

AGEING AND DISABILITY COMMISSIONER BILL 2019

Schedule of the amendments referred to in the Legislative Council's message of 18 June 2019.

- No. 1 **GRN No. 1 [c2019-009A]**
Page 6, clause 12 (1) (d), line 17. Insert “, including referrals to independent advocacy services, where appropriate” after “older adults”.
- No. 2 **GRNS No. 2 [c2019-009A]**
Page 6, clause 12 (1) (e), lines 18 and 19. Omit “regarding matters in relation to which the Commissioner may conduct investigations”. Insert instead “relating to the protection and promotion of the rights of adults with disability and older adults or the abuse, neglect or exploitation of adults with disability or older adults”.
- No. 3 **GRNS No. 3 [c2019-009A]**
Page 6, clause 12 (1). Insert after line 25:
 (h) to monitor, assess and report on the New South Wales implementation of the National Disability Strategy (*NDS*).
- No. 4 **OPP No. 1 [c2019-014A]**
Page 6, clause 12, lines 28–32. Omit all words on those lines. Insert instead:
 (3) The Commissioner is not subject to the control or direction of the Minister.
- No. 5 **GRN No. 5 [c2019-009A]**
Page 6, clause 13 (1), lines 34–36. Omit all words on those lines. Insert instead:
 (1) A person may make a report to the Commissioner about the following:
 (a) an adult with disability or older adult if the person has reasonable grounds to believe the adult is subject to, or at risk of, abuse, neglect or exploitation,
 (b) circumstances that the person has reasonable grounds to believe will result in the abuse, neglect or exploitation of an adult with disability or older adult.
- No. 6 **OPP No. 1 [c2019-012]**
Page 7, clause 13. Insert after line 19:
 (9) If the Commissioner is of the opinion that a report, or part of a report, may provide evidence of the commission of a criminal offence, the Commissioner must refer the report, or the part of the report, to the Commissioner of Police or the Director of Public Prosecutions.
- No. 7 **GRN No. 6 [c2019-009A]**
Page 7, clause 13 (9), lines 20 and 21. Omit all words on those lines. Insert instead:
 (9) The Commissioner may conduct an investigation of a report that the Commissioner has referred to another person or body under subsection (8), including in consultation with the person or body, if the Commissioner is of the opinion that conducting an investigation may be necessary to protect an adult with disability or older adult from abuse, neglect or exploitation.

No. 8 **GRN No. 7 [c2019-009A]**

Page 7, clause 13 (10) (a), line 25. Insert “despite having been provided with the appropriate support for the purposes of making such a decision” after “consent”.

No. 9 **GRN No. 8 [c2019-009A]**

Page 7, clause 13 (10) (b), line 26. Omit all words on the line. Insert instead:

- (b) 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

No. 10 **GRN No. 9 [c2019-009A]**

Page 7, clause 14. Insert after line 36:

- (2) A relevant agency may provide relevant information to the Commissioner for the purposes of enabling or assisting the Commissioner’s exercise of its functions.

No. 11 **GRN No. 10 [c2019-009A]**

Page 7, clause 14 (3), lines 41 and 42. Omit “that may be provided under this section, and to which an information sharing arrangement may relate”. Insert instead “or a relevant agency that may be provided under this section”.

No. 12 **OPP No. 1 [c2019-013]**

Page 8, Division 2 of Part 3, line 35. Insert “**and public inquiries**” after “**Investigations**”.

Amendment rejected ~~No. 13 **GRN No. 11 [c2019-009A]**~~

~~Page 8, clause 16 (1) (a), line 39. Insert “and answer any questions” after “notice”.~~

Amendment rejected ~~No. 14 **GRN No. 12 [c2019-009A]**~~

~~Page 9, clause 16 (2), line 7. Omit “50”. Insert instead “100”.~~

No. 15 **OPP No. 1 [c2019-017A]**

Page 9, clause 16 (3) lines 8–11. Omit all words on those lines.

No. 16 **GRN No. 13 [c2019-009A]**

Page 9, clause 17 (3), line 43. Insert “(in circumstances where the adult has been provided with the appropriate support for the purposes of making such a decision)” after “concerned”.

No. 17 **OPP No. 2 [c2019-013]**

Page 10. Insert after line 13:

19 Public inquiries

- (1) For the purposes of an investigation of a report, the Commissioner may conduct a public inquiry, if the Commissioner is of the opinion that a public inquiry is in the public interest, having regard to:
 - (a) the seriousness of the allegation of abuse, neglect or exploitation, and
 - (b) the wishes of any person with disability or older adult to whom the report relates, and

- (c) the privacy of the persons who will be affected by a public inquiry.
- (2) For the purpose of conducting a public inquiry under this section, the Commissioner has the functions, protections and immunities conferred on a commissioner by Division 1 of Part 2 of the *Royal Commissions Act 1923*.
- (3) The provisions of the *Royal Commissions Act 1923* (except section 13 and Division 2 of Part 2) apply, with necessary modifications, to a public inquiry and to any witness or person summoned by or appearing before the public inquiry or providing material to the inquiry, but section 11 (2) of that Act shall have effect subject to subsection (4).
- (4) Nothing in this section requires any person to give any statement of information, answer any question or disclose any document if the person can claim privilege not to do so.
- (5) A witness summoned by or appearing before the Commissioner is to be paid such amount as the Commissioner determines, but not exceeding the amount that would be payable to a witness that is a Crown witness subpoenaed by the Crown to give evidence.
- (6) For the purpose of conducting a public inquiry under this section, the Commissioner is not bound by the rules of evidence and may be informed on any matter in issue at the public inquiry in such manner as the Commissioner considers appropriate.
- (7) The Commissioner may give directions as to the procedure to be followed at or in connection with the inquiry.
- (8) The Commissioner may appoint an Australian legal practitioner to assist the Commissioner for the purposes of an inquiry held by the Commissioner and the Australian legal practitioner may appear before the inquiry.
- (9) In this section:
- disclosure** of a document includes the provision of copies of the document, the granting of access to the document or the disclosure of the contents of the document.
- document** includes a part of a document.
- privilege** means privilege based on a claim by a person that evidence or other information about a matter or document:
- (a) might tend to incriminate the person or make the person liable to any forfeiture or penalty, or
- (b) could not be required to be adduced in proceedings before a New South Wales court by reason of the operation of Part 3.10 (Privileges) of Chapter 3 of the Evidence Act 1995.

No. 18 **GRN No. 14 [c2019-009A]**

Page 11, clause 19, line 16. Insert “or older adult” after “disability”.

No. 19 **GRN No. 15 [c2019-009A]**

Page 11, clause 20 (1), lines 24 and 35. Insert “or older adults” after “disability”.

No. 20 **GRN No. 16 [c2019-009A]**

Page 12, clause 21 (1) (h), line 26. Insert “independent” after “about”.

No. 21 **GRN No. 17 [c2019-009A]**

Page 13, clause 23 (3) (e), line 18. Omit “community”.

- No. 22 **OPP No. 2 [c2019-012]**
Page 14, clause 24. Insert after line 9:
- (3) An annual report by the Commissioner must include information about the number of referrals made by the Commissioner under section 13 and the outcome of each referral.
- No. 23 **GRN No. 18 [c2019-009A]**
Page 14, clause 24, lines 10–12. Omit all words on those lines. Insert instead:
- (3) An annual report prepared under subsection (1) must include the following:
 - (a) any recommendations for administrative action or changes in the laws of the State that the Commissioner considers necessary,
 - (b) information on the number of reports made to, and actioned by, the Commissioner, and the number of referrals made elsewhere and to whom,
 - (c) the number of investigations held under section 13 (10) where consent was not given, including as a percentage of total investigations held,
 - (d) if a Board member has been removed under section 27 (9) during the reporting period, the reasons for removing the member
- No. 24 **GRN No. 19 [c2019-009A]**
Page 14, clause 25 (3), line 21. Omit “may”. Insert instead “must”.
- No. 25 **OPP No. 1 [c2019-015B]**
Page 15, clause 27 (2), lines 4–5. Omit “relating to the abuse, neglect or exploitation of adults with disability and older adults”.
- No. 26 **OPP No. 2 [c2019-015B]**
Page 15, clause 27 (3), lines 7 and 8. Omit “Minister who, in the opinion of the Minister,”. Insert instead “Commissioner who, in the opinion of the Commissioner”.
- No. 27 **GRN No. 21 [c2019-009A]**
Page 15, clause 27, line 11. Omit all words on the line. Insert instead:
the community, and include the following:
- (a) 2 or more persons with disability,
 - (b) a representative of independent specialist advocacy, information and representative organisations for people with disability in New South Wales,
 - (c) a representative of independent specialist advocacy, information and representative organisations for older adults in New South Wales,
 - (d) 1 or more persons representing persons employed in the provision of disability services or services for older adults.
- No. 28 **OPP No. 4 [c2019-015B]**
Page 15, clause 27 (6), line 14. Omit “Minister is to appoint”. Insert instead “Board is to elect”.

- No. 29 **OPP No. 5 [c2019-015B]**
Page 15, clause 27 (8), line 19. Omit “Minister”. Insert instead “Commissioner”.
- No. 30 **OPP No. 6 [c2019-015B]**
Page 15, clause 27 (9), line 20. Omit “Minister”. Insert instead “Commissioner”.
- No. 31 **OPP No. 7 [c2019-015B]**
Page 15, clause 27 (9), line 20. Insert “and must provide a report on the removal to the Presiding Officer of each House of Parliament” after “time”.

Amendment rejected ~~No. 32 — GRN No. 25 [c2019-009A]~~
~~Page 15, clause 29, line 41. Omit “50”. Insert instead “100”.~~

Amendment rejected ~~No. 33 — GRN No. 26 [c2019-009A]~~
~~Page 16, clause 30, line 4. Omit “50”. Insert instead “100”.~~

Amendment rejected ~~No. 34 — GRN No. 27 [c2019-009A]~~
~~Page 16. Insert after line 11:~~

~~**32A — Independent specialist disability advocacy, information and representative organisations**~~

- ~~(1) — Parliament recommends the State provide financial assistance to independent specialist disability advocacy, information and representative organisations in New South Wales by grants of a minimum of \$20,000,000 per annum (adjusted annually for inflation), to be distributed as determined by the Commissioner.~~
- ~~(2) — The assistance recommended under subsection (1) is in addition to any other financial assistance to be provided by the Commonwealth.~~

- No. 35 **OPP No. 1 [c2019-016C]**
Page 16. Insert after line 34:
- 34 Independent review of Act**
- (1) The Minister is to commission an independent review of the Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) A report on the outcome of the review is to be tabled in each House of Parliament before 1 July 2022.
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