

Police Complaints Authority Act 1988

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An Act to make better provision for the investigation and resolution of complaints against the Police by establishing an independent Police Complaints Authority

BE IT ENACTED by the Parliament of New Zealand as follows:

1 Short Title and commencement

- (1) This Act may be cited as the Police Complaints Authority Act 1988.
- (2) This Act shall come into force on a date to be fixed by the Governor-General by Order in Council.

2 Interpretation

In this Act, unless the context otherwise requires,—

Authority means the Police Complaints Authority established under section 4 of this Act

Commissioner means the Commissioner of Police appointed under the Police Act 1958

Deputy Authority means the person appointed as the deputy to the Police Complaints Authority under section 8 of this Act.

3 Act to bind the Crown

This Act shall bind the Crown.

Police Complaints Authority

4 Police Complaints Authority

- (1) There shall be an authority to be known as the Police Complaints Authority.
- (2) The Authority shall be a person appointed by the Governor-General on the recommendation of the House of Representatives.
- (3) No person shall be appointed as the Authority unless that person—
 - (a) Is qualified as a barrister or solicitor of the High Court; and
 - (b) Possesses suitable legal experience for the task.
- (4) The appointment of a Judge as the Authority shall not affect the Judge's tenure of judicial office, rank, title, status, precedence, salary, annual or other allowances, or other rights or privileges as a Judge (including matters relating to superannuation) and,

for all purposes, service by a Judge as the Authority shall be taken to be service as a Judge.

- (5) Subsection (2) applies despite section 28(1)(b) of the Crown Entities Act 2004.

Subsection (5) was amended, as from 1 April 1988, by section 90(a) State Sector Act 1988 (1988 No 20) by substituting the reference to the “State Sector Act 1988” for a reference to the “State Services Act 1962”.

Subsection (5) was substituted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

4A Crown entity

- (1) The Authority is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
- (2) The Crown Entities Act 2004 applies to the Authority except to the extent that this Act expressly applies otherwise.
- (3) The person appointed as the Authority is the board for the purpose of section 10 of that Act.
- (4) The Authority is a corporation sole.

Sections 4A and 4AB were inserted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

4AB Independence

Except as expressly provided in this or any other Act, the Authority must act independently in performing its statutory functions and duties, and exercising its statutory powers, under—

- (a) this Act; and
- (b) any other Act that expressly provides for the functions, powers, or duties of the Authority (other than the Crown Entities Act 2004).

Sections 4A and 4AB were inserted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

5 Term of office of Authority

- (1)
- (2)
- (3) The person appointed as the Authority—
- (a) May resign the office at any time by written notice given to the Governor-General:

(b) Shall resign the office on attaining the age of 72 years.

- (4) Subsection (3)(a) applies despite section 44 of the Crown Entities Act 2004.

Subsections (1) and (2) were repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

Subsection (4) was inserted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

6 Power to remove or suspend Authority

- (1) Section 42 of the Crown Entities Act 2004 applies if the Authority or the Deputy Authority is a Judge.
- (2) Section 39 of the Crown Entities Act 2004 does not apply to the Authority or Deputy Authority.
- (3) Instead, the Authority or Deputy Authority may be removed for just cause by the Governor-General acting upon an address from the House of Representatives.
- (4) **Just cause** has the same meaning as in section 40 of the Crown Entities Act 2004.

Section 6 was amended, as from 1 January 2002, by section 70(1) Human Rights Amendment Act 2001 (2001 No 96), by substituting the words “inability to perform the functions of the office” for the word “disability”.

Section 6 was substituted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

7 Filling of vacancy

- (1) Where any vacancy occurs in the office of Authority, the vacancy shall, subject to subsection (2) of this section, be filled by the appointment of a successor by the Governor-General on the recommendation of the House of Representatives.
- (2) Where—
- (a) A vacancy occurs while Parliament is not in session, or exists at the close of a session; and
- (b) The House of Representatives has not recommended an appointment to fill the vacancy,—
- the vacancy may, at any time before the commencement of the next ensuing session of Parliament, be filled by the appointment of a successor by the Governor-General in Council.
- (3) Any appointment made under subsection (2) of this section shall lapse and the office shall again become vacant unless,

before the end of the 24th sitting day of the House of Representatives following the date of the appointment, the House confirms the appointment.

8 Deputy Police Complaints Authority

- (1) There may from time to time be appointed a deputy to the person appointed as the Police Complaints Authority, who, subject to the control of the Authority, shall have and may exercise all the powers, duties, and functions of the Authority under this Act (including the power of delegation conferred by section 36 of this Act).
- (2) The Deputy Authority shall be appointed in the same manner as the Authority, and sections 4 to 7 of this Act shall apply to the Deputy Authority in the same manner as they apply to the Authority.
- (3) On the occurrence from any cause of a vacancy in the office of Authority, and in case of the absence from duty of the person appointed as the Authority (from whatever cause arising), and for so long as any such vacancy or absence continues, the Deputy Authority shall have and may exercise all the powers, duties, and functions of the Authority.
- (4) The fact that the Deputy Authority exercises any power, duty, or function of the Authority shall be conclusive evidence of his or her authority to do so.

9 Salaries and allowances

[Repealed]

Subsection (1)(a) was amended, as from 1 July 1992, by section 4 Higher Salaries Commission Amendment Act (No 2) 1992 (1992 No 130) by substituting the words “Such remuneration” for the words “A salary at such rate”. See section 5 of that Act for the savings provisions.

Subsection (1) was amended, as from 1 April 2003, by section 4(1) Remuneration Authority (Members of Parliament) Amendment Act 2002 (2002 No 54) by substituting the words “Remuneration Authority” for the words “Higher Salaries Commission” in both places where they appear.

Sections 9 and 10 were repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

10 Staff

[Repealed]

Section 10(3) was amended, as from 19 December 1984, by section 33(1) State Sector Amendment Act 1989 (1989 No 136) by substituting the reference to the “State Services Commissioner” for the reference to the “State Service Commission”.

Section 10(4) was amended, as from 1 April 1988, by section 90(a) State Sector Act 1988 (1988 No 20) by substituting the reference to the “State Sector Act 1988” for a reference to the “State Services Act 1962”.

Sections 9 and 10 were repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

11 Superannuation or retiring allowances

For the purpose of providing a superannuation fund or retiring allowance for the Authority and the Deputy Authority, sums by way of subsidy may from time to time be paid into any superannuation scheme that is registered under the Superannuation Schemes Act 1989.

Section 11 was substituted, as from 1 July 1992, by section 4 Higher Salaries Commission Amendment (No 2) 1992 (1992 No 130). *See* section 5 of that Act for the savings provisions.

Section 11 was amended, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115) by substituting the words “the Authority and the Deputy Authority” for the words “the Authority, the Deputy Authority, and any officer or employee of the Authority”.

11A Funds of Authority

[Repealed]

Sections 11A to 11E were inserted, as from 1 April 1989, by section 2 Police Complaints Authority Amendment Act 1988 (1988 No 207).

Sections 11A to 11D were repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

11B Bank accounts

[Repealed]

Sections 11A to 11E were inserted, as from 1 April 1989, by section 2 Police Complaints Authority Amendment Act 1988 (1988 No 207).

Sections 11A to 11D were repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

11C Accounts and audit

[Repealed]

Sections 11A to 11E were inserted, as from 1 April 1989, by section 2 Police Complaints Authority Amendment Act 1988 (1988 No 207).

Subsection (1) was substituted, and a new subsection (2) inserted, as from 1 July 2001, by section 53 Public Audit Act 2001 (2001 No 10).

Subsections (2) to (5) were repealed, as from 21 December 1992, by section 42 Public Finance Amendment Act 1992 (1992 No 142).

Sections 11A to 11D were repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

11CA Crown entity

[Repealed]

Section 11CA was inserted, as from 21 December 1992, by section 42 Public Finance Amendment Act 1992 (1992 No 142).

Sections 11A to 11D were repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

11D Investment of money

[Repealed]

Sections 11A to 11E were inserted, as from 1 April 1989, by section 2 Police Complaints Authority Amendment Act 1988 (1988 No 207).

Sections 11A to 11D were repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

11E Exemption from income tax

The income of the Authority shall be exempt from income tax.

Sections 11A to 11E were inserted, as from 1 April 1989, by section 2 Police Complaints Authority Amendment Act 1988 (1988 No 207).

Functions of Authority

12 Functions of Authority

(1) The functions of the Authority shall be—

- (a) To receive complaints—
 - (i) Alleging any misconduct or neglect of duty by any member of the Police; or
 - (ii) Concerning any practice, policy, or procedure of the Police affecting the person or body of persons making the complaint in a personal capacity:

- (b) To investigate of its own motion, where it is satisfied that there are reasonable grounds to carry out an investigation in the public interest, any incident involving death or serious bodily harm notified to the Authority by the Commissioner under section 13 of this Act:
 - (c) To take such action in respect of complaints, incidents, and other matters as is contemplated by this Act.
- (2) In the course of taking action in respect of any complaint the Authority may investigate any apparent misconduct or neglect of duty by a member of the Police, or any Police practice, policy, or procedure, which appears to the Authority to relate to the complaint, notwithstanding that the complaint itself does not refer to that misconduct, neglect, practice, policy, or procedure.
- (3) Nothing in subsection (1) of this section shall authorise the Authority to investigate any matter relating to the terms and conditions of service of any person as a member of the Police.

13 Duty of Commissioner to notify Authority of certain incidents involving death or serious bodily harm

Where a member of the Police acting in the execution of the member's duty causes, or appears to have caused, death or serious bodily harm to any person, the Commissioner shall as soon as practicable give to the Authority a written notice setting out particulars of the incident in which the death or serious bodily harm was caused.

14 Mode of complaint

- (1) A complaint may be made either orally or in writing.
- (2) A complaint made orally shall be reduced to writing as soon as practicable.
- (3) A complaint may be made to the Authority, to any member of the Police, to an Ombudsman, or, where the complaint is in writing, to the Registrar or Deputy Registrar of any District Court.
- (4) Any Ombudsman or Registrar or Deputy Registrar to whom a complaint is made shall forward it to the Authority as soon as practicable.

- (5) Notwithstanding any provision in any enactment, where any letter appearing to be written by or on behalf of—
- (a) A person in custody on a charge or after conviction of any offence; or
 - (b) A patient of any hospital within the meaning of the Mental Health Act 1969,—
- is addressed to the Authority, the person for the time being in charge of the place or institution where the person is in custody or is a patient shall immediately forward the letter, unopened, to the Authority.

15 Duty of Commissioner to notify Authority of complaints

The Commissioner shall notify the Authority as soon as practicable of every complaint received by the Police, other than a complaint notified to the Commissioner by the Authority.

16 Duty of Authority to notify Commissioner of complaints

The Authority shall notify the Commissioner as soon as practicable of every complaint received by it, other than a complaint notified to it by the Commissioner.

17 Action upon receipt of complaint

- (1) On receiving or being notified of a complaint under this Act, the Authority may do all or any of the following:
- (a) Investigate the complaint itself, whether or not the Police have commenced a Police investigation;
 - (b) Defer action until the receipt of a report from the Commissioner on a Police investigation of the complaint;
 - (c) Oversee a Police investigation of the complaint;
 - (d) Decide, in accordance with section 18 of this Act, to take no action on the complaint.
- (2) Subject to subsection (2A) of this section, the Authority shall, as soon as practicable, advise the Commissioner and the complainant of the procedure it proposes to adopt under subsection (1) of this section.
- (2A) Where—
- (a) A complaint is made to the Police; and

- (b) The Authority decides to adopt the procedure provided for in paragraph (a) or paragraph (b) or paragraph (c) of subsection (1) of this section; and
 - (c) The Authority is satisfied that the Police will inform the complainant of the procedure to be followed,—
the Authority is not required to inform the complainant in accordance with subsection (2) of this section of the procedure it proposes to follow.
- (3) Where any complaint appears to the Authority to be capable of resolution by conciliation in accordance with any conciliation procedure established by or under the Police Act 1958, it may indicate that view to the Commissioner.

Subsection (2) was substituted, and subsection (2A) was inserted, as from 1 July 1994, by section 2 Police Complaints Authority Amendment Act 1994 (1994 No 53).

18 Authority may decide to take no action on complaint

- (1) The Authority may in its discretion decide to take no action, or, as the case may require, no further action, on any complaint if—
- (a) The complaint relates to a matter of which the person alleged to be aggrieved has had knowledge for more than 12 months before the complaint was made; or
 - (b) In the opinion of the Authority—
 - (i) The subject-matter of the complaint is trivial; or
 - (ii) The complaint is frivolous or vexatious or is not made in good faith; or
 - (iii) The person alleged to be aggrieved does not desire that action be taken or, as the case may be, continued; or
 - (iv) The identity of the complainant is unknown and investigation of the complaint would thereby be substantially impeded; or
 - (v) There is in all the circumstances an adequate remedy or right of appeal, other than the right to petition the House of Representatives, which it would be reasonable for the person alleged to be aggrieved to exercise.

- (2) The Authority may decide not to take any further action on a complaint if, in the course of the investigation of the complaint by the Authority or the Police, or as a result of the Commissioner's report on a Police investigation, it appears to the Authority that, having regard to all the circumstances of the case, any further action is unnecessary or inappropriate.
- (3) In any case where the Authority decides to take no action, or no further action, on a complaint, it shall inform the complainant of that decision and the reasons for it.

19 Subsequent powers in relation to complaint

The Authority may at any time—

- (a) Review a Police investigation of a complaint:
- (b) Decide to investigate a complaint itself:
- (c) Where it oversees a Police investigation, give such directions to the Police concerning the investigation as it thinks fit:
- (d) Direct the Police to re-open an investigation, and thereafter oversee the investigation:
- (e) Direct the Police to reconsider their proposals for action on a complaint:
- (f) Decide, in accordance with section 18 of this Act, to take no further action on the complaint:
- (g) Decide that no action by the Authority is required on the ground that it considers that the outcome of a Police investigation is satisfactory.

20 Duty of Commissioner to report to Authority on Police investigation of complaint

- (1) The Commissioner shall as soon as practicable, and in no case later than 2 months, after the completion of a Police investigation of a complaint, report to the Authority—
 - (a) Whether the complaint has been upheld and, if so, what action has been taken or is proposed to be taken to rectify the matter:
 - (b) Whether the complaint has been settled by conciliation.
- (2) When reporting to the Authority under this section, the Commissioner shall supply to the Authority accompanying mater-

ial sufficient to enable the Authority to assess the adequacy of the Police investigation.

- (3) The Commissioner may consult the Authority on any Police proposals for action on a complaint before reporting to the Authority under this section.

21 Commissioner to provide information and assistance at request of Authority

- (1) The Commissioner shall, whenever the Authority so requests, provide to the Authority all such information and assistance as is necessary for the proper performance by the Authority of its functions in relation to its investigation of any complaint, incident, or other matter under this Act.
- (2) Where the Authority oversees a Police investigation of a complaint, the Commissioner shall, whenever the Authority so requests, provide to the Authority—
 - (a) Any or all information in the possession or under the control of the Police that is relevant to the complaint:
 - (b) A report on the progress of the investigation.

22 Power of Police to investigate complaints and other matters

- (1) Nothing in this Act shall prevent the Commissioner from commencing or continuing a Police investigation into any complaint, incident, or other matter.
- (2) If, either before or after the commencement of a Police investigation, the Commissioner forms a view that the complaint, incident, or other matter should be investigated by the Authority, the Commissioner may request the Authority to do so.

Proceedings of Authority

23 Proceedings of Authority

- (1) Before proceeding to investigate any matter under this Act the Authority shall inform the Commissioner, the complainant (if any), and, unless the interests of justice otherwise require, any person alleged to be aggrieved (if not the complainant) of its intentions to make the investigation.

- (2) Every investigation by the Authority under this Act shall be conducted in private.
- (3) Subject to section 31 of this Act,—
 - (a) The Authority may hear or obtain information from such persons as it thinks fit, including, where it considers that cultural matters are a factor relevant to a complaint or investigation, information from such persons as the Authority thinks have knowledge or experience in those matters:
 - (b) It shall not be necessary for the Authority to hold any hearing:
 - (c) No person shall be entitled as of right to be heard by the Authority.
- (4) Subject to the provisions of this Act, the Authority may regulate its procedure in such manner as it thinks fit.

Subsection (4) was inserted, as from 1 July 1994, by section 3 Police Complaints Authority Amendment Act 1994 (1994 No 53).

24 Powers of Authority in relation to investigations

- (1) The Authority may require any person who in its opinion is able to give information relating to any matter under investigation by the Authority to furnish such information, and to produce such documents or things in the possession or under the control of that person, as in the opinion of the Authority are relevant to the subject-matter of the investigation.
- (2) The Authority may summon before it and examine on oath any person who in its opinion is able to give any information relating to the matter under investigation, and may for the purpose administer an oath to any person so summoned.
- (3) Every such examination by the Authority shall be deemed to be a judicial proceeding within the meaning of section 108 of the Crimes Act 1961 (which relates to perjury).

25 Protection and privileges of witnesses, etc

- (1) Except as provided in subsection (2) of this section and in section 26(2) of this Act, every person shall have the same privileges in relation to the giving of information to the Authority, the answering of questions put by the Authority, and the pro-

duction of documents and things to the Authority, as witnesses have in any Court.

- (2) Where the Authority requires any person to give any information or produce any document or thing, and compliance with that requirement would breach an obligation of secrecy or non-disclosure imposed on that person by or under any enactment,—
 - (a) The existence of the obligation shall not constitute a ground for refusal or failure to give the information or produce the document or thing, as the case may be; and
 - (b) Compliance with any such requirement is not a breach of the relevant obligation of secrecy or non-disclosure, or of the enactment or provision by which that obligation is imposed.
- (3) No person shall be liable to prosecution for an offence against any enactment, other than section 37 of this Act, by reason of that person's compliance with any requirement of the Authority under section 24 of this Act.
- (4) Except in proceedings for perjury within the meaning of the Crimes Act 1961 in respect of sworn testimony given before the Authority, or for an offence against section 37 of this Act,—
 - (a) No statement made or answer given by any person in the course of any investigation by or proceedings before the Authority shall be admissible in evidence against that or any other person in any Court or in any inquiry or other proceeding; and
 - (b) No evidence in respect of proceedings before the Authority shall be given against any person.
- (5) Where the attendance of any person is required by the Authority under section 24 of this Act, the person shall be entitled to the same fees, allowances, and expenses as if the person were a witness in a Court and, for the purpose,—
 - (a) The provisions of any regulations in that behalf under the Summary Proceedings Act 1957 shall apply accordingly; and
 - (b) The Authority shall have the powers of a Court under any such regulations to fix or disallow, in whole or

in part, or to increase, any amounts payable under the regulations.

26 Disclosure of certain matters not to be required

(1) Where—

- (a) The Prime Minister certifies that the giving of any information or the production of any document or thing might prejudice—
 - (i) The security or defence of New Zealand, or the international relations of the Government of New Zealand; or
 - (ii) Any interest protected by section 7 of the Official Information Act 1982 (which relates to the Cook Islands, Niue, Tokelau, and the Ross Dependency); or
- (b) The Attorney-General certifies that the giving of any information or the production of any document or thing—
 - (i) Might prejudice the prevention, investigation, or detection of offences; or
 - (ii) Might involve the disclosure of proceedings of Cabinet, or any committee of Cabinet, relating to matters of a secret or confidential nature, and such disclosure would be injurious to the public interest,—

the Authority shall not require the information to be given, or, as the case may be, the document or thing to be produced.

- (2) Except as provided in subsection (1) of this section, the rule of law which authorises or requires the withholding of any document, or the refusal to answer any question, on the ground that the disclosure of the document 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 Authority.

Procedure on completion of investigation

27 Procedure after investigation by Authority

- (1) Where the Authority itself undertakes an investigation under this Act it shall form an opinion on whether or not any deci-

sion, recommendation, act, omission, conduct, policy, practice, or procedure which was the subject-matter of the investigation was contrary to law, unreasonable, unjustified, unfair, or undesirable.

- (2) The Authority shall convey its opinion, with reasons, to the Commissioner, and may make such recommendations as it thinks fit, including a recommendation that disciplinary or criminal proceedings be considered or instituted against any member of the Police.

28 Procedure after investigation by Police

- (1) Where the Commissioner reports to the Authority, pursuant to section 20 of this Act, on a Police investigation of a complaint, the Authority shall form an opinion on whether or not any decision, recommendation, act, omission, conduct, policy, practice, or procedure which was the subject-matter of the investigation was contrary to law, unreasonable, unjustified, unfair, or undesirable.
- (2) After considering the Commissioner's report and forming its opinion, the Authority—
 - (a) Shall indicate to the Commissioner whether or not it agrees with the Commissioner's decision or proposed decision in respect of the complaint:
 - (b) May, where it disagrees with the Commissioner's decision or proposed decision, make such recommendations, supported by reasons, as it thinks fit, including a recommendation that disciplinary or criminal proceedings be considered or instituted against any member of the Police.

29 Implementation of recommendations of Authority

- (1) The Commissioner shall, as soon as reasonably practicable after receiving any recommendation of the Authority under section 27(2) or section 28(2) of this Act,—
 - (a) Notify the Authority of the action (if any) proposed to be taken to give effect to the recommendation; and
 - (b) Give reasons for any proposal to depart from, or not to implement, any such recommendation.

- (2) If, within a reasonable time after a recommendation is made, no action is taken which seems to the Authority to be adequate and appropriate, the Authority may, after considering any comments made by the Commissioner,—
- (a) Send a copy of its opinion and recommendations on the matter, together with the comments of the Commissioner, to the Attorney-General and the Minister of Police; and
 - (b) Where it considers it appropriate, transmit to the Attorney-General for tabling in the House of Representatives such report on the matter as it thinks fit.
- (3) The Attorney-General shall, as soon as practicable after receiving a report under subsection (2)(b) of this section, lay the report before the House of Representatives.

30 Parties to be informed of progress and result of investigation

Where the Authority investigates a complaint, it shall—

- (a) Conduct the investigation with due expedition; and
- (b) If it seems appropriate, inform the complainant and the Commissioner of the progress of the investigation; and
- (c) In every case inform the parties concerned, as soon as reasonably practicable after the conclusion of the investigation, and in such manner as it thinks proper, of the result of the investigation.

31 Adverse comment

The Authority shall not, in any opinion or recommendation given under section 27 or section 28 of this Act, or in any report made or published under section 29 or section 34 of this Act, make any comment that is adverse to any person unless that person has been given a reasonable opportunity to be heard.

Miscellaneous provisions

32 Authority and staff to maintain secrecy

- (1) The Authority, and every person holding any office or appointment under the Authority, shall maintain secrecy in respect of all matters that come to their knowledge in the exercise of their

functions, and shall not communicate any such matter to any person except for the purpose of carrying out their functions under or giving effect to this Act.

- (2) Notwithstanding subsection (1) of this section, the Authority may disclose such matters as in the opinion of the Authority ought to be disclosed—
- (a) For the purposes of carrying out an investigation or other duty of the Authority under this Act; or
 - (b) In order to establish grounds for the Authority's conclusions and recommendations,—
other than any matter which is likely to prejudice any of the interests described in subsection (1) of section 26 of this Act, whether or not any certificate has been given under that subsection.
- (3) The Authority, and every person holding any office or appointment under the Authority, shall be deemed for the purposes of sections 105 and 105A of the Crimes Act 1961 to be officials.
- (4) Subsection (1) applies to a person employed by Archives New Zealand (Te Rua Mahara o te Kawanatanga) or by or in a repository approved under section 26 of the Public Records Act 2005, and who has access to public records in respect of which the Authority is subject to an obligation of secrecy under this section.

Subsection (4) was inserted, as from 21 April 2005, by section 67(1) Public Records Act 2005 (2005 No 40).

33 Proceedings privileged

- (1) Subject to subsection (2) of this section,—
- (a) No proceedings, civil or criminal, shall lie against the Authority, or against any person holding any office or appointment under the Authority, for anything done or reported or said by the Authority or person in the course of the exercise or intended exercise of their functions under this Act, unless it is shown that the Authority or person acted in bad faith:
 - (b) Neither the Authority, nor any person holding any office or appointment under the Authority, shall be called to give evidence in any Court, or in any proceedings of a judicial nature, in respect of anything coming to their

knowledge in the exercise of their functions under this Act.

- (2) Nothing in subsection (1) of this section applies in respect of proceedings for—
 - (a) An offence against section 78 or section 78A(1) or section 105 or section 105A of the Crimes Act 1961; or
 - (b) The offence of conspiring to commit an offence against section 78 or section 78A(1) or section 105 or section 105A of the Crimes Act 1961; or
 - (c) The offence of attempting to commit an offence against section 78 or section 78A(1) or section 105 or section 105A of the Crimes Act 1961; or
 - (d) An offence against section 37 of this Act.
- (3) Anything said or any information given or any document or thing produced by any person in the course of any investigation by or proceedings before the Authority under this Act shall be privileged in the same manner as if the investigation or proceedings were proceedings in a Court.
- (4) For the purposes of clause 3 of Part 2 of Schedule 1 to the Defamation Act 1992,—
 - (a) Any report, opinion, or recommendation given by the Authority under section 27 or section 28 or section 29 of this Act; and
 - (b) Any report published by the Authority or the Commissioner under section 34 of this Act,—shall be deemed to be an official report made by a person holding an inquiry under the authority of the Government of New Zealand.
- (5) This section applies despite section 121 of the Crown Entities Act 2004.
- (6) Sections 59(3) and 60 of the Crown Entities Act 2004 do not apply unless the entity bringing the action, or the person making the application, shows that the member, employee, or office holder of the Authority acted in bad faith.

Subsection (4) was amended (as from 1 February 1993) by section 56(1) Defamation Act 1992 (1992 No 105) by substituting the words “clause 3 of Part 2 Act 1992” for the words “clause 5 of Schedule 1 to the Defamation Act 1954”.

Subsections (5) and (6) were inserted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

34 Publication of reports by Authority and by Commissioner

- (1) The Authority may from time to time, in the public interest or in the interests of any person, publish reports relating to—
- (a) The general exercise of its functions under this Act; or
 - (b) Any particular case or cases in relation to which it has exercised its functions under this Act,—
- whether or not the matters dealt with in the report have been the subject of a report to the Attorney-General and the Minister of Police, or to the House of Representatives, under section 29 of this Act.
- (2) The Commissioner may, after receiving from the Authority any opinion or recommendation given under section 27 or section 28 of this Act, publish all or any part of the opinion or recommendation.
- (3) In determining the desirability or extent of publication under subsection (2) of this section, the Commissioner shall take into account any recommendation of the Authority concerning publication.
- (4) Neither the Authority nor the Commissioner shall, in any report published under this section, disclose any matter which is likely to prejudice any of the interests described in subsection (1) of section 26 of this Act, whether or not any certificate has been given under that subsection.

35 Annual report

[Repealed]

Subsection (2) was substituted, as from 21 December 1992, by section 42 Public Finance Amendment Act 1992 (1992 No 142).

Sections 35 and 36 were repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

36 Delegation of powers by Authority

[Repealed]

Sections 35 and 36 were repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

37 Offences

Every person commits an offence under this Act and is liable on summary conviction to a fine not exceeding \$2,000 who,—

- (a) Without reasonable excuse, obstructs, hinders, or resists the Authority or any other person in the exercise of their powers under this Act:
- (b) Without reasonable excuse, refuses or fails to comply with any requirement of the Authority or any other person under this Act:
- (c) Makes any statement or gives any information to the Authority, or to any other person exercising powers under this Act, knowing that the statement or information is false or misleading.

38 Money to be appropriated by Parliament for purposes of this Act

[Repealed]

Sections 38 and 39 were repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

38A Crimes of Torture Act 1989 not limited

Nothing in this Act limits the operation of Part 2 of the Crimes of Torture Act 1989.

Section 38A was inserted, as from 5 December 2006, by section 14 Crimes of Torture Amendment Act 2006 (2006 No 68).

39 Amendments to other Acts

[Repealed]

Sections 38 and 39 were repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

40 Savings and transitional

- (1) Nothing in this Act shall apply to any complaint or matter which an Ombudsman has been requested or has commenced to investigate before the commencement of this Act, and the Ombudsman may proceed with and complete the investigation of any such complaint or matter as if this Act had not been passed.
- (2) Except where the Authority takes action on a complaint referred to in subsection (3) of this section, nothing in this Act shall apply to any complaint received by the Police before the commencement of this Act, and the Police may proceed with

and complete the investigation of any such complaint as if this Act had not been passed.

- (3) Where the Authority receives or is notified of any complaint that has also been received by the Police before the commencement of this Act, it shall not take any action on the complaint (other than any preliminary inquiry to determine whether or not this subsection applies) unless—
 - (a) Subject to subsection (4) of this section, the complainant is a person who, if this Act had not been passed, could have complained to an Ombudsman in accordance with section 13(7)(d) of the Ombudsmen Act 1975, but has not so complained; or
 - (b) The Commissioner requests the Authority to investigate the complaint under section 22(2) of this Act; or
 - (c) In any other case, the Authority considers that there are exceptional circumstances that make it desirable that the Authority take action on the complaint.
- (4) The Authority shall not take any action on a complaint referred to in subsection (3)(a) of this section where it considers that, in all the circumstances, a reasonable period of time was available before the commencement of this Act during which the complainant could have complained to an Ombudsman about the final result of the Police investigation into the original complaint or any Police failure to investigate the complaint.