

THE OMBUDSPERSON FOR CHILDREN ACT 2003

**Act No. 41 of 2003**

I assent

SIR ANEEROOD JUGNAUTH

President of the Republic

10<sup>th</sup> November 2003

**Date in force: by [Proclamation No. of ]**

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## **AN ACT**

To provide for the establishment of an office of Ombudsperson for Children and for matters related thereto

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ENACTED by the Parliament of Mauritius, as follows -

### **1. Short title**

This **Act** may be cited as the Ombudsperson for Children **Act** 2003.

### **2. Interpretation**

'child' means a person under the age of 18;

'Convention' means the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations on 20 November 1989;

'Minister' means the Minister to whom responsibility for the subject of child development is assigned;

'Ombudsperson for Children' means the Ombudsperson for Children whose office is established under section 3;

'public body' means-

- (a) a Ministry or Government department;
- (b) a local authority;
- (c) a statutory corporation;
- (d) any other company, partnership or other entity of which the Government is, by the holding of shares or some other financial input, or in any other manner, in a position to influence the policy or decision of such body.

### **3. Establishment of the office of Ombudsperson for Children**

- (1) There is established for the purposes of this **Act** the office of Ombudsperson for Children.

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(2) The Ombudsperson for Children shall be a person who has a wide knowledge of the issues and the law relating to children in Mauritius.

(3) The Ombudsperson for Children shall take before the President the oath specified in the Schedule before assuming the duties of his office.

#### **4. Appointment of Ombudsperson for Children**

- (1) The Ombudsperson for Children shall be appointed by the President of the Republic **acting** after consultation with the Prime Minister, the Leader of the Opposition, the Minister and such other persons as he considers appropriate.
- (2) An appointment under subsection (1) shall be subject to such terms and conditions as the President may determine.
- (3) The Ombudsperson for Children shall hold office for 4 years and shall be eligible for reappointment for only a second term of 4 years.
- (4) The President may remove the Ombudsperson for Children from office for inability to perform the functions of his office, whether arising from infirmity of body and mind or any other cause, or for misbehaviour.
- (4) The Ombudsperson for Children shall not engage in any trade, business, profession or political **activity**.

## **5. Objects of the office of the Ombudsperson for Children**

The Ombudsperson for Children shall –

- (a) ensure that the rights, needs and interests of children are given full consideration by public bodies, private authorities, individuals and associations of individuals.
- (b) promote the rights and interests of children;
- (c) promote compliance with the Convention.

## **6. Powers and functions of the Ombudsperson for Children**

In carrying out the duties of his Office, the Ombudsperson for Children shall –

- (a) make proposals to the Minister on legislation, policies and **practices** regarding services to, or the rights of, children;
- (b) advise the Minister on public and private residential placement facilities and shelters established for the benefit of children;
- (c) advise public bodies and other institutions responsible for providing care and other services to children on the protection of the rights of children;

- (d) take such steps as he may deem necessary to ensure that children under the care of, or supervision of, a public body are treated fairly, properly and adequately;
- (e) propose measures to ensure that the legal rights of children in care are protected and that the placement facilities promote the safety of children and conform with such norms as the Ombudsperson for Children may, from time to time, recommend;
- (f) initiate an investigation whenever the Ombudsperson for Children considers that there is, has been or is likely to be, a violation of the rights of a child;
- (g) investigate cases relating to the situation of children in the family, in schools and in all other institutions, including private or public bodies, as well as cases of abandoned children or street children;
- (h) investigate any suspected or reported case of child labour;
- (i) investigate cases concerning a child who is a citizen of Mauritius and who may be abroad at the time of the investigation, or a child who is not a citizen of Mauritius but who is residing in Mauritius;
- (j) investigate complaints made by a child, or any other person, in relation to the rights of any child;
- (k) advise the Minister on the establishment of mechanisms to afford children the ability to express themselves freely, according to their age and maturity, especially on all matters concerning their individual or collective rights;

- (l) advise the Minister on the creation of partnerships with parents, teachers, non-governmental as well as governmental organisations, local authorities and any other stakeholders committed to the promotion of children's rights.

## 7. Investigation

- (1) Where the Ombudsperson for Children considers, either upon complaint made to him or on his own motion, that it is necessary to investigate a matter relating to the rights of a child, the Ombudsperson for Children shall investigate the complaint in such manner as he considers appropriate.
- (2) For the purposes of an investigation under this **Act**, the Ombudsperson for Children may -
  - (a) request any person, including any public officer, to provide information concerning a child whose rights have been, are being or are likely to be violated;
  - (b) enter premises where –
    - (i) a child is present, either temporarily or permanently, including an **educational** or health institution and a place of detention, in order to study the environment of such a place and assess its suitability;
    - (ii) a child may be in employment;

- (iii) there is reasonable ground to believe that the moral and physical safety of a child may be in danger;
  - (c) request the Commissioner of Police to enquire and report to the Ombudsperson for Children on any allegation relating to the breach of the rights of a child;
  - (d) enter any licensed premises where the Ombudsperson for Children suspects that alcohol and tobacco may be handled, consumed or purchased by children;
  - (e) record the statement of any person in connection with an investigation;
  - (f) request the assistance of the Commissioner of Police and the Officer-in-Charge of any public body or institution, as the case may be, to facilitate any entry and effect, where appropriate, any seizure pursuant to paragraphs (b) and (d).
- (3) Following an investigation under subsection (1), the Ombudsperson for Children shall -
- (a) **act** as a mediator to resolve any dispute relating to the rights of the child,
  - (b) make a report to such person or authority as the Ombudsperson for Children considers appropriate;
  - (c) make proposals of a general nature to the Minister on any matter which may have arisen in the course of the investigation.



- (4) The Ombudsperson for Children shall not investigate any case which is pending before any Court but may refer any child involved in such a case to the Ministry for advice, assistance or counselling.

## **8. Protection of witnesses**

Notwithstanding any enactment, no statement made in good faith by any person by way of a written complaint, or by the giving in writing of a statement made in the course of an investigation, to the Ombudsperson for Children, or any member of the staff of the Ombudsperson for Children, shall subject the maker of the statement to, or be used against him in, any civil or criminal proceedings.

## **9. Immunity from legal proceedings**

No liability, civil or criminal, shall lie against the Ombudsperson for Children, or any member of the staff of the Ombudsperson for Children, in respect of anything which is done, or purported to be done, in good faith under this Act or in respect of the publication, by or under the authority of the Ombudsperson for Children, of any report, proceedings or other matter under this Act.

## **10. Staff of the Ombudsperson for Children**

The Secretary for Public Service Affairs shall make available to the Ombudsperson for Children such administrative and other staff as the Ombudsperson for Children may require.

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## **11. Report of Ombudsperson for Children**

- (1) The Ombudsperson for Children shall, not later than 30 September in each year, submit a report on its **activities** during the preceding year, to the President.
- (2) Notwithstanding subsection (1), the Ombudsperson for Children may at any other time, submit a special report on any matter which, in his opinion, is of such urgency or importance that it should not be delayed until submission of an annual report to the President.
- (3) The President shall cause every report sent to him under this section to be laid before the Assembly within one month of its submission.

## **12. Regulations**

The Minister may –

- (a) make such regulations as he thinks fit for the purposes of this **Act**;
- (b) after consultation with the Ombudsperson for Children, make regulations for the purpose of regulating the procedure to be applied for the investigation of complaints by the Ombudsperson for Children.

## **13. Commencement**

This **Act** shall come into operation on a date to be fixed by Proclamation.

Passed by the National Assembly on the twenty first day of October two thousand and three

André Pompon

Clerk of the National Assembly

**SCHEDULE**

(section 3)

I ..... having been appointed to be the Ombudsperson for Children under the Ombudsperson for Children **Act** 2003 do swear/solemnly affirm that I shall faithfully, impartially and to the best of my ability discharge the trust and perform the duties devolving upon me by such appointment and that I shall not, without reasonable cause, disclose any information imparted to me in the performance of such duties.

(S).....

Before me,

Date:.....

(S).....

**President of the Republic**