



New South Wales

Privacy and Personal Information Protection Amendment Bill 2003

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Privacy and Personal Information Protection Act 1998* to transfer the Privacy Commissioner's functions under that Act to the Ombudsman. The Bill also amends a number of other Acts and regulations to remove references to the Privacy Commissioner and to generally replace those references with references to the Ombudsman.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Privacy and Personal Information Protection Act 1998* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the Acts and regulations specified in Schedule 2.

Schedule 1 Amendment of Privacy and Personal Information Protection Act 1998

Schedule 1 [8] repeals Division 1 of Part 4 of the Act which provides for the appointment of a Privacy Commissioner and contains provisions relating to the staff of that office. **Schedule 1 [1], [2] and [23]** (to the extent that Schedule 1 [23] repeals Schedule 1 to the Act) are consequential amendments.

Schedule 1 [3] provides that the Minister may determine what is a relevant privacy law for the purposes of section 19 (2) of the Act (which relates to the disclosure of personal information to persons or bodies outside of New South Wales). This function is currently exercised by the Privacy Commissioner. **Schedule 1 [4]** requires the Minister to consult the Ombudsman before making such a determination.

Schedule 1 [6] replaces certain references in the Act that relate to the Privacy Commissioner with references to the Ombudsman so as to transfer the Privacy Commissioner's functions under the Act to the Ombudsman. **Schedule 1 [5], [7], [9]–[12] and [15]** are consequential on the Privacy Commissioner's functions being transferred to the Ombudsman. Also, **Schedule 1 [16]** omits provisions relating to the Privacy Commissioner that would, on the transfer of the functions of that office to the Ombudsman, be duplicated in the *Ombudsman Act 1974*.

Schedule 1 [13] provides that the Minister, instead of the Privacy Commissioner, may make a direction under section 41 of the Act exempting a public sector agency from complying with an information protection principle or a privacy code of practice under the Act. **Schedule 1 [14]** requires the Minister to consult the Ombudsman before making such a direction.

Schedule 1 [17] enables the Ombudsman, if a complaint is made under the *Privacy and Personal Information Protection Act 1998* that relates to the conduct of a public sector agency, to decide not to deal with the complaint under the Act but deal with it instead as a complaint under section 12 of the *Ombudsman Act 1974*.

Schedule 1 [19] removes the Privacy Commissioner's role in undertaking internal reviews on behalf of the public sector agency. **Schedule 1 [18]** is a consequential amendment.

Schedule 1 [20] repeals Part 7 of the Act which provides for the establishment of a Privacy Advisory Committee. **Schedule 1 [23]**, to the extent that it repeals Schedule 2 to the Act, is a consequential amendment.

Schedule 1 [21] extends, by 1 year, the timeframe for the review of the Act that must be carried out by the Minister under section 75 of the Act. **Schedule 1 [22]** provides that the Minister, in undertaking the review of the Act, may not investigate certain matters or reconsider certain decisions in relation to the investigation of complaints under the Act.

Schedule 1 [25] enables regulations of a savings and transitional nature to be made as a consequence of the enactment of the proposed Act. **Schedule 1 [24] and [26]** insert Part headings into Schedule 4 to the Act.

Schedule 1 [27] inserts savings and transitional provisions consequent on the enactment of the proposed Act. In particular, provision is made for the abolition of the Privacy Advisory Committee and for references to the Privacy Commissioner to be construed as references to the Ombudsman.

Schedule 2 Amendment of other legislation

Schedule 2 amends the Acts and regulations listed below. The amendments are largely consequential on the transfer of the Privacy Commissioner's functions under the *Privacy and Personal Information Protection Act 1998* to the Ombudsman.

Children (Detention Centres) Regulation 2000

Crimes (Administration of Sentences) Regulation 2001

Crimes (Forensic Procedures) Act 2000

Defamation Act 1974

Freedom of Information Act 1989

Freedom of Information Regulation 2000

Health Records and Information Privacy Act 2002

Ombudsman Act 1974

Road Transport (Driver Licensing) Act 1998

Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999

Roads Act 1993

Statutory and Other Offices Remuneration Act 1975

In particular, **Schedule 2.8 [3]** amends the *Ombudsman Act 1974* to provide that the conduct of public authorities in relation to alleged violations of the privacy of persons is no longer conduct that is excluded from being the subject of a complaint under section 12 of that Act or of an investigation by the Ombudsman under that Act.

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No. , 2003

A Bill for

An Act to amend the *Privacy and Personal Information Protection Act 1998* to transfer the functions of the Privacy Commissioner to the Ombudsman; to amend other Acts and regulations consequentially; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Privacy and Personal Information Protection Amendment Act 2003</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6 7
3 Amendment of Privacy and Personal Information Protection Act 1998 No 133	8 9
The <i>Privacy and Personal Information Protection Act 1998</i> is amended as set out in Schedule 1.	10 11
4 Amendment of other legislation	12
Each Act and regulation specified in Schedule 2 is amended as set out in that Schedule.	13 14

Schedule 1 Amendment of Privacy and Personal Information Protection Act 1998

(Section 3)

[1] Long title

Omit “to provide for the appointment of a Privacy Commissioner;”.

[2] Section 3 Definitions

Omit the definition of *Privacy Commissioner*.

[3] Section 19 Special restrictions on disclosure of personal information

Omit “Privacy Commissioner” from section 19 (3).

Insert instead “Minister”.

[4] Section 19 (3A)

Insert after section 19 (3):

(3A) The Minister is not to make any such determination unless the Minister has consulted with the Ombudsman about the proposed determination and taken into account any submissions made by the Ombudsman in relation to the matter.

[5] Section 19 (4)

Omit “Privacy Commissioner is, within the year following the commencement of this section;”.

Insert instead “Ombudsman is”.

[6] Sections 31, 33 (5), 36 (2) (l), 37, 38, 39, 40, 42, 43 (1), 45–51, 53 (5) (b), 54 (1) and (2) and 55 (6) and (7)

Omit “Privacy Commissioner”, “Privacy Commissioner’s” and “the Commissioner” wherever occurring.

Insert instead “Ombudsman”, “Ombudsman’s” and “the Ombudsman”, respectively.

[7] Part 4, heading	1
Omit “ Privacy Commissioner ”.	2
Insert instead “ Privacy functions of Ombudsman ”.	3
[8] Part 4, Division 1	4
Omit the Division.	5
[9] Part 4, Division 2, heading	6
Omit “ Functions of Privacy Commissioner ”.	7
Insert instead “ General functions ”.	8
[10] Section 36 General functions	9
Omit section 36 (1).	10
[11] Section 36 (2)	11
Omit “In particular, the Privacy Commissioner has the following functions”.	12 13
Insert instead “The Ombudsman has the following functions under this Act”.	14 15
[12] Section 37 Requirement to give information	16
Insert “under this Act” after “functions” in section 37 (1).	17
[13] Section 41 Exempting agencies from complying with principles and codes	18 19
Omit “Privacy Commissioner, with the approval of the Minister,” from section 41 (1).	20 21
Insert instead “Minister”.	22

[14] Section 41 (3)	1
Omit the subsection. Insert instead:	2
(3) The Minister is not to make a direction under this section unless the Minister:	3
(a) has consulted with the Ombudsman about the proposed direction and has taken into account any submissions made by the Ombudsman in relation to the matter, and	4
(b) is satisfied that the public interest in requiring the public sector agency to comply with the information protection principle or privacy code of practice is outweighed by the public interest in the Minister making the direction.	5
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[15] Section 42 Information about compliance arrangements	13
Omit “, New South Wales Crime Commission or Ombudsman’s Office” from section 42 (3).	14
Insert instead “or the New South Wales Crime Commission”.	15
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[16] Sections 44 and 64–68	17
Omit the sections.	18
[17] Section 46 Preliminary assessment of privacy related complaints	19
Insert after section 46 (2):	20
(2A) If the subject-matter of the complaint relates to the conduct of a public sector agency that is a public authority within the meaning of the <i>Ombudsman Act 1974</i> , the Ombudsman may decide not to deal with the complaint under this Division but deal with it instead as a complaint under section 12 of the <i>Ombudsman Act 1974</i> .	21
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[18] Section 53 Internal review by public sector agencies	27
Omit “Except as provided by section 54 (3), the” from section 53 (4).	28
Insert instead “The”.	29
[19] Section 54 Role of Ombudsman in internal review process	30
Omit section 54 (3)–(5).	31

[20] Part 7 Privacy Advisory Committee	1
Omit the Part.	2
[21] Section 75 Review of Act	3
Omit “5 years” wherever occurring. Insert instead “6 years”.	4
[22] Section 75 (2A)	5
Insert after section 75 (2):	6
(2A) In undertaking the review, the Minister may not:	7
(a) investigate a matter relating to particular conduct, or	8
(b) reconsider any decision of the Ombudsman to investigate or not to investigate, or to discontinue the investigation of, a particular complaint, or	9 10 11
(c) reconsider any finding, recommendation, determination or other decision of the Ombudsman in relation to a particular investigation or complaint under this Act.	12 13 14 15
[23] Schedules 1 and 2	16
Omit the Schedules.	17
[24] Schedule 4 Savings, transitional and other provisions	18
Insert before clause 1:	19
Part 1 Preliminary	20
[25] Schedule 4, clause 1 (1)	21
Insert at the end of the subclause:	22
<i>Privacy and Personal Information Protection Amendment Act</i> 2003	23 24
[26] Schedule 4	25
Insert after clause 1:	26
Part 2 Provisions consequent on enactment of this Act	27 28

[27] Schedule 4	1
Insert at the end of the Schedule with appropriate Part and clause numbers:	2
Part Provisions consequent on enactment of Privacy and Personal Information Protection Amendment Act 2003	3
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Definition	6
In this Part:	7
<i>amending Act</i> means the <i>Privacy and Personal Information Protection Amendment Act 2003</i> .	8
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Saving of certain matters	10
(1) Subject to the regulations, anything done by the Privacy Commissioner in relation to the initiation, preparation or development of a draft privacy code of practice before the commencement of Schedule 1 [8] to the amending Act is, on that commencement, taken to have been done by the Ombudsman.	11
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(2) A complaint received by the Privacy Commissioner under this Act before the commencement of Schedule 1 [8] to the amending Act, but not concluded immediately before that commencement, may, subject to the regulations, continue to be dealt with by the Ombudsman under this Act as amended by the amending Act.	17
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(3) Subject to the regulations, a determination by the Privacy Commissioner under section 19 (3) that was in force immediately before the commencement of Schedule 1 [3] to the amending Act is, on that commencement, taken to be a determination by the Minister.	23
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(4) Subject to the regulations, a direction made by the Privacy Commissioner under section 41 that was in force immediately before the commencement of Schedule 1 [13] to the amending Act is, on that commencement, taken to be a direction made by the Minister.	28
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Abolition of Privacy Advisory Committee

- (1) The Privacy Advisory Committee is abolished.
- (2) A person who, immediately before the commencement of Schedule 1 [20] to the amending Act, held office as a member of the Privacy Advisory Committee, ceases to hold office on that commencement.
- (3) A person who ceases to hold office because of subclause (2) is not entitled to any remuneration or compensation because of the loss of that office.

Office of Privacy Commissioner

- (1) The person holding office as Privacy Commissioner immediately before the commencement of Schedule 1 [8] to the amending Act ceases to hold office on that commencement.
- (2) A person who ceases to hold office because of subclause (1) is not entitled to any remuneration or compensation because of the loss of that office.

Construction of references to Privacy Commissioner

A reference in any Act other than this Act, or in any instrument made under an Act, to the Privacy Commissioner (including any reference that is required to be construed as a reference to the Privacy Commissioner) is to be construed as a reference to the Ombudsman.

Schedule 2 Amendment of other legislation	1
(Section 4)	2
2.1 Children (Detention Centres) Regulation 2000	3
[1] Clause 29 Correspondence with external bodies	4
Omit “the Privacy Commissioner,” from the definition of <i>privileged letter</i>	5
in clause 29 (1).	6
[2] Clause 29 (3) (j)	7
Omit the paragraph.	8
2.2 Crimes (Administration of Sentences) Regulation 2001	9
Dictionary	10
Omit “the Privacy Commissioner,” from paragraph (a) of the definition of	11
<i>exempt body</i> .	12
2.3 Crimes (Forensic Procedures) Act 2000 No 59	13
Sections 92 (2) (i) and 109 (2) (f)	14
Omit “complaint by the Privacy Commissioner” wherever occurring.	15
Insert instead “privacy-related complaint by the Ombudsman”.	16
2.4 Defamation Act 1974 No 18	17
[1] Section 17B Matters under Privacy and Personal Information Protection Act 1998	18
Omit section 17B (1) and (2).	19
[2] Schedule 2 Proceedings of public concern and official and public documents and records	20
Omit clause 2 (11).	21
2.5 Freedom of Information Act 1989 No 5	22
Schedule 2 Exempt bodies and offices	23
Omit the matter relating to the office of Privacy Commissioner.	24
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2.6 Freedom of Information Regulation 2000	1
Schedule 4 Public offices	2
Omit the matter relating to the Privacy Commissioner from Part 2.	3
2.7 Health Records and Information Privacy Act 2002 No 71	4
[1] Section 4 Definitions	5
Omit the definition of <i>guidelines</i> from section 4 (1).	6
[2] Section 4 (1), definition of “Privacy Commissioner”	7
Omit the definition.	8
[3] Sections 24 (Ministerial guidelines), 28 (2) and 29 (a) and (b) and clauses 3 (2), 4 (3), 10 (1) (d) (iii), (e) (iii) and (f) (iii) and 11 (1) (d) (iii), (e) (iii) and (f) (iii) of Schedule 1	9 10 11
Omit “Privacy Commissioner” wherever occurring.	12
Insert instead “Minister”.	13
[4] Sections 40, 42, 44–46, 47 (Reports and recommendations of Ombudsman), 50 (Appearance by Ombudsman), 59–61, 63, 65 (including the note following section 65 (3)) and 67 and clause 2 (Ombudsman may exempt) of Schedule 2	14 15 16 17
Omit “Privacy Commissioner”, “Privacy Commissioner’s” and “the Commissioner” wherever occurring.	18 19
Insert instead “Ombudsman”, “Ombudsman’s” and “the Ombudsman”, respectively.	20 21
[5] Section 40 Preparation and making of health privacy codes of practice	22 23
Omit “Attorney General” from section 40 (4).	24
Insert instead “Minister administering the <i>Privacy and Personal Information Protection Act 1998</i> ”.	25 26

[6] Sections 43, 48 (including the note following section 48 (1)) and 66	1
Omit “The Privacy Commissioner” and “the Privacy Commissioner” wherever occurring.	2 3
Insert instead “The Ombudsman” and “the Ombudsman”, respectively.	4
[7] Part 7, heading	5
Omit “ Privacy Commissioner ”.	6
Insert instead “ General functions ”.	7
[8] Section 58 Functions of Ombudsman under this Act	8
Omit “The Privacy Commissioner has the following functions”.	9
Insert instead “The Ombudsman has the following functions under this Act”.	10 11
[9] Section 58 (b)	12
Omit “prepare and publish guidelines”.	13
Insert instead “issue guidelines, following consultation with the Minister.”.	14 15
[10] Section 58, note	16
Omit the note at the end of the section.	17
[11] Section 59 Requirement to give information	18
Insert “under this Act” after “functions” in section 59 (1).	19
[12] Section 62 Exempting organisations from complying with Principles and codes	20 21
Omit “Privacy Commissioner may, in accordance with this section,” from section 62 (1).	22 23
Insert instead “Minister may”.	24
[13] Section 62 (3)	25
Omit the subsection. Insert instead:	26
(3) The Minister is not to make a direction under this section unless the Minister:	27 28

(a)	has consulted with the Ombudsman and the Minister administering the <i>Privacy and Personal Information Protection Act 1998</i> about the proposed direction and has taken into account any submissions made by the Ombudsman or that Minister in relation the matter, and	1 2 3 4 5
(b)	is satisfied that the public interest in requiring the organisation to comply with the Health Privacy Principle, the provision of Part 4 or the health privacy code of practice is outweighed by the public interest in the Minister making the direction.	6 7 8 9 10
[14]	Section 63 Information about compliance arrangements	11
	Omit “, New South Wales Crime Commission or Ombudsman’s Office” from section 63 (3).	12 13
	Insert instead “or the New South Wales Crime Commission”.	14
[15]	Section 64	15
	Omit the section. Insert instead:	16
	64 Provisions relating to guidelines issued by Minister	17
(1)	The guidelines issued by the Minister under this Act may apply, adopt or incorporate any publication as in force for the time being.	18 19 20
(2)	Any such guidelines may, from time to time, be amended or replaced. The procedure for amending or replacing guidelines is the same as for the issuing of the guidelines unless the Minister otherwise decides in respect of a particular amendment.	21 22 23 24 25
(3)	The following provisions apply in relation to guidelines issued by the Minister under this Act:	26 27
(a)	before any such guidelines are issued, an impact assessment statement must be prepared,	28 29
(b)	the draft guidelines and impact assessment statement must be publicly exhibited for a period of at least 21 days to allow for public comment on the draft guidelines,	30 31 32 33

	(c) the Minister is to consult with the Ombudsman about the draft guidelines and take into account any submissions made by the Ombudsman in relation to the draft guidelines.	1 2 3 4
[16]	Sections 70 (1) (a) (ii) and 72 (1) (b)	5
	Omit “Privacy Commissioner” wherever occurring.	6
	Insert instead “Ombudsman under this Act”.	7
[17]	Section 78 Review of Act	8
	Insert after section 78 (2):	9
	(2A) In undertaking the review, the Minister may not:	10
	(a) investigate a matter relating to particular conduct, or	11
	(b) reconsider any decision of the Ombudsman to investigate or not to investigate, or to discontinue the investigation of, a particular complaint, or	12 13 14
	(c) reconsider any finding, recommendation, determination or other decision of the Ombudsman in relation to a particular investigation or complaint under this Act.	15 16 17 18
[18]	Schedule 2 Savings and transitional provisions	19
	Insert at the end of clause 1 (1):	20
	<i>Privacy and Personal Information Protection Amendment Act 2003</i> , but only to the extent that it amends this Act	21 22
[19]	Schedule 3 Amendment of Privacy and Personal Information Protection Act 1998	23 24
	Omit items [9], [16], [20], [22] and [23].	25
[20]	Schedule 3 [18], [21] and [25]	26
	Omit “Privacy Commissioner” wherever occurring.	27
	Insert instead “Ombudsman”.	28

2.8 Ombudsman Act 1974 No 68	1
[1] Section 10 Delegation	2
Insert “under this or any other Act” after “any functions of the Ombudsman” in section 10 (1).	3 4
[2] Section 23 Expert assistance	5
Insert “under this or any other Act” after “functions”.	6
[3] Schedule 1 Excluded conduct of public authorities	7
Omit item 17.	8
[4] Schedule 1A Agencies	9
Omit “Privacy Commissioner”.	10
2.9 Road Transport (Driver Licensing) Act 1998 No 99	11
Section 41 Release of photographs prohibited	12
Omit “Privacy Commissioner” from section 41 (2).	13
Insert instead “Ombudsman”.	14
2.10 Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999	15 16
Clause 126I Release of photographs prohibited	17
Omit “Privacy Commissioner” from clause 126I (2).	18
Insert instead “Ombudsman”.	19
2.11 Roads Act 1993 No 33	20
Section 250A Approved camera recording devices—toll offences	21
Omit “Privacy Commissioner” from section 250A (5).	22
Insert instead “Ombudsman”.	23

2.12 Statutory and Other Offices Remuneration Act 1975 (1976 No 4)	1
	2
Schedule 1 Public offices	3
Omit “Full-time Privacy Commissioner”.	4