



New South Wales

# Community Services (Complaints, Reviews and Monitoring) Amendment Bill 2014

## Explanatory note

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

## Overview of Bill

The objects of this Bill are as follows:

- (a) to authorise the Ombudsman to review the systems of service providers of community services and to make reports and recommendations in relation to them,
- (b) to make it clear that persons advocating on behalf of persons provided with community services are included in the complaints resolution process,
- (c) to extend the objects of the *Community Services (Complaints, Reviews and Monitoring) Act 1993 (the Act)*,
- (d) to make further provision for the functions of the Ombudsman in respect of the prevention or reduction of reviewable deaths,
- (e) to make other minor amendments to the Act.

## 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 the date of assent to the proposed Act.

## **Schedule 1      Amendment of Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2**

**Schedule 1 [1]** makes it clear that the object of the Act to encourage compliance with, and facilitate awareness of, community welfare legislation may be achieved by education.

**Schedule 1 [2], [5]–[8], [11], [13], [17], [19], [20], [23] and [24]** update references to Departments and Ministers to reflect changes to Government administrative arrangements and make consequential amendments. Some functions currently conferred on the relevant Department head are now conferred on the Chief Executive of Ageing, Disability and Home Care (as a consequence of the abolition of the Department of Ageing, Disability and Home Care).

**Schedule 1 [3]** corrects a reference to the *Children and Young Persons (Care and Protection) Act 1998* in the definition of *child in care*. **Schedule 1 [4]** repeals a redundant provision in the definition of *child in care*.

**Schedule 1 [9]** authorises the Ombudsman to report on and make recommendations to the Minister and others about any systemic issues relating to the provision of community services by service providers.

**Schedule 1 [10]** re-enacts a provision that empowers certain persons to make a community services complaint on behalf of others to make it clear that an advocate for a person to whom a community service is provided can make a complaint on the person's behalf.

**Schedule 1 [12]** enables the Child Death Review Team to include representatives not only from the Ministry of Health, but also from other bodies or organisations that are part of a broader group known as NSW Health (such as the Health Administration Corporation).

**Schedule 1 [14]** makes it clear that certain persons under a duty to provide records to the Child Death Review Team are also required to provide any document that assists to explain those records. **Schedule 1 [15] and [16]** are consequential amendments.

**Schedule 1 [18]** extends the Ombudsman's functions to include undertaking research or other projects in partnership with other persons or bodies for the purpose of formulating strategies to reduce or remove risk factors associated with reviewable deaths that are preventable.

**Schedule 1 [21]** imposes a duty on certain doctors and other health care professionals to provide the Ombudsman with access to records relating to reviewable deaths, in so far as they are relevant to the Ombudsman's functions, and copies of such records. The duty extends to records that the doctors and other health care professionals concerned may require other persons to produce.

**Schedule 1 [22]** authorises the Ombudsman to provide information obtained under Part 6 of the Act to persons in connection with research that is undertaken to prevent or reduce the likelihood of reviewable deaths in New South Wales. If the personal information is provided to a person who is not a public sector agency, the Ombudsman must ensure that the person agrees to deal with the information in accordance with the relevant information protection principles that would apply if the person were a public sector agency.

**Schedule 1 [25]** enables savings and transitional regulations to be made as a consequence of amendments to the Act. **Schedule 1 [26]** contains a specific transitional provision.



New South Wales

# Community Services (Complaints, Reviews and Monitoring) Amendment Bill 2014

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New South Wales

# Community Services (Complaints, Reviews and Monitoring) Amendment Bill 2014

No. , 2014

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## A Bill for

An Act to amend the *Community Services (Complaints, Reviews and Monitoring) Act 1993* to make further provision for complaints, reviews and monitoring in relation to the provision of community services.

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**The Legislature of New South Wales enacts:**

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**1 Name of Act**

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This Act is the *Community Services (Complaints, Reviews and Monitoring) Amendment Act 2014*.

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**2 Commencement**

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

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<b>Schedule 1</b>	<b>Amendment of Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2</b>	1
		2
<b>[1] Section 3 Objects and principles</b>		3
	Insert “, including by education” after “legislation” in section 3 (1) (f).	4
<b>[2] Section 4 Definitions</b>		5
	Omit “Director-General of the Department of Community Services” from paragraph (b) of the definition of <i>child in care</i> in section 4 (1).	6
	Insert instead “Secretary of the Department of Family and Community Services”.	7
<b>[3] Section 4 (1), definition of “child in care”</b>		9
	Omit “section 135” from paragraph (c). Insert instead “section 135A”.	10
<b>[4] Section 4 (1), definition of “child in care”</b>		11
	Omit paragraph (e).	12
<b>[5] Section 4 (1), definition of “relevant Minister”</b>		13
	Omit “Minister for Community Services” from paragraph (d).	14
	Insert instead “Minister for Family and Community Services”.	15
<b>[6] Section 4 (1), definition of “service provider”</b>		16
	Omit the definition. Insert instead:	17
	<i>service provider</i> means:	18
	(a) the Department of Family and Community Services, or	19
	(b) an implementation company under the <i>National Disability Insurance Scheme (NSW Enabling) Act 2013</i> while the company is a public sector agency of the State under that Act, or	20
	(c) a person or organisation funded by the Minister for Family and Community Services, the Minister for Ageing or the Minister for Disability Services to provide a service, or	21
	(d) a person or organisation authorised or licensed by the Minister for Family and Community Services, the Minister for Ageing or the Minister for Disability Services to provide a service, or	22
	(e) the Home Care Service of New South Wales or a person or organisation funded by the Home Care Service to provide a service, or	23
	(f) a person or organisation that is covered by an arrangement made after 7 April 1994 (the date of commencement of this section) between a Minister of the State of New South Wales and a State or Commonwealth Minister, under which arrangement that State or Commonwealth Minister agrees to the person or organisation being a service provider for the purposes of this Act, or	24
	(g) an authorised carer or designated agency within the meaning of the <i>Children and Young Persons (Care and Protection) Act 1998</i> , or	25
	(h) the proprietor or occupier of premises that consist of an assisted boarding house.	26
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<b>[7]</b>	<b>Section 5 Administration of community welfare legislation</b>	1
	Omit section 5 (1) (b) and (c). Insert instead:	2
	(b) inconsistent with the way in which those resources have been allocated by the Minister for Family and Community Services, the Minister for Ageing, the Minister for Disability Services or the Secretary of the Department of Family and Community Services in accordance with Government policy, or	3 4 5 6 7
	(c) inconsistent with Government policy, as certified in writing by the Minister for Family and Community Services, the Minister for Ageing or the Minister for Disability Services and notified to the Tribunal, the Commission for Children and Young People or other person or body making the determination.	8 9 10 11 12
<b>[8]</b>	<b>Section 7 Appointment of Official Community Visitors</b>	13
	Omit section 7 (2) (d). Insert instead:	14
	(d) is not employed in the Public Service within the Department of Family and Community Services.	15 16
<b>[9]</b>	<b>Section 14A</b>	17
	Insert after section 14:	18
	<b>14A Reports on systemic issues</b>	19
	(1) The Ombudsman may, during or at the completion of a review or any other inquiry carried out by the Ombudsman under another provision of this Act:	20 21
	(a) report on any systemic issues relating to the provision of community services by service providers, and	22 23
	(b) make such recommendations as the Ombudsman thinks fit.	24
	(2) A copy of a report containing recommendations:	25
	(a) must be given to the relevant Minister in relation to the service provider concerned and to the service provider concerned, and	26 27
	(b) may be given to any other person or body, as the Ombudsman thinks appropriate.	28 29
<b>[10]</b>	<b>Section 23 Who may make a complaint?</b>	30
	Omit section 23 (2). Insert instead:	31
	(2) Without limiting the generality of subsection (1), a complaint may be made:	32
	(a) by a person advocating on behalf of the person in respect of whom the relevant service was provided, withdrawn, varied or administered, or	33 34
	(b) by a person who is responsible for, or is a next friend of, the person in respect of whom the relevant service was provided, withdrawn, varied or administered.	35 36 37
<b>[11]</b>	<b>Section 28 Applications to Tribunal for administrative reviews of decisions</b>	38
	Omit section 28 (2). Insert instead:	39
	(2) In this section:	40
	<i>relevant decision maker</i> means the following:	41
	(a) the Minister for Family and Community Services,	42
	(b) the Minister for Ageing,	43

	(c) the Minister for Disability Services,	1
	(d) the Secretary of the Department of Family and Community Services,	2
	(e) a service provider (other than an authorised carer within the meaning of the <i>Children and Young Persons (Care and Protection) Act 1998</i> ).	3 4
<b>[12]</b>	<b>Section 34C Establishment and composition of the Team</b>	5
	Omit section 34C (4) (b). Insert instead:	6
	(b) NSW Health within the meaning of the <i>Health Administration Act 1982</i> ,	7
<b>[13]</b>	<b>Section 34K Duty of persons to assist the Team</b>	8
	Omit “Director-General” from section 34K (1) (a). Insert instead “Secretary”.	9
<b>[14]</b>	<b>Section 34K (2)</b>	10
	Insert “(including any document that assists to explain that record)” after “that subsection”.	11
<b>[15]</b>	<b>Section 34K (3)</b>	12
	Insert “, or restricts or prohibits disclosure of information,” after “records”.	13
<b>[16]</b>	<b>Section 34K (3)</b>	14
	Omit “that subsection”. Insert instead “this section”.	15
<b>[17]</b>	<b>Section 34L Confidentiality of information</b>	16
	Omit “Director-General” from section 34L (1) (c) (ii). Insert instead “Secretary”.	17
<b>[18]</b>	<b>Section 36 Systemic review of deaths of children at risk of harm, children in care or other persons in care</b>	18 19
	Omit “undertake research or other projects” from section 36 (1) (d).	20
	Insert instead “undertake, alone or with others, research or other projects”.	21
<b>[19]</b>	<b>Section 37 Notification to Ombudsman of reviewable deaths</b>	22
	Omit section 37 (2). Insert instead:	23
	(2) The Chief Executive of ADHC must provide the Ombudsman with copies of any notification received by the Chief Executive relating to a reviewable death not later than 30 days after receiving the notification.	24 25 26
<b>[20]</b>	<b>Section 37 (4)</b>	27
	Insert after section 37 (3):	28
	(4) In this section:	29
	<i>Chief Executive of ADHC</i> means the person employed in the Department of Family and Community Services as the Chief Executive of Ageing, Disability and Home Care or, if there is no such person, the Secretary of the Department.	30 31 32
<b>[21]</b>	<b>Section 38 Provision of information and assistance to Ombudsman</b>	33
	Insert after section 38 (1) (g):	34
	(g1) a medical practitioner or health care professional who, or the head of a body which, delivered health services to a person whose death is a reviewable death,	35 36 37



<b>[22] Section 39 Information to be provided by Ombudsman</b>	1
Insert at the end of the section:	2
(2) The Ombudsman may provide to a person any information or copies of documents obtained by the Ombudsman under this Part to facilitate research that is undertaken for the purpose of helping to prevent or reduce the likelihood of reviewable deaths in New South Wales, if the Ombudsman thinks it appropriate to do so.	3 4 5 6 7
(3) The Ombudsman must not provide any personal information (within the meaning of the <i>Privacy and Personal Information Protection Act 1998</i> ) to a person under subsection (2) unless:	8 9 10
(a) the person is a public sector agency under that Act, or	11
(b) the person agrees to deal with the information in accordance with the information protection principles set out in sections 12, 17, 18 and 19 of the <i>Privacy and Personal Information Protection Act 1998</i> as those principles would apply if the person were a public sector agency.	12 13 14 15
<b>Note.</b> The <i>Privacy and Personal Information Protection Act 1998</i> requires public sector agencies to deal with personal information in accordance with the information protection principles set out in that Act.	16 17 18
In addition, the <i>Health Records and Information Privacy Act 2002</i> requires any public sector agency or private sector person that collects, holds or uses health information to comply with the health privacy principles provided for by that Act.	19 20 21
<b>[23] Section 44</b>	22
Omit the section. Insert instead:	23
<b>44 Condition of provision of funds</b>	24
(1) The recipient of any funds provided by the State for the purposes of a community welfare program must make such arrangements for their expenditure as are necessary to facilitate the resolution of complaints at a local level.	25 26 27 28
(2) It is a condition of the provision of the funds that the recipient comply with this section.	29 30
(3) In this section, <i>community welfare program</i> means any program provided under or regulated by community welfare legislation.	31 32
<b>[24] Section 45 Reasons to be given for certain decisions</b>	33
Omit section 45 (4). Insert instead:	34
(4) In this section:	35
<b>relevant decision maker</b> means the following:	36
(a) the Minister for Family and Community Services,	37
(b) the Minister for Ageing,	38
(c) the Minister for Disability Services,	39
(d) the Secretary of the Department of Family and Community Services,	40
(e) a service provider (other than an authorised carer within the meaning of the <i>Children and Young Persons (Care and Protection) Act 1998</i> ).	41 42
<b>[25] Schedule 1 Savings and transitional provisions</b>	43
Insert at the end of clause 1 (1):	44
any Act that amends this Act	45

<b>[26] Schedule 1, Part 5</b>	1
Insert after Part 4:	2
<b>Part 5 Community Services (Complaints, Reviews and Monitoring) Amendment Act 2014</b>	3
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<b>18 Appointment of Official Community Visitors</b>	5
The amendment to section 7 made by the <i>Community Services (Complaints, Reviews and Monitoring) Amendment Act 2014</i> applies only to the appointment or re-appointment of a person as Official Community Visitor after the commencement of the amendment.	6
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