

OMBUDSMAN (AMENDMENT) ACT 1993 No. 37

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Ombudsman Act 1974 No. 68
4. Amendment of other Acts
5. Transitional provisions

SCHEDULE 1—AMENDMENT OF OMBUDSMAN ACT 1974
SCHEDULE 2—AMENDMENT OF OTHER ACTS

OMBUDSMAN (AMENDMENT) ACT 1993 No. 37

NEW SOUTH WALES



Act No. 37, 1993

An Act to amend the Ombudsman Act 1974 with respect to the Ombudsman's reports to Parliament and access to, and the disclosure of, information; to make consequential amendments to certain other Acts; to amend the Public Finance and Audit Act 1983 with respect to access to, and disclosure of, information and the tabling of reports in Parliament; and for other purposes. [Assented to 8 June 1993]

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

1. This Act may be cited as the Ombudsman (Amendment) Act 1993.

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 other Acts

4. Each Act set out in Schedule 2 is amended as set out in that Schedule.

Transitional provisions

5. (1) The amendments made by this Act in relation to the making, tabling and publication of reports by the Ombudsman under the Ombudsman Act 1974, the Police Regulation (Allegations of Misconduct) Act 1978 and the Police Service Act 1990, and by the Auditor-General under the Public Finance and Audit Act 1983, apply to reports made after the commencement of the amendments concerned.

(2) Sections 21, 21A and 21B of the Ombudsman Act 1974, as inserted by this Act, do not apply to requirements made, or the exercise of any powers, by the Ombudsman before the commencement of those sections.

(3) Section 17A of the Defamation Act 1974, as in force before the commencement of the amendments made to that section by this Act, continues to apply to reports made before that commencement.

SCHEDULE 1—AMENDMENT OF OMBUDSMAN ACT 1974

(Sec. 3)

- (1) Section 5A:

After section 5, insert:

References to Presiding Officers

5A. (1) In this Act, a reference to a Presiding Officer of a House of Parliament is a reference to the President of the

SCHEDULE 1—AMENDMENT OF OMBUDSMAN ACT 1974—
continued

Legislative Council or the Speaker of the Legislative Assembly.

(2) If there is a vacancy in the office of President, the reference to the President is taken to be a reference to the Clerk of the Legislative Council.

(3) If there is a vacancy in the office of Speaker, the reference to the Speaker is taken to be a reference to the Clerk of the Legislative Assembly.

(2) Sections 21–21B:

Omit section 21,, insert instead:

Limits on secrecy and privilege

21. (1) This section applies if, in an investigation under this Act or an inquiry under section 19, the Ombudsman requires any person:

- (a) to give any statement of information; or
- (b) to produce any document or other thing; or
- (c) to give a copy of any document; or
- (d) to answer any question.

(2) The Ombudsman must set aside the requirement if it appears to the Ombudsman that any person has a ground of privilege, whereby, in proceedings in a court of law, the person might resist a like requirement and it does not appear to the Ombudsman that that person consents to compliance with the requirement.

(3) The requirement may however be made despite, and is not required to be set aside because of:

- (a) any rule of law which, in proceedings in a court of law, might justify an objection to compliance with a like requirement on grounds of public interest; or
- (b) any privilege of a public authority which the public authority might claim in a court of law, other than a claim based on legal professional privilege; or
- (c) any duty of secrecy or other restriction on disclosure applying to a public authority.

SCHEDULE 1—AMENDMENT OF OMBUDSMAN ACT 1974—
*continued***Privilege as regards entry and inspections on public premises**

21A. (1) The Ombudsman must not exercise powers under section 20 if it appears to the Ombudsman that any person has a ground of privilege, whereby, in proceedings in a court of law, the person might resist inspection of the premises or document or thing or production of the document or thing and it does not appear to the Ombudsman that that person consents to the inspection or production.

(2) The powers may however be exercised despite:

- (a) any rule of law which, in proceedings in a court of law, might justify an objection to an inspection of the premises or document or thing or to production of the document or thing on grounds of public interest; or
- (b) any privilege of a public authority which the public authority might claim in a court of law, other than a claim based on legal professional privilege; or
- (c) any duty of secrecy or other restriction on disclosure applying to a public authority.

Requirements and inspections relating to matters affected by legal professional privilege on review under Freedom of Information Act 1989

21B. (1) Despite sections 21 and 21A, the Ombudsman may make, and is not required to set aside, a requirement referred to in section 21, or may exercise powers under section 20, concerning information or a document that might be subject to a privilege of a public authority based on legal professional privilege if:

- (a) the requirement is made or the powers are exercised for the purposes of an investigation of the conduct of a person or body in relation to a determination made by an agency under the Freedom of Information Act 1989; and
- (b) the investigation concerns a document claimed to be an exempt document under that Act on the grounds of legal professional privilege.

(2) A person of whom any such requirement is made must comply with the requirement.

SCHEDULE 1—AMENDMENT OF OMBUDSMAN ACT 1974—
continued

(3) Despite section 34, the Ombudsman must not release a document referred to in subsection (1) or disclose the contents of any such document.

(4) Nothing in this section affects the question of whether a document is, or might be, subject to legal professional privilege.

(3) Section 21A (**Injunction**):

Renumber the section as section 21C.

(4) Section 22 (**Cabinet proceedings**):

(a) In section 22 (1) (a), after “relates”, insert “to a cabinet document that is an exempt document under the Freedom of Information Act 1989 or”.

(b) Omit section 22 (2), insert instead:

(2) For the purposes of subsection (1), a certificate of the head of The Cabinet Office that:

(a) a document is a cabinet document that is an exempt document under the Freedom of Information Act 1989;
or

(b) any information, document, thing or question relates to confidential proceedings of cabinet or of a committee of cabinet,

is conclusive of that fact.

(5) Section 27 (**Default in consequent action**):

(a) Omit “Minister for presentation to Parliament”, insert instead “Presiding Officer of each House of Parliament and must also provide the responsible Minister with a copy of the report”.

(b) At the end of section 27, insert:

(2) The responsible Minister must make a statement to the House of Parliament in which the Minister sits in response to the report not more than 12 sitting days after the report is made to the Presiding Officer.

SCHEDULE 1—AMENDMENT OF OMBUDSMAN ACT 1974—
continued

(6) Sections 30, 30A:

Omit section 30, insert instead:

Annual reports

30. (1) The Ombudsman must, as soon as practicable after 30 June in each year, prepare a report of the Ombudsman's work and activities for the preceding 12 months and furnish the report to the Presiding Officer of each House of Parliament.

(2) The Annual Reports (Departments) Act 1985 is, in its application to the annual reports of the Ombudsman's Office, modified as follows:

- (a) letters of submission under that Act are to be made to the Presiding Officer of each House of Parliament and not to the appropriate Minister;
- (b) the annual report is to be submitted to the Presiding Officer of each House of Parliament and not to the appropriate Minister;
- (c) provisions of that Act relating to the presentation of annual reports to the appropriate Minister and to the public availability of annual reports do not apply to the Ombudsman or the Ombudsman's Office.

(3) Section 31AA applies to the annual report of the Ombudsman's Office as if it were a report made or furnished under this Part.

Public availability of annual reports

30A. (1) The Ombudsman must, as soon as practicable after an annual report has been tabled in each House of Parliament or made public by a Presiding Officer, make copies of the report available for public sale or distribution.

(2) The regulations may make provision for or with respect to the place or places at which the Ombudsman is to make copies of the report available.

(7) Section 31 (**Special report to Parliament**):

- (a) From section 31 (1), omit "Minister for presentation to Parliament", insert instead "Presiding Officer of each House of Parliament and must also provide the Minister with a copy of the report".
- (b) Omit section 31 (3).

SCHEDULE 1—AMENDMENT OF OMBUDSMAN ACT 1974—
continued

(8) Sections 31AA, 31AB:

After section 31, insert:

Provisions relating to reports

31AA. (1) **Tabling.** A copy of a report made or furnished to the Presiding Officer of a House of Parliament under this Part must be laid before that House on the next sitting day of that House after it is received by the Presiding Officer.

(2) **Public reports.** If a report includes a recommendation by the Ombudsman that the report be made public forthwith, the Presiding Officer of a House of Parliament may make it public whether or not that House is in session and whether or not the report has been laid before that House.

(3) **Privileges and immunities.** A report that is made public by the Presiding Officer of a House of Parliament before it is laid before that House attracts the same privileges and immunities as it would if it had been laid before that House.

(4) **Report procedures.** A Presiding Officer need not inquire whether all or any conditions precedent have been satisfied as regards a report purporting to have been made or furnished in accordance with this Act.

Ombudsman may furnish information to ICAC and DPP

31AB. (1) The Ombudsman may, at any time, furnish information obtained by the Ombudsman in discharging functions under this or any other Act to the Director of Public Prosecutions or to the Independent Commission Against Corruption.

(2) However, the Ombudsman must not disclose information that could not otherwise be disclosed under this Act or could not:

- (a) in the case of the Director of Public Prosecutions—be obtained by the Director under the Director of Public Prosecutions Act 1986 or any other Act; or
- (b) in the case of the Independent Commission Against Corruption—be obtained by the Commission under the Independent Commission Against Corruption Act 1988 or any other Act.

SCHEDULE 2—AMENDMENT OF OTHER ACTS

(Sec. 4)

Defamation Act 1974 No. 18**(1) Section 17A (Matters relating to the Ombudsman etc.):**

- (a) From section 17A (4), omit “section 31 (3) of the Ombudsman Act 1974 or under section 32 (3) or 45 (5) of the Police Regulation (Allegations of Misconduct) Act 1978”, insert instead “section 31AA of the Ombudsman Act 1974 or under section 45 (5) or 59A of the Police Regulation (Allegations of Misconduct) Act 1978”.
- (b) From section 17A (5), omit “31 (3)”, insert instead “31AA”.
- (c) From section 17A (6), omit “32 (3) or 45 (5)”, insert instead “45 (5) or 59A”.

(2) Section 17A (Matters relating to the Ombudsman etc.):

- (a) From section 17A (3), omit “section 6 (2) of the Police Regulation (Allegations of Misconduct) Act 1978”, insert instead “section 125 (4) of the Police Service Act 1990”.
- (b) From section 17A (4), omit “section 31 (3) of the Ombudsman Act 1974 or under section 32 (3) or 45 (5) of the Police Regulation (Allegations of Misconduct) Act 1978”, insert instead “section 31AA of the Ombudsman Act 1974 or under section 170A or 197 (5) of the Police Service Act 1990”.
- (c) From section 17A (5), omit “31 (3)”, insert instead “31AA”.
- (d) From section 17A (6), omit “Police Regulation (Allegations of Misconduct) Act 1978”, insert instead “Police Service Act 1990”.
- (e) From section 17A (6), omit “32 (3) or 45 (5)”, insert instead “170A or 197 (5)”.

Police Regulation (Allegations of Misconduct) Act 1978 No. 84**(1) Section 4 (Definitions):**

At the end of section 4, insert:

- (2) In this Act, a reference to a Presiding Officer of a House of Parliament is a reference to the President of the Legislative Council or the Speaker of the Legislative Assembly.

SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

(3) If there is a vacancy in the office of President, the reference to the President is taken to be a reference to the Clerk of the Legislative Council.

(4) If there is a vacancy in the office of Speaker, the reference to the Speaker is taken to be a reference to the Clerk of the Legislative Assembly.

(2) Section 26 (**Certain information to be confidential**):

From section 26 (2) (b), omit “Minister for presentation to Parliament”, insert instead “Presiding Officer of each House of Parliament and must also provide the Minister with a copy of the report”.

(3) Section 32 (**Special report to Parliament**):

(a) From section 32 (1), omit “Minister for presentation to Parliament”, insert instead “Presiding Officer of each House of Parliament and must also provide the Minister with a copy of the report”.

(b) Omit section 32 (3).

(4) Section 59 (**Certain documents privileged**):

In section 59 (2) (b), before “either House”, insert “the Presiding Officer of a House of Parliament or”.

(5) Section 59A:

After section 59, insert:

Provisions relating to reports

59A. (1) **Tabling.** A copy of a report made or furnished to the Presiding Officer of a House of Parliament under this Act must be laid before that House on the next sitting day of that House after it is received by the Presiding Officer.

(2) **Public reports.** If a report includes a recommendation by the Ombudsman that the report be made public forthwith, the Presiding Officer of a House of Parliament may make it public whether or not that House is in session and whether or not the report has been laid before that House.

SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

(3) **Privileges and immunities.** A report that is made public by the Presiding Officer of a House of Parliament before it is laid before that House attracts the same privileges and immunities as it would if it had been laid before that House.

(4) **Report procedures.** A Presiding Officer need not inquire whether all or any conditions precedent have been satisfied as regards a report purporting to have been made and furnished in accordance with this Act.

Police Service Act 1990 No. 47(1) Section 3 (**Definitions**):

At the end of section 3, insert:

(4) In this Act, a reference to a Presiding Officer of a House of Parliament is a reference to the President of the Legislative Council or the Speaker of the Legislative Assembly.

(5) If there is a vacancy in the office of President, the reference to the President is taken to be a reference to the Clerk of the Legislative Council.

(6) If there is a vacancy in the office of Speaker, the reference to the Speaker is taken to be a reference to the Clerk of the Legislative Assembly.

(2) Section 161 (**Special report to Parliament**):

(a) From section 161 (1), omit “Minister for presentation to Parliament”, insert instead “Presiding Officer of each House of Parliament and must also provide the Minister with a copy of the report”.

(b) Omit section 161 (3).

(3) Section 166 (**Certain information to be confidential**):

From section 166 (3) (b), omit “Minister for presentation to Parliament”, insert instead “Presiding Officer of each House of Parliament and must also provide the Minister with a copy of the report”.

SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

(4) Section 170A:

After section 170, insert:

Provisions relating to reports

170A. (1) **Tabling.** A copy of a report made or furnished to the Presiding Officer of a House of Parliament under this Act must be laid before that House on the next sitting day of that House after it is received by the Presiding Officer.

(2) **Public reports.** If a report includes a recommendation by the Ombudsman that the report be made public forthwith, the Presiding Officer of a House of Parliament may make it public whether or not that House is in session and whether or not the report has been laid before that House.

(3) **Privileges and immunities.** A report that is made public by the Presiding Officer of a House of Parliament before it is laid before that House attracts the same privileges and immunities as it would if it had been laid before that House.

(4) **Report procedures.** A Presiding Officer need not inquire whether all or any conditions precedent have been satisfied as regards a report purporting to have been made and furnished in accordance with this Act.

(5) Section 172A (**Certain documents privileged**):

- (a) In section 172A (2) (b), before “either House”, insert “the Presiding Officer of a House of Parliament or”.
- (b) From section 172A (2) (c), omit “161 (3) or”.

Public Finance and Audit Act 1983 No. 152(1) Section 36 (**Access to records, information etc.**):

After section 36 (4), insert:

(5) The Auditor-General, an auditor or a person authorised by the Auditor-General is entitled to exercise functions under this section despite:

- (a) any rule of law which, in proceedings in a court of law, might justify an objection to access to accounts, records, documents or papers or information on grounds of public interest; or

SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

- (b) any privilege of an authority which the authority might claim in a court of law, other than a claim based on legal professional privilege; or
- (c) any duty of secrecy or other restriction on disclosure applying to an authority or to an officer of an authority.

(6) Nothing in this section entitles the Auditor-General, an auditor or a person authorised by the Auditor-General to have access to a cabinet document that is an exempt document under the Freedom of Information Act 1989.

(7) In subsection (5), “**authority**” means an authority, or other body, whose accounts are subject to audit by the Auditor-General under this Act or any other Act.

(2) Section 52B:

After section 52A, insert:

Tabling etc. of special reports

52B. (1) The Auditor-General is, as soon as practicable after making a special report under section 52 (3), to present the report to the Legislative Assembly, if the Legislative Assembly is then sitting.

(2) If at the time at which the Auditor-General seeks to present the report to the Legislative Assembly the Legislative Assembly is not sitting, the Auditor-General is to present the report to the Clerk of the Legislative Assembly to be dealt with in accordance with section 63C.

*[Minister's second reading speech made in—
Legislative Assembly on 21 May 1993
Legislative Council on 21 May 1993]*