



New South Wales

# Ombudsman and Other Legislation Amendment Bill 2024

## Explanatory note

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

## Overview of Bill

The object of this Bill is to—

- (a) amend the *Ombudsman Act 1974* to make minor miscellaneous amendments, and
- (b) amend the *Community Services (Complaints, Reviews and Monitoring) Act 1993* to make changes consequent on the enactment of the proposed Act and the *Disability Inclusion Amendment Act 2022*, and
- (c) repeal the *Ombudsman Regulation 2016*.

## 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 Ombudsman Act 1974 No 68

**Schedule 1[2]** amends the definition of *public authority* to include a person entitled to be reimbursed from public funds for expenses associated with attending meetings or carrying out the business of a body constituted by an Act.

**Schedule 1[3]** removes redundant provisions that restrict the ability of the Ombudsman to investigate complaints about conduct occurring before 1 December 1976.

**Schedule 1[4]** clarifies that the Ombudsman may make preliminary inquiries to determine whether the Ombudsman has jurisdiction over particular conduct and for the purposes of any other function of the Ombudsman under the *Ombudsman Act 1974* or another Act.

**Schedule 1[5] and [6]** ensure that the Ombudsman may copy documents the Ombudsman inspects while on the premises of a public authority. The proposed amendments also require a public authority to provide the assistance and resources the Ombudsman reasonably requires to copy documents. The provisions are consistent with similar provisions relating to the Independent Commission Against Corruption and the Law Enforcement Conduct Commission.

**Schedule 1[7]** changes the definition of an *Aboriginal program* to provide that it is a Government program that is primarily directed to the health, or cultural, economic, educational or other wellbeing, of Aboriginal persons or communities and includes the OCHRE (Opportunity, Choice, Healing, Responsibility, Empowerment) program. **Schedule 1[1] and [8]–[10]** make consequential amendments.

**Schedule 1[12]** omits section 31Z, which prohibits the Ombudsman or a public authority from disclosing information tending to identify a person who takes protected action (a *protected person*). **Schedule 1[11], [13] and [14]** make consequential amendments.

**Schedule 1[15]** provides that a public authority has a duty to cooperate with the Ombudsman in the exercise of the Ombudsman's functions, including in relation to dealing with complaints, conducting investigations and overseeing public authorities. This includes a requirement that a public authority must use the public authority's best endeavours to assist the Ombudsman in exercising the functions if asked to assist.

**Schedule 1[16]** clarifies that the Ombudsman may provide a range of educational and training services and may charge reasonable fees for the services.

**Schedule 1[17]** addresses ambiguity in the investigation of certain privacy related complaints by clarifying that the jurisdiction of the Ombudsman to investigate privacy related complaints is only excluded for complaints arising under the *Health Records and Information Privacy Act 2002* and the *Privacy and Personal Information Protection Act 1998*. Complaints under the Acts are investigated by the Privacy Commissioner.

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

**Schedule 2** makes minor amendments to the *Community Services (Complaints, Reviews and Monitoring) Act 1993* to reflect amendments made to the *Ombudsman Act 1974* by the proposed Act and the *Disability Inclusion Amendment Act 2022*.

## **Schedule 3      Repeal**

**Schedule 3** repeals the *Ombudsman Regulation 2016*.



New South Wales

# Ombudsman and Other Legislation Amendment Bill 2024

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*This PUBLIC BILL, originated in the LEGISLATIVE COUNCIL and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.*

*Legislative Council*

*Clerk of the Parliaments*



New South Wales

## **Ombudsman and Other Legislation Amendment Bill 2024**

No. \_\_\_\_\_, 2024

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### **A Bill for**

*An Act to make miscellaneous amendments to the *Ombudsman Act 1974* and the *Community Services (Complaints, Reviews and Monitoring) Act 1993*; and to repeal the *Ombudsman Regulation 2016*.*

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*The LEGISLATIVE ASSEMBLY has this day agreed to this Bill with/without amendment.*

*Legislative Assembly*

*Clerk of the Legislative Assembly*

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**Tabling copy**

|   |   |
|---|---|
| <b>The Legislature of New South Wales enacts—</b>                           | 1 |
| <b>1 Name of Act</b>  | 2 |
| This Act is the <i>Ombudsman and Other Legislation Amendment Act 2024</i> . | 3 |
| <b>2 Commencement</b>   | 4 |
| This Act commences on the date of assent to this Act.                       | 5 |

|  |   |                      |
|--|---|----------------------|
| <b>Schedule 1</b>  | <b>Amendment of Ombudsman Act 1974 No 68</b>  | 1                    |
| <b>[1] Section 5 Definitions</b>   |   | 2                    |
|  | Insert in alphabetical order in section 5(1)—   | 3                    |
|  | <i>Aboriginal program</i> , for Part 3B—see section 25K.  | 4                    |
| <b>[2] Section 5(1), definition of “public authority”, paragraph (f)</b> |   | 5                    |
|  | Omit the paragraph. Insert instead—   | 6                    |
|  | (f) a person entitled to be reimbursed from public funds for expenses associated with attending meetings or carrying out the business of a body constituted by an Act,  | 7<br>8<br>9          |
| <b>[3] Section 12 Right to complain</b>                                  |   | 10                   |
|  | Omit section 12(1), excluding the notes. Insert instead—  | 11                   |
|  | (1) Any person, including a public authority, may complain to the Ombudsman about the conduct of a public authority unless the conduct is of a class described in Schedule 1.   | 12<br>13<br>14       |
| <b>[4] Section 13AA Preliminary inquiries</b>                            |   | 15                   |
|  | Omit section 13AA(1). Insert instead—   | 16                   |
|  | (1) The Ombudsman may make preliminary inquiries for any of the following purposes—   | 17<br>18             |
|  | (a) deciding whether the Ombudsman has jurisdiction over particular conduct,  | 19<br>20             |
|  | (b) deciding whether to make particular conduct of a public authority the subject of an investigation under this Act,   | 21<br>22             |
|  | (c) another function of the Ombudsman under this Act or another Act.  | 23                   |
| <b>[5] Section 20 Entry on premises etc</b>                              |   | 24                   |
|  | Insert “and copy” after “inspect” in section 20(b).   | 25                   |
| <b>[6] Section 20(2)</b>   |   | 26                   |
|  | Insert at the end of the section—   | 27                   |
|  | (2) A public authority that occupies or uses premises entered by the Ombudsman under this section must give the Ombudsman the reasonable assistance and access to facilities necessary to enable the Ombudsman to exercise powers under this section. | 28<br>29<br>30<br>31 |
| <b>[7] Section 25K</b>   |   | 32                   |
|  | Omit the section. Insert instead—   | 33                   |
| <b>25K Definition</b>  |   | 34                   |
|  | In this part—   | 35                   |
|  | <i>Aboriginal program</i> means a Government program that is primarily directed to the health, or cultural, economic, educational or other wellbeing, of Aboriginal persons or communities.   | 36<br>37<br>38       |
|  | <b>Example</b> — the OCHRE (Opportunity, Choice, Healing, Responsibility, Empowerment) program launched by the Government in April 2013   | 39<br>40             |

|   |                      |
|---|----------------------|
| <b>[8] Section 25L Monitoring and assessment of Aboriginal programs</b>   | 1                    |
| Omit section 25L(1). Insert instead—  | 2                    |
| (1) The Ombudsman may monitor and assess Aboriginal programs.   | 3                    |
| <b>[9] Section 25M Provision of information</b>   | 4                    |
| Omit “to which this Part applies” wherever occurring in section 25M(1), (4) and (5).  | 5                    |
| <b>[10] Section 25N Reporting on Aboriginal programs</b>  | 6                    |
| Omit “to which this Part applies” from section 25N(1).  | 7                    |
| <b>[11] Section 31Q Limitation on protections for limited protected action</b>  | 8                    |
| Omit “, 31U and 31Z”. Insert instead “and 31U”.   | 9                    |
| <b>[12] Section 31Z Identifying information not to be disclosed</b>   | 10                   |
| Omit the section.   | 11                   |
| <b>[13] Section 34 Disclosure of information</b>  | 12                   |
| Omit section 34(1)(ka).   | 13                   |
| <b>[14] Section 34(3), definition of “identifying information”</b>  | 14                   |
| Omit the definition.  | 15                   |
| <b>[15] Section 36A</b>   | 16                   |
| Insert after section 36—  | 17                   |
| <b>36A Duty of public authority to cooperate and assist</b>   | 18                   |
| A public authority—   | 19                   |
| (a) has a duty to cooperate with the Ombudsman in the exercise of the Ombudsman’s functions, including in relation to dealing with complaints, conducting investigations and overseeing public authorities, and | 20<br>21<br>22<br>23 |
| (b) must use the public authority’s best endeavours to assist the Ombudsman in exercising the functions if asked to assist.   | 24<br>25             |
| <b>Note—</b> See section 12 and Schedule 1, which provide that certain conduct is excluded conduct for the purposes of making complaints under this Act.  | 26<br>27             |
| <b>[16] Section 38AA</b>  | 28                   |
| Insert after section 38—  | 29                   |
| <b>38AA Fees for services</b>   | 30                   |
| (1) The Ombudsman may provide education and other training services, including in the following areas—  | 31<br>32             |
| (a) handling complaints,  | 33                   |
| (b) conducting investigations,  | 34                   |
| (c) avoiding conduct that may lead to a finding under section 26(1),  | 35                   |
| (d) other matters relating to the Ombudsman’s functions.  | 36                   |
| (2) The Ombudsman may charge reasonable fees for services provided under this section.  | 37<br>38             |

|  |   |
|--|---|
| <b>[17] Schedule 1 Excluded conduct of public authorities</b>  | 1 |
| Omit item 17. Insert instead—  | 2 |
| <b>17</b> Conduct of a public authority for which a complaint may be made to the Privacy Commissioner under— | 3 |
| (a) the <i>Health Records and Information Privacy Act 2002</i> , or  | 4 |
| (b) the <i>Privacy and Personal Information Protection Act 1998</i> .  | 5 |
|  | 6 |



|  |  |    |
|--|--|----|
| <b>Schedule 2</b>  | <b>Amendment of Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2</b>                | 1  |
|  |  | 2  |
| <b>[1] Section 15 Application of provisions of the Ombudsman Act 1974 to reviews and other functions</b> |  | 3  |
|  |  | 4  |
|  | Insert “13AA,” after “sections” in section 15(1).  | 5  |
| <b>[2] Part 6, heading</b>   |  | 6  |
|  | Omit “and persons with disabilities in care”.  | 7  |
| <b>[3] Section 36, heading</b>   |  | 8  |
|  | Omit “, children in care or other persons in care”. Insert instead “and children in care”.               | 9  |
| <b>[4] Section 36(1)(b)</b>  |  | 10 |
|  | Omit “, children in detention centres, correctional centres or lock-ups or persons in residential care”. | 11 |
|  |  | 12 |
|  | Insert instead “or children in detention centres, correctional centres or lock-ups”.                     | 13 |
| <b>[5] Section 42 Application of provisions of the Ombudsman Act 1974 to this Part</b>                   |  | 14 |
|  | Insert “13AA,” after “sections” in section 42(1).  | 15 |

**Schedule 3 Repeal**

1

**Repeal of Ombudsman Regulation 2016**

2

The *Ombudsman Regulation 2016* is repealed.

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