

Act No. 79 of 1990

OMBUDSMAN (AMENDMENT) BILL 1990

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are:

- (a) to amend the Ombudsman Act 1974 so as:
 - * to establish a Parliamentary joint committee (to be known as the Committee on the Office of the Ombudsman) to monitor and review the exercise by the Ombudsman of the Ombudsman's functions under that Act and any other Act; and
 - * to dispense with the requirements of that Act that the Minister's concurrence, approval or consent be obtained in connection with certain matters; and
 - * to enable the Ombudsman to disclose certain information in proceedings before the District Court under the Freedom of Information Act 1989; and
- (b) to amend the Freedom of Information Act 1989 so as:
 - * to remove any doubt as to the period within which an appeal to the District Court may be made under that Act in respect of matters that have been referred to the Ombudsman for investigation under the Ombudsman Act 1974; and
 - * to exclude the Ombudsman, in relation to the Ombudsman's complaint handling, investigative and reporting functions, from the operation of that Act.

Clause 1 specifies 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 Schedule of amendments to the Ombudsman Act 1974.

Clause 4 is a formal provision that gives effect to the Schedule of amendments to the Freedom of Information Act 1989.

SCHEDULE 1 - AMENDMENT OF OMBUDSMAN ACT 1974

Establishment of Parliamentary joint committee

Proposed Part 4A provides for the establishment of a Parliamentary joint committee to be known as the Committee on the Office of the Ombudsman. The joint committee's functions will generally be to monitor and review the exercise by the Ombudsman of the Ombudsman's functions. However, the joint committee will not be empowered to do so in relation to particular complaints or in relation to the Ombudsman's functions under the Telecommunications (Interception) (New South Wales) Act 1987.

The joint committee is to consist of 5 members (3 from the Legislative Council and 6 from the Legislative Assembly) but may not include a Minister of the Crown or a Parliamentary Secretary. The proposed Part provides for the filling of vacancies in the office of a member of the joint committee, for the appointment of a Chairman and Vice-chairman of the joint committee and for the procedures by which the joint committee is to be governed in the conduct of its meetings.

For the purpose of exercising its functions, the joint committee will be empowered to send for persons, papers and records. Evidence will generally be taken in public, but will be taken in private where it relates to secret or confidential matters. Evidence that is taken in private will not be permitted to be publicly disclosed without the consent of the person by whom it was given.

Ministerial consents and concurrences

The appointment of special officers (section 9), the delegation of functions to the Ombudsman of the Commonwealth or of another State or Territory (section 10A) and the obtaining of expert assistance (section 23) are matters that currently require the concurrence, approval or consent of the Minister. It is proposed to omit those requirements.

Disclosure by Ombudsman or officer

Section 34 of the Act prohibits the Ombudsman, and any officer of the Ombudsman, from disclosing information except in certain specified circumstances. It is proposed to add to the list of circumstances so as to ensure that in any proceedings under Division 2 of Part 5 of the Freedom of Information Act 1989 the Ombudsman, and any such officer, may disclose information arising as a consequence of a determination made by the Ombudsman under section 24 (relating to the obtaining of access to documents held by the Ombudsman) or 43 (relating to the amendment of records held by the Ombudsman) of that Act.

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As a consequence of these amendments, it is also proposed to amend section 35 of the Act so as to ensure that the Ombudsman, and any such officer, are competent and compellable witnesses in any such proceedings.

It is also proposed to amend section 34 of the Act so as to ensure that the Ombudsman, and any such officer, claim confidentiality for information obtained by them in confidence in circumstances in which that information is to be given by them to the joint committee to be established under proposed Part 4A.

SCHEDULE 2 - AMENDMENT OF FREEDOM OF INFORMATION ACT 1989

Time within which appeals may be made

It is proposed to clarify the ambit of section 54 (b) of the Act in relation to the time within which an appeal to the District Court may be made where an application has previously been made to the Ombudsman in respect of the matter the subject of the appeal. The proposed amendment will distinguish between those situations where the Ombudsman decides not to investigate a complaint, or decides to discontinue an investigation into a complaint, and those situations where the Ombudsman completes an investigation of a complaint.

Exemption of Ombudsman from Freedom of Information Act 1989

It is proposed to exclude the office of Ombudsman from the operation of the Act in relation to the Ombudsman's complaint handling, investigative and reporting functions. The Act will consequently apply to the Ombudsman's other (mainly administrative) functions only.
