



New South Wales

Ombudsman Amendment Bill 2012

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 provide for the Ombudsman to appoint an Australian legal practitioner to assist the Ombudsman in an inquiry,
- (b) to enable the Ombudsman to restrict the publication of evidence or information provided to an inquiry and to prohibit the publication of evidence or information provided to an Ombudsman's inquiry and the disclosure of information about a summons by the Ombudsman,
- (c) to enable the Ombudsman to require officers of the Crime Commission or the Police Integrity Commission to give evidence or produce documents in connection with investigations of matters referred to the Ombudsman by the Inspector of the Police Integrity Commission or the Inspector of the Crime Commission,
- (d) to clarify the operation of transitional provisions relating to the application of secrecy provisions to information obtained under the repealed *New South Wales Crime Commission Act 1985*.

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 Ombudsman Act 1974 No 68

Schedule 1 [1] provides for the Ombudsman to appoint an Australian legal practitioner to assist the Ombudsman for the purposes of an inquiry.

Schedule 1 [2] inserts proposed sections 19A–19C. Proposed section 19A enables the Ombudsman to direct that certain matters relating to an inquiry not be published, including evidence given before an inquiry, the contents of something produced to the Ombudsman and information that might identify a person who has given evidence or whether a person has given evidence to an inquiry. A direction can only be given if the Ombudsman is satisfied that it is necessary or desirable in the public interest. Proposed section 19B prohibits a person who was present at an Ombudsman’s inquiry from publishing evidence or a document given at the inquiry unless the publication is to the Ombudsman, an officer of the Ombudsman or an Australian legal practitioner assisting the Ombudsman or is permitted by the Ombudsman. Proposed section 19C prohibits a person who is required by a summons to produce a document or thing to the Ombudsman or to give evidence from disclosing information about the summons if it is likely to prejudice the investigation to which it relates.

Schedule 1 [3] provides that an Australian legal practitioner assisting the Ombudsman or representing a person at an inquiry held by the Ombudsman has the same protection and immunity as a barrister has in appearing for a party to proceedings in the Supreme Court.

Schedule 1 [4] enables regulations containing savings and transitional provisions to be made as a consequence of any Act amending the *Ombudsman Act 1974*.

Schedule 2 Amendment of Crime Commission Act 2012 No 66

Schedule 2 [1] requires the Inspector of the Crime Commission to specify in writing the terms of any referral by the Inspector of a matter to another public authority or public official for consideration or action.

Schedule 2 [2] inserts proposed section 80A. The proposed section contains an exception to the general secrecy provisions of the *Crime Commission Act 2012* and enables the Commissioner for the Crime Commission, and any officer of the Commission, to furnish information and give evidence to the Ombudsman about matters arising from the exercise of Crime Commission functions. However, the

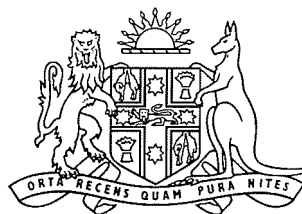
Ombudsman will only be able to compel such information to be given in connection with a matter that has been referred to the Ombudsman for investigation by the Inspector of the Crime Commission or the Inspector of the Police Integrity Commission.

Schedule 2 [3] makes it clear that the secrecy provisions of the *Crime Commission Act 2012*, and the provision inserted by Schedule 1 [2] apply to information obtained, and things done, under the former *New South Wales Crime Commission Act 1985*.

Schedule 3 Amendment of Police Integrity Commission Act 1996 No 28

Schedule 3 [1] amends the exception to the general secrecy provisions of the *Police Integrity Commission Act 1996* which permits the Commissioner for the Police Integrity Commission and any officer of the Police Integrity Commission to provide information to, and give evidence before, the Ombudsman. The Ombudsman will only be able to compel the provision of information or evidence in connection with a matter that has been referred to the Ombudsman for investigation by the Inspector of the Police Integrity Commission or the Inspector of the Crime Commission.

Schedule 3 [2] requires the Inspector of the Police Integrity Commission to specify in writing the terms of any referral by the Inspector of a matter to another agency for consideration or action.



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New South Wales

Ombudsman Amendment Bill 2012

No , 2012

A Bill for

An Act to amend the *Ombudsman Act 1974*, the *Crime Commission Act 2012* and the *Police Integrity Commission Act 1996* with respect to inquiries by the Ombudsman and the disclosure of information.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Ombudsman Amendment Act 2012</i> .	3
2 Commencement	4
This Act commences on the date of assent to this Act.	5

Schedule 1 Amendment of Ombudsman Act 1974 No 68

[1] Section 19 Inquiries

Insert after section 19 (3):

- (4) The Ombudsman may appoint an Australian legal practitioner to assist the Ombudsman for the purposes of an inquiry held by the Ombudsman and the Australian legal practitioner may appear before the inquiry.

[2] Sections 19A–19C

Insert after section 19:

19A Restriction on publication of evidence**(1) Direction regarding publication**

The Ombudsman may direct that:

- (a) any evidence given before an inquiry held by the Ombudsman, or
- (b) the contents of any document, or a description of any thing, produced to the Ombudsman, or
- (c) any information that might enable a person who has given or may be about to give evidence before an inquiry to be identified or located, or
- (d) the fact that any person has given or may be about to give evidence before an inquiry,

must not be published, or must not be published except in such manner, and to such persons, as the Ombudsman specifies.

(2) Public interest

The Ombudsman is not to give a direction under this section unless satisfied that the direction is necessary or desirable in the public interest.

(3) Offence

A person must not make a publication in contravention of a direction given under this section.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

(4)	Definition	1
	In this section and sections 19B and 19C, <i>inquiry</i> means an inquiry held under section 19.	2 3
19B	Publication of evidence given at inquiry	4
(1)	A person who was present at an inquiry must not publish, or permit to be published, any evidence given before the inquiry or any of the contents of a document produced at the inquiry, except to the Ombudsman, an officer of the Ombudsman or an Australian legal practitioner appointed under section 19 (4) or as permitted by the Ombudsman or the regulations.	5 6 7 8 9 10
	Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.	11 12
(2)	Nothing in this section affects section 19A, but a person cannot be punished under both sections for the same publication.	13 14
(3)	This section does not apply to an officer of the Ombudsman or an Australian legal practitioner appointed under section 19 (4).	15 16
19C	Disclosures prejudicing investigations	17
(1)	A person who is required by the Ombudsman by a summons issued under section 19 (2) to give evidence or to produce a document or other thing must not disclose any information about the summons that is likely to prejudice the investigation to which it relates.	18 19 20 21 22
	Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.	23 24
(2)	Subsection (1) does not apply to a summons unless it specifies that information about the summons must not be disclosed.	25 26
(3)	A person does not contravene this section if:	27
(a)	the disclosure is made to an employee, agent or other person in order to obtain information to comply with the summons and the employee, agent or other person is directed not to inform the person to whom the information relates about the matter, or	28 29 30 31 32
(b)	the disclosure is made to obtain legal advice or representation in relation to the summons, or	33 34
(c)	the disclosure is made for the purposes of, or in the course of, legal proceedings, or	35 36

(d)	the disclosure is made in accordance with guidelines issued by the Ombudsman or in accordance with the regulations.	1 2 3
(4)	A reference in this section to the disclosure of any information about a summons includes a reference to:	4 5
(a)	a disclosure about the existence or nature of the summons or of the investigation to which it relates, and	6 7
(b)	a disclosure of any information to a person from which the person could reasonably be expected to infer the existence or nature of the summons or of the investigation to which it relates.	8 9 10 11
[3]	Section 35A Immunity of Ombudsman and others	12
	Insert after section 35A (3):	13
(4)	An Australian legal practitioner assisting the Ombudsman or representing a person at an inquiry held by the Ombudsman has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.	14 15 16 17
[4]	Schedule 2 Savings and transitional provisions	18
	Insert at the end of clause 1 (1):	19
	any other Act that amends this Act	20

Schedule 2 Amendment of Crime Commission Act 2012 No 66

[1] Section 63 Powers of Inspector

Insert at the end of the section:

- (2) A referral of a matter under this section to another public authority or public official for consideration or action must specify in writing the terms of the referral.

[2] Section 80A

Insert after section 80:

80A Disclosure of information and giving of evidence by Commission to Ombudsman

- (1) The Commissioner, and any officer of the Commission acting with the approval of the Commissioner, may:
 - (a) furnish to the Ombudsman information obtained by the Commissioner or officer in exercising functions in relation to the Commission, or
 - (b) give evidence before the Ombudsman and produce any document to the Ombudsman in respect of any such information.
- (2) The Commissioner, and any officer of the Commission, can be compelled to give evidence before the Ombudsman or produce a document before the Ombudsman in respect of information obtained by the Commissioner or officer in exercising functions as referred to in subsection (1) only if:
 - (a) a matter has been referred by the Inspector of the Crime Commission, or the Inspector of the Police Integrity Commission, to the Ombudsman for investigation, and
 - (b) the evidence or document is relevant to the matter referred.
- (3) The Ombudsman may exercise the Ombudsman's powers under section 19 (2) of the *Ombudsman Act 1974* for the purposes of subsection (2).
- (4) This section applies despite section 80 and any other law.

[3] Schedule 4 Savings, transitional and other provisions

Omit clause 8. Insert instead:

8 Secrecy

Sections 80 and 80A apply to and in respect of anything to which section 29 of the repealed Act applied immediately before its repeal and, for that purpose, a reference in section 80:

- (a) to a provision of this Act includes a reference to the corresponding provision of the repealed Act, and
- (b) to the exercise of functions under this Act includes a reference to the exercise of functions under the repealed Act.

**Schedule 3 Amendment of Police Integrity
Commission Act 1996 No 28**

**[1] Section 60 Disclosure of information and giving of evidence by
Commission to Ombudsman**

Omit section 60 (2). Insert instead:

- (2) The PIC Commissioner, and any officer of the Commission, can be compelled to give evidence before the Ombudsman or produce a document before the Ombudsman in respect of information obtained by the PIC Commissioner or officer in exercising functions as referred to in subsection (1) only if:
 - (a) a matter has been referred by the Inspector of the Police Integrity Commission, or the Inspector of the Crime Commission, to the Ombudsman for investigation, and
 - (b) the evidence or document is relevant to the matter referred.
- (2A) The Ombudsman may exercise the Ombudsman's powers under section 19 (2) of the *Ombudsman Act 1974* for the purposes of subsection (2).

[2] Section 90 Powers of Inspector

Insert at the end of the section:

- (2) A referral of a matter under this section to another agency for consideration or action must specify in writing the terms of the referral.