



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.