



Australian Capital Territory

Human Rights Act 2004

A2004-5

Republication No 4

Effective: 18 March 2008 – 31 December 2008

Republication date: 18 March 2008

Last amendment made by A2008-3

Not all amendments are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Human Rights Act 2004* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 18 March 2008. It also includes any amendment, repeal or expiry affecting the republished law to 18 March 2008.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

Human Rights Act 2004

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R4
18/03/08

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Australian Capital Territory

Human Rights Act 2004

An Act to respect, protect and promote human rights

Preamble

- 1 Human rights are necessary for individuals to live lives of dignity and value.
- 2 Respecting, protecting and promoting the rights of individuals improves the welfare of the whole community.
- 3 Human rights are set out in this Act so that individuals know what their rights are.
- 4 Setting out these human rights also makes it easier for them to be taken into consideration in the development and interpretation of legislation.
- 5 This Act encourages individuals to see themselves, and each other, as the holders of rights, and as responsible for upholding the human rights of others.
- 6 Few rights are absolute. Human rights may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society. One individual's rights may also need to be weighed against another individual's rights.
- 7 Although human rights belong to all individuals, they have special significance for Indigenous people—the first owners of this land, members of its most enduring cultures, and individuals for whom the issue of rights protection has great and continuing importance.

The Legislative Assembly for the Australian Capital Territory therefore enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Human Rights Act 2004*.

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*human rights*—see section 5.' means that the term 'human rights' is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

Part 2 Human rights

5 What are *human rights*?

In this Act:

human rights means the civil and political rights in part 3.

6 Who has human rights?

Only individuals have human rights.

7 Rights apart from Act

This Act is not exhaustive of the rights an individual may have under domestic or international law.

Examples of other rights

- 1 rights under the *Discrimination Act 1991* or another Territory law
- 2 rights under the ICCPR not listed in this Act
- 3 rights under other international conventions

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Part 3 Civil and political rights

Note The primary source of these rights is the International Covenant on Civil and Political Rights.

8 Recognition and equality before the law

- (1) Everyone has the right to recognition as a person before the law.
- (2) Everyone has the right to enjoy his or her human rights without distinction or discrimination of any kind.
- (3) Everyone is equal before the law and is entitled to the equal protection of the law without discrimination. In particular, everyone has the right to equal and effective protection against discrimination on any ground.

Examples of discrimination

Discrimination because of race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth, disability or other status.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

9 Right to life

- (1) Everyone has the right to life. In particular, no-one may be arbitrarily deprived of life.
- (2) This section applies to a person from the time of birth.

10 Protection from torture and cruel, inhuman or degrading treatment etc

- (1) No-one may be—
 - (a) tortured; or
 - (b) treated or punished in a cruel, inhuman or degrading way.
- (2) No-one may be subjected to medical or scientific experimentation or treatment without his or her free consent.

11 Protection of the family and children

Note Family has a broad meaning (see ICCPR General Comment 19 (39th session, 1990)).

- (1) The family is the natural and basic group unit of society and is entitled to be protected by society.
- (2) Every child has the right to the protection needed by the child because of being a child, without distinction or discrimination of any kind.

Examples of distinction or discrimination

Distinction or discrimination because of race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth, disability or other status.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

12 Privacy and reputation

Everyone has the right—

- (a) not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and
- (b) not to have his or her reputation unlawfully attacked.

13 Freedom of movement

Everyone has the right to move freely within the ACT and to enter and leave it, and the freedom to choose his or her residence in the ACT.

14 Freedom of thought, conscience, religion and belief

- (1) Everyone has the right to freedom of thought, conscience and religion. This right includes—
 - (a) the freedom to have or to adopt a religion or belief of his or her choice; and
 - (b) the freedom to demonstrate his or her religion or belief in worship, observance, practice and teaching, either individually or as part of a community and whether in public or private.
- (2) No-one may be coerced in a way that would limit his or her freedom to have or adopt a religion or belief in worship, observance, practice or teaching.

15 Peaceful assembly and freedom of association

- (1) Everyone has the right of peaceful assembly.
- (2) Everyone has the right to freedom of association.

16 Freedom of expression

- (1) Everyone has the right to hold opinions without interference.
- (2) Everyone has the right to freedom of expression. This right includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of borders, whether orally, in writing or in print, by way of art, or in another way chosen by him or her.

17 Taking part in public life

Every citizen has the right, and is to have the opportunity, to—

- (a) take part in the conduct of public affairs, directly or through freely chosen representatives; and
- (b) vote and be elected at periodic elections, that guarantee the free expression of the will of the electors; and
- (c) have access, on general terms of equality, for appointment to the public service and public office.

18 Right to liberty and security of person

- (1) Everyone has the right to liberty and security of person. In particular, no-one may be arbitrarily arrested or detained.
- (2) No-one may be deprived of liberty, except on the grounds and in accordance with the procedures established by law.
- (3) Anyone who is arrested must be told, at the time of arrest, of the reasons for the arrest and must be promptly told about any charges against him or her.
- (4) Anyone who is arrested or detained on a criminal charge—
 - (a) must be promptly brought before a judge or magistrate; and
 - (b) has the right to be tried within a reasonable time or released.
- (5) Anyone who is awaiting trial must not be detained in custody as a general rule, but his or her release may be subject to guarantees to appear for trial, at any other stage of the judicial proceeding, and, if appropriate, for execution of judgment.
- (6) Anyone who is deprived of liberty by arrest or detention is entitled to apply to a court so that the court can decide, without delay, the lawfulness of the detention and order the person's release if the detention is not lawful.

- (7) Anyone who has been unlawfully arrested or detained has the right to compensation for the arrest or detention.
- (8) No-one may be imprisoned only because of the inability to carry out a contractual obligation.

19 Humane treatment when deprived of liberty

- (1) Anyone deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person.
- (2) An accused person must be segregated from convicted people, except in exceptional circumstances.

Note An accused child must also be segregated from accused adults (see s 20 (1))

- (3) An accused person must be treated in a way that is appropriate for a person who has not been convicted.

20 Children in the criminal process

- (1) An accused child must be segregated from accused adults.
- (2) An accused child must be treated in a way that is appropriate for a person of the child's age who has not been convicted.
- (3) A child must be brought to trial as quickly as possible.
- (4) A convicted child must be treated in a way that is appropriate for a person of the child's age who has been convicted.

21 Fair trial

- (1) Everyone has the right to have criminal charges, and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing.
- (2) However, the press and public may be excluded from all or part of a trial—
 - (a) to protect morals, public order or national security in a democratic society; or
 - (b) if the interest of the private lives of the parties require the exclusion; or
 - (c) if, and to the extent that, the exclusion is strictly necessary, in special circumstances of the case, because publicity would otherwise prejudice the interests of justice.
- (3) But each judgment in a criminal or civil proceeding must be made public unless the interest of a child requires that the judgment not be made public.

22 Rights in criminal proceedings

- (1) Everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.
- (2) Anyone charged with a criminal offence is entitled to the following minimum guarantees, equally with everyone else:
 - (a) to be told promptly and in detail, in a language that he or she understands, about the nature and reason for the charge;
 - (b) to have adequate time and facilities to prepare his or her defence and to communicate with lawyers or advisors chosen by him or her;
 - (c) to be tried without unreasonable delay;

- (d) to be tried in person, and to defend himself or herself personally, or through legal assistance chosen by him or her;
 - (e) to be told, if he or she does not have legal assistance, about the right to legal assistance chosen by him or her;
 - (f) to have legal assistance provided to him or her, if the interests of justice require that the assistance be provided, and to have the legal assistance provided without payment if he or she cannot afford to pay for the assistance;
 - (g) to examine prosecution witnesses, or have them examined, and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as prosecution witnesses;
 - (h) to have the free assistance of an interpreter if he or she cannot understand or speak the language used in court;
 - (i) not to be compelled to testify against himself or herself or to confess guilt.
- (3) A child who is charged with a criminal offence has the right to a procedure that takes account of the child's age and the desirability of promoting the child's rehabilitation.
- (4) Anyone convicted of a criminal offence has the right to have the conviction and sentence reviewed by a higher court in accordance with law.

23 Compensation for wrongful conviction

- (1) This section applies if—
- (a) anyone is convicted by a final decision of a criminal offence; and
 - (b) the person suffers punishment because of the conviction; and
 - (c) the conviction is reversed, or he or she is pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice.

- (2) If this section applies, the person has the right to be compensated according to law.
- (3) However, subsection (2) does not apply if it is proved that the nondisclosure of the unknown fact in time is completely or partly the person's own doing.

24 Right not to be tried or punished more than once

No-one may be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with law.

25 Retrospective criminal laws

- (1) No-one may be held guilty of a criminal offence because of conduct that was not a criminal offence under Territory law when it was engaged in.
- (2) A penalty may not be imposed on anyone for a criminal offence that is heavier than the penalty that applied to the offence when it was committed. If the penalty for an offence is reduced after anyone commits the offence, he or she benefits from the reduced penalty.

26 Freedom from forced work

- (1) No-one may be held in slavery or servitude.
- (2) No-one may be made to perform forced or compulsory labour.
- (3) In subsection (2):
forced or compulsory labour does not include—
 - (a) work or service normally required of an individual who is under detention because of a lawful court order, or who has been conditionally released from detention under a court order; or
 - (b) work or service required because of an emergency or calamity threatening the life or wellbeing of the community; or

(c) work or service that forms part of normal civil obligations.

27 Rights of minorities

Anyone who belongs to an ethnic, religious or linguistic minority must not be denied the right, with other members of the minority, to enjoy his or her culture, to declare and practise his or her religion, or to use his or her language.

28 Human rights may be limited

- (1) Human rights may be subject only to reasonable limits set by Territory laws that can be demonstrably justified in a free and democratic society.
- (2) In deciding whether a limit is reasonable, all relevant factors must be considered, including the following:
 - (a) the nature of the right affected;
 - (b) the importance of the purpose of the limitation;
 - (c) the nature and extent of the limitation;
 - (d) the relationship between the limitation and its purpose;
 - (e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

Part 4 Application of human rights to Territory laws

29 Application of pt 4

This part applies to all Territory laws.

30 Interpretation of laws and human rights

So far as it is possible to do so consistently with its purpose, a Territory law must be interpreted in a way that is compatible with human rights.

31 Interpretation of human rights

- (1) International law, and the judgments of foreign and international courts and tribunals, relevant to a human right may be considered in interpreting the human right.
 - (2) In deciding whether material mentioned in subsection (1) or any other material should be considered, and the weight to be given to the material, the following matters must be taken into account:
 - (a) the desirability of being able to rely on the ordinary meaning of this Act, having regard to its purpose and its provisions read in the context of the Act as a whole;
 - (b) the undesirability of prolonging proceedings without compensating advantage;
 - (c) the accessibility of the material to the public.
- Note* The matters to be taken into account under this subsection are consistent with those required to be taken into account under the Legislation Act, s 141 (2).
- (3) For subsection (2) (c), material in the ACT legislation register is taken to be accessible to the public.

32 Declaration of incompatibility

- (1) This section applies if—
 - (a) a proceeding is being heard by the Supreme Court; and
 - (b) an issue arises in the proceeding about whether a Territory law is consistent with a human right.
- (2) If the Supreme Court is satisfied that the Territory law is not consistent with the human right, the court may declare that the law is not consistent with the human right (the *declaration of incompatibility*).
- (3) The declaration of incompatibility does not affect—
 - (a) the validity, operation or enforcement of the law; or
 - (b) the rights or obligations of anyone.
- (4) The registrar of the Supreme Court must promptly give a copy of the declaration of incompatibility to the Attorney-General.

33 Attorney-General's action on receiving declaration of incompatibility

- (1) This section applies if the Attorney-General receives a copy of a declaration of incompatibility.
- (2) The Attorney-General must present a copy of the declaration of incompatibility to the Legislative Assembly within 6 sitting days after the day the Attorney-General receives the copy.
- (3) The Attorney-General must prepare a written response to the declaration of incompatibility and present it to the Legislative Assembly not later than 6 months after the day the copy of the declaration is presented to the Legislative Assembly.

34 Notice to Attorney-General and commission

- (1) This section applies—

- (a) if—
 - (i) a question arises in a proceeding in the Supreme Court that involves the application of this Act; or
 - (ii) the Supreme Court is considering making a declaration of incompatibility in a proceeding; and
 - (b) the Territory is not a party to the proceeding.
- (2) The Supreme Court must not allow the proceeding to continue or make the declaration unless the court is satisfied that—
- (a) notice of the proceeding has been given to the Attorney-General and the commission; and
 - (b) a reasonable time has passed since the giving of the notice for the Attorney-General and the commission to decide whether to intervene in the proceeding.
- (3) For subsection (2), the Supreme Court may—
- (a) direct a party to give notice of the proceeding to the Attorney-General and the commission; and
 - (b) continue to hear evidence and argument concerning matters severable from any matter involving the application of this Act.
- (4) Subsection (2) does not prevent the Supreme Court from hearing and deciding a proceeding, to the extent that the proceeding relates to the grant of urgent relief of an interlocutory nature, if the court considers it necessary in the interests of justice.

35 Attorney-General's right to intervene on human rights

The Attorney-General may intervene in a proceeding before a court that involves the application of this Act.

36 Human rights commissioner may intervene

- (1) The human rights commissioner may intervene in a proceeding before a court that involves the application of this Act with the leave of the court.
- (2) The court may give leave subject to conditions.

Part 5 Scrutiny of proposed Territory laws

37 Attorney-General's statement on government bills

- (1) This section applies to each bill presented to the Legislative Assembly by a Minister.
- (2) The Attorney-General must prepare a written statement (the *compatibility statement*) about the bill for presentation to the Legislative Assembly.
- (3) The compatibility statement must state—
 - (a) whether, in the Attorney-General's opinion, the bill is consistent with human rights; and
 - (b) if it is not consistent, how it is not consistent with human rights.

38 Consideration of bills by standing committee of Assembly

- (1) The relevant standing committee must report to the Legislative Assembly about human rights issues raised by bills presented to the Assembly.
- (2) In this section:
relevant standing committee means—
 - (a) the standing committee of the Legislative Assembly nominated by the Speaker for this section; or
 - (b) if no nomination under paragraph (a) is in effect—the standing committee of the Legislative Assembly responsible for the consideration of legal issues.

39 Noncompliance with s 37 and s 38

A failure to comply with section 37 or section 38 in relation to a bill does not affect the validity, operation or enforcement of any Territory law.

U Part 5A Obligations of public authorities

Part 6 Miscellaneous

41 Review of effect of territory laws on human rights

- (1) The commission has the following functions:
 - (a) review the effect of territory laws, including the common law, on human rights;
 - (b) report in writing to the Attorney-General on the results of the review.
- (2) The Attorney-General must present a copy of a report mentioned in subsection (1) to the Legislative Assembly within 6 sitting days after the day the Attorney-General receives the report.
- (3) However, the Attorney-General may amend the report (including by omitting part of the report) before presenting it to the Legislative Assembly to prevent the report—
 - (a) disclosing the identity of—
 - (i) a person whose human rights have, or may have been, contravened; or
 - (ii) someone who may have contravened someone else's rights; or
 - (b) allowing the identity of someone mentioned in paragraph (a) to be worked out; or
 - (c) disclosing information if the disclosure of the information could, in the Attorney-General's opinion, harm the public interest.
- (4) If the Attorney-General amends the report, the Attorney-General must present a statement to the Legislative Assembly with the report that tells the Assembly that the report has been amended.

42 Regulation-making power

The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

44 Review of Act

- (1) The Attorney-General must review the operation of this Act and present a report of the review to the Legislative Assembly not later than 1 July 2009.
- (2) This section expires on 1 January 2010.

Schedule 1 ICCPR source of human rights

(see pt 3)

column 1 item	column 2 section	column 3 description	column 4 ICCPR article
1	8 (1)	right to recognition as person	16
2	8 (2)	right to enjoy rights without distinction etc	2 (1)
3	8 (3)	equality before law and equal protection	26
4	9 (1)	right to life	6 (1)
5	10	protection from torture and cruel, inhuman or degrading treatment etc	7
6	11 (1)	protection of family	23 (1)
7	11 (2)	protection of children	24 (1)
8	12	privacy and reputation	17 (1)
9	13	freedom of movement	12 (1)
10	14 (1)	freedom of thought, conscience and religion	18 (1), (3)
11	14 (2)	no coercion to limit religious freedom	18 (2), (3)
12	15 (1)	peaceful assembly	21
13	15 (2)	freedom of association	22
14	16 (1)	right to hold opinions	19 (1)

column 1 item	column 2 section	column 3 description	column 4 ICCPR article
15	16 (2)	freedom of expression	19 (2), (3)
16	17	taking part in public life	25
17	18 (1)- (7)	right to liberty and security of person	9
18	18 (8)	no imprisonment for contractual obligations	11
19	19	humane treatment when deprived of liberty	10 (1), (2) (a)
20	20	children in the criminal process	10 (2) (b), (3)
21	21	fair trial	14 (1)
22	22 (1)	rights in criminal proceedings	14 (2)
23	22 (2)	minimum guarantees for those charged	14 (3)
24	22 (3)	rights of child charged	14 (4)
25	22 (4)	right of review	14 (5)
26	23	compensation for wrongful conviction	14 (6)
27	24	right not to be tried or punished more than once	14 (7)
28	25	retrospective criminal laws	15 (1)
29	26	freedom from forced work	8 (1), (2), (3) (a), (3) (c)
30	27	rights of minorities	27

U Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- Act (see s 7)
- entity
- foreign country
- individual
- may (see s 146)
- proceeding
- statutory instrument (see s 13).

commission means the human rights commission.

conduct includes omission.

court includes the following:

- (a) the administrative appeals tribunal;
- (b) the discrimination tribunal;
- (c) the guardianship tribunal;
- (d) the mental health tribunal;
- (e) an entity prescribed under the regulations.

declaration of incompatibility—see section 32.

engage in conduct means—

- (a) do an act; or
- (b) omit to do an act.

human rights—see section 5.

ICCPR means the International Covenant on Civil and Political Rights.

international law includes—

- (a) the International Covenant on Civil and Political Rights and other human rights treaties to which Australia is a party; and
- (b) general comments and views of the United Nations human rights treaty monitoring bodies; and
- (c) declarations and standards adopted by the United Nations General Assembly that are relevant to human rights.

Territory law means an Act or statutory instrument.

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

3 Legislation history

Human Rights Act 2004 A2004-5

notified LR 10 March 2004

s 1, s 2 commenced 10 March 2004 (LA s 75 (1))

remainder commenced 1 July 2004 (s 2)

as amended by

Human Rights Commission Legislation Amendment Act 2005 A2005-41 sch 1 pt 1.7 (as am by A2006-3 amdt 1.3)

notified LR 1 September 2005

s 1, s 2 commenced 1 September 2005 (LA s 75 (1))

sch 1 pt 1.7 commenced 1 November 2006 (s 2 (3) (as am by A2006-3
amdt 1.3) and see Human Rights Commission Act 2005 A2005-40, s 2
(as am by A2006-3 s 4) and CN2006-21)

Human Rights Commission Legislation Amendment Act 2006 A2006-3 amdt 1.3

notified LR 22 February 2006

s 1, s 2 commenced 22 February 2006 (LA s 75 (1))

amdt 1.3 commenced 23 February 2006 (s 2)

Note This Act only amends the Human Rights Commission
Legislation Amendment Act 2005 A2005-41

Human Rights Amendment Act 2008 A2008-3

notified LR 17 March 2008

s 1, s 2 commenced 17 March 2008 (LA s 75 (1))

ss 7-9 commences 1 January 2009 (s 2 (1))

remainder commenced 18 March 2008 (s 2 (2))

4 Amendment history

Commencement

s 2 om LA s 89 (4)

Human rights may be limited

s 28 am A2008-3 s 4

Interpretation of laws and human rights

s 30 sub A2008-3 s 5

Endnotes

4 Amendment history

Notice to Attorney-General and commission

s 34 hdg sub A2005-41 amdt 1.101
s 34 am A2005-41 amdts 1.102-1.104
sub A2008-3 s 6

Obligations of public authorities

pt 5A hdg ins A2008-3 s 7

Meaning of public authority

s 40 om A2005-41 amdt 1.105
ins A2008-3 s 7

Meaning of function of a public nature

s 40A ins A2008-3 s 7

Public authorities must act consistently with human rights

s 40B ins A2008-3 s 7

Legal proceedings in relation to public authority actions

s 40C ins A2008-3 s 7

Other entities may choose to be subject to obligations of public authorities

s 40D ins A2008-3 s 7

Miscellaneous

pt 6 hdg orig pt 6 hdg om A2005-41 amdt 1.105
(prev pt 7 hdg) renum A2005-41 amdt 1.107

Miscellaneous

pt 7 hdg renum as pt 6 hdg

Review of effect of territory laws on human rights

s 41 om A2005-41 amdt 1.105
ins A2005-41 amdt 1.106

Review of Act after 1st year of operation

s 43 exp 1 January 2007 (s 43 (3))

Review of Act

s 44 exp 1 January 2010 (s 44 (2))

Legislation amended—sch 2

s 45 om LA s 89 (3)

Consequential amendments

sch 2 om LA s 89 (3)

Dictionary

dict

am A2008-3 s 8def **act** ins A2008-3 s 9def **commission** ins A2005-41 amdt 1.108def **function of a public nature** ins A2008-3 s 9def **human rights commissioner** om A2005-41 amdt 1.109def **public authority** ins A2008-3 s 9**5 Earlier republications**

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 1 July 2004	1 July 2004– 31 October 2006	not amended	new Act
R2 1 Nov 2006	1 Nov 2006– 1 Jan 2007	A2006-3	amendments by A2005-41 as amended by A2006-3
R3 2 Jan 2007	2 Jan 2007– 17 Mar 2008	A2006-3	commenced expiry

Endnotes

6 Uncommenced amendments

6 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

Human Rights Amendment Act 2008 A2008-3 ss 7-9

7 New part 5A

insert

Part 5A Obligations of public authorities

40 Meaning of *public authority*

- (1) Each of the following is a *public authority*:
- (a) an administrative unit;
 - (b) a territory authority;
 - (c) a territory instrumentality;
 - (d) a Minister;
 - (e) a police officer, when exercising a function under a Territory law;
 - (f) a public employee;
 - (g) an entity whose functions are or include functions of a public nature, when it is exercising those functions for the Territory or a public authority (whether under contract or otherwise).

Note A reference to an entity includes a reference to a person exercising a function of the entity, whether under a delegation, subdelegation or otherwise (see Legislation Act, s 184A (1)).

- (2) However, *public authority* does not include—
- (a) the Legislative Assembly, except when acting in an administrative capacity; or
 - (b) a court, except when acting in an administrative capacity.

40A Meaning of *function of a public nature*

- (1) In deciding whether a function of an entity is a *function of a public nature*, the following matters may be considered:
- (a) whether the function is conferred on the entity under a territory law;
 - (b) whether the function is connected to or generally identified with functions of government;
 - (c) whether the function is of a regulatory nature;
 - (d) whether the entity is publicly funded to perform the function;
 - (e) whether the entity performing the function is a company (within the meaning of the Corporations Act) the majority of the shares in which are held by or for the Territory.
- (2) Subsection (1) does not limit the matters that may be considered in deciding whether a function is of a public nature.

Endnotes

6 Uncommenced amendments

- (3) Without limiting subsection (1) or (2), the following functions are taken to be of a public nature:
- (a) the operation of detention places and correctional centres;
 - (b) the provision of any of the following services:
 - (i) gas, electricity and water supply;
 - (ii) emergency services;
 - (iii) public health services;
 - (iv) public education;
 - (v) public transport;
 - (vi) public housing.

40B Public authorities must act consistently with human rights

- (1) It is unlawful for a public authority—
- (a) to act in a way that is incompatible with a human right; or
 - (b) in making a decision, to fail to give proper consideration to a relevant human right.
- (2) Subsection (1) does not apply if the act is done or decision made under a law in force in the Territory and—
- (a) the law expressly requires the act to be done or decision made in a particular way and that way is inconsistent with a human right; or
 - (b) the law cannot be interpreted in a way that is consistent with a human right.

Note A law in force in the Territory includes a Territory law and a Commonwealth law.

- (3) In this section:

public authority includes an entity for whom a declaration is in force under section 40D.

40C Legal proceedings in relation to public authority actions

- (1) This section applies if a person—
- (a) claims that a public authority has acted in contravention of section 40B; and
 - (b) alleges that the person is or would be a victim of the contravention.
- (2) The person may—
- (a) start a proceeding in the Supreme Court against the public authority; or
 - (b) rely on the person's rights under this Act in other legal proceedings.
- (3) A proceeding under subsection (2) (a) must be started not later than 1 year after the day (or last day) the act complained of happens, unless the court orders otherwise.
- (4) The Supreme Court may, in a proceeding under subsection (2), grant the relief it considers appropriate except damages.
- (5) This section does not affect—
- (a) a right a person has (otherwise than because of this Act) to seek relief in relation to an act or decision of a public authority; or
 - (b) a right a person has to damages (apart from this section).

Note See also s 18 (7) and s 23.

Endnotes

6 Uncommenced amendments

(6) In this section:

public authority includes an entity for whom a declaration is in force under section 40D.

40D Other entities may choose to be subject to obligations of public authorities

- (1) An entity that is not a public authority under section 40 may ask the Minister, in writing, to declare that the entity is subject to the obligations of a public authority under this part.
- (2) On request under subsection (1), the Minister must make the declaration.
- (3) The Minister may revoke the declaration only if the entity asks the Minister, in writing, to revoke it.
- (4) A declaration under this section is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

8 Dictionary, note 2, new dot point

insert

- emergency service

9 Dictionary, new definitions

insert

act, for part 5A (Obligations of public authorities), includes fail to act and propose to act.

function of a public nature—see section 40A.

public authority—see section 40.

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