

# 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.

#### Responsible Minister

- Minister for Seniors
- Minister for Disability Inclusion

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

#### 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 29.

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

**Department** means the Department in which this Act is administered.

**detrimental action** means action causing, comprising or involving 1 or more 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.

**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.

**joint committee** means the Committee on Ageing and Disability constituted under section 28A.

**NDIS Commissioner** means the Commissioner of the NDIS Quality and Safeguards Commission under the [National Disability Insurance Scheme Act 2013](#) of the Commonwealth.

**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 *Australia's Disability Strategy 2021-2031*.

(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 may 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 NDIS Commissioner,

(c1) the Children's Guardian under the *Children's Guardian Act 2019*,

(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.

(9A) The Commissioner is not required to refer a report, or part of a report, under subsection (9) if the Commissioner believes on reasonable grounds that the adult with disability or older adult does not wish to have the report, or part of the report, referred.

(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) The Commissioner must not conduct an investigation into an allegation of abuse, neglect or exploitation of an adult with disability or older adult unless the Commissioner has obtained the adult's consent.

(12) The Commissioner is not required to obtain the adult's consent if—

(a) the Commissioner—

(i) has made reasonable efforts to obtain access to the adult, and

(ii) has not been able to obtain access to the adult, or

(b) the Commissioner considers that—

(i) the adult is incapable of giving consent despite being provided with appropriate support to make a decision about consent, or

(ii) 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

(iii) circumstances prescribed by the regulations exist.

## **14 Exchange of information with relevant agencies**

(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.

#### **14A Exchange of information with other entities**

- (1) The Commissioner may provide relevant information to an entity for the purposes of enabling or assisting the entity—
  - (a) to provide a service in relation to, or take other action in respect of, the safety of an adult with disability or older adult, or
  - (b) to make a decision or assessment in relation to the safety of an adult with disability or older adult, or
  - (c) to take action in respect of the safety of adults with disability or older adults generally.
- (2) An entity may provide relevant information to the Commissioner for the purposes of enabling or assisting the Commissioner's handling of a report under this Act.

#### **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.

(3) This section does not—

- (a) require the Commissioner to provide information to an entity only in accordance with subsection (1) if the information may otherwise be lawfully provided, or
- (b) limit the operation of another Act or law under which an entity is authorised or required to disclose information to another person or body.

(4) This section applies to an entity if the entity is—

- (a) a person or body that—

- (i) provides, or is able to provide, supports to adults with disability or older adults, and
    - (ii) is not a relevant agency, or
  - (b) a person or body prescribed by the regulations.
- (5) In this section—
- relevant agency** and **relevant information** have the same meanings as in section 14.

## **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.

## **15A Protection of employees or contractors who assist Commissioner**

- (1) An employer must not take or threaten to take detrimental action against an employee or contractor because the employee or contractor assists, or proposes to assist, the Commissioner with any function in relation to a report about the abuse, neglect or exploitation of an adult with disability or an older adult.

Maximum penalty—50 penalty units.

- (2) In this section—

**employer** includes—

- (a) a person who engages a person as a contractor for services, and
- (b) a person acting on behalf of an employer.

## **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.
- (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 a relevant regulatory body with advice or information relating to the conduct of the premises,

- (e) inform a relevant regulatory body 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.
- (4) In this section—
- relevant regulatory body** means the following—
- (a) the Minister,
  - (b) the Commissioner,
  - (c) the Secretary of the Department,
  - (d) the NDIS Commissioner.

## **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.

## **24A Service providers to give information to Commissioner**

- (1) A service provider that provides a visitable service must give the Commissioner the required information in accordance with this section.

Maximum penalty—50 penalty units.

- (2) The required information must be given—

- (a) for an existing visitable service—within the required time after the commencement of this section, or
- (b) for a new visitable service—within the required time after the commencement of the service.

- (3) The required information must be—

- (a) in writing, and
- (b) if required to be given in a particular way by the regulations—given in that way.

- (4) In this section—

**required information**, for a service provider, means—

- (a) contact details for the service provider, and
- (b) details about the location of the visitable service of the service provider.

***required time*** means—

- (a) the period prescribed by the regulations, or
- (b) if a period is not prescribed—1 month.

## **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 (Repealed)**

### **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 5A Committee on Ageing and Disability**

### **28A Constitution of joint committee**

- (1) A joint committee of members of Parliament, to be known as the Committee on Ageing and Disability, must be appointed.
- (2) The joint committee must be appointed as soon as practicable after—
  - (a) the commencement of this part, and
  - (b) the first session of each Parliament.
- (3) The joint committee has the functions conferred or imposed on the joint committee by or under this Act or another Act.
- (4) Schedule 2 contains provisions relating to the joint committee.

### **28B Functions**

- (1) The joint committee has the following functions under this Act—
  - (a) to monitor and review the exercise of the Commissioner's functions,
  - (b) to report to both Houses of Parliament, with the comments the joint committee thinks appropriate, on any matter—
    - (i) relevant to the Commissioner or connected with the exercise of the Commissioner's functions, and
    - (ii) to which, in the joint committee's opinion, the attention of Parliament should be directed,
  - (c) to examine each annual report and other report—
    - (i) made by the Commissioner, and



- (ii) presented to each House of Parliament under this Act, Part 5 or another Act,
  - (d) to report to both Houses of Parliament on matters appearing in, or arising out of, the annual reports or other reports,
  - (e) in relation to trends and changes in services and issues affecting adults with disability and older adults—
    - (i) to examine the trends and changes, and
    - (ii) to report to both Houses of Parliament about changes the joint committee thinks desirable to the functions and procedures of the Commissioner,
  - (f) to inquire into any question in connection with the Commissioner's functions that is referred to the joint committee by both Houses of Parliament and to report to both Houses on the question.
- (2) Nothing in this part or Schedule 2 authorises the joint committee to—
- (a) reinvestigate a particular report, or
  - (b) reconsider a decision to investigate, not to investigate or to discontinue the investigation of a particular report, or
  - (c) reconsider the findings, recommendations, determinations or other decisions of the Commissioner, or another person, in relation to a particular investigation or report.
- (3) The Commissioner may, as soon as practicable after a report of the joint committee has been tabled in a House of Parliament, prepare and give to the Presiding Officer of the House a report in response to the report of the joint committee.

## **28C Membership**

- (1) The joint committee consists of 7 members as follows—
  - (a) 3 members who are members of, and appointed by, the Legislative Council,
  - (b) 4 members who are members of, and appointed by, the Legislative Assembly.
- (2) The appointment of members of the joint committee must, as far as practicable, be in accordance with the practice of Parliament in relation to the appointment of members to serve on joint committees of both Houses of Parliament.
- (3) A person is not eligible for appointment as a member of the joint committee if the person is a Minister of the Crown or a Parliamentary Secretary.

## 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 Commissioner's opinion, have relevant knowledge of and experience in matters relating to adults with disability and older adults (the **appointed members**).
- (4) The Commissioner must ensure that the composition of the Board reflects the diversity of the community and includes the following—
  - (a) 2 or more persons with disability,
  - (a1) 2 or more older adults,
  - (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.

#### **31A Disclosure of information about outcome of report under section 13**

Despite section 31, if the Commissioner considers disclosure of information about the outcome of a report to the Commissioner under section 13 is consistent with the objects and principles of this Act, the Commissioner may disclose the information to the following persons—

- (a) a person who made the report,
- (b) another person concerned for the welfare of the adult with disability or the older adult who was alleged to have been subject to, or at risk of, abuse, neglect or exploitation.

### **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 Savings, transitional and other provisions**

### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the commencement of—
  - (a) a provision of this Act, or
  - (b) a provision amending this Act.
- (2) A savings or transitional provision consequent on the commencement of a provision must not be made more than 2 years after that commencement.
- (3) A savings or transitional provision made consequent on the commencement of a provision is repealed 2 years after that commencement.
- (4) A savings or transitional provision made consequent on the commencement of a provision may take effect before that commencement but not before—
  - (a) for a provision of this Act, the date of assent to this Act, or
  - (b) for a provision amending this Act, the date of assent to the amending Act.
- (5) A savings or transitional provision taking effect before its publication on the NSW legislation website does not—
  - (a) affect the rights of a person existing before that publication in a way prejudicial to the person, or
  - (b) impose liabilities on a person for anything done or omitted to be done before that publication.
- (6) In this clause—

**person** does not include the State or an authority of the State.

## **Schedule 2 Committee on Ageing and Disability**

section 28A(4)

### **1 Vacancies**

- (1) A member of the joint committee ceases to hold office—
  - (a) when the Legislative Assembly is dissolved or expires, or

- (b) if the member becomes a Minister of the Crown or a Parliamentary Secretary, or
  - (c) if the member ceases to be a member of the Legislative Council or Legislative Assembly, or
  - (d) for a member who is a member of the Legislative Council—if the member resigns the office by written instrument addressed to the President of the Legislative Council, or
  - (e) for a member who is a member of the Legislative Assembly—if the member resigns the office by written instrument addressed to the Speaker of the Legislative Assembly, or
  - (f) if the member is discharged from office by the House of Parliament to which the member belongs.
- (2) Either House of Parliament may appoint 1 of its members to fill a vacancy among the members of the joint committee appointed by the House.

## **2 Chairperson and deputy chairperson**

- (1) There must be a chairperson and a deputy chairperson of the joint committee, who must be elected by and from the members of the joint committee.
- (2) A member of the joint committee ceases to hold office as chairperson or deputy chairperson of the joint committee if the member—
  - (a) ceases to be a member of the joint committee, or
  - (b) resigns the office by written instrument presented to a meeting of the joint committee, or
  - (c) is discharged from office by the joint committee.
- (3) If there is a vacancy in the office of the chairperson or the chairperson is absent from New South Wales or is for any other reason unable to perform the duties of the chairperson, the deputy chairperson may exercise the functions of the chairperson under this Act or the [Parliamentary Evidence Act 1901](#).

## **3 Procedure**

- (1) The procedure for calling meetings of the joint committee and conducting business at the meetings must, subject to this Act, be determined by the joint committee.
- (2) The Clerk of the Legislative Assembly must call the first meeting of the joint committee in each House of Parliament in the way the Clerk thinks appropriate.
- (3) At a meeting of the joint committee, 4 members constitute a quorum, but the joint committee must meet as a joint committee at all times.

- (4) The following person must preside at a meeting of the joint committee—
  - (a) the chairperson,
  - (b) if the chairperson is absent—the deputy chairperson,
  - (c) if the chairperson and deputy chairperson are absent—a member of the joint committee elected to chair the meeting by the members present.
- (5) The deputy chairperson or other member presiding at a meeting of the joint committee has, in relation to the meeting, all the functions of the chairperson.
- (6) The chairperson, deputy chairperson or other member presiding at a meeting of the joint committee has—
  - (a) a deliberative vote, and
  - (b) if there is an equality of votes—a casting vote.
- (7) A question arising at a meeting of the joint committee must be decided by a majority of the votes of the members present and voting.
- (8) The joint committee may sit and transact business despite—
  - (a) a prorogation of the Houses of Parliament, or
  - (b) an adjournment of either House of Parliament.
- (9) The joint committee may sit and transact business on a sitting day of a House of Parliament during the time of sitting.

#### **4 Reporting when Parliament not in session**

- (1) If a House of Parliament is not sitting when the joint committee seeks to give a report to the House, the joint committee may present copies of the report to the Clerk of the House.
- (2) The report—
  - (a) on presentation and for all purposes is taken to have been laid before the House, and
  - (b) may be printed by authority of the Clerk, and
  - (c) if printed by authority of the Clerk—is for all purposes taken to be a document published by or under the authority of the House, and
  - (d) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after receipt of the report by the Clerk.

## **5 Evidence**

- (1) The joint committee has power to send for persons, papers and records.
- (2) The joint committee must take all evidence in public subject to clause 6.
- (3) If the joint committee as constituted at any time has taken evidence in relation to a matter but the joint committee as constituted in that way has ceased to exist before reporting on the matter, the joint committee as constituted at any later time, whether during the same or another Parliament, may consider the evidence as if it had taken the evidence.
- (4) The production of documents to the joint committee must be in accordance with the practice of the Legislative Assembly in relation to the production of documents to select committees of the Legislative Assembly.

## **6 Confidentiality**

- (1) The joint committee must take evidence in private if—
  - (a) the evidence relates to a secret or confidential matter, and
  - (b) the witness giving the evidence requests that it be taken in private.
- (2) The joint committee must direct that a document be treated as confidential if—
  - (a) the document relates to a secret or confidential matter, and
  - (b) the person producing the document requests that it be treated as confidential.
- (3) For this clause, when the joint committee directs that a document be treated as confidential—
  - (a) the contents of the document are taken to be evidence—
    - (i) given by the person producing the document, and
    - (ii) taken by the joint committee in private, and
  - (b) the person producing the document is taken to be a witness.
- (4) If, at the request of a witness, evidence is taken by the joint committee in private—
  - (a) the joint committee must not, without the written consent of the witness, disclose the evidence, and
  - (b) a member of the joint committee or another person must not, without the written consent of the witness and the authority of the joint committee under subclause (6), disclose the evidence.

Maximum penalty—20 penalty units or imprisonment for 3 months, or both.



- (5) If evidence is taken by the joint committee in private other than at the request of a witness, a member of the joint committee or another person must not, without the authority of the joint committee under subclause (6), disclose the evidence.

Maximum penalty—20 penalty units or imprisonment for 3 months, or both.

- (6) Subject to subclause (4), the joint committee may disclose or, with the written permission of the chairperson, authorise the disclosure of evidence taken in private by the joint committee.
- (7) Nothing in this clause prohibits—
- (a) the disclosure of evidence that has already been lawfully published, or
  - (b) the disclosure by a person of a matter of which the person has become aware other than because of the giving of evidence before the joint committee.
- (8) This clause has effect despite the *Parliamentary Papers (Supplementary Provisions) Act 1975*, section 4.
- (9) If evidence taken by the joint committee in private is disclosed in accordance with this clause, the *Parliamentary Papers (Supplementary Provisions) Act 1975*, sections 5 and 6 apply in relation to the disclosure as if it were a publication of the evidence under the authority of that Act, section 4.
- (10) A document produced to the joint committee in proceedings conducted in private is a public document for the purposes of the *Defamation Act 2005*, section 28 if the document is disclosed in accordance with this clause.
- (11) Proceedings of the joint committee conducted in private are proceedings of public concern for the purposes of the *Defamation Act 2005*, section 29 if the proceedings relate to the taking of evidence that is disclosed in accordance with this clause.
- (12) In this clause—

**disclose** includes publish.

**document** includes part of a document.

## **7 Application of certain Acts**

For the *Parliamentary Evidence Act 1901* and the *Parliamentary Papers (Supplementary Provisions) Act 1975* and for any other purposes—

- (a) the joint committee must be regarded as a joint committee of the Legislative Council and Legislative Assembly, and
- (b) the proposal for the appointment of the joint committee must be regarded as having originated in the Legislative Assembly.

## **8 Validity of certain acts or proceedings**

- (1) This clause applies if, at the time an act or proceeding of the joint committee is done, taken or commenced, there is—
  - (a) a vacancy in the office of a member of the joint committee, or
  - (b) a defect in the appointment, or a disqualification, of a member of the joint committee.
- (2) The act or proceeding of the joint committee is as valid as if the vacancy, defect or disqualification did not exist and the joint committee were fully and properly constituted.