

Ombudsman Amendment Regulation 2025 (No 1)

Subordinate law SL2025-21

made under the

Ombudsman Act 1989, s 34A(1)(j) (Ombudsman may disclose child safety information)

EXPLANATORY STATEMENT

This explanatory statement relates to the Ombudsman Amendment Regulation 2025 (No 1) (the Regulation). It has been prepared to assist the reader of the Regulation. It does not form part of the Regulation and has not been endorsed by the Legislative Assembly. The statement is to be read in conjunction with the Regulation. It is not, and is not meant to be, a comprehensive description of the Regulation.

Summary

The ACT's reportable conduct scheme is administered by the ACT Ombudsman under the *Ombudsman Act 1989* (the Act). It aims to improve child protection within organisations in the ACT.

The ACT Ombudsman is authorised to disclose child safety information to entities specified under section 34A(1) of the Act if the Ombudsman is satisfied on reasonable grounds that information received under the Ombudsman Act is relevant to the safety, health or wellbeing of a child or class of child. Section 34A(1)(j) of the Act provides that the Ombudsman may also disclose child safety information to any other entity prescribed by regulation.

The Regulation enables the Ombudsman to share child safety information with an entity that exercises a function under a law of another Australian state or territory or the Commonwealth corresponding, or substantially corresponding, to a function of the Ombudsman under the Division 2.2A of the Act (reportable conduct).

Human Rights

The Regulation has been carefully considered in the context of the objects of the *Human Rights Act 2004* (HR Act). Any limitations on human rights are justifiable as reasonable limits by laws in a free and democratic society, as

required by section 28 of the HR Act, are proportionate and present the least restrictive approach to the overall policy objective of the Regulation. The Regulation also importantly strengthens the protection of rights under the HR Act.

Rights Promoted

The Regulation engages and promotes the protection of the family and children under Section 11 of the HR Act.

Protection of family and children

Section 11 provides that every child has the right to the protection needed by the child because of being a child, without distinction or discrimination of any kind. The Regulation will help facilitate effective information sharing with reportable conduct scheme operators in other Australian jurisdictions, to prevent, identify and respond to conduct that impedes the protection of children.

Rights Limited

The Regulation may limit the Section 12 right to privacy and reputation.

Privacy and reputation

Nature of the right (s28(2)(a), HR Act)

Section 12 of the HR Act protects all individuals from unlawful and arbitrary interference with privacy, family, home or correspondence, or unlawful attack on their reputation.

Nature of the limitation (s28(2)(c), HR Act)

The right may be limited if the Ombudsman discloses private information about an individual to an entity prescribed by the Regulation.

Rational connection between the limitation and the purpose (s28(2)(d), HR Act)

The Regulation is necessary to protect the safety, health and wellbeing of children and young people through effective information sharing and oversight of reportable conduct between jurisdictions.

Legitimate purpose (s28(2)(b), HR Act)

The objective of the Regulation is to promote the safety, health and wellbeing of children and young people across Australia. The Regulation will enable the Ombudsman to share information with entities that exercise a function corresponding or substantially corresponding to the Ombudsman under the Act, division 2.2A (Reportable conduct) in other jurisdictions. This will improve the effective operation of information sharing and reportable conduct schemes across Australia. The Regulation ensures the operation of the ACT's reportable conduct scheme aligns with other Australian jurisdictions (New South Wales, Victoria, Western Australia and Queensland) who can currently share information under their schemes with other jurisdictions.

Proportionality (s28(2)(e), HR Act)

The right under section 12 not absolute. The term ‘arbitrary interference’ is described as intending to guarantee that even interference provided by law should be reasonable in the circumstances, in accordance with the provisions, aims and objectives of the International Covenant on Civil and Political Rights (ICCPR). It is therefore reasonable to suggest that a person’s right to privacy and reputation can be interfered with, provided the interference is both lawful (allowed for by the law) and not arbitrary (reasonable in the circumstances).

The Regulation is the least restrictive on the right to privacy and reputation to achieve the legitimate purpose. The Ombudsman must be satisfied on reasonable grounds that the information shared with a prescribed entity is relevant to the safety, health and wellbeing of children and young people (section 34A(1) of the Act). The information can only be shared with entities exercising a function that corresponds or substantially corresponds to a function of the Ombudsman division 2.2A of the Act.

In other jurisdictions, the corresponding legislation for their Reportable Conduct Schemes prescribes how information is obtained, investigated and disclosed. The overarching purpose of reportable conduct schemes across jurisdictions is to report and investigate reportable conduct matters with the core objective being to protect children and young people from harm and promote their health, safety and wellbeing. Any sharing of reportable conduct information by the ACT Ombudsman with other jurisdictions would be in line with this purpose. The use of the information by other jurisdictions would be guided by their reportable conduct scheme legislation which broadly echo the same purpose of protection of children and young people from harm and prescribe the role and functions of the reportable conduct scheme operators.

CLAUSE NOTES

PART 1 PRELIMINARY

Clause 1 Name of Regulation

This clause provides that the name of the regulation is the Ombudsman Amendment Regulation 2025 (No 1).

Clause 2 Commencement

This clause provides that the Regulation commences the day after its notification day.

Clause 3 Legislation amended

This clause provides that the Regulation amends the *Ombudsman Regulation 1989*.

Clause 4 New section 3

This clause inserts a new section that prescribes that the Ombudsman may disclose child safety information to an entity that performs a function in another Australian jurisdiction substantially corresponding to a function of the Ombudsman under the Act, division 2.2A. In effect this will be other reportable conduct scheme operators in other Australian States and Territories, and the Commonwealth.