



New South Wales

Ombudsman Regulation 2016

under the

Ombudsman Act 1974

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

MIKE BAIRD, MP
Premier

Explanatory note

The object of this Regulation is to remake, with minor amendments, the provisions of the *Ombudsman Regulation 2011*, which is repealed on 1 September 2016 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following:

- (a) prescribing for the purposes of Part 3A (Child protection) of the *Ombudsman Act 1974*:
 - (i) certain public authorities as designated government agencies,
 - (ii) certain bodies as designated non-government agencies,
 - (iii) certain persons as the heads of specified designated non-government agencies,
 - (iv) the responsible Ministers for designated non-government agencies for matters arising under that Part,
- (b) prescribing certain Aboriginal programs for the purposes of Part 3B (Aboriginal programs) of that Act,
- (c) savings and formal matters.

This Regulation is made under the *Ombudsman Act 1974*, including sections 25A (1) (definitions of **designated government agency**, **designated non-government agency** and **head**), 25J (1), 25K and 39 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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1 Name of Regulation

This Regulation is the *Ombudsman Regulation 2016*.

2 Commencement

This Regulation commences on 1 September 2016 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Ombudsman Regulation 2011* which is repealed on 1 September 2016 by section 10 (2) of the *Subordinate Legislation Act 1989*.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

For the purposes of paragraphs (a1) and (c) of the definition of *designated government agency* in section 25A (1) of the Act, the following are prescribed:

(a) **Corrective Services**

that part of the Department of Justice comprising the group of staff who are principally involved in the administration of any one or more of the following Acts:

- (i) *Crimes (Administration of Sentences) Act 1999*,
- (ii) *Crimes (Interstate Transfer of Community Based Sentences) Act 2004*,
- (iii) *International Transfer of Prisoners (New South Wales) Act 1997*,
- (iv) *Parole Orders (Transfer) Act 1983*,
- (v) *Prisoners (Interstate Transfer) Act 1982*.

(b) **Juvenile Justice**

that part of the Department of Justice comprising the group of staff who are principally involved in the administration of any Act administered by the Minister for Justice and Police (other than an Act referred to in paragraph (a)) including the group of staff within that Department who are known as the Juvenile Justice Branch,

(c) **Ageing, Disability and Home Care and Community Services**

that part of the Department of Family and Community Services comprising the group of staff who are principally involved in the administration of any Act administered by any one or more of the following Ministers:

- (i) Minister for Ageing,

- (ii) Minister for Disability Services,
- (iii) Minister for Family and Community Services,
- (d) **Statutory health corporations**
a statutory health corporation within the meaning of the *Health Services Act 1997*,
- (e) **Ambulance Service**
the Ambulance Service of NSW within the meaning of the *Health Services Act 1997*,
- (f) **TAFE**
the TAFE Commission within the meaning of the *Technical and Further Education Commission Act 1990*.

5 Designated non-government agencies

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

6 Heads of certain church 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) For the purposes of section 25J (1) of the Act, 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 only one 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 Part 3B—Aboriginal programs

(1) In this clause:

OCHRE means the program by that name (Opportunity, Choice, Healing, Responsibility, Empowerment) that was launched by the Government of New South Wales in April 2013.

(2) For the purposes of section 25K of the Act, OCHRE is prescribed as an Aboriginal program to which Part 3B of the Act applies.

9 Savings

Any act, matter or thing that, immediately before the repeal of the *Ombudsman Regulation 2011*, had effect under that Regulation continues to have effect under this Regulation.