



New South Wales

Community Services (Complaints, Reviews and Monitoring) Amendment Act 2014 No 20

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Community Services (Complaints, Reviews and Monitoring) Amendment Act 2014 No 20

Act No 20, 2014

An Act to amend the *Community Services (Complaints, Reviews and Monitoring) Act 1993* to make further provision for complaints, reviews and monitoring in relation to the provision of community services. [Assented to 5 June 2014]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Community Services (Complaints, Reviews and Monitoring) Amendment Act 2014*.

2 Commencement

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

Schedule 1 Amendment of Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2

[1] Section 3 Objects and principles

Insert “, including by education” after “legislation” in section 3 (1) (f).

[2] Section 4 Definitions

Omit “Director-General of the Department of Community Services” from paragraph (b) of the definition of *child in care* in section 4 (1).

Insert instead “Secretary of the Department of Family and Community Services”.

[3] Section 4 (1), definition of “child in care”

Omit “section 135” from paragraph (c). Insert instead “section 135A”.

[4] Section 4 (1), definition of “child in care”

Omit paragraph (e).

[5] Section 4 (1), definition of “relevant Minister”

Omit “Minister for Community Services” from paragraph (d).

Insert instead “Minister for Family and Community Services”.

[6] Section 4 (1), definition of “service provider”

Omit the definition. Insert instead:

service provider means:

- (a) the Department of Family and Community Services, or
- (b) an implementation company under the *National Disability Insurance Scheme (NSW Enabling) Act 2013* while the company is a public sector agency of the State under that Act, or
- (c) a person or organisation funded by the Minister for Family and Community Services, the Minister for Ageing or the Minister for Disability Services to provide a service, or
- (d) a person or organisation authorised or licensed by the Minister for Family and Community Services, the Minister for Ageing or the Minister for Disability Services to provide a service, or
- (e) the Home Care Service of New South Wales or a person or organisation funded by the Home Care Service to provide a service, or
- (f) a person or organisation that is covered by an arrangement made after 7 April 1994 (the date of commencement of this section) between a Minister of the State of New South Wales and a State or Commonwealth Minister, under which arrangement that State or Commonwealth Minister agrees to the person or organisation being a service provider for the purposes of this Act, 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 an assisted boarding house.

[7] Section 5 Administration of community welfare legislation

Omit section 5 (1) (b) and (c). Insert instead:

- (b) inconsistent with the way in which those resources have been allocated by the Minister for Family and Community Services, the Minister for Ageing, the Minister for Disability Services or the Secretary of the Department of Family and Community Services in accordance with Government policy, or
- (c) inconsistent with Government policy, as certified in writing by the Minister for Family and Community Services, the Minister for Ageing or the Minister for Disability Services and notified to the Tribunal, the Commission for Children and Young People or other person or body making the determination.

[8] Section 7 Appointment of Official Community Visitors

Omit section 7 (2) (d). Insert instead:

- (d) is not employed in the Public Service within the Department of Family and Community Services.

[9] Section 14A

Insert after section 14:

14A Reports on systemic issues

- (1) The Ombudsman may, during or at the completion of a review or any other inquiry carried out by the Ombudsman under another provision of this Act:
 - (a) report on any systemic issues relating to the provision of community services by service providers, and
 - (b) make such recommendations as the Ombudsman thinks fit.
- (2) 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.

[10] Section 23 Who may make a complaint?

Omit section 23 (2). Insert instead:

- (2) Without limiting the generality of subsection (1), a complaint may be made:
 - (a) by a person advocating on behalf of the person in respect of whom the relevant service was provided, withdrawn, varied or administered, or
 - (b) by a 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.

[11] Section 28 Applications to Tribunal for administrative reviews of decisions

Omit section 28 (2). Insert instead:

- (2) In this section:
 - relevant decision maker* means the following:
 - (a) the Minister for Family and Community Services,
 - (b) the Minister for Ageing,

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

[12] Section 34C Establishment and composition of the Team

Omit section 34C (4) (b). Insert instead:

- (b) NSW Health within the meaning of the *Health Administration Act 1982*,

[13] Section 34K Duty of persons to assist the Team

Omit “Director-General” from section 34K (1) (a). Insert instead “Secretary”.

[14] Section 34K (2)

Insert “(including any document that assists to explain that record)” after “that subsection”.

[15] Section 34K (3)

Insert “, or restricts or prohibits disclosure of information,” after “records”.

[16] Section 34K (3)

Omit “that subsection”. Insert instead “this section”.

[17] Section 34L Confidentiality of information

Omit “Director-General” from section 34L (1) (c) (ii). Insert instead “Secretary”.

[18] Section 36 Systemic review of deaths of children at risk of harm, children in care or other persons in care

Omit “undertake research or other projects” from section 36 (1) (d).

Insert instead “undertake, alone or with others, research or other projects”.

[19] Section 37 Notification to Ombudsman of reviewable deaths

Omit section 37 (2). Insert instead:

- (2) The Chief Executive of ADHC must provide the Ombudsman with copies of any notification received by the Chief Executive relating to a reviewable death not later than 30 days after receiving the notification.

[20] Section 37 (4)

Insert after section 37 (3):

- (4) In this section:

Chief Executive of ADHC means the person employed in the Department of Family and Community Services as the Chief Executive of Ageing, Disability and Home Care or, if there is no such person, the Secretary of the Department.

[21] Section 38 Provision of information and assistance to Ombudsman

Insert after section 38 (1) (g):

- (g1) a medical practitioner or health care professional who, or the head of a body which, delivered health services to a person whose death is a reviewable death,

[22] Section 39 Information to be provided by Ombudsman

Insert at the end of the section:

- (2) The Ombudsman may provide to a person any information or copies of documents obtained by the Ombudsman under this Part to facilitate research that is undertaken for the purpose of helping to prevent or reduce the likelihood of reviewable deaths in New South Wales, if the Ombudsman thinks it appropriate to do so.
- (3) The Ombudsman must not provide any personal information (within the meaning of the *Privacy and Personal Information Protection Act 1998*) to a person under subsection (2) unless:
 - (a) the person is a public sector agency under that Act, or
 - (b) the person agrees to deal with the information in accordance with the information protection principles set out in sections 12, 17, 18 and 19 of the *Privacy and Personal Information Protection Act 1998* as those principles would apply if the person were a public sector agency.

Note. The *Privacy and Personal Information Protection Act 1998* requires public sector agencies to deal with personal information in accordance with the information protection principles set out in that Act.

In addition, the *Health Records and Information Privacy Act 2002* requires any public sector agency or private sector person that collects, holds or uses health information to comply with the health privacy principles provided for by that Act.

[23] Section 44

Omit the section. Insert instead:

44 Condition of provision of funds

- (1) The recipient of any funds provided by the State for the purposes of a community welfare program must make such arrangements for their expenditure as are necessary to facilitate the resolution of complaints at a local level.
- (2) It is a condition of the provision of the funds that the recipient comply with this section.
- (3) In this section, *community welfare program* means any program provided under or regulated by community welfare legislation.

[24] Section 45 Reasons to be given for certain decisions

Omit section 45 (4). Insert instead:

- (4) In this section:
relevant decision maker means the following:
 - (a) the Minister for Family and Community Services,
 - (b) the Minister for Ageing,
 - (c) the Minister for Disability Services,
 - (d) the Secretary of the Department of Family and Community Services,
 - (e) a service provider (other than an authorised carer within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*).

[25] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

any Act that amends this Act

[26] Schedule 1, Part 5

Insert after Part 4:

Part 5 Community Services (Complaints, Reviews and Monitoring) Amendment Act 2014

18 Appointment of Official Community Visitors

The amendment to section 7 made by the *Community Services (Complaints, Reviews and Monitoring) Amendment Act 2014* applies only to the appointment or re-appointment of a person as Official Community Visitor after the commencement of the amendment.

[Second reading speech made in—

Legislative Assembly on 20 March 2014

Legislative Council on 27 May 2014]