



New South Wales

Ageing and Disability Commissioner Amendment Act 2024 No 14

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Ageing and Disability Commissioner Amendment Act 2024 No 14

Act No 14, 2024

An Act to amend the *Ageing and Disability Commissioner Act 2019* to implement a number of recommendations arising from an independent statutory review of the Act; and for other purposes.
[Assented to 3 April 2024]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Ageing and Disability Commissioner Amendment Act 2024*.

2 Commencement

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

Schedule 1 **Amendment of Ageing and Disability Commissioner Act 2019 No 7**

[1] **Section 3 Definitions**

Omit section 3(1), definition of *Board*. Insert in alphabetical order—

Board means the Ageing and Disability Advisory Board established under section 29.

Department means the Department in which this Act is administered.

joint committee means the Committee on Ageing and Disability constituted under section 28A.

NDIS Commissioner means the Commissioner of the NDIS Quality and Safeguards Commission under the *National Disability Insurance Scheme Act 2013* of the Commonwealth.

[2] **Section 12 Functions of Commissioner**

Omit “the National Disability Strategy (*NDS*)” from section 12(1)(h).

Insert instead “*Australia’s Disability Strategy 2021–2031*”.

[3] **Section 13 Reports may be made to Commissioner**

Omit “Commissioner must” from section 13(8). Insert instead “Commissioner may”.

[4] **Section 13(8)(c)**

Omit the paragraph. Insert instead—

(c) the NDIS Commissioner,

[5] **Section 13(9A)**

Insert after section 13(9)—

(9A) The Commissioner is not required to refer a report, or part of a report, under subsection (9) if the Commissioner believes on reasonable grounds that the adult with disability or older adult does not wish to have the report, or part of the report, referred.

[6] **Section 13(11) and (12)**

Omit section 13(11). Insert instead—

(11) The Commissioner must not conduct an investigation into an allegation of abuse, neglect or exploitation of an adult with disability or older adult unless the Commissioner has obtained the adult’s consent.

(12) The Commissioner is not required to obtain the adult’s consent if—

(a) the Commissioner—

(i) has made reasonable efforts to obtain access to the adult, and

(ii) has not been able to obtain access to the adult, or

(b) the Commissioner considers that—

(i) the adult is incapable of giving consent despite being provided with appropriate support to make a decision about consent, or

(ii) it is not necessary to obtain consent due to the seriousness of the allegation or the risk to the personal safety of the adult, or

(iii) circumstances prescribed by the regulations exist.

[7] Section 14, heading

Insert “with relevant agencies” after “information”.

[8] Section 14A

Insert after section 14—

14A Exchange of information with other entities

- (1) The Commissioner may provide relevant information to an entity for the purposes of enabling or assisting the entity—
 - (a) to provide a service in relation to, or take other action in respect of, the safety of an adult with disability or older adult, or
 - (b) to make a decision or assessment in relation to the safety of an adult with disability or older adult, or
 - (c) to take action in respect of the safety of adults with disability or older adults generally.
- (2) An entity may provide relevant information to the Commissioner for the purposes of enabling or assisting the Commissioner’s handling of a report under this Act.

Note— It is an offence under section 31 for a person to disclose any information obtained in connection with the administration or execution of this Act, except in certain circumstances.
- (3) This section does not—
 - (a) require the Commissioner to provide information to an entity only in accordance with subsection (1) if the information may otherwise be lawfully provided, or
 - (b) limit the operation of another Act or law under which an entity is authorised or required to disclose information to another person or body.
- (4) This section applies to an entity if the entity is—
 - (a) a person or body that—
 - (i) provides, or is able to provide, supports to adults with disability or older adults, and
 - (ii) is not a relevant agency, or
 - (b) a person or body prescribed by the regulations.
- (5) In this section—

relevant agency and *relevant information* have the same meanings as in section 14.

[9] Section 21 Appointment of Official Community Visitors

Omit section 21(1)(d). Insert instead—

- (d) is not employed within the Department.

[10] Section 22 Functions of Official Community Visitors

Omit “the Minister and the Commissioner” wherever occurring in section 22(1)(d) and (e).
Insert instead “a relevant regulatory body”.

[11] Section 22(4)

Insert after section 22(3)—

- (4) In this section—
relevant regulatory body means the following—
- (a) the Minister,
 - (b) the Commissioner,
 - (c) the Secretary of the Department,
 - (d) the NDIS Commissioner.

[12] Section 24A

Insert after section 24—

24A Service providers to give information to Commissioner

- (1) A service provider that provides a visitable service must give the Commissioner the required information in accordance with this section.
Maximum penalty—50 penalty units.
- (2) The required information must be given—
 - (a) for an existing visitable service—within the required time after the commencement of this section, or
 - (b) for a new visitable service—within the required time after the commencement of the service.
- (3) The required information must be—
 - (a) in writing, and
 - (b) if required to be given in a particular way by the regulations—given in that way.
- (4) In this section—
required information, for a service provider, means—
 - (a) contact details for the service provider, and
 - (b) details about the location of the visitable service of the service provider.
required time means—
 - (a) the period prescribed by the regulations, or
 - (b) if a period is not prescribed—1 month.

[13] Section 26 Report about disability advocacy

Omit the section.

[14] Part 5A

Insert after Part 5—

Part 5A Committee on Ageing and Disability

28A Constitution of joint committee

- (1) A joint committee of members of Parliament, to be known as the Committee on Ageing and Disability, must be appointed.
- (2) The joint committee must be appointed as soon as practicable after—
 - (a) the commencement of this part, and
 - (b) the first session of each Parliament.

- (3) The joint committee has the functions conferred or imposed on the joint committee by or under this Act or another Act.
- (4) Schedule 2 contains provisions relating to the joint committee.

28B Functions

- (1) The joint committee has the following functions under this Act—
 - (a) to monitor and review the exercise of the Commissioner’s functions,
 - (b) to report to both Houses of Parliament, with the comments the joint committee thinks appropriate, on any matter—
 - (i) relevant to the Commissioner or connected with the exercise of the Commissioner’s functions, and
 - (ii) to which, in the joint committee’s opinion, the attention of Parliament should be directed,
 - (c) to examine each annual report and other report—
 - (i) made by the Commissioner, and
 - (ii) presented to each House of Parliament under this Act, Part 5 or another Act,
 - (d) to report to both Houses of Parliament on matters appearing in, or arising out of, the annual reports or other reports,
 - (e) in relation to trends and changes in services and issues affecting adults with disability and older adults—
 - (i) to examine the trends and changes, and
 - (ii) to report to both Houses of Parliament about changes the joint committee thinks desirable to the functions and procedures of the Commissioner,
 - (f) to inquire into any question in connection with the Commissioner’s functions that is referred to the joint committee by both Houses of Parliament and to report to both Houses on the question.
- (2) Nothing in this part or Schedule 2 authorises the joint committee to—
 - (a) reinvestigate a particular report, or
 - (b) reconsider a decision to investigate, not to investigate or to discontinue the investigation of a particular report, or
 - (c) reconsider the findings, recommendations, determinations or other decisions of the Commissioner, or another person, in relation to a particular investigation or report.
- (3) The Commissioner may, as soon as practicable after a report of the joint committee has been tabled in a House of Parliament, prepare and give to the Presiding Officer of the House a report in response to the report of the joint committee.

28C Membership

- (1) The joint committee consists of 7 members as follows—
 - (a) 3 members who are members of, and appointed by, the Legislative Council,
 - (b) 4 members who are members of, and appointed by, the Legislative Assembly.
- (2) The appointment of members of the joint committee must, as far as practicable, be in accordance with the practice of Parliament in relation to the

appointment of members to serve on joint committees of both Houses of Parliament.

- (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.

[15] Section 29 Ageing and Disability Advisory Board

Omit “opinion of the Commissioner” from section 29(3).

Insert instead “Commissioner’s opinion.”.

[16] Section 29(4)

Omit “The Minister”. Insert instead “The Commissioner”.

[17] Section 29(4)

Omit “community, and include”. Insert instead “community and includes”.

[18] Section 29(4)(a1)

Insert after section 29(4)(a)—

- (a1) 2 or more older adults,

[19] Schedule 2

Insert after Schedule 1—

Schedule 2 Committee on Ageing and Disability

section 28A(4)

1 Vacancies

- (1) A member of the joint committee ceases to hold office—
- (a) when the Legislative Assembly is dissolved or expires, 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) for a member who is a member of the Legislative Council—if the member resigns the office by written instrument addressed to the President of the Legislative Council, or
 - (e) for a member who is a member of the Legislative Assembly—if the member resigns the office by written instrument 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 1 of its members to fill a vacancy among the members of the joint committee appointed by the House.

2 Chairperson and deputy chairperson

- (1) There must be a chairperson and a deputy chairperson of the joint committee, who must be elected by and from the members of the joint committee.
- (2) A member of the joint committee ceases to hold office as chairperson or deputy chairperson of the joint committee if the member—

- (a) ceases to be a member of the joint committee, or
 - (b) resigns the office by written instrument presented to a meeting of the joint committee, or
 - (c) is discharged from office by the joint committee.
- (3) If there is a vacancy in the office of the chairperson or the chairperson is absent from New South Wales or is for any other reason unable to perform the duties of the chairperson, the deputy chairperson may exercise the functions of the chairperson under this Act or the *Parliamentary Evidence Act 1901*.

3 Procedure

- (1) The procedure for calling meetings of the joint committee and conducting business at the meetings must, subject to this Act, be determined by the joint committee.
- (2) The Clerk of the Legislative Assembly must call the first meeting of the joint committee in each House of Parliament in the way the Clerk thinks appropriate.
- (3) At a meeting of the joint committee, 4 members constitute a quorum, but the joint committee must meet as a joint committee at all times.
- (4) The following person must preside at a meeting of the joint committee—
 - (a) the chairperson,
 - (b) if the chairperson is absent—the deputy chairperson,
 - (c) if the chairperson and deputy chairperson are absent—a member of the joint committee elected to chair the meeting by the members present.
- (5) The deputy chairperson or other member presiding at a meeting of the joint committee has, in relation to the meeting, all the functions of the chairperson.
- (6) The chairperson, deputy chairperson or other member presiding at a meeting of the joint committee has—
 - (a) a deliberative vote, and
 - (b) if there is an equality of votes—a casting vote.
- (7) A question arising at a meeting of the joint committee must be decided by a majority of the votes of the members present and voting.
- (8) The joint committee may sit and transact business despite—
 - (a) a prorogation of the Houses of Parliament, or
 - (b) an 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.

4 Reporting when Parliament not in session

- (1) If a House of Parliament is not sitting when the joint committee seeks to give a report to the House, the joint committee may present copies of the report to the Clerk of the House.
- (2) The report—
 - (a) on presentation and for all purposes is taken to have been laid before the House, and
 - (b) may be printed by authority of the Clerk, and

- (c) if printed by authority of the Clerk—is for all purposes taken to be a document published by or under the authority of the House, and
- (d) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after receipt of the report by the Clerk.

5 Evidence

- (1) The joint committee has power to send for persons, papers and records.
- (2) The joint committee must take all evidence in public subject to clause 6.
- (3) If the joint committee as constituted at any time has taken evidence in relation to a matter but the joint committee as constituted in that way has ceased to exist before reporting on the matter, the joint committee as constituted at any later time, whether during the same or another Parliament, may consider the evidence as if it had taken the evidence.
- (4) The production of documents to the joint committee must be in accordance with the practice of the Legislative Assembly in relation to the production of documents to select committees of the Legislative Assembly.

6 Confidentiality

- (1) The joint committee must take evidence in private if—
 - (a) the evidence relates to a secret or confidential matter, and
 - (b) the witness giving the evidence requests that it be taken in private.
- (2) The joint committee must direct that a document be treated as confidential if—
 - (a) the document relates to a secret or confidential matter, and
 - (b) the person producing the document requests that it be treated as confidential.
- (3) For this clause, when the joint committee directs that a document be treated as confidential—
 - (a) the contents of the document are taken to be evidence—
 - (i) given by the person producing the document, and
 - (ii) taken by the joint committee in private, and
 - (b) the person producing the document is taken to be a witness.
- (4) If, at the request of a witness, evidence is taken by the joint committee in private—
 - (a) the joint committee must not, without the written consent of the witness, disclose the evidence, and
 - (b) a member of the joint committee or another person must not, without the written consent of the witness and the authority of the joint committee under subclause (6), disclose the evidence.

Maximum penalty—20 penalty units or imprisonment for 3 months, or both.
- (5) If evidence is taken by the joint committee in private other than at the request of a witness, a member of the joint committee or another person must not, without the authority of the joint committee under subclause (6), disclose the evidence.

Maximum penalty—20 penalty units or imprisonment for 3 months, or both.

- (6) Subject to subclause (4), the joint committee may disclose or, with the written permission of the chairperson, authorise the disclosure of evidence taken in private by the joint committee.
- (7) Nothing in this clause prohibits—
 - (a) the disclosure of evidence that has already been lawfully published, or
 - (b) the disclosure by a person of a matter of which the person has become aware other than because of the giving of evidence before the joint committee.
- (8) This clause has effect despite the *Parliamentary Papers (Supplementary Provisions) Act 1975*, section 4.
- (9) If evidence taken by the joint committee in private is disclosed in accordance with this clause, the *Parliamentary Papers (Supplementary Provisions) Act 1975*, sections 5 and 6 apply in relation to the disclosure as if it were a publication of the evidence under the authority of that Act, section 4.
- (10) A document produced to the joint committee in proceedings conducted in private is a public document for the purposes of the *Defamation Act 2005*, section 28 if the document is disclosed in accordance with this clause.
- (11) Proceedings of the joint committee conducted in private are proceedings of public concern for the purposes of the *Defamation Act 2005*, section 29 if the proceedings relate to the taking of evidence that is disclosed in accordance with this clause.
- (12) In this clause—

disclose includes publish.

document includes part of a document.

7 Application of certain Acts

For the *Parliamentary Evidence Act 1901* and the *Parliamentary Papers (Supplementary Provisions) Act 1975* and for any other purposes—

- (a) the joint committee must be regarded as a joint committee of the Legislative Council and Legislative Assembly, and
- (b) the proposal for the appointment of the joint committee must be regarded as having originated in the Legislative Assembly.

8 Validity of certain acts or proceedings

- (1) This clause applies if, at the time an act or proceeding of the joint committee is done, taken or commenced, there is—
 - (a) a vacancy in the office of a member of the joint committee, or
 - (b) a defect in the appointment, or a disqualification, of a member of the joint committee.
- (2) The act or proceeding of the joint committee is as valid as if the vacancy, defect or disqualification did not exist and the joint committee were fully and properly constituted.

[Second reading speech made in—

Legislative Assembly on 29 November 2023

Legislative Council on 14 March 2024]