



New South Wales

Ageing and Disability Commissioner Bill 2019

Explanatory note

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

Overview of Bill

The objects of this Bill are to protect and promote the rights of adults with disability and older adults and to protect those adults from abuse, neglect and exploitation.

The Bill establishes the office of Ageing and Disability Commissioner (the *Commissioner*) and provides for the Commissioner's functions, which include:

- (a) dealing with allegations of abuse, neglect or exploitation of adults with disability and older adults, and
- (b) community education and general advice and assistance to the public, and
- (c) inquiring into and reporting on systemic issues, and
- (d) advising and making recommendations to the Minister administering the proposed Act.

The Bill also establishes an Ageing and Disability Advisory Board (the *Board*) and provides that the Official Community Visitor program, to the extent that it relates to visits to accommodation provided to adults with disability and certain boarding houses, is to be administered by the Commissioner instead of the Ombudsman as is currently the case.

Outline of provisions

Part 1 Preliminary

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.

Clause 3 defines certain words and expressions used in the proposed Act.

Clause 4 sets out the objects (as set out in the Overview) and principles of the proposed Act. When exercising a function under the proposed Act, the Commissioner or any other person must have regard to the objects and principles.

Part 2 Appointment of Commissioner

Clause 5 provides for the appointment of an Ageing and Disability Commissioner by the Governor.

Clause 6 provides for the employment and remuneration of the Commissioner.

Clause 7 sets out when the office of Commissioner becomes vacant.

Clause 8 enables the Governor to remove the Commissioner from office, but only for incompetence, incapacity or misbehaviour.

Clause 9 provides for the appointment of an acting Commissioner in certain circumstances.

Clause 10 provides for staff to be employed in the Public Service.

Clause 11 enables the Commissioner to delegate the Commissioner's functions.

Part 3 Functions of Commissioner

Division 1 General functions

Clause 12 specifies the functions of the Commissioner, which include the following:

- (a) to deal with allegations of abuse, neglect and exploitation of adults with disability and older adults, whether on the basis of a report made to the Commissioner or at the Commissioner's own initiative,
- (b) to take further necessary action following an investigation into an allegation of abuse, neglect or exploitation of an adult with disability or older adult,
- (c) to raise awareness and educate the public about matters relating to the abuse, neglect and exploitation of adults with disability and older adults,
- (d) to provide advice and general assistance to the public about matters relating to the abuse, neglect and exploitation of adults with disability and older adults,
- (e) to inquire into and report on systemic issues regarding matters in relation to which the Commissioner may conduct investigations,
- (f) to consult with the Board on matters relating to the abuse, neglect and exploitation of adults with disability and older adults,
- (g) to advise, and make recommendations to, the Minister, at the Commissioner's own initiative or at the request of the Minister, on matters relating to the abuse, neglect and exploitation of adults with disability and older adults.

The Commissioner is not subject to the control or direction of the Minister administering the proposed Act in the exercise of certain functions, including conducting investigations.

Clause 13 provides that a person may make a report to the Commissioner about 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. The Commissioner may, at the Commissioner's own initiative, decide to deal with a matter as a report if it relates to an adult with disability or older adult that the Commissioner has reasonable grounds to believe is subject to, or at risk of, abuse, neglect or exploitation. In dealing with a report, the Commissioner may conduct an investigation, make a referral to another person or body or may decline to take action.

If the Commissioner is of the opinion that a report, or part of a report, constitutes a complaint that may be made to any of the following persons or bodies, the Commissioner must refer the report, or the part of the report, to the person or body:

- (a) the Health Care Complaints Commission,
- (b) the Commissioner of the Aged Care Quality and Safety Commission,
- (c) the Commissioner of the NDIS Quality and Safeguards Commission,
- (d) any other person or body prescribed by the regulations.

The Commissioner must obtain the consent of an adult with disability or older adult in order to conduct an investigation into an allegation of abuse, neglect or exploitation of the adult, except in certain circumstances.

Clause 14 provides that the Commissioner may provide certain information about an adult with disability or older adult to a government sector agency, the Civil and Administrative Tribunal, a hospital or other health organisation to assist that agency to provide services to the adult. The Commissioner may also enter into arrangements with those agencies for the purposes of sharing and exchanging information.

Clause 15 protects the identity of a person who, in good faith, makes a report to the Commissioner under the proposed Act.

Division 2 Investigations

Clause 16 enables the Commissioner to require a person to attend a meeting or to produce documents or things for the purposes of an investigation of a report.

Clause 17 enables the Commissioner to apply for a search warrant if the Commissioner has reasonable grounds for believing that an adult with disability or older adult is subject to, or at risk of, serious abuse, neglect or exploitation at particular premises.

Clause 18 provides that a provision of any other Act or law that prohibits or restricts the disclosure of information does not operate to prevent the provision of information to the Commissioner under the proposed Division.

Part 4 Official Community Visitors

Clause 19 defines expressions used in the proposed Part. A *visitable service* means an accommodation service where adults with disability are in full-time care, a boarding house for people with additional needs or any other service prescribed by the regulations. Currently, premises at which those services are provided are visited by Official Community Visitors appointed under the *Community Services (Complaints, Reviews and Monitoring) Act 1993*. The provisions of the proposed Part are substantially the same as the current provisions of that Act.

Clause 20 provides for the appointment of Official Community Visitors by the Minister administering the proposed Act.

Clause 21 provides for the functions of Official Community Visitors in relation to visitable services.

Clause 22 provides that the Commissioner has a general oversight and co-ordination role in relation to Official Community Visitors.

Clause 23 protects a person who makes a complaint or provides information to an Official Community Visitor from retribution.

Part 5 Annual reports and special reports

Clause 24 requires the Commissioner to prepare annual reports on the Commissioner's activities and the activities of the Official Community Visitors.

Clause 25 enables the Commissioner to prepare special reports that can be provided to Parliament and requires the Commissioner to prepare special reports on the request of the Minister administering the proposed Act.

Clause 26 deals with the provision of annual reports and special reports to Parliament.

Part 6 Miscellaneous

Clause 27 establishes the Ageing and Disability Advisory Board, which will advise the Commissioner on matters relating to the abuse, neglect or exploitation of adults with disability and older adults that the Board considers appropriate or that are referred to the Board by the Commissioner.

Clause 28 protects persons involved in the administration of the proposed Act from personal liability if acting in good faith.

Clause 29 makes it an offence for a person to disclose information obtained in connection with the administration or execution of the proposed Act except in certain circumstances. The maximum penalty is 50 penalty units (currently, \$5,500).

Clause 30 makes it an offence for a person, without reasonable excuse, to resist or obstruct the Commissioner or other person in the exercise of a function under the proposed Act. The maximum penalty is 50 penalty units (currently, \$5,500).

Clause 31 provides that proceedings for an offence under the proposed Act may be dealt with summarily before the Local Court.

Clause 32 provides that the proposed Act binds the Crown.

Clause 33 enables the Governor to make regulations, including savings and transitional regulations, for the purposes of the proposed Act.

Schedule 1 Amendment of Acts

Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2

Schedule 1.1 [1] provides that the functions of Official Community Visitors appointed under the *Community Services (Complaints, Reviews and Monitoring) Act 1993* do not extend to visitable services that are accommodation services for adults with disability or assisted boarding houses. Those services will be visited by Official Community Visitors appointed under the proposed Act (see proposed Part 4).

Schedule 1.1 [2] and [3] update the provisions that require the Ombudsman to monitor and review deaths of persons in residential care and children in care, so that deaths of persons living in supported group accommodation are included. Supported group accommodation has the same meaning as it has in the *Disability Inclusion Act 2014* and includes supported group accommodation provided by a registered provider under the National Disability Insurance Scheme of the Commonwealth.

Coroners Act 2009 No 41

Schedule 1.2 [1] and [2] update the provisions relating to the jurisdiction of the State Coroner to provide that an inquest may be held into the death of a person who was living in supported group accommodation. Supported group accommodation has the same meaning as it has in the *Disability Inclusion Act 2014* and includes supported group accommodation provided by a registered provider under the National Disability Insurance Scheme of the Commonwealth.

Schedule 1.2 [4] requires the State Coroner to inform the Commissioner of the NDIS Quality and Safeguards Commission of the Commonwealth about a death of a person living in supported group accommodation, in addition to being required to inform the Ombudsman as is currently the case. **Schedule 1.2 [3] and [5]** are consequential amendments.

Government Information (Public Access) Act 2009 No 52

Schedule 1.3 provides that information relating to the report handling, investigative and reporting functions of the Commissioner is excluded information under the *Government Information (Public Access) Act 2009*, which means that there is a conclusive presumption of an overriding public interest against disclosure of the information and that an access application cannot be made for access to the information.

Government Sector Employment Act 2013 No 40

Schedule 1.4 provides that the Office of the Commissioner is a separate Public Service agency headed by the Commissioner.

Health Records and Information Privacy Act 2002 No 71

Schedule 1.5 provides that the Commissioner is an investigative agency under the *Health Records and Information Privacy Act 2002*, which means that the Commissioner is exempt from certain health privacy principles under that Act in relation to the handling of information in the exercise of the Commissioner's report handling and investigative functions.

Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Schedule 1.6 is an amendment consequent on proposed section 17 of the proposed Act.

Privacy and Personal Information Protection Act 1998 No 133

Schedule 1.7 [1] provides that the Commissioner is an investigative agency under the *Privacy and Personal Information Protection Act 1998*, which means that the Commissioner is exempt from certain provisions of that Act in relation to the exercise of the Commissioner's report handling and investigative functions.

Schedule 1.7 [2] exempts the Commissioner from a special restriction on the disclosure of personal information. The Ombudsman, the Health Care Complaints Commission, the Anti-Discrimination Board and the Civil and Administrative Tribunal are currently exempt from the restriction.



New South Wales

Ageing and Disability Commissioner Bill 2019

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New South Wales

Ageing and Disability Commissioner Bill 2019

No. , 2019

A Bill for

An Act to establish the office of Ageing and Disability Commissioner and to provide for the functions of that office; and for other purposes.

The Legislature of New South Wales enacts:	1
Part 1 Preliminary	2
1 Name of Act	3
This Act is the <i>Ageing and Disability Commissioner Act 2019</i> .	4
2 Commencement	5
(1) This Act commences on 1 July 2019, except as provided by subsection (2).	6
(2) Part 4 and Schedule 1.1 [1] commence on a day or days to be appointed by proclamation.	7 8
3 Definitions	9
(1) In this Act:	10
Board means the Ageing and Disability Advisory Board established under section 27.	11 12
Commissioner means the Ageing and Disability Commissioner appointed under section 5.	13 14
disability has the same meaning as in the <i>Disability Inclusion Act 2014</i> .	15
function includes a power, authority or duty and exercise a function includes perform a duty.	16 17
government sector agency has the same meaning as it has in the <i>Government Sector Employment Act 2013</i> and includes a council within the meaning of the <i>Local Government Act 1993</i> .	18 19 20
investigation means an investigation of a report conducted by the Commissioner under Part 3.	21 22
Official Community Visitor means an Official Community Visitor appointed under section 20.	23 24
older adult means a person who is aged:	25
(a) 50 years or over, in the case of an Aboriginal or Torres Strait Islander person, or	26 27
(b) 65 years or over, in any other case.	28
report , other than in Part 5, means a report made to the Commissioner under section 13 and includes a matter dealt with as a report by the Commissioner under that section or section 21 (3).	29 30 31
Note. The <i>Interpretation Act 1987</i> contains definitions and other provisions that affect the interpretation and application of this Act.	32 33
(2) Notes included in this Act do not form part of this Act.	34
4 Objects and principles of Act	35
(1) The objects of this Act are:	36
(a) to protect and promote the rights of adults with disability and older adults, and	37
(b) to protect adults with disability and older adults from abuse, neglect and exploitation.	38 39
(2) When exercising a function under this Act, the Commissioner or any other person must have regard to the objects of the Act and the following principles:	40 41
(a) adults with disability and older adults have the right to respect for their worth and dignity as individuals and to live free from abuse, neglect and exploitation,	42 43

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| (b) | adults with disability and older adults have the right to respect for their cultural and linguistic diversity, age, gender, sexual orientation and religious beliefs, | 1
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| (c) | adults with disability and older adults have the right to privacy and confidentiality, | 3
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| (d) | adults with disability and older adults have the right to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports and services, | 5
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| (e) | families, carers and other significant persons have a crucial role in the lives of adults with disability and older adults and it is important to respect and preserve those relationships. | 8
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| (3) | When exercising a function under this Act, the Commissioner or any other person must have regard to the following: | 11
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| (a) | adults with disability and older adults may face multiple disadvantages and are potentially more vulnerable to abuse, neglect and exploitation, | 13
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| (b) | a person from any of the following groups who is also an adult with disability or older adult may face additional disadvantages and barriers to accessing supports and services: | 15
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17 |
| | (i) women, | 18 |
| | (ii) Aboriginal and Torres Strait Islander adults, | 19 |
| | (iii) gay, lesbian, bisexual, transgender and intersex communities, | 20 |
| | (iv) adults from culturally and linguistically diverse backgrounds, | 21 |
| | (v) adults living in regional and remote areas. | 22 |
| (4) | When exercising a function under this Act with respect to a particular adult with disability or older adult, the Commissioner or any other person must have regard to the wishes of the adult. | 23
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25 |
| (5) | This section is intended to give guidance in the administration of this Act and does not create, or confer on any person, any right or entitlement enforceable at law. | 26
27 |

Part 2	Appointment of Commissioner	1
5	Appointment of Ageing and Disability Commissioner	2
(1)	The Governor may appoint an Ageing and Disability Commissioner.	3
(2)	The Commissioner holds office for the term, not exceeding 5 years, specified in the instrument of appointment, but is eligible for re-appointment.	4 5
(3)	A person is not eligible to be appointed for more than 2 terms of office as Commissioner (whether or not consecutive terms).	6 7
(4)	The office of Commissioner is a full-time office and the holder of the office is required to hold it on that basis, except to the extent permitted by the Minister.	8 9
6	Employment and remuneration	10
(1)	The employment of the Commissioner is (subject to this Act) to be governed by a contract of employment between the Commissioner and the Minister.	11 12
(2)	The following provisions of or made under the <i>Government Sector Employment Act 2013</i> relating to the employment of Public Service senior executives apply to the Commissioner (but in the application of those provisions a reference to the employer of a Public Service senior executive is to be read as a reference to the Minister):	13 14 15 16
(a)	provisions relating to the band in which an executive is to be employed,	17
(b)	provisions relating to the contract of employment of an executive,	18
(c)	provisions relating to the remuneration, employment benefits and allowances of an executive.	19 20
(3)	The office of Commissioner is a statutory office and the provisions of the <i>Government Sector Employment Act 2013</i> relating to the employment of Public Service employees do not apply to that office, except as provided by this section.	21 22 23
7	Vacancy in office	24
(1)	The office of Commissioner becomes vacant if the Commissioner:	25
(a)	dies, or	26
(b)	completes a term of office and is not re-appointed, or	27
(c)	resigns the office by instrument in writing addressed to the Minister, or	28
(d)	is removed from office by the Governor under section 8, or	29
(e)	becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the Commissioner's creditors or makes an assignment of the Commissioner's remuneration for their benefit, or	30 31 32 33
(f)	becomes a mentally incapacitated person, or	34
(g)	is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or	35 36 37 38
(h)	is imprisoned in respect of a conviction for an offence punishable in New South Wales by imprisonment or for an offence committed elsewhere than in New South Wales that, if committed in New South Wales, would be an offence so punishable.	39 40 41 42
(2)	If the office of Commissioner becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.	43 44

8	Removal from office	1
(1)	The Governor may remove the Commissioner from office, but only for incompetence, incapacity or misbehaviour.	2 3
(2)	The Commissioner cannot be removed from office under Part 6 of the <i>Government Sector Employment Act 2013</i> .	4 5
9	Acting Commissioner	6
(1)	The Minister may appoint a person to act as the Commissioner during the illness or absence of the Commissioner or during a vacancy in the office of Commissioner.	7 8
(2)	A person, while acting as Commissioner, has and may exercise the functions of the Commissioner and is taken to be the Commissioner.	9 10
(3)	The Minister may, at any time, remove a person from office as acting Commissioner.	11
(4)	An acting Commissioner is entitled to be paid the remuneration (including travelling and subsistence allowances) that the Minister may from time to time determine.	12 13
10	Staff	14
	Persons may be employed in the Public Service under the <i>Government Sector Employment Act 2013</i> to enable the Commissioner to exercise the Commissioner's functions.	15 16 17
	Note. Section 59 of the <i>Government Sector Employment Act 2013</i> provides that the persons so employed (or whose services the Commissioner makes use of) may be referred to as officers or employees, or members of staff, of the Commissioner. Section 47A of the <i>Constitution Act 1902</i> precludes the Commissioner from employing staff.	18 19 20 21
11	Delegation	22
	The Commissioner may delegate any of the Commissioner's functions (other than this power of delegation) to any member of the staff of the Commissioner or to a person of a class prescribed by the regulations.	23 24 25

Part 3	Functions of Commissioner	1
Division 1	General functions	2
12	Functions of Commissioner	3
(1)	The Commissioner has the following functions:	4
(a)	to deal with allegations of abuse, neglect and exploitation of adults with disability and older adults, whether on the basis of a report made to the Commissioner or at the Commissioner's own initiative, including by referring matters to appropriate persons or bodies and by conducting investigations,	5 6 7 8
(b)	to take further action, following an investigation into an allegation of abuse, neglect or exploitation of an adult with disability or older adult, that the Commissioner considers necessary to protect the adult from abuse, neglect and exploitation, including by making an application to a court or tribunal in respect of the adult,	9 10 11 12 13
(c)	to raise awareness and educate the public about matters relating to the abuse, neglect and exploitation of adults with disability and older adults,	14 15
(d)	to provide advice and general assistance to the public about matters relating to the abuse, neglect and exploitation of adults with disability and older adults,	16 17
(e)	to inquire into and report on systemic issues regarding matters in relation to which the Commissioner may conduct investigations,	18 19
(f)	to consult with the Board on matters relating to the abuse, neglect and exploitation of adults with disability and older adults that the Commissioner considers appropriate,	20 21 22
(g)	to advise, and make recommendations to, the Minister, at the Commissioner's own initiative or at the request of the Minister, on matters relating to the abuse, neglect and exploitation of adults with disability and older adults.	23 24 25
(2)	The Commissioner has any other functions that are conferred or imposed on the Commissioner by or under this or any other Act.	26 27
(3)	The Commissioner is not subject to the control or direction of the Minister in the exercise of the following functions:	28 29
(a)	conducting investigations under this Part,	30
(b)	advising or making recommendations to the Minister,	31
(c)	preparing annual reports and special reports under Part 5.	32
13	Reports may be made to Commissioner	33
(1)	A person may make a report to the Commissioner about 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.	34 35 36
(2)	Without limiting subsection (1), an adult with disability or older adult may make a report to the Commissioner if the adult has reasonable grounds to believe the adult is subject to, or at risk of, abuse, neglect or exploitation.	37 38 39
(3)	A report does not need to be in writing.	40
(4)	If a person, acting in good faith, makes a report to the Commissioner in accordance with this section, that person is not liable to any civil or criminal action, or any disciplinary action, for making the report.	41 42 43
(5)	The Commissioner may do any one or more of the following in respect of a report:	44
(a)	conduct an investigation,	45

- (b) make a referral to another person or body, 1
 - (c) decline to take action on the report. 2
- (6) The Commissioner may, at the Commissioner's own initiative, decide to deal with a matter as a report under this section if the matter relates to an adult with disability or older adult that the Commissioner has reasonable grounds to believe is subject to, or at risk of, abuse, neglect or exploitation. 3-6
- (7) The Commissioner may make preliminary inquiries for the purposes of deciding how to deal with a report and may request further information from the person making the report. 7-9
- (8) If the Commissioner is of the opinion that a report, or part of a report, constitutes a complaint that may be made to any of the following persons or bodies, the Commissioner must refer the report, or the part of the report, to the person or body: 10-12
 - (a) the Health Care Complaints Commission under the *Health Care Complaints Act 1993*, 13-14
 - (b) the Commissioner of the Aged Care Quality and Safety Commission under the *Aged Care Quality and Safety Commission Act 2018* of the Commonwealth, 15-16
 - (c) the Commissioner of the NDIS Quality and Safeguards Commission under the *National Disability Insurance Scheme Act 2013* of the Commonwealth, 17-18
 - (d) any other person or body prescribed by the regulations. 19
- (9) The Commissioner may not conduct an investigation of a report that the Commissioner has referred to another person or body under subsection (8). 20-21
- (10) In order to conduct an investigation into an allegation of abuse, neglect or exploitation of an adult with disability or older adult, the Commissioner must obtain the consent of the adult, unless the Commissioner is of the opinion that: 22-24
 - (a) the adult is incapable of giving consent, or 25
 - (b) the allegation is so serious that it is not necessary to obtain consent, or 26
 - (c) any other circumstances prescribed by the regulations exist. 27
- 14 Exchange of information** 28
 - (1) The Commissioner may provide relevant information to a relevant agency for the purposes of enabling or assisting the relevant agency: 29-30
 - (a) to provide a service to, or take other action in respect of, an adult with disability or older adult, or 31-32
 - (b) to make a decision or assessment in relation to the safety, welfare or well-being of an adult with disability or older adult, or 33-34
 - (c) to take action in respect of the safety, welfare or well-being of adults with disability or older adults generally. 35-36
 - (2) Without limiting subsection (1), the Commissioner may enter into an arrangement (an **information sharing arrangement**) with a relevant agency (or in the case of the Civil and Administrative Tribunal, the President of the Tribunal) for the purposes of sharing or exchanging relevant information held by the Commissioner or the agency. 37-40
 - (3) The **relevant information** held by the Commissioner that may be provided under this section, and to which an information sharing arrangement may relate, is limited to information concerning the following: 41-43
 - (a) a report under this Act, 44
 - (b) the safety, welfare or well-being of an adult with disability or older adult, 45
 - (c) the abuse, neglect or exploitation of an adult with disability or older adult, 46

(d)	any other matter prescribed by the regulations.	1
(4)	Under an information sharing arrangement, the Commissioner and the relevant agency are, despite any other Act or law, authorised:	2
	(a) to request and receive information held by the other party to the arrangement, and	3
	(b) to disclose information to the other party.	4
(5)	Subsection (4) applies only to the extent that the information is reasonably necessary to assist in the exercise of functions of the Commissioner under this Act or the functions of the relevant agency.	5
(6)	This section does not:	6
	(a) require the Commissioner to provide information to a relevant agency only in accordance with subsection (1), or with an information sharing arrangement, where that information can otherwise be lawfully provided, or	7
	(b) limit the operation of any other Act or law under which a relevant agency is authorised or required to disclose information to another person or body.	8
(7)	In this section:	9
	relevant agency means any of the following:	10
	(a) a government sector agency,	11
	(b) the Civil and Administrative Tribunal,	12
	(c) a public health organisation within the meaning of the <i>Health Services Act 1997</i> ,	13
	(d) a public hospital within the meaning of the <i>Health Services Act 1997</i> ,	14
	(e) a private health facility within the meaning of the <i>Private Health Facilities Act 2007</i> ,	15
	(f) any other person or body prescribed by the regulations.	16
15	Protection of persons who make reports	17
	The identity of a person who makes a report to the Commissioner in good faith, or information from which the identity of that person could be deduced, must not be disclosed by any person or body unless the disclosure is:	18
	(a) made with the consent of the person who made the report, or	19
	(b) necessary for the purposes of law enforcement, or	20
	(c) necessary for any other purpose prescribed by the regulations.	21
	Note. It is an offence under section 29 for a person to disclose any information obtained in connection with the administration or execution of this Act, except in certain circumstances.	22
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Division 2	Investigations	35
16	Compulsory attendance at meetings and production of documents	36
(1)	For the purposes of an investigation, the Commissioner may, by notice in writing, require any person:	37
	(a) to attend a meeting at a time and place specified in the notice, or	38
	(b) to produce, at a time and place specified in the notice, to the Commissioner any document or thing described in the notice that is in the custody or under the control of the person and that, in the opinion of the Commissioner, is relevant to the investigation.	39
(2)	A person must not:	40
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- (a) without reasonable excuse, refuse or fail to do anything required of the person by a notice under this section, or 1
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- (b) in response to a notice, make a statement that the person knows is false or misleading, or 3
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- (c) alter, suppress or destroy any document or thing that the person is required by a notice to produce. 5
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- Maximum penalty: 50 penalty units. 7
- (3) A person is not required to produce any document under this section if there is an overriding public interest against the disclosure of the document for the purposes of the *Government Information (Public Access) Act 2009* or if access to the document would otherwise be denied under that Act. 8
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- (4) A person is not required to produce a document under this section if the document was prepared for the dominant purpose of Part 4 of the *Private Health Facilities Act 2007*. 12
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- 17 Search warrants** 15
- (1) For the purposes of an investigation, the Commissioner may apply to an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* for a search warrant if the Commissioner has reasonable grounds for believing that there is on any premises an adult with disability or older adult who is subject to, or at risk of, serious abuse, neglect or exploitation. 16
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- (2) An authorised officer to whom an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the Commissioner, or a member of the Commissioner's staff named in the warrant, to enter the premises specified in the warrant and do any or all of the following: 21
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- (a) examine and inspect any part of the premises for evidence of abuse, neglect or exploitation of an adult with disability or older adult, 25
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- (b) take any photographs, films, audio, video or other recordings as the Commissioner or staff member considers necessary, 27
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- (c) require documents to be produced for inspection, 29
- (d) examine and inspect any documents, 30
- (e) copy or take notes from any documents, 31
- (f) for the purpose of further examination, take possession of, and remove, any documents or other things, 32
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- (g) require the owner or occupier of the premises to provide the Commissioner (or staff member named in the warrant) with any assistance or facilities that are reasonably necessary to enable the Commissioner or staff member to conduct an investigation, 34
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- (h) require any person in or about the premises to answer questions or otherwise provide information. 38
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- (3) If the person executing a warrant under this section is accompanied by a relevant health practitioner, the relevant health practitioner may inspect the premises and observe and speak with any adult with disability or older adult apparently residing at the premises and may, with the consent of the adult concerned, examine the adult. 40
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- (4) If the Commissioner, or a member of the Commissioner's staff named in the warrant, removes any goods from the premises when executing a warrant under this section, the Commissioner or staff member must provide a written receipt to the person apparently in charge of the premises. 44
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- (5) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section. 1
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Note. Under Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, a person may execute a search warrant with the aid of any assistants the person considers necessary (including a police officer or health practitioner). 3
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- (6) In this section, ***relevant health practitioner*** means a medical practitioner or other health practitioner of a class prescribed by the regulations. 6
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- 18 Restrictions on providing information** 8
- Except as provided by the regulations, a provision of any other Act or law (whether enacted or made before or after the commencement of this section) that prohibits or restricts the disclosure of information does not operate to prevent the provision of information (or affect a duty to provide information) to the Commissioner under this Division. 9
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Part 4 Official Community Visitors

19 Definitions

In this Part:

assisted boarding house has the same meaning as it has in the *Boarding Houses Act 2012*.

service provider means:

- (a) the Minister, or
- (b) a person or organisation funded, authorised or licensed by the Minister to provide an accommodation service, or
- (c) the owner or occupier of premises that are an assisted boarding house, or
- (d) an implementation company under the *National Disability Insurance Scheme (NSW Enabling) Act 2013* while the company is a public sector agency of the State under that Act, or
- (e) any other person or organisation prescribed by the regulations.

visitable service means:

- (a) an accommodation service where an adult with disability using the service is in the full-time care of the service provider, or
- (b) an assisted boarding house, or
- (c) any other service prescribed by the regulations as a visitable service.

20 Appointment of Official Community Visitors

- (1) The Minister may, on the recommendation of the Commissioner, appoint a person as an Official Community Visitor if the person, in the opinion of the Minister:
 - (a) has appropriate knowledge and expertise in matters relating to adults with disability, and
 - (b) has a commitment to the objects and principles of this Act and the following Acts:
 - (i) *Boarding Houses Act 2012*,
 - (ii) *Community Services (Complaints, Reviews and Monitoring) Act 1993*,
 - (iii) *Community Welfare Act 1987*,
 - (iv) *Disability Inclusion Act 2014*,
 - (v) *Guardianship Act 1987*,
 - (vi) *National Disability Insurance Scheme Act 2013* of the Commonwealth, and
 - (c) has skills in the solving of problems about access to, and the use of, services by adults with disability, and
 - (d) is not employed within the Department of Family and Community Services and Justice.
- (2) An Official Community Visitor holds office for the term, not exceeding 3 years, specified in the instrument of appointment, but is eligible for re-appointment.
- (3) A person may not be appointed as an Official Community Visitor for consecutive terms totalling more than 6 years.
- (4) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to an Official Community Visitor.

- (5) The Minister may, on the recommendation of the Commissioner, remove an Official Community Visitor from office, but only for incompetence, incapacity or misbehaviour. 1
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- (6) Despite subsection (5), an Official Community Visitor who has a disability (other than mental incapacity) may not be removed from office on the ground of incapacity unless the disability renders the Official Community Visitor incapable of performing the functions of an Official Community Visitor. 4
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21 Functions of Official Community Visitors 8

- (1) An Official Community Visitor may do any of the following: 9
- (a) at any reasonable time, enter and inspect premises at which a visitable service is provided, 10
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 - (b) confer alone with any person who is resident or employed at the premises, 12
 - (c) inspect any document held at the premises that relates to the operation of a visitable service (having regard to the wishes of any person resident at the premises to whom the document relates), 13
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 - (d) provide the Minister and the Commissioner with advice or information relating to the conduct of the premises, 16
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 - (e) inform the Minister and the Commissioner on matters affecting the welfare, interests and conditions of persons using visitable services, 18
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 - (f) encourage the promotion of legal and human rights of persons using visitable services, including the right to privacy, confidentiality, adequate information and consultation in relation to those services and the right to complain, 20
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 - (g) consider matters raised by persons using visitable services, staff of providers of visitable services and people having a genuine concern for the welfare, interests and conditions of persons using visitable services, 23
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 - (h) provide information to persons using visitable services about advocacy services available to help them with grievances or concerns and, in appropriate cases, to assist a person to obtain those advocacy services, 26
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 - (i) facilitate, wherever it is reasonable and practicable to do so, the early and speedy resolution of grievances or concerns affecting persons using visitable services by referring those grievances or concerns to the providers of the relevant services or to other appropriate bodies, 29
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 - (j) exercise any other functions prescribed by the regulations. 33
- (2) An Official Community Visitor must, in exercising a function under this section, act in a manner that preserves, as far as possible, the privacy of each person resident at the premises at which a visitable service is provided. 34
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- (3) The Commissioner may deal with a matter arising out of any advice or information provided by an Official Community Visitor as if it were a report made under section 13. 37
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22 Co-ordination of Official Community Visitors 40

- (1) The Commissioner has a general oversight and co-ordination role in relation to Official Community Visitors and may determine priorities for the services to be provided by Official Community Visitors. 41
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- (2) The Commissioner may convene meetings of Official Community Visitors and take other action that is necessary for the exercise of the Commissioner's functions under this section. 44
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- (3) At least one meeting is to be held in each calendar year. 47

23 Protection against retribution	1
(1) A person must not take or threaten to take detrimental action in respect of a person because that person (or any other person) makes, or proposes to make, a complaint to an Official Community Visitor.	2
Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.	3
(2) It is a defence to a prosecution for an offence under this section if it is proved that:	4
(a) the complaint was made or proposed in bad faith, or	5
(b) any material allegation was known by the person making it to be false.	6
(3) In this section:	7
<i>complaint</i> includes providing information, documents or evidence to an Official Community Visitor.	8
<i>detrimental action</i> means action causing, comprising or involving any of the following:	9
(a) injury, damage or loss,	10
(b) intimidation or harassment,	11
(c) discrimination, disadvantage or adverse treatment in relation to employment,	12
(d) dismissal from, or prejudice in, employment,	13
(e) prejudice in the provision of a community service,	14
(f) disciplinary proceedings.	15

Part 5	Annual reports and special reports	1
24	Annual reports to Parliament	2
(1)	The Commissioner is required to prepare, within the period of 4 months after 30 June in each year, a report on the activities of the Commissioner, and the activities of the Official Community Visitors, during the year ended on that 30 June and to provide the report to the Presiding Officer of each House of Parliament.	3 4 5 6
(2)	The Commissioner may, but is not required to, prepare the annual report on the activities of the Official Community Visitors as a separate annual report under this section.	7 8 9
(3)	An annual report by the Commissioner may include any recommendations for administrative action or changes in the laws of the State that the Commissioner considers necessary.	10 11 12
25	Special reports to Parliament and to Minister	13
(1)	The Commissioner may, at any time, prepare a special report on any matter relating to the functions of the Commissioner and provide the special report to the Presiding Officer of each House of Parliament.	14 15 16
(2)	Before providing a special report to the Presiding Officer of each House of Parliament, the Commissioner is to provide a copy of the special report to the Minister.	17 18 19
(3)	The Commissioner is to prepare a special report for the Minister on any matter requested by the Minister and may provide the special report to the Presiding Officer of each House of Parliament.	20 21 22
26	Provisions relating to reports	23
(1)	A copy of a report provided to the Presiding Officer of a House of Parliament under this Part must be laid before that House within 5 sitting days of that House after it is received by the Presiding Officer.	24 25 26
(2)	If a report includes a recommendation by the Commissioner that the report be made public immediately, the Presiding Officer of a House of Parliament may make it public whether or not that House is in session and whether or not the report has been laid before that House.	27 28 29 30

Part 6	Miscellaneous	1
27	Ageing and Disability Advisory Board	2
(1)	There is to be an Ageing and Disability Advisory Board.	3
(2)	The function of the Board is to advise the Commissioner on any matter relating to the abuse, neglect or exploitation of adults with disability and older adults that the Board considers appropriate or that is referred to the Board by the Commissioner.	4 5 6
(3)	The Board is to consist of the Commissioner and persons appointed by the Minister who, in the opinion of the Minister, have relevant knowledge of and experience in matters relating to adults with disability and older adults (the <i>appointed members</i>).	7 8 9
(4)	The Minister must ensure that the composition of the Board reflects the diversity of the community.	10 11
(5)	An appointed member is to be appointed to the Board for a period of 3 years or less and may be re-appointed.	12 13
(6)	The Minister is to appoint a chairperson and deputy chairperson from the appointed members.	14 15
(7)	The procedure for the calling of meetings of the Board and for the conduct of those meetings is to be determined by the Commissioner.	16 17
(8)	An appointed member is entitled to be paid the fees and allowances (if any) that the Minister may from time to time determine for the member.	18 19
(9)	The Minister may remove an appointed member from the Board at any time.	20
28	Personal liability	21
(1)	A matter or thing done or omitted to be done by any of the following persons does not, if the matter or thing was done or omitted to be done in good faith for the purposes of executing this Act, subject the person so acting personally to any action, liability, claim or demand:	22 23 24 25
(a)	the Commissioner,	26
(b)	a member of the staff of the Commissioner,	27
(c)	a person acting under the direction of the Commissioner,	28
(d)	an Official Community Visitor,	29
(e)	a member of the Board.	30
(2)	However, the liability attaches instead to the Crown.	31
29	Disclosure of information	32
	A person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:	33 34
(a)	with the consent of the person from whom the information was obtained, or	35
(b)	in connection with the administration or execution of this Act, or	36
(c)	for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or	37 38
(d)	in accordance with a requirement imposed under the <i>Ombudsman Act 1974</i> , or	39
(e)	with other lawful excuse.	40
	Maximum penalty: 50 penalty units.	41

30	Obstruction of Commissioner	1
	A person must not, without reasonable excuse, resist or obstruct the Commissioner or other person in the exercise of a function under this Act.	2 3
	Maximum penalty: 50 penalty units.	4
31	Proceedings for offences	5
	Proceedings for an offence under this Act may be dealt with summarily before the Local Court.	6 7
32	Act to bind Crown	8
	This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.	9 10 11
33	Regulations	12
(1)	The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.	13 14 15 16
(2)	In particular, the regulations may make provision for or with respect to reports, including:	17 18
	(a) the procedure for making a report to the Commissioner, and	19
	(b) the manner in which the Commissioner is to deal with a report, and	20
	(c) the grounds on which the Commissioner may decline to take action on a report.	21
(3)	The regulations may also contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.	22 23
(4)	A provision of a savings or transitional nature may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.	24 25
(5)	To the extent to which a provision of a savings and transitional nature takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:	26 27 28
	(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	29 30 31
	(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	32 33 34

Schedule 1	Amendment of Acts	1
1.1	Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2	2
		3
[1]	Section 8 Functions of Official Community Visitors	4
	Omit paragraphs (b) and (c) of the definition of <i>visitable service</i> in section 8 (6).	5
	Insert instead:	6
	(b) a service prescribed by the regulations as a visitable service,	7
	but does not include a visitable service within the meaning of Part 4 of the <i>Ageing and Disability Commissioner Act 2019</i> .	8
		9
[2]	Section 35 Application of Part	10
	Omit “residential care provided by a service provider” from section 35 (1) (f).	11
	Insert instead “supported group accommodation”.	12
[3]	Section 35 (2)	13
	Insert in alphabetical order:	14
	<i>supported group accommodation</i> has the same meaning as it has in the <i>Disability Inclusion Act 2014</i> .	15
	Note. This includes, for example, supported group accommodation provided by a registered provider under the <i>National Disability Insurance Scheme Act 2013</i> of the Commonwealth.	16
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1.2	Coroners Act 2009 No 41	20
[1]	Section 24 Jurisdiction concerning deaths of children and disabled persons	21
	Omit “residential care provided by a service provider and authorised or funded under the <i>Disability Inclusion Act 2014</i> ” from section 24 (1) (e).	22
	Insert instead “supported group accommodation”.	23
		24
[2]	Section 24 (3)	25
	Insert in alphabetical order:	26
	<i>supported group accommodation</i> has the same meaning as it has in the <i>Disability Inclusion Act 2014</i> .	27
	Note. This includes, for example, supported group accommodation provided by a registered provider under the <i>National Disability Insurance Scheme Act 2013</i> of the Commonwealth.	28
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[3]	Section 36 State Coroner to inform Ombudsman and others about certain child and disability deaths	32
		33
	Omit “, in accordance with subsection (2),” from section 36 (1).	34
[4]	Section 36 (1A)	35
	Insert after section 36 (1):	36
	(1A) The State Coroner is to provide the Commissioner of the NDIS Quality and Safeguards Commission under the <i>National Disability Insurance Scheme Act 2013</i> of the Commonwealth with all relevant material held by the State Coroner relating to any death or suspected death of a person in the circumstances referred to in section 24 (1) (e) or (f).	37
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[5] Section 36 (2)	1
Omit “referred to in subsection (1)”.	2
1.3 Government Information (Public Access) Act 2009 No 52	3
Schedule 2 Excluded information of particular agencies	4
Insert at the end of clause 2:	5
The office of Ageing and Disability Commissioner—report handling, investigative and reporting functions (including any functions of the Commissioner relating to Official Community Visitors appointed under the <i>Ageing and Disability Commissioner Act 2019</i>).	6 7 8 9
1.4 Government Sector Employment Act 2013 No 40	10
Schedule 1 Public Service agencies	11
Insert in appropriate order in Part 3:	12
Office of the Ageing and Disability Commissioner	*Ageing and Disability Commissioner
1.5 Health Records and Information Privacy Act 2002 No 71	13
Section 4 Definitions	14
Insert after paragraph (g) of the definition of <i>investigative agency</i> in section 4 (1):	15
(g1) the Ageing and Disability Commissioner,	16
1.6 Law Enforcement (Powers and Responsibilities) Act 2002 No 103	17
Schedule 2 Search Warrants under other Acts	18
Insert in alphabetical order:	19
<i>Ageing and Disability Commissioner Act 2019</i> , section 17	20
1.7 Privacy and Personal Information Protection Act 1998 No 133	21
[1] Section 3 Definitions	22
Insert after paragraph (a) (vii) of the definition of <i>investigative agency</i> in section 3 (1):	23
(viia) the Ageing and Disability Commissioner,	24
[2] Section 28 Other exemptions	25
Insert “, Ageing and Disability Commissioner” after “Anti-Discrimination Board” in section 28 (1).	26 27