



Ombudsman Amendment (Aboriginal Programs) Bill 2014

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Extract from NSW Legislative Council Hansard and Papers Tuesday 27 May 2014.

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Second Reading

The Hon. CATHERINE CUSACK [9.39 p.m.], on behalf of the Hon. Matthew Mason-Cox: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

I wish to acknowledge the traditional custodians of the land on which we meet today, the Gadigal people of the Eora nation. I pay my respects also to their elders, past and present, and pay my respects to the elders of the other first nations of New South Wales. I acknowledge also the presence in the gallery of Professor Shane Houston, Deputy Vice-Chancellor (Indigenous Strategy and Services) at the University of Sydney. Professor Houston was a member of the Ministerial Taskforce on Aboriginal Affairs.

The Government was elected with a mandate to make New South Wales number one again. We were elected on a five-point plan, one point being to restore accountability. Historically, throughout Australia all levels of government have struggled with the issue of accountability for expenditure on Aboriginal programs. The Ombudsman Amendment (Aboriginal Programs) Bill 2014 outlines the proposal for the appointment of a deputy ombudsman for Aboriginal Programs—an Australian first and a landmark reform for Aboriginal Affairs. The idea for this initiative came from Aboriginal community leaders and demonstrates the commitment of the Government to listen to communities and to work in genuine partnership with them to implement much-needed reform. This is an Australian first—no previous State or Federal government has opened itself up to this level of independent scrutiny of its Aboriginal programs. In three recent independent reports both the New South Wales Auditor-General and the New South Wales Ombudsman have called on government to have greater accountability in the design and delivery of programs and services for Aboriginal people.

In May 2011 the Auditor-General stated in his report on the previous Labor Government's Aboriginal Affairs Two Ways Together plan that "it has not delivered the improvement in overall outcomes for Aboriginal people that was intended." The Auditor-General recommended that an independent auditor undertake an annual review of government programs and services delivered to Aboriginal people, to build an evidence base of what works in Aboriginal Affairs, and to appoint an independent advisor as a champion for Aboriginal people in New South Wales.

In October 2011 the NSW Ombudsman identified similar shortfalls with the previous Government's policy in his special report to Parliament, "Addressing Aboriginal Disadvantage: the need to do things differently". He found:

Wasted opportunities stemming from a large amount of funds being spent on a disparate 'grab-bag' of programs without adequate accountability.

The Ombudsman recommended that an independent agency be provided with the legislative authority to undertake and report on the effectiveness of the implementation of the New South Wales Government's plan for addressing Aboriginal disadvantage. In December 2012 the NSW Ombudsman published a report, "Responding to Child Sexual Assault in Aboriginal Communities". In his report the Ombudsman recommended, inter alia, enacting legislation for an independent body to advise government on the progress of major initiatives in Aboriginal Affairs.

The Auditor-General and Ombudsman confirmed concerns raised by Aboriginal people over the absence of genuinely shared decision-making, the duplication of services, lack of coordination, unclear accountability pathways and—despite significant investment over time—limited demonstrable improvement in the lives of Aboriginal people across New South Wales.

In August 2011 in response to the Auditor-General's report the Minister established and chaired the New South Wales Government Ministerial Taskforce for Aboriginal Affairs. The taskforce comprised seven senior Ministers and four senior Aboriginal community representatives who, for the first time, sat at the table and made decisions together. The

task force had a tight focus: to improve education and employment opportunities for Aboriginal people across New South Wales, and to improve service delivery and accountability in Aboriginal Affairs.

In 2012 the taskforce held two rounds of community consultation and heard directly from Aboriginal people, the non-government sector and corporate Australia about what works on the ground and how to build on these initiatives. More than 2,500 people attended these community consultations, more than 400 survey forms were completed and 201 submissions were received. Aboriginal people expressed concern that they were "over-served but under-delivered" and that they are "talked to, not worked with". The task force listened to the community and made recommendations to the New South Wales Government concerning the areas of focus.

As a result of this partnership with Aboriginal people, Opportunity, Choice, Healing, Responsibility and Empowerment [OCHRE] was created. OCHRE is the New South Wales Government's plan for Aboriginal Affairs, which has been developed in partnership with Aboriginal people and is the response to the taskforce's recommendations. Through consultation, we heard from thousands of people who requested support for more Aboriginal young people to stay at school; more Aboriginal young people to transition into employment; the teaching of Aboriginal language and culture in order to build people's pride and identity; increasing the skill and capacity of local governance bodies; and making both government and communities more accountable for the money they spend.

These aspirations are reflected in the OCHRE initiatives, which are being introduced in partnership with Aboriginal people. Connected Communities and Opportunity Hubs aim to support more Aboriginal young people to stay at school and help with the transition into employment.

The Aboriginal Language and Culture Nest aims to increase the number of Aboriginal language speakers and teachers in order to build people's pride and identity. Local decision-making models aim to increase the skill and capacity of local governance bodies and the establishment of a deputy ombudsman reflects the intention to make both government and communities more accountable for the money they spend and to ensure that the initiatives are delivered effectively and outcomes are achieved. Specifically, the OCHRE accountability framework has the following components: an Aboriginal voice in design and delivery of programs and services, a refocused role for the Aboriginal Affairs agency, improved coordination and oversight, and meaningful and measureable reporting.

Initially, to implement the accountability framework, OCHRE proposed a new position of Coordinator General for Aboriginal Affairs and a new and independent Aboriginal Council. Aboriginal Affairs consulted with the Aboriginal representatives on the taskforce, a broad range of New South Wales government agencies, the New South Wales Auditor-General and the NSW Ombudsman to further develop the coordinator general proposal, including legislation to underpin the position. In the course of the consultation, Aboriginal community leaders suggested that, on the issue of accountability, it would be more effective to appoint an Aboriginal Ombudsman to monitor and assess specified initiatives and programs relating to Aboriginal Affairs.

It was decided that the deputy ombudsman idea was a stronger model for a number of reasons including, importantly, that it utilises an existing structure and process—the Office of the NSW Ombudsman—and that the Ombudsman has proven capacity and an excellent reputation amongst Aboriginal people in our State.

In this context, I now turn my attention to the nature and detail of the bill before the House. Section 8 of the Ombudsman Act 1974 provides that the Ombudsman may appoint a deputy ombudsman who can exercise functions delegated by the Ombudsman subject to certain limitations—covered in section 8A. Following amendments in 2002, the Ombudsman appointed a deputy ombudsman for Community and Disability Services—covered in section 8 (1A).

This bill now proposes a new section 8 (1B), similar to the preceding section, that the Ombudsman appoint a deputy ombudsman to enable the Ombudsman to monitor and assess Aboriginal programs, being government initiatives or services relating to Aboriginal Affairs prescribed by the regulations. It is intended that the deputy ombudsman for Aboriginal Programs will be an Aboriginal person and will be appointed administratively. Aboriginal programs to be monitored and assessed by the deputy ombudsman will be prescribed in the regulations.

The Government has drafted regulations in readiness for the changes proposed in this bill. The draft regulations propose that OCHRE be the first Aboriginal program to be prescribed by the regulations. The deputy ombudsman's support of the Ombudsman in the independent monitoring and review of Aboriginal programs should encourage progressive and continuous improvements in those programs. It aims to avoid a critical after-the-fact report when a program has been delivered, the money has already been spent or it is simply too late to salvage a proper outcome from a poorly designed and poorly delivered program.

Existing powers of the Ombudsman which may be delegated to the deputy ombudsman to compel the release of information and documents by agencies, and the power to enter premises to access documents, will apply in the same way in order to monitor and assess Aboriginal programs prescribed by the regulations. The Ombudsman may provide information obtained this way to another agency with a relevant interest. There are protections against adverse implications for individuals who disclose records and information to the Ombudsman under new section 25M.

Central to the Ombudsman's existing role within the New South Wales Government's accountability framework is the power to produce reports. The bill creates new section 25N that permits the Ombudsman to provide a report on any matter concerning an Aboriginal program, including recommendations for improvements in the delivery of the program, to the Minister responsible for the program and to any other Minister or public authority affected, in the opinion of the Ombudsman, by the report. The Minister responsible for the Aboriginal program must furnish a copy of the report to both Houses of Parliament within one month.

The Ombudsman may make also a special report to Parliament on any systemic issue relating to Aboriginal Affairs. As with other reports, the Ombudsman is required to consult with the responsible Minister before publishing a report

concerning his or her portfolio. We do not expect that all reports from the Ombudsman will be positive—we are realistic regarding the historic challenges that face program delivery, especially in matters relating to Aboriginal Affairs. No program is perfect; all programs require a degree of fine-tuning. The proposed provisions within the bill provide the opportunity for government to fine-tune programs along the way to improve the model and therefore improve the outcomes.

There is no quick fix; the reform in OCHRE is long term. However, if we build genuine partnerships with Aboriginal people and they own the initiatives, combined with a strong accountability structure to measure outcomes, we will make a difference. Under new section 25M (4), the Ombudsman and the Minister responsible for the Aboriginal program also may consult with each other on the monitoring and assessment of a program, or on any other matters relating to the program.

It is intended that the Ombudsman may consult also with heads of agencies, Aboriginal peak bodies and other relevant stakeholders in monitoring and assessing Aboriginal programs. Importantly, the Ombudsman may be able to assist Aboriginal Affairs in its solution brokerage function between New South Wales government agencies, through the use of existing discretionary powers, to engage in facilitation to resolve intractable issues that cannot be resolved via escalation through internal government mechanisms.

The deputy ombudsman will be supported by staff and will draw on the existing resources, knowledge and reputation of the Ombudsman to ensure genuine review and accountability for Aboriginal programs for future decades. The New South Wales Ombudsman, Mr Bruce Barbour, said:

Having an Aboriginal person in a statutory role of this type will allow my office to continue to strengthen its work with Aboriginal communities across the State and sends a strong message about the importance of improving the circumstances of Aboriginal people.

Councillor Stephen Ryan of the New South Wales Aboriginal Land Council, one of the Aboriginal members on the taskforce, has warmly welcomed the reform. Councillor Ryan said:

I strongly support this initiative and congratulate the Minister for delivering on his commitment. The issue of accountability was raised repeatedly by Aboriginal communities across the State during our Taskforce consultation.

It is hoped the creation of the position of deputy ombudsman for Aboriginal Programs will lead to better outcomes for Aboriginal people, with more regular reports on how well these initiatives are being implemented in Aboriginal communities.

"NSW 2021: A Plan to make NSW Number One" dedicates an entire chapter to restoring accountability to the New South Wales Government. The New South Wales Government is committed to strengthening the powers of independent watchdogs, including the NSW Ombudsman. We are committed to making more government information easily available, enabling citizens to critique government services and finding more ways to involve people in government decision-making, and will require government to continuously improve its own performance. This was the mandate we were elected on and this bill delivers on that commitment to the people of New South Wales. Professor Shane Houston commented on the benefit of the proposed reform. He said:

This new position is a game changer, it shows the Government is committed to better outcomes for Aboriginal people in New South Wales. The legislation represents a significant structural reform which looks beyond political cycles and will entrench accountability across a life cycle. Having an Aboriginal voice within the Ombudsman's Office is integral to improving education and employment outcomes for future generations.

In concluding, this bill represents the final piece of the jigsaw puzzle. What we have learnt from the reports of the Auditor-General, the Ombudsman and from Aboriginal people comes down to three key points: partnership, planning and accountability. Firstly, we created partnerships with Aboriginal people through the Ministerial Taskforce for Aboriginal Affairs, the success of which was demonstrated in the level of engagement with Aboriginal people throughout the consultation process. Secondly, the consultations formed the foundation upon which OCHRE was created. OCHRE now provides a planning road map for Aboriginal people and for government to follow in the years ahead. Thirdly, with the deputy ombudsman responsible for Aboriginal programs, we now have an independent accountability structure with ongoing monitoring and assessment that will help Aboriginal people realise their aspirations as detailed in OCHRE.

The Government thanks those who assisted in developing this bill. In particular I thank and acknowledge the critical role of the four Aboriginal community representatives on the taskforce: Councillor Stephen Ryan, Councillor for the Central Region for New South Wales Aboriginal Land Council; Professor Shane Houston, Deputy Vice-Chancellor Indigenous Strategy and Services at the University of Sydney; Mr Danny Lester, Chief Executive Officer of the Aboriginal Employment Strategy Limited; and Ms Maydina Penrith, a young Aboriginal leader.

I thank also my ministerial colleagues and senior government officials for their genuine commitment to the taskforce. I thank the members in the Minister's office particularly the Aboriginal policy officer, Caity McLoughlin, and chief of staff, Verity Lomax, who worked tirelessly to make sure this reform was driven and realised. It was critical for community members to be directly involved in the taskforce through the community consultations. The taskforce was able to tap into their insight and knowledge to inform its deliberations on the future direction of Aboriginal Affairs in New South Wales. I thank them for their time, knowledge and commitment. I commend the bill to the House.

