



New South Wales

Ageing and Disability Commissioner Amendment Bill 2023

Explanatory note

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

Overview of Bill

The object of this Bill is to implement a number of recommendations arising from an independent statutory review of the *Ageing and Disability Commissioner Act 2019* (the *principal Act*).

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.

Schedule 1 **Amendment of Ageing and Disability Commissioner Act 2019 No 7**

Schedule 1[1] replaces the definition of *Board* to correct a cross-reference and inserts definitions of *Department* and *NDIS Commissioner* for the purposes of the principal Act. **Schedule 1[4] and [9]** make consequential amendments.

Schedule 1[2] updates a reference to a Commonwealth strategy.

Schedule 1[3] provides that the Ageing and Disability Commissioner (the *Commissioner*) has a discretion whether to make referrals to certain agencies.

Schedule 1[5] permits the Commissioner to not make a referral to the Commissioner of Police or the Director of Public Prosecutions of a report that may provide evidence of the commission of a criminal offence if the relevant adult with disability or older adult is opposed to the referral.

Schedule 1[6] requires the Commissioner to obtain the consent of an adult with disability or older adult before conducting an investigation into an allegation of abuse, neglect or exploitation of the adult, except in certain limited circumstances.

Schedule 1[8] enables the Commissioner to give information to entities that are not relevant agencies, but only if the information is about the safety of an adult with disability or older adult. The Commissioner is also able to receive information from the entities in relation to the Commissioner's functions. **Schedule 1[7]** makes a consequential amendment.

Schedule 1[10] and [11] include the Secretary of the Department of Communities and Justice and the NDIS Commissioner as persons to whom an Official Community Visitor may provide advice and information about certain matters.

Schedule 1[12] requires a service provider to give certain information to the Commissioner about the provider and about the visitable services of the provider.

Schedule 1[13] omits a redundant provision.

Schedule 1[14] inserts a missing comma.

Schedule 1[15] requires the Commissioner to ensure that the composition of the Ageing and Disability Advisory Board (the **Board**) reflects the diversity of the community.

Schedule 1[16] corrects a grammatical error.

Schedule 1[17] requires the composition of the Board to include 2 or more older adults.

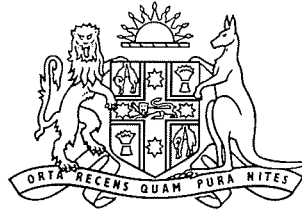


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Ageing and Disability Commissioner Amendment Bill 2023

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New South Wales

Ageing and Disability Commissioner Amendment Bill 2023

No. _____, 2023

A Bill for

An Act to amend the *Ageing and Disability Commissioner Act 2019* to implement a number of recommendations arising from an independent statutory review of the Act; and for other purposes.

The Legislature of New South Wales enacts—

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1 Name of Act

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This Act is the *Ageing and Disability Commissioner Amendment Act 2023*.

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2 Commencement

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This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of Ageing and Disability Commissioner Act 2019 No 7	1
		2
[1] Section 3 Definitions		3
	Omit section 3(1), definition of <i>Board</i> . Insert in alphabetical order—	4
	<i>Board</i> means the Ageing and Disability Advisory Board established under section 29.	5
	<i>Department</i> means the Department in which this Act is administered.	6
	<i>NDIS Commissioner</i> means the Commissioner of the NDIS Quality and Safeguards Commission under the <i>National Disability Insurance Scheme Act 2013</i> of the Commonwealth.	7
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[2] Section 12 Functions of Commissioner		11
	Omit “the National Disability Strategy (<i>NDS</i>)” from section 12(1)(h).	12
	Insert instead “ <i>Australia’s Disability Strategy 2021–2031</i> ”.	13
[3] Section 13 Reports may be made to Commissioner		14
	Omit “Commissioner must” from section 13(8). Insert instead “Commissioner may”.	15
[4] Section 13(8)(c)		16
	Omit the paragraph. Insert instead—	17
	(c) the NDIS Commissioner,	18
[5] Section 13(9A)		19
	Insert after section 13(9)—	20
	(9A) The Commissioner is not required to refer a report, or part of a report, under subsection (9) if the Commissioner believes on reasonable grounds that the adult with disability or older adult does not wish to have the report, or part of the report, referred.	21
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[6] Section 13(11) and (12)		25
	Omit section 13(11). Insert instead—	26
	(11) The Commissioner must not conduct an investigation into an allegation of abuse, neglect or exploitation of an adult with disability or older adult unless the Commissioner has obtained the adult’s consent.	27
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	(12) The Commissioner is not required to obtain the adult’s consent if—	30
	(a) the Commissioner—	31
	(i) has made reasonable efforts to obtain access to the adult, and	32
	(ii) has not been able to obtain access to the adult, or	33
	(b) the Commissioner considers that—	34
	(i) the adult is incapable of giving consent despite being provided with appropriate support to make a decision about consent, or	35
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	(ii) it is not necessary to obtain consent due to the seriousness of the allegation or the risk to the personal safety of the adult, or	37
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	(iii) circumstances prescribed by the regulations exist.	39
[7] Section 14, heading		40
	Insert “with relevant agencies” after “information”.	41

[8] Section 14A	1
Insert after section 14—	2
14A Exchange of information with other entities	3
(1) The Commissioner may provide relevant information to an entity for the purposes of enabling or assisting the entity—	4
(a) to provide a service in relation to, or take other action in respect of, the safety of an adult with disability or older adult, or	5
(b) to make a decision or assessment in relation to the safety of an adult with disability or older adult, or	6
(c) to take action in respect of the safety of adults with disability or older adults generally.	7
(2) An entity may provide relevant information to the Commissioner for the purposes of enabling or assisting the Commissioner’s handling of a report under this Act.	8
Note— It is an offence under section 31 for a person to disclose any information obtained in connection with the administration or execution of this Act, except in certain circumstances.	9
(3) This section does not—	10
(a) require the Commissioner to provide information to an entity only in accordance with subsection (1) if the information may otherwise be lawfully provided, or	11
(b) limit the operation of another Act or law under which an entity is authorised or required to disclose information to another person or body.	12
(4) This section applies to an entity if the entity is—	13
(a) a person or body that—	14
(i) provides, or is able to provide, supports to adults with disability or older adults, and	15
(ii) is not a relevant agency, or	16
(b) a person or body prescribed by the regulations.	17
(5) In this section—	18
<i>relevant agency</i> and <i>relevant information</i> have the same meanings as in section 14.	19
[9] Section 21 Appointment of Official Community Visitors	20
Omit section 21(1)(d). Insert instead—	21
(d) is not employed within the Department.	22
[10] Section 22 Functions of Official Community Visitors	23
Omit “the Minister and the Commissioner” wherever occurring in section 22(1)(d) and (e).	24
Insert instead “a relevant regulatory body”.	25
[11] Section 22(4)	26
Insert after section 22(3)—	27
(4) In this section—	28
<i>relevant regulatory body</i> means the following—	29
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	(a) the Minister,	1
	(b) the Commissioner,	2
	(c) the Secretary of the Department,	3
	(d) the NDIS Commissioner.	4
[12]	Section 24A	5
	Insert after section 24—	6
24A	Service providers to give information to Commissioner	7
(1)	A service provider that provides a visitable service must give the Commissioner the required information in accordance with this section.	8
	Maximum penalty—50 penalty units.	9
(2)	The required information must be given—	10
	(a) for an existing visitable service—within the required time after the commencement of this section, or	11
	(b) for a new visitable service—within the required time after the commencement of the service.	12
(3)	The required information must be—	13
	(a) in writing, and	14
	(b) if required to be given in a particular way by the regulations—given in that way.	15
(4)	In this section—	16
	<i>required information</i> , for a service provider, means—	17
	(a) contact details for the service provider, and	18
	(b) details about the location of the visitable service of the service provider.	19
	<i>required time</i> means—	20
	(a) the period prescribed by the regulations, or	21
	(b) if a period is not prescribed—1 month.	22
[13]	Section 26 Report about disability advocacy	23
	Omit the section.	24
[14]	Section 29 Ageing and Disability Advisory Board	25
	Omit “opinion of the Commissioner” from section 29(3).	26
	Insert instead “Commissioner’s opinion,”.	27
[15]	Section 29(4)	28
	Omit “The Minister”. Insert instead “The Commissioner”.	29
[16]	Section 29(4)	30
	Omit “community, and include”. Insert instead “community and includes”.	31

[17] Section 29(4)(a1)

Insert after section 29(4)(a)—

(a1) 2 or more older adults,

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