

# **OMBUDSMAN (AMENDMENT) ACT 1990 No. 79**

NEW SOUTH WALES



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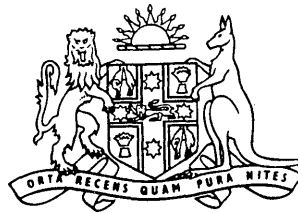
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# OMBUDSMAN (AMENDMENT) ACT 1990 No. 79

NEW SOUTH WALES



## Act No. 79,1990

An Act to amend the Ombudsman Act 1974 so as to provide for the establishment of a Parliamentary Joint Committee on the Office of the Ombudsman; and to amend the Freedom of Information Act 1989 so as to exclude the Ombudsman from the requirements of that Act in connection with investigations conducted by the Ombudsman.  
[Assented to 4 December, 1990]

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

**Short title**

1. This Act may be cited as the Ombudsman (Amendment) Act 1990.

**Commencement**

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

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

3. The Ombudsman Act 1974 is amended as set out in Schedule 1.

**Amendment of Freedom of Information Act 1989 No. 5**

4. The Freedom of Information Act 1989 is amended as set out in Schedule 2.

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**SCHEDULE 1 - AMENDMENT OF OMBUDSMAN ACT 1974**

(Sec. 3)

(1) Section 5 (**Definitions**):

Insert in section 5 (1), in alphabetical order:

"**Joint Committee**" means the joint committee, called the Committee on the Office of the Ombudsman, constituted under Part 4A;

(2) Section 9 (**Special officers**):

Omit ", with the concurrence of the Minister,".

(3) Section 10A (**Delegation to other Ombudsmen**):

From section 10A (1), omit " , with the approval of the Minister,".

(4) Section 23 (**Expert assistance**):

Omit ", with the consent of the Minister,".

(5) Part 4A:

After Part 4, insert

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**PART 4A - PARLIAMENTARY JOINT COMMITTEE**

**Constitution of Joint Committee**

31A. As soon as practicable after the commencement of this Part and the commencement of the first session of each Parliament, a joint committee of members of Parliament, to be known as the Committee on the Office of the Ombudsman, is to be appointed.

**Functions**

31B. (1) The functions of the Joint Committee are as follows:

- (a) to monitor and to review the exercise by the Ombudsman of the Ombudsman's functions under this or any other Act;
- (b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Ombudsman or connected with the exercise of the Ombudsman's functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed;
- (c) to examine each annual and other report made by the Ombudsman, and presented to Parliament, under this or any other Act and to report to both Houses of Parliament on any matter appearing in, or arising out of, any such report;
- (d) to report to both Houses of Parliament any change that the Joint Committee considers desirable to the functions, structures and procedures of the Office of the Ombudsman;
- (e) to inquire into any question in connection with the Joint Committee's functions which is referred to it by both Houses of Parliament, and to report to both Houses on that question.

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- (2) Nothing in this Part authorises the Joint Committee:
- (a) to investigate a matter relating to particular conduct; or
  - (b) to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint; or
  - (c) to exercise any function referred to in subsection (1) in relation to any report under section 27; or
  - (d) to reconsider the findings, recommendations, determinations or other decisions of the Ombudsman, or of any other person, in relation to a particular investigation or complaint or in relation to any particular conduct the subject of a report under section 27; or
  - (e) to exercise any function referred to in subsection (1) in relation to the Ombudsman's functions under the Telecommunications (Interception) (New South Wales) Act 1987.
- (3) The functions of the Joint Committee may be exercised in respect of matters occurring before or after the commencement of this section.

**Membership**

31C. (1) The Joint Committee is to consist of 9 members, of whom:

- (a) 3 are to be members of, and appointed by, the Legislative Council; and
  - (b) 6 are to be members of, and appointed by, the Legislative Assembly.
- (2) The appointment of members of the Joint Committee is, as far as practicable, to be in accordance with the practice of Parliament with reference to the appointment of members to serve on joint committees of both Houses of Parliament.

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(3) A person is not eligible for appointment as a member of the Joint Committee if the person is a Minister of the Crown or a Parliamentary Secretary.

**Vacancies**

31D. (1) A member of the Joint Committee ceases to hold office:

- (a) ,when the Legislative Assembly is dissolved or expires by the effluxion of time; or
- (b) if the member becomes a Minister of the Crown or a Parliamentary Secretary; or
- (c) if the member ceases to be a member of the Legislative Council or Legislative Assembly; or
- (d) if, being a member of the Legislative Council, the member resigns the office by instrument in writing addressed to the President of the Legislative Council; or
- (e) if, being a member of the Legislative Assembly, the member resigns the office by instrument in writing addressed to the Speaker of the Legislative Assembly; or
- (f) if the member is discharged from office by the House of Parliament to which the member belongs.

(2) Either House of Parliament may appoint one of its members to fill a vacancy among the members of the Joint Committee appointed by that House.

**Chairman and Vice-Chairman**

31E. (1) There is to be a Chairman and a Vice-chairman of the Joint Committee, who are to be elected by and from the members of the Joint Committee.

(2) A member of the Joint Committee ceases to hold office as Chairman or Vice-chairman of the Joint Committee if:

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- (a) the member ceases to be a member of the Committee; or
- (b) the member resigns the office by instrument in writing presented to a meeting of the Committee; Of
- (c) the member is discharged from office by the Committee.

(3) At any time when the Chairman is absent from New South Wales or is, for any reason, unable to perform the duties of Chairman or there is a vacancy in that office, the Vice-chairman may exercise the functions of the Chairman under this Act or under the Parliamentary Evidence Act 1901.

**Procedure**

31F. (1) The procedure for the calling of meetings of the Joint Committee and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Committee.

(2) The Clerk of the Legislative Assembly is to call the first meeting of the Joint Committee in each Parliament in such manner as the Clerk thinks fit.

(3) At a meeting of the Joint Committee, 5 members constitute a quorum, but the Committee must meet as a joint committee at all times.

(4) The Chairman or, in the absence of the Chairman, the Vice-chairman (or, in the absence of both the Chairman and the Vice-chairman, a member of the Joint Committee elected to chair the meeting by the members present) is to preside at a meeting of the Joint Committee.

(5) The Vice-chairman or other member presiding at a meeting of the Joint Committee has, in relation to the meeting, all the functions of the Chairman.

(6) The Chairman, Vice-chairman or other member presiding at a meeting of the Joint Committee has a

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deliberative vote and, in the event of an equality of votes, also has a casting vote.

(7) A question arising at a meeting of the Joint Committee is to be determined by a majority of the votes of the members present and voting.

(8) The Joint Committee may sit and transact business despite any prorogation of the Houses of Parliament or any adjournment of either House of Parliament.

(9) The Joint Committee may sit and transact business on a sitting day of a House of Parliament during the time of sitting.

**Evidence**

31G. (1) The Joint Committee has power to send for persons, papers and records.

(2) Subject to section 31H, the Joint Committee must take all evidence in public.

(3) If the Joint Committee as constituted at any time has taken evidence in relation to a matter but the Committee as so constituted has ceased to exist before reporting on the matter, the Committee as constituted at any subsequent time, whether during the same or another Parliament, may consider that evidence as if it had taken the evidence.

(4) The production of documents to the Joint Committee is to be in accordance with the practice of the Legislative Assembly with respect to the production of documents to select committees of the Legislative Assembly.

**Confidentiality**

31H. (1) If any evidence proposed to be given before, or the whole or a part of a document produced or proposed to be produced to, the Joint Committee relates to a secret or confidential matter, the Committee may, and at the



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request of the witness giving the evidence or the person producing the document must:

- (a) take the evidence in private; or
- (b) direct that the document, or the part of the document, be treated as confidential.

(2) If a direction under subsection (1) applies to a document or part of a document produced to the Joint Committee:

- (a) the contents of the document or part are, for the purposes of this section, to be regarded as evidence given by the person producing the document or part and taken by the Committee in private; and
- (b) the person producing the document or part is, for the purposes of this section, to be regarded as a witness.

(3) If, at the request of a witness, evidence is taken by the Joint Committee in private:

- (a) the Committee must not, without the consent in writing of the witness; and
- (b) a person (including a member of the Committee) must not, without the consent in writing of the witness and the authority of the Committee under subsection (S),

disclose or publish the whole or a part of that evidence.

Penalty: \$2,000 or imprisonment for 3 months, or both.

(4) If evidence is taken by the Joint Committee in private otherwise than at the request of a witness, a person (including a member of the Committee) must not, without the authority of the Committee under subsection (5), disclose or publish the whole or a part of that evidence.

Penalty \$2,000 or imprisonment for 3 months, or both.

(5) The Joint Committee may, in its discretion, disclose or publish or, by writing under the hand of the Chairman, authorise the disclosure or publication of evidence taken in private by the Committee, but this subsection does not

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operate so as to affect the necessity for the consent of a witness under subsection (3).

(6) Nothing in this section prohibits:

- (a) the disclosure or publication of evidence that has already been lawfully published; or
- (b) the disclosure or publication by a person of a matter of which the person has become aware otherwise than by reason, directly or indirectly, of the giving of evidence before the Joint Committee.

(7) This section has effect despite section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975.

(8) If evidence taken by the Joint Committee in private is disclosed or published in accordance with this section:

- (a) sections 5 and 6 of the Parliamentary Papers (Supplementary Provisions) Act 1975 apply to and in relation to the disclosure or publication as if it were a publication of that evidence under the authority of section 4 of that Act; and
- (b) Division 5 of Part 3 of, and Schedule 2 to, the Defamation Act 1974 apply to and in relation to that evidence as if it were taken by the Committee in public.

**Application of certain Acts etc.**

31I. For the purposes of the Parliamentary Evidence Act 1901 and the Parliamentary Papers (Supplementary Provisions) Act 1975 and for any other purposes:

- (a) the Joint Committee is to be regarded as a joint committee of the Legislative Council and Legislative Assembly; and
- (b) the proposal for the appointment of the Joint Committee is to be regarded as having originated in the Legislative Assembly.

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**Validity of certain acts or proceedings**

31J. Any act or proceeding of the Joint Committee is, even though at the time when the act or proceeding was done, taken or commenced there was:

- (a) a vacancy in the office of a member of the Committee; or
  - (b) any defect in the appointment, or any disqualification, of a member of the Committee,
- as valid as if the vacancy, defect or disqualification did not exist and the Committee were fully and properly constituted.

**(6) Section 34 (Disclosure by Ombudsman or officer):**

- (a) After section 34 (1) (b), insert:
    - (b1) for the purpose of any proceedings under Division 2 of Part 5 of the Freedom of Information Act 1989 arising as a consequence of a determination made by the Ombudsman under section 24 or 43 of that Act;
  - (b) After section 34 (3), insert:
    - (4) If:
      - (a) the Ombudsman, or an officer of the Ombudsman, is to give evidence before, or to produce the whole or any part of a document to, the Joint Committee; and
      - (b) the evidence proposed to be given, or the whole or any part of the document proposed to be produced, would disclose information obtained by the Ombudsman or officer, in the course of his or her office, from a public authority or other person; and
      - (c) the public authority or other person has informed the Ombudsman or officer that the information is confidential,
- the Ombudsman or officer must make a request under section 31H (1) for the evidence to be taken in private or

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For a direction to be given that the document, or part of the document, be treated as confidential.

(5) In the case of information obtained from a public authority or other person as referred to in subsection (4), a reference in section 31H to the consent in writing of a witness, in relation to the disclosure or publication of evidence, is to be construed as a reference to the consent in writing of the public authority or other person.

(7) Section 35 (**Ombudsman or officer as witness**):

(a) From section 35 (2) (b), omit "or".

(b) At the end of section 35 (2) (c), insert:

; or

(d) under Division 2 of Part 5 of the Freedom of Information Act 1989 arising as a consequence of a determination made by the Ombudsman under section 24 or 43 of that Act.

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(Sec. 4)

(1) Section 54 (**Time within which appeals to be made**):

Omit section 54 (b), insert instead

(b) if a complaint is made to the Ombudsman in relation to the determination within that period of 60 days and

(i) the Ombudsman refuses to investigate the conduct complained of or discontinues an investigation of that conduct - within 60 days after the complainant is informed of that fact; or

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- (ii) the Ombudsman completes an investigation of the conduct complained of - within 60 days after the results of the investigation are reported to the complainant.

(2) Schedule 2 (**Exempt bodies and offices**):

At the end of the Schedule, insert:

The office of Ombudsman - the complaint handling, investigative and reporting functions of that office.

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*[Minister's second reading speech made in -  
Legislative Assembly on 13 November 1990  
Legislative Council on 22 November 1990]*