



# OFFICE OF THE OMBUDSMAN

## SECOND ANNUAL REPORT OF THE OMBUDSMAN

(July 1982 June 1983)



MR. DANIEL P. MAEKE, O.B.E.  
Ombudsman

## SECOND ANNUAL REPORT

(July 1982 – June 1983)

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Office of the Ombudsman  
Honiara  
Solomon Islands.

15th September, 1983

The Prime Minister,  
The Hon. S. Mamaloni MP.,  
Prime Minister's Office,  
HONIARA.

Dear Sir,

I have the honour to submit my Second Annual Report for the period July 1982 to June 1983.

In accordance with Section 98(3) of the Constitution this Report will in due course be laid before Parliament.

I have the honour to remain Sir.

Yours faithfully,

(D P Maeke - OBE)  
Ombudsman

## GENERAL: Period covered by the Report

This is the Second Annual Report of the Ombudsman's Operation in accordance with Section 98(3) of the Constitution - "The Ombudsman shall make an annual report and may make such additional report to Parliament as he deems appropriate concerning the discharge of his functions, and draw attention to any defects which appear to exist in the administration or any law."

The report covers the period from July 1, 1982 to June 30, 1983. As stated in the First Annual Report, emphasis during this period is to consolidate the establishment of the office. Consolidation in this context refers to the operation of the office, that is how effective and fruitful did the office tackle its constitutional functions and responsibilities. This area more or less rests on staffing and calibre of officers posted to the office. I am indeed pleased and thankful to the Public Service Office for the appointment of the first Investigation Officer in March and the appointment of the new Legal Advisor in May 1983. The appointments brings full strength at this point of time to the office. These appointments had made a lot of differences to the output of work and what actually had been achieved.

Accommodation wise, I am thankful to the Minister of Foreign Affairs and International Trade and his Permanent Secretary for giving up one of their rooms to enable me to accomodate my new officers. However, my plea for independent office accommodation still remains paramount.

In the area of finance, I know I am not the exception to raise disappointment on the question of inadequate financial allocations. The shortfall had more or less affected our mobility in visiting Ministries and other authorities involved during case investigations particularly in the Provinces.

The activities of the office attracted criticisms from certain authorities and officers involved. This shows a healthy development in the field of awareness and ignorance of the roles of the office. The office had taken stock of its operation and appropriate measures taken where necessary to cater for the issues raised. I thank Ministries, authorities and officers responsible.

### Operation in Vacuum:

"This Act may be cited as the Ombudsman (Further Provision) Act 1980 and shall come into operation on such date as the Prime Minister may, by order appoint".

I was aghast to discover that such an order was never made in July 1981. The omission was brought to the attention of the Prime Minister on 17th May 1983 and he took immediate steps to rectify the omission by appointing 18 May 1983. In addition to this, draft legislations were to have been tabled during the June/July sitting of Parliament by the Prime Minister to validate the operation of the office from July 1981 to 17 May 1983, unfortunately this was not possible. It is hoped it will be made in the November/December sitting.

### Visits and speaking Activities:

During the period the following visits and speaking engagements were made by officers of the office.

27 - 29 April 1982	Central Province	-	Ombudsman	(Visit)
27 - 29 July 1982	Temotu Province	-	Ombudsman	(Visit)
11 - 13 August 1982	Isabel Province	-	Ombudsman	(Visit)
3 - 5 August 1982	Malaita Province	-	Legal Advisor	(Visit)
1 - 3 September 1982	Makira Province	-	Legal Advisor	(Visit)
6 - 9 September 1982	Western Province	-	Ombudsman	(Visit)
6 - 10 December 1982	Western Province	-	Legal Advisor	(Visit)
11 March 1983	Siota Prov. Sec. Sch.	-	Ombudsman	(Talk)
8 April 1983	King George VI School	-	Ombudsman	(Talk)
11 April 1983	Sol. Islands Teach. Col.	-	Ombudsman	(Talk)
12 April 1983	Selwyn College	-	Ombudsman	(Talk)
12 April 1983	St. Joseph Sec. Sch.	-	Ombudsman	(Talk)
18 April 1983	Alegegeo Pro. Sec. Sch.	-	Investigation Officer	(Talk)
21 April 1983	Su'u Secondary Sch.	-	Investigation Officer	(Talk)

3 - 6 May 1983	Central Province	-	Ombudsman (Visit)
16 - 20 May 1983	Makira Province	-	Investigation Officer (Visit)
19 May 1983	Pawa Secondary School	-	Investigation Officer (Talk)

Discussions on our tour reports held with appropriate authorities were both useful and rewarding. It is through this approach certain issues which would have taken longer to deal with through correspondence were either settled or clarifications made.

One particular issue which arouse interests and concerted views from all the Provinces was on the problem of maintenance of Provincial Bye-Laws. The involvement by this office stemmed rather indirectly from information that the Central Province failed to bring to justice, offenders who breached Bride Price Control Bye-Law 1979. According to the First Schedule, Ngela Island maximum Bride Price is \$150.00. Penalty for offences against this particular Bye-Law is a fine of one hundred dollars or imprisonment for three months or to both such fine and imprisonment.

Under Section 5(1)(c) of my Act I opened a case file on the issue and preliminary inquiry made. Replies from all the Provinces showed that they faced the same problem in maintaining their Bye-Laws. I closed my case file in learning that the Ministry of Police and Justice with Provincial Affairs Ministries and the Provinces are working together to solve the problem.

I wish to thank officials of the Provinces, headmasters and staffs of educational institutions visited for the assistance and co-operation received, for without which my staffs and I would not be able to achieve our objectives.

During the period I attended the Sixth Conference of Australasian and Pacific Ombudsman ably hosted by the Commonwealth Ombudsman, Proffessor J.R. Richardson in Canberra from 25th - 28th October 1982.

The increase volume of written submissions, telephone calls and visits made to the office during the period covered, demonstrates that members of the public for whom the office is established to serve came to know of its existence and work. General publicity work however will still remain an important feature.

It is worth mentioning in this report that my Act precludes and gives only limited scope whereby to manoeuvre in the field of publicity. The Act and Section 98(3) of the National Constitution empower the Ombudsman, submission of annual report and additional reports to Parliament, but either than that, releasing of further information which in the opinion of the Ombudsman could further enhance public knowledge of the functions of the office is strickly taboo.

This is a dismall situation and it is hope legislature in its esteem future deliberations, would seriously consider amending relevant parts of the Act, to enable the Ombudsman sufficient grounds to manoeuvre in the field of publicity.

Co-operation from authorities subject to the authority of the office developed steadily. It is however felt, less time and efforts could be saved if information requested on cases being investigated, given on receipt of initial written requests.

#### Staff: (30/6/83)

Legal Advisor  
Senior Investigation Officer  
Typist  
Cleaner

The office for the first time achieved its total staff establishment on the arrival of the Legal Advisor D.A. Strassnick (Miss) on 24th May 1983. She replaced Mr. J. Piasi who was seconded to this office in May, 1982. I thank Mr. Piasi and wish him all the best in his new posting in the Registrar General's Office. The office also welcome its first Investigation Officer, Mr. S. Alasia in March, 1983. Arrangements are at hand for his three months training attachment with the New Zealand Ombudsman's Office towards the end of 1983. I thank Mr. G. Laking Chief Ombudsman of New Zealand for accepting my request and the assistance kindly given.

Increase in staff enables the office to undertake regular visits to Provincial Headquarters and sub-stations. This is either to carry out follow up work on pending cases, attend to new ones or engage on publicity work to further our efforts in educating members of the public of the work of the office. I thank the Government for the increase in my staff. The increase in staffs demonstrates Government's faith of the role the office plays.

It is partially true increase in staff will enable the office to cope with the increase load of work. But it is an illusion and misleading to assume because of manpower improvement, cases under investigation will be quickly attended to and disposed of. Speedy conclusion to any case depends more on type of answers given by authorities concerned.

#### **Acommodation:**

The office after two years of operation is still being temporarily housed in the Ministry of Foreign Affairs and International Trades. I am grateful to the former Minister who called us intruders (not with malice) and his sucessor who loves to keep on reminding me and wanting to know when will I be moving from his premises, for allowing three of their rooms to my office.

I share the Minister's concern for having us in his premises for two reasons. Future expansion which means increase in his staffs would required the three rooms my office occupies. The second reason is the Minister's opinion which I support is for the office of the Ombudsman to have a permanent premises of its own.

#### **Publicity:**

How would they know if they were not told. How would they follow if they were not led.

General publicity work performed during the period was in the form of talks given to educational institutions, Provincial members and groups of public servants. The talks covered the roles of the office.

As mentioned earlier the issue of releasing information under the Constitution and the Ombudsman (Further Provisions) Act 1980 was discussed with the Secretary to Cabinet and Public Service. The restriction place by the Official Secrets Act and the Ombudsman Act is a hindrance to my office's efforts to educate and convey to the members of the public for whom the office was established to serve.

Appendix D summarizes the submission made to the Secretary to Cabinet and Public Service Office on the question of releasing information from the office.

#### **CASES HANDLED AND STATISTICS**

Total number of cases brought forward	17	
Total number of cases received	191	208 (76)
Total number of cases disposed of		160 (59)
Total number of cases pending		48 (17)

#### **Classifications of cases disposed of**

Justified	60 (14)
Not justified	37 (30)
Discontinued	19 ( 7)
Explained	28 ( 7)
No Jurisdiction	17 ( 1)

#### **Authorities and Agencies involved**

Police and Justice	-	25 (7)
Transport Communications & Government Utilities	-	24 (3)
Education, Training and Cultural Affairs	-	20 (8)
Public Service Office	-	15 (10)
Malaita Province	-	12 (2)

Solomon Islands Electricity Authority	-	11 (0)
Finance	-	10 (5)
Home Affairs and National Development	-	10 (7)
Lands Energy and Natural Resources	-	8 (2)
Temotu Province	-	9 (2)
Central Province	-	9 (1)
Western Province	-	7 (2)
Guadalcanal Province	-	5 (0)
Youth Employment and Social Development	-	5 (3)
Solomon Islands Housing Authority	-	5 (3)
Private Agencies	-	3 (1)
Public Service Commission	-	2 (0)
Committee on Prerogative of Mercy	-	2 (1)
Honiara Town Council	-	2 (0)
Solomon Islands Broadcasting Corporation	-	1 (1)
Isabel Province	-	1 (0)
Cattle Development Authority	-	1 (0)
Development Bank of Solomon Islands	-	1 (0)
Solomon Islands Ports Authority	-	1 (0)
National Bank of Solomon Islands	-	1 (0)
Solair	-	1 (0)
Solomon Islands Plantation Limited	-	1 (0)
National Provident Fund	-	1 (0)
Soltel	-	1 (0)

There are parallel increases on both the bodies involved and the number of cases received during the period. The figures in the brackets are those for the first reporting period. The increase number of cases received revealed that more people came to know of the existence and the work of the office. This is due to extensive publicity activities carried out by the staffs.

In spite of an increase number of cases received, the office was able to dispose 77% of the total number of cases registered. This compares favourably with 78% disposed of during the first reporting period. This is due to the appointments of the permanent Legal Advisor and the Senior Investigation Officer early this year. I wish to register my deep appreciation and thanks to both of them.

All that glitters is not gold! Though I am satisfied of the achievements made, problems were also encountered. As stated in the First Annual Report speedy conclusions and possible remedies, could only be made to cases under investigation if responses from authorities involved were received in good time. I feel I am going to live with having to continue the practice of sending reminders after reminders, in order to receive what I need. I hate to be a 'beggar' for the rest of my term in office.

Effective performance of what one does weighs heavily on adequate finance. It is common sense that growth in activities, increase in staffs and wide coverage in the scope of activities, require proportionate increases in finance. It is a fallacy to expect increase and improved performance of work on limited financial allocations. The cuts in the 1983 allocations to the office expenses drastically affected my projected programme for the whole of 1983.

Financial Allocation 1983	1982	1983	
	SI\$	SI\$	SI\$
1. Office Expenses and Incidentals	1000	900	100 (D)
2. Travel and Transport	1000	700	300 (D)
3. Hire of Plant and Vehicles	1000	500	500 (D)
4. Telephone and Telegrams	1000	800	500 (D)
5. Utilities (Water, lighting)	1000	500	500 (D)

There has been an overall decrease of financial allocation for all items. This represents a 32% cut in the 1983 allocation for running the office. Sub-head, Hire of Plant and Vehicles was overspent at the end of May. This slows down making visits to authorities involved and lengthening period to make conclusions to cases under investigation.

## Appendices.

- Appendix A: Provision in the Constitution
- Appendix B: Ombudsman Act (Further Provisions) No. 1 Act 1980
- Appendix C: Background Information of Solomon Islands.
- Appendix D: Publicity

## SELECTED CASES SUMMARIES

The main functions of the Ombudsman stipulated in S97(1) of the Constitution are to:-

- (a) enquire into the conduct of any person to whom this section applies in the exercise of his office or authority thereof;
- (b) assist in the improvement of the practices and procedures of public bodies;
- (c) ensure the elimination of arbitrary and unfair decisions.

The bulk of the submissions relate to arbitrary and unfair decisions. About 50% of these cases were upheld leading to recommendations to authorities involved to rectify the mistakes.

As stated in the First Annual Report, not all complaints received were upheld and that not all recommendations made benefited the complainants directly. However, the dialogues had with the authorities involved and substances revealed by the investigations conducted alerted the authorities and individual officers, resulting in extra care being taken in ones work.

Cases CF: 48/7/82 and CF: 132/11/82 included in the sample cases in this report are of interest. In CF: 132/11/82 authorities involved in compliance to recommendation made after seeking legal advice, made changes to the established practices to correct the anomaly and in CF: 48/7/82, necessary steps taken to contain the shortfall in the upkeep of Provincial Bye-Laws.

In both these case corrective measures taken, do not benefit the complainants solely, but the outcomes cater for those eligible and of assistance to the would be victims of the loopholes in the maintenance of Provincial Bye-Laws.

### **CF: 11/2/82: Non-eligibility for wife's return air fares from Public Fund - Public Service Office**

A Senior official of the government complained to the office of the Government's ruling for him to reimburse the Government his wife's return air fares from the United Kingdom. He claimed the imposition contradicts the policy governing pre- and in-service overseas trainings which caters for wife's return air fares whether or not wives of officers undergoing courses also attend approved courses.

Prior to January 1972 the costs of sending a student (pre- in-service) overseas were charged to the Solomon Islands Recurrent Budget. Under this system, a wife's fare was paid whether or not she underwent a training course in overseas country. As from January 1972 costs for overseas training were transferred to the Capital Budget, financed from Development Aid. Under this a wife's fare can only be met if she also attends a training course approved by the Solomon Islands Government.

The complainant in 1980/81 did a Masters Degree in Agricultural Science at Reading University under the EEC Scholarship scheme. The scholarship did not cater for his wife's fare. The officer before he left wrote to the Public Service Office requesting the Government to initially meet his children's fares and to be charged as his advance account. He not being aware of the change in the policy still believes his wife's fare will still be met by the Solomon Islands Government.

The officer in his submission quoted that if there was a change in the policy in 1972, he questioned the application of the rule in relation to his own case when he underwent overseas course in 1974/75 and another officer's case who also attended an overseas course in 1973/75. In both these cases their wife's return air fares were paid for by the Government, though both did not attend any approved course.

After sighting relevant correspondence from the Public Service Office, it is clear that there were irregularities in the application of the rule. I therefore recommend to the authority involved to cancel deduction from the officer's salary in reimbursing his wife's return air fares.

The Public Service Office sort legal advice on the issue. The Attorney General's advice was that the issue was moving into political field and that it seemed appropriate to consult the Prime Minister. This was accordingly made and the Prime Minister has directed that the Government to meet the full cost of the officer's return air fare.

**CASE 35/6/82:      Rescinding of renewal of contract: Public Service Office**

Section 198(3) constitutes the functions of the office of the Auditor General. It is an important and specialize job and thus, staffing of the office must be releastically seen in light of the duties requires of it by the Constitution. The head of the Department is appointed by the Governor General Section 108(2).

Mr. .... was recruited for two years under OSAS terms in May 1980 from the United Kingdom as Senior Auditor (L7/8). On 29th December 1980 the Public Service Office (the PSO) submitted to the Public Service Commission (the PSC) for Mr. .... conversion of three years (normal practice). The submission was supported by the PSO saying, there is no objection as far as localisation is concerned. The PSC decided that Mr. .... tour of two years be not converted saying, that while the Responsible Officer strongly supported Mr. .... application for conversion, the Commission saw this as an obstacle to localisation. The Auditor General in his memorandum to the PSC argued that Mr. .... conversion from two to three year tour would in no way impede localisation of his Department, but on the contrary, would be of great benefit. The PSO in light of the additional information which clearly merits the Audit Department to retain Mr. ...., further recommend to the PSC the conversion. The PSC in considering the new submission concluded thus - "The Commission advised that should Mr. .... service is still needed, the officer should apply for a renewal of contract at the end of his present contract. In view of this the PSC reserved its decision and refer the matter to the Secretary of the PSO for his due consideration.

In compliance to the PSC's minute 233/81, the Auditor General in July, 1981, submitted to the PSO for the renewal of Mr. .... two year contract. In support to the recommendation he attached documents showing the breakdown of staffing of the Department from 1982-85. The documents clearly showed that renewal of contract does not in anyway impede localisation.

The PSO supporting the recommendation made the submission to the PSC on 30th July, 1981. On 4th August 1981 the PSC decided to offer a renewal of contract for two years to Mr. .... who received the following from the Secretary for PSO the following month - "I am pleased to inform you that your application for renewal of contract for another tour of two years is approved. The ODA have been asked to redesignate you for the extension. A new agreement of service will be drafted and issued for your signature prior to your departure for leave".

The submission to the PSC was made without prior consultation with the responsible Minister (the Minister). In discovering the PSC's decision the Minister instructed the Secretary for the PSO that the action taken was not in line with the new government's policy of localisation of depending less on overseas recruitment.

The PSC's decision made on 4/8/81, minute 626/81 to renew Mr. .... contract was made on the merits of the recommendations made to the PSO by his Department. On 3/6/82 the PSO in making the second submission seeking the agreement for the decision conveyed in the PSC's minute 626/81 to be rescinded. The main reason for doing this was based exclusively on the change in the Government's Policy to depend less on overseas officers and making maximum use of local officers. It is anticipated that Mr. .... post will be localised in July, 1982. this was in fact not achieved. The PSC met in June 1982 to consider the new submission and concluded that in view of the content of the new submission agreed to rescind minute 626/81 and advised Mr. .... may proceed on terminal leave at the end of his current tour.

Section 116(1) of the Constitution reads - "Subject to the provisions of this Constitution, power to confirm appointment and to remove and to exercise disciplinary control over persons holding or acting in such offices is vested in the PSC." Under this Section the PSC is empowered to act independently void from any form of interference, political and administrative wise in all its

deliberations. The fundamental principle in the maintenance of independency as enshrined and required by the Constitution is how the PSC reaches its final decision preceded by careful analysis of supportive documents and recommendations. These could be geared either to achieving Government Policies and aims or in terms of maintaining effectiveness and efficiencies in the service.

Section 40 of the Constitution reads - "Where a Minister has been charged with responsibilities for administration of any department of the government, he shall exercise general direction and control over the department and, subject to such direction and control, any department in charge of a Minister (including the office of the Prime Minister) shall be under the supervision of a Permanent Secretary or some other supervising officer whose office shall be a public office". Under this Section each Government Minister has managerial functions over a Government Ministry he is given portfolio to minister. The overall Supervision of the daily operation of a ministry is the responsibility of the Permanent Secretary. His functions is however is subject to the Minister's orders and directives.

The information in paragraph 4 in the history of the case submitted by the Auditor General to the PSO, clearly revealed that renewal of contract would in no way impede localisation in the department. Mr. .... renewal would however only consolidated the localisation programme in this particular department in terms of his on-the-job training duties and responsibilities and thus, eventually achieving the Government's aim of depending less on overseas officers and while making the maximum use of local officer's skills and potentials. But to harness the skills and potentials demands relevant coaching, this according to the Auditor General's submission to the PSO was Mr. .... undertaking.

The submission by the PSO on 3/6/82 to the PSC to rescind the decision as per minute 626/81 was wholly based on the change in policy of localisation. The detailed supportive materials previously made by the Auditor General which affected the former decision by the PSC to renew Mr. .... contract was totally being ignored in the new submission. In the absence of such information the PSC was provided with inadequate information. The Auditor General and his local senior staffs were disappointed by the decision.

The investigation was made after the complainant left for his terminal leave. My opinion on the administrative dealings of the PSO and conveyed to them in my further report on 6th August, 1982, that the submission to the PSC was inadequate unbalanced and unreasonable. I termed this case 'justified'.

**CF: 12/82 - Arbitrary Directive on Assessment of a new employee's entry point of salary: Police and Justice**

This particular complaint was made by an employee of the Ministry of Police and Justice against a new employee who was paid at point 3 on the Level 2 salary scale.

The complainant alleged that the action of the Permanent Secretary of the Ministry contravenes contents of G.O.S.304 - Starting Rates, thus causing injustice to others who had been in the service longer.

My investigation revealed that the newly appointed officer had satisfactorily completed a course of studies, recognised by the Public Service Office, qualifying him for appointment to Level 2 at the minimum point. However, there is no merit in placing his salary at point 3 of the L2 salary scale. Therefore, it was recommended that his entry point to be at the minimum point of L2.

The new Permanent Secretary to the Ministry did not accept my recommendation on the ground of victimisation. I do not accept this view and further requested the Ministry to reconsider its stand. The Permanent Head to the Ministry in his further reply resisted to compromise and firmly held his view.

In closing this case which I termed 'justified', I had this sent in reply - The product of what you termed victimisation in this case is none other than bending the established procedures. If this office accepts this practice, then it is a party to malpractices creating unfairness to those gone before and those coming after. I therefore, do not conform to the belief on victimisation to override fairness and consistency to the rules.

**CASE: 34/82 - Police and Justice**

This particular case took almost a year before a satisfactory action acceptable to the office was made.

Mr. A was dismissed from the Police Force for criminal misconduct. After his dismissal he made submission to the office of the followings -

- (a) Non-payment of earned leave
- (b) Non-payment of sea fares to his home island after dismissal.

Following preliminary inquiry with the Police Force, the second issue was found not justified.

In response to my request the following extract from the Commissioner of Police's letter was received, - "In 1979 he was scheduled to go on annual leave in July but this was not materialised because of two court cases were held against him in Gizo Magistrate Court. Subsequently his court cases were heard by the end of September and the officer suffered dismissal as a result of both criminal charges. So that in other words although the officer did not have any leave in 1978 he has already taken it in advance on full pay. As for 1979 leave it is unfortunate that he did not take it prior to his court hearing. In all I think the employer (Government) has acted reasonably well in trying to accommodate the officer's case within the administrative umbrella."

In response to the Commissioner's letter and further discussion made with the Force, the Commissioner was informed of my office's stand on the question of earned leave not taken.

It was noted that from July to September when the case was heard was a time span of 86 days. The complainant earned leave was only 24 days. This leave could easily be taken within this period. There are no Police regulations stopping an officer awaiting trial in taking his leave. It was also pointed out that there are no financial cost differences if an officer went on leave and return to duties or if went on leave and recalled to attend court hearing. My final recommendation therefore was, the holding back of his leave was unreasonable and consideration be made to compensate him for leave not taken before his dismissal.

The Commissioner of Police referred the matter to the Public Service Office. The Public Service Office in a letter to the Commissioner of Police, not copied to my office stated, - "Mr. A was dismissed from the service by the Commissioner of Police who has the power under the Police Act. In terms of G.O.B705 Mr. A therefore forfeits all rights and privileges attaching to his appointment. It is hoped that the matter is now cleared and the case now treated resolved."

The Deputy Commissioner of Police in his letter to me stated - "Attached herewith is a photo copy of SPS (Secretary for the Public Service) memorandum for your information and to inform Mr. A of SPS's advice."

After receiving another letter from the Deputy Commissioner of the same tone, I informed the Secretary for the Public Service in writing that my client's dismissal and G.O.B705 are not in any way being questioned but I held a view that it is the Police Force's action for holding back his 1979 earned leave was unjustified and unreasonable.

The Public Service Office in reconsidering the complaint says this in a letter to the Commissioner - "Having studied the paper relating to Mr. A's case I am in agreement that, exceptionally, he should be paid salary in lieu of leave earned but not taken between January to September 1979 a total of 18 days." Payment was processed by the Force and sent to the Sub-Treasury on 31st December, 1982. I closed my file and termed the case "Justified".

**CASE 160/83 : Redundancy Termination : Solomon Islands Ports Authority**

The complainant joined the Ports Authority in January 1967 as a Warehouse Clerk and being made redundant when he returned from his annual leave in February 1983. He was a stevedoring clerk at the time of his termination.

The Management action was in accordance with the Burgess Association Ltd's Report. The theme of the report was to examine existing operations for improvements on all sections of the Ports Authority to give maximum output of available resources.

One of the recommendations was reductions in manning levels - "Given the current levels of traffic there is overmanning in some sections of the port. The stevedoring section should be reduced by 10 men to 15 permanent stevedorers while in the Warehouse and Security Sections numbers should be reduced by 20% on a no replacement for wastage basis."

Parts of the complainants letter of Termination reads - "As a result of the Board's adoption on 26th August, 1982 of the consultants recommendations we very much regret to advise that a decision has now been taken with great reluctance to terminate your service on 31st January, 1983. The Authority's obligations for redundancy shall be calculated at that date."

The meaning of dismissal because of redundancy is in Section 4 of the Employment Act 1981. It reads - "For the purpose of this Act, when an employee is dismissed his dismissal is to be taken to be because of redundancy if it is attributable wholly or mainly to:-

- (a) the fact that his employer has ceased, or intends to cease -
  - (i) to carry on the business for the purpose of which the employee was employed by him; or
  - (ii) to carry on that business in the place where the employees was so employed, or
- (b) the fact that the requirements of that business
  - (i) for employees to carry out work of a particular kind; or
  - (ii) for employees to carry out work of a particular kind in the place where he was so employed, have ceased or diminished or are expected to cease or diminished.

In short employees can be made redundant when business closes, move to another place or contracts in size and it becomes necessary for the employer to dismiss employees.

Investigation was discontinued on the basis that the complainant wishes to persue the matter in court.

#### **Complainant against Lot 1712/VI/H Tender Board's Decision : Lands, Energy & Natural Resources**

The complainant E lodged a complaint to this office saying that he had been given unfair treatment in an application for a plot of commercial land in Honiara. He had applied to erect a building for purposes of a retail shop.

After the tender was awarded to a lady, F, ahead of E, he question the Board's decision. He has fulfilled the prerequisites. They are (1) he had offered the highest tender rent of \$250 per annum compared to F's (the lady) \$85.00, (2) he submitted a completed building plan whereas Ms F had not and (3) he had completed a loan application for consideration by the Development Bank of Solomon Islands while Ms F had not.

The Tender Baord met and decided to award the tender to a lady. One of the main reasons for the action was that a female should be given equal chance as men to participate in the Commercial world.

I made investigations and the following points were revealed. (1) Ms F was requested by the Commissioner of Lands to increase her annual rental from \$85 to \$250 (2) she was also requested to sort out her loan (with Solomon Islands Development Bank) to finance the erection of the building and produce documents of support before 31st December 1981. (3) F and her Architect were to complete building plans before the due date of December 31 1981.

On 29th October 1981, when F submitted her plan it was rejected. Her Architect was therefore requested to submit a new plan.

Ms F then asked the Tender Board to extend the due date because (1) arrangements with the DBSI for a loan was still not being finalized (2) new plans for the Snack Bar would be made and she requested that the time limit of 31/12/81 to be extended.

On 12th January 1982 well after the closing date for submission of the necessary information and documents, the Commissioner of Lands unilaterally decided to extend the closing date to June 30 1982. Thus, rescinding the decision of the Tender Board.

On June 1st 1982, Ms F, submitted her new plan to the Commissioner of Lands and this was accepted and Lot 1712/VI/H was offered to her on a 50 years - fixed term estate.

It was evident that one important factor in granting ownership to the lot of land in question was the submission and approval of the final arrangements by the applicant with the Development Bank of Solomon Islands. In this circumstance the granting of ownership preceded the final financial arrangements with the lending agency.

The office noted that (1) the administration of the issue was not correctly done. Also in some respects it was not legally done (2) the tender should have been re-advertized when it was discovered that the successful tenderer failed to provide the necessary information in time.

The following recommendations were made -

- (i) The administrative dealing by the division of Lands and especially the Tender Board highly favoured Ms F on unfounded reasons.
- (ii) The Ministry to consider formalizing the roles of the Tender Board.
- (iii) The Ministry to consider re-tendering a Lot 1712/VI/H if possible, and priority to be given to Mr. E for any commercial site in the same area in future to compensate for the unfair dealings he had suffered. I closed the case as "justified".

#### **CF: 171/83 - Guadalcanal Province**

The complainant Mr. K was a direct employee of the Guadalcanal Province. He previously worked in the Public Service but resigned to take up a Social Development Assistant post with the Province in January 1979. He was paid at L3 as a provincial employee. In November 1979 he was sent to pursue a Commonwealth Youth Diploma at the University of the South Pacific in Fiji. This course ended in early 1981 and was sandwich in nature.

On completion of his studies he returned to work in the Guadalcanal Province. After a time he felt that terms and conditions of his employment with the Province were not suited or relevant to his diploma. He claimed that he should be paid at L5. Unfortunately this was not provided for a Provincial level. In fact direct employees of the Province are not paid higher than level 3.

Mr. K's main complaints were that he was wrongly dismissed by the Provincial Executive and that he had not been paid his charge allowance (as his qualification was worth a L5 salary). Also he stated that his termination letter did not include reasons for that action and that he was not given chance to state his case for any allegation of misconduct that he may be terminated for.

However, investigations revealed the following points -

- (1) That Mr. K had a rather bad disciplinary record. He had been warned a few times. A final warning letter was issued on 24th August 1982.
- (2) As he was a direct employee of the Province, he was not entitled to charge or acting allowance.

The office therefore upheld the decision made by the Guadalcanal Provincial Executive.

The following recommendations therefore were made.

- (1) That employees who are qualified with Degrees or diplomas be paid at their appropriate salary scales despite the place of their employment i.e in the Public Service and Provinces. The differences in pay scales could hinder potential and qualified Solomon Islanders to work for the Provinces.

- (2) That Provinces make clear guidelines and responsibilities to their field staff.

and

- (3) That Provinces upgrade their terms of conditions and services.

The case was close as "not justified".

**CF: 137/82 - Delay in Processing Loan Application : Cattle Development Authority**

In November 1982 a rural farmer complained to the office that he submitted a loan application for a cattle project to an officer of the Cattle Development Authority in Malaita Province for appraisal. He waited for several months and after making some abortive calls in the Provincial Office he approached this office for assistance.

The Cattle Development Officer in the Province was contacted and the following response was received in December 1982.

- (a) I was first made aware of Mr. .... proposal development project in September when the loan application was submitted for appraisal. At that time I considered the amount of money requested in excess of funding requirements for a cattle development project.
- (b) I suggested also that the size of the block be reduced so that the area be within the capabilities of the farmer, and the area be submitted for pasture grant approval.
- (c) On consultation with the Field Officer recently I discovered that the proposed area is presently under land dispute.
- (d) Whilst I appreciate Mr. .... enthusiasm, I have an obligation to the Development Bank and the Solomon Island Cattle Industry to ensure cattle development proceeds in a viable direction.
- (e) May I suggest to Mr. ...., that instead of formally complaining to every department that he considers will push his proposal through, that he resolves the land dispute. This will ensure a more sympathetic hearing to his problem.

I wrote to the Cattle Development Officer thanking him for revealing certain issues related to the farmer's proposed project but which are vital in appraising any new development project. This case was closed and termed it 'explained.'

**CASE: 107/82 - Ministry of Finance**

The Income Tax Assessment system is a major issue of concern to many Public Officers. Indeed many Public Officers do not know exactly how this system works and this is where the Inland Revenue Division must do something about it.

A couple, Mr. X and his wife enquired about the system of deducting Income Tax from their wages. The couple stated that they were over-taxed and they saw it as unfair.

The Inland Revenue Department wrote and clarified on some of the issues raised by the couple. Contrary to their expectations the department wrote and demanded that Mr. X pay for tax arrears totalling \$605.94. Mr. X then demanded that the department rechecked their figures otherwise he would take the case to court.

The department did recheck their figures and a revised assessment for two years 1975 and 1976 were accordingly issued.

Our office on investigation found the following points.

- (i) Mr. X had not declared a retail store which he operated as well as a Taxi, therefore the department had to make rough calculations (giving rise to a big amount of money in tax arrears).

- (ii) For one year Mr. X was not employed and so he was regarded as a dependent of the wife. When the department knew he was employed, adjustments were made.

After adjustments were made the sum of money was reduced to a certain extent and that it would be deducted from Mr. X's wages in installments. Mr. X was quite satisfied with the outcome and we closed the file as "explained".

#### **CASE: 64/82 - Solomon Taiyo Limited**

This case involves a man who had a brother, B, working for the fishing company, Solomon Taiyo Ltd. In mid 1979, B, was aboard one of the Catcher boats on fishing trip when he suddenly went missing. It is believed that B went overboard and got drowned.

Under the Workmen's compensation Act an employee who has an accident or is killed in the course of doing his job, compensation must be paid by his or her employer.

The Solomon Taiyo Company Ltd., gave a sum of \$4,700 to A, B's brother. However, A complained that the amount of money given was not enough. A, claimed that travelling and fish bonus allowances were not included in the compensation money.

This office did not immediately deal with the case because Solomon Taiyo Co. Ltd was more a private company. It was a joint venture between Taiyo Fishing Co. of Japan and Solomon Islands Government. We felt that it was action which could be dealt with in a court of law. We then contacted those at the Labour Division to see what their views were like. We did so also seek information whether the amount paid by Solomon Taiyo was adequate or not.

Investigations revealed that the compensation paid was correct (in accordance with the Workers Compensation Act). Mr. A was advised to see the office of Public Solicitors should he wish to take the matter up in a Court of law. The case was closed as "explained".

#### **CASE: 132/82 - Underpayment of Annual Allowance - Ministry of Finance**

The complainant submitted his complaint to the office believing that he had not been paid the full amount of his entitlement under the Pensions Act upon retirement.

When the National Provident Fund was introduced in 1976, some government officers who were covered by the Pensions Act became contributors to the Fund, thereby freezing their entitlements under the Pensions Act.

Mr. X became contributor to the National Provident Fund on October 1977, thereby freezing his entitlements under the Pensions Act. He retired in October 1982 at the age of 52 and under the Pensions Act, receives an annual allowance of \$217.71 per year.

A retired worker may apply for lump sum if his annual entitlement would be less than \$500 per year. Mr. X duly applied to commute his annual allowance into one lump sum. The application was approved and his entitlement was processed.

The question was whether the amount paid as a lump sum under the Pensions Act on final retirement to the worker would be calculated on the age of the worker when he transferred to the National Provident Fund or when he actually stopped working. The equations in the Pensions Act is such that the older a worker is on retirement the less the lump sum payment. I hold a view that as all his pension entitlements were frozen in October 1977 when he became contributor to the Fund, calculation of his lump sum should be based on factors related to his age at that time and not at the date of his retirement. This view prompted the relevant departments to look into the question and they decided that the age on transfer to the National Provident Fund must be used in the calculation, so the complainant was successful and the case closed as 'justified'.

#### **CASE: 145/82 - Western Province**

This case began with an interesting note in the sense that the complainant wrote to the office in his vernacular language. Fortunately the legal advisor was a man from the same area and he was able to interpret the letter. The case was found to be worth our investigation.

The complainant, C, a contractor entered into a contractual relationship with the Western Council (now Western Provincial Assembly) for purposes of cleaning and maintaining all the drains at Munda Station. Also C was to be responsible for disposing household rubbish, other refuse, rubble and waste from Munda Station.

The contract was to last for 2 months (Feb. - March 1978) and the Contract price was \$480.00. After the job was completed the Contractor C, wrote a letter to the council that his payment which was due was unreasonably delayed.

The council replied on 3/3/78 that work was completed ahead of schedule and that the Contractor was not expecting to receive the whole amount of \$480.

In the contract it is stated that if work is to be completed ahead of time then a portion of that amount shall therefore be paid equivalent to the time spent. The work was completed within a month and the council paid him \$240 (half of \$480.00).

The contractor complained and wrote to the office. After we made our investigation and perusal of his papers it was found that the council's action was justified. Hence the case was closed as not justified.

#### **CASE: 131/82 - Ministry of Police & Justice**

##### **Disciplinary Charge**

The complainant, a police officer who was one of the two Police Officers investigating a theft was approached by the office of Public Solicitors either to pay compensation or to face disciplinary charge.

The man, Y who was suspected of the theft was employed by the Ministry of Police and Justice as an Orderly. The complainant was one of the two Police Officers who took the suspect to the Police Station. On reaching the station a Sergeant took charge of the issue and questioned the suspect. The complainant had left. The suspect was then placed in custody but for an unreasonable period. This was in contravention of law as the suspect was in custody for over 24 hours.

The disciplinary charge or payment of compensation was for the alleged involvement by the complainant in the unlawful detention of the suspect. This payment of compensation was demanded by the office of the Public Solicitors.

The complainant wrote to us seeking assistance. I took the case up with the office of the Commissioner of Police. The Commissioner of Police was helpful and in his letter to us, he thus wrote, "Police Constable 238 X was known to have given assistance in the investigation of the particular case in which Y was the suspect. However, the decision as for the detention of the suspect came from another officer and not PC 238 X. As it stands now PC 238 X would not be disciplined due to no evidence against him."

The office having seen that the complainant would not be disciplined, advised him that his alleged involvement has been cleared and his case was closed as justified.

#### **CASE: 143/82 - Honiara Municipal Authority**

The complainant, a lady sought assistance from this office over the closure of her shop at the Honiara Market by the Honiara Municipal Authority. The lady was given three months notice to that effect. It is understood that the tenancy was for two years subject to renewal of lease.

Two of the reasons for the closure were:-

- (i) there was no formal lease agreement controlling the tenancy (with the lady and Honiara Municipal Authority).
- (ii) the Authority wishes to rectify matters.

The complainant stated that she was unfairly disregarded. However, after assessing the case our office found the following points.

- (1) The tenancy was for two years and that this could be renewed on application.
- (2) Tender thereafter was open to anyone interested.
- (3) The Authority had given 3 months notice of closing the shop.
- (4) The closure was for the authority to rectify some defects or factors of like nature in the lease agreement.
- (5) The authority had to send two notices of closure to the tenant as she seemed to ignore the first notice given by the authority.

In view of the above factors this office found that the Authority's action was justified and hence we closed the case as "explained."

#### **CASE: 149/83 - Police Brutality - Police & Justice**

An incident allegedly involving Mr. X occurred on 20th December at Tenavatu Club on the outskirts of Honiara. It was alleged that the complainant, Mr. X was with a Provincial Minister of the Guadalcanal Province at **Tenavatu** when a fight broke out.

The Police arrived and allegations were made that the complainant was one of those involved. This led to the arrest of Mr. X on 22nd December.

Mr. X then lodged a complaint to the office about brutal treatment he received from officers of the Force on the morning of December 22nd. He was dragged from his bed at Tuvaruhu and taken to Kukum Police Station where he was punched three times by Sgt. Y and then put in a cell. Mr. X stated that he was also being sworn at. In demanding reasons for such treatment he was told that this would be given at the Police Station.

My office then requested the Commissioner of Police to release 6 Police Officers for interviews to be conducted in the Ombudsman Office.

The Acting Commissioner of Police replied in his letter as follows - "I must say that every complaint made against Police which involves a criminal act is normally investigated and forwarded to the Director of Police Prosecutions for direction and is not decided by the Commissioner of Police. I do not therefore see any reason why these officers are required to be interviewed by your office since they may be accused."

This involves a question of jurisdiction. I replied that my office was required to do so under the Ombudsman (Further Provisions) Act 1980, Section 5(2) which says that the police force or any member thereof is under the jurisdiction of the Ombudsman office. The office required information from the 6 police officers to help in the investigations. A Provincial Minister of the Guadalcanal Provincial Assembly (who accompanied the complainant) at the time of the incident and a witness was also interviewed.

The 6 police officers in their written submissions all denied the alleged assault.

Mr. X and his witness when interviewed independently stated that the cause of being questioned and placed in a cell was connected with a fight which took place at Tenavatu Club on 20th December 1982. Both denied being involved in the fight nor were they present in the premises of the Club when the fight took place. Another companion, a Provincial Minister in the Guadalcanal Assembly confirmed that he and the complainant left the club before the fight occurred.

Investigations also revealed that the Commanding Officer at Kukum Police Station has confirmed that Sgt. Y was disciplined by the Police Force authorities for assaulting a man involved in the Tenavatu fight. Another Police Officer was warned by letter for a similar offence.

My recommendation of the case was that the Police Force should do something about such practices . . . . . "the credibility of the Force is being undermined if assault on suspects is practised. It is for pre-cautionary stand to take positive measures to eradicate such unwarranted actions."

The case was closed as "justified."

## **Lack of Government Accommodation**

The office received numerous complaints from members of the Public Service that there is not enough houses for Government employees. It was decided not to pursue investigation on each case but to take the whole issue up with the Public Service Office.

According to information received from the Public Service Office, there are currently 225 officers of all grades who lack government accommodation and are leaving with friends and relatives. Officers affected in the Provinces are not included.

The Government in 1970s introduced a policy to enable workers in Honiara to have their own houses. To achieve this aim came the introduction of a system for selling certain number of Government houses to its employees and the establishment of the Solomon Islands Housing Authority. Many public servants and others bought houses from the government and the Housing Authority. There were however certain factors which undermined the success of the scheme. Principally, not many local officers were able to secure loans to purchase Government houses as they were very expensive, the Housing Authority's inability due to lack of adequate funds in absolving the demands and increase inflow of rural people to urban areas.

The Government realising the problem of shortage of accommodation put a temporary halt on the sale of houses in 1980. In 1982 the sale was reopened but has to be discontinued for indefinite period in early 1983.

The steady increase in the number of Government Officers without accommodation is due to, seven percent annual growth of public employees, governments decision not to build new government houses and the inability of the Housing Authority in its activities to cater for the increase demands.

The concern of this office in relation to the problem lies in the following areas.

- (a) Though the Government is not legally obliged to provide accommodation, there is however moral obligation to afford to give fair and just dealings to its employees.
- (b) Lodging with relatives, friends and one-talks though acceptable in our Melanesian Society, breeds all kinds of unwarranted social and health problems especially in an urban setting.

In the effort to alleviate the problem the Government is thinking of building semi-permanent structure houses in selected sites in Honiara and new houses currently being built in the Naha Valley Housing Estate will not be sold.

## **LONG SERVE BENEFITS**

Part III of the Employment Act 1981 covers Long Service Benefit. The basic reason in having this piece of legislation is to cater for employees who are not covered by the Pensions Act until the establishment of the National Provident Fund in 1976.

Section 15 (1) In any case where -

- (a) an employer is or was liable under Section 13 of the Solomon Islands National Provident Fund Act 1973 (payment of contributions into the National Provident Fund) to make a contribution in respect of an employee for any period beginning with 1st October 1976;
- and
- (b) on that date, the employee had been continuously employed by the employer for one year or more, subject to the following provisions, the employer shall be liable to pay the employee a sum calculated in accordance with Section 16 (in this Act referred to as "Long Service Benefit."

- (2) Reference in this part to an employer and his employees are reference to a person who was, on October 1st, 1976, an employer for the purposes of the Solomon Islands National Provident Fund Act 1973 and to his employees for those purposes on that date.

During the period covered there were 27 written submissions and numerous telephone calls and verbal contacts handled. I believe the great deal of time devoted to this particular issue by the office and number of written and oral submissions reduced if, Part III of the Employment Act was given proper attention by those concerned and instructions issued through the Public Service Circular No. 13 were properly followed.

Investigation on many of the written submissions had to be discontinued due to lack of the required information from Ministries concerned. This is due to Ministries' failure in keeping employment records and re-organisation of ministries causing losses to records if they were ever being kept.

This office sympathises for those who due to no faults of their own were being deprived of the benefits they genuinely suppose to have received, due to laxity and careless attitude in the administration of employment records in the past.

## Conclusion

### PROBLEMS ENCOUNTERED

All living creatures subject to changes. Changes compatible to their ideologies, environments, interests and ambitions. Changes caused naturally which man has no power to control or changes brought about by ones own devices and investments. There are changes involving from activities of other causing changes to modes of living which create dismay, disunity, confusion and breaching of established social beliefs and personal relationships.

The Solomon Islands was inhabited by people socially grouped into individual clans and tribes, traditionally ruled by an individual or a group of individual leaders before the advent of 'white-men' - missionaries and traders. The two groups came with entirely different purposes. The former to christianised and the later to seek tradeable commodities. Their intrusion and presence were sources of tremendous impact on the life of the indigenous population, inflicting changes of various shades and degree.

Further activities such as introduction of administrative government, education and extensive and scrupulous commercial activities aggravated the degree of impact and changes on the life of the people. At that point of time, due to ignorance and fear, the absence of any form of resistance bred fertile atmosphere in accepting changes blindly. This then was the prevailing situation in the 1800 and early 1900.

The Solomon Islands in the late 1960 and early 1970, attracted by waves of achieving statehood in many former British dependencies in Africa, Carribean, Asian and the Pacific regions, agitated for political independence which was eventually achieved peacefully in 1978.

Section 96 of our Constitution provides for the establishment of the office of the Ombudsman. In order to comply with Section 143 of the Constitution the office was set up in July 1981.

The office celebrated its second birthday on July 1 of this year. During its first year of operation, the office was fully comitted in setting up the machinery through which to carry out its constitutional functions. Difficulties confronted were mentioned in the First Annual Report. I regret to report certain major problems such as office accommodation understanding of the roles of the office and lack of adequate finance still exist.

It is now proper and expedient to assess the Constitutional functions of the office and importantly so to come to grasp with problems and difficulties encountered.

The lingua franca for written communication of all major activities in the Solomon Islands is English. Education the spearhead for any meaningful development until the late 1950 was sparodically being conducted independently by the various christian bodies operating in the islands. The government not until 1975 fully committed itself in taking full responsibility in the

field of education. In spite of this move, a very high percentage of the population particularly amongst the older generation are illiterate, even if they were able to read and write, lack of a mean in reaching the public through written materials is a real hindrance.

Communication through the Solomon Islands Broadcasting Corporation is another route utilised and had achieved certain success but receptions at distant areas from Honiara, are poor and a great number of people within the zone where reception is good do not have radios. Thus, attempts made through newspaper and broadcasting were only a partial success.

Transportation is one of the biggest problems faced when undertaking touring of the provinces. Regular visits to provincial centres is a priority in our annual programme. It has been experienced that on several occasions arranged visits to provinces had to be cancelled due to either closure of airports, lack of accommodation in Provincial Rest Houses and weather which is beyond one's power to control.

In developing countries new ideas and concepts have been introduced with genuine purposes but too often, due to political pressures inadequate ground work preceded the actual introduction, adaption and implementation. Thus, the aims and goals often did not materialise to expectation. The results then, weighed heavily on the attitude of the recipients. Similar receptions also affected new ideas and plans forced upon the people.

Thorough preparation could slow up achieving approved plans and policies, but skipping such means leads only to misunderstanding, confusion and chaos which otherwise should not have been encountered.

Problems encountered since the establishment of the office involved from lack of adequate finance, thorough preparation, and ignorant of the concept of Ombudsman and its functions as enshrined in the Constitution.

#### **Further Report to Parliament**

Section 16(5) of the Ombudsman (Further Provision) Act 1980 stipulates submission of Further Report to Parliament - "If within reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman if he thinks fit after considering the comments, if any, made by or on behalf of any department, authority, body or person affected, may thereafter make such further report on the matter as he thinks fit to Parliament."

During the reporting period (July 1982 - June 1982) only one such report was made. The case involved termination of the Deputy Manager of the National Provident Fund by the Board (NPF).

The underlying factor in the inclusion of Section 16(5) of the Act is that the Office has no authority to compel bodies involved to comply to form of recommendations made. Therefore, submission of Further Report in nature is more or less a form of appeal to the authority the office is responsible and answerable to, the Legislature. As Further Report is a form of appeal, it calls for an answer. The course of action taken is important but the most important issue is consideration of the report and decision made. Submission of Further Report is meaningless, a waste of valuable time and efforts if it is not given due appropriate attention. Furthermore, the possibility in rectifying the injustice caused is denied. The result could give rise to the question of credibility and image of the office. An organisation or institution statutorily established if it is to fully achieve its functions and roles requires the support it requires, the office of the Ombudsman is no exception.

It is sad to report the First Further Report submitted under Section 16(5) of the Ombudsman Act, failed to receive the required attention presumably due to more pressing and important matters during the second session of the Seventh Meeting of Parliament.

## WHAT ARE THE POWERS OF THE OMBUDSMAN

The Ombudsman's functions under Section 97(1) of the Constitution shall be to:-

- (a) enquire into the conduct of any person to whom this section applies in the exercise of his office or authority, or abuse thereof;
- (b) assist in the improvement of the practices and procedures of public bodies; and
- (c) ensure the elimination of arbitrary and unfair decisions.

Section 5(1) of the Ombudsman Act says: - The Ombudsman may for the purposes of Section 97(1) of the Constitution **investigates** any **action** taken by any officer of authority to which this section applies in the exercise of the **administrative functions** of that officer or authority in any case which - complaint under this section is made alleging that a person or body of persons has suffered **injustice** in the consequence of that action.

Section 16(1) Ombudsman Act - In the event where investigation revealed that the action taken caused injustice in the opinion of the Ombudsman due to:-

- (a) contrary to law;
- (b) based wholly or partly on a mistake of law or fact;
- (c) unreasonably, delayed; or
- (d) otherwise unjust or manifestly unreasonable.

The Ombudsman under Section 16(2) of the Act is empowered to form opinion on step to be recommended to remedy the injustices caused.

The remedial steps could be:-

- (a) the matter should be given further consideration;
- (b) the omission should be rectified;
- (c) the decision should be cancelled, reversed or varied;
- (d) any practice on which the fact, omission decision or recommendation was based should be altered;
- (e) any law on which he, act, omission, decision or recommendation was based should be reconsidered;
- (f) reasons should have been given for the decision; or
- (g) any other steps should be taken;

the Ombudsman shall **report** this **opinion** and his reasons thereof to the officer, of the department or authority concerned and may **make** such **recommendations** as he thinks fit and shall also **send** a copy of his report and recommendations to the Prime Minister and to any Minister concerned.

Section 16(5) of the Act - If within reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman if he thinks fit after considering the comments, if any, made by or behalf of any department, authority body or person affected, may thereafter **make** such **further report** on the matter as he thinks fit to Parliament.

Section 98(3) of the Constitution - The Ombudsman **shall make** an annual report and **may make** such additional reports to Parliament as he deems appropriate concerning the discharge of his functions, and **may draw** attention to any defects which appear to him to exist in the administration or any law.

### Authority or Power of the Ombudsman

1. Investigates action taken by any officer of the Public Service, statutory authorities and Provincial Government of their administrative functions and that such action made is alleged to have caused injustice S5(1).

2. Making of further or additional reports to Parliament on the ground that, appropriate measures not being taken by the authority concerned on recommendations made and also to draw attention to any defects that appears to him to exist in the administration or any law S16(5).
3. Make Annual Report to Parliament. This type of report gives the detail activities of the office within one calendar year. S98(3) Constitution.
4. Associated power in connection to investigatory work.
  - (a) obtaining of information S10(1)
  - (b) order person/s for the purpose of acquiring information or production of documents S12(1).
  - (c) enter premises S14(1).

The opinion formed and recommendations made do not compel the authority involved to conform to opinions formed nor to comply to the recommendations made.

**APPENDIX A**  
**(Extract from the Constitution)**

**THE OMBUDSMAN**

96. (1) There shall be an Ombudsman, whose office shall be a public office.
- (2) The Ombudsman shall be appointed by the Governor-General, acting in accordance with the advice of a committee consisting of the Speaker, the Chairman of the Public Service Commission and the Chairman of the Judicial and Legal Service Commission.
- (3) If the person appointed as Ombudsman is a member of Parliament or a provincial assembly, he shall forthwith cease to be such a member.
- (4) The Ombudsman shall not perform the functions of any other public or provincial government office, and shall not, without the approval of the Governor-General in each particular case, hold any other office of emolument than the office of the Ombudsman or engage in any occupation for reward outside the duties of his office.
- (5) Subject to the provisions of the next following sub-section the Ombudsman shall vacate his office at the expiration of five years from the date of his appointment'
- (6) The Ombudsman may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the procedure for the removal of a judge of the High Court as set out in subsections (4) to (7) of Section 80 of this Constitution.

Functions of  
Ombudsman.

97. (1) The functions of the Ombudsman shall be to:-
- (a) enquire into the conduct of any person to whom this section applies in the exercise of his office or authority, or abuse thereof;
- (b) assist in the improvement of the practices and procedures of public bodies; and
- (c) ensure the elimination of arbitrary and unfair decisions.
- (2) Parliament may confer additional functions on the Ombudsman.
- (3) The section applies to members of the Public Service, the Police Force, and Prisons Service, provincial governments, and such other offices, commissions, corporate bodies or public agencies as may be prescribed by Parliament.

Proviso refers to  
Ombudsman.

Provided that it shall not apply to the Governor-General or his personal staff or to the Director of Public Prosecutions or any person acting in accordance with his instructions.

- (4) Nothing in this section or in any Act of Parliament enacted for the purposes of this Chapter shall confer on the Ombudsman any power to question or review any decision of any judge, magistrate or registrar in the exercise of his judicial functions.

Discharge of  
functions of  
Ombudsman.

98. (1) In the discharge of his functions the Ombudsman shall not be subject to the direction or control of any other person or authority and no proceedings of the Ombudsman shall be called in question in any court of law.
- (2) The Ombudsman shall not conduct an investigation in respect of any matter if he has been given notice by the Prime Minister that the investigation of that matter would not be in the interests of the security of Solomon Islands.
- (3) The Ombudsman shall make an annual report and may make such additional reports to Parliament as he deems appropriate concerning the discharge of his functions, and may draw attention to any defects which appear to him to exist in the administration or any law.

Further Provisions.

99. Parliament may make proviso for such supplementary and ancillary matters as may appear necessary or expedient to give effect to the provisions of Chapter.

APPENDIX B  
Solomon Islands Act No. 1 of 1980

Assented to in Her Majesty's name and on Her Majesty's behalf this 3rd day of April 1980.

B. Devesi  
Governor-General

AN ACT  
TO MAKE FURTHER PROVISIONS RELATING TO THE OFFICE AND POWERS OF THE  
OMBUDSMAN AND FOR MATTERS CONNECTED THEREWITH AN INCIDENTAL THERE-  
TO.

ENACTED by the National Parliament of Solomon Islands.

Short title.

1. This Act may be cited as the Ombudsman (Further Provisions) Act 1980 and shall come into operation on such date as the Prime Minister may, by order, appoint.

4. (1) Before entering upon the exercise of the duties of this office, the Ombudsman shall take and subscribe the oaths prescribed in the Official Oaths Act and shall take before the Chief Justice an oath in the form set out in the First Part of the Schedule to this Act.

(2) The members of the staff of the Ombudsman shall maintain secrecy in respect of all matters which come to their knowledge in the exercise of their duties and shall, before entering upon the exercise of their duties take an oath to be administered by the Ombudsman in the form set out in the Second Part of the Schedule to this Act.

Person by  
whom complaints

6. (1) A complaint under section 5 may be made by any individual or by any body of persons whether incorporated or not, not being -

(a) a department or authority of the Government or any authority or body constituted for purposes of the public service or local government; or

(b) any other authority or body whose members are appointed by the Governor-General or by a Minister or whose revenue consist wholly or mainly of moneys provided from public funds.

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

Circumstances  
in which  
Ombudsman shall  
not investigate.

7. (1) The Ombudsman shall not conduct an investigation in respect of any complaint unless the person aggrieved is a resident of Solomon Islands (or, if he is dead, was a resident at the time of his death) or the complaint relates to action taken in relation to him while he was present in Solomon Islands or in relation to rights or obligations that accrued or arose in Solomon Islands.

(2) The Ombudsman shall not conduct an investigation in respect of any complaint in so far as it relates to any of the following matters, that is to say -

(a) any action in respect of which the person aggrieved has a right of appeal, reference or review to or before a tribunal constituted by or under any law in force in Solomon Islands; or

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

Provided that -

- (i) the Ombudsman may conduct such 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 avail himself or to have availed himself of the right or remedy; and
- (ii) nothing in this subsection shall preclude the Ombudsman from conducting any investigation as to whether any of the provisions of Chapter 11 of the Constitution has been contravened.

(3) The Ombudsman shall not conduct an investigation in respect of any complaint in respect of any action if he is given notice in writing by the Prime Minister that the action was taken by a Minister in person in the exercise of his own deliberate judgement.

(4) The Ombudsman shall not conduct an investigation in respect of any complaint where it appears to him -

- (a) that the complaint is merely frivolous or vexatious;
- (b) that the subject matter of the complaint is trivial;
- (c) that the person aggrieved has not sufficient interest in the subject matter of the complaint; or
- (d) that the making of the complaint has, without reasonable cause, been delayed for more than twelve months.

(5) The Ombudsman shall not conduct an investigation in respect of any matter if he is given notice by the Prime Minister that the matter would not be in the interests of the security of Solomon Islands.

(6) In this section "action" includes failure to act.

Procedure  
for making com-  
plaint.

8. (1) Any complaint or invitation made to the Ombudsman shall be in writing and shall be submitted direct to the Ombudsman.

(2) Notwithstanding the provisions of any written law, any complaint made to the Ombudsman by any person who is in legal custody or who is an inmate of any mental hospital or similar institutions shall be forwarded unopened to the Ombudsman by the person in charge of the place where the complainant is detained or is an inmate.

Recording and  
notifying intended  
investigation.

9. (1) Subject to the provisions of this section, the Ombudsman shall before entering upon an investigation -

- (a) record the nature and scope of the investigation he proposes to make; and
- (b) inform the officer or authority concerned of his intention to make such investigation and to furnish him with a copy of such record; or

if he considers that the complaint is of a trivial or vexatious nature, or he determines to apply the provisions of section 21, he shall record that he does not intend to make an investigation and so notify the person making the complaint.

(2) If in the course of an investigation the Ombudsman considers that the nature or scope of an investigation should be enlarged he shall cause a further record to be made to that effect and shall furnish to the officer or authority a copy thereof.

(3) The record and any further record made in accordance with this section shall form part of the proceedings of an investigation.

(4) Nothing in this section shall be construed as precluding the Ombudsman, before complying with subsection (1) or subsection (2), from conducting an examination of any person who has made a complaint or from consulting the officer or authority concerned in order that he may determine whether or not an investigation should be made or whether or not the nature or scope of an investigation should be enlarged.

10. (1) Subject to the provisions of this Act, the Ombudsman may obtain information from such persons and in such manner and make such enquiries as he thinks fit and may determine whether any person may be represented by a legal representative or otherwise in an investigation.

(2) Every investigation shall be conducted in private and subject to the provisions of section 8 and this section, the procedure for conducting an investigation shall be such as the Ombudsman considers appropriate in the circumstances of the case.

(3) It shall not be necessary for the Ombudsman to hold a hearing during the course of an investigation nor shall any person be entitled as of right to be heard by him;

Provided that if at any time during the course of an investigation it appears to the Ombudsman that there may be sufficient grounds for his making any report or recommendation that may adversely affect any person, officer or authority, he shall afford such person, officer or authority an opportunity to be heard; and no comment that is adverse to any person, officer or authority shall be contained in a report to Parliament, to a Minister or to a department or authority unless such person, officer or authority has been given opportunity to be heard.

Disclosure  
of information.

11. (1) For the purposes of an investigation under this Act, the Ombudsman may require any Minister, officer or member of any department or authority concerned or any other person who in his opinion is able to furnish information or produce documents or things relevant to the investigation to furnish any such information or produce any such document or thing.

(2) No obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to persons in the public service imposed by any law in force in Solomon Islands or any rule or law shall apply to the disclosure of information for the purposes of any such investigation; 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.

(3) No person shall be required or authorised by virtue of this section to furnish any information or answer any question or produce any document relating to proceedings of the Cabinet or any committee thereof; and for the purposes of this subsection a certificate issued by the Secretary to the Cabinet with the approval of the Prime Minister and certifying that any information, question or document so relates shall be conclusive.

(4) The Attorney-General may give notice to the Ombudsman with respect of any document of information specified in the notice, or any class or documents or information so specified, that in his opinion the disclosure of that document or information or documents or information of that class, would be contrary to the public interest in relation to defence, external relations or internal security; and where such notice is given nothing in this section shall be construed as authorising or requiring the Ombudsman or any member of his staff 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.

Attendance  
of witnesses.

12. (1) Subject to the provisions of this Act, the Ombudsman may by order require any person who in his opinion is able to furnish information or produce any document, paper or thing, relevant to an investigation to attend before him at a time and place specified in such an order and be examined on oath or produce such document, paper or thing.

(2) Where the Ombudsman orders any person to be examined on oath, he may administer such oath.

(3) An order made under this section shall be served on the person to whom it is directed by a member of the staff of the Ombudsman or by a police officer in the manner prescribed for the service of a summons on a witness in civil proceedings before a court of law.

(4) If a person to whom an order under this section is directed does not attend at the time and place mentioned therein, the Ombudsman, upon being satisfied that the order was duly served or that the person to whom the order was directed wilfully avoided service, issue a warrant to apprehend such person and to bring such person before him at a time and place specified therein. Every warrant issued this section shall be executed by a police officer.

(5) Where a person is arrested in pursuance of a warrant issued under this section and is not brought before the Ombudsman within twenty-four hours of his arrest or is earlier released by order of the Ombudsman on his undertaking to attend at a time and place specified therein, such person shall forthwith be taken before a Magistrate who shall -

(a) if such person enters into a suitable recognizance for his appearance before the Ombudsman, release him from custody; or

(b) order such person to be detained in custody until such time as he can be brought before the Ombudsman.

(6) When any person is required by the Ombudsman to attend before him for the purposes of this section, such person shall be entitled to the same fees, allowances and expenses as if he were a witness before a court of law and for the purposes of this subsection, the Ombudsman shall have the powers of a court to fix or disallow the amount of any such fee, allowance or expenses.

(7) For the avoidance of doubt it is hereby declared that this section shall apply whether or not the person or witness concerned is a person in respect of whose conduct the Ombudsman has jurisdiction to inquire.

**Privilege of witnesses.**

13. (1) Subject to section 11(2) every person required to give any information or ordered to attend to give evidence or to produce any document, paper or thing before the Ombudsman shall be entitled in respect of such information, evidence, document, paper or thing to the same rights and privileges as a witness in any court of law.

(2) An answer given by a person to a question put by the Ombudsman shall not be admissible in evidence against him in any civil or criminal proceedings except in the case of criminal proceedings for an offence against this Act or for perjury, subornation of perjury or defeating or obstructing the course of justice, and no evidence in respect of proceedings at a hearing before the Ombudsman shall be given against any person other than in further proceedings before the Ombudsman.

(3) When a person gives evidence or produces any document, paper or thing at a hearing before the Ombudsman in pursuance of this Act the proceedings shall be deemed to be judicial proceedings for the purposes of a prosecution for perjury, subornation or perjury or defeating or obstructing the course of justice.

(4) The Ombudsman may hear and obtain information whether or not the same be evidence within the meaning of the law for the time being regulating the admissibility of evidence in courts of law.

**Powers of entry.**

14. (1) For the purposes of this Act the Ombudsman or any person specifically authorised by him may at any time enter upon any premises occupied by any person, department or authority in respect of which he may carry out an investigation and inspect the premises and thereon make such inquiries as he shall think fit.

(2) Before entering upon any premises pursuant to the above subsection, the Ombudsman shall give at least 24 hours notice to the appropriate person, department or authority.

**Investigation not to affect departmental action.**

15. The conduct of an investigation by the Ombudsman 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 in respect of any matter which is the subject of the investigation.

**Proceedings after investigation.**

16. (1) The provisions of this section shall apply in every case where, after making an investigation, the Ombudsman is of opinion that the action that was the subject matter of investigation was -

- (a) contrary to law;
- (b) based wholly or partly on a mistake of law or fact;
- (c) unreasonably delayed; or
- (d) otherwise unjust or manifestly unreasonable.

(2) If in any case to which this section applies the Ombudsman is of the opinion that -

- (a) the matter should be given further consideration;
- (b) the omission should be rectified;
- (c) the decision should be cancelled, reversed or varied;
- (d) any practice on which the act, omission, decision or recommendation was based should be altered;

- (e) any law on which the act, omission, decision or recommendation was based should be reconsidered;
- (f) reasons should have been given for the decision; or
- (g) any other steps should be taken,

the Ombudsman shall report this opinion and his reasons therefore to the officer, of the department or authority concerned and may make such recommendations as he thinks fit and shall also send a copy of his report and recommendations to the Prime Minister and to any Minister concerned.

(3) When reporting his opinion to the officer of the department or authority concerned, the Ombudsman may request such officer to notify him within a specified time of the steps (if any) that it is proposed to take to give effect to the recommendations of the Ombudsman.

Notification  
to complaint.

(4) The Ombudsman shall inform the person who has made a complaint of the result of his investigations -

- (a) where the officer of the department or authority concerned is not required to take any steps in the matter - at the time that he sends a copy of his report to the Prime Minister; or
- (b) where the officer of the department of authority concerned is requested in accordance with subsection (3) to notify the Ombudsman of the steps that it is proposed to take - upon receipt of such notification or at the expiry of 28 days from the date of the request, whichever shall be the earlier.

(5) If within a reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman if he thinks fit after considering the comments, if any, made by or behalf of any department, an authority, body or person affected, may thereafter make such further report on the matter as he thinks fit to Parliament.

Privilege of  
communication.

17. For the purposes of any law relating to defamation, the publication, by the Ombudsman or by any member of his staff, of any report or communication and the publication to the Ombudsman or to any member of his staff, or to any member of Parliament in accordance with the provisions of section 5(1) of this Act, of any complaint or other matter, shall, if made in accordance with the provisions of section 98(3) of the Constitution or of this Act, be absolutely privileged.

Expenses  
and  
allowances.

18. The Ombudsman may, in his discretion, pay to any person by whom a complaint has been made or to any person who attends or furnishes information for the purposes of an investigation, sums in respect of expenses properly incurred or by way of allowance or compensation for loss of time, in accordance with such scales and subject to such conditions as may be prescribed.

Administrative  
expenses.

19. The administrative expenses of the office of the Ombudsman including such expenses and allowances as are authorised by the provisions of this Act shall to such amount as may be sanctioned by Parliament be paid out of the Consolidated Fund.

Offences.

20. (1) Any person who, otherwise than in the course of his duty, directly or indirectly, by himself or by any other person, in any manner whatsoever including giving undue publicity to his complaint wilfully influences or attempts to influence the decision of the Ombudsman

with regards to any complaint made to him or to any investigation made by him, shall be guilty of an offence.

(2) Subject to the provisions of this Act, any person who is requested by the Ombudsman or by any member of the staff of the Ombudsman acting in the exercise of his duties, to furnish any information or to produce any document, paper or thing and who wilfully fails to furnish such information or to produce such document, paper or thing; shall be guilty of an offence.

(3) Any person who, in connection with any matter which lies within the jurisdiction of Ombudsman, wilfully gives him any information which is false or misleading by reason of the falsity of, or the omission of, a material particular, shall be guilty of an offence.

(4) Any person guilty of an offence under the provisions of this section shall be liable to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

(5) No prosecution for an offence against this section shall be instituted except with the consent of the Director of Public Prosecutions.

Ombudsman  
may determine  
not to  
investigate  
complaint where  
undue publicity given.

21. The Ombudsman may determine not to make an investigation in the case of any complaint where the complaint or any person acting in his behalf (whether or not the complainant has authorised or consented to his doing so) has given undue publicity may prejudice the impartial investigation of the complaint.

22. The Prime Minister may make regulations in order to carry this Act into effect and for prescribing anything which is required to be prescribed hereunder.

## SCHEDULE

### FIRST PART

#### OATH OF OMBUDSMAN

I,           swear that I will well, faithfully and impartially serve Her Majesty, Queen Elizabeth the Second, Her heirs and successors according to law, in the office of Ombudsman and that I will not except in accordance with the provisions of Chapter IX of the Constitution and the Ombudsman (Further Provisions) Act divulge any information received by me in the exercise of my duties as Ombudsman to any person. So help me God.

### SECOND PART

#### OATH OF MEMBER OF STAFF OF OMBUDSMAN'S OFFICE

I,           swear that I will regard all information documents and other matters which may come into my possession or to my knowledge in the course of my official duties, as secret and that I will not, except in accordance with the provisions of Chapter IX of the Constitution and the Ombudsman (Further Provisions) Act, divulge any information received by me in the exercise of my official duties to any person. So help me God.

## APPENDIX C

### BACKGROUND INFORMATION ON SOLOMON ISLANDS

#### The land

Solomon Islands lies between longitudes 155° 30' and 170° 30' and latitudes 5° 10' and 12° 45' South. The total land area is approximately 27,560 square kilometers and total sea area approximately 1.3 square kilometers.

The group is a scattered Archipelago of mountainous islands and low lying coral atolls, stretches for about 1,100 km in a South Easterly direction from Bougainville in Papua New Guinea to the Santa Cruz Islands.

#### Geographical Features and Climatic Conditions

There are six main islands Choiseul, New Georgia, Santa Isabel, Guadalcanal, Malaita and San Cristobal are characterized by precipitous, thickly forested mountain ranges intersected by deep, narrow valleys. They vary between 150 km and 200 km in length and between 33 km to steeply on one side to sea level on the other through a series of foothills to the coast.

There are extensive coral reefs and lagoons around many of the islands and these form attractive and fascinating stretches of scenery. Ontong Java, the raised atoll north of the main island chain and Sikaiana atoll (Stewart Islands) to the northeast, are typical atolls and they, with the raised atolls of Bellona and Rennell to the South and the islands of Tikopia and Anuta far to the East are the homes of the Polynesian communities.

There is abundance of rivers on all the larger islands from which the water is normally drinkable. Volcanic activity still exists to some extent, on the islands of Tinakula near Santa Cruz and Savo, near Guadalcanal.

The climate of the Solomon Islands is equatorial but is tempered by the surrounding ocean. For most of the year it is warm and pleasant with few extremes of temperature. There are no clearly defined seasons but from the end of April until November, the South East trade winds blow almost continuously with varying intensity. Between November and April, the weather is more uncertain, most of the winds from the West or North West though occasionally from the South South East. In this season there are long periods of calms which are punctuated by squalls and by build-up cyclones.

Rainfall is always heavy in the inland areas and on the windward side of the main islands coastal areas of the larger islands sheltered from the prevailing winds are usually drier than in other areas.

Honiara (the capital) in the rain shadow area, has an annual rainfall of about 2,250mm, with the bulk falling during the first 3 months of the year.

#### Population by Ethnic Origin, (1976 national census)

Melanesian	183,665
Polynesian	7,821
Micronesian	2,753
European	1,359
Chinese	452
Others	773
TOTAL	196,823

The population of the Solomon Islands at 30th June 1982 was estimated at 244,000.

#### Government:

Solomon Islands is a full member of the Commonwealth and recognises H.M. Queen Elizabeth II as Head of State, represented in the Solomon Islands by a Governor-General. Solomon Islands gained political independence from Britain in July 7, 1978.

The Central Government follows the Westminster system and there is a single Chamber National Parliament composed of 38 elected members. There are three recognised political parties, People's Alliance, United Party and National Democratic Party. Almost one third of members returned in the 1980 elections were independent of Party affiliation.

The present coalition Government headed by Mr. Solomon Mamaloni comprises of People's Alliance, National Democratic and some Independents. The former Prime Minister Sir Peter Kenilorea is the Leader of the Opposition.

#### Economy:

The Solomon Islands economy is changing rapidly from its former classic, colonial state of being dependent on the export of a single crop, copra, into a much more diversified and complex system.

Sales of copra, fish, timber and palm oil form the bulk of export earnings, while imports cover a wide range of goods of which fuel oil and machinery are important. Foreign aids helps to give a comfortable surplus on the Balance of Payments. The main trading partners are Japan, New Zealand, Australia and EEC.

While there has been greatly increased participation and control of the economy by its own people over recent years, Solomon Islands continues to depend on primary products sold in World Markets for the major part of its income and makes.

#### Social Services:

With reference to social services in the field of Education, the overall aim is to provide a co-ordinated system of primary, secondary and tertiary education with a twofold purpose. This is to meet the nation's need for skilled manpower as quickly as possible and to provide a basic education for all children suited to the environment in which they will live and work as adults.

Some basic figures in the field of education

Primary	Schools	385
	Teachers	1,201
	Pupils	30,263
Secondary	Schools	20
	Teachers	265
	Students	4,781
Teacher Training	College	1
	Lecturers	25
	Students	219
Technical Training	College	1
	Lecturers	31
	Students	848

In addition there are 327 Solomon Islanders studying overseas (Universities, Colleges etc.) sponsored by government, churches and private agencies.

In terms of Health and Medical Services, the Chief endemic diseases are malaria and tuberculosis and vigorous efforts are being made to combat these scourges.

The government recognises the need for a more intensive family health programme, regarding family planning, the government and the Roman Catholic Church are quite active in providing information and help to couples who wishes to be involved in family planning.

In the context of transport and communications, on the whole, improvements have been made and now there are 25 aerodromes throughout the country, four of which are designated international airports. With the establishment of SOLTEL, Solomon Islands is said to have entered the space age, making communication with any country in the world more faster and easier than before.

The Solomon Islands is said to be a Christian Country with approximately 97% of its population, as Christians. Today there are five main churches in the Solomons with a few other small denominations being established lately. The main churches are: the Church of Melanesia (Anglican), Roman Catholic Church, South Seas Evangelical Church and Seventh Day Adventist Church.

## APPENDIX D

### OMBUDSMAN'S ACT

- S4 (1) Before entering upon the exercise of the duties of this office, the Ombudsman shall take and subscribe the oaths prescribed in the Official Oaths Act and shall take before the Chief Justice an oath in the form set out in the First Part of the Schedule to this Act.
- S4 (2) The members of the Staff of the Ombudsmans shall maintain secrecy in respect of all matters which come to their knowledge in the exercise of their duties and shall, before entering upon the exercise of their duties take an oath to be administered by the Ombudsman in the form set out in the Second Part of the Schedule to this Act.

This means that the Ombudsman is bound by the Official Oaths Act 1978. Neither of the Oaths contained therein deal with secrecy. They are the Oath of Allegiance and the Oath of Office.

The oaths in the Schedule of the Ombudsman (Further Provisions) Act bind the Ombudsman and his staff. In essence they are the same and forbid the divulgence of any information by either the Ombudsman or a member of his staff except in accordance with Chapter IX of the Constitution.

#### Chapter IX Constitution

- S98 (3) The Ombudsman shall make an annual report and may make such additional reports to Parliament as he deems appropriate concerning the discharge of his functions.

No other part or section of Chapter IX of the Constitution deals with the reporting of information. This could easily mean that except where he is reporting to Parliament the Ombudsman may **not** divulge **any** information.

The difficulty is that Chapter IX does not face the question of **fulfilling the functions** of the office by the **use of publicity**, so the reference to that Chapter by the schedule does not assist at all.

The reason that publicity is not mentioned is not clear. Maybe it was never intended that the office should use it as a tool for fulfilling its functions. This seems to be the effect of the legislation which is very unfortunate for two reasons.

- A. The result of one particular case has already been sent to the local newspapers and SIBC with the sanction of the Ombudsman because the publicity the only way for ensuring the elimination of unfair decisions (S97(1)(c)). In that case other people were affected and unless they knew of their rights would not have benefited by the work of the Ombudsman.

#### Was this publicity contrary to the Act?

- B. The functions of the office could be achieved more successfully with the use of publicity. Where the office, through hard work gains a good result it is very good for public relations for that result to be publicised. It enhances the office in the public eye and will in some occasions make some people aware of rights which they too have and will remedy injustices done in the past.

This is a very serious matter and we must be sure of the legality of advertising before we undertake any further publicity. It is usual for the Ombudsman or one of his staff to highlight particular cases when giving public talks. This demonstrates the effectiveness of the office, but does it also divulge information received in the exercise of duties. Probably yes.

The policy behind the oath is clear. Firstly, national security and secondly it will encourage people to be frank with the office if they do not fear publicity. However, the Ombudsman will be better equipped to achieve his functions with a power of publicity, (A power which we, in all good faith, assumed we had because it seemed so central to the discharge of our functions).

The Constitution does not say we cannot publicise results, but it does not say that we can. The inference seems to be that we cannot.

The Ombudsman (Further Provisions) Act 1981 does not mention the Official Secrets Act (Cap. 23), but it has been brought to our attention that we may also be bound by that Act.

#### **Official Secrets Act**

- S5 (1) If any person having in his possession or control any secret official code word, or pass word or any sketch, plan, model, article, not document or information which ... he has obtained ... owing to his position as a person who holds or has held office under Her Majesty ...

- (a) communicate ... to any person, other than a person to whom he is authorised to communicate it ...

that person shall be guilty of a misdemeanour.

#### **Definition**

- S2 "Office under Her Majesty" includes any office or employment in or under any department of the Government of the UK, or of S.I.

#### **Question**

Who has the power to authorise communication under S.5(1)(a)?

The Act does not say. Possibly it is legislative.

The Act merely states "other than a person to whom he is authorised to communicate."

The "Official Secrets Declaration" in use by the Public Service states "I must not divulge any information ... without the previous sanction of the head of Department."

There is no power in the Act for the Head of Department to sanction the release of any information. In fact, if he is an officer "in or under any department" he too is bound by the Act unless there is legislation to the contrary.

The Public Service Commission being a commission established by the Constitution has the power to make regulations for regulating and facilitating the performance by the Commission of their functions (Con. S.137(1)).

This power has been exercised and we must turn to the General Orders.

G.O. Appointments - Section I

- G.O 120 Oaths - **Official Secrets Ordinance** - All appointments are subject the candidates being prepared to take any oaths or affirmation which may be prescribed by the law. (Cap. 11) or the Governor and to conform with Public Service Procedure for the administration of the Official Secrets Act. (Cap. 23).

This brings the discussion back to the Official Secrets Declaration. If this declaration was drafted in exercise of the powers to regulate its functions under S.137(1) there may be a problem because the declaration states that the Head of Department has

the power to exclude the operation of the Official Secrets Act. This could be going beyond the power of the Commission. If it is merely an explanatory note it may be misleading. I have been unable to find any legislation (as distinct from delegated legislation or regulation) which gives to the Heads of Departments this power.

So the position seems to be that officers in the Ombudsman's Office and the Ombudsman are bound by;

- (1) Oaths within the Ombudsman (Supplementary Provisions) Act.
- (2) Ombudsman only - Oath of Allegiance  
- Oath of Office
- (3) Official Secrets Act.

It is interesting to note that the Oaths contained in the Ombudsman (Supplementary Provisions) Act give even less room for the divulging of information than the Official Secrets Act.

This paper has been more to raise points for discussion and clarification to provide definite answers.

Any argument saying that the office has an instant power to advertise as a legitimate means of fulfilling its functions is tenuous.

Short of discovering relevant legislation which has been overlooked or amendment to the Ombudsman (Supplementary Provisions) Act the office of the Ombudsman seems bound to limit its publication to the issuing of the report to Parliament.

# SOLOMON ISLANDS



