



New South Wales

Ageing and Disability Commissioner Bill 2019

Explanatory note

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

Overview of Bill

The objects of this Bill are to protect and promote the rights of adults with disability and older adults and to protect those adults from abuse, neglect and exploitation.

The Bill establishes the office of Ageing and Disability Commissioner (the *Commissioner*) and provides for the Commissioner's functions, which include:

- (a) dealing with allegations of abuse, neglect or exploitation of adults with disability and older adults, and
- (b) community education and general advice and assistance to the public, and
- (c) inquiring into and reporting on systemic issues, and
- (d) advising and making recommendations to the Minister administering the proposed Act.

The Bill also establishes an Ageing and Disability Advisory Board (the *Board*) and provides that the Official Community Visitor program, to the extent that it relates to visits to accommodation provided to adults with disability and certain boarding houses, is to be administered by the Commissioner instead of the Ombudsman as is currently the case.

Outline of provisions

Part 1 Preliminary

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.

Clause 3 defines certain words and expressions used in the proposed Act.

Clause 4 sets out the objects (as set out in the Overview) and principles of the proposed Act. When exercising a function under the proposed Act, the Commissioner or any other person must have regard to the objects and principles.

Part 2 Appointment of Commissioner

Clause 5 provides for the appointment of an Ageing and Disability Commissioner by the Governor.

Clause 6 provides for the employment and remuneration of the Commissioner.

Clause 7 sets out when the office of Commissioner becomes vacant.

Clause 8 enables the Governor to remove the Commissioner from office, but only for incompetence, incapacity or misbehaviour.

Clause 9 provides for the appointment of an acting Commissioner in certain circumstances.

Clause 10 provides for staff to be employed in the Public Service.

Clause 11 enables the Commissioner to delegate the Commissioner's functions.

Part 3 Functions of Commissioner

Division 1 General functions

Clause 12 specifies the functions of the Commissioner, which include the following:

- (a) to deal with allegations of abuse, neglect and exploitation of adults with disability and older adults, whether on the basis of a report made to the Commissioner or at the Commissioner's own initiative,
- (b) to take further necessary action following an investigation into an allegation of abuse, neglect or exploitation of an adult with disability or older adult,
- (c) to raise awareness and educate the public about matters relating to the abuse, neglect and exploitation of adults with disability and older adults,
- (d) to provide advice and general assistance to the public about matters relating to the abuse, neglect and exploitation of adults with disability and older adults,
- (e) to inquire into and report on systemic issues regarding matters in relation to which the Commissioner may conduct investigations,
- (f) to consult with the Board on matters relating to the abuse, neglect and exploitation of adults with disability and older adults,
- (g) to advise, and make recommendations to, the Minister, at the Commissioner's own initiative or at the request of the Minister, on matters relating to the abuse, neglect and exploitation of adults with disability and older adults.

The Commissioner is not subject to the control or direction of the Minister administering the proposed Act in the exercise of certain functions, including conducting investigations.

Clause 13 provides that a person may make a report to the Commissioner about an adult with disability or older adult if the person has reasonable grounds to believe the adult is subject to, or at risk of, abuse, neglect or exploitation. The Commissioner may, at the Commissioner's own initiative, decide to deal with a matter as a report if it relates to an adult with disability or older adult that the Commissioner has reasonable grounds to believe is subject to, or at risk of, abuse, neglect or exploitation. In dealing with a report, the Commissioner may conduct an investigation, make a referral to another person or body or may decline to take action.

If the Commissioner is of the opinion that a report, or part of a report, constitutes a complaint that may be made to any of the following persons or bodies, the Commissioner must refer the report, or the part of the report, to the person or body:

- (a) the Health Care Complaints Commission,
- (b) the Commissioner of the Aged Care Quality and Safety Commission,
- (c) the Commissioner of the NDIS Quality and Safeguards Commission,
- (d) any other person or body prescribed by the regulations.

The Commissioner must obtain the consent of an adult with disability or older adult in order to conduct an investigation into an allegation of abuse, neglect or exploitation of the adult, except in certain circumstances.

Clause 14 provides that the Commissioner may provide certain information about an adult with disability or older adult to a government sector agency, the Civil and Administrative Tribunal, a hospital or other health organisation to assist that agency to provide services to the adult. The Commissioner may also enter into arrangements with those agencies for the purposes of sharing and exchanging information.

Clause 15 protects the identity of a person who, in good faith, makes a report to the Commissioner under the proposed Act.

Division 2 Investigations

Clause 16 enables the Commissioner to require a person to attend a meeting or to produce documents or things for the purposes of an investigation of a report.

Clause 17 enables the Commissioner to apply for a search warrant if the Commissioner has reasonable grounds for believing that an adult with disability or older adult is subject to, or at risk of, serious abuse, neglect or exploitation at particular premises.

Clause 18 provides that a provision of any other Act or law that prohibits or restricts the disclosure of information does not operate to prevent the provision of information to the Commissioner under the proposed Division.

Part 4 Official Community Visitors

Clause 19 defines expressions used in the proposed Part. A *visitable service* means an accommodation service where adults with disability are in full-time care, a boarding house for people with additional needs or any other service prescribed by the regulations. Currently, premises at which those services are provided are visited by Official Community Visitors appointed under the *Community Services (Complaints, Reviews and Monitoring) Act 1993*. The provisions of the proposed Part are substantially the same as the current provisions of that Act.

Clause 20 provides for the appointment of Official Community Visitors by the Minister administering the proposed Act.

Clause 21 provides for the functions of Official Community Visitors in relation to visitable services.

Clause 22 provides that the Commissioner has a general oversight and co-ordination role in relation to Official Community Visitors.

Clause 23 protects a person who makes a complaint or provides information to an Official Community Visitor from retribution.

Part 5 Annual reports and special reports

Clause 24 requires the Commissioner to prepare annual reports on the Commissioner's activities and the activities of the Official Community Visitors.

Clause 25 enables the Commissioner to prepare special reports that can be provided to Parliament and requires the Commissioner to prepare special reports on the request of the Minister administering the proposed Act.

Clause 26 deals with the provision of annual reports and special reports to Parliament.

Part 6 Miscellaneous

Clause 27 establishes the Ageing and Disability Advisory Board, which will advise the Commissioner on matters relating to the abuse, neglect or exploitation of adults with disability and older adults that the Board considers appropriate or that are referred to the Board by the Commissioner.

Clause 28 protects persons involved in the administration of the proposed Act from personal liability if acting in good faith.

Clause 29 makes it an offence for a person to disclose information obtained in connection with the administration or execution of the proposed Act except in certain circumstances. The maximum penalty is 50 penalty units (currently, \$5,500).

Clause 30 makes it an offence for a person, without reasonable excuse, to resist or obstruct the Commissioner or other person in the exercise of a function under the proposed Act. The maximum penalty is 50 penalty units (currently, \$5,500).

Clause 31 provides that proceedings for an offence under the proposed Act may be dealt with summarily before the Local Court.

Clause 32 provides that the proposed Act binds the Crown.

Clause 33 enables the Governor to make regulations, including savings and transitional regulations, for the purposes of the proposed Act.

Schedule 1 Amendment of Acts

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

Schedule 1.1 [1] provides that the functions of Official Community Visitors appointed under the *Community Services (Complaints, Reviews and Monitoring) Act 1993* do not extend to visitable services that are accommodation services for adults with disability or assisted boarding houses. Those services will be visited by Official Community Visitors appointed under the proposed Act (see proposed Part 4).

Schedule 1.1 [2] and [3] update the provisions that require the Ombudsman to monitor and review deaths of persons in residential care and children in care, so that deaths of persons living in supported group accommodation are included. Supported group accommodation has the same meaning as it has in the *Disability Inclusion Act 2014* and includes supported group accommodation provided by a registered provider under the National Disability Insurance Scheme of the Commonwealth.

Coroners Act 2009 No 41

Schedule 1.2 [1] and [2] update the provisions relating to the jurisdiction of the State Coroner to provide that an inquest may be held into the death of a person who was living in supported group accommodation. Supported group accommodation has the same meaning as it has in the *Disability Inclusion Act 2014* and includes supported group accommodation provided by a registered provider under the National Disability Insurance Scheme of the Commonwealth.

Schedule 1.2 [4] requires the State Coroner to inform the Commissioner of the NDIS Quality and Safeguards Commission of the Commonwealth about a death of a person living in supported group accommodation, in addition to being required to inform the Ombudsman as is currently the case. **Schedule 1.2 [3] and [5]** are consequential amendments.

Government Information (Public Access) Act 2009 No 52

Schedule 1.3 provides that information relating to the report handling, investigative and reporting functions of the Commissioner is excluded information under the *Government Information (Public Access) Act 2009*, which means that there is a conclusive presumption of an overriding public interest against disclosure of the information and that an access application cannot be made for access to the information.

Government Sector Employment Act 2013 No 40

Schedule 1.4 provides that the Office of the Commissioner is a separate Public Service agency headed by the Commissioner.

Health Records and Information Privacy Act 2002 No 71

Schedule 1.5 provides that the Commissioner is an investigative agency under the *Health Records and Information Privacy Act 2002*, which means that the Commissioner is exempt from certain health privacy principles under that Act in relation to the handling of information in the exercise of the Commissioner's report handling and investigative functions.

Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Schedule 1.6 is an amendment consequent on proposed section 17 of the proposed Act.

Privacy and Personal Information Protection Act 1998 No 133

Schedule 1.7 [1] provides that the Commissioner is an investigative agency under the *Privacy and Personal Information Protection Act 1998*, which means that the Commissioner is exempt from certain provisions of that Act in relation to the exercise of the Commissioner's report handling and investigative functions.

Schedule 1.7 [2] exempts the Commissioner from a special restriction on the disclosure of personal information. The Ombudsman, the Health Care Complaints Commission, the Anti-Discrimination Board and the Civil and Administrative Tribunal are currently exempt from the restriction.