

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

[1993-2]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Previously named**  
Community Services (Complaints, Appeals and Monitoring) Act 1993
- **See also**  
*Community Services (Complaints, Reviews and Monitoring) Amendment (Application) Bill 2001* [Non-government Bill: Mr B R Hazzard, MP]  
*Community Services (Complaints, Reviews and Monitoring) Amendment (Application) Bill 2001 (No 2)* [Non-government Bill: Hon Patricia Forsythe, MLC]  
*Statute Law (Miscellaneous Provisions) Bill 2001*

### Authorisation

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



New South Wales

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



New South Wales

An Act to provide for complaints, reviews and monitoring in relation to the provision of community services; to provide for Community Visitors and their functions; to constitute, and confer and impose functions on, the Community Services Commission, to confer and impose functions on the Administrative Decisions Tribunal; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation, being a day or days not later than 12 months after the date of assent.

### 3 Objects and principles

(1) The objects of this Act are as follows:

- (a) to foster, in community services and programs, and in related services and programs, an atmosphere in which complaints and independent monitoring are viewed positively as ways of enhancing the delivery of those services and programs,
- (b) to provide for the resolution of complaints about community services and programs, especially complaints by persons who are eligible to receive, or receive, those services, by families and by persons advocating on behalf of such persons or families,
- (c) to encourage, wherever reasonable and practicable, the resolution of complaints at a local level,
- (d) to encourage, wherever reasonable and practicable, the resolution of complaints through alternative dispute resolution,

- (e) to provide independent and accessible mechanisms for the resolution of complaints, for the review of administrative decisions and for the monitoring of services, programs and complaint procedures, and
- (f) to encourage compliance with the objects, principles and provisions of the community welfare legislation.

(2) The following principles must be observed in exercising functions under this Act:

- (a) the paramount consideration in providing a service for a person must be the best interests of the person,
- (b) a person who is eligible to receive, or receives, a community service is also to receive an adequate explanation of the service, is to be heard in relation to the service and may question decisions or actions that affect the person in relation to the service,
- (c) a service provider is to promote and respect the legal and human rights of a person who receives a community service and must respect any need for privacy or confidentiality,
- (d) a service provider is, to the best of his or her ability, to provide such information about the service as may enable an appropriate decision to be made by the person for whom the service is, or is to be, provided,
- (e) a service provider is to enable a complaint about the service to be dealt with fairly, informally and quickly and at a place convenient to the complainant,
- (f) a complaint about the provision of a service is to be dealt with even if it is made by another person on behalf of the person eligible to receive, or receiving, the service.

#### 4 Definitions

In this Act:

**Commission** means the corporation constituted by section 77.

**Commissioner** means the Commissioner for Community Services holding office under section 78.

**community service** means:

- (a) a service rendered under the community welfare legislation, or
- (b) a service rendered by a person or organisation that is covered by an arrangement referred to in paragraph (d) of the definition of **service provider** in this section.

**community welfare legislation** means:

- (a) this Act, and
- (b) the [Home Care Service Act 1988](#), and
- (c) any other Act administered by the Minister for Community Services within the Department of Community Services, and
- (d) any other Act administered by the Minister for Aged Services, or the Minister for Disability Services, within the Ageing and Disability Department, and
- (e) any instrument in force under any of those Acts.

**Conciliation Division** means the Conciliation Division of the Commission constituted by section 80.

**Divisional Head** of the Tribunal means the Divisional Head of the Community Services Division of the Tribunal.

**exercise** of a function includes, where the function is a duty, the performance of the duty.

**function** includes a power, authority and duty.

**Investigation Division** means the Investigation Division of the Commission constituted by section 80.

**member** means a member of the Tribunal.

**person eligible for a service** includes a person claiming to be eligible for a service.

**public authority** means a government department, administrative office or declared authority specified in Schedule 1, 2 or 3 to the [Public Sector Management Act 1988](#), and includes an authority prescribed as a public authority by the regulations.

**Registrar** means the Registrar of the Tribunal.

**Review Council** means the Community Services Review Council constituted by section 107.

**service provider** means:

- (a) the Department of Community Services, or
- (b) the Ageing and Disability Department, or
- (c) a person or organisation funded by the Minister for Community Services, the Minister for Aged Services or the Minister for Disability Services to provide a service, or
- (d) a person or organisation authorised by the Minister for Community Services, the Minister for Aged Services or the Minister for Disability Services to provide a service, or



- (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
- (f) a person or organisation that is covered by an arrangement (made after the commencement of this section) between the Minister for Community Services 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.

**Tribunal** means the Administrative Decisions Tribunal established by the [Administrative Decisions Tribunal Act 1997](#).

## **5 Administration of community welfare legislation**

The determination of an issue under this Act, and any decision or recommendation on a matter arising from the operation of this Act, must not be made in a way that is (or that requires the taking of action that is):

- (a) beyond the resources appropriated by Parliament for the delivery of community services, or
- (b) inconsistent with the way in which those resources have been allocated by the Minister for Community Services, the Minister for Aged Services, the Minister for Disability Services, the Director-General of the Department of Community Services or the Director-General of the Ageing and Disability Department in accordance with Government policy, or
- (c) inconsistent with Government policy, as certified in writing by the Minister for Community Services, the Minister for Aged Services or the Minister for Disability Services and notified to the Tribunal, Commission or other person or body making the determination.

## **6 Act binds the Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

## **Part 2 Community Visitors**

### **7 Appointment of Community Visitors**

- (1) The Minister for Community Services may, after consultation with the Review Council, appoint an eligible person to be a Community Visitor for the purposes of this Act.
- (2) An eligible person is one who, in the opinion of the Minister for Community Services:
  - (a) has appropriate knowledge and expertise in the matters relating to community services in which the person would be most involved as a Community Visitor, and

- (b) has a commitment to the objectives of the community welfare legislation, and
  - (c) has skills in the solving of problems about access to, and the use of, community services, and
  - (d) is not employed in the Department of Community Services, or the Ageing and Disability Department, as an officer or temporary employee within the meaning of the *Public Sector Management Act 1988*.
- (3) A Community Visitor holds office for such period not exceeding 3 years as is specified in his or her instrument of appointment but, if qualified, is eligible for appointment for consecutive terms of office totalling not more than 6 years.
- (4) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the Community Visitors and a Community Visitor is not subject to that Part.

## **8 Functions of Community Visitors**

- (1) A Community Visitor may:
- (a) at any reasonable time, enter and inspect a place at which a visitable service is provided, and
  - (b) confer alone with any person who is resident or employed at such a place, and
  - (c) inspect any document held at such place which relates to the operation of a visitable service, and
  - (d) provide the Minister for Community Services and the Commission with advice or reports on any matters relating to the conduct of such a place, and
  - (e) exercise such other functions as may be prescribed by the regulations for the purposes of this section.
- (2) Before inspecting a document as referred to in subsection (1), the Community Visitor must take all reasonable steps to ascertain, and must have regard to (but is not bound by), the wishes of any person to whom the document relates and for whom a service is provided at that place.
- (3) A Community Visitor must, in exercising a function under this section, act in such a manner as preserves, as far as possible, the privacy of each person resident at that visitable service.
- (3A) On receiving a copy of any advice or report under subsection (1) (d), the Minister for Community Services must send a copy of the advice or report to:
- (a) the Minister for Aged Services, if the visitable service in relation to which the advice or report was given was provided by a person or organisation authorised or funded by the Minister for Aged Services to provide a service, or

(b) the Minister for Disability Services, if the visitable service in relation to which the advice or report was given was provided by a person or organisation authorised or funded by the Minister for Disability Services to provide a service.

(4) In this section **visitable service** means:

(a) an accommodation service provided by the Department of Community Services, or the Ageing and Disability Department, or by a funded agency where a person using the service is in the full-time care of the service provider, or

(b) a service prescribed by the regulations as a visitable service.

## **9 Co-ordination of Community Visitors**

(1) The Commission has a general oversight and co-ordination role in relation to Community Visitors and may determine priorities for the services to be provided by Community Visitors.

(2) The Commission may convene such meetings of Community Visitors, and take such other action, as may be necessary for the exercise of its functions under this section.

(3) At least one such meeting is to be held in each calendar year.

## **10 Annual report**

(1) During each year, as soon as practicable after 30 June but on or before 31 December, the Commission is to prepare and forward to the Minister for Community Services a report of the work and activities of the Community Visitors for the period of 12 months ending on 30 June in that year.

(2) The Minister is to lay the report, or cause it to be laid, before both Houses of Parliament as soon as practicable after receiving the report.

## **Part 3 Persons in care**

### **11 Review of situation of person in care**

(1) The Commission may, on application or on its own initiative, review the situation of a child in care or a person in care.

(2) In carrying out a review, the Commission is to look at such aspects of the welfare, status, progress and circumstances of the child in care or person in care as are referred to in the application or as it thinks fit.

(3) On completion of a review, the Commission is to make a written report that:

(a) informs the Minister for Community Services of the results of the review, and

(b) advises the Minister for Community Services as to whether any change (and, if so,

what change) in the circumstances or status of the child in care or person in care whose situation was reviewed would, in the opinion of the Commission, promote the welfare and interests of the child or person.

- (3A) On being informed of the results of a review, and being advised by the Commission, under subsection (3), the Minister for Community Services must send a copy of the results of the review and the advice to:
- (a) the Minister for Aged Services, if the person in relation to whom the review was carried out is an aged person and is in the care of the Ageing and Disability Department or of a person or organisation authorised or funded by the Minister for Aged Services to provide that care, or
  - (b) the Minister for Disability Services, if the person in relation to whom the review was carried out is a person with a disability and is in the care of the Ageing and Disability Department or of a person or organisation authorised or funded by the Minister for Disability Services to provide that care.
- (4) In the exercise of its functions under this section in relation to a child in care or person in care, the Commission may:
- (a) inspect files, records and papers in respect of the child or person that are kept in the offices of the Department of Community Services, or the Ageing and Disability Department, or an applicable service provider, and
  - (b) hear or receive submissions from any person, including the child in care or the person in care.
- (5) A child in care or a person in care is not eligible for a review under this section unless the child or person has been in care for a period of more than 3 months, or an aggregate period of 6 months, in the period of 12 months preceding the application for review or the decision to review.
- (6) In this section:

***applicable service provider*** means a service provider, or a service provider of a class, prescribed by the regulations as an applicable service provider for the purposes of this section.

***child in care*** means:

- (a) a child or young person for whom the Director-General of the Department of Community Services has the care responsibility under section 49 of the *Children and Young Persons (Care and Protection) Act 1998*, or
- (b) a child or young person for whom a person has the daily care and control under out-of-home care arrangements made under the *Children and Young Persons (Care and Protection) Act 1998*, or

(c) a child or young person who is under the parental responsibility of the Minister administering the *Children and Young Persons (Care and Protection) Act 1998*.

**person in care** means a person who is in the care of the Director-General of the Department of Community Services, or the Director-General of the Ageing and Disability Department, or an applicable service provider.

## **Part 4 Complaints**

### **Division 1 Making of complaints**

#### **12 Complaint of unreasonable conduct by service provider**

A person may make a complaint to the Commission that a service provider has acted unreasonably:

- (a) by not providing a community service to a particular person, or
- (b) by providing a community service to a particular person, or
- (c) in the way in which a community service was provided to a particular person, or
- (d) by withdrawing or varying a community service to a particular person, or
- (e) in the administration of a community service in relation to a particular person.

#### **13 Who may make a complaint?**

- (1) A complaint may be made by any person who demonstrates to the satisfaction of the Commission that he or she has a genuine concern in the subject-matter of the complaint.
- (2) Without limiting the generality of subsection (1), a complaint may be made by any person who is responsible for, or is a next friend of, the person to whom the relevant service was provided.
- (3) A person found by the Commission to be unjustifiably interfering in a matter is not entitled to make a complaint in relation to the matter.
- (4) In determining whether a person is unjustifiably interfering in a matter, the Commission is to take into account, to the extent that it is practicable to do so, the wishes and interests of any other persons who have an interest in the matter.

#### **14 Persons to be notified of complaint**

- (1) On receiving a complaint, the Commission must give written notice of the making of the complaint, the nature of the complaint and the identity of the complainant to the person against whom the complaint is made.

- (2) This section does not require the Commission to give notice if the giving of the notice will or is likely to:
  - (a) prejudice the investigation of the complaint, or
  - (b) place the health or safety of a person to whom a service is provided at risk, or
  - (c) place the complainant at risk of intimidation or harassment.
- (3) Regulations may be made for or with respect to:
  - (a) the recording of complaints made to the Commission and complaints shown on returns made by service providers, and
  - (b) the maintenance of a central register of those complaints, and
  - (c) the publication of information about those complaints.

#### **15 Can a complaint be withdrawn?**

- (1) A complainant may withdraw the complaint at any time by notice in writing to the Commission.
- (2) On the withdrawal of a complaint, the Commission may cease to deal with it or may continue to deal with the matter the subject of the complaint if it appears to the Commission that:
  - (a) the matter raises a significant issue of public safety or public interest, or
  - (b) the matter raises a significant question as to the appropriate care or treatment of a client by a service provider.

### **Division 2 The preliminary inquiry stage**

#### **16 Reference to the Investigation Division**

On its receipt by the Commission, a complaint is to be referred to the Investigation Division for assessment.

#### **17 The purpose of assessment**

The assessment of a complaint within the Investigation Division is for the purpose of deciding whether:

- (a) the complaint should be referred to the service provider for resolution, if possible, or
- (b) the complaint should be the subject of alternative dispute resolution, investigated or referred to another person or body for investigation, or
- (c) the Commission should decline to entertain the complaint.

### **18 Commission may require further information**

For the purposes of the assessment, the Commission may require the complainant to provide further particulars of the complaint within the time specified by the Commission.

### **19 Time for completion of assessment**

- (1) The Commission is required to carry out its assessment of a complaint as soon as possible but not later than 28 days after receiving the complaint.
- (2) If the Commission requires the complainant to provide further particulars of the complaint, the Commission may, within 28 days of receiving the complaint, notify the complainant that those particulars are required on or before a specified date. In that case, the Commission then has another 28 days (from that specified date) to carry out the assessment.
- (3) If the Commission requires further particulars of the complaint from some other person, the Commission may, within 28 days after receiving the complaint, notify the complainant that the Commission requires more time to assess the complaint. If the complainant agrees, the Commission may notify the other person that those particulars are required on or before a specified date (agreed to by the complainant). The Commission then has another 28 days (from that date specified) to carry out the assessment.

### **20 Reference of complaint to another person or body for investigation**

- (1) Following the assessment, the Commission may refer a complaint (or any part of a complaint) to another person or body if, during the assessment, it appears that the complaint raises issues which require investigation by the other person or body.
- (2) Despite the referral of a complaint (or part), the Commission may, if it considers there are appropriate reasons to do so, continue to deal with the complaint.

### **21 In what circumstances can the Commission decline to entertain a complaint?**

- (1) Following the assessment, the Commission may decline to entertain a complaint (or any part of a complaint) for any one or more of the following reasons:
  - (a) in the opinion of the Commission, the complaint is able to be resolved at a local level,
  - (b) the complaint (or part) is frivolous, vexatious, trivial or not made in good faith,
  - (c) the subject-matter of the complaint (or part) does not warrant either alternative dispute resolution or investigation,
  - (d) the complaint does not have sufficient relevance to the best interests of the person receiving the service,

- (e) the subject-matter of the complaint (or part) has been or is under investigation by some other competent person or body or has been or is the subject of legal proceedings,
  - (f) the complaint (or part) raises issues which require investigation by another person or body,
  - (g) there is or was, in relation to the matter complained of, an alternative means of dealing with the matter which is satisfactory to the complainant,
  - (h) the complaint (or part) relates to a matter which occurred more than 2 years before the complaint was made and the complainant does not have a sufficient reason for having delayed the making of the complaint,
  - (i) the complainant has failed to provide further particulars of the complaint (or part) within the time specified by the Commission and does not have sufficient reason for doing so,
  - (j) the complaint (or part) concerns a matter that falls within the responsibility of the Commonwealth.
- (2) This section does not exhaust the circumstances in which the Commission may decline to entertain a complaint (or part).

## **22 Reference of complaint for alternative dispute resolution**

- (1) Following the assessment:
- (a) if it appears to the Commission that the complainant has taken all reasonable steps to resolve the matter the subject of the complaint with the person against whom the complaint is made, and
  - (b) the parties to the complaint consent to the complaint being referred for alternative dispute resolution,
- the Commission may refer the complaint for alternative dispute resolution in accordance with Division 3.
- (2) This section has effect subject to sections 23 and 24.

## **23 Reference of complaint for investigation**

Following the assessment, if it appears to the Commission that:

- (a) the complaint raises a significant issue of public safety or public interest, or
- (b) the complaint raises a significant question as to the appropriate care or treatment of a client by a service provider, or



- (c) the complaint raises a question as to whether a service provider has acted unreasonably as referred to in section 12,

the Commission may refer the complaint to the Investigation Division for investigation in accordance with Division 4.

#### **24 Effect of agreement between parties to complaint**

- (1) The Commission must not refer a complaint for alternative dispute resolution if the parties to the complaint have reached agreement concerning the matter the subject of the complaint.
- (2) However, the Commission may, despite any such agreement (whenever made), refer the complaint for investigation if it appears to the Commission that:
  - (a) the complaint raises a significant issue of public safety or public interest, or
  - (b) the complaint raises a significant question as to the appropriate care or treatment of a client by a service provider.

#### **25 Notice of action taken or decision made following assessment**

- (1) The Commission must give the parties to the complaint notice in writing of the action taken or decision made under this Division by the Commission concerning the complaint.
- (2) This section does not require the Commission to give notice of action taken or a decision made to refer a complaint to the Investigation Division if the giving of the notice would:
  - (a) prejudice the investigation of the complaint, or
  - (b) place the health or safety of a client at risk, or
  - (c) place the complainant at risk of intimidation or harassment.
- (3) If the Commission declines to entertain the complaint (or part of the complaint) the Commission must include in the notice to the complainant the reasons for its decision.
- (4) The Commission must notify a complainant whose complaint is one that can properly be made under this Act that, if the complaint is not resolved to the complainant's satisfaction, the complainant may ask the Commission to further consider the complaint. The Commission may further consider the complaint accordingly.

### **Division 3 Alternative dispute resolution**

#### **26 Conciliators**

- (1) Persons may be employed under Part 2 of the *Public Sector Management Act 1988* to

be conciliators for the purposes of this Act.

- (2) The Commission may approve persons to be conciliators for the purposes of this Act.
- (3) A conciliator has the functions conferred or imposed on a conciliator by or under this or any other Act.

## **27 Resolution of complaint**

On the referral of a complaint to the Conciliation Division by the Commission, the Commission must nominate a conciliator to deal with the complaint.

## **28 Notification of arrangements for resolution of a complaint**

Within 14 days after the referral of a complaint by the Commission to the Conciliation Division, the Commission must give written notice to the parties to the complaint of:

- (a) the referral of the complaint, and
- (b) the details of the arrangements made concerning the process for alternative dispute resolution.

## **29 Conciliation to be voluntary**

Participation in the process for alternative dispute resolution by the parties to a complaint is voluntary.

## **30 What is the role of a conciliator?**

The function of a conciliator is to deal with a complaint:

- (a) by bringing the parties to the complaint together for the purpose of promoting the discussion, negotiation and settlement of the complaint, and
- (b) by undertaking any activity for the purpose of promoting that discussion, negotiation and settlement, and
- (c) if possible, by assisting the parties to the complaint to reach agreement.

## **31 Are the parties entitled to be represented?**

- (1) A party to a complaint is not entitled to be legally represented in proceedings before a conciliator or, except as provided by this section, represented by an agent.
- (2) The Commission may permit a party to a complaint to be represented by an agent if it appears to the Commission that:
  - (a) an agent should be permitted to facilitate resolution of the complaint, and
  - (b) the agent proposed has sufficient knowledge of the matter the subject of the complaint to enable the agent to represent the party effectively.

- (3) The Commission's permission may be given subject to conditions. The entitlement of an agent to represent a party is subject to compliance by the agent with any such conditions.
- (4) This section does not prevent an officer of a corporation which is a party to a complaint from representing the corporation.
- (5) Contravention of this section does not invalidate any proceedings before a conciliator.

### **32 Confidentiality of proceedings before a conciliator**

- (1) Evidence of anything said or admitted during proceedings before a conciliator, and any document prepared for the purposes of the proceedings:
  - (a) are not admissible and cannot be used in a proceeding in a court or before a person or body (other than a court) authorised by law, or by consent of parties, to hear and receive evidence, and
  - (b) cannot be used by the Commission as a ground for exercising a power of investigation.
- (2) A conciliator or a party to proceedings before a conciliator must not disclose information obtained during the proceedings, except for the purposes of section 34.  
Maximum penalty: 10 penalty units.
- (3) Subsection (2) does not prevent a conciliator from disclosing to the Commission any matter which, in the opinion of the conciliator, involves a serious issue of public safety or relates to the commission of a serious offence within the meaning of section 311 of the *Crimes Act 1900*. However, the conciliator is to make the disclosure only if he or she considers that no action will be taken on the matter unless the disclosure is made.

### **33 Conclusion of proceedings before a conciliator**

- (1) Proceedings before a conciliator are concluded:
  - (a) if either party terminates the proceedings at any time, or
  - (b) if the parties reach agreement concerning the matter the subject of the proceedings.
- (2) The person who begins proceedings before a conciliator must notify the Commission without delay if the parties reach agreement otherwise than during the proceedings.
- (3) Proceedings before a conciliator are to cease if they are terminated by the conciliator after having formed the view:
  - (a) that it is unlikely that the parties will reach agreement, or
  - (b) that a significant issue of public safety or public interest has been raised which

requires that the proceedings be terminated.

**34 Preparation and distribution of report on conclusion of proceedings before a conciliator**

- (1) On the conclusion of proceedings before a conciliator, the conciliator must report the result of the proceedings to the Commission.
- (2) The report may contain a recommendation that the Commission investigate the complaint on which the proceedings were based.
- (3) As soon as practicable after receipt of the report, the Commission must give a copy of the report to the parties to the complaint.

**35 Can a complaint be referred for investigation after proceedings before a conciliator?**

- (1) The Commission may decide to investigate a complaint that has been subject to proceedings before a conciliator.
- (2) A complaint may be investigated under this section only if:
  - (a) the report of the conciliator contains a recommendation that the Commission investigate the complaint, or
  - (b) new material concerning the matter the subject of the complaint becomes available and that material raises a matter which would cause the Commission to refer the complaint for investigation in accordance with section 23.

**Division 4 Investigation of complaints**

**36 The purpose of investigation**

- (1) The investigation of a complaint within the Investigation Division is for the purpose of obtaining information concerning the matter complained of and to determine what action should be taken in respect of the complaint.
- (2) The investigation of a complaint is to be conducted as expeditiously as the proper investigation of the complaint permits.

**37 Persons investigated to be given opportunity to be heard in certain circumstances**

- (1) If, following the investigation of a complaint against a service provider the Commission considers there are grounds for adverse comment in respect of the service provider, the Commission must, before making the adverse comment, inform the service provider of the substance of those grounds and give the service provider an opportunity to make submissions.
- (2) Any such submission must be made in writing within 28 days after the service provider is so informed or within such further period as the Commission may allow.

- (3) This section does not apply if the Commission is satisfied that it is in the public interest to take immediate action without first informing the service provider.

### **38 Report on completion of action**

- (1) On completion of an investigation of a complaint, the Commission:
- (a) is to report the result of the investigation, and any action recommended by the Commission, to the complainant and to the service provider the subject of the complaint, and
  - (b) may provide a copy of the report to the Minister for Community Services and inform the Minister of any action taken under subsection (2).
- (2) The Commission may:
- (a) request a service provider to report to the Commission on action taken by the provider in response to a recommendation of the Commission resulting from the action taken in relation to a complaint, or
  - (b) refer information or evidence from the action taken to another authority having power to investigate the information or evidence, or
  - (c) recommend that the Minister for Community Services send a copy of the report to another Minister, if the other Minister is responsible for a service provider the subject of the complaint, or
  - (d) if no action is taken within a reasonable time on a recommendation of the Commission, recommend that the Minister lay before Parliament a special report prepared by the Commission in relation to the recommendation.
- (3) On receiving a copy of a report under subsection (1) (b), the Minister for Community Services must send a copy of the report to:
- (a) the Minister for Aged Services, if the service provider in relation to whom the complaint was made is the Ageing and Disability Department (and the service relates to the aged) or is a person or organisation authorised or funded by the Minister for Aged Services to provide a service, or
  - (b) the Minister for Disability Services, if the service provided in relation to whom the complaint was made is the Ageing and Disability Department (and the service relates to people with a disability) or is a person or organisation authorised or funded by the Minister for Disability Services to provide a service.

### **39 Dismissal or termination of matter**

- (1) The Commission may:
- (a) dismiss a complaint by notice to the complainant if the complaint is found to be

one that the Commission could have declined to entertain, or

(b) terminate the matter by sending a letter of explanation or clarification to the complainant.

(2) In any such case, the Commission is not required to make a report under section 38.

## **Part 5 Review by Tribunal of decisions**

### **40 Applications to the Tribunal for reviews of decisions**

(1) A person may apply to the Tribunal for a review of any of the following decisions:

(a) a decision made by a person or body by or under the community welfare legislation where the legislation expressly provides that the decision is a reviewable decision for the purposes of this paragraph, and

(b) a decision of the Commission to investigate a complaint, being an investigation that is beyond its powers, and

(c) a decision of the Commission that was beyond its powers, and

(d) a decision that was made by a relevant decision maker and is of a class prescribed by the regulations for the purposes of this section, and

(e) a decision made by any State Minister (other than the Minister for Community Services, the Minister for Aged Services or the Minister for Disability Services), any Commonwealth Minister or any public authority, if it is within a class of decisions that, with the consent of that Minister or public authority, is prescribed by the regulations for the purposes of this section.

(2) If there is a failure within a reasonable time to make a decision that, if made, could be the subject of an application to the Tribunal under subsection (1) (b) or (c), the Tribunal may:

(a) treat the decision as having been made in a manner unfavourable to the applicant for the decision, and

(b) permit the applicant to apply to the Tribunal as if the unfavourable decision had in fact been made.

(3) In this section:

**relevant decision maker** means the following:

(a) the Minister for Community Services,

(b) the Minister for Aged Services,

(c) the Minister for Disability Services,

- (d) the Director-General of the Department of Community Services,
- (e) the Director-General of the Ageing and Disability Department,
- (f) the Commission,
- (g) a service provider.

(4) In this Part, a reference to a decision, in relation to the Commission, includes a reference to action taken by the Commission and to a recommendation made by the Commission.

#### **41 Who may apply to the Tribunal?**

- (1) An application may be made to the Tribunal by any person who demonstrates to the satisfaction of the Tribunal that he or she has a genuine concern in the subject-matter of the decision concerned.
- (2) Without limiting the generality of subsection (1), an application may be made by any person who is responsible for, is a next friend of or is appointed by the Tribunal to represent the person to whom the application relates.
- (3) The Tribunal may, on application, grant leave to apply for a review of a decision to any person who was entitled to, but did not, apply for a review of the decision within the time allowed for an application.
- (4) A person found by the Tribunal to be unjustifiably interfering in a matter is not entitled to apply to the Tribunal for a review in relation to the matter.
- (5) In determining whether a person is unjustifiably interfering in a matter, the Tribunal is to take into account, to the extent that it is practicable to do so, the wishes and interests of any other persons who have an interest in the matter.
- (6) This section applies despite any contrary provisions of the [Administrative Decisions Tribunal Act 1997](#).

#### **42 Representative applications**

- (1) The Tribunal may, on application, give leave for an application for a review of a decision to be dealt with as a representative application if it is satisfied that:
  - (a) 3 or more persons are entitled to apply to the Tribunal for a review of a decision arising from the same, similar or related circumstances as those to which the application relates but their joinder as appellants is impracticable, and
  - (b) the applicant is one of those persons and the others consent to a representative application, and
  - (c) the application is made in good faith, and

- (d) the applicant is capable of adequately advocating the interests of the persons entitled to apply for a review, and
  - (e) a representative application would be to the advantage of the persons entitled to apply for a review, and
  - (f) a representative application would be an efficient and effective means of dealing with the claims of the persons entitled to apply for a review.
- (2) The Tribunal may make orders about the making, notification, conduct and determination of a representative application.
- (3) The decision of the Tribunal on a representative application is binding on the persons referred to in subsection (1) (a).

#### **43 Alternatives to Tribunal determining the matter**

- (1) The Tribunal must take such steps as to it seems reasonable to encourage the parties to an application for review to effect an amicable agreement.
- (2) The Tribunal may, before it hears an application, or before it determines a matter the subject of an application, refer the application or matter:
- (a) to the service provider for resolution at a local level, or
  - (b) to the Commission for alternative dispute resolution or investigation under this Act, or
  - (c) for investigation by any other appropriate investigative authority.
- (3) The powers conferred on the Tribunal by this section are in addition to any other powers that the Tribunal has under the *Administrative Decisions Tribunal Act 1997*, including section 74 (Preliminary conferences) or Part 4 (Alternative dispute resolution) of Chapter 6.

#### **44 Additional powers of Tribunal**

- (1) The Tribunal may decline to hear or determine an application if, in the opinion of the Tribunal:
- (a) the applicant has available an alternative and satisfactory means of redress, or
  - (b) the applicant has not made appropriate attempts to have the matter to which the application relates resolved otherwise, or
  - (c) the ground for the application is unacceptable having regard to the frequency of applications previously made by or on behalf of the appellant in respect of the same subject-matter.



- (2) In giving its decision on an application, the Tribunal may make recommendations for consideration by the relevant Minister and, if any recommendations are made, the parties affected by the decision are entitled to be informed:
  - (a) of any action taken in relation to the recommendations, or
  - (b) that it is not proposed to take any such action.
- (3) Nothing in this section limits the powers of the Tribunal under Division 3 (Powers on review) of Part 3 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997*.
- (4) In this section:

**relevant Minister** means:

- (a) the Minister for Community Services, if the decision against which the appeal was made was made by the Minister for Community Services, the Director-General of the Department of Community Services or by a person or organisation authorised or funded by the Minister for Community Services to provide a service, or
- (b) the Minister for Aged Services, if the decision against which the appeal was made was made by the Minister for Aged Services, the Director-General of the Ageing and Disability Department (and the decision related to the provision of services to the aged) or by a person or organisation authorised or funded by the Minister for Aged Services to provide a service, or
- (c) the Minister for Disability Services, if the decision against which the appeal was made was made by the Minister for Disability Services, the Director-General of the Ageing and Disability Department (and the decision related to the provision of services to people with disabilities) or by a person or organisation authorised or funded by the Minister for Disability Services to provide a service, or
- (d) the Minister for Community Services, if the decision against which the appeal was made was made by the Home Care Service of New South Wales or by a person or organisation funded by the Home Care Service of New South Wales to provide a service.

#### **45 Right of appearance**

- (1) In any proceedings before the Tribunal, the parties to the proceedings may appear in person or, by leave of the Tribunal, may be represented by a barrister or solicitor or by an agent.
- (2) The Commissioner has a right to appear in proceedings before the Tribunal in order to assist the Tribunal otherwise than as a party, unless the proceedings concern an application for the review of a decision of the Commission.
- (3) In proceedings before it directly or significantly affecting a prescribed person, the

Tribunal may appoint a person to act as guardian ad litem for the person.

- (4) In proceedings before it directly or significantly affecting a prescribed person, the Tribunal may, if it considers that the person should be separately represented:
  - (a) order that the person be separately represented, and
  - (b) make such other orders as it thinks necessary for the purpose of securing separate representation for the person.
- (5) A person is not entitled to legal aid under the [Legal Aid Commission Act 1979](#) merely because the Tribunal has made an order under subsection (4).
- (6) This section applies despite the provisions of section 71 (Representation of parties) of the [Administrative Decisions Tribunal Act 1997](#).
- (7) In this section:

**prescribed person** means a child or a person of a class prescribed for the purposes of this section by the regulations.

#### **46 Costs**

- (1) The Tribunal may, if in the particular circumstances of the case it is of the opinion that it is appropriate to do so, make orders with respect to the payment of costs of proceedings before it.
- (2) Any such costs may be recovered as a debt.
- (3) A certificate purporting to be signed by the Divisional Head or the Registrar and containing a statement as to any matters relating to the award of costs under this section is admissible as evidence of those matters.
- (4) This section applies despite the provisions of section 88 (Costs) of the [Administrative Decisions Tribunal Act 1997](#).

#### **47-76 (Repealed)**

## **Part 6 The Community Services Commission**

### **Division 1 Establishment of the Commission**

#### **77 Constitution of the Commission**

- (1) There is constituted by this section a corporation with the corporate name of the Community Services Commission.
- (2) The affairs of the Commission are to be managed by the Commissioner for Community Services.

- (3) Any act, matter or thing done in the name of, or on behalf of, the Commission by the Commissioner, or with the authority of the Commissioner, is taken to have been done by the Commission.
- (4) The Commission is a statutory body representing the Crown.

#### **78 Commissioner for Community Services**

- (1) There is to be a Commissioner for Community Services appointed by the Governor on the recommendation of the Minister for Community Services after consultation with the Review Council.
- (2) The person appointed to be Commissioner is to be a person who, in the opinion of the Minister for Community Services:
  - (a) has a commitment to the objectives of the community welfare legislation, and
  - (b) has skills in the solving of problems about access to, and the use of, community services.
- (3) The employment of the Commissioner is subject to Part 2A of the *Public Sector Management Act 1988*, but is not subject to Part 2 of that Act.
- (4) The Governor may remove the Commissioner from office only for incapacity, incompetence or misbehaviour.

#### **79 Acting Commissioner**

- (1) The Minister for Community Services may, from time to time, appoint a person to act in the office of the Commissioner during the illness or absence of the Commissioner (or during a vacancy in the office of Commissioner) and the person, while so acting, has all the functions of the Commissioner.
- (2) The Minister for Community Services may, at any time, remove a person from the office of acting Commissioner.
- (3) An acting Commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister for Community Services may from time to time determine.

#### **80 Investigation Division and Conciliation Division**

The Commission is to include within its organisation an Investigation Division and a Conciliation Division.

#### **81 Seal of the Commission**

The seal of the Commission is to be kept by the Commissioner and is to be affixed to a document only:

- (a) in the presence of the Commissioner or a member of the staff of the Commission authorised for the purpose by the Commissioner, and
- (b) with an attestation by the Commissioner or authorised person of the fact of the affixing of the seal.

## **82 Staff of the Commission**

- (1) Such staff as may be necessary to enable the Commission to exercise its functions are to be employed under Part 2 of the *Public Sector Management Act 1988*.
- (2) The Commission may arrange for the use of the services of any staff or facilities of a Government department or administrative office.

## **Division 2 Functions of the Commission**

### **83 Functions of Commission**

- (1) The Commission has the following functions:
  - (a) to promote and assist the development of standards for the delivery of community services,
  - (b) to educate service providers, clients, carers and the community generally about those standards,
  - (c) to monitor and review the delivery of community services,
  - (d) to inquire, on its own initiative or at the request of the Minister for Community Services, the Minister for Aged Services or the Minister for Disability Services, into matters affecting service providers and persons receiving, or eligible to receive, community services,
  - (e) to receive, assess, resolve or investigate complaints under section 12 (which relates to unreasonable conduct by a service provider),
  - (f) to assist service providers in improving their complaints procedures,
  - (g) to assist in the making of complaints by persons receiving, or eligible to receive, community services,
  - (h) to promote, liaise with and assist advocacy services and organisations for persons receiving, or eligible to receive, community services,
  - (i) to support the development of advocacy programs,
  - (j) to provide information, education and training, and to encourage others to do so, relating to the making, handling and resolution of complaints about the delivery of community services,

- (k) to review the causes and patterns of complaints and identify ways in which those causes could be removed or minimised,
  - (l) to exercise and perform the other functions conferred and imposed on the Commission by or under this or any other Act.
- (2) In the exercise of its functions, the Commission must, whenever possible:
- (a) consult and co-operate with other relevant investigative agencies and those concerned with the determination of the rights and interests of persons receiving, or eligible to receive, community services, and
  - (b) consult persons and groups with an interest in the provision of community services, particularly organisations of persons receiving, or eligible to receive, community services and those advocating their interests, and
  - (c) have regard to the needs of those persons (such as children) who are receiving, or are eligible to receive, community services and are least likely or able to complain.
- (3) Following an inquiry, review or investigation under this Act, the Commission may make to the Minister for Community Services, the Minister for Aged Services, the Minister for Disability Services, the Director-General of the Department of Community Services, the Director-General of the Ageing and Disability Department, a service provider or other appropriate person recommendations for improvement of the delivery of community services.
- (3A) If the Commission makes such recommendations in relation to a person or body other than the Minister for Community Services, the Commission must forward a copy of the recommendations to the Minister for Community Services.
- (4) The Commission may request the Minister to consider tabling in Parliament any recommendations made under this section if the Commission considers that they raise a significant issue of public safety or public interest.
- (5) The Commission may provide advice and assistance to the Review Council.

## **Division 3 Miscellaneous**

### **84 Powers of entry by the Commissioner**

- (1) The Commissioner may enter any part of premises on which the functions of a service provider are exercised and may there exercise the powers conferred by this section, but only if the Commissioner:
- (a) is in possession of a certificate of authority issued by the Commission and produces the certificate if required to do so by the person apparently in occupation of the premises, and

- (b) gives reasonable notice to the occupier of the premises of intention to exercise the power, unless the giving of notice would defeat the purpose for which it is intended to exercise the power, and
  - (c) exercises the power at a reasonable hour of the day, unless it is being exercised in an emergency, and
  - (d) uses no more force than is reasonably necessary.
- (2) The Commissioner is not entitled to enter a part of premises used for residential purposes, except:
- (a) with the consent of the occupier, or
  - (b) under the authority of a search warrant.
- (3) The Commissioner may do any of the following:
- (a) inspect the premises and make notes in relation to the inspection,
  - (b) examine, seize, retain or remove any equipment that the Commissioner reasonably believes is, has been or may be used in connection with a complaint being investigated,
  - (c) require a person having access to records relating to the conduct of the premises to produce the records for examination,
  - (d) make copies of, or take extracts from, those records,
  - (e) for the purpose of further examination, take possession of, and remove, any of those records,
  - (f) require the owner or occupier of those premises to provide the Commissioner with such assistance and facilities as is or are reasonably necessary to enable the Commissioner to exercise functions under this section.
- (4) The Commissioner may ask any person on the premises to answer questions, or to produce records, relating to the delivery of services at or from the premises.
- (5) If damage is caused by the exercise of the powers conferred by this section, the Minister for Community Services is to pay reasonable compensation for the damage unless the exercise of the powers was obstructed by the occupier of the premises.
- (6) A Magistrate may, on the application of the Commissioner, issue a summons requiring a person:
- (a) to produce to a Local Court constituted by a Magistrate sitting alone any records that the person summoned has failed to produce in accordance with a requirement made under this section, or

(b) to appear before such a Local Court and give evidence in relation to a matter in respect of which the person has failed to answer a question in accordance with such a requirement.

(7) Documents produced in response to a summons under this section:

(a) are, at the request of the Commissioner, to be made available to enable the Commissioner to make copies of, or take extracts from, the records, and

(b) are to be returned to the person summoned no later than 7 days after their production to the Local Court.

(8) A person who, having been served with a summons under this section, fails to comply with the summons is guilty of an offence.

Maximum penalty: 20 penalty units.

## 85 Search warrants

(1) The Commissioner may apply to an authorised justice for a search warrant if the Commissioner has reasonable grounds for believing that, on specified premises, this Act is being contravened or for the purposes of section 84.

(2) An authorised justice to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant to the Commissioner to enter and search the premises.

(3) Part 3 of the [Search Warrants Act 1985](#) applies to a search warrant issued under this section.

(4) On entering any premises on the authority of a search warrant issued under this section, the Commissioner may search the premises and may seize and carry away anything considered by the Commissioner to be evidence of a contravention of this Act.

(5) This section does not authorise the Commissioner to carry away anything for which the Commissioner does not give a receipt.

(6) In executing a search warrant, the Commissioner may be accompanied by a police officer.

(7) In this section, **authorised justice** has the same meaning as in the [Search Warrants Act 1985](#).

## 86 Offence: obstructing the Commissioner

A person who:

(a) prevents the Commissioner from exercising a function under section 84, or

- (b) hinders or obstructs the Commissioner in the exercise of such a function, or
- (c) without reasonable excuse, refuses or fails to comply with a requirement made or to answer a question of the Commissioner asked in accordance with section 84, or
- (d) furnishes the Commissioner with information knowing that it is false or misleading in a material particular,

is guilty of an offence.

Maximum penalty: 20 penalty units.

#### **87 Offence: impersonating the Commissioner**

A person who impersonates or falsely represents that the person is the Commissioner is guilty of an offence.

Maximum penalty: 10 penalty units.

#### **88 Expert assistance**

In the exercise of any of its functions, the Commission may obtain assistance from a person who, in the opinion of the Commission, is sufficiently qualified or experienced to give expert advice on the matter in question.

#### **89 Delegation**

The Commission may delegate its functions, and the Commissioner may delegate his or her functions, other than this power of delegation, to any officer of the Commission.

#### **90 Financial year**

The financial year of the Commission is the year ending on 30 June.

#### **91 Annual report**

- (1) During each year, as soon as practicable after 30 June but on or before 31 December, the Commission is to prepare and forward to the Minister for Community Services a report of its work and activities for the period ending on 30 June in that year.
- (2) Without affecting the generality of subsection (1), the Commission is to report on the exercise of each of its functions.
- (3) The Minister for Community Services is to lay the report, or cause it to be laid, before both Houses of Parliament as soon as practicable after receiving the report.

### **Part 7**

#### **92-106 (Repealed)**



## **Part 8 The Community Services Review Council**

### **107 Constitution of the Community Services Review Council**

- (1) There is constituted by this section a Community Services Review Council comprising the following part-time members:
  - (a) the Commissioner,
  - (b) the Director-General of the Department of Community Services,
  - (b1) the Director-General of the Ageing and Disability Department,
  - (c) the Ombudsman,
  - (d) the President of the Guardianship Tribunal,
  - (e) the Divisional Head of the Tribunal,
  - (f) the Public Guardian,
  - (g) 6 persons appointed by the Minister for Community Services.
- (2) Of the members appointed by the Minister for Community Services:
  - (a) 2 are to have knowledge and experience gained as service providers, and
  - (b) 2 are to have knowledge and experience gained as clients of service providers, and
  - (c) 2 are to be persons considered by the Minister for Community Services to be interested in the provision of community services.
- (3) The Chairperson of the Review Council is to be appointed by the Minister for Community Services from among its members.

### **108 Functions of the Review Council**

The Review Council is:

- (a) to encourage co-ordination of the functions of the Tribunal, the Commission, the Community Visitors and other persons and authorities in so far as those functions relate to the provision of community services, and
- (b) to provide the Minister for Community Services with strategic advice regarding the operational effectiveness of the review and monitoring system established under this Act.

### **109 Meetings of the Review Council**

- (1) As soon as practicable after the Review Council is first constituted, the Chairperson is

to convene a meeting at which the Review Council is to decide:

- (a) the procedure for calling a meeting of the Review Council, and
  - (b) the quorum for a meeting of the Review Council, and
  - (c) the procedure at a meeting of the Review Council, and
  - (d) any other matters necessary to enable the Review Council to exercise its functions.
- (2) A decision supported by a majority of the members present and voting at a meeting of the Review Council at which a quorum is present is a decision of the Review Council.
- (3) At a meeting of the Review Council, the Chairperson is to preside or, if the Chairperson is not present, a member elected for the purpose by those present is to preside.
- (4) If there is an equality of votes at a meeting of the Review Council, the Chairperson or other member presiding has a second or casting vote in addition to a deliberative vote.

#### **110 Term of office of appointed member**

Subject to this Part, an appointed member is to hold office for such period (not exceeding 5 years) as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

#### **111 Remuneration of members**

- (1) A member of the Review Council who is not appointed by the Minister for Community Services is entitled to be paid such travelling and subsistence allowances as the Minister for Community Services may from time to time determine in respect of the member.
- (2) An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister for Community Services may from time to time determine in respect of the member.

#### **112 Vacancy in office of appointed member**

- (1) The office of an appointed member becomes vacant if the member:
- (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister for

Community Services, or

- (d) is removed from office by the Minister for Community Services under this clause, or
- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (f) becomes a mentally incapacitated person, or
- (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.

- (2) The Minister for Community Services may remove an appointed member from office for misbehaviour, incompetence, incapacity or failure to attend meetings.

## **Part 9 Miscellaneous**

### **113 Condition of provision of funds**

It is a condition of the provision of funds under the community welfare legislation and any program administered by the Minister for Community Services within the Department of Community Services, or the Minister for Aged Services or the Minister for Disability Services within the Ageing and Disability Department, that the recipient of the funds must make such arrangements for their expenditure as are necessary to facilitate the resolution of complaints at a local level.

### **114 Reasons to be given for certain decisions**

- (1) If a decision of a class prescribed for the purposes of this subsection is made by a relevant decision maker, the person or body that made the decision must:
  - (a) record the reasons for the decision, and
  - (b) give a written copy of the reasons to each person considered by the decision-maker to have been directly affected by the decision.
- (2) In this section, a reference to a decision, in relation to the Commission, includes a reference to action taken by the Commission and a recommendation made by the Commission.
- (3) If a person or body makes a prescribed decision that is a reviewable decision under the *Administrative Decisions Tribunal Act 1997*, the requirements of subsection (1) are taken to be satisfied in relation to any person who is entitled to apply only if:
  - (a) notice is given to the person in accordance with section 48 (Notice of decision and

review rights to be given by administrators) of the *Administrative Decisions Tribunal Act 1997*, and

(b) a statement of reasons containing the matter specified by section 49 (3) of that Act is also given to the person.

(4) In this section:

**relevant decision maker** means the following:

- (a) the Minister for Community Services,
- (b) the Minister for Aged Services,
- (c) the Minister for Disability Services,
- (d) the Director-General of the Department of Community Services,
- (e) the Director-General of the Ageing and Disability Department,
- (f) the Commission,
- (g) a service provider.

#### **115 Service of documents on the Commission**

- (1) (Repealed)
- (2) A document may be served on the Commission by leaving it at, or by sending it by post to, the office of the Commission.

#### **116 Notices etc to be written in other languages**

(1) If:

- (a) the Commission is required, by or under this Act, to cause a document or other instrument to be served on any person, and
- (b) it appears to the Commission that the person is blind or illiterate or is not literate in the English language,

the Commission is, in so far as it is reasonably practicable, to cause the information contained in the document or other instrument to be communicated to the person in a manner that the person understands, which may include (in the case of a person who is literate in another language) by means of a document or other instrument written in that other language.

- (2) Failure to comply with this section does not affect any thing done under any other provision of this Act.

### **117 Protection of complainant against retribution**

- (1) A person who takes or threatens to take detrimental action against another person because that other person:
- (a) makes, or proposes to make, a complaint to a service provider, Community Visitor or the Commission, or
  - (b) brings, or proposes to bring, proceedings before the Tribunal, or
  - (c) provides, or proposes to provide, information, documents or evidence to a Community Visitor, the Commission or the Tribunal,
- is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (2) It is a defence to a prosecution for an offence under this section if it is proved:
- (a) that the action referred to in subsection (1) on which the prosecution was based was taken or proposed in bad faith, or
  - (b) that any material allegation was known by the person making it to be false.
- (3) In this section, **detrimental action** means action causing, comprising or involving any of the following:
- (a) injury, damage or loss,
  - (b) intimidation or harassment,
  - (c) discrimination, disadvantage or adverse treatment in relation to employment,
  - (d) dismissal from, or prejudice in, employment,
  - (e) prejudice in the provision of a community service,
  - (f) disciplinary proceedings.

### **118 Offence: improper disclosure of information**

If a person discloses information obtained in exercising a function under this Act and the disclosure is not made:

- (a) with the consent of the person to whom the information relates, or
- (b) in connection with the execution or administration of this Act, or
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or

(d) with other lawful excuse,  
the person is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

### **119 Exclusion of personal liability**

Anything done by:

- (a) a Community Visitor, or
  - (b) the Commission, the Commissioner or a member of the staff of the Commission, or
  - (c) any person acting for or under the direction of the Commission or the Commissioner,
- does not, if it was done in good faith for the purpose of executing this or any other Act, subject the Community Visitor, the member of the staff of the Commission, the Commissioner or a person so acting, personally to any action, liability, claim or demand.

### **120 Section 3 does not give rise to or affect a cause of action**

- (1) Nothing in section 3 nor in any application of that section by this Act gives rise to, or can be taken into account, in any civil cause of action.
- (2) In this section, **cause of action** does not include proceeding before the Tribunal for a review of a decision.

### **121 Jurisdiction of Commission and Ombudsman**

- (1) Conduct of a public authority that could be, or is or has been, the subject of a complaint to the Commission or of an appeal to the Tribunal may not be the subject of a complaint under the [Ombudsman Act 1974](#), except:
  - (a) a matter arising under Part 3A (Child protection) of that Act, or
  - (b) a matter of a class or kind referred to in subsection (3).
- (2) The Commission and the Ombudsman may enter into arrangements regarding the co-operative exercise of their respective functions.
- (3) Any such arrangement may provide that matters of a specified class or kind that could otherwise be the subject of a complaint under the [Ombudsman Act 1974](#) should not be excluded from being the subject of such a complaint by this section.
- (4) Any such arrangement may also provide for the furnishing to the Ombudsman of copies of complaints received by the Commission under this Act.
- (5) The Commission and Ombudsman are empowered and required to exercise their functions in conformity with any relevant arrangements entered into under this

section.

- (6) Without limiting subsection (5), the Commission and the Ombudsman may disclose to each other any information obtained by them in relation to any matter within their respective jurisdiction.
- (7) Arrangements under this section are to be published in the Gazette by the Commission and the Ombudsman. However, a failure to do so does not affect the validity of the arrangement.

## **122 Proceedings for offences**

Proceedings for an offence under this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

## **123 Savings and transitional provisions**

Schedule 1 has effect.

## **124 Regulations**

- (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 giving effect to this Act.
- (2) The regulations may create offences punishable by a penalty not exceeding 10 penalty units.

## **125 (Repealed)**

## **126 Review of Act**

- (1) The Minister for Community Services is to review this 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) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 Savings and transitional provisions**

(Section 123)

### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

- (2) Any provision of a regulation made under this clause may, if the regulations so provide, take effect from the date of assent to this Act or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (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
  - (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.

**2, 3 (Repealed)**

**Schedule 2 (Repealed)**