



New South Wales

# Independent Commission Against Corruption and Ombudsman Legislation Amendment Act 2009 No 95

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New South Wales

# **Independent Commission Against Corruption and Ombudsman Legislation Amendment Act 2009 No 95**

Act No 95, 2009

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An Act to amend the *Independent Commission Against Corruption Act 1988* in relation to unlawful surveillance device recordings and the duty to notify corrupt conduct; and to amend the *Community Services (Complaints, Reviews and Monitoring) Act 1993* to enable the Ombudsman to audit an interagency plan relating to child sexual assault in Aboriginal communities. [Assented to 30 November 2009]

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

**1 Name of Act**

This Act is the *Independent Commission Against Corruption and Ombudsman Legislation Amendment Act 2009*.

**2 Commencement**

This Act commences on the date of assent to this Act.

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## **Schedule 1      Amendment of Independent Commission Against Corruption Act 1988 No 35**

### **[1] Section 11 Duty to notify Commission of possible corrupt conduct**

Insert after section 11 (5):

- (6) The regulations may prescribe the principal officer of a separate office within a public authority as the principal officer of the public authority in relation to matters concerning the separate office.

### **[2] Schedule 4 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

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### **[3] Schedule 4**

Insert at the end of the Schedule with appropriate Part and clause numbers:

## **Part      Use of unlawful surveillance device recordings concerning Mr Michael Loch McGurk—2009 amending Act**

### **Definitions**

In this Part:

*Commission* includes an officer of the Commission.

*relevant recording* means a recording of any private conversation to which Mr Michael Loch McGurk, deceased former resident of Cremorne, was a party or was apparently a party.

*surveillance device* means a surveillance device within the meaning of the *Surveillance Devices Act 2007*.

### **Use etc of relevant recordings despite Surveillance Devices Act 2007**

- (1) Part 2 of the *Surveillance Devices Act 2007* is not contravened by:
- (a) the Commission obtaining, possessing, publishing or communicating, before 31 December 2010, in accordance with a provision of this Act, any relevant recording that has

- been obtained by the use of a surveillance device in contravention of Part 2 of that Act, or
- (b) a person providing any such relevant recording to the Commission, before 31 December 2010, in accordance with a requirement made of the person under this Act, or
  - (c) the possession, publication or communication at any time of a report of the Commission made before 31 December 2010 concerning any such relevant recording (or of any information in the report).
- (2) The Commission is to ensure that the publication or communication of a relevant recording referred to in subclause (1) is made only for the purposes of investigating or reporting on particular alleged corrupt conduct.

**Operation of this Part**

- (1) This Part extends to relevant recordings obtained by a person by the use of a surveillance device before the commencement of this Part.
- (2) Anything done by the Commission or other person before the commencement of this Part that would not have contravened Part 2 of the *Surveillance Devices Act 2007* if it had been done after that commencement is taken not to have been a contravention of that Part.

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

**[1] Part 6A**

Insert after Part 6:

### **Part 6A Audit of Interagency Plan relating to child sexual assault in Aboriginal communities**

**43B The Interagency Plan**

In this Part:

*the Interagency Plan* means the *New South Wales Interagency Plan To Tackle Child Sexual Assault in Aboriginal Communities 2006–2011*, released by the Government of New South Wales in January 2007.

**43C Audit of implementation of Interagency Plan**

- (1) The Ombudsman has the following audit functions in relation to the Interagency Plan:
  - (a) to review the implementation of the Interagency Plan by public authorities of the State that have functions under the Plan,
  - (b) to identify any areas in which further action is required by those public authorities to implement the Interagency Plan,
  - (c) to make recommendations for the more efficient and effective implementation of the Interagency Plan by those public authorities.
- (2) The Ombudsman must prepare and provide a report to the Minister for Aboriginal Affairs by 31 December 2012 on the Ombudsman's audit of the implementation of the Interagency Plan.
- (3) The Minister for Aboriginal Affairs must, within 1 month after receiving the report, furnish a copy of the report to the Presiding Officer of each House of Parliament.
- (4) The Ombudsman's audit functions cease after the provision of the report to the Minister for Aboriginal Affairs.

**43D    Provision of information**

- (1) It is the duty of the head of a public authority that has functions under the Interagency Plan 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 audit functions in relation to the Interagency Plan.
- (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 (other than a provision applied by section 43E) does not prevent a person to whom this section applies from complying, or affect the person's duty to comply, with this section.
- (4) The Ombudsman may, if the Ombudsman thinks it appropriate to do so, provide information obtained by the Ombudsman under this section to a public authority that has functions under the Interagency Plan and that has a relevant interest.
- (5) The provision of information under this section:
  - (a) does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct, and
  - (b) does not give rise to any liability for defamation or other civil liability.
- (6) In this section:  
*head*, in relation to a public authority, has the same meaning as it has in the *Ombudsman Act 1974*.

**43E    Application of Ombudsman Act 1974**

- (1) For the purpose of the exercise of functions under this Part, sections 17–24 (except section 21B), 31AC 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.

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- (2) Section 31AA of the *Ombudsman Act 1974* applies to a report of the Ombudsman under this Part in the same way that it applies to a report under Part 4 of that Act.
- (3) For the purpose of the application of section 31AA (2) of the *Ombudsman Act 1974* under this section, a report of the Ombudsman under this Part is taken to include a recommendation by the Ombudsman that the report be made public forthwith.

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

Insert at the end of clause 1 (1):

*Independent Commission Against Corruption and Ombudsman  
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[Second reading speech made in Legislative Council on 12 November 2009  
Agreement in principle speech made in Legislative Assembly on 25 November 2009]

BY AUTHORITY