

Deeds of Release and complaints to integrity agencies

Tabled as a special report under section 31 of the Ombudsman Act 1974

7 July 2025

The Hon. Ben Franklin, MLC
President
Legislative Council
Parliament House
SYDNEY NSW 2000

The Hon. Greg Piper, MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Mr President and Mr Speaker,

Pursuant to section 31 of the *Ombudsman Act 1974*, we are providing you with a report titled *Deeds of Release and complaints to integrity agencies*.

We draw your attention to section 31AA of the Act in relation to the tabling of this report, and request that you make the report public forthwith.

Yours sincerely



Paul Miller
NSW Ombudsman

7 July 2025



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Executive overview

We have recently become aware of a circumstance where an agency has, as a condition of settling a dispute, required a member of the public to sign a Deed of Settlement and Release that purports to block them from making or continuing to make a complaint to a NSW integrity body. This includes the Ombudsman and the Independent Commission Against Corruption (ICAC), both of whom are specifically referenced in the Deed.

Such provisions are deeply concerning. They are neither appropriate nor acceptable.

It is likely that they are legally unenforceable. It would in any event be dangerous for an agency to seek to enforce the provision – in the case of the Ombudsman, ICAC and other key integrity agencies, it is a criminal offence to take detrimental action against a person for making a complaint or disclosure to, or for otherwise assisting, the integrity agency.

This report is not an investigation, and as such we make no findings under the *Ombudsman Act 1974*. We also do not suggest that such provisions have been used, by this or any other agency, for the purpose of concealing from integrity agencies any actual issues of wrong conduct.

However, we have recommended that the agency in question write to those affected to advise them that the provision that purports to prohibit them from complaining to or providing information or assistance to the Ombudsman or the ICAC will not be enforced and is to be disregarded. We have also recommended that it ensure that such a provision is not included in any future settlement deeds.

We have recommended that central agencies consider issuing a sector-wide directive reminding all agencies that such provisions are not to be included in settlement agreements.

What has triggered this report

In recent months, the Ombudsman has been approached by members of the public who have made complaints to us about certain conduct of Revenue NSW.

One of those individuals had informed us that they wished to withdraw their complaint as Revenue NSW has required them to sign a Deed of Settlement and Release as a condition to settling their dispute with Revenue. The Deed of Settlement and Release prohibits them from making or continuing to make a complaint to the Ombudsman about Revenue NSW's conduct in relation to the dispute.

We sought and obtained from Revenue NSW a copy of the Deed of Settlement and Release that had been entered into by that complainant – see extract set out in **Annexure 1**.

Under the Deed, each party releases the other from all *'causes of action, proceedings, suits, claims, costs and demands of any nature whatsoever which may be related to or arise out of'* the settlement made between them.

The deed also includes an express provision under which the complainant agrees to:

'cease pursuit of and/or withdraw any existing complaints or applications for investigation or relief lodged with the NSW Ombudsman, the Independent Commission Against Corruption, the Minister and/or any other external body'

and to:

‘not make any new claims or complaints to the NSW Ombudsman, the Minister, or the Independent Commission Against Corruption or any external body in relation to the issues in dispute . . .’

The Deed also provides that its terms are confidential and are not to be disclosed to anyone other than in limited circumstances.

The cover page of the Deed provided to us by Revenue NSW bears the name of the NSW Crown Solicitor.

Our concerns¹

It is important that disputes are able to be resolved to finality, and settlement agreements, including in appropriate cases with ‘releases’, can serve a useful and legitimate purpose.

However, the work of integrity agencies in receiving and assessing reports about possible wrong conduct by government agencies is not merely about responding to private disputes between complainants and agencies; that work is a matter of public interest. It is inappropriate that any settlement agreement should purport to block a person from approaching or assisting an integrity agency with information or concerns about possible corrupt conduct, maladministration or other wrong conduct.

The Deed impedes the work of integrity agencies, and is contrary to the public interest

People have a statutory right to complain to integrity agencies,² including about their suspicion of corruption, maladministration or other wrong conduct by a government agency or official. Doing so, and the ensuing scrutiny of that conduct by the integrity body is a matter of public interest.

The Ombudsman, perhaps more than any other of the core integrity agencies,³ can be viewed as having dual functions of both providing inter-parties dispute resolution as well as undertaking scrutiny and investigation of suspected wrongdoing.⁴ In this way, our functions work both for the benefit of individuals as well as in the broader public interest.

For other integrity agencies, such as the ICAC, which do not have a similar ‘dispute resolution’ focus, it is even more evident that their functions are singularly focused on that broader public interest (of detection, investigation and exposure of wrongdoing).⁵

Nevertheless, the core feature common to all integrity agencies – including the NSW Ombudsman – is their role in oversighting, in the public interest, the conduct of public bodies and others exercising public functions or using public resources. In that context, accessing complaints and reports, including from members of the general public as well as from public sector whistleblowers and others, is essential to the effective work of those integrity agencies. Although an individual will typically make a complaint to the Ombudsman seeking a solution to their personal situation, that complaint has the potential to benefit

¹ We note that similar concerns were raised and reported by the Ombudsman in its 2006-2007 Annual Report (at pages [131-132](#)).

² In respect of the Ombudsman, this right is conferred expressly by [section 12](#) of the *Ombudsman Act 1974*, which deals with complaints about public authorities, and is entitled ‘Right to complain’. In the case of service provider complaints, the right to complain to the Ombudsman about their conduct is found in [section 22](#) of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

³ In NSW these are typically taken to include, as well as the NSW Ombudsman, the ICAC, the Law Enforcement Conduct Commission, the Audit Office and the Electoral Commission: see eg. [TD24-12 Charter of Independence for NSW integrity agencies](#). The concerns raised here may extend to other statutory agencies that perform integrity and oversight functions, including for example the Information and Privacy Commissioners.

⁴ The Ombudsman’s particular focus is maladministration, being wrong conduct of a kind described in [section 26](#) of the *Ombudsman Act 1974*. This includes conduct that is contrary to law, unreasonable or unjust. Other integrity agencies focus on particular kinds of wrong conduct; eg., ICAC (corrupt conduct), LECC (Police misconduct and maladministration); and Audit Office (serious and substantial waste).

⁵ See *Young v Crime and Corruption Commission* [2019] QCA 189, [17].

others in the same or a similar predicament. And while our office may not be able to provide exactly what the complainant is asking for, we may be able to effect changes that benefit those who would otherwise find themselves in the same situation in future.

Moreover, if an agency has engaged in wrong conduct (such as corrupt conduct or maladministration) the fact that the individual complainant may be satisfied with a proposed 'settlement' does not affect the broader public interest that may remain in holding the agency to account for any wrongdoing. That includes, in appropriate cases, public reporting and the consideration of recommendations for further action, such as disciplinary action or systemic reforms. Especially if a settlement involves the payment of money, waiving of some or all of a debt, or other financial terms with the individual complainant, a Deed of Settlement and Release that operates to avoid broader public interest scrutiny may be viewed as particularly problematic.

It is evidently contrary to the public interest for agencies to seek to block complaints being made to integrity bodies, where those complaints may otherwise result in their conduct being subject to scrutiny.

The provision may be legally ineffective, could not be enforced by the agency without risk of the agency itself committing a criminal offence, and in any case cannot affect an integrity agency's decision whether to continue pursuing a matter

A provision of a Deed of Settlement and Release that purports to require a person to withdraw any complaint they have made to an integrity body is likely to be ineffective for legal and practical reasons:

- *The provision is likely to be legally ineffective*

Our view is that such a provision ought, if tested in court, to be considered to have no legal effect.

It is important that disputes can be settled, and the ability of parties to make settlement agreements, which may include appropriate releases from future claims, is a component of freedom of contract that underpins our legal system. However, that freedom is not absolute.

The ability to contract to give up a statutory right, for example, 'hinges on the scope and policy' of the statute that creates it.⁶ In some cases, the statute may expressly state that a person cannot 'contract out' of the statutory right. In those cases, an agreement to give up the right is clearly unenforceable. However, even where the statute is silent on the question, the nature of the statute may be inconsistent with a person surrendering a right given by the statute.⁷ In those cases, the giving up of the right will also be unenforceable.

In deciding whether a statute gives a person a right that they can give up in a settlement agreement or other contract, a distinction is drawn between statutory rights that are essentially 'individual' in nature and those that deliver a collective benefit to the community.

Where a statutory right is personal to the individual, it is more likely that that right can be given away or surrendered by the individual. For example, a person may give up a right to commence civil proceedings where the person is seeking payment of compensation.

Where the statutory right is given to the individual but is also in the broader public interest, the situation is different. It is the policy of the law that contractual arrangements will not be enforced where they operate to defeat or circumvent a statutory purpose or policy according to

⁶ *Commonwealth v Verwayen* (1990) 170 CLR 394 at 405; *Price v Spoor* [2021] HCA 20, [11]; (2021) 270 CLR 450 at 460.

⁷ *Price v Spoor* [2021] HCA 20, [12]; (2021) 270 CLR 450 at 460, citing *Westfield Management Ltd v AMP Capital Property Nominees Ltd* [2012] HCA 54; (2012) 247 CLR 129 at 143-144, [46].

which statutory rights are conferred in the public interest, rather than for the benefit of an individual alone. The courts will treat such arrangements as ineffective or void.⁸ The ‘public interest’ here is ‘a term embracing matters, among others, of standards of human conduct and of the functioning of government and government instrumentalities tacitly accepted and acknowledged to be for the good order of society and for the wellbeing of its members. The interest is therefore the interests of the public as distinct from the interest of an individual or individuals’.⁹

For the reasons set out above, the right to complain to an integrity body about suspected wrongdoing by public bodies is inherently a matter of public, and not merely the individual’s, interest.

- *Agencies may potentially engage in a criminal offence if they seek to enforce the provision*

Any attempt to enforce such a provision would appear likely to contravene the statutory protections for those who make a complaint or report to an integrity agency. These include protections that make it a criminal offence to take detrimental action against a person for making a complaint or otherwise assisting an integrity body.¹⁰

The Ombudsman Act, for example, makes it a criminal offence to take detrimental action against anyone for ‘making a complaint or disclosure of information to the Ombudsman about ... a matter that concerns or may concern serious maladministration, or... another matter the Ombudsman may deal with under [the] Act’ or for ‘assisting the Ombudsman in some other way’.¹¹ The offence carries a penalty of 200 penalty units or 5 years imprisonment.¹²

- *Inability to prevent integrity agency from continuing to act on complaint*

Even if the provisions of the Deed of Settlement and Release were otherwise legally enforceable against the individual, they could not operate to prevent the integrity agency, if it has become aware of suspected wrongdoing by an agency, from continuing to pursue that matter.

The Ombudsman, for example, has the power to inquire into and investigate possible wrong conduct of agencies whether or not a complaint has been made. Even if a complaint is ‘withdrawn’, the Ombudsman may still pursue the matters raised in the complaint.¹³ The same is, of course, also true of ICAC and other integrity bodies.

Even if legally ineffective, the provision has a chilling effect on complaints and may result in agencies evading proper scrutiny

Regardless of whether the provisions are ultimately found to be legally ineffective and unenforceable, provision of this nature are likely to have (and appear intended to have) a chilling effect on complainants, discouraging them from making complaints or further assisting integrity bodies in respect

⁸ *Westfield Management Ltd v AMP Capital Property Nominees Ltd* [2012] HCA 54; (2012) 247 CLR 129.

⁹ *Director of Public Prosecutions v Smith* [1991] 1 VR 63, [75], citing *Sinclair v Mining Warden at Maryborough* (1975) 132 CLR 473 at 480.

¹⁰ See eg *Ombudsman Act 1974*, [Part 4B](#); *Independent Commission Against Corruption Act 1988*, [s79I](#).

¹¹ *Ombudsman Act 1974*, [Part 4B](#).

¹² *Ombudsman Act 1974*, [s31R](#).

¹³ Of course, if the complaint has been resolved to the satisfaction of the particular complainant, this will be a relevant and often conclusive consideration for the Ombudsman in determining whether any further action is warranted. However, the mere fact that the individual complainant has settled their complaint, does not mean that the Ombudsman could not or would not continue to pursue the matter, including if necessary by formal investigation and report, if there are significant broader public interest considerations, such as evidence of serious or systemic wrong conduct by the agency that goes beyond the circumstances of the individual complainant.

of complaints previously made. A complainant is unlikely to know that provisions of this kind are unlikely to be enforceable.

Again, it is inappropriate and unacceptable that agencies should seek to shield themselves against the proper scrutiny of integrity agencies in respect of allegations of corrupt conduct, maladministration or other wrongdoing through the use of confidential deeds of release.

Recommendations

We do not suggest any Deed of Release has been used, by Revenue NSW or any other agency, for the purpose of concealing from integrity agencies any actual issues of wrong conduct.¹⁴

We have also not commenced any investigation under the Ombudsman Act about Revenue NSW's conduct in entering into the Deed of Release, and accordingly make no findings as such under section 26 of the Ombudsman Act.

It is reassuring that Revenue NSW has confirmed that, in so far as it is concerned, the current circumstances are unique and do not reflect any broader practice. However, we cannot know if, or how extensively, similar provisions may exist in settlement agreements entered into by any other agencies.¹⁵

Given the seriousness of this matter, we consider it important to put on public record our concerns with such provisions, and to ensure that other agencies are made aware.

We have made the following recommendations to Revenue NSW and to Premier's Department/The Cabinet Office:

- 1. That Revenue NSW ensure that it does not again require any person to enter into a Deed of Release that purports to prevent the person making or continuing a complaint to the Ombudsman, the ICAC or any other integrity agency.**
- 2. That Revenue NSW write to any counterparty to an existing Deed of Settlement and Release that purports to prevent the person making or continuing a complaint about Revenue NSW, advising that Revenue NSW:**
 - respects the person's statutory right to make such a complaint,
 - acknowledges the public interest in proper scrutiny by integrity agencies of alleged or suspected wrong conduct by Government agencies, and
 - will not take any steps to enforce that provision of the Deed, which can be disregarded.
- 3. That Premier's Department/The Cabinet Office consider causing a direction to be issued (whether that is by way of a Secretaries Board decision, a formal memorandum or circular,¹⁶ or otherwise) reminding all government agencies that this practice is inappropriate and unacceptable, and that it is not to be done.**

Consultation and agency correspondence

We provided a draft copy of this report to the ICAC, as well as to a number of other integrity agencies.

¹⁴ The issues that were raised with the Ombudsman in the complaints made about Revenue NSW are still under assessment. We will continue that process notwithstanding the entry into any Deed of Release, or any 'withdrawal' of a complaint pursuant to the terms of such a Deed. However, see footnote 13 above.

¹⁵ This is so particularly noting that deeds of release will typically include a confidentiality provision.

¹⁶ For example, a Premier's Memorandum outlines the requirements of agencies in respect of their status as model litigants in civil proceedings: [M2016-03 Model litigant policy for civil litigation](#) | [info.buy.nsw](#)

The response of the Chief Commissioner of the ICAC is set out in **Annexure 2**.

The ICAC has advised that it shares our concerns. It agrees that such provisions are contrary to the public interest and not enforceable, and that action taken to enforce them would constitute detrimental action. The ICAC also supports the recommendations we have made, including that Premier's Department consider a direction reminding all government agencies that any practice seeking to prevent complaints being made to integrity agencies is contrary to the public interest and therefore inappropriate and unacceptable and should not be done.

We also raised our concerns with, and provided draft recommendations, to Revenue NSW, as well as with The Cabinet Office and Premier's Department.

A response from the Deputy Secretary, Revenue NSW was received and is set out in **Annexure 3**. The Deputy Secretary has indicated that he shares our concerns and that the provision in question is inappropriate and unacceptable.

The response also confirms that Revenue NSW does not have a 'practice' of entering into such Deeds and that, apart from two recent Deeds relating to a single dispute, Revenue NSW has not identified any other Deeds containing like terms.

Annexure 1

Extract from the Deed of Settlement and Release

- 5.4 [REDACTED] undertakes to cease pursuit of and/or withdraw any existing complaints or applications for investigation or relief lodged with the NSW Ombudsman, the Independent Commission Against Corruption, the Minister, and/or any other external body, including any applications for ex-gratia relief, in relation to [REDACTED].
- 5.5 [REDACTED] undertakes that it will not make any new claims or complaints to the New South Wales Ombudsman, the Minister, or to the Independent Commission Against Corruption or any external body in relation to the issues in dispute in the [REDACTED] [REDACTED] or make any new applications for ex-gratia relief or applications for any related relief.

6. Confidentiality

- 6.1 The parties agree that the terms and conditions of this Deed shall remain strictly confidential between the parties and shall not be disclosed, except where the disclosure:
- (a) is made by a party to professional advisers, auditors, bankers, financial advisers and financiers, to whom it is necessary for that party to disclose the terms and only for the purpose for which it is necessary to disclose the terms;
 - (b) is necessary to comply with any law including any mandatory reporting requirements, the requirement of the Chief Commissioner to produce documents to the Parliament of the State of New South Wales, a Minister, or the requirement of any regulatory body or other competent authority having jurisdiction over the affairs of the party; or
 - (c) for the purposes of enforcement of this Deed.
- 6.2 If disclosure of the terms of this Deed is permitted under this clause, the obligation of confidentiality shall remain in full force and effect for all other purposes.
- 6.3 In the event of default under this clause and notwithstanding clause 5, the aggrieved party shall be entitled to commence proceedings for the recovery of any loss sustained as a result.

Annexure 2

Correspondence from the ICAC



Mr Paul Miller PSM
NSW Ombudsman

By email: [REDACTED]

26 June 2025

Dear Mr Miller

Use of Deeds of Release to block reporting of complaints

I am writing in response to the email received from Ms Smith concerning the draft Ombudsman report "*The use of Deeds of Release to block complaints to NSW integrity agencies*".

Thank you for giving the Commission the opportunity to consider and comment on the draft report.

The Commission shares your concern with the use of any Deed of Settlement to attempt to prevent a person from making or continuing to make a complaint to the Commission or any other NSW integrity agency. Such a provision is contrary to the public interest that corrupt conduct and other forms of wrongdoing are reported to relevant agencies so that they may be properly assessed and, if appropriate, investigated. The ability to receive and assess reports of wrongdoing is, as noted in the draft report, essential to the effective work of integrity agencies.

While, for the reasons set out in the draft report, any provision seeking to prevent reporting to an integrity agency would not be enforceable, the mere fact that such a provision is included in a Deed of Release will act as a deterrent to people approaching integrity agencies with their concerns. Any attempt to enforce such a provision would also constitute detrimental action against a person for making a complaint.

The Commission agrees with the contents of the draft report and supports the three recommendations. In particular, the Commission agrees that the Premier's Department should consider making a direction reminding all government agencies that any practice seeking to prevent complaints being made to integrity agencies is contrary to the public interest and therefore inappropriate and unacceptable and should not be done.

The Commission is happy for this response and the Commission's endorsement of the concerns raised and the recommendations to be included in the final report.

Yours sincerely

[REDACTED]

The Hon John Hatzistergos AM
Chief Commissioner

OFFICIAL

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Annexure 3

Correspondence from Revenue NSW



Our Reference: BN04017-2025

Paul Miller
NSW Ombudsman
Level 24, 580 George Street
SYDNEY NSW 2000

Cc to the Crown Solicitor
Cc to the Secretary, The Cabinet Office

Dear Mr Miller

Ombudsman Special report to Parliament – Deeds of Release

I refer to your letter of 27 June 2025 advising of your intention to table a Special Report to Parliament under section 31 of the *Ombudsman Act 1974* concerning settlement agreements (**draft Report**). Thank you for inviting my comment on the draft Report.

I acknowledge the significant role of NSW integrity agencies in promoting the integrity of the state's public administration and I share the concerns raised in the draft Report regarding the inclusion in Deeds entered into by NSW government agencies of any terms that may impede the work of such agencies.

You have indicated that the draft Report follows an individual advising you about a Deed of Release entered into with Revenue NSW. Having made enquiries following receipt of your letter, I can confirm that, in June 2025, to settle a dispute in respect of the obligation to pay tax, the trustee companies for two family trusts for a family entered into two Deeds of Settlement and Release with Revenue NSW in relevantly the same terms (the **Deeds**). The Deeds contain terms requiring the trustees to refrain from engaging in certain conduct such as pursuit of complaints to the NSW Ombudsman or the Independent Commission Against Corruption.

I understand that the intention of the Deeds at the time of execution was to bring to finality the specific matters between the parties. The execution of the Deeds followed a period of prolonged dispute between Revenue NSW and the trustees, which commenced in April 2024 and concluded with settlement between the parties in June 2025. It was in light of this protracted dispute that the Deeds, including terms that prohibited the trustees from maintaining or making a complaint to the NSW Ombudsman and other persons, were drafted by the Crown Solicitor's Office (**CSO**) and executed.

However, even in such circumstances, I acknowledge that the inclusion of such terms was neither appropriate nor acceptable.

I would like to assure the Ombudsman that Revenue NSW has no practice of entering into settlement agreements which prohibit or purport to prohibit a person

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Revenue

from maintaining or commencing complaints or claims with NSW integrity agencies. Indeed, Revenue NSW does not commonly enter into settlement agreements in relation to taxation matters, the last of which we have identified in the time available was entered into in 2018.

I am pleased to confirm that, in the time available, Revenue NSW has not identified any other Deed of Release it has entered into which contains like terms, and that the inclusion of the terms at issue appears to have been peculiar to the Deeds in question and to have reflected a unique set of circumstances.

Revenue NSW acknowledges and accepts the recommendations made in the draft Report, subject to one qualification in relation to recommendation 1. I have directed Revenue NSW to work to action the recommendations as a matter of priority, including by writing to any counterparty to a Deed of Release and Settlement in the form set out in recommendation 2. In relation to recommendation 1, while it is framed in a non-definitive way, I would ask that its wording be amended to avoid suggesting that Revenue NSW has a “practice” as described, noting that such a provision appears to have been used only in settling this single dispute with the two related trustees.

In addition to the recommended steps, Revenue NSW is reviewing the way in which it receives litigation support from the CSO and whether lawyers from the Department of Customer Service (DCS) should in future become involved at critical junctures to provide instructions, including in relation to any Deeds of Settlement.

[REDACTED]

Yours sincerely

[REDACTED]

Scott Johnston
Deputy Secretary
Commissioner of Fines Administration
Chief Commissioner of State Revenue
Date: 4 July 2025

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