

# Ageing and Disability Commissioner Act 2019 No 7

[2019-7]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Does not include amendments by**  
[Children's Guardian Act 2019 No 25](#) (not commenced — to commence on 1.3.2020)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Ageing and Disability Commissioner Act 2019 No 7



New South Wales

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

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Ageing and Disability Commissioner Act 2019*.

### 2 Commencement

- (1) This Act commences on 1 July 2019, except as provided by subsection (2).
- (2) Part 4 and Schedule 1.1 [1] commence on a day or days to be appointed by proclamation.

### 3 Definitions

- (1) In this Act:

**Board** means the Ageing and Disability Advisory Board established under section 27.

**Commissioner** means the Ageing and Disability Commissioner appointed under section 5.

**disability** has the same meaning as in the *Disability Inclusion Act 2014*.

**function** includes a power, authority or duty and **exercise** a function includes perform a duty.

**government sector agency** has the same meaning as it has in the *Government Sector Employment Act 2013* and includes a council within the meaning of the *Local Government Act 1993*.

**investigation** means an investigation of a report conducted by the Commissioner under Part 3.

**Official Community Visitor** means an Official Community Visitor appointed under section 21.

**older adult** means a person who is aged:

- (a) 50 years or over, in the case of an Aboriginal or Torres Strait Islander person, or
- (b) 65 years or over, in any other case.

**report**, other than in Part 5, means a report made to the Commissioner under section 13 and includes a matter dealt with as a report by the Commissioner under that section or section 22 (3).

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

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

#### **4 Objects and principles of Act**

- (1) The objects of this Act are:

- (a) to protect and promote the rights of adults with disability and older adults, and
- (b) to protect adults with disability and older adults from abuse, neglect and exploitation.

- (2) When exercising a function under this Act, the Commissioner or any other person must have regard to the objects of the Act and the following principles:

- (a) adults with disability and older adults have the right to respect for their worth and dignity as individuals and to live free from abuse, neglect and exploitation,
- (b) adults with disability and older adults have the right to respect for their cultural and linguistic diversity, age, gender, sexual orientation and religious beliefs,
- (c) adults with disability and older adults have the right to privacy and confidentiality,
- (d) adults with disability and older adults have the right to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports and services,
- (e) families, carers and other significant persons have a crucial role in the lives of adults with disability and older adults and it is important to respect and preserve those relationships.

- (3) When exercising a function under this Act, the Commissioner or any other person must have regard to the following:

- (a) adults with disability and older adults may face multiple disadvantages and are potentially more vulnerable to abuse, neglect and exploitation,
- (b) a person from any of the following groups who is also an adult with disability or older adult may face additional disadvantages and barriers to accessing supports and services:
  - (i) women,
  - (ii) Aboriginal and Torres Strait Islander adults,
  - (iii) gay, lesbian, bisexual, transgender and intersex communities,
  - (iv) adults from culturally and linguistically diverse backgrounds,
  - (v) adults living in regional and remote areas.
- (4) When exercising a function under this Act with respect to a particular adult with disability or older adult, the Commissioner or any other person must have regard to the wishes of the adult.
- (5) This section is intended to give guidance in the administration of this Act and does not create, or confer on any person, any right or entitlement enforceable at law.

## **Part 2 Appointment of Commissioner**

### **5 Appointment of Ageing and Disability Commissioner**

- (1) The Governor may appoint an Ageing and Disability Commissioner.
- (2) The Commissioner holds office for the term, not exceeding 5 years, specified in the instrument of appointment, but is eligible for re-appointment.
- (3) A person is not eligible to be appointed for more than 2 terms of office as Commissioner (whether or not consecutive terms).
- (4) The office of Commissioner is a full-time office and the holder of the office is required to hold it on that basis, except to the extent permitted by the Minister.

### **6 Employment and remuneration**

- (1) The employment of the Commissioner is (subject to this Act) to be governed by a contract of employment between the Commissioner and the Minister.
- (2) The following provisions of or made under the [Government Sector Employment Act 2013](#) relating to the employment of Public Service senior executives apply to the Commissioner (but in the application of those provisions a reference to the employer of a Public Service senior executive is to be read as a reference to the Minister):

- (a) provisions relating to the band in which an executive is to be employed,
  - (b) provisions relating to the contract of employment of an executive,
  - (c) provisions relating to the remuneration, employment benefits and allowances of an executive.
- (3) The office of Commissioner is a statutory office and the provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to that office, except as provided by this section.

## **7 Vacancy in office**

- (1) The office of Commissioner becomes vacant if the Commissioner:
- (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 removed from office by the Governor under section 8, or
  - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the Commissioner's creditors or makes an assignment of the Commissioner's remuneration for their benefit, or
  - (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 imprisoned in respect of a conviction for an offence punishable in New South Wales by imprisonment or for an offence committed elsewhere than in New South Wales that, if committed in New South Wales, would be an offence so punishable.
- (2) If the office of Commissioner becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **8 Removal from office**

- (1) The Governor may remove the Commissioner from office, but only for incompetence, incapacity or misbehaviour.
- (2) The Commissioner cannot be removed from office under Part 6 of the [Government Sector Employment Act 2013](#).

## 9 Acting Commissioner

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

## 10 Staff

Persons may be employed in the Public Service under the [Government Sector Employment Act 2013](#) to enable the Commissioner to exercise the Commissioner's functions.

### Note—

Section 59 of the [Government Sector Employment Act 2013](#) provides that the persons so employed (or whose services the Commissioner makes use of) may be referred to as officers or employees, or members of staff, of the Commissioner. Section 47A of the [Constitution Act 1902](#) precludes the Commissioner from employing staff.

## 11 Delegation

The Commissioner may delegate any of the Commissioner's functions (other than this power of delegation) to any member of the staff of the Commissioner or to a person of a class prescribed by the regulations.

# Part 3 Functions of Commissioner

## Division 1 General functions

### 12 Functions of Commissioner

- (1) The Commissioner has the following functions:
  - (a) to deal with allegations of abuse, neglect and exploitation of adults with disability and older adults, whether on the basis of a report made to the Commissioner or at the Commissioner's own initiative, including by referring matters to appropriate persons or bodies and by conducting investigations,
  - (b) to take further action, following an investigation into an allegation of abuse, neglect or exploitation of an adult with disability or older adult, that the Commissioner considers necessary to protect the adult from abuse, neglect and exploitation, including by making an application to a court or tribunal in respect of the adult,



- (c) to raise awareness and educate the public about matters relating to the abuse, neglect and exploitation of adults with disability and older adults,
  - (d) to provide advice and general assistance to the public about matters relating to the abuse, neglect and exploitation of adults with disability and older adults, including referrals to independent advocacy services, where appropriate,
  - (e) to inquire into and report on systemic issues relating to the protection and promotion of the rights of adults with disability and older adults or the abuse, neglect or exploitation of adults with disability or older adults,
  - (f) to consult with the Board on matters relating to the abuse, neglect and exploitation of adults with disability and older adults that the Commissioner considers appropriate,
  - (g) to advise, and make recommendations to, the Minister, at the Commissioner's own initiative or at the request of the Minister, on matters relating to the abuse, neglect and exploitation of adults with disability and older adults,
  - (h) to monitor, assess and report on the New South Wales implementation of the National Disability Strategy (**NDS**).
- (2) The Commissioner has any other functions that are conferred or imposed on the Commissioner by or under this or any other Act.
- (3) The Commissioner is not subject to the control or direction of the Minister.

### **13 Reports may be made to Commissioner**

- (1) A person may make a report to the Commissioner about the following:
- (a) an adult with disability or older adult if the person has reasonable grounds to believe the adult is subject to, or at risk of, abuse, neglect or exploitation,
  - (b) circumstances that the person has reasonable grounds to believe will result in the abuse, neglect or exploitation of an adult with disability or older adult.
- (2) Without limiting subsection (1), an adult with disability or older adult may make a report to the Commissioner if the adult has reasonable grounds to believe the adult is subject to, or at risk of, abuse, neglect or exploitation.
- (3) A report does not need to be in writing.
- (4) If a person, acting in good faith, makes a report to the Commissioner in accordance with this section, that person is not liable to any civil or criminal action, or any disciplinary action, for making the report.
- (5) The Commissioner may do any one or more of the following in respect of a report:

- (a) conduct an investigation,
  - (b) make a referral to another person or body,
  - (c) decline to take action on the report.
- (6) The Commissioner may, at the Commissioner's own initiative, decide to deal with a matter as a report under this section if the matter relates to an adult with disability or older adult that the Commissioner has reasonable grounds to believe is subject to, or at risk of, abuse, neglect or exploitation.
- (7) The Commissioner may make preliminary inquiries for the purposes of deciding how to deal with a report and may request further information from the person making the report.
- (8) If the Commissioner is of the opinion that a report, or part of a report, constitutes a complaint that may be made to any of the following persons or bodies, the Commissioner must refer the report, or the part of the report, to the person or body:
- (a) the Health Care Complaints Commission under the *Health Care Complaints Act 1993*,
  - (b) the Commissioner of the Aged Care Quality and Safety Commission under the *Aged Care Quality and Safety Commission Act 2018* of the Commonwealth,
  - (c) the Commissioner of the NDIS Quality and Safeguards Commission under the *National Disability Insurance Scheme Act 2013* of the Commonwealth,
  - (d) any other person or body prescribed by the regulations.
- (9) If the Commissioner is of the opinion that a report, or part of a report, may provide evidence of the commission of a criminal offence, the Commissioner must refer the report, or the part of the report, to the Commissioner of Police or the Director of Public Prosecutions.
- (10) The Commissioner may conduct an investigation of a report that the Commissioner has referred to another person or body under subsection (8), including in consultation with the person or body, if the Commissioner is of the opinion that conducting an investigation may be necessary to protect an adult with disability or older adult from abuse, neglect or exploitation.
- (11) In order to conduct an investigation into an allegation of abuse, neglect or exploitation of an adult with disability or older adult, the Commissioner must obtain the consent of the adult, unless the Commissioner is of the opinion that:
- (a) the adult is incapable of giving consent despite having been provided with the appropriate support for the purposes of making such a decision, or

- (b) it is not necessary to obtain consent due to the seriousness of the allegation or the risk to the personal safety of the adult, or
- (c) any other circumstances prescribed by the regulations exist.

#### **14 Exchange of information**

- (1) The Commissioner may provide relevant information to a relevant agency for the purposes of enabling or assisting the relevant agency:
  - (a) to provide a service to, or take other action in respect of, an adult with disability or older adult, or
  - (b) to make a decision or assessment in relation to the safety, welfare or well-being of an adult with disability or older adult, or
  - (c) to take action in respect of the safety, welfare or well-being of adults with disability or older adults generally.
- (2) A relevant agency may provide relevant information to the Commissioner for the purposes of enabling or assisting the Commissioner's exercise of its functions.
- (3) Without limiting subsection (1), the Commissioner may enter into an arrangement (an **information sharing arrangement**) with a relevant agency (or in the case of the Civil and Administrative Tribunal, the President of the Tribunal) for the purposes of sharing or exchanging relevant information held by the Commissioner or the agency.
- (4) The **relevant information** held by the Commissioner or a relevant agency that may be provided under this section, is limited to information concerning the following:
  - (a) a report under this Act,
  - (b) the safety, welfare or well-being of an adult with disability or older adult,
  - (c) the abuse, neglect or exploitation of an adult with disability or older adult,
  - (d) any other matter prescribed by the regulations.
- (5) Under an information sharing arrangement, the Commissioner and the relevant agency are, despite any other Act or law, authorised:
  - (a) to request and receive information held by the other party to the arrangement, and
  - (b) to disclose information to the other party.
- (6) Subsection (5) applies only to the extent that the information is reasonably necessary to assist in the exercise of functions of the Commissioner under this Act or the functions of the relevant agency.

(7) This section does not:

- (a) require the Commissioner to provide information to a relevant agency only in accordance with subsection (1), or with an information sharing arrangement, where that information can otherwise be lawfully provided, or
- (b) limit the operation of any other Act or law under which a relevant agency is authorised or required to disclose information to another person or body.

(8) In this section:

**relevant agency** means any of the following:

- (a) a government sector agency,
- (b) the Civil and Administrative Tribunal,
- (c) a public health organisation within the meaning of the *Health Services Act 1997*,
- (d) a public hospital within the meaning of the *Health Services Act 1997*,
- (e) a private health facility within the meaning of the *Private Health Facilities Act 2007*,
- (f) any other person or body prescribed by the regulations.

## **15 Protection of persons who make reports**

The identity of a person who makes a report to the Commissioner in good faith, or information from which the identity of that person could be deduced, must not be disclosed by any person or body unless the disclosure is:

- (a) made with the consent of the person who made the report, or
- (b) necessary for the purposes of law enforcement, or
- (c) necessary for any other purpose prescribed by the regulations.

### **Note—**

It is an offence under section 31 for a person to disclose any information obtained in connection with the administration or execution of this Act, except in certain circumstances.

## **Division 2 Investigations and public inquiries**

### **16 Compulsory attendance at meetings and production of documents**

- (1) For the purposes of an investigation, the Commissioner may, by notice in writing, require any person:
  - (a) to attend a meeting at a time and place specified in the notice, or

(b) to produce, at a time and place specified in the notice, to the Commissioner any document or thing described in the notice that is in the custody or under the control of the person and that, in the opinion of the Commissioner, is relevant to the investigation.

(2) A person must not:

(a) without reasonable excuse, refuse or fail to do anything required of the person by a notice under this section, or

(b) in response to a notice, make a statement that the person knows is false or misleading, or

(c) alter, suppress or destroy any document or thing that the person is required by a notice to produce.

Maximum penalty: 50 penalty units.

(3) A person is not required to produce a document under this section if the document was prepared for the dominant purpose of Part 4 of the *Private Health Facilities Act 2007*.

## **17 Search warrants**

(1) For the purposes of an investigation, the Commissioner may apply to an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* for a search warrant if the Commissioner has reasonable grounds for believing that there is on any premises an adult with disability or older adult who is subject to, or at risk of, serious abuse, neglect or exploitation.

(2) An authorised officer to whom an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the Commissioner, or a member of the Commissioner's staff named in the warrant, to enter the premises specified in the warrant and do any or all of the following:

(a) examine and inspect any part of the premises for evidence of abuse, neglect or exploitation of an adult with disability or older adult,

(b) take any photographs, films, audio, video or other recordings as the Commissioner or staff member considers necessary,

(c) require documents to be produced for inspection,

(d) examine and inspect any documents,

(e) copy or take notes from any documents,

(f) for the purpose of further examination, take possession of, and remove, any documents or other things,

- (g) require the owner or occupier of the premises to provide the Commissioner (or staff member named in the warrant) with any assistance or facilities that are reasonably necessary to enable the Commissioner or staff member to conduct an investigation,
  - (h) require any person in or about the premises to answer questions or otherwise provide information.
- (3) If the person executing a warrant under this section is accompanied by a relevant health practitioner, the relevant health practitioner may inspect the premises and observe and speak with any adult with disability or older adult apparently residing at the premises and may, with the consent of the adult concerned (in circumstances where the adult has been provided with the appropriate support for the purposes of making such a decision), examine the adult.
- (4) If the Commissioner, or a member of the Commissioner's staff named in the warrant, removes any goods from the premises when executing a warrant under this section, the Commissioner or staff member must provide a written receipt to the person apparently in charge of the premises.
- (5) Division 4 of Part 5 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) applies to a search warrant issued under this section.

**Note—**

Under Division 4 of Part 5 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#), a person may execute a search warrant with the aid of any assistants the person considers necessary (including a police officer or health practitioner).

- (6) In this section, **relevant health practitioner** means a medical practitioner or other health practitioner of a class prescribed by the regulations.

## **18 Restrictions on providing information**

Except as provided by the regulations, a provision of any other Act or law (whether enacted or made before or after the commencement of this section) that prohibits or restricts the disclosure of information does not operate to prevent the provision of information (or affect a duty to provide information) to the Commissioner under this Division.

## **19 Public inquiries**

- (1) For the purposes of an investigation of a report, the Commissioner may conduct a public inquiry, if the Commissioner is of the opinion that a public inquiry is in the public interest, having regard to:
- (a) the seriousness of the allegation of abuse, neglect or exploitation, and
  - (b) the wishes of any person with disability or older adult to whom the report relates,

and

(c) the privacy of the persons who will be affected by a public inquiry.

- (2) For the purpose of conducting a public inquiry under this section, the Commissioner has the functions, protections and immunities conferred on a commissioner by Division 1 of Part 2 of the *Royal Commissions Act 1923*.
- (3) The provisions of the *Royal Commissions Act 1923* (except section 13 and Division 2 of Part 2) apply, with necessary modifications, to a public inquiry and to any witness or person summoned by or appearing before the public inquiry or providing material to the inquiry, but section 11 (2) of that Act shall have effect subject to subsection (4).
- (4) Nothing in this section requires any person to give any statement of information, answer any question or disclose any document if the person can claim privilege not to do so.
- (5) A witness summoned by or appearing before the Commissioner is to be paid such amount as the Commissioner determines, but not exceeding the amount that would be payable to a witness that is a Crown witness subpoenaed by the Crown to give evidence.
- (6) For the purpose of conducting a public inquiry under this section, the Commissioner is not bound by the rules of evidence and may be informed on any matter in issue at the public inquiry in such manner as the Commissioner considers appropriate.
- (7) The Commissioner may give directions as to the procedure to be followed at or in connection with the inquiry.
- (8) The Commissioner may appoint an Australian legal practitioner to assist the Commissioner for the purposes of an inquiry held by the Commissioner and the Australian legal practitioner may appear before the inquiry.
- (9) In this section:

**disclosure** of a document includes the provision of copies of the document, the granting of access to the document or the disclosure of the contents of the document.

**document** includes a part of a document.

**privilege** means privilege based on a claim by a person that evidence or other information about a matter or document:

- (a) might tend to incriminate the person or make the person liable to any forfeiture or penalty, or
- (b) could not be required to be adduced in proceedings before a New South Wales court by reason of the operation of Part 3.10 (Privileges) of Chapter 3 of the

*Evidence Act 1995.*

## **Part 4 Official Community Visitors**

### **20 Definitions**

In this Part:

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

**service provider** means:

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

**visitable service** means:

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

### **21 Appointment of Official Community Visitors**

- (1) The Minister may, on the recommendation of the Commissioner, appoint a person as an Official Community Visitor if the person, in the opinion of the Minister:
  - (a) has appropriate knowledge and expertise in matters relating to adults with disability or older adults, and
  - (b) has a commitment to the objects and principles of this Act and the following Acts:
    - (i) *Boarding Houses Act 2012*,
    - (ii) *Community Services (Complaints, Reviews and Monitoring) Act 1993*,
    - (iii) *Community Welfare Act 1987*,



- (iv) *Disability Inclusion Act 2014*,
  - (v) *Guardianship Act 1987*,
  - (vi) *National Disability Insurance Scheme Act 2013* of the Commonwealth, and
- (c) has skills in the solving of problems about access to, and the use of, services by adults with disability or older adults, and
- (d) is not employed within the Department of Family and Community Services and Justice.
- (2) An Official Community Visitor holds office for the term, not exceeding 3 years, specified in the instrument of appointment, but is eligible for re-appointment.
- (3) A person may not be appointed as an Official Community Visitor for consecutive terms totalling more than 6 years.
- (4) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to an Official Community Visitor.
- (5) The Minister may, on the recommendation of the Commissioner, remove an Official Community Visitor from office, but only for incompetence, incapacity or misbehaviour.
- (6) Despite subsection (5), an Official Community Visitor who has a disability (other than mental incapacity) may not be removed from office on the ground of incapacity unless the disability renders the Official Community Visitor incapable of performing the functions of an Official Community Visitor.

## **22 Functions of Official Community Visitors**

- (1) An Official Community Visitor may do any of the following:
- (a) at any reasonable time, enter and inspect premises at which a visitable service is provided,
  - (b) confer alone with any person who is resident or employed at the premises,
  - (c) inspect any document held at the premises that relates to the operation of a visitable service (having regard to the wishes of any person resident at the premises to whom the document relates),
  - (d) provide the Minister and the Commissioner with advice or information relating to the conduct of the premises,
  - (e) inform the Minister and the Commissioner on matters affecting the welfare, interests and conditions of persons using visitable services,

- (f) encourage the promotion of legal and human rights of persons using visitable services, including the right to privacy, confidentiality, adequate information and consultation in relation to those services and the right to complain,
  - (g) consider matters raised by persons using visitable services, staff of providers of visitable services and people having a genuine concern for the welfare, interests and conditions of persons using visitable services,
  - (h) provide information to persons using visitable services about independent advocacy services available to help them with grievances or concerns and, in appropriate cases, to assist a person to obtain those advocacy services,
  - (i) facilitate, wherever it is reasonable and practicable to do so, the early and speedy resolution of grievances or concerns affecting persons using visitable services by referring those grievances or concerns to the providers of the relevant services or to other appropriate bodies,
  - (j) exercise any other functions prescribed by the regulations.
- (2) An Official Community Visitor must, in exercising a function under this section, act in a manner that preserves, as far as possible, the privacy of each person resident at the premises at which a visitable service is provided.
- (3) The Commissioner may deal with a matter arising out of any advice or information provided by an Official Community Visitor as if it were a report made under section 13.

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

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

### **24 Protection against retribution**

- (1) A person must not take or threaten to take detrimental action in respect of a person because that person (or any other person) makes, or proposes to make, a complaint to an Official Community Visitor.

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 that:
  - (a) the complaint was made or proposed in bad faith, or

(b) any material allegation was known by the person making it to be false.

(3) In this section:

**complaint** includes providing information, documents or evidence to an Official Community Visitor.

**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 service,
- (f) disciplinary proceedings.

## **Part 5 Annual reports and special reports**

### **25 Annual reports to Parliament**

- (1) The Commissioner is required to prepare, within the period of 4 months after 30 June in each year, a report on the activities of the Commissioner, and the activities of the Official Community Visitors, during the year ended on that 30 June and to provide the report to the Presiding Officer of each House of Parliament.
- (2) The Commissioner may, but is not required to, prepare the annual report on the activities of the Official Community Visitors as a separate annual report under this section.
- (3) An annual report by the Commissioner must include information about the number of referrals made by the Commissioner under section 13 and the outcome of each referral.
- (4) An annual report prepared under subsection (1) must include the following:
  - (a) any recommendations for administrative action or changes in the laws of the State that the Commissioner considers necessary,
  - (b) information on the number of reports made to, and actioned by, the Commissioner, and the number of referrals made elsewhere and to whom,
  - (c) the number of investigations held under section 13 (11) where consent was not given, including as a percentage of total investigations held,

- (d) if a Board member has been removed under section 29 (9) during the reporting period, the reasons for removing the member.

## **26 Report about disability advocacy**

- (1) The Commissioner must, by 31 December 2019:
  - (a) prepare a report in relation to the funding arrangements for independent specialist advocacy, information and representative organisations for people with disability in New South Wales, and
  - (b) consult with independent specialist advocacy, information and representative organisations for people with disability in New South Wales in relation to the report, and
  - (c) provide the report to the Presiding Officer of each House of Parliament.
- (2) For the purposes of subsection (1), in preparing the report the Commissioner must take into account any funding provided by the Commonwealth, under the *National Disability Insurance Scheme Act 2013* of the Commonwealth, to independent specialist advocacy, information and representative organisations for people with disability in New South Wales.
- (3) Before providing the report to the Presiding Officer of each House of Parliament, the Commissioner must give a copy of the report to the Minister.

## **27 Special reports to Parliament and to Minister**

- (1) The Commissioner may, at any time, prepare a special report on any matter relating to the functions of the Commissioner and provide the special report to the Presiding Officer of each House of Parliament.
- (2) Before providing a special report to the Presiding Officer of each House of Parliament, the Commissioner is to provide a copy of the special report to the Minister.
- (3) The Commissioner is to prepare a special report for the Minister on any matter requested by the Minister and must provide the special report to the Presiding Officer of each House of Parliament.

## **28 Provisions relating to reports**

- (1) A copy of a report provided to the Presiding Officer of a House of Parliament under this Part must be laid before that House within 5 sitting days of that House after it is received by the Presiding Officer.
- (2) If a report includes a recommendation by the Commissioner that the report be made public immediately, the Presiding Officer of a House of Parliament may make it public whether or not that House is in session and whether or not the report has been laid

before that House.

## **Part 6 Miscellaneous**

### **29 Ageing and Disability Advisory Board**

- (1) There is to be an Ageing and Disability Advisory Board.
- (2) The function of the Board is to advise the Commissioner on any matter that the Board considers appropriate or that is referred to the Board by the Commissioner.
- (3) The Board is to consist of the Commissioner and persons appointed by the Commissioner who, in the opinion of the Commissioner have relevant knowledge of and experience in matters relating to adults with disability and older adults (the **appointed members**).
- (4) The Minister must ensure that the composition of the Board reflects the diversity of the community, and include the following:
  - (a) 2 or more persons with disability,
  - (b) a representative of independent specialist advocacy, information and representative organisations for people with disability in New South Wales,
  - (c) a representative of independent specialist advocacy, information and representative organisations for older adults in New South Wales,
  - (d) 1 or more persons representing persons employed in the provision of disability services or services for older adults.
- (5) An appointed member is to be appointed to the Board for a period of 3 years or less and may be re-appointed.
- (6) The Board is to elect a chairperson and deputy chairperson from the appointed members.
- (7) The procedure for the calling of meetings of the Board and for the conduct of those meetings is to be determined by the Commissioner.
- (8) An appointed member is entitled to be paid the fees and allowances (if any) that the Commissioner may from time to time determine for the member.
- (9) The Commissioner may remove an appointed member from the Board at any time and must provide a report on the removal to the Presiding Officer of each House of Parliament.

### **30 Personal liability**

- (1) A matter or thing done or omitted to be done by any of the following persons does

not, if the matter or thing was done or omitted to be done in good faith for the purposes of executing this Act, subject the person so acting personally to any action, liability, claim or demand:

- (a) the Commissioner,
- (b) a member of the staff of the Commissioner,
- (c) a person acting under the direction of the Commissioner,
- (d) an Official Community Visitor,
- (e) a member of the Board.

(2) However, the liability attaches instead to the Crown.

### **31 Disclosure of information**

A person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:

- (a) with the consent of the person from whom the information was obtained, or
- (b) in connection with the administration or execution of this Act, or
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or
- (d) in accordance with a requirement imposed under the [Ombudsman Act 1974](#), or
- (e) with other lawful excuse.

Maximum penalty: 50 penalty units.

### **32 Obstruction of Commissioner**

A person must not, without reasonable excuse, resist or obstruct the Commissioner or other person in the exercise of a function under this Act.

Maximum penalty: 50 penalty units.

### **33 Proceedings for offences**

Proceedings for an offence under this Act may be dealt with summarily before the Local Court.

### **34 Act to bind Crown**

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

### **35 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 carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to reports, including:
  - (a) the procedure for making a report to the Commissioner, and
  - (b) the manner in which the Commissioner is to deal with a report, and
  - (c) the grounds on which the Commissioner may decline to take action on a report.
- (3) The regulations may also contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (4) A provision of a savings or transitional nature may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (5) To the extent to which a provision of a savings and transitional nature takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (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.

### **36 Independent review of Act**

- (1) The Minister is to commission an independent review of the 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) A report on the outcome of the review is to be tabled in each House of Parliament before 1 July 2022.

### **Schedule 1 (Repealed)**