



New South Wales

Ombudsman Amendment (Child Protection and Community Services) Bill 1998 (No 3)

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*
This Bill is cognate with the *Commission for Children and Young People Bill 1998 (No 2)*.

Overview of Bill

The objects of this Bill are:

- (a) to extend the jurisdiction of the Ombudsman in respect of child protection matters, and
- (b) to make further provision with respect to the notification and investigation of child abuse, and
- (c) to facilitate the co-operative exercise of the functions of the Ombudsman and the Community Services Commission with respect to child protection and community service matters, and
- (d) to make other related changes.

* Amended in committee—see table at end of volume

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Ombudsman Act 1974* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Community Services (Complaints, Appeals and Monitoring) Act 1993* set out in Schedule 2.

Schedule 1 Amendment of Ombudsman Act 1974

Schedule 1 [1] inserts a new Part 3A into the *Ombudsman Act 1974* (proposed sections 25A-25J). The proposed new Part generally sets out the Ombudsman's role in relation to child abuse allegations and child abuse convictions against employees of certain government and non-government agencies ("designated agencies").

Proposed section 25A defines relevant expressions used in the new Part.

Child abuse is defined to mean:

- (a) assault (including sexual assault) of a child. or
- (b) ill-treatment or neglect of a child. or
- (c) exposing or subjecting a child to behaviour that psychologically harms the child.

whether or not, in any case, with the consent of the child.

Designated government agency is defined to mean:

- (a) the Department of Education and Training (including a government school), the Department of Community Services, the Department of Health, the Department of Sport and Recreation, the Department of Juvenile Justice or the Department of Corrective Services.
- (b) an area health service within the meaning of the *Health Services Act 1997*.
- (c) any other public authority prescribed by the regulations for the purposes of this definition.

Designated non-government agency is defined to mean:

- (a) a non-government school within the meaning of the *Education Reform Act 1990*. or

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- (b) a child care centre, or residential child care centre, that is licensed or required to be licensed under the *Children (Care and Protection) Act 1987*. or
- (c) a substitute residential child care agency, or
- (d) any other body prescribed by the regulations for the purposes of this definition.

Proposed section 25B imposes a general duty on the Ombudsman to keep under scrutiny the systems for preventing child abuse by employees of designated agencies and other public authorities, and for handling and responding to child abuse allegations and child abuse convictions against those employees.

Proposed section 25C imposes an obligation on the heads of designated agencies to notify the Ombudsman of any child abuse allegations or convictions against employees and of details of disciplinary action taken or proposed to be taken.

Proposed section 25D authorises the disclosure by the heads or other employees of designated agencies of information about child abuse allegations or convictions against employees to the Ombudsman. The proposed section enables the Ombudsman to pass on any such information to the police or other investigative agencies. or to the proposed Commission for Children and Young Persons. despite the secrecy provisions of the Principal Act.

Proposed section 25E enables the Ombudsman to monitor the progress of any investigation by a designated agency into child abuse allegations or convictions against employees of the agency.

Proposed section 25F requires the head of a designated agency to report to the Ombudsman on the results of an investigation monitored by the Ombudsman and on the action taken as a result of the investigation.

Proposed section 25G enables the Ombudsman to conduct an independent investigation into a child abuse allegation or conviction against an employee of a designated agency (or into any inappropriate handling of or response to any such allegation or conviction). The Ombudsman may require the agency to defer its investigation. and may provide recommendations to the agency on the Action that should be taken.

Proposed section 25H ensures that the disclosure of information under the above provisions of new Part 3A is not prevented or restricted by any other Act or law and that the persons making disclosures are protected from liability

Proposed section 25I extends the obligation to report under proposed section 25C and the authority to disclose information under proposed section 25D to all public authorities in respect of employment-related child abuse.

Proposed section 25J ensures that the provisions of the Principal Act (including those on investigations and reports) relating to the actions of public authorities apply to matters arising under the above provisions of the new Part 3A.

Schedule 1 [2] is a consequential amendment.

Schedule 1 [3] ensures that the exclusion of employment matters from the jurisdiction of the Ombudsman does not affect the Ombudsman's jurisdiction under the above provisions of the new Part 3A.

Schedule 1 [4] excludes from the jurisdiction of the Ombudsman the conduct of a conciliator in relation to the conciliation of a complaint under the *Community Services (Complaints, Appeals and Monitoring) Act 1993*.

Schedule 2 Amendment of Community Services (Complaints, Appeals and Monitoring) Act 1993

Schedule 2 deals with the relationship between the Ombudsman and the Community Services Commission. At present section 121 imposes a complete bar on the jurisdiction of the Ombudsman in respect of matters within the jurisdiction of the Community Services Commission. That bar is to be removed in respect of the child protection jurisdiction proposed to be conferred on the Ombudsman by the Bill and in respect of matters agreed between them. The Ombudsman and the Commission may enter into reciprocal arrangements regarding the co-operative exercise of their respective functions. Any such arrangement may identify any matters in which the jurisdiction of the Ombudsman is not excluded. Other provisions are made with respect to the exercise of their respective functions in this area.