



New South Wales

Ombudsman and Other Legislation Amendment Act 2024 No 52

Contents

		Page
	1 Name of Act	2
	2 Commencement	2
Schedule 1	Amendment of Ombudsman Act 1974 No 68	3
Schedule 2	Amendment of Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2	6
Schedule 3	Repeal	7



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Ombudsman and Other Legislation Amendment Act 2024 No 52

Act No 52, 2024

An Act to make miscellaneous amendments to the *Ombudsman Act 1974* and the *Community Services (Complaints, Reviews and Monitoring) Act 1993*; and to repeal the *Ombudsman Regulation 2016*. [Assented to 20 August 2024]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Ombudsman and Other Legislation Amendment Act 2024*.

2 Commencement

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

Schedule 1 Amendment of Ombudsman Act 1974 No 68

[1] Section 5 Definitions

Insert in alphabetical order in section 5(1)—

Aboriginal program, for Part 3B—see section 25K.

[2] Section 5(1), definition of “public authority”, paragraph (f)

Omit the paragraph. Insert instead—

- (f) a person entitled to be reimbursed from public funds for expenses associated with attending meetings or carrying out the business of a body constituted by an Act,

[3] Section 12 Right to complain

Omit section 12(1), excluding the notes. Insert instead—

- (1) Any person, including a public authority, may complain to the Ombudsman about the conduct of a public authority unless the conduct is of a class described in Schedule 1.

[4] Section 13AA Preliminary inquiries

Omit section 13AA(1). Insert instead—

- (1) The Ombudsman may make preliminary inquiries for any of the following purposes—
 - (a) deciding whether the Ombudsman has jurisdiction over particular conduct,
 - (b) deciding whether to make particular conduct of a public authority the subject of an investigation under this Act,
 - (c) another function of the Ombudsman under this Act or another Act.

[5] Section 20 Entry on premises etc

Insert “and copy” after “inspect” in section 20(b).

[6] Section 20(2)

Insert at the end of the section—

- (2) A public authority that occupies or uses premises entered by the Ombudsman under this section must give the Ombudsman the reasonable assistance and access to facilities necessary to enable the Ombudsman to exercise powers under this section.

[7] Section 25K

Omit the section. Insert instead—

25K Definition

In this part—

Aboriginal program means the following—

- (a) the OCHRE program,
- (b) other Government programs primarily directed to the health, or cultural, economic, educational or other wellbeing, of Aboriginal persons or communities.

OCHRE program means the OCHRE (Opportunity, Choice, Healing, Responsibility, Empowerment) program launched by the Government in April 2013.

[8] Section 25L Monitoring and assessment of Aboriginal programs

Omit section 25L(1). Insert instead—

- (1) The Ombudsman—
 - (a) is to monitor and assess the OCHRE program, and
 - (b) may monitor and assess other Aboriginal programs.

[9] Section 25M Provision of information

Omit “to which this Part applies” wherever occurring in section 25M(1), (4) and (5).

[10] Section 25N Reporting on Aboriginal programs

Omit “to which this Part applies” from section 25N(1).

[11] Section 36A

Insert after section 36—

36A Duty of public authority to cooperate and assist

A public authority—

- (a) has a duty to cooperate with the Ombudsman in the exercise of the Ombudsman’s functions, including in relation to dealing with complaints, conducting investigations and overseeing public authorities, and
- (b) must use the public authority’s best endeavours to assist the Ombudsman in exercising the functions if asked to assist.

Note— See section 12 and Schedule 1, which provide that certain conduct is excluded conduct for the purposes of making complaints under this Act.

[12] Section 38AA

Insert after section 38—

38AA Fees for services

- (1) The Ombudsman may provide education and other training services, including in the following areas—
 - (a) handling complaints,
 - (b) conducting investigations,
 - (c) avoiding conduct that may lead to a finding under section 26(1),
 - (d) other matters relating to the Ombudsman’s functions.
- (2) The Ombudsman may charge reasonable fees for services provided under this section.

[13] Schedule 1 Excluded conduct of public authorities

Omit item 17. Insert instead—

- 17** Conduct of a public authority for which a complaint may be made to the Privacy Commissioner under—
 - (a) the *Health Records and Information Privacy Act 2002*, or

(b) the *Privacy and Personal Information Protection Act 1998*.

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

[1] Section 15 Application of provisions of the Ombudsman Act 1974 to reviews and other functions

Insert “13AA,” after “sections” in section 15(1).

[2] Part 6, heading

Omit “and persons with disabilities in care”.

[3] Section 36, heading

Omit “, children in care or other persons in care”. Insert instead “and children in care”.

[4] Section 36(1)(b)

Omit “, children in detention centres, correctional centres or lock-ups or persons in residential care”.

Insert instead “or children in detention centres, correctional centres or lock-ups”.

[5] Section 42 Application of provisions of the Ombudsman Act 1974 to this Part

Insert “13AA,” after “sections” in section 42(1).

Schedule 3 Repeal

Repeal of Ombudsman Regulation 2016

The *Ombudsman Regulation 2016* is repealed.

[Second reading speech made in—
Legislative Council on 9 May 2024
Legislative Assembly on 9 August 2024]