person to be Commissioner.

(2) The Commissioner shall hold office for a term not exceeding five years and is eligible for re-appointment.

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(3) For the purposes of this Law a "qualified person" is a person who satisfies the requirements set out in section 49N of the Constitution.

4. The Commissioner shall not enter upon the duties of his office until he has taken and subscribed the oath of office in the form set out in Schedule 1.

Oath of Office

5. (1) There shall be paid to the Commissioner a salary at such annual rate and such other emoluments as the Governor may specify by order.

Salary and emoluments

(2) An order made under this section may contain such supplementary provisions as the Governor may consider necessary for the purpose of the order.

(3) The salary and emoluments of the Commissioner shall not be altered to his disadvantage during the period of his appointment.

6. (1) Any function of the Commissioner under this Law may be performed by any officer of the Commissioner authorised by him for that purpose.

Administrative provisions

(2) The officers of the Commissioner shall be public officers appointed by the Governor.

(3) The Commissioner may, by order, charge such fees in connection with his functions in such amounts and subject to such conditions as the Governor in Cabinet may prescribe; and such fees shall be published in the Gazette.

(4) Any fees received by the Commissioner pursuant to subsection (3) shall be paid into the revenue of the Islands.

7. (1) Where the office of Commissioner becomes vacant the Governor, after consultation with the Cabinet, may, pending the appointment of a new Commissioner, appoint a person under this section to act as the Commissioner at any time during the period of 12 months beginning with the date on which the vacancy arose.

Appointment of acting Commissioner

(2) A person appointed under this section shall hold office during the pleasure of the Governor and, subject to that, shall hold office-

- (a) until the appointment of a new Commissioner or the expiry of the period of 12 months beginning with the date on which the vacancy arose, whichever occurs first; and
- (b) in other respects, in accordance with the terms and conditions of his appointment which shall be such as the Governor may determine.

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(3) A person appointed under this section shall, while he holds office, be treated for all purposes as the Commissioner.

Appointment of
mediators

8. (1) The Commissioner may from time to time appoint-
- (a) mediators for the purposes of section 12; or
 - (b) professional or technical advisers to assist him in the performance of his functions.

(2) Persons appointed under subsection (1) shall be paid such fees as the Governor in Cabinet may approve.

Government entities
it to investigation

9. (1) Subject to the provisions of this Law, this Law applies to all government entities.

(2) Any reference in this Law to a government entity to which this Law applies includes a reference to the Ministers, members or public officers of that government entity.

Powers of investigation

10. (1) The purpose of an investigation by the Commissioner shall be to ascertain whether injustice has been caused by improper, unreasonable or inadequate administrative conduct on the part of any government entity subject to this Law.

(2) In investigating any matter leading to, or resulting from or connected with a decision of a Minister, the Commissioner shall not inquire into or question the policy of the Minister in accordance with which the decision was made.

(3) The Commissioner may investigate any course of conduct or anything done or omitted by any person in the exercise of administrative functions respecting any business of the government not being functions concerned with any action or matter set out in Schedule 2.

(4) The Governor in Cabinet may, by notice published in the Gazette, amend Schedule 2 so as to exclude from the provisions of that Schedule such actions and matters as may be described in the notice.

(5) An investigation by the Commissioner shall not be prevented by any provision of any enactment other than the Constitution to the effect, howsoever expressed, that any matter or thing shall be final and conclusive or shall not be disputed, reviewed or called in question.

Conditions of
investigation

11. (1) The Commissioner shall not make an investigation without first receiving a written complaint in accordance with this Law unless he is of the

*is directly
by minister*

opinion or the Legislative Assembly resolves that there are reasons of special importance which makes investigation by the Commissioner desirable in the public interest.

(2) Except as provided in this Law, the Commissioner shall not conduct an investigation under this Law in respect of -

- (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 Law; or
- (b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law.

(3) Notwithstanding subsection (2), 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.

(4) In determining whether to initiate, continue or discontinue an investigation under this Law, 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 Law shall be determined by the Commissioner.

(5) The Commissioner may refuse to investigate any matter on the ground that it is trivial or that the complaint is frivolous or vexatious or not made in good faith or that the complainant has not a sufficient interest therein.

(6) If any question arises whether the Commissioner is empowered to make an investigation or to exercise any power under this Law the Commissioner may, if he thinks fit, apply to the Grand Court which may determine the question by declaratory order.

12. (1) The Commissioner may decide to deal with a complaint by mediation under this section if he is of the opinion, having regard to all the circumstances of the case, that the subject matter of the complaint involves only minor maladministration.

*Dealing with complaints
by mediation*

(2) The Commissioner shall appoint in accordance with section 8 such person as he thinks fit to be a mediator in any mediation.

(3) The Commissioner shall not participate in any mediation.

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(4) Participation in the mediation by the complainant and the relevant government entity is voluntary and any party may withdraw at any time.

(5) The mediator may terminate the mediation at any time.

(6) Where an attempt to deal with a complaint by mediation under this section is unsuccessful-

- (a) the complainant is to be treated as if the mediation had not taken place; and
- (b) the mediator is excluded from participating as an investigating officer in any subsequent investigation of the complaint.

(7) Anything said or admitted during mediation and any document prepared for the purposes of such mediation shall not be admissible in evidence-

- (a) in any subsequent investigation of the complaint concerned unless the person who said or admitted the thing of to whom the document relates consents to its admission; or
- (b) against any person in any court or at any inquiry or in any other proceedings,

and no evidence in respect of the mediation may be given against any person.

(8) Nothing in this section prevents a complaint from being dealt with otherwise than in accordance with this section.

Provisions relating to
complaints

13. (1) A complaint under this Law may be made by any person but not a person who is-

- (a) a body constituted for purposes of the public service or of government or for the purposes of carrying on under national ownership any industry or undertaking or part of an industry or undertaking; or
- (b) any other authority or body whose members are appointed by the Government or by a government entity, or whose revenues consist wholly or mainly of moneys provided by Government.

(2) Where the person by whom a complaint might have been made under this Law has died or is for any reason unable to act for himself, the complaint may be made by the personal representative of his estate or by a member of his family or other individual suitable to represent him; but except as provided in this Law a complaint shall not be entertained under this Law unless made by the person aggrieved himself.

(3) A complaint shall not be entertained under this Law unless it is properly made not later than 12 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 Law unless the person aggrieved is ordinarily resident in the Islands (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 Islands on a ship or aircraft registered in the Islands, or in relation to rights or obligations which accrued or arose in the Islands or on such ship or aircraft. *(Carrying the flag)*

(5) A written complaint by any person under this Law shall set out in detail the circumstances which allegedly gave rise to the complaint.

14. (1) Where the Commissioner proposes to conduct an investigation pursuant to a complaint under this Law he shall afford to the principal officer of the government entity concerned, and to any 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 investigation*

(2) Every such investigation shall be conducted in private, but except as provided in this Law 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 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 his attorney-at-law or otherwise, in the investigation.

(3) No person shall be entitled as of right to be consulted or heard by the Commissioner except in the manner provided in this Law.

(4) 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 Law-

- (a) sums in respect of expenses properly incurred by them; or
- (b) allowances by way of compensation for the loss of their time,

in such amounts and subject to such conditions as may be prescribed.

(5) The conduct of an investigation under this Law shall not affect any action taken by the government entity concerned, or any power or duty of that *(2003 Revision)*

government entity, to take further action with respect to any matters subject to the investigation; but where the person aggrieved has been removed from the Islands under the Immigration Law (2003 Revision) or other enabling legislation he shall, if the Commissioner so directs, be permitted to re-enter and remain in the Islands, subject to such conditions as the Governor may direct, for the purposes of the investigation.

Evidence

15. (1) For the purposes of an investigation under this Law the Commissioner may require any Minister, officer or member of the government entity 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.

(2) Subject to this Law, for the purposes of any such investigation the Commissioner shall have the same powers as the Grand 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) Subject to a specific declaration to the contrary by the Governor acting in his discretion, no obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to persons in Government service, whether imposed by any Law or by any rule of law, shall apply to the disclosure of information for the purposes of an investigation under this Law; and subject as aforesaid, Government 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 to the Commissioner as is allowed by law in legal proceedings.

(4) No person shall be required or authorised by virtue of this Law to furnish any information or answer any question relating to proceedings of Cabinet or of any committee of 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 Governor and certifying that any information, question, document or part of a document so relates shall be conclusive.

(5) Subject to subsection (3), no person shall be compelled for the purposes of an investigation under this Law to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the Grand Court.

(6) The Governor shall not be compelled for the purposes of an investigation under this Law to give any evidence before the Commissioner.

(7) Subject to this section no information, answer, documents or thing shall be withheld from the Commissioner on the ground that its disclosure would be contrary to the public interest.

16. (1) Information obtained by the Commissioner or his officers in the course of or for the purposes of an investigation under this Law shall not be disclosed except-

Provision for secrecy of information

- (a) for the purposes of the investigation and of any report to be made on the investigation under this Law;
- (b) for the purposes of proceedings (or possible proceedings) for an offence of perjury connected with an investigation under this Law; or
- (c) for the purposes of any proceedings under section 15.

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 Law.

(2) The Governor acting in his discretion 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 Governor acting in his discretion the disclosure of that document or information, or of documents or information of that class, would be prejudicial to the safety of the Islands or otherwise contrary to the public interest; and where such a notice is given nothing in this Law shall be construed as authorising or requiring the Commissioner or any officer of the Commissioner to communicate to any person for any purpose any document or information specified in the notice or any document or information of a class so specified.

17. (1) If any person without lawful excuse obstructs the Commissioner or any officer of the Commissioner in the performance of his functions under this Law, or is guilty of any act or omission in relation to any investigation under this Law which, if that investigation were a proceeding in the Grand Court, would constitute contempt of court, the Commissioner may certify the offence to the Grand Court.

Obstruction and contempt

(2) Where an offence is certified under this section, the Grand 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 Grand Court could deal with him if he had committed a contempt of the court.

18. (1) After conducting an investigation under this Law, the Commissioner shall inform the principal officer of the government entity concerned of the result

Procedure after investigation

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of that investigation, and if the Commissioner is of the opinion that the person aggrieved has sustained injustice in consequence of a fault in the administration of that government entity, he shall inform such officer of the reason for that opinion and may, if he thinks fit, make recommendations for action to be taken by the government entity, as the case may be, within a specified time.

(2) Recommendations made by the Commissioner under subsection (1) may include all or any of the following-

- (a) that the action which was the subject matter of the complaint be reviewed; ~~(law)~~
- (b) that an enactment, rule or regulation which causes or may cause injustice, be altered; or
- (c) that compensation be made to the person aggrieved.

(3) Where the Commissioner has made a recommendation under subsection (1) and within the time specified or a reasonable time thereafter, he is of the opinion that no adequate action has been taken to remedy the injustice, he shall lay before the Legislative Assembly a ~~special~~ report on the case.

(4) The Commissioner, prior to laying a ~~special~~ report under subsection (3), shall provide the Governor with a copy of such report.

(5) The Commissioner shall not, in any report under subsection (3), comment adversely on any person unless he has given that person an opportunity to be heard.

(6) Where the Commissioner is of opinion that-

- (a) the person aggrieved has sustained any such injustice as is mentioned in this Law, he shall inform that person of his opinion, the nature of the injustice sustained and the recommendation (if any) which has been made to remedy the injustice, and may make any comments in relation to the case as he thinks fit; and
- (b) the person aggrieved has suffered no injustice, he shall inform that person of that opinion and the reasons therefor and may make such comments in relation to the case as he thinks fit.

(7) Where the Commissioner makes an investigation on his own initiative or pursuant to a resolution of the Legislative Assembly he shall make a report thereupon to the Legislative Assembly.

19. If the Commissioner finds, during the conduct of his investigations or on conclusion of such investigations, that there is evidence of a breach of duty, or misconduct, or criminal offence on the part of an officer of any government entity

*Disciplinary actions
against officers*

he shall refer the matter to the person or body of persons competent to take such disciplinary or other proceeding as may be appropriate against that officer and in all such cases shall lay a special report before the Legislative Assembly.

20. (1) The Commissioner shall annually lay before the Legislative Assembly a general report on the performance of his functions under this Law and may from time to time lay before the Legislative Assembly such other reports with respect to those functions as he thinks fit.

Reports by
Commissioner

(2) Notwithstanding the generality of subsection (1), the Commissioner may lay before the Legislative Assembly reports on the inequitable or unreasonable nature or operation of any enactment or rule of law.

21. No proceeding of the Commissioner may be held bad for want of form and, except on the ground of lack of jurisdiction, no proceeding or decision of the Commissioner conducted or taken in good faith is liable to be challenged, reviewed, quashed or called in question in any court.

Appeals restricted

22. For the purposes of the law of defamation-

Privileged
communications

- (a) any communications made by or to the Commissioner for the purposes of a complaint or investigation shall be privileged in the same manner as if it were made in the course of proceedings in the Grand Court;
- (b) any report of the Commissioner under this Law shall be deemed to be authorised to be published by the Legislative Assembly; and
- (c) any communication between the Commissioner and a member of the Legislative Assembly and the Speaker of the Legislative Assembly for the purposes of the Commissioner's functions shall be deemed to be a proceeding of the Legislative Assembly.

23. (1) The Governor in Cabinet may make regulations generally for the administration of this Law and, in particular, for prescribing anything required to be prescribed under this Law.

Regulations

(2) Regulations made under this Law shall be subject to affirmative resolution.

24. All expenses incurred by the Commissioner in connection with his functions under this Law or the regulations shall be defrayed out of moneys voted for the purpose by the Legislative Assembly.

Expenses

Section 4

SCHEDULE 1

**OATH FOR THE DUE EXECUTION OF THE OFFICE OF
COMMISSIONER**

1. Oath

I, _____, appointed Complaints Commissioner of the Cayman Islands in accordance with the Complaints Commissioner Law, 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.

2. 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.

Section 9

SCHEDULE 2

MATTERS NOT SUBJECT TO INVESTIGATION

1. Action taken in matters certified by the Governor to affect relations or dealings between the Government of the Islands and any other Government or any international organisation of States or Governments.
2. Action taken in matters certified by the Governor to affect defence, external affairs or internal security.
3. Action taken by or with the authority of the Attorney-General, the Commissioner of Police, the Chief Immigration Officer or the Collector of Customs for the purposes of investigating crime or of protecting the security of the Islands, including action so taken with respect to passports.
4. Action taken in connection with the Governor's power of pardon under section 53 of the Constitution.

5. The commencement or conduct of civil or criminal proceedings before any court of law in the Islands.
6. Action taken in respect of appointments or removals, pay, discipline, or other personal matters in relation to—
 - (a) service in any office or employment under the Government; or
 - (b) 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 the Government.
7. Action taken by the Attorney-General in connection with the exercise or possible exercise of his power under the Constitution to institute, undertake, take over, continue or discontinue criminal proceedings before any court of law in the Islands.
8. Legal advice given by or on behalf of the Attorney-General to the Government or to any public body.
9. Action taken by the Auditor-General in connection with the exercise or possible exercise of his power under the constitution or otherwise.
10. Action taken by the appropriate authority in connection with the exercise or possible exercise of the authority's power under any Mutual Legal assistance arrangement, including extradition.
11. Action taken in matters relating to contractual or other commercial transactions, being transactions of a Ministry or department or a statutory authority not being transactions relating to—
 - (a) the acquisition of land compulsorily or in circumstances in which it can be acquired compulsorily; or
 - (b) the disposal of surplus land acquired compulsorily or in circumstances in which it could be acquired compulsorily.
12. Any action which by virtue of any provision of the Constitution may not be enquired into by any court.
13. Any judicial function not specifically excluded by paragraphs 1 to 12.

The Complaints Commissioner Law, 2003

Passed by the Legislative Assembly this 1st day of October, 2003.

JULIANNA O'CONNOR - CONNOLLY
Speaker.

WENDY LAUER EBANKS
Clerk of the Legislative Assembly.