



New South Wales

# Community Services Legislation Amendment Act 2002 No 42

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New South Wales

## **Community Services Legislation Amendment Act 2002 No 42**

Act No 42, 2002

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An Act to amend the *Community Services (Complaints, Reviews and Monitoring) Act 1993* and other Acts with respect to the monitoring of community services, complaints about community services and the reporting and investigation of deaths of children at risk and children and persons in care; to abolish the Community Services Commission and confer its functions on the Ombudsman; and for other purposes. [Assented to 3 July 2002]

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

**1 Name of Act**

This Act is the *Community Services Legislation Amendment Act 2002*.

**2 Commencement**

This Act commences on a day to be appointed by proclamation.

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

The *Community Services (Complaints, Reviews and Monitoring) Act 1993* is amended as set out in Schedule 1.

**4 Amendment of Coroners Act 1980 No 27**

The *Coroners Act 1980* is amended as set out in Schedule 2.

**5 Amendment of Ombudsman Act 1974 No 68**

The *Ombudsman Act 1974* is amended as set out in Schedule 3.

**6 Amendment of other Acts**

The Acts specified in Schedule 4 are amended as set out in that Schedule.

## **Schedule 1 Amendment of Community Services (Complaints, Reviews and Monitoring) Act 1993**

(Section 3)

### **[1] Long title**

Omit “to constitute, and confer and impose functions on, the Community Services Commission”.

Insert instead “to confer and impose functions on the Ombudsman”.

### **[2] Section 3 Objects and principles**

Omit “and” where lastly occurring in section 3 (1) (e).

### **[3] Section 3 (1) (f) and (g)**

Omit section 3 (1) (f). Insert instead:

- (f) to encourage compliance with, and facilitate awareness of, the objects, principles and provisions of the community welfare legislation,
- (g) to provide for independent monitoring of community services and programs, both generally and in particular cases.

### **[4] Section 4 Definitions**

Omit the definitions of *Commission*, *Commissioner* and *public authority*.

Insert instead in alphabetical order:

*Community and Disability Services Commissioner* means a Deputy Ombudsman appointed as Community and Disability Services Commissioner under section 8 (1A) of the *Ombudsman Act 1974*.

*Community Services Division* means the Community Services Division of the Ombudsman’s Office established under section 12.

**[5] Section 4**

Insert in alphabetical order:

***child in care*** means a child or young person under the age of 18 years:

- (a) who is under the parental responsibility of the Minister administering the *Children and Young Persons (Care and Protection) Act 1998*, or
- (b) for whom the Director-General of the Department of Community Services or a designated agency has the care responsibility under section 49 of the *Children and Young Persons (Care and Protection) Act 1998*, or
- (c) who is a protected person within the meaning of section 135 of the *Children and Young Persons (Care and Protection) Act 1998*, or
- (d) who is the subject of an out-of-home care arrangement under the *Children and Young Persons (Care and Protection) Act 1998*, or
- (e) who would be, if the amendments made by Schedule 1 [17] and [18] to the *Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Act 2001* were in force, the subject of an out-of-home care arrangement referred to in paragraph (d), or
- (f) who is the subject of a sole parental responsibility order under section 149 of the *Children and Young Persons (Care and Protection) Act 1998*, or
- (g) who is otherwise in the care of a service provider.

***parental responsibility***, in relation to a child or young person, means all the duties, powers, responsibilities and authority that, by law, parents have in relation to their children.

***public authority*** has the same meaning as it has in the *Ombudsman Act 1974*.

***relevant Minister***, in relation to a service provider, means:

- (a) in the case of a service provider that is a Government Department, the Minister responsible for that Department, or

- (b) in the case of a person or organisation authorised, licensed or funded by a Minister to provide a service, that Minister, or
- (c) in the case of the Home Care Service of New South Wales or a person or organisation funded by the Service to provide a service, the Minister responsible for the Home Care Service of New South Wales, or
- (d) in any other case, the Minister for Community Services.

***residential centre for handicapped persons*** means:

- (a) premises declared to be a residential centre for handicapped persons under section 3A of the *Youth and Community Services Act 1973*, or
- (b) premises licensed under Part 3 of the *Youth and Community Services Act 1973*,

but does not include premises exempted from the requirement to be licensed under that Act.

***service*** includes a statutory or other function, and ***rendering*** or ***providing*** a service includes exercising such a function.

***visitable service*** has the same meaning as it has in section 8.

**[6] Section 4, definition of “community welfare legislation”**

Omit the definition. Insert instead:

***community welfare legislation*** means the following Acts and the instruments in force under those Acts:

- (a) this Act,
- (b) the *Adoption Act 2000*,
- (c) the *Children and Young Persons (Care and Protection) Act 1998*,
- (d) the *Community Welfare Act 1987*,
- (e) the *Disability Services Act 1993*,
- (f) the *Guardianship Act 1987*,
- (g) the *Home Care Service Act 1988*,

- (h) the *Youth and Community Services Act 1973*,
- (i) any other Act relating to the provision of community services that is prescribed by the regulations.

**[7] Section 4**

Omit the definitions of *Conciliation Division*, *Divisional Head*, *Investigation Division*, *member*, *Registrar* and *Review Council*.

**[8] Section 4, definition of “service provider”**

Insert “or licensed” after “authorised” in paragraph (d).

**[9] Section 4, definition of “service provider”**

Insert at the end of paragraph (f):

- , or
- (g) an authorised carer or designated agency within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*, or
- (h) the proprietor or occupier of premises that consist of a residential centre for handicapped persons.

**[10] Section 4 (2)**

Insert at the end of section 4:

- (2) Notes included in this Act do not form part of this Act.

**[11] Section 5 Administration of community welfare legislation**

Insert at the end of the section:

- (2) This section does not apply to the exercise of any function of the Ombudsman under this Act.

**[12] Section 7 Appointment of Community Visitors**

Omit “Minister for Community Services” wherever occurring.  
Insert instead “Minister”.

**[13] Section 7 (1)**

Omit “after consultation with the Review Council”.

Insert instead “on the recommendation of the Ombudsman”.

**[14] Section 7 (5) and (6)**

Insert after section 7 (4):

- (5) The Minister may at any time, on the recommendation of the Ombudsman, remove a Community Visitor from office on the ground of misbehaviour, incompetence or incapacity.
- (6) Despite subsection (5), a Community Visitor who has a disability or a temporary disability (other than mental incapacity) may not be removed from office on the ground of incapacity unless the disability is such as to render the Community Visitor incapable of performing the functions of a Community Visitor.

**[15] Section 8 Functions of Community Visitors**

Omit “the Minister for Community Services and the Commission” from section 8 (1) (d).

Insert instead “the relevant Minister in relation to the provider of the visitable service and the Ombudsman”.

**[16] Section 8 (3A)**

Omit the subsection.

**[17] Section 8 (4)–(6)**

Omit section 8 (4). Insert instead:

- (4) The Ombudsman may investigate a matter concerning the provision of services by the provider of a visitable service, being a matter arising out of any advice or report given under this section.
- (5) For the purposes of this Act and the application of the *Ombudsman Act 1974*, a matter investigated under this section



by the Ombudsman is taken to be a matter subject to a complaint made about a service provider under Part 4 of this Act.

(6) In this section:

*visitable service* means:

- (a) an accommodation service provided by the Department of Community Services or the Department of Ageing, Disability and Home Care, or by a funded agency where a person using the service is in the full-time care of the service provider, or
- (b) a residential centre for handicapped persons, or
- (c) a service prescribed by the regulations as a visitable service.

**[18] Section 9 Co-ordination of Community Visitors**

Omit "Commission" wherever occurring. Insert instead "Ombudsman".

**[19] Section 10 Annual report**

Omit "Commission" from section 10 (1). Insert instead "Ombudsman".

**[20] Section 10 (1)**

Omit "for Community Services".

**[21] Part 3**

Omit the Part. Insert instead:

**Part 3 Community services functions of  
Ombudsman**

**Division 1 General functions**

**11 Community services functions of Ombudsman**

(1) The Ombudsman has the following functions:

- (a) to promote and assist the development of standards for the delivery of community services,
- (b) to educate service providers, clients, carers and the community generally about those standards,
- (c) to monitor and review the delivery of community services and related programs, both generally and in particular cases,
- (d) to make recommendations for improvements in the delivery of community services and for the purpose of promoting the rights and best interests of persons using, or eligible to use, community services,
- (e) to inquire, on his or her own initiative, into matters affecting service providers and visitable services and persons receiving, or eligible to receive, community services or services provided by visitable services,
- (f) to receive, assess, resolve or investigate complaints under Part 4,
- (g) to assist service providers in improving their complaints procedures,
- (h) to assist in the making of complaints under Part 4 by persons receiving, or eligible to receive, community services,
- (i) to provide information, education and training, and to encourage others to do so, relating to the making, handling and resolution of complaints about the delivery of community services,
- (j) to promote access to advocacy support for persons receiving, or eligible to receive, community services to ensure adequate participation in decision making about the services they receive,
- (k) to review the causes and patterns of complaints under Part 4 and identify ways in which those causes could be removed or minimised,
- (l) to review the situation of a child in care or a person in care or a group of children in care or a group of persons in care under section 13,

- (m) to review the systems of service providers for handling complaints under section 14,
  - (n) to review the causes and patterns of reviewable deaths under Part 6 and identify ways in which those deaths could be prevented or reduced.
- (2) In the exercise of functions under this Act, the Ombudsman may:
- (a) consult and co-operate with other relevant investigative agencies and those concerned with the determination of the rights and interests of persons receiving, or eligible to receive, community services, and
  - (b) consult persons and groups with an interest in the provision of community services, particularly organisations of persons receiving, or eligible to receive, community services and those advocating their interests, and
  - (c) have regard to the needs of those persons (such as children) who are receiving, or are eligible to receive, community services and are least likely or able to complain.

## **12 Community Services Division of Ombudsman's Office**

- (1) The Ombudsman is to establish a Community Services Division to perform the Ombudsman's functions under this Act, subject to the directions of the Ombudsman under section 8A of the *Ombudsman Act 1974* and the delegation of those functions under section 10 of that Act.
- (2) The Community Services Division is to comprise the Community and Disability Services Commissioner, who is to head the Division, and other staff employed to carry out the functions of the Ombudsman under this Act.
- (3) Staff employed in the Community Services Division may undertake such other functions as may be delegated or directed by the Ombudsman under the *Ombudsman Act 1974*.
- (4) The Community Services Division is to be established as a branch of the Ombudsman's Office.

- (5) The Community Services Division may not be abolished under section 55A of the *Public Sector Management Act 1988*.

## **Division 2      Reviews**

### **13    Review of situation of children and other persons in care**

- (1) The Ombudsman may, on application or on the Ombudsman's own initiative, review the situation of a child in care or a person in care, or of a group of children in care or persons in care.
- (2) In carrying out a review, the Ombudsman is to look at such aspects of the welfare, status, progress and circumstances of the child or children or the person or persons the subject of the review as are referred to in the application or as the Ombudsman thinks fit.
- (3) In the exercise of functions under this section, the Ombudsman may hear or receive submissions from any person, including a child in care or person in care whose situation is being reviewed.
- (4) On completion of a review, the Ombudsman is to make a report:
  - (a) setting out the results of the review, and
  - (b) advising as to whether any change (and if so, what change) in the circumstances of the child or children or the person or persons the subject of the review would, in the Ombudsman's opinion, promote their welfare and interests.
- (5) The Ombudsman:
  - (a) must give a copy of the report to the relevant Minister in relation to the service provider concerned and to the service provider concerned, and
  - (b) may give a copy of the report to any other person or body as the Ombudsman thinks appropriate.
- (6) In this section:

*person in care* means a person (other than a child in care) who is in the care of a service provider.

**14 Review of complaints handling systems**

- (1) The Ombudsman is to review the systems of service providers for handling complaints relating to the provision of services by, or the conduct of, service providers.
- (2) For that purpose, the Ombudsman may require the chief executive or an employee of, or a person acting on behalf of, a service provider to provide information about those systems and their operation.
- (3) The Ombudsman may:
  - (a) report from time to time on any matters relevant to the exercise of the Ombudsman's functions under this section, and
  - (b) make such recommendations from time to time as the Ombudsman thinks fit.
- (4) A copy of a report containing recommendations:
  - (a) must be given to the relevant Minister in relation to the service provider concerned and to the service provider concerned, and
  - (b) may be given to any other person or body, as the Ombudsman thinks appropriate.

**Division 3      Application of powers under Ombudsman Act 1974**

**15 Application of provisions of the Ombudsman Act 1974 to reviews and other functions**

- (1) For the purpose of exercising functions under section 11 (1) (c), (d) or (e) or conducting a review under section 13 or 14, sections 17–24 (except section 21B) and 36 of the *Ombudsman Act 1974* apply to or in respect of the exercise of those functions or that review in the same way as they apply to or in respect of an investigation of a complaint by the Ombudsman under that Act, subject to any necessary modifications and to any modifications prescribed by the regulations.
- (2) For that purpose, those provisions apply to or in respect of a service provider or a provider of a visitable service (whether or not a public authority) or an employee, or a person acting on

behalf of, a service provider or a provider of a visitable service in the same way as they apply to a public authority.

- (3) For the purposes of this section, section 19 of the *Ombudsman Act 1974* does not apply to the exercise of a function under section 11 (1) (c), (d) or (e).

#### **Division 4 Additional functions**

##### **16 Application of Division**

The Ombudsman may exercise functions under this Division for the purposes of the Ombudsman's functions under section 11 (1) (c), (d) or (e), Division 2, Part 4 or Part 6.

##### **17 Powers of entry**

- (1) The Ombudsman may enter any part of premises at or from which the services of a service provider are provided and may there exercise the powers conferred by this section, but only if:
- (a) in a case where the power is exercised under delegation by an officer of the Ombudsman, the officer is in possession of a certificate of authority issued by the Ombudsman and produces the certificate if required to do so by a person apparently in occupation of the premises, and
  - (b) the Ombudsman gives reasonable notice to an occupier of the premises of intention to exercise the power, unless the giving of notice would defeat the purpose for which it is intended to exercise the power, and
  - (c) the Ombudsman exercises the power at a reasonable hour of the day, unless it is being exercised in an emergency, and
  - (d) the Ombudsman uses no more force than is reasonably necessary.
- (2) The Ombudsman is not entitled to enter a part of premises used for residential purposes, except:
- (a) with the consent of the occupier, or
  - (b) under the authority of a search warrant.

- (3) The Ombudsman may do any of the following:
  - (a) inspect the premises and make notes in relation to the inspection,
  - (b) examine, seize, retain or remove any equipment that the Ombudsman reasonably believes is, has been or may be used in connection with a complaint or other matter being investigated,
  - (c) require a person having access to records relating to the conduct of the premises or the delivery of services to produce records for inspection,
  - (d) make copies of, or take extracts from, those records,
  - (e) for the purpose of further examination, take possession of, and remove, any of those records,
  - (f) require the owner or occupier of those premises to provide the Ombudsman with such assistance and facilities as is or are reasonably necessary to enable the Ombudsman to exercise functions under this section.
- (4) The Ombudsman may ask any person on the premises to answer questions, or to produce records, relating to the delivery of services at or from the premises.
- (5) If damage is caused by the exercise of powers conferred by this section, the Minister is to pay reasonable compensation for the damage unless the exercise of the powers was obstructed by the occupier of the premises.
- (6) A Magistrate may, on the application of the Ombudsman, issue a summons requiring a person:
  - (a) to produce to a Local Court any records that the person summoned has failed to produce in accordance with a requirement made under this section, or
  - (b) to appear before a Local Court and give evidence in relation to a matter in respect of which the person has failed to answer a question in accordance with such a requirement.

- (7) Documents produced in response to a summons under this section:
  - (a) are, at the request of the Ombudsman, to be made available to enable the Ombudsman to make copies of, or take extracts from, the records, and
  - (b) are to be returned to the person summoned no later than 7 days after their production to the Local Court.
- (8) A person who, having been served with a summons under this section, fails to comply with the summons is guilty of an offence.

Maximum penalty (subsection (8)): 20 penalty units.

#### **18 Search warrants**

- (1) The Ombudsman may apply to an authorised justice for a search warrant if the Ombudsman has reasonable grounds for believing that:
  - (a) on specified premises, this Act is being contravened, or
  - (b) entry to specified premises for the purpose of carrying out a search is necessary for the purposes for which powers under this Division may be exercised.
- (2) An authorised justice to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant to the Ombudsman to enter and search the premises.
- (3) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section.
- (4) On entering any premises on the authority of a search warrant issued under this section, the Ombudsman may search the premises and may seize and carry away anything considered by the Ombudsman to be evidence of a contravention of this Act.
- (5) This section does not authorise the Ombudsman to carry away anything for which the Ombudsman does not give a receipt.
- (6) In executing a search warrant, the Ombudsman must be accompanied by a police officer.



(7) In this section:

*authorised justice* has the same meaning as in the *Search Warrants Act 1985*.

**19 Offence: obstructing the Ombudsman**

A person who:

- (a) prevents the Ombudsman from exercising a function under section 17, or
- (b) hinders or obstructs the Ombudsman in the exercise of such a function, or
- (c) without reasonable excuse, refuses or fails to comply with a requirement made or to answer a question of the Ombudsman asked in accordance with section 17, or
- (d) furnishes the Ombudsman with information knowing that it is false or misleading in a material particular,

is guilty of an offence.

Maximum penalty: 20 penalty units.

**20 Relationship to Ombudsman Act 1974**

This Division is in addition to, and does not derogate from, any functions of the Ombudsman under the *Ombudsman Act 1974*, including any function exercised as a result of the application of a provision of that Act to a function carried out under this Act.

**[22] Part 4**

Omit the Part. Insert instead:

**Part 4 Complaints**

**21 Definition**

In this Part:

*community services complaint* means a complaint about a service provider made under this Act or the *Ombudsman Act 1974*.

## **22 Complaints about service providers**

- (1) A person may make a complaint to the Ombudsman about the conduct of a service provider with respect to the provision, failure to provide, withdrawal, variation or administration of a community service in respect of a particular person or group of persons.
- (2) A complaint under subsection (1) may be made about the conduct of any person who is an employee of, or who acts for or on behalf of, a service provider.
- (3) A complaint may be made orally or in writing.
- (4) A person may not complain about conduct that is conduct of a kind referred to in Schedule 1 (other than items 6, 12 and 17) of the *Ombudsman Act 1974*.
- (5) This section is in addition to, and does not derogate from, any right of a person to complain to the Ombudsman under the *Ombudsman Act 1974* about the conduct of a service provider.

**Note.** A complaint may be made under the *Ombudsman Act 1974* in relation to conduct of a public authority, being an action or inaction or alleged action or inaction relating to a matter of administration.

## **23 Who may make a complaint?**

- (1) A community services complaint may be made by any person who demonstrates to the satisfaction of the Ombudsman that he or she has a genuine concern in the subject-matter of the complaint.
- (2) Without limiting the generality of subsection (1), a complaint may be made by any person who is responsible for, or is a next friend of, the person in respect of whom the relevant service was provided, withdrawn, varied or administered.
- (3) A person who is, in the opinion of the Ombudsman, unjustifiably interfering in a matter is not entitled to make a complaint in relation to the matter.

- (4) In determining whether a person is unjustifiably interfering in a matter, the Ombudsman is to take into account, to the extent that it is practicable to do so, the wishes and interests of any other persons who have an interest in the matter.
- (5) This section has effect despite any provision of the *Ombudsman Act 1974*.

**24 Application of Ombudsman Act 1974 to complaints under this Act**

- (1) The *Ombudsman Act 1974* (other than section 12 (1) and (4) of that Act) applies to or in respect of a complaint made under this Act about the conduct of a service provider, and any conduct of a service provider, in the same way that it applies to or in respect of a complaint made under that Act about the conduct of a public authority or to conduct of a public authority.
- (2) For that purpose:
  - (a) a complaint made under this Act is taken to be a complaint made under section 12 (1) of the *Ombudsman Act 1974*, and
  - (b) section 13 (1) of that Act applies to conduct about which a complaint could be made under this Act, and
  - (c) a service provider (including any person who is an employee of, or who acts for or on behalf of, a service provider) is taken to be a public authority, and
  - (d) the Ombudsman has the same functions in relation to the investigation of, reporting on and furnishing of information about a complaint under this Act as the Ombudsman has under the *Ombudsman Act 1974*, and
  - (e) section 26A of that Act applies in respect of a report by the Ombudsman about a complaint made under this Act.
- (3) Despite subsection (1), the Ombudsman is not required to give notice of a complaint or an investigation if the giving of notice will or is likely to:
  - (a) prejudice the investigation of the complaint, or
  - (b) place the health or safety of a person to whom a service is provided at risk, or

- (c) place the complainant at risk of intimidation or harassment.

**Note.** Under the *Ombudsman Act 1974*, the Ombudsman may make preliminary inquiries about a complaint, deal with a complaint by conciliation or investigate a complaint and may investigate conduct whether or not there has been a complaint.

**25 Referral of complaints about service providers or to service providers for resolution**

- (1) The Ombudsman may refer a community services complaint (or any part of a community services complaint) to another person or body (including a service provider) if it appears that the complaint raises issues that may require investigation by the other person or body.
- (2) Despite the referral of a complaint (or part of a complaint), the Ombudsman may, if the Ombudsman considers there are appropriate reasons to do so, continue to deal with the complaint.
- (3) The Ombudsman may, if of the opinion that it is appropriate to do so, refer a complaint (or part of a complaint) to the service provider for resolution, if possible.
- (4) A service provider to whom a complaint (or part of a complaint) is referred under this section must report to the Ombudsman on the outcome of that referral.
- (5) The Ombudsman may monitor the progress of an investigation by a service provider into a matter referred to the service provider by the Ombudsman under subsection (1).
- (6) A service provider is to provide the Ombudsman with such documentary and other information as the Ombudsman may from time to time request with respect to an investigation referred to in subsection (5).

**26 Can a complaint be withdrawn?**

- (1) A complainant may withdraw a community services complaint at any time by notice in writing to the Ombudsman.
- (2) On the withdrawal of a complaint, the Ombudsman may cease to deal with it or may continue to deal with the matter the subject of the complaint if it appears to the Ombudsman that:

- (a) the matter raises a significant issue of public safety or public interest, or
- (b) the matter raises a significant question as to the appropriate care or treatment of a person by a service provider.

**27 Additional grounds for investigating complaint**

In addition to any ground on which the Ombudsman may investigate a community services complaint under the *Ombudsman Act 1974*, the Ombudsman may investigate any such complaint if it appears to the Ombudsman that:

- (a) the complaint raises a significant issue of public safety or public interest, or
- (b) the complaint raises a significant question as to the appropriate care or treatment of a person by a service provider.

**[23] Section 40**

Omit the section. Insert instead:

**40 Applications to Administrative Decisions Tribunal for reviews of decisions**

- (1) A person may apply to the Tribunal for a review of any of the following decisions:
  - (a) a decision that is a reviewable decision under section 193 of the *Adoption Act 2000*, section 36 of the *Adoption Information Act 1990*, section 20 of the *Disability Services Act 1993* or section 245 of the *Children and Young Persons (Care and Protection) Act 1998*,
  - (b) a decision made by a person or body under the community welfare legislation where the legislation expressly provides that the decision is a reviewable decision for the purposes of this section,
  - (c) a decision that was made by a relevant decision maker and is of a class prescribed by the regulations for the purposes of this section,

- (d) a decision made by any State Minister, any Commonwealth Minister or any public authority, not being a relevant decision maker, if it is within a class of decisions that, with the consent of the Minister or public authority, is prescribed by the regulations for the purposes of this section.

(2) In this section:

*relevant decision maker* means the following:

- (a) the Minister for Community Services,
- (b) the Minister for Ageing,
- (c) the Minister for Disability Services,
- (d) the Director-General of the Department of Community Services,
- (e) the Director-General of the Department of Ageing, Disability and Home Care,
- (f) a service provider (other than an authorised carer within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*).

**[24] Section 43 Alternatives to Tribunal determining the matter**

Omit section 43 (2) (b). Insert instead:

- (b) to the Ombudsman recommending that consideration be given to investigation or resolution of the matter under this Act or the *Ombudsman Act 1974*, or

**[25] Section 44 Additional powers of Tribunal**

Omit “relevant Minister” from section 44 (2).

Insert instead “person who made the decision concerned or the relevant Minister, if the decision was made by a service provider”.

**[26] Section 44 (4)**

Omit the subsection.

**[27] Section 45 Right of appearance**

Omit section 45 (2). Insert instead:

- (2) The Ombudsman has a right to appear in proceedings before the Tribunal in order to assist the Tribunal otherwise than as a party.

**[28] Section 46 Costs**

Omit “Divisional Head or the Registrar” from section 46 (3).

Insert instead “Registrar of the Tribunal”.

**[29] New section 40 and sections 41–46**

Renumber new section 40 (as inserted by Schedule 1 [23]) and sections 41–46 as sections 28–34.

**[30] Part 6**

Omit the Part. Insert instead:

**Part 6 Reviews of deaths of children in care and certain other children and persons with disabilities in care**

**35 Application of Part**

- (1) This Part applies in respect of the deaths of the following persons (in this Part referred to as *reviewable deaths*):
  - (a) a child in care,
  - (b) a child in respect of whom a report was made under Part 2 of Chapter 3 of the *Children and Young Persons (Care and Protection) Act 1998* within the period of 3 years immediately preceding the child’s death,
  - (c) a child who is a sibling of a child in respect of whom a report was made under Part 2 of Chapter 3 of the *Children and Young Persons (Care and Protection) Act 1998* within the period of 3 years immediately preceding the child’s death,

- (d) a child whose death is or may be due to abuse or neglect or that occurs in suspicious circumstances,
- (e) a child who, at the time of the child's death, was an inmate of a children's detention centre, a correctional centre or a lock-up (or was temporarily absent from such a place),
- (f) a person (whether or not a child) who, at the time of the person's death, was living in, or was temporarily absent from, residential care provided by a service provider and authorised or funded under the *Disability Services Act 1993* or a residential centre for handicapped persons (in this Part referred to as a *person in residential care*),
- (g) a person (other than a child in care) who is in a target group within the meaning of the *Disability Services Act 1993* who receives from a service provider assistance (of a kind prescribed by the regulations) to enable the person to live independently in the community.

(2) In this Part:

*child* means a person under the age of 18 years.

**36 Systemic review of deaths of children at risk of harm, children in care or other persons in care**

(1) The Ombudsman has the following functions:

- (a) to monitor and review reviewable deaths,
- (b) to formulate recommendations as to policies and practices to be implemented by government and service providers for the prevention or reduction of deaths of children in care, children at risk of death due to abuse or neglect, children in detention centres, correctional centres or lock-ups or persons in residential care,
- (c) to maintain a register of reviewable deaths occurring in New South Wales after a date prescribed by the regulations classifying the deaths according to cause, demographic criteria or other factors prescribed by the regulations,



- (d) to undertake research or other projects for the purpose of formulating strategies to reduce or remove risk factors associated with reviewable deaths that are preventable.
- (2) For the purpose of exercising those functions the Ombudsman may:
  - (a) keep under scrutiny systems for reporting reviewable deaths, and
  - (b) undertake detailed reviews of information relating to reviewable deaths, and
  - (c) analyse data with respect to the causes of reviewable deaths to identify patterns and trends relating to those deaths, and
  - (d) consult with and obtain advice from any person or body having appropriate expertise.

**37 Notification to Ombudsman of reviewable deaths**

- (1) The Registrar of Births, Deaths and Marriages must provide the Ombudsman with a copy of death registration information relating to a child's death not later than 30 days after receiving the information.
- (2) The Director-General of the Department of Ageing, Disability and Home Care must provide the Ombudsman with copies of any notification received by the Director-General relating to a reviewable death not later than 30 days after receiving the notification.
- (3) It is the duty of the State Coroner to notify the Ombudsman of any reviewable death notified to the State Coroner not later than 30 days after receiving the notification.

**38 Provision of information and assistance to Ombudsman**

- (1) It is the duty of each of the following persons, namely:
  - (a) a service provider (whether or not a government agency),
  - (b) the chief executive officer of a service provider,
  - (c) the relevant Minister for a service provider,

- (d) the Department Head, chief executive officer or senior member of any department of the government, statutory body or local authority,
- (e) the Commissioner of Police,
- (f) the Commissioner for Children and Young People,
- (g) the State Coroner,
- (h) the holder of any office prescribed by the regulations,

to provide the Ombudsman with full and unrestricted access to records that are under the person's control, or whose production the person may, in an official capacity, reasonably require, being records to which the Ombudsman reasonably requires access for the purpose of exercising the Ombudsman's functions under this Part.

- (2) Access to which the Ombudsman is entitled under this section includes the right to inspect and, on request, to be provided with copies of, any record referred to in subsection (1) and to inspect any non-documentary evidence associated with any such record.
- (3) A provision of any Act or law that restricts or denies access to records does not prevent a person to whom this section applies from complying, or affect the person's duty to comply, with this section.

### **39 Information to be provided by Ombudsman**

The Ombudsman may provide to the Children's Guardian, the Commissioner for Children and Young People, the Child Death Review Team, an advisory committee established under this Part or a public authority or service provider that has a relevant interest, information or copies of documents, obtained by the Ombudsman under this Part, if the Ombudsman thinks it appropriate to do so.

### **40 Protections relating to information provided under this Part**

If information is provided under this Part:

- (a) the furnishing of the information is not, in any proceedings before a court, tribunal or committee, to be held to constitute a breach of professional etiquette or

ethics or a departure from accepted standards of professional conduct, and

- (b) no liability for defamation is incurred because of the provision of the information, and
- (c) the provision of the information does not constitute a ground for civil proceedings, for malicious prosecution or for conspiracy.

**41 Advisory committees**

- (1) The Ombudsman may establish advisory committees for the purpose of assisting the Ombudsman in the exercise of functions under this Part.
- (2) The composition and terms of appointment of any such committee are to be as determined by the Ombudsman.

**42 Application of provisions of the Ombudsman Act 1974 to this Part**

- (1) For the purpose of exercising functions under this Part, sections 17–24 (except section 21B) and 36 of the *Ombudsman Act 1974* apply to or in respect of the exercise of those functions in the same way that they apply to or in respect of an investigation of a complaint by the Ombudsman under that Act, subject to any necessary modifications and to any modifications prescribed by the regulations.
- (2) For that purpose, those provisions apply to or in respect of a service provider (whether or not a public authority) or an employee, or a person acting on behalf of, a service provider in the same way as they apply to a public authority.
- (3) For the purpose of the application of sections 21 (3) and 21A (2) of the *Ombudsman Act 1974* under this section, the Ombudsman is not required to set aside a requirement, and is not prevented from exercising a power, because of a claim by a public authority based on legal professional privilege.

**43 Reports**

- (1) The Ombudsman must, as soon as practicable after 30 June in each year, prepare an annual report on the Ombudsman's work and activities under this Part for the preceding 12 months and

furnish the report to the Presiding Officer of each House of Parliament.

- (2) Without limiting any other matter that may be included, the report is to include the following:
  - (a) a report as to data collected and information relating to reviewable deaths that occurred in the State during the period covered by the report,
  - (b) any recommendations made for the purposes of section 36 (1) (b) in the period covered by the report,
  - (c) information with respect to the implementation or otherwise of previous recommendations (as appropriate).
- (3) The Ombudsman may, from time to time, report to a service provider or other appropriate person or body on a matter relating to a reviewable death or arising out of the exercise of the Ombudsman's functions under this Part.
- (4) Section 30 (2) and (3) of the *Ombudsman Act 1974* apply to an annual report under this section in the same way as they apply to an annual report under that section.

**[31] Part 8 The Community Services Review Council**

Omit the Part.

**[32] Section 114 Reasons to be given for certain decisions**

Omit section 114 (2).

**[33] Section 114 (4), definition of "relevant decision maker"**

Omit "Aged Services" from paragraph (b).  
Insert instead "Ageing".

**[34] Section 114 (4), definition of "relevant decision maker"**

Omit "Ageing and Disability Department" from paragraph (e).  
Insert instead "Department of Ageing, Disability and Home Care".

**[35] Section 114 (4), definition of “relevant decision maker”**

Omit paragraph (f).

**[36] Section 114 (4), definition of “relevant decision maker”, paragraph (g)**

Insert “(other than an authorised carer within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*)” after “service provider”.

**[37] Section 115 Service of documents on the Commission**

Omit the section.

**[38] Section 116 Notices etc to be written in other languages**

Omit “Commission” wherever occurring. Insert instead “Ombudsman”.

**[39] Section 117 Protection of complainant against retribution**

Insert “or any other person” after “other person” in section 117 (1).

**[40] Section 117 (1)**

Omit “Commission” wherever occurring. Insert instead “Ombudsman”.

**[41] Section 118 Offence: improper disclosure of information**

Omit the section.

**[42] Section 119 Exclusion of personal liability**

Omit paragraphs (b) and (c). Insert instead:

- (b) any person acting under the direction of the Ombudsman or any officer of the Ombudsman,

**[43] Section 119**

Omit “member of the staff of the Commission, the Commissioner”.  
Insert instead “Ombudsman”.

**[44] Section 121 Jurisdiction of Commission and Ombudsman**

Omit the section.

**[45] Section 126 Review of Act**

Omit the section.

**[46] Sections 113, 114, 116, 117, 119, 120, 122, 123, 124**

Renumber sections 113, 114, 116, 117, 119, 120, and 122–124 as sections 44–52.

**[47] Part 9**

Renumber as Part 7.

**[48] New section 53**

Insert after new section 52:

**53 Review of Act**

- (1) The Joint Committee (within the meaning of the *Ombudsman Act 1974*) is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the *Community Services Legislation Amendment Act 2002*.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

**[49] Schedule 1 Savings and transitional provisions**

Omit “Section 123” from the section reference. Insert instead “Section 51”.

**[50] Schedule 1, clause 1 (1)**

Omit “this Act.”. Insert instead:

the following Acts:

*Community Services Legislation Amendment Act 2002*

**[51] Schedule 1**

Insert after clause 1:

**2 Definitions**

In this Schedule:

*former Commission* means the Community Services Commission constituted under section 77, as in force before its repeal by the 2002 amending Act.

*former Commissioner* means the person who held office as the Commissioner for Community Services immediately before the repeal of section 78 by the 2002 amending Act.

*2002 amending Act* means the *Community Services Legislation Amendment Act 2002*.

**3 Community Visitors**

- (1) Nothing in the 2002 amending Act affects the appointment of a person as a Community Visitor if the person was, immediately before the amendment of section 7 (1) by the 2002 amending Act, a Community Visitor.
- (2) Any such person is taken to have been appointed under section 7 (1) as so amended and this Act, including section 7 (5) and (6) as inserted by the 2002 amending Act, applies accordingly.

**4 Existing reviews**

- (1) This clause applies to a review under Part 3 undertaken but not completed by the former Commission immediately before the substitution of Part 3 by the 2002 amending Act.

- (2) The Ombudsman may complete the review and Part 3, as substituted by the 2002 amending Act, applies to any such review.

#### **5 Existing complaints**

- (1) This clause applies to a complaint made under Part 4 but not finally dealt with by the former Commission immediately before the substitution of Part 4 by the 2002 amending Act.
- (2) The Ombudsman may deal with the complaint as if it had been made under Part 4 as so substituted and that Part applies to any such complaint.

#### **6 Reviews by Administrative Decisions Tribunal**

- (1) Nothing in the 2002 amending Act affects an application for review made to the Tribunal under section 40 before the substitution of that section by that amending Act, except as provided by this clause.
- (2) Proceedings on any review under section 40 (1) (b) or (c) (as in force immediately before the substitution of section 40 by the 2002 amending Act), and not finally dealt with before the substitution of that section, must be discontinued by the Tribunal.

#### **7 Community Services Commission**

- (1) On the repeal of Part 6 by the 2002 amending Act, the Community Services Commission is abolished.
- (2) On the abolition of the Commission, any assets, rights and liabilities of the Commission become the assets, rights and liabilities of the Crown.
- (3) In this clause:

*assets* means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

*liabilities* means all liabilities, debts and obligations (whether present or future and whether vested or contingent).



*rights* means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent).

**8 Community Services Commissioner**

- (1) The person who, immediately before the repeal of Part 6 by the 2002 amending Act, held office as Commissioner for Community Services:
  - (a) ceases to hold that office, and
  - (b) is taken to be appointed as a Deputy Ombudsman under the *Ombudsman Act 1974* for a period of 3 years commencing on the commencement of this clause.
- (2) A person who ceases under this clause to hold office is not entitled to any remuneration or compensation because of the loss of that office.

**9 Staff of the Community Services Commission**

- (1) On the repeal of Part 6 by the 2002 amending Act, the group of staff attached to the former Commission is abolished as a Department of the Public Service.
- (2) That group of staff is added on that repeal to the Ombudsman's Office.

**10 Community Services Review Council**

On the repeal of Part 8 by the 2002 amending Act:

- (a) the Community Services Review Council is abolished, and
- (b) a person holding office as a member of that Council ceases to hold that office and is not entitled to compensation because of ceasing to hold that office.

**11 Construction of certain references**

A reference in another Act or in an instrument made under an Act or in any document:

- (a) to the Community Services Commission or the Commissioner for Community Services is to be read as a reference to the Ombudsman, or

- (b) to a provision of this Act repealed or renumbered by the 2002 amending Act extends to the corresponding provision of this Act or to the renumbered provision, or
- (c) to any act, matter or thing referred to in any such repealed or renumbered provision extends to the corresponding act, matter or thing referred to in the corresponding provision of this Act or the renumbered provision.

## **12 Transitional reference to community welfare legislation**

A reference in this Act to the community welfare legislation includes a reference to the following Acts and the instruments made under those Acts:

- (a) the *Adoption of Children Act 1965* and the *Adoption Information Act 1990* (but only until their repeal by the *Adoption Act 2000* and, after their repeal, only in connection with acts or omissions done or omitted before their repeal),
- (b) the *Children (Care and Protection) Act 1987* (but only until its repeal by the *Children and Young Persons (Care and Protection) Act 1998* and, after its repeal, only in connection with acts or omissions done or omitted before its repeal).

## **13 Transitional reference**

A reference in Part 3 or Part 6, as substituted by the 2002 amending Act, to a child in care includes a reference to a child who is subject to an arrangement for the care of a child referred to in section 19 (4) (a), (c), (d), (e) or (f) of the *Children (Care and Protection) Act 1987*.

## **Schedule 2    Amendment of Coroners Act 1980**

(Section 4)

**[1]    Section 4A State Coroners and Deputy State Coroners**

Omit “2” from section 4A (1). Insert instead “3”.

**[2]    Section 12A Obligation to report death**

Omit “or 13A” from section 12A (1) (a). Insert instead “, 13A or 13AB”.

**[3]    Section 12A (3A) and (3B)**

Insert after section 12A (3):

(3A) The State Coroner is to provide to the Ombudsman all relevant material held by the State Coroner relating to a death or suspected death referred to in section 13AB (1), or the death of a person under the age of 18 years in the circumstances set out in section 13A (1) (c), as soon as practicable after a decision not to hold an inquest into the death or suspected death concerned is made or, if an inquest is held, as soon as practicable after the conclusion or termination of the inquest.

(3B) The requirements of subsection (3A) are in addition to any requirements of Part 6 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

**[4]    Section 12B Medical practitioner must not certify cause of death if death is reportable to a coroner**

Omit section 12B (1) (g). Insert instead:

(g) the person died while in or temporarily absent from a hospital within the meaning of the *Mental Health Act 1990* and while the person was a resident at the hospital for the purpose of receiving care, treatment or assistance,

**[5] Section 12B (1) (i)**

Insert after section 12B (1) (h):

- (i) the person died in circumstances that are examinable as referred to in section 13AB (Child or disability deaths examinable only by State Coroner or Deputy State Coroner).

**[6] Section 12B (2) (b)**

Omit “or (h)”. Insert instead “, (h) or (i)”.

**[7] Section 13 Inquests into deaths or suspected deaths**

Omit section 13 (1) (h). Insert instead:

- (h) the person died while in or temporarily absent from a hospital within the meaning of the *Mental Health Act 1990* and while the person was a resident at the hospital for the purpose of receiving care, treatment or assistance.

**[8] Section 13AB**

Insert after section 13A:

**13AB Child or disability deaths examinable only by State Coroner or Deputy State Coroner**

- (1) A coroner who is the State Coroner or a Deputy State Coroner has jurisdiction to hold an inquest concerning the death or suspected death of a person if it appears to the coroner that the person was, or that there is reasonable cause to suspect that the person was:
  - (a) a child in care, or
  - (b) a child in respect of whom a report was made under Part 2 of Chapter 3 of the *Children and Young Persons (Care and Protection) Act 1998* within the period of 3 years immediately preceding the child’s death, or

- (c) a child who is a sibling of a child in respect of whom a report was made under Part 2 of Chapter 3 of the *Children and Young Persons (Care and Protection) Act 1998* within the period of 3 years immediately preceding the child's death, or
  - (d) a child whose death is or may be due to abuse or neglect or that occurs in suspicious circumstances, or
  - (e) a person (whether or not a child) who, at the time of the person's death, was living in, or was temporarily absent from, residential care provided by a service provider and authorised or funded under the *Disability Services Act 1993* or a residential centre for handicapped persons, or
  - (f) a person (other than a child in care) who is in a target group within the meaning of the *Disability Services Act 1993* who receives from a service provider assistance (of a kind prescribed by the regulations) to enable the person to live independently in the community.
- (2) If jurisdiction to hold an inquest arises under both this section and section 13, an inquest is not to be held except by the State Coroner or a Deputy State Coroner.
- (3) If jurisdiction to hold an inquest into the death of a child arises under this section or section 13A, the coroner must use his or her best endeavours to notify the following persons of any right that they have to legal representation at the inquest:
- (a) the persons having parental responsibility for the child,
  - (b) the child's parents (if they do not have that responsibility),
  - (c) such family members as would be reasonably expected to have an immediate interest in the outcome of the inquest.
- (4) In this section:
- child** means a person under the age of 18 years.
- child in care** means a child or young person under the age of 18 years:

- 
- (a) who is under the parental responsibility of the Minister administering the *Children and Young Persons (Care and Protection) Act 1998*, or
  - (b) for whom the Director-General of the Department of Community Services or a designated agency has the care responsibility under section 49 of the *Children and Young Persons (Care and Protection) Act 1998*, or
  - (c) who is a protected person within the meaning of section 135 of the *Children and Young Persons (Care and Protection) Act 1998*, or
  - (d) who is the subject of an out-of-home care arrangement under the *Children and Young Persons (Care and Protection) Act 1998*, or
  - (e) who is the subject of a sole parental responsibility order under section 149 of the *Children and Young Persons (Care and Protection) Act 1998*, or
  - (f) who is otherwise in the care of a service provider.

**parental responsibility**, in relation to a child or young person, means all the duties, powers, responsibilities and authority that, by law, parents have in relation to their children.

**residential centre for handicapped persons** means:

- (a) premises declared to be a residential centre for handicapped persons under section 3A of the *Youth and Community Services Act 1973*, or
- (b) premises licensed under Part 3 of the *Youth and Community Services Act 1973*,

but does not include premises exempted under that Act from the requirement to be licensed.

**service** includes a statutory or other function, and **rendering** or **providing** a service includes exercising such a function.

**service provider** has the same meaning as it has in the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

**[9] Section 14B General cases in which inquest required to be held**

Insert “or 13AB” after “13A” in section 14B (1) (b).

**[10] Schedule 3 Savings and transitional provisions**

Insert before clause 1:

**1A Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Community Services Legislation Amendment Act 2002* (but only to the extent that it amends this Act)

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**[11] Schedule 3, clauses 11 and 12**

Insert after clause 10:

**11 Child or disability deaths**

The amendments to this Act by the *Community Services Legislation Amendment Act 2002* do not apply to or in respect of a death that occurred before the commencement of the amendments concerned.

**12 Transitional reference**

A reference in section 13AB to a child in care includes a reference to a child who is subject to an arrangement for the care of a child referred to in section 19 (4) (a), (c), (d), (e) or (f) of the *Children (Care and Protection) Act 1987*.

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## Schedule 3 Amendment of Ombudsman Act 1974

(Section 5)

### [1] Section 6 Office of Ombudsman

Insert after section 6 (8):

- (9) Despite subsection (4) (b), the Ombudsman does not vacate the office of Ombudsman if the Ombudsman engages in paid employment outside the duties of the office with the approval of the Minister.

### [2] Section 8 Deputy Ombudsman and Assistant Ombudsman— appointment etc

Omit section 8 (1). Insert instead:

- (1) The Ombudsman may appoint one or more Deputy Ombudsman and Assistant Ombudsman.
- (1A) The Ombudsman must appoint a Deputy Ombudsman as the Community and Disability Services Commissioner for the purposes of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

### [3] Section 8 (2)–(5)

Omit “the Deputy Ombudsman” wherever occurring.

Insert instead “a Deputy Ombudsman”.

### [4] Section 8 (6)

Insert after section 8 (5):

- (6) Despite subsection (2), section 6 (4) (b) does not apply to or in respect of a Deputy Ombudsman or an Assistant Ombudsman if the Deputy Ombudsman or Assistant Ombudsman engages in paid employment outside the duties of the office of Deputy Ombudsman or Assistant Ombudsman with the approval of the Ombudsman.



**[5] Section 8A Deputy Ombudsman and Assistant Ombudsman—functions**

Omit “The Deputy” from section 8A (1). Insert instead “A Deputy”.

**[6] Section 8B**

Insert after section 8A:

**8B Acting Deputy Ombudsman and Assistant Ombudsman**

- (1) The Ombudsman may, from time to time, appoint a person to be an acting Deputy Ombudsman or Assistant Ombudsman, and the Ombudsman may revoke any such appointment.
- (2) In the absence of a Deputy Ombudsman or an Assistant Ombudsman, a person so appointed is to act in the place of the Deputy Ombudsman or Assistant Ombudsman.
- (3) While acting in the place of a Deputy Ombudsman or an Assistant Ombudsman, a person has all the functions of the Deputy Ombudsman or Assistant Ombudsman and is taken to be a Deputy Ombudsman or an Assistant Ombudsman.

**[7] Section 11 Effect of certain acts etc**

Omit “the Deputy Ombudsman” from section 11 (a).

Insert instead “a Deputy Ombudsman”.

**[8] Section 23 Expert assistance**

Omit “In an investigation or conciliation under this Act”.

Insert instead “For the purposes of the exercise of any of the Ombudsman’s functions”.

**[9] Section 35B Application to Supreme Court**

Insert “(whether under this or any other Act)” after “investigation” where secondly occurring in section 35B (1).

**[10] Section 35B (3A)**

Insert after section 35B (3):

- (3A) For the purposes of subsection (1), the following persons are interested parties in relation to the investigation of a community

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services complaint within the meaning of Part 4 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*:

- (a) a service provider or a provider of a visitable service that is the subject of the investigation or proposed investigation,
- (b) the chief executive or principal officer of that service provider or service,
- (c) if the investigation arises from the making of a complaint under that Act, the complainant.

**[11] Section 35C Referral of legal question to Administrative Decisions Tribunal for advisory opinion**

Insert at the end of the section:

- (4) In this section:

*agency* includes a service provider or a provider of a visitable service within the meaning of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

**[12] Section 37 Offences**

Omit “this Act” from section 37 (1) (b).  
Insert instead “this or any other Act”.

**[13] Section 37 (2) (c)**

Omit “the Deputy Ombudsman” wherever occurring.  
Insert instead “a Deputy Ombudsman”.

**[14] Section 37 (2) (c2)**

Insert after section 37 (2) (c1):

- (c2) where he or she has not been appointed under section 8B as an acting Deputy Ombudsman or an Assistant Ombudsman—represent that he or she has been so appointed,

**[15] Section 40**

Insert after section 39:

**40 Savings and transitional provisions**

Schedule 2 has effect.

**[16] Schedule 1 Excluded conduct of public authorities**

Omit item 28.

**[17] Schedule 2**

Insert after Schedule 1:

**Schedule 2 Savings and transitional provisions**

(Section 40)

**1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Community Services Legislation Amendment Act 2002* (but only to the extent that it amends this Act)

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **2 Existing Deputy Ombudsman and Assistant Ombudsman**

Nothing in the *Community Services Legislation Amendment Act 2002* affects the appointment of a person who held office as a Deputy Ombudsman or an Assistant Ombudsman immediately before the substitution of section 8 (1) by that Act.

## **Schedule 4 Amendment of other Acts**

(Section 6)

### **4.1 Adoption Act 2000 No 75**

#### **Section 193 Decisions that are reviewable by Administrative Decisions Tribunal (cf AC Act ss 14, 67A, AI Act s 36)**

Omit “section 40” wherever occurring. Insert instead “section 28”.

### **4.2 Children and Young Persons (Care and Protection) Act 1998 No 157**

#### **[1] Section 180 Functions—generally**

Insert at the end of the section:

- (2) Despite any provision of this or any other Act, the Children’s Guardian is not entitled to carry out any of the following functions:
  - (a) an investigation into the death of a child that is subject to investigation by the coroner under section 13A or 13AB of the *Coroners Act 1980* or review or investigation by the Ombudsman,
  - (b) the investigation or resolution of a dispute that is the subject of a community services complaint within the meaning of Part 4 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

#### **[2] Section 192 Functions of Child Death Review Team**

Omit “that are due to abuse or neglect or that occur in suspicious circumstances or” from section 192 (1) (a) (i).

**[3] Section 192 (3)**

Insert after section 192 (2):

- (3) The Team may not undertake a detailed review of a reviewable death (within the meaning of Part 6 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*).

**[4] Section 245 Decisions that are reviewable by Administrative Decisions Tribunal**

Omit “section 40” from section 245 (1). Insert instead “section 28”.

**4.3 Children (Care and Protection) Act 1987 No 54**

**[1] Section 103 Functions of Child Death Review Team**

Omit “that are due to abuse or neglect or that occur in suspicious circumstances or” from section 103 (1) (a) (i).

**[2] Section 103 (3)**

Insert after section 103 (2):

- (3) The Team may not undertake a detailed review of a reviewable death (within the meaning of Part 6 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*).

**[3] Section 112 Decisions that are reviewable by Administrative Decisions Tribunal**

Omit “section 40”. Insert instead “section 28”.

**4.4 Defamation Act 1974 No 18**

**[1] Section 17A Matters relating to the Ombudsman etc**

Omit “the Deputy Ombudsman” from section 17A (2).  
Insert instead “a Deputy Ombudsman”.

**[2] Section 17KA Matters arising under the Community Services (Complaints, Reviews and Monitoring) Act 1993**

Omit the section.

**4.5 Disability Services Act 1993 No 3**

**Section 20 Decisions that are reviewable by Administrative Decisions Tribunal**

Omit “section 40”. Insert instead “section 28”.

**4.6 Jury Act 1977 No 18**

**Schedule 2 Persons ineligible to serve as jurors**

Insert “a” before “Deputy Ombudsman” in item 9.

**4.7 Privacy and Personal Information Protection Act 1998 No 133**

**[1] Section 3 Definitions**

Omit paragraph (d) of the definition of *investigative agency*.

**[2] Section 28 Other exemptions**

Omit “, Guardianship Board and Community Services Commission” from section 28 (1).

Insert instead “and Guardianship Board”.

#### **4.8 Public Finance and Audit Act 1983 No 152**

##### **Schedule 3 Departments**

Omit the matter relating to the Community Services Commission.

#### **4.9 Public Sector Management Act 1988 No 33**

##### **Schedule 1 Departments**

Omit the matter relating to the Community Services Commission.

#### **4.10 Search Warrants Act 1985 No 37**

##### **Section 10 Definitions**

Omit “section 85 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*”.

Insert instead “section 18 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*”.

#### **4.11 Superannuation Act 1916 No 28**

##### **Schedule 26**

Omit “Community Services Commission” from Part 1 of the Schedule.

[Second reading speech made in—  
Legislative Council on 18 June 2002  
Legislative Assembly on 27 June 2002]

BY AUTHORITY