



New South Wales

Ombudsman Regulation 2005

under the

Ombudsman Act 1974

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Ombudsman Act 1974*.

BOB CARR, M.P.,
Premier

Explanatory note

The object of this Regulation is to repeal and remake, with effect from 1 July 2005 and with some amendments and the addition of one clause, the *Ombudsman Regulation 1999*. That Regulation would otherwise be repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation prescribes certain bodies as *designated government agencies* and *designated non-government agencies* (and prescribes the persons who are the *heads* of certain designated non-Government agencies) for the purposes of Part 3A (Child protection) of the *Ombudsman Act 1974 (the Act)*.

The additional clause concerns the meaning of *responsible Minister* in relation to designated non-Government agencies in respect of matters arising under Part 3A. The current definition of the term in respect of such agencies is, effectively, “the Minister who, in the opinion of the Ombudsman, is the most nearly concerned with the conduct of the” agency concerned.

In exercising functions under Part 3A of the Act, the Ombudsman deals with non-Government agencies that may have more than one Minister concerned with their conduct (for example, in terms of licensing on the one hand and in terms of funding on the other). It is not always possible to determine which Minister is “most nearly” concerned with the conduct of such an agency. On the other hand, in some cases there may be no Minister with a sufficient connection to the agency to warrant the Minister’s involvement with the agency. Further, it may not be appropriate for a Minister to exercise certain functions under the Act in relation to the agency.

Accordingly, clause 7 of this Regulation modifies the meaning of *responsible Minister* in the context referred to above.

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Ombudsman Regulation 2005

Explanatory note

This Regulation is made under the *Ombudsman Act 1974*, including sections 25A (Definitions), 25J (Application of other provisions of this Act) and 39 (the general regulation-making power).

This Regulation comprises or relates to matters of a machinery nature.

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2005 No 309

Clause 1 Ombudsman Regulation 2005

Ombudsman Regulation 2005

under the

Ombudsman Act 1974

1 Name of Regulation

This Regulation is the *Ombudsman Regulation 2005*.

2 Commencement

This Regulation commences on 1 July 2005.

Note. This Regulation repeals and replaces the *Ombudsman Regulation 1999* which would otherwise be repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

the Act means the *Ombudsman Act 1974*.

(2) Notes included in this Regulation do not form part of this Regulation.

4 Designated government agencies

The following bodies are prescribed for the purposes of the definition of *designated government agency* in section 25A (1) of the Act:

- (a) a statutory health corporation within the meaning of the *Health Services Act 1997*,
- (b) the Ambulance Service of New South Wales,
- (c) the TAFE Commission,
- (d) the Department of Ageing, Disability and Home Care.

5 Designated non-government agencies

Affiliated health organisations within the meaning of the *Health Services Act 1997* are prescribed for the purposes of the definition of *designated non-government agency* in section 25A (1) of the Act.

6 Heads of certain agencies

- (1) This clause applies to an agency referred to in paragraph (a), (b) or (c) of the definition of *designated non-government agency* in section 25A (1) of the Act that is under the authority of a Catholic Bishop of New South Wales.
- (2) For the purposes of the definition of *head* of an agency in section 25A (1) of the Act, the Catholic Bishop who has authority over the agency concerned is to be regarded as the head of the agency.

7 Responsible Minister in relation to child protection matters

- (1) This clause applies only in respect of matters arising under Part 3A (Child protection) of the Act.
- (2) The definition of *responsible Minister* in section 5 (1) of the Act is modified such that the *responsible Minister* for a designated non-Government agency for the purposes of the Act is:
 - (a) the Minister whose portfolio has, in the opinion of the Ombudsman, sufficient funding or regulatory responsibility for the agency to warrant involvement on the Minister's part in relation to the agency, or
 - (b) if there is no such portfolio—the Minister who is, in the opinion of the Ombudsman, a Minister sufficiently concerned with the conduct of the agency.
- (3) Two or more Ministers may be responsible Ministers for a particular non-Government agency. In that case, the Ombudsman may (but is not obliged to) elect to regard one only of those Ministers as the responsible Minister, and the Minister so regarded is taken to be the responsible Minister for the agency concerned.
- (4) A responsible Minister is not to exercise any functions under section 26A (Authority to pay compensation), 32 (Staff) or 34 (Disclosure by Ombudsman or officer) of the Act in relation to a designated non-Government agency, and action may be taken under those sections in respect of such an agency without any authorisation, approval or consent of the responsible Minister that would, in the absence of this subclause, be required.

8 Repeal

The *Ombudsman Regulation 1999* is repealed.