



New South Wales

Independent Commission Against Corruption and Ombudsman Legislation Amendment Bill 2009

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Independent Commission Against Corruption Act 1988*:
 - (i) to provide that Part 2 of the *Surveillance Devices Act 2007* (which prohibits certain activities relating to surveillance devices and recordings) does not prevent the Independent Commission Against Corruption from using, until 31 December 2010, recordings of private conversations to which Mr Michael Loch McGurk was a party that were obtained in contravention of Part 2, and
 - (ii) to make it clear that Part 2 does not prevent a person from providing, until 31 December 2010, any such recordings to the Commission if required to do so by the Commission, and
 - (iii) to enable the duty of principal officers of public authorities to report alleged corrupt conduct to the Commission to be extended to the heads of separate offices within those public authorities,
- (b) to amend the *Community Services (Complaints, Reviews and Monitoring) Act 1993* to confer on the Ombudsman the function of auditing the implementation

by public authorities of the *New South Wales Interagency Plan To Tackle Child Sexual Assault in Aboriginal Communities 2006–2011*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Independent Commission Against Corruption Act 1988 No 35

Schedule 1 [3] inserts special provisions into Schedule 4 to the *Independent Commission Against Corruption Act 1988 (the principal Act)* to enable the Commission to obtain, possess, publish or communicate, until 31 December 2010 in accordance with the principal Act, any recordings of private conversations to which Mr Michael Loch McGurk was (or apparently was) a party that have been obtained by the use of a surveillance device in contravention of Part 2 of the *Surveillance Devices Act 2007*. The provisions also make it clear that Part 2 does not prevent a person from providing any such recording to the Commission in accordance with a requirement made of the person under the principal Act. Anything done by the Commission or other persons before the commencement of the proposed Act is taken to have been validly done if authorised by the proposed special provisions.

Section 11 of the principal Act imposes a duty to report corrupt conduct to the Independent Commission Against Corruption on certain persons, including the principal officer of a public authority. The regulations may prescribe the person who is the principal officer for the purposes of section 11. **Schedule 1 [1]** ensures that the regulations may prescribe the principal officer of a separate office within a public authority as the principal officer of the public authority in relation to matters concerning the separate office. The amendment will enable the duty to report to be retained in relation to the former heads of government departments that have recently been amalgamated.

Schedule 1 [2] enables regulations of a savings or transitional nature to be made consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2

Schedule 2 [1] inserts proposed Part 6A (proposed sections 43B–43E) into the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

Proposed section 43B defines *the Interagency Plan* as the *New South Wales Interagency Plan To Tackle Child Sexual Assault in Aboriginal Communities 2006–2011*.

Proposed section 43C provides that the Ombudsman’s audit functions include a review of the implementation of the Interagency Plan by relevant State public authorities (including identifying further action required by the public authorities to implement the Interagency Plan and making recommendations for the more efficient and effective implementation of the Interagency Plan). Proposed section 43C also requires the Ombudsman to report to the Minister for Aboriginal Affairs on the audit by 31 December 2012 (the report is to be tabled in Parliament within 1 month after it is furnished to the Minister).

Proposed section 43D deals with the provision of information to the Ombudsman by the head of a relevant public authority to assist the Ombudsman in carrying out the audit.

Proposed section 43E applies relevant provisions of the *Ombudsman Act 1974* to functions exercised under proposed Part 6A.

Schedule 2 [2] enables regulations of a savings or transitional nature to be made consequent on the enactment of the proposed Act.

First print



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Independent Commission Against Corruption and Ombudsman Legislation Amendment Bill 2009

No. , 2009

A Bill for

An Act to amend the *Independent Commission Against Corruption Act 1988* in relation to unlawful surveillance device recordings and the duty to notify corrupt conduct; and to amend the *Community Services (Complaints, Reviews and Monitoring) Act 1993* to enable the Ombudsman to audit an interagency plan relating to child sexual assault in Aboriginal communities.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Independent Commission Against Corruption and Ombudsman Legislation Amendment Act 2009</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6

Schedule 1	Amendment of Independent Commission Against Corruption Act 1988 No 35	1 2 3
[1]	Section 11 Duty to notify Commission of possible corrupt conduct	4
	Insert after section 11 (5):	5
	(6) The regulations may prescribe the principal officer of a separate office within a public authority as the principal officer of the public authority in relation to matters concerning the separate office.	6 7 8 9
[2]	Schedule 4 Savings, transitional and other provisions	10
	Insert at the end of clause 1 (1):	11
	<i>Independent Commission Against Corruption and Ombudsman Legislation Amendment Act 2009</i>	12 13
[3]	Schedule 4	14
	Insert at the end of the Schedule with appropriate Part and clause numbers:	15
Part	Use of unlawful surveillance device recordings concerning Mr Michael Loch McGurk—2009 amending Act	16 17 18
	Definitions	19
	In this Part:	20
	<i>Commission</i> includes an officer of the Commission.	21
	<i>relevant recording</i> means a recording of any private conversation to which Mr Michael Loch McGurk, deceased former resident of Cremorne, was a party or was apparently a party.	22 23 24 25
	<i>surveillance device</i> means a surveillance device within the meaning of the <i>Surveillance Devices Act 2007</i> .	26 27
	Use etc of relevant recordings despite Surveillance Devices Act 2007	28 29
	(1) Part 2 of the <i>Surveillance Devices Act 2007</i> is not contravened by:	30 31
	(a) the Commission obtaining, possessing, publishing or communicating, before 31 December 2010, in accordance with a provision of this Act, any relevant recording that has	32 33 34

been obtained by the use of a surveillance device in contravention of Part 2 of that Act, or	1 2
(b) a person providing any such relevant recording to the Commission, before 31 December 2010, in accordance with a requirement made of the person under this Act, or	3 4 5
(c) the possession, publication or communication at any time of a report of the Commission made before 31 December 2010 concerning any such relevant recording (or of any information in the report).	6 7 8 9
(2) The Commission is to ensure that the publication or communication of a relevant recording referred to in subclause (1) is made only for the purposes of investigating or reporting on particular alleged corrupt conduct.	10 11 12 13
Operation of this Part	14
(1) This Part extends to relevant recordings obtained by a person by the use of a surveillance device before the commencement of this Part.	15 16 17
(2) Anything done by the Commission or other person before the commencement of this Part that would not have contravened Part 2 of the <i>Surveillance Devices Act 2007</i> if it had been done after that commencement is taken not to have been a contravention of that Part.	18 19 20 21 22

Schedule 2	Amendment of Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2	1 2 3
[1] Part 6A		4
	Insert after Part 6:	5
	Part 6A Audit of Interagency Plan relating to child sexual assault in Aboriginal communities	6 7
43B	The Interagency Plan	8
	In this Part:	9
	<i>the Interagency Plan</i> means the <i>New South Wales Interagency Plan To Tackle Child Sexual Assault in Aboriginal Communities 2006–2011</i> , released by the Government of New South Wales in January 2007.	10 11 12 13
43C	Audit of implementation of Interagency Plan	14
(1)	The Ombudsman has the following audit functions in relation to the Interagency Plan:	15 16
(a)	to review the implementation of the Interagency Plan by public authorities of the State that have functions under the Plan,	17 18 19
(b)	to identify any areas in which further action is required by those public authorities to implement the Interagency Plan,	20 21
(c)	to make recommendations for the more efficient and effective implementation of the Interagency Plan by those public authorities.	22 23 24
(2)	The Ombudsman must prepare and provide a report to the Minister for Aboriginal Affairs by 31 December 2012 on the Ombudsman’s audit of the implementation of the Interagency Plan.	25 26 27 28
(3)	The Minister for Aboriginal Affairs must, within 1 month after receiving the report, furnish a copy of the report to the Presiding Officer of each House of Parliament.	29 30 31
(4)	The Ombudsman’s audit functions cease after the provision of the report to the Minister for Aboriginal Affairs.	32 33

43D	Provision of information	1
(1)	It is the duty of the head of a public authority that has functions under the Interagency Plan to provide the Ombudsman with full and unrestricted access to records that are under the person's control, or whose production the person may, in an official capacity, reasonably require, being records to which the Ombudsman reasonably requires access for the purpose of exercising the Ombudsman's audit functions in relation to the Interagency Plan.	2 3 4 5 6 7 8 9
(2)	Access to which the Ombudsman is entitled under this section includes the right to inspect and, on request, to be provided with copies of, any record referred to in subsection (1) and to inspect any non-documentary evidence associated with any such record.	10 11 12 13
(3)	A provision of any Act or law that restricts or denies access to records (other than a provision applied by section 43E) does not prevent a person to whom this section applies from complying, or affect the person's duty to comply, with this section.	14 15 16 17
(4)	The Ombudsman may, if the Ombudsman thinks it appropriate to do so, provide information obtained by the Ombudsman under this section to a public authority that has functions under the Interagency Plan and that has a relevant interest.	18 19 20 21
(5)	The provision of information under this section:	22
(a)	does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct, and	23 24 25
(b)	does not give rise to any liability for defamation or other civil liability.	26 27
(6)	In this section:	28
	<i>head</i> , in relation to a public authority, has the same meaning as it has in the <i>Ombudsman Act 1974</i> .	29 30
43E	Application of Ombudsman Act 1974	31
(1)	For the purpose of the exercise of functions under this Part, sections 17–24 (except section 21B), 31AC and 36 of the <i>Ombudsman Act 1974</i> apply to or in respect of the exercise of those functions in the same way that they apply to or in respect of an investigation of a complaint by the Ombudsman under that Act, subject to any necessary modifications and to any modifications prescribed by the regulations.	32 33 34 35 36 37 38

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Amendment of Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2 Schedule 2

- (2) Section 31AA of the *Ombudsman Act 1974* applies to a report of the Ombudsman under this Part in the same way that it applies to a report under Part 4 of that Act. 1
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- (3) For the purpose of the application of section 31AA (2) of the *Ombudsman Act 1974* under this section, a report of the Ombudsman under this Part is taken to include a recommendation by the Ombudsman that the report be made public forthwith. 4
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[2] Schedule 1 Savings and transitional provisions 9

Insert at the end of clause 1 (1): 10

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