

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

[1993-2]



New South Wales

## Status Information

### Currency of version

Historical version for 1 January 2012 to 30 June 2013 (accessed 6 December 2023 at 3:23)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### 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
- **Does not include amendments by**  
[Boarding Houses Act 2012 No 74](#) (not commenced)  
[Statute Law \(Miscellaneous Provisions\) Act 2013 No 47](#) (not commenced — to commence on 1.7.2013)

### Authorisation

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File last modified 25 June 2013

# 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 Official Community Visitors and their functions; to confer and impose functions on the Ombudsman, 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,
  - (f) to encourage compliance with, and facilitate awareness of, the objects, principles and provisions of the community welfare legislation,
  - (g) to provide for independent monitoring of community services and programs, both generally and in particular cases.
- (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

- (1) In this Act:

**Child Death Review Team** or **Team** means the Child Death Review Team established under Part 5A.

**child in care** means a child or young person under the age of 18 years:

- (a) who is under the parental responsibility of the Minister administering the *Children and Young Persons (Care and Protection) Act 1998*, or
- (b) for whom the Director-General of the Department of Community Services or a designated agency has the care responsibility under section 49 of the *Children and*

*Young Persons (Care and Protection) Act 1998*, or

- (c) who is a protected person within the meaning of section 135 of the *Children and Young Persons (Care and Protection) Act 1998*, or
- (d) who is the subject of an out-of-home care arrangement under the *Children and Young Persons (Care and Protection) Act 1998*, or
- (e) who would be, if the amendments made by Schedule 1 [17] and [18] to the *Children and Young Persons (Care and Protection) Amendment (Permanency Planning) Act 2001* were in force, the subject of an out-of-home care arrangement referred to in paragraph (d), or
- (f) who is the subject of a sole parental responsibility order under section 149 of the *Children and Young Persons (Care and Protection) Act 1998*, or
- (g) who is otherwise in the care of a service provider.

**Commission for Children and Young People** means the Commission for Children and Young People constituted under the *Commission for Children and Young People Act 1998*.

**Commissioner for Children and Young People** means the Commissioner for the Commission for Children and Young People appointed under the *Commission for Children and Young People Act 1998*.

**Community and Disability Services Commissioner** means a Deputy Ombudsman appointed as Community and Disability Services Commissioner under section 8 (1A) of the *Ombudsman Act 1974*.

**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 (f) of the definition of **service provider** in this section.

**Community Services Division** means the Community Services Division of the Ombudsman's Office established under section 12.

**community welfare legislation** means the following Acts and the instruments in force under those Acts:

- (a) this Act,
- (b) the *Adoption Act 2000*,
- (c) the *Children and Young Persons (Care and Protection) Act 1998*,



- (c1) the *Children (Education and Care Services) Supplementary Provisions Act 2011*,
- (d) the *Community Welfare Act 1987*,
- (e) the *Disability Services Act 1993*,
- (f) the *Guardianship Act 1987*,
- (g) the *Home Care Service Act 1988*,
- (h) the *Youth and Community Services Act 1973*,
- (i) any other Act relating to the provision of community services that is prescribed by the regulations.

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

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

**parental responsibility**, in relation to a child or young person, means all the duties, powers, responsibilities and authority that, by law, parents have in relation to their children.

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

**public authority** has the same meaning as it has in the *Ombudsman Act 1974*.

**relevant Minister**, in relation to a service provider, means:

- (a) in the case of a service provider that is a Government Department, the Minister responsible for that Department, or
- (b) in the case of a person or organisation authorised, licensed or funded by a Minister to provide a service, that Minister, or
- (c) in the case of the Home Care Service of New South Wales or a person or organisation funded by the Service to provide a service, the Minister responsible for the Home Care Service of New South Wales, or
- (d) in any other case, the Minister for Community Services.

**residential centre for handicapped persons** means:

- (a) premises declared to be a residential centre for handicapped persons under section 3A of the *Youth and Community Services Act 1973*, or
- (b) premises licensed under Part 3 of the *Youth and Community Services Act 1973*, but does not include premises exempted from the requirement to be licensed under

that Act.

**service** includes a statutory or other function, and **rendering** or **providing** a service includes exercising such a function.

**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 or licensed 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, or
- (g) an authorised carer or designated agency within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*, or
- (h) the proprietor or occupier of premises that consist of a residential centre for handicapped persons.

**Tribunal** means the Administrative Decisions Tribunal established by the *Administrative Decisions Tribunal Act 1997*.

**visitable service** has the same meaning as it has in section 8.

- (2) Notes included in this Act do not form part of this Act.

## 5 Administration of community welfare legislation

- (1) 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.

(2) This section does not apply to the exercise of any function of the Ombudsman under this Act.

## **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 Official Community Visitors**

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

- (1) The Minister may, on the recommendation of the Ombudsman, appoint an eligible person to be an Official Community Visitor for the purposes of this Act.
- (2) An eligible person is one who, in the opinion of the Minister:
  - (a) has appropriate knowledge and expertise in the matters relating to community services in which the person would be most involved as an Official 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) An Official 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 Official Community Visitors and an Official Community Visitor is not subject to that Part.

- (5) The Minister may at any time, on the recommendation of the Ombudsman, remove an Official Community Visitor from office on the ground of misbehaviour, incompetence or incapacity.
- (6) Despite subsection (5), an Official Community Visitor who has a disability or a temporary disability (other than mental incapacity) may not be removed from office on the ground of incapacity unless the disability is such as to render the Official Community Visitor incapable of performing the functions of an Official Community Visitor.

## **8 Functions of Official Community Visitors**

- (1) An Official 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 relevant Minister in relation to the provider of the visitable service and the Ombudsman 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 Official 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) An Official 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) (Repealed)
- (4) The Ombudsman may investigate a matter concerning the provision of services by the provider of a visitable service, being a matter arising out of any advice or report given under this section.
- (5) For the purposes of this Act and the application of the *Ombudsman Act 1974*, a matter investigated under this section by the Ombudsman is taken to be a matter subject to a complaint made about a service provider under Part 4 of this Act.

(6) In this section:

**visitable service** means:

- (a) an accommodation service provided by the Department of Community Services or the Department of Ageing, Disability and Home Care, or by a funded agency where a person using the service is in the full-time care of the service provider, or
- (b) a residential centre for handicapped persons, or
- (c) a service prescribed by the regulations as a visitable service.

#### **8A Provision of information to Children's Guardian**

- (1) An Official Community Visitor is required to provide to the Children's Guardian, and the Children's Guardian is authorised to collect and use, any information obtained by the Official Community Visitor under section 8 that is of a class specified by the Children's Guardian (and notified to the Visitor) as being information that is relevant to the exercise of the functions of the Children's Guardian in connection with the accreditation of an organisation or government department as a designated agency under the *Children and Young Persons (Care and Protection) Act 1998*.
- (2) 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 (or affect a duty to provide information) under this section.

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

- (1) The Ombudsman 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.
- (2) The Ombudsman may convene such meetings of Official 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 Ombudsman is to prepare and forward to the Minister a report of the work and activities of the Official 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 Community services functions of Ombudsman**

## **Division 1 General functions**

### **11 Community services functions of Ombudsman**

(1) The Ombudsman 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 and related programs, both generally and in particular cases,
- (d) to make recommendations for improvements in the delivery of community services and for the purpose of promoting the rights and best interests of persons using, or eligible to use, community services,
- (e) to inquire, on his or her own initiative, into matters affecting service providers and visitable services and persons receiving, or eligible to receive, community services or services provided by visitable services,
- (f) to receive, assess, resolve or investigate complaints under Part 4,
- (g) to assist service providers in improving their complaints procedures,
- (h) to assist in the making of complaints under Part 4 by persons receiving, or eligible to receive, community services,
- (i) 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,
- (j) to promote access to advocacy support for persons receiving, or eligible to receive, community services to ensure adequate participation in decision making about the services they receive,
- (k) to review the causes and patterns of complaints under Part 4 and identify ways in which those causes could be removed or minimised,
- (l) to review the situation of a child in care or a person in care or a group of children in care or a group of persons in care under section 13,
- (m) to review the systems of service providers for handling complaints under section 14,
- (n) to review the causes and patterns of reviewable deaths under Part 6 and identify ways in which those deaths could be prevented or reduced.

- (2) In the exercise of functions under this Act, the Ombudsman may:
- (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.

## **12 Community Services Division of Ombudsman's Office**

- (1) The Ombudsman is to establish a Community Services Division to perform the Ombudsman's functions under this Act, subject to the directions of the Ombudsman under section 8A of the *Ombudsman Act 1974* and the delegation of those functions under section 10 of that Act.
- (2) The Community Services Division is to comprise the Community and Disability Services Commissioner, who is to head the Division, and other staff employed to carry out the functions of the Ombudsman under this Act.
- (3) Staff employed in the Community Services Division may undertake such other functions as may be delegated or directed by the Ombudsman under the *Ombudsman Act 1974*.
- (4) The Community Services Division is to be established as a branch of the Ombudsman's Office.
- (5) The Community Services Division may not be abolished under section 55A of the *Public Sector Management Act 1988*.

## **Division 2 Reviews**

### **13 Review of situation of children and other persons in care**

- (1) The Ombudsman may, on application or on the Ombudsman's own initiative, review the situation of a child in care or a person in care, or of a group of children in care or persons in care.
- (2) In carrying out a review, the Ombudsman is to look at such aspects of the welfare, status, progress and circumstances of the child or children or the person or persons the subject of the review as are referred to in the application or as the Ombudsman thinks fit.
- (3) In the exercise of functions under this section, the Ombudsman may hear or receive

submissions from any person, including a child in care or person in care whose situation is being reviewed.

- (4) On completion of a review, the Ombudsman is to make a report:
  - (a) setting out the results of the review, and
  - (b) advising as to whether any change (and if so, what change) in the circumstances of the child or children or the person or persons the subject of the review would, in the Ombudsman's opinion, promote their welfare and interests.
- (5) The Ombudsman:
  - (a) must give a copy of the report to the relevant Minister in relation to the service provider concerned and to the service provider concerned, and
  - (b) may give a copy of the report to any other person or body as the Ombudsman thinks appropriate.
- (6) In this section:

***person in care*** means a person (other than a child in care) who is in the care of a service provider.

#### **14 Review of complaints handling systems**

- (1) The Ombudsman is to review the systems of service providers for handling complaints relating to the provision of services by, or the conduct of, service providers.
- (2) For that purpose, the Ombudsman may require the chief executive or an employee of, or a person acting on behalf of, a service provider to provide information about those systems and their operation.
- (3) The Ombudsman may:
  - (a) report from time to time on any matters relevant to the exercise of the Ombudsman's functions under this section, and
  - (b) make such recommendations from time to time as the Ombudsman thinks fit.
- (4) A copy of a report containing recommendations:
  - (a) must be given to the relevant Minister in relation to the service provider concerned and to the service provider concerned, and
  - (b) may be given to any other person or body, as the Ombudsman thinks appropriate.

### **Division 3 Application of powers under [Ombudsman Act 1974](#)**



## **15 Application of provisions of the *Ombudsman Act 1974* to reviews and other functions**

- (1) For the purpose of exercising functions under section 11 (1) (c), (d) or (e) or conducting a review under section 13 or 14, sections 17–24 (except section 21B) and 36 of the *Ombudsman Act 1974* apply to or in respect of the exercise of those functions or that review in the same way as they apply to or in respect of an investigation of a complaint by the Ombudsman under that Act, subject to any necessary modifications and to any modifications prescribed by the regulations.
- (2) For that purpose, those provisions apply to or in respect of a service provider or a provider of a visitable service (whether or not a public authority) or an employee, or a person acting on behalf of, a service provider or a provider of a visitable service in the same way as they apply to a public authority.
- (3) For the purposes of this section, section 19 of the *Ombudsman Act 1974* does not apply to the exercise of a function under section 11 (1) (c), (d) or (e).

## **Division 4 Additional functions**

### **16 Application of Division**

The Ombudsman may exercise functions under this Division for the purposes of the Ombudsman's functions under section 11 (1) (c), (d) or (e), Division 2, Part 4 or Part 6.

### **17 Powers of entry**

- (1) The Ombudsman may enter any part of premises at or from which the services of a service provider are provided and may there exercise the powers conferred by this section, but only if:
  - (a) in a case where the power is exercised under delegation by an officer of the Ombudsman, the officer is in possession of a certificate of authority issued by the Ombudsman and produces the certificate if required to do so by a person apparently in occupation of the premises, and
  - (b) the Ombudsman gives reasonable notice to an 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) the Ombudsman exercises the power at a reasonable hour of the day, unless it is being exercised in an emergency, and
  - (d) the Ombudsman uses no more force than is reasonably necessary.
- (2) The Ombudsman 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 Ombudsman 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 Ombudsman reasonably believes is, has been or may be used in connection with a complaint or other matter being investigated,
  - (c) require a person having access to records relating to the conduct of the premises or the delivery of services to produce records for inspection,
  - (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 Ombudsman with such assistance and facilities as is or are reasonably necessary to enable the Ombudsman to exercise functions under this section.
- (4) The Ombudsman 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 powers conferred by this section, the Minister 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 Ombudsman, issue a summons requiring a person:
- (a) to produce to the Local Court any records that the person summoned has failed to produce in accordance with a requirement made under this section, or
  - (b) to appear before the 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 Ombudsman, to be made available to enable the Ombudsman 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 (subsection (8)): 20 penalty units.

## 18 Search warrants

- (1) The Ombudsman may apply to an authorised officer for a search warrant if the Ombudsman has reasonable grounds for believing that:
  - (a) on specified premises, this Act is being contravened, or
  - (b) entry to specified premises for the purpose of carrying out a search is necessary for the purposes for which powers under this Division may be exercised.
- (2) An authorised officer 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 Ombudsman to enter and search the premises.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* 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 Ombudsman may search the premises and may seize and carry away anything considered by the Ombudsman to be evidence of a contravention of this Act.
- (5) This section does not authorise the Ombudsman to carry away anything for which the Ombudsman does not give a receipt.
- (6) In executing a search warrant, the Ombudsman must be accompanied by a police officer.
- (7) In this section:

**authorised officer** has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

## 19 Offence: obstructing the Ombudsman

A person who:

- (a) prevents the Ombudsman from exercising a function under section 17, or
- (b) hinders or obstructs the Ombudsman 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 Ombudsman asked in accordance with section 17, or
- (d) furnishes the Ombudsman with information knowing that it is false or misleading in a material particular,

is guilty of an offence.

Maximum penalty: 20 penalty units.

## 20 Relationship to [Ombudsman Act 1974](#)

This Division is in addition to, and does not derogate from, any functions of the Ombudsman under the [Ombudsman Act 1974](#), including any function exercised as a result of the application of a provision of that Act to a function carried out under this Act.

## Part 4 Complaints

### 21 Definition

In this Part:

**community services complaint** means a complaint about a service provider made under this Act or the [Ombudsman Act 1974](#).

### 22 Complaints about service providers

- (1) A person may make a complaint to the Ombudsman about the conduct of a service provider with respect to the provision, failure to provide, withdrawal, variation or administration of a community service in respect of a particular person or group of persons.
- (2) A complaint under subsection (1) may be made about the conduct of any person who is an employee of, or who acts for or on behalf of, a service provider.
- (3) A complaint may be made orally or in writing.
- (4) A person may not complain about conduct that is conduct of a kind referred to in Schedule 1 (other than items 6, 12 and 17) of the [Ombudsman Act 1974](#).
- (5) This section is in addition to, and does not derogate from, any right of a person to complain to the Ombudsman under the [Ombudsman Act 1974](#) about the conduct of a service provider.

#### **Note—**

A complaint may be made under the [Ombudsman Act 1974](#) in relation to conduct of a public authority, being an action or inaction or alleged action or inaction relating to a matter of administration.

### 23 Who may make a complaint?

- (1) A community services complaint may be made by any person who demonstrates to the satisfaction of the Ombudsman 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 in respect of whom the relevant service was provided, withdrawn, varied or administered.

- (3) A person who is, in the opinion of the Ombudsman, 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 Ombudsman 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.
- (5) This section has effect despite any provision of the *Ombudsman Act 1974*.

#### **24 Application of *Ombudsman Act 1974* to complaints under this Act**

- (1) The *Ombudsman Act 1974* (other than section 12 (1) and (4) of that Act) applies to or in respect of a complaint made under this Act about the conduct of a service provider, and any conduct of a service provider, in the same way that it applies to or in respect of a complaint made under that Act about the conduct of a public authority or to conduct of a public authority.
- (2) For that purpose:
  - (a) a complaint made under this Act is taken to be a complaint made under section 12 (1) of the *Ombudsman Act 1974*, and
  - (b) section 13 (1) of that Act applies to conduct about which a complaint could be made under this Act, and
  - (c) a service provider (including any person who is an employee of, or who acts for or on behalf of, a service provider) is taken to be a public authority, and
  - (d) the Ombudsman has the same functions in relation to the investigation of, reporting on and furnishing of information about a complaint under this Act as the Ombudsman has under the *Ombudsman Act 1974*, and
  - (e) section 26A of that Act applies in respect of a report by the Ombudsman about a complaint made under this Act.
- (2A) However, the *Ombudsman Act 1974* as applied by this section applies, in relation to a complaint made under this Act about the conduct of a service provider that is not a government agency (and in relation to any conduct of such a service provider), subject to any modifications prescribed by the regulations.
- (3) Despite subsection (1), the Ombudsman is not required to give notice of a complaint or an investigation if the giving of 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.

**Note—**

Under the *Ombudsman Act 1974*, the Ombudsman may make preliminary inquiries about a complaint, deal with a complaint by conciliation or investigate a complaint and may investigate conduct whether or not there has been a complaint.

**25 Referral of complaints about service providers or to service providers for resolution**

- (1) The Ombudsman may refer a community services complaint (or any part of a community services complaint) to another person or body (including a service provider) if it appears that the complaint raises issues that may require investigation by the other person or body.
- (2) Despite the referral of a complaint (or part of a complaint), the Ombudsman may, if the Ombudsman considers there are appropriate reasons to do so, continue to deal with the complaint.
- (3) The Ombudsman may, if of the opinion that it is appropriate to do so, refer a complaint (or part of a complaint) to the service provider for resolution, if possible.
- (4) A service provider to whom a complaint (or part of a complaint) is referred under this section must report to the Ombudsman on the outcome of that referral.
- (5) The Ombudsman may monitor the progress of an investigation by a service provider into a matter referred to the service provider by the Ombudsman under subsection (1).
- (6) A service provider is to provide the Ombudsman with such documentary and other information as the Ombudsman may from time to time request with respect to an investigation referred to in subsection (5).

**26 Can a complaint be withdrawn?**

- (1) A complainant may withdraw a community services complaint at any time by notice in writing to the Ombudsman.
- (2) On the withdrawal of a complaint, the Ombudsman may cease to deal with it or may continue to deal with the matter the subject of the complaint if it appears to the Ombudsman 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 person by a service provider.

**27 Additional grounds for investigating complaint**

In addition to any ground on which the Ombudsman may investigate a community services complaint under the *Ombudsman Act 1974*, the Ombudsman may investigate

any such complaint if it appears to the Ombudsman 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 person by a service provider.

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

### **28 Applications to Administrative Decisions 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 that is a reviewable decision under section 193 of the *Adoption Act 2000*, section 36 of the *Adoption Information Act 1990*, section 20 of the *Disability Services Act 1993* or section 245 of the *Children and Young Persons (Care and Protection) Act 1998*,
- (a1) a decision that is a reviewable decision for external review under section 192 of the National Law Alignment Provisions (within the meaning of the *Children (Education and Care Services) Supplementary Provisions Act 2011*),
- (b) a decision made by a person or body under the community welfare legislation where the legislation expressly provides that the decision is a reviewable decision for the purposes of this section,
- (c) 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,
- (d) a decision made by any State Minister, any Commonwealth Minister or any public authority, not being a relevant decision maker, if it is within a class of decisions that, with the consent of the Minister or public authority, is prescribed by the regulations for the purposes of this section.

(2) In this section:

**relevant decision maker** means the following:

- (a) the Minister for Community Services,
- (b) the Minister for Ageing,
- (c) the Minister for Disability Services,
- (d) the Director-General of the Department of Community Services,
- (e) the Director-General of the Department of Ageing, Disability and Home Care,
- (f) a service provider (other than an authorised carer within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*).

## 29 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*.
- (7) An application may not be made under this Part for a review of a reviewable decision under the *Children (Education and Care Services) Supplementary Provisions Act 2011* by the person who is the subject of the reviewable decision. Any such application must be made as provided for by that Act.
- (8) In this section:  
  
**reviewable decision** under the *Children (Education and Care Services) Supplementary Provisions Act 2011* means a decision that is a reviewable decision for external review under section 192 of the National Law Alignment Provisions (within the meaning of that Act).

## 30 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).

### **31 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 Ombudsman recommending that consideration be given to investigation or resolution of the matter under this Act or the [Ombudsman Act 1974](#), 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.

### **32 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 person who made the decision concerned or the relevant Minister, if the decision was made by a service provider 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) (Repealed)

### **33 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 an Australian legal practitioner or by an agent.
- (2) The Ombudsman has a right to appear in proceedings before the Tribunal in order to assist the Tribunal otherwise than as a party.
- (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.
- (3A) Anything done or omitted to be done by a member of the Guardian Ad Litem Panel who is appointed by the Tribunal as a guardian ad litem does not subject the member personally to any action, liability, claim or demand if the thing was done, or omitted to be done, in good faith for the purposes of exercising his or her functions as a guardian ad litem under this Act.
- (3B) However, any such liability attaches instead to the Crown.
- (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:

**Guardian Ad Litem Panel** means the panel constituted as the Guardian Ad Litem Panel by the Director-General of the Department of Justice and Attorney General.

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

### 34 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 Registrar of the Tribunal 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](#).

## Part 5A Child Death Review Team

### Division 1 Preliminary

#### 34A Object of Part

The object of this Part is to prevent and reduce the deaths of children in New South Wales through the constitution of the Child Death Review Team which is to exercise the functions conferred or imposed on it under this Part.

#### 34B Definitions

In this Part:

**child** means a person under the age of 18 years.

**Convenor** means the Convenor of the Child Death Review Team.

**court** includes any tribunal or person having power to require the production of documents or the answering of questions.

**member** means a member of the Child Death Review Team.

**produce** includes permit access to.

**Team-related person** means the following:

- (a) a member of the Team,
- (b) a member of staff of the Ombudsman's Office who is supporting and assisting the Team in the exercise of its functions,
- (c) any person engaged to assist the Team in the exercise of its functions, including persons appointed under section 34E.

## **Division 2 Constitution and functions of the Team**

### **34C Establishment and composition of the Team**

- (1) The Child Death Review Team is established by this Act.
- (2) The Team is to consist of the following members:
  - (a) the Ombudsman, who is to be the Convenor of the Team,
  - (b) the Commissioner for Children and Young People,
  - (c) the Community and Disability Services Commissioner,
  - (d) such other persons as may be appointed by the Minister.
- (3) The Team is to be supported and assisted in the exercise of its functions by members of staff of the Ombudsman's Office.
- (4) The Team is to include representatives of each of the following:
  - (a) that part of the Department of Family and Community Services comprising the group of staff who are principally involved in the administration of the *Children and Young Persons (Care and Protection) Act 1998*,
  - (b) the Ministry of Health,
  - (c) the NSW Police Force,
  - (d) the Department of Education and Communities,
  - (e) the Department of Attorney General and Justice,
  - (f) the Office of the NSW State Coroner, within the Department of Attorney General and Justice,
  - (g) that part of the Department of Family and Community Services comprising the group of staff who are principally involved in the administration of the *Disability Services Act 1993*.
- (5) Each representative referred to in subsection (4) is to be nominated by the Minister responsible for the organisation concerned.

- (6) In addition, the Team is to include persons recommended by the Convenor and who, in the opinion of the Minister, are:
  - (a) experts in health care, research methodology, child development or child protection, or
  - (b) persons who, because of their qualifications or experience, or both, are likely to make a valuable contribution to the work of the Team.
- (7) The Minister is to appoint 2 persons who are Aboriginal persons (within the meaning of the *Aboriginal Land Rights Act 1983*) as members of the Team.
- (8) The Team must consist of not less than 14 members (in addition to the Convenor, Commissioner for Children and Young People and the Community and Disability Services Commissioner) and not more than 20 members (in addition to the Convenor and those Commissioners) at any one time.
- (9) A person who is a member of the Legislative Council or the Legislative Assembly is not eligible to be a member of the Team.
- (10) Schedule 2 contains provisions relating to the members and procedure of the Team.

#### **34D Functions of the Team**

- (1) The Team has the following functions:
  - (a) to maintain the register of child deaths occurring in New South Wales that has recorded such deaths since 1 January 1996,
  - (b) to classify those deaths according to cause, demographic criteria and other relevant factors,
  - (c) to analyse data to identify patterns and trends relating to those deaths,
  - (d) to undertake, alone or with others, research that aims to help prevent or reduce the likelihood of child deaths,
  - (e) to make recommendations, arising from the Team's maintenance of the register of child deaths and from its research, as to legislation, policies, practices and services for implementation by government and non-government agencies and the community to prevent or reduce the likelihood of child deaths,
  - (f) to identify areas requiring further research by the Team or other agencies or persons.
- (2) Any function of the Team with respect to child deaths occurring in New South Wales may also be exercised by the Team in connection with the death of a child dying outside the State while ordinarily resident in the State.

- (3) The Convenor may enter into an agreement or other arrangement for the exchange of information between the Team and a person or body having functions under the law of another State or a Territory that are substantially similar to the functions of the Team, being information relevant to the exercise of the functions of the Team or that person or body.
- (4) The Team may not undertake a review of a reviewable death (within the meaning of Part 6) but may:
  - (a) include a reviewable death in research that examines a sample or population of child deaths, and
  - (b) with the approval of the Minister, conduct research about reviewable deaths.
- (5) The Team may exercise functions with respect to the death of a child even though the death is or may be the subject of a review by the Domestic Violence Death Review Team established under the *Coroners Act 2009*.

#### **34E Appointment of expert advisers**

- (1) The Convenor may, otherwise than under a contract of employment, appoint persons with relevant qualifications and experience to advise the Team in the exercise of its functions.
- (2) A person so appointed is entitled to be paid such remuneration and allowances (including travelling and subsistence allowances) as may be determined by the Convenor in respect of the person.

#### **34F Annual report to Parliament**

- (1) The Team is required to prepare, within the period of 4 months after 30 June in each year, a report of its operations during the year that ended on that 30 June and to provide the report to the Presiding Officer of each House of Parliament.
- (2) A report by the Team under this section must include the following:
  - (a) a description of its activities during that year in relation to each of its functions,
  - (b) details of the extent to which its previous recommendations have been accepted,
  - (c) whether any information has been authorised to be disclosed by the Convenor as referred to in section 34L (1) (b),
  - (d) if the Team has not presented a report to Parliament under section 34H within the previous 3 years, the reasons why such a report has not been presented.
- (3) A report by the Team under this section may include, in relation to any details referred to in subsection (2) (b), comment on the extent to which those recommendations have been implemented in practice.

### **34G Annual child death review report**

- (1) The Team is required to prepare, within the period of 4 months after 30 June in each year, a report consisting of data collected and analysed in relation to child deaths registered during the previous calendar year and provide the report to the Presiding Officer of each House of Parliament.
- (2) A report by the Team under this section may include any recommendations made for the purposes of section 34D (1) (e) or (f).

### **34H Other reports**

The Team may, at any time, make a report containing the results of research undertaken in the exercise of its research functions under this Part and provide the report to the Presiding Officer of each House of Parliament.

### **34I Preparation and presentation of reports**

- (1) Each report prepared by the Team is to be provided to the Minister.
- (2) A report provided to the Presiding Officer of a House of Parliament under this Part is to be laid before that House within 15 sitting days of that House after it is received by the Presiding Officer.
- (3) The Team may include in a report a recommendation that the report be made public as soon as practicable.
- (4) If a report includes a recommendation by the Team that the report be made public as soon as practicable, a 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.
- (5) If such a report is made public by a Presiding Officer of a House of Parliament before it is laid before that House, it attracts the same privileges and immunities as if it had been laid before that House.
- (6) A Presiding Officer need not inquire whether all or any conditions precedent have been satisfied as regards a report purporting to have been made and provided in accordance with this Part.
- (7) A report of the Team under this Part may be presented separately from any other such report or together with any other such report.

### **34J Application of [Ombudsman Act 1974](#)**

- (1) The provisions of section 31B (1) (a)-(c) and (e), (2) (a) and (3) of the [Ombudsman Act 1974](#) apply to and in respect of the exercise of functions by the Team and reports prepared by the Team in the same way as those provisions apply to and in respect of

the exercise of functions by the Ombudsman and reports made by the Ombudsman.

**Note—**

Section 31B of the [Ombudsman Act 1974](#) provides for the monitoring of the exercise of functions by the Ombudsman and review of reports of the Ombudsman by the Committee on the Office of the Ombudsman and the Police Integrity Commission.

- (2) In addition to the functions that the Committee on the Office of the Ombudsman and the Police Integrity Commission has in relation to the Team under subsection (1), the Committee has the function of examining trends and changes in services and issues affecting children, and reporting to both Houses of Parliament any changes that the Committee thinks desirable to the functions and procedures of the Team.

### **Division 3 Access to and confidentiality of information**

#### **34K Duty of persons to assist the Team**

- (1) It is the duty of each of the following persons to provide the Team with full and unrestricted access to records that are under the person's control, or whose production the person may, in an official capacity, reasonably require, being records to which the Team reasonably requires access for the purpose of exercising its functions:
- (a) the Director-General, the Department Head, chief executive officer or senior member of any department of the government, statutory body or local authority,
  - (b) the Commissioner of Police,
  - (c) the State Coroner,
  - (d) a medical practitioner or health care professional who, or the head of a body which, delivers health services to children,
  - (e) a person who, or the head of a body which, delivers welfare services to children (including family support services, children's services, foster care or residential out-of-home care, and disability services),
  - (f) the principal of a non-government school (within the meaning of the [Education Act 1990](#)).
- (2) Access to which the Team is entitled under subsection (1) includes the right to inspect and, on request, to be provided with copies of, any record referred to in that subsection and to inspect any non-documentary evidence associated with any such record.
- (3) A provision of any Act or law that restricts or denies access to records does not prevent a person to whom subsection (1) applies from complying, or affect the person's duty to comply, with that subsection.
- (4) In this section, **record** means any document or other source of information compiled,



recorded or stored in written form or on film, or by electronic process, or in any other manner or by any other means.

### **34L Confidentiality of information**

- (1) A Team-related person must not make a record of, or directly or indirectly disclose to any person, any information (including the contents of any document) that was acquired by the person by reason of being a Team-related person, unless:
- (a) the record or disclosure is made in good faith for the purpose of exercising a function under this Part, or
  - (b) the record or disclosure is authorised to be made by the Convenor in connection with research that is undertaken for the purpose of helping to prevent or reduce the likelihood of deaths of children in New South Wales, or
  - (c) the record or disclosure is made by the Convenor for the purpose of:
    - (i) providing information to the Commissioner of Police in connection with a possible criminal offence, or
    - (ii) reporting to the Director-General of the Department of Family and Community Services that a child or class of children may be at risk of harm, or
    - (iii) providing information to the State Coroner that may relate to a death that is within the jurisdiction of the State Coroner, whether or not the death has been the subject of an inquest under the *Coroners Act 2009*, or
    - (iv) providing information to the Domestic Violence Death Review Team established under the *Coroners Act 2009* in connection with that Team's functions, or
    - (v) providing information to the Ombudsman concerning the death of a child that is relevant to the exercise of any of the Ombudsman's functions, or
    - (vi) giving effect to any agreement or other arrangement entered into under section 34D (3), or
  - (d) the record or disclosure is made by a member of the Team to a Minister, or to a Department Head, chief executive officer or senior member of any department of the government or a statutory body, in connection with a draft report prepared for the purpose of this Part, or
  - (e) the record or disclosure is made by a member of the Team to any person, body or organisation for the purpose of obtaining information or advice, or enabling comments to be made to the Team, in connection with a draft report or part of a draft report prepared for the purposes of this Part.

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

(2) A Team-related person is not required:

(a) to produce to any court any document or other thing that has come into the person's possession, custody or control, or

(b) to reveal to any court any information that has come to the person's notice, by reason of being a Team-related person.

(3) Any authority or person to whom any information referred to in subsection (1) is revealed, and any person or employee under the control of that authority or person:

(a) is subject to the same obligations and liabilities under subsection (1), and

(b) enjoys the same rights and privileges under subsection (2),

in respect of that information as if he or she were a Team-related person who had acquired the information for the purpose of the exercise of the functions of the Team. Failure to comply with obligations and liabilities referred to in this subsection is taken to be a contravention of subsection (1).

#### **34M Dishonestly obtaining information**

A person who dishonestly obtains information (including the contents of any document) that was acquired by a person by reason of being a Team-related person is guilty of an offence.

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

### **Division 4 Miscellaneous**

#### **34N Execution of documents**

A document required to be executed by the Team in the exercise of its functions is sufficiently executed if it is signed by the Convenor or another member authorised by the Convenor.

#### **34O Proceedings for offences under Part**

Despite any other law, proceedings for an offence under this Part must be commenced not later than 2 years from when the offence was alleged to have been committed.

#### **34P Review of Part**

(1) The Minister is to review this Part to determine whether the policy objectives of this Part remain valid and whether the terms of this Part 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 commencement of this Part.
- (3) A report on 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.

## **Part 6 Reviews of deaths of children in care and certain other children and persons with disabilities in care**

### **35 Application of Part**

- (1) This Part applies in respect of the deaths of the following persons (in this Part referred to as **reviewable deaths**):
  - (a) a child in care,
  - (b), (c) (Repealed)
  - (d) a child whose death is or may be due to abuse or neglect or that occurs in suspicious circumstances,
  - (e) a child who, at the time of the child's death, was an inmate of a children's detention centre, a correctional centre or a lock-up (or was temporarily absent from such a place),
  - (f) a person (whether or not a child) who, at the time of the person's death, was living in, or was temporarily absent from, residential care provided by a service provider and authorised or funded under the *Disability Services Act 1993* or a residential centre for handicapped persons (in this Part referred to as a **person in residential care**),
  - (g) a person (other than a child in care) who is in a target group within the meaning of the *Disability Services Act 1993* who receives from a service provider assistance (of a kind prescribed by the regulations) to enable the person to live independently in the community.

- (2) In this Part:

**child** means a person under the age of 18 years.

### **36 Systemic review of deaths of children at risk of harm, children in care or other persons in care**

- (1) The Ombudsman has the following functions:
  - (a) to monitor and review reviewable deaths,
  - (b) to formulate recommendations as to policies and practices to be implemented by government and service providers for the prevention or reduction of deaths of

children in care, children at risk of death due to abuse or neglect, children in detention centres, correctional centres or lock-ups or persons in residential care,

- (c) to maintain a register of reviewable deaths occurring in New South Wales after a date prescribed by the regulations classifying the deaths according to cause, demographic criteria or other factors prescribed by the regulations,
- (d) to undertake research or other projects for the purpose of formulating strategies to reduce or remove risk factors associated with reviewable deaths that are preventable.

(2) For the purpose of exercising those functions the Ombudsman may:

- (a) keep under scrutiny systems for reporting reviewable deaths, and
- (b) undertake detailed reviews of information relating to reviewable deaths, and
- (c) analyse data with respect to the causes of reviewable deaths to identify patterns and trends relating to those deaths, and
- (d) consult with and obtain advice from any person or body having appropriate expertise.

### **37 Notification to Ombudsman of reviewable deaths**

- (1) The Registrar of Births, Deaths and Marriages must provide the Ombudsman with a copy of death registration information relating to a child's death not later than 30 days after receiving the information.
- (2) The Director-General of the Department of Ageing, Disability and Home Care must provide the Ombudsman with copies of any notification received by the Director-General relating to a reviewable death not later than 30 days after receiving the notification.
- (3) It is the duty of the State Coroner to notify the Ombudsman of any reviewable death notified to the State Coroner not later than 30 days after receiving the notification.

### **38 Provision of information and assistance to Ombudsman**

- (1) It is the duty of each of the following persons, namely:
  - (a) a service provider (whether or not a government agency),
  - (b) the chief executive officer of a service provider,
  - (c) the relevant Minister for a service provider,
  - (d) the Department Head, chief executive officer or senior member of any department of the government, statutory body or local authority,

- (e) the Commissioner of Police,
- (f) the Commissioner for Children and Young People,
- (g) the State Coroner,
- (h) the holder of any office prescribed by the regulations,

to provide the Ombudsman with full and unrestricted access to records that are under the person's control, or whose production the person may, in an official capacity, reasonably require, being records to which the Ombudsman reasonably requires access for the purpose of exercising the Ombudsman's functions under this Part.

- (2) Access to which the Ombudsman is entitled under this section includes the right to inspect and, on request, to be provided with copies of, any record referred to in subsection (1) and to inspect any non-documentary evidence associated with any such record.
- (3) A provision of any Act or law that restricts or denies access to records does not prevent a person to whom this section applies from complying, or affect the person's duty to comply, with this section.

### **39 Information to be provided by Ombudsman**

The Ombudsman may provide to the Children's Guardian, the Commissioner for Children and Young People, the Child Death Review Team, an advisory committee established under this Part or a public authority or service provider that has a relevant interest, information or copies of documents, obtained by the Ombudsman under this Part, if the Ombudsman thinks it appropriate to do so.

### **40 Protections relating to information provided under this Part**

If information is provided under this Part:

- (a) the furnishing of the information is not, in any proceedings before a court, tribunal or committee, to be held to constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct, and
- (b) no liability for defamation is incurred because of the provision of the information, and
- (c) the provision of the information does not constitute a ground for civil proceedings, for malicious prosecution or for conspiracy.

### **41 Advisory committees**

- (1) The Ombudsman may establish advisory committees for the purpose of assisting the Ombudsman in the exercise of functions under this Part.
- (2) The composition and terms of appointment of any such committee are to be as

determined by the Ombudsman.

#### **42 Application of provisions of the *Ombudsman Act 1974* to this Part**

- (1) For the purpose of exercising functions under this Part, sections 17–24 (except section 21B) and 36 of the *Ombudsman Act 1974* apply to or in respect of the exercise of those functions in the same way that they apply to or in respect of an investigation of a complaint by the Ombudsman under that Act, subject to any necessary modifications and to any modifications prescribed by the regulations.
- (2) For that purpose, those provisions apply to or in respect of a service provider (whether or not a public authority) or an employee, or a person acting on behalf of, a service provider in the same way as they apply to a public authority.
- (3) For the purpose of the application of sections 21 (3) and 21A (2) of the *Ombudsman Act 1974* under this section, the Ombudsman is not required to set aside a requirement, and is not prevented from exercising a power, because of a claim by a public authority based on legal professional privilege.

#### **43 Reports**

- (1) The Ombudsman must prepare a report every 2 years on the Ombudsman's work and activities under this Part for the preceding 2 calendar years. The first such biennial report is to be prepared in respect of the 2-year period ending on 31 December 2009.
- (1A) Each report under subsection (1) must be provided to the Presiding Officer of each House of Parliament as soon as practicable after 30 June following the reporting period.
- (2) Without limiting any other matter that may be included, the report is to include the following:
  - (a) a report as to data collected and information relating to reviewable deaths that occurred in the State during the reporting period,
  - (b) any recommendations made for the purposes of section 36 (1) (b) in the reporting period,
  - (c) information with respect to the implementation or otherwise of previous recommendations (as appropriate).
- (3) The Ombudsman may, from time to time, report to a service provider or other appropriate person or body on a matter relating to a reviewable death or arising out of the exercise of the Ombudsman's functions under this Part.
- (4) Section 30 (2) and (3) of the *Ombudsman Act 1974* apply to a report under subsection (1) in the same way as they apply to an annual report under that section.

**43A (Repealed)**

**Part 6A Audit of Interagency Plan relating to child sexual assault in Aboriginal communities**

**43B The Interagency Plan**

In this Part:

**the Interagency Plan** means the *New South Wales Interagency Plan To Tackle Child Sexual Assault in Aboriginal Communities 2006-2011*, released by the Government of New South Wales in January 2007.

**43C Audit of implementation of Interagency Plan**

- (1) The Ombudsman has the following audit functions in relation to the Interagency Plan:
  - (a) to review the implementation of the Interagency Plan by public authorities of the State that have functions under the Plan,
  - (b) to identify any areas in which further action is required by those public authorities to implement the Interagency Plan,
  - (c) to make recommendations for the more efficient and effective implementation of the Interagency Plan by those public authorities.
- (2) The Ombudsman must prepare and provide a report to the Minister for Aboriginal Affairs by 31 December 2012 on the Ombudsman's audit of the implementation of the Interagency Plan.
- (3) The Minister for Aboriginal Affairs must, within 1 month after receiving the report, furnish a copy of the report to the Presiding Officer of each House of Parliament.
- (4) The Ombudsman's audit functions cease after the provision of the report to the Minister for Aboriginal Affairs.

**43D Provision of information**

- (1) It is the duty of the head of a public authority that has functions under the Interagency Plan to provide the Ombudsman with full and unrestricted access to records that are under the person's control, or whose production the person may, in an official capacity, reasonably require, being records to which the Ombudsman reasonably requires access for the purpose of exercising the Ombudsman's audit functions in relation to the Interagency Plan.
- (2) Access to which the Ombudsman is entitled under this section includes the right to inspect and, on request, to be provided with copies of, any record referred to in subsection (1) and to inspect any non-documentary evidence associated with any

such record.

- (3) A provision of any Act or law that restricts or denies access to records (other than a provision applied by section 43E) does not prevent a person to whom this section applies from complying, or affect the person's duty to comply, with this section.
- (4) The Ombudsman may, if the Ombudsman thinks it appropriate to do so, provide information obtained by the Ombudsman under this section to a public authority that has functions under the Interagency Plan and that has a relevant interest.
- (5) The provision of information under this section:
  - (a) does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct, and
  - (b) does not give rise to any liability for defamation or other civil liability.
- (6) In this section:

**head**, in relation to a public authority, has the same meaning as it has in the [Ombudsman Act 1974](#).

#### **43E Application of [Ombudsman Act 1974](#)**

- (1) For the purpose of the exercise of functions under this Part, sections 17-24 (except section 21B), 31AC and 36 of the [Ombudsman Act 1974](#) apply to or in respect of the exercise of those functions in the same way that they apply to or in respect of an investigation of a complaint by the Ombudsman under that Act, subject to any necessary modifications and to any modifications prescribed by the regulations.
- (2) Section 31AA of the [Ombudsman Act 1974](#) applies to a report of the Ombudsman under this Part in the same way that it applies to a report under Part 4 of that Act.
- (3) For the purpose of the application of section 31AA (2) of the [Ombudsman Act 1974](#) under this section, a report of the Ombudsman under this Part is taken to include a recommendation by the Ombudsman that the report be made public forthwith.

## **Part 7 Miscellaneous**

### **44 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.



#### 45 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) (Repealed)
- (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 Ageing,
- (c) the Minister for Disability Services,
- (d) the Director-General of the Department of Community Services,
- (e) the Director-General of the Department of Ageing, Disability and Home Care,
- (f) (Repealed)
- (g) a service provider (other than an authorised carer within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*).

#### 46 Notices etc to be written in other languages

- (1) If:
  - (a) the Ombudsman 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 Ombudsman that the person is blind or illiterate or is not literate in the English language,

the Ombudsman 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.

#### **47 Protection of complainant against retribution**

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

#### **48 Exclusion of personal liability**

Anything done by:

- (a) an Official Community Visitor, or
- (b) any person acting under the direction of the Ombudsman or any officer of the Ombudsman, or
- (c) the Child Death Review Team, a member of the Team or any person acting under the direction of the Team,

does not, if it was done in good faith for the purpose of executing this or any other Act, subject the Official Community Visitor, the Ombudsman, the officer, a member of the Team or a person so acting, personally to any action, liability, claim or demand.

#### **49 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.

#### **50 Proceedings for offences**

Proceedings for an offence under this Act or the regulations are to be dealt with summarily before the Local Court.

#### **51 Savings and transitional provisions**

Schedule 1 has effect.

#### **52 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.
- (1A) Without limiting subsection (1), the regulations may make provision for or with respect to the constitution, functions, procedure and other matters relating to the Child Death Review Team.
- (2) The regulations may create offences punishable by a penalty not exceeding 10 penalty units.

#### **53 Review of Act**

- (1) The Joint Committee (within the meaning of the [Ombudsman Act 1974](#)) 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 the *Community Services Legislation Amendment Act 2002*.

- (3) A report on 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 51)

### Part 1 Regulations

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Community Services Legislation Amendment Act 2002*

*Commission for Children and Young People Amendment (Child Death Review Team) Act 2003*

*Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009*, to the extent that it amends this Act

*Independent Commission Against Corruption and Ombudsman Legislation Amendment Act 2009*

*Children Legislation Amendment (Child Death Review Team) Act 2011*

- (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.

### Part 2 Community Services Legislation Amendment Act 2002

#### 2 Definitions

In this Schedule:

**former Commission** means the Community Services Commission constituted under

section 77, as in force before its repeal by the 2002 amending Act.

**former Commissioner** means the person who held office as the Commissioner for Community Services immediately before the repeal of section 78 by the 2002 amending Act.

**2002 amending Act** means the *Community Services Legislation Amendment Act 2002*.

### 3 Community Visitors

- (1) Nothing in the 2002 amending Act affects the appointment of a person as an Official Community Visitor if the person was, immediately before the amendment of section 7 (1) by the 2002 amending Act, a Community Visitor.
- (2) Any such person is taken to have been appointed under section 7 (1) as so amended and this Act, including section 7 (5) and (6) as inserted by the 2002 amending Act, applies accordingly.
- (3) A reference in another Act or in an instrument made under an Act or in any document to a Community Visitor appointed under this Act is to be read as a reference to an Official Community Visitor appointed under this Act.

### 4 Existing reviews

- (1) This clause applies to a review under Part 3 undertaken but not completed by the former Commission immediately before the substitution of Part 3 by the 2002 amending Act.
- (2) The Ombudsman may complete the review and Part 3, as substituted by the 2002 amending Act, applies to any such review.

### 5 Existing complaints

- (1) This clause applies to a complaint made under Part 4 but not finally dealt with by the former Commission immediately before the substitution of Part 4 by the 2002 amending Act.
- (2) The Ombudsman may deal with the complaint as if it had been made under Part 4 as so substituted and that Part applies to any such complaint.

### 6 Reviews by Administrative Decisions Tribunal

- (1) Nothing in the 2002 amending Act affects an application for review made to the Tribunal under section 40 before the substitution of that section by that amending Act, except as provided by this clause.
- (2) Proceedings on any review under section 40 (1) (b) or (c) (as in force immediately before the substitution of section 40 by the 2002 amending Act), and not finally dealt with before the substitution of that section, must be discontinued by the Tribunal.

## 7 Community Services Commission

- (1) On the repeal of Part 6 by the 2002 amending Act, the Community Services Commission is abolished.
- (2) On the abolition of the Commission, any assets, rights and liabilities of the Commission become the assets, rights and liabilities of the Crown.
- (3) In this clause:

**assets** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

**liabilities** means all liabilities, debts and obligations (whether present or future and whether vested or contingent).

**rights** means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent).

## 8 Community Services Commissioner

- (1) The person who, immediately before the repeal of Part 6 by the 2002 amending Act, held office as Commissioner for Community Services:
  - (a) ceases to hold that office, and
  - (b) is taken to be appointed as a Deputy Ombudsman under the [Ombudsman Act 1974](#) for a period of 3 years commencing on the commencement of this clause.
- (2) A person who ceases under this clause to hold office is not entitled to any remuneration or compensation because of the loss of that office.

## 9 Staff of the Community Services Commission

- (1) On the repeal of Part 6 by the 2002 amending Act, the group of staff attached to the former Commission is abolished as a Department of the Public Service.
- (2) That group of staff is added on that repeal to the Ombudsman's Office.

## 10 Community Services Review Council

On the repeal of Part 8 by the 2002 amending Act:

- (a) the Community Services Review Council is abolished, and
- (b) a person holding office as a member of that Council ceases to hold that office and is not entitled to compensation because of ceasing to hold that office.

## **11 Construction of certain references**

A reference in another Act or in an instrument made under an Act or in any document:

- (a) to the Community Services Commission or the Commissioner for Community Services is to be read as a reference to the Ombudsman, or
- (b) to a provision of this Act repealed or renumbered by the 2002 amending Act extends to the corresponding provision of this Act or to the renumbered provision, or
- (c) to any act, matter or thing referred to in any such repealed or renumbered provision extends to the corresponding act, matter or thing referred to in the corresponding provision of this Act or the renumbered provision.

## **12 Transitional reference to community welfare legislation**

A reference in this Act to the community welfare legislation includes a reference to the following Acts and the instruments made under those Acts:

- (a) the *Adoption of Children Act 1965* and the *Adoption Information Act 1990* (but only until their repeal by the *Adoption Act 2000* and, after their repeal, only in connection with acts or omissions done or omitted before their repeal),
- (b) the *Children (Care and Protection) Act 1987* (but only until its repeal by the *Children and Young Persons (Care and Protection) Act 1998* and, after its repeal, only in connection with acts or omissions done or omitted before its repeal).

## **13 Transitional reference**

A reference in Part 3 or Part 6, as substituted by the 2002 amending Act, to a child in care includes a reference to a child who is subject to an arrangement for the care of a child referred to in section 19 (4) (a), (c), (d), (e) or (f) of the *Children (Care and Protection) Act 1987*.

## **Part 3 Commission for Children and Young People Amendment (Child Death Review Team) Act 2003**

### **14 Ombudsman's report under Part 6 for year ending 30 June 2003**

Section 43, as amended by the *Commission for Children and Young People Amendment (Child Death Review Team) Act 2003*, extends to the preparation and presentation of the annual report of the Ombudsman under Part 6 for the year ended 30 June 2003.

## **Part 4 Children Legislation Amendment (Child Death Review Team) Act 2011**

### **15 Continuation of existing entity**

The Child Death Review Team established by section 34C is taken to be a continuation of,

and the same legal entity as, the Child Death Review Team established under section 45B of the *Commission for Children and Young People Act 1998*.

## 16 Continuation of existing members

A person who, immediately before the commencement of this clause held office as a member of the Team under section 45C of the *Commission for Children and Young People Act 1998*, is taken to have been appointed under section 34C of this Act for the balance of the term for which he or she was appointed under that section 45C, subject to clauses 5 and 6 of Schedule 2 to this Act.

## 17 Annual reports of Child Death Review Team

The reference to section 34H in section 34F (2) (d) includes a reference to section 45P of the *Commission for Children and Young People Act 1998*.

# Schedule 2 Provisions relating to the Child Death Review Team

(Section 34C (10))

## 1 Definitions

In this Schedule:

**appointed member** means a member of the Team appointed by the Minister under section 34C (2) (d).

**Convenor** means the Convenor of the Team.

**member** means a member of the Team.

## 2 Deputy Convenor

- (1) The members of the Team are to elect one member as the Deputy Convenor of the Team.
- (2) The member so elected holds office as Deputy Convenor for the balance of the member's term of office, subject to subclause (3).
- (3) A person holding the office of Deputy Convenor vacates that office if the person:
  - (a) is removed from that office by the Minister under clause 6, or
  - (b) resigns that office by instrument in writing addressed to the Minister, or
  - (c) ceases to be a member.

## 3 Term of office of members

An appointed member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-



appointment.

#### **4 Remuneration**

An appointed member other than a representative of a department of the government, the NSW Police Force or a statutory body, is entitled to be paid such remuneration and allowances (including travelling or subsistence allowances) as the Minister may from time to time determine in respect of the member.

#### **5 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, or
- (d) is absent from 4 consecutive meetings of the Team of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Team or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for having been absent from those meetings, 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, or
- (h) is removed from office by the Minister under clause 6, or
- (i) is the subject of a communication in writing to the Minister by the Minister that nominated the member, stating that he or she no longer represents that organisation.

(2) If the office of an appointed member becomes vacant, another person is, subject to this Schedule, to be appointed to fill the vacancy.

#### **6 Removal from office**

The Minister may remove an appointed member from office for incapacity, incompetence or misbehaviour.

## **7 Effect of certain other Acts**

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of a person as a member.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify that person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Schedule as a member.

## **8 General procedure**

- (1) Subject to the regulations, the procedure for the calling of meetings of the Team and for the conduct of business at those meetings is to be as determined by the Convenor.
- (2) The Team is to meet not less than 4 times in each calendar year.

## **9 Quorum for meetings**

The quorum for a meeting of the Team is a majority of its members for the time being.

## **10 Presiding member**

- (1) The Convenor, or in the absence of the Convenor, the Deputy Convenor, is to preside at any meeting of the Team.
- (2) If both the Convenor and the Deputy Convenor are absent from any meeting, a member elected by the members present at the meeting is to preside at that meeting.
- (3) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **11 Voting**

A decision supported by a majority of the votes cast at a meeting of the Team at which a quorum is present is the decision of the Team.