



New South Wales

# Ombudsman Legislation Amendment Bill 2022

## Explanatory note

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

## Overview of Bill

The object of this Bill is to make various amendments to the *Ombudsman Act 1974* (*the Act*) and the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

## 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]** enables the Ombudsman to appoint a Deputy Ombudsman or an Assistant Ombudsman to be an acting Ombudsman during an absence of the Ombudsman for no more than 30 days.

**Schedule 1[2]** renames the Community and Disability Services Commissioner as the Community Services Commissioner.

**Schedule 1[3]** provides that the Ombudsman's powers in relation to a public authority extend to a former public authority.

**Schedule 1[4]** ensures a detained person is able to make an oral complaint about the conduct of a public authority in a way that is not recorded or monitored.

**Schedule 1[5]** enables the Ombudsman to refer a complaint about the conduct of a public authority to the public authority for investigation.

**Schedule 1[6]** makes it clear that, for a provision in another Act providing an exception to confidentiality or non-disclosure, information provided in response to a preliminary inquiry under the Act is taken to be information provided in response to a requirement under the Act.

**Schedule 1[7]** enables the Ombudsman to charge reasonable fees for conciliation services.

**Schedule 1[8]** enables the Ombudsman to require a public authority to give an oral statement at a specified time and place.

**Schedule 1[9]** provides that it is not a contravention of a direction of the Ombudsman relating to the publication of evidence to provide information or evidence to an Australian legal practitioner to obtain legal advice or representation in relation to an inquiry or investigation.

**Schedule 1[10]** provides that it is not an offence for a person present at an inquiry to provide information or evidence to an Australian legal practitioner to obtain legal advice or representation in relation to an inquiry or investigation.

**Schedule 1[11]** enables the Ombudsman to review the systems of public authorities for handling complaints.

**Schedule 1[12]** changes references to the Department of Premier and Cabinet to the Public Service Commissioner.

**Schedule 1[13] and [14]** clarify existing section 34(4) and (5) and move the provisions into the section to which they relate.

**Schedule 1[15]** permits the disclosure of information by the Ombudsman or an officer of the Ombudsman—

- (a) for proceedings under, or in relation to, the Act, sections 19A, 19B, 19C, 31H and 34, which generally relate to the unlawful disclosure of information and confidentiality, or
- (b) to a law enforcement agency for an inquiry or investigation to determine whether the proceedings referred to in paragraph (a) should be commenced, or
- (c) to a law enforcement agency if the information relates or may relate to a breach of a law of the State, another State, the Commonwealth or a Territory, or
- (d) to a Commission appointed under the *Royal Commissions Act 1923*, or
- (e) to a special inquiry set up under the *Special Commissions of Inquiry Act 1983*.

The amendment also makes it clear that the Ombudsman may disclose information about certain decisions made by the Ombudsman, including the commencement, progress, discontinuance or conclusion of an investigation or to correct a public record.

**Schedule 1[16]** allows the Ombudsman to be compelled to give evidence or produce a document in proceedings under, or in relation to, the Act, section 31H or 34, which relate to unlawful disclosure of information and confidentiality.

**Schedule 1[17]** extends the protection against self-incrimination to an individual who is required to give a statement or evidence under the Act, section 19, which relates to inquiries held under the Act.

**Schedule 1[18]** increases the penalty for certain offences from 10 penalty units to 50 penalty units.

**Schedule 1[19]** enables a person to complain about conduct of a public authority relating to a matter referred to the Ombudsman by the Inspector of the Commission under the *Independent Commission Against Corruption Act 1988*.

**Schedule 1[20]** provides that the Act, Part 6, which relates to complaint referral arrangements between certain agencies, does not apply to the Children's Guardian.

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

**Schedule 2[1] and [3]** make amendments consequential on the amendment made by Schedule 1[2].

**Schedule 2[2]** omits a redundant provision.

**Schedule 2[4]** provides that the Convenor may record or disclose information for the purpose of providing information to the Health Care Complaints Commission established under the *Health Care Complaints Act 1993* in connection with the Commission's functions.

**Schedule 2[5]** omits spent provisions.

## **Schedule 3      Consequential amendments to Public Interest Disclosures Act 2022 No 14**

**Schedule 3** makes consequential amendments to the *Public Interest Disclosures Act 2022*, Schedule 5, which amends the *Ombudsman Act 1974* and has not commenced.



New South Wales

# Ombudsman Legislation Amendment Bill 2022

## Contents

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		Page
	1 Name of Act	2
	2 Commencement	2
<b>Schedule 1</b>	<b>Amendment of Ombudsman Act 1974 No 68</b>	<b>3</b>
<b>Schedule 2</b>	<b>Amendment of Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2</b>	<b>9</b>
<b>Schedule 3</b>	<b>Consequential amendments to Public Interest Disclosures Act 2022 No 14</b>	<b>10</b>



New South Wales

# Ombudsman Legislation Amendment Bill 2022

No. \_\_\_\_\_, 2022

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## **A Bill for**

An Act to make various amendments to the *Ombudsman Act 1974* and the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

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**Tabling copy**

**The Legislature of New South Wales enacts—**

1

**1 Name of Act**

2

This Act is the *Ombudsman Legislation Amendment Act 2022*.

3

**2 Commencement**

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 7 Acting Ombudsman</b>		2
Insert after section 7(1)—		3
(1A) The Ombudsman may—		4
(a) from time to time, appoint a Deputy Ombudsman or an Assistant Ombudsman to be an acting Ombudsman during an absence of the Ombudsman for a period of no more than 30 days, and		5 6 7
(b) revoke the appointment.		8
(1B) An appointment of an acting Ombudsman by the Ombudsman is revoked on the appointment of an acting Ombudsman by the Governor.		9 10
<b>[2] Section 8 Deputy Ombudsman and Assistant Ombudsman</b>		11
Omit “and Disability” from section 8(1A).		12
<b>[3] Section 11A</b>		13
Insert before section 12—		14
<b>11A Application of Part</b>		15
This Part applies to a person who was a public authority in relation to conduct occurring while the person was a public authority in the same way as it applies to a public authority.		16 17 18
<b>[4] Section 12 Right to complain</b>		19
Omit section 12(3). Insert instead—		20
(3) If a person detained by, or in the custody of, a public authority (a <i>detained person</i> ) requests to make a complaint to the Ombudsman, the public authority or other person superintending the detained person must—		21 22 23
(a) take all steps necessary to facilitate the making of the complaint by the detained person, and		24 25
(b) if the complaint is made orally—make reasonable arrangements for the detained person to make the complaint in a way that is not recorded or monitored, and		26 27 28
(c) if the complaint is made in writing—send to the Ombudsman, as soon as practicable, the written matter addressed to the Ombudsman, unopened.		29 30 31
<b>[5] Section 12A</b>		32
Insert after section 12—		33
<b>12A Referral of complaints about public authorities for investigation</b>		34
(1) The Ombudsman may, if the Ombudsman considers it appropriate, refer a complaint about the conduct of a public authority to the public authority for investigation.		35 36 37
(2) The public authority must report to the Ombudsman on the outcome of the referral.		38 39
(3) The Ombudsman may, when referring the complaint to the public authority, make recommendations on whether, and in what way, the public authority may investigate or otherwise deal with the complaint.		40 41 42

(4)	The Ombudsman may monitor the progress of the public authority's investigation of the complaint.	1 2
(5)	The public authority must, on the request of the Ombudsman, provide documents and other information relating to the complaint.	3 4
(6)	The Ombudsman may, if the Ombudsman considers it appropriate, also continue to deal with the complaint.	5 6
(7)	In this section— <i>complaint</i> includes part of a complaint.	7 8
<b>[6]</b>	<b>Section 13AA Preliminary inquiries</b>	9
	Insert after section 13AA(5)—	10
(6)	For a provision in another Act providing an exception to confidentiality or non-disclosure, information provided in response to an inquiry made under this section is taken to be information provided in response to a requirement under this Act.	11 12 13 14
<b>[7]</b>	<b>Section 13A Dealing with complaint by conciliation</b>	15
	Insert after section 13A(6)—	16
(7)	The Ombudsman may charge the public authority reasonable fees for the following—	17 18
(a)	a conciliation provided under this section,	19
(b)	the engagement of a mediator to assist in the conciliation.	20
<b>[8]</b>	<b>Section 18</b>	21
	Omit the section. Insert instead—	22
<b>18</b>	<b>Ombudsman may require information, document or other thing</b>	23
(1)	For an investigation under this Act, the Ombudsman may, by written notice, require a public authority to do the following—	24 25
(a)	give the Ombudsman a written or oral statement of information specified or described in the notice,	26 27
(b)	produce, in accordance with directions in the notice, a document or other thing, or a copy of a document, specified or described in the notice.	28 29 30
(2)	The notice may—	31
(a)	require a person to attend at a specified time and place to give an oral statement of information, and	32 33
(b)	specify the time within which the information must be provided.	34
<b>[9]</b>	<b>Section 19A Restriction on publication of evidence</b>	35
	Omit section 19A(3A). Insert instead—	36
(3A)	It is not a contravention of a direction given under this section to provide information or evidence—	37 38
(a)	to a registered medical practitioner or registered psychologist for the purposes of providing medical or psychiatric care, treatment or counselling, including psychological counselling, to a person who has given or may give evidence before an inquiry, or	39 40 41 42



(b)	to an Australian legal practitioner to obtain legal advice or representation in relation to an inquiry or an investigation relating to an inquiry.	1 2 3
<b>[10]</b>	<b>Section 19B Publication of evidence given at inquiry</b>	4
	Omit section 19B(4). Insert instead—	5
(4)	It is not a contravention of this section to provide information or evidence to—	6
(a)	a registered medical practitioner or registered psychologist for the purposes of providing medical or psychiatric care, treatment or counselling, including psychological counselling, to a person who has given or may give evidence before an inquiry, or	7 8 9 10
(b)	an Australian legal practitioner to obtain legal advice or representation in relation to an inquiry or an investigation relating to an inquiry.	11 12
<b>[11]</b>	<b>Section 25A</b>	13
	Insert after section 25—	14
<b>25A</b>	<b>Review of complaints handling systems</b>	15
(1)	The Ombudsman may review the systems of a public authority for handling complaints.	16 17
(2)	The Ombudsman may, in carrying out the review, require the head of the public authority to provide information about the systems, including the operation of the systems.	18 19 20
(3)	The Ombudsman may—	21
(a)	report on issues relating to the systems, and	22
(b)	review the policies and performance of the public authority in relation to handling complaints, and	23 24
(c)	make recommendations the Ombudsman considers appropriate.	25
(4)	A copy of a report containing recommendations—	26
(a)	must be given to the relevant Minister in relation to the public authority, and	27 28
(b)	may be given to another person or body the Ombudsman considers appropriate.	29 30
<b>[12]</b>	<b>Sections 26(3)(c) and 28(c)</b>	31
	Omit “Department of Premier and Cabinet” wherever occurring.	32
	Insert instead “Public Service Commissioner”.	33
<b>[13]</b>	<b>Section 31H Confidentiality</b>	34
	Insert after section 31H(3)—	35
(3A)	The Ombudsman or an officer of the Ombudsman must make a request under subsection (1) for evidence to be taken in private, or for a direction to be given that a document, or part of a document, be treated as confidential, if—	36 37 38
(a)	the Ombudsman or officer must give the evidence before, or produce the whole or part of the document to, the Joint Committee, and	39 40
(b)	the evidence proposed to be given, or the whole or part of the document proposed to be produced, would disclose information obtained by the	41 42

	Ombudsman or officer, in connection with the administration or execution of this Act, from a public authority or other person, and	1
	(c) the public authority or other person has informed the Ombudsman or officer that the information is confidential.	2
(3B)	If, at the request of the Ombudsman or an officer of the Ombudsman, evidence referred to in subsection (3A) is taken by the Joint Committee in private—	3
	(a) the Committee must not disclose or publish the whole or part of the evidence without the written consent of the public authority or other person, and	4
	(b) a person, including a member of the Committee, must not disclose or publish the whole or part of the evidence without—	5
	(i) the written consent of the public authority or other person, and	6
	(ii) the authority of the Committee under subsection (5).	7
	Maximum penalty—20 penalty units or imprisonment for 3 months, or both.	8
<b>[14]</b>	<b>Section 31H(5)</b>	9
	Insert “or the consent of a public authority or other person under subsection (3B)” after “subsection (3)”.	10
<b>[15]</b>	<b>Section 34</b>	11
	Omit the section. Insert instead—	12
	<b>34 Disclosure of information</b>	13
(1)	The Ombudsman or an officer of the Ombudsman must not disclose information obtained in connection with the administration or execution of this Act unless the disclosure is made as follows—	14
	(a) for information obtained from a public authority—with the consent of—	15
	(i) the head of the authority, or	16
	(ii) the responsible Minister,	17
	(b) for information obtained from another person—	18
	(i) with the consent of the person, or	19
	(ii) for proceedings relating to the discipline of police officers before the Commissioner of Police or the Industrial Relations Commission,	20
	(c) for information relating to the safety, welfare or well-being of a child or young person—to a police officer, the Department of Communities and Justice or another public authority the Ombudsman considers appropriate in the circumstances,	21
	(d) to a person, if the Ombudsman believes on reasonable grounds that—	22
	(i) disclosure to the person is necessary to prevent or lessen the likelihood of harm being done to a person, and	23
	(ii) there is a risk of harm, including self-harm, being done to a person,	24
	(e) for proceedings under the <i>Government Information (Public Access) Act 2009</i> , Part 5 arising as a consequence of a decision made by the Ombudsman in relation to an access application under that Act,	25
	(f) for proceedings under the <i>Police Act 1990</i> , section 167A,	26

- (g) for proceedings under the *Public Interest Disclosures Act 1994*, section 20 or 20B, 1  
2
- (h) for criminal proceedings resulting from an investigation under this Act, 3  
if the investigation related, whether or not entirely, to a matter referred 4  
by the Inspector of the Law Enforcement Conduct Commission to the 5  
Ombudsman for investigation, 6
- (i) for proceedings under or in relation to the following— 7
  - (i) this section or section 19A, 19B, 19C, 31H or 37, 8
  - (ii) the *Royal Commissions Act 1923*, Part 3, 9
  - (iii) the *Special Commissions of Inquiry Act 1983*, Part 4, 10
- (j) to a law enforcement agency for an inquiry or investigation to determine 11  
whether proceedings referred to in paragraph (i) should be commenced, 12
- (k) to a registered medical practitioner or registered psychologist in relation 13  
to the provision of medical or psychiatric care, treatment or counselling, 14  
including psychological counselling, by the Ombudsman or an officer 15  
of the Ombudsman, 16
- (l) for information that relates or may relate to a breach of a law of the 17  
State, another State, the Commonwealth or a Territory—to a law 18  
enforcement agency, 19
- (m) to a Commission appointed under the *Royal Commissions Act 1923*, 20
- (n) to a special inquiry set up under the *Special Commissions of Inquiry Act* 21  
*1983*, 22
- (o) in connection with the administration or execution of this Act. 23  
Maximum penalty—50 penalty units. 24
- (2) Subsection (1) does not prevent the Ombudsman from disclosing 25  
information— 26
  - (a) to a person exercising functions under the law of another State, the 27  
Commonwealth or a Territory, which are similar to the functions 28  
exercised by the Ombudsman, if the Ombudsman is of the opinion the 29  
disclosure is appropriate, or 30
  - (b) about a decision made by the Ombudsman under section 13, 13AA, 13A 31  
or 15, including the commencement, progress, discontinuance or 32  
conclusion of an investigation, or 33
  - (c) to correct a public record about— 34
    - (i) an investigation under this Act, or 35
    - (ii) the exercise of a function of the Ombudsman. 36
- (3) In this section— 37
  - law enforcement agency*** means— 38
    - (a) the NSW Police Force, or 39
    - (b) a police force of another State or Territory, or 40
    - (c) the Australian Federal Police, or 41
    - (d) another authority or body responsible for the enforcement of the laws of 42  
the Commonwealth or of the State or another State or Territory. 43

**[16] Section 35 Ombudsman, officer or expert as witness** 44

Omit section 35(2)(a). Insert instead— 45

	(a) proceedings under or in relation to section 19A, 19B, 19C, 21C, 31H, 34, 35A, 35B or 37,	1 2
<b>[17]</b>	<b>Section 36</b>	3
	Omit the section. Insert instead—	4
	<b>36 Protection against self-incrimination</b>	5
	(1) If an individual is required to give a statement or evidence under section 18 or 19, the statement or evidence is not admissible in evidence against the individual in criminal proceedings, other than proceedings under section 37(1)(c).	6 7 8 9
	(2) Subsection (1) applies whether or not the individual objects to giving the statement or evidence.	10 11
<b>[18]</b>	<b>Section 37 Offences</b>	12
	Omit “10 penalty units” wherever occurring in section 37(1) and (2).	13
	Insert instead “50 penalty units”.	14
<b>[19]</b>	<b>Schedule 1 Excluded conduct of public authorities</b>	15
	Insert “, unless the conduct relates to a matter referred to the Ombudsman by the Inspector of the Commission under the <i>Independent Commission Against Corruption Act 1988</i> ” after “1988” in item 20.	16 17 18
<b>[20]</b>	<b>Schedule 1A Agencies</b>	19
	Omit “Children’s Guardian”.	20

<b>Schedule 2</b>	<b>Amendment of Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2</b>	1
		2
<b>[1] Section 4 Definitions</b>		3
	Omit section 4(1), definitions of <i>Community and Disability Services Commissioner</i> and <i>Community Services Division</i> .	4
		5
	Insert in alphabetical order—	6
	<i>Community Services Commissioner</i> means a Deputy Ombudsman appointed as Community Services Commissioner under the <i>Ombudsman Act 1974</i> , section 8(1A).	7
		8
		9
<b>[2] Section 12 Community Services Division of Ombudsman’s Office</b>		10
	Omit the section.	11
<b>[3] Section 34C Establishment and composition of the Team</b>		12
	Omit “and Disability” wherever occurring in section 34C(2)(c) and (8).	13
<b>[4] Section 34L Confidentiality of information</b>		14
	Insert after section 34L(1)(c)(vi)—	15
	(vii) providing information to the Health Care Complaints Commission established under the <i>Health Care Complaints Act 1993</i> in connection with the Commission’s functions, or	16
		17
		18
<b>[5] Part 6A Audit of Interagency Plan relating to child sexual assault in Aboriginal communities</b>		19
	Omit the Part.	20
		21

<b>Schedule 3</b>	<b>Consequential amendments to Public Interest Disclosures Act 2022 No 14</b>	1
		2
<b>[1] Schedule 5 Amendment of Ombudsman Act 1974 No 68</b>		3
	Omit “(c2)” from Schedule 5[3]. Insert instead “(k)”.	4
<b>[2] Schedule 5[10]–[13]</b>		5
	Omit Schedule 5[10]–[13]. Insert instead—	6
<b>[10] Section 34 Disclosure of information</b>		7
	Omit section 34(1)(g). Insert instead—	8
	(g) for proceedings under the <i>Public Interest Disclosures Act 2022</i> , section 33 or 37,	9 10
<b>[11] Section 34(1)(i)(i)</b>		11
	Insert “, 31R, 31U” after “31H”.	12
<b>[11A] Section 34(1)(ka)</b>		13
	Insert after section 34(1)(k)—	14
	(ka) if the information is identifying information—for a reason specified in section 31Z(2),	15 16
<b>[12] Section 34(3)</b>		17
	Insert in alphabetical order—	18
	<i>identifying information</i> has the same meaning as in section 31Z.	19
<b>[13] Section 35 Ombudsman, officer or expert as witness</b>		20
	Insert “31R, 31U,” after “31H,” in section 35(2)(a).	21
<b>[3] Schedule 5[15] and [16]</b>		22
	Omit “10 penalty units” wherever occurring. Insert instead “50 penalty units”.	23