



Australian Capital Territory

Human Rights Commission Act 2005

A2005-40

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Australian Capital Territory

Human Rights Commission Act 2005

A2005-40

An Act to establish the Human Rights Commission, and for other purposes

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

2003 147B

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Part 1 Preliminary

1 Name of Act

This Act is the *Human Rights Commission Act 2005*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

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 '*health professional*—see the *Health Professionals Act 2004*, section 14.' means that the term 'health professional' is defined in that section and the definition applies to this Act.

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

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Part 2 Objects and important concepts

6 Main objects of Act

This Act has the following main objects:

- (a) to promote the human rights and welfare of people living in the ACT by—
 - (i) promoting the provision of community education, information and advice in relation to human rights; and
 - (ii) identifying and examining issues that affect the human rights and welfare of vulnerable groups in the community; and
 - (iii) making recommendations to government and non-government agencies on legislation, policies, practices and services that affect vulnerable groups in the community;
- (b) to promote understanding and acceptance of, and compliance with, the *Discrimination Act 1991* and the *Human Rights Act 2004*;
- (c) to promote improvements in the provision of disability services, health services and services for older people;
- (d) to promote the rights of users of disability services, health services and services for older people;
- (e) to promote an awareness of the rights and responsibilities of users and providers of services to which this Act relates;
- (f) to establish a commission to provide—

- (i) an independent, fair and accessible process for the resolution of discrimination complaints and complaints between users and providers of disability services, health services and services for older people; and
 - (ii) a process to encourage and assist users and providers of disability services, health services and services for older people to make improvements in the provision of services, particularly by encouraging and assisting service users and providers to contribute to the review and improvement of service quality;
- (g) to foster community discussion, and the provision of community education and information, about—
- (i) this Act and related Acts; and
 - (ii) the operation of the commission; and
 - (iii) the procedures for making complaints.

7 What is a *health service*?

- (1) For this Act, a *health service* is a service provided in the ACT to someone (the *service user*) for any of the following purposes:
- (a) assessing, recording, maintaining or improving the physical, mental or emotional health, comfort or wellbeing of the service user;
 - (b) diagnosing or treating an illness, disability, disorder or condition of the service user.
- (2) In applying this Act in relation to a health professional who is a veterinary surgeon, a *health service* is a service provided to an animal (the *service user*) for any of the purposes mentioned in subsection (1) (a) or (b).

- (3) A *health service* includes—
- (a) a service provided by a health professional in the professional's capacity as a health professional; and
 - (b) a service provided specifically for carers of people receiving health services or carers of people with physical or mental conditions.

8 What is a *service for people with a disability*?

- (1) A *service for people with a disability* is a service provided in the ACT specifically for people with a disability or their carers.

Examples of services for people with a disability or their carers

- 1 a service that provides home help, personal care, home maintenance or modification, food services, respite care, transport, assessment or referral of support needs, education, training and skill development, information services, coordination, case management and brokerage, recreation, advocacy, community access, accommodation support, rehabilitation, or employment services, specifically for people with a disability or their carers
- 2 a service provided in association with the use of premises for the care, treatment or accommodation of people with a disability

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).

- (2) In this section:

disability means a disability that—

- (a) is attributable to an intellectual, psychiatric, sensory or physical impairment, or a combination of those impairments; and
- (b) is permanent or likely to be permanent; and
- (c) results in—
 - (i) the person having a substantially reduced capacity for communication, learning or mobility; and

- (ii) the need for continuing support services for the person;
and
- (d) may, but need not, be of a chronic episodic nature.

Note **Disability** is defined differently for complaints about discrimination on the grounds of disability (see *Discrimination Act 1991*, s 5AA).

9 What is a *service for older people*?

A *service for older people* is a service provided in the ACT specifically for older people or their carers.

Examples of services for older people

- 1 a service that provides home help, personal care, home maintenance or modification, food services, respite care, transport, assessment or referral of support needs, education, training and skill development, information services, coordination, case management and brokerage, recreation, advocacy, community access, accommodation support, rehabilitation, or employment services, specifically for older people or their carers
- 2 a service provided in association with the use of premises for the care, treatment or accommodation of older people.

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).

10 Who is a *provider*?

- (1) For this Act, a *provider* of a service is an entity that provides, or holds out that it can provide, the service.
- (2) A *provider* of a service includes—
 - (a) an entity that employs someone who—
 - (i) provides the service; or
 - (ii) holds out that the person can provide the service; and
 - (b) a volunteer providing the service on behalf of someone else;
and

Part 2 Objects and important concepts

Section 10

- (c) someone who was a provider when the service was provided, but is no longer providing the service.
- (3) However, a funding body does not provide a service only because the body pays for the service to be provided by someone else.

14 Commission's functions

- (1) The commission has the following functions:
- (a) encouraging the resolution of complaints made under this Act, and assisting in their resolution, by providing an independent, fair and accessible process for resolving the complaints;
 - (b) encouraging and assisting users and providers of disability services, health services and services for older people to make improvements in the provision of services, particularly by encouraging and assisting service users and providers to contribute to the review and improvement of service quality;
 - (c) encouraging and assisting people providing disability services, health services, and services for older people, and people engaging in conduct that may be complained about under this Act, to develop and improve procedures for dealing with complaints;
 - (d) promoting community discussion, and providing community education and information, about—
 - (i) this Act and related Acts; and
 - (ii) the operation of the commission; and
 - (iii) the procedures for making complaints;
 - (e) identifying, inquiring into and reviewing issues relating to the matters that may be complained about under this Act;
 - (f) reporting to the Minister, and other appropriate entities, about each inquiry and review mentioned in paragraph (e) or advising the Minister and other appropriate entities about the inquiry and review;
- Note* The commission may make a report to other appropriate entities by a third-party report.
- (g) advising the Minister about any matter in relation to this Act or a related Act;

- (h) collecting information about the operation of this Act and related Acts, and publishing the information;
- (i) exercising any other function given to the commission under this Act or another Territory law.

Note The following Acts give the commission functions:

- *Discrimination Act 1991*
- *Health Professionals Act 2004*
- *Health Records (Privacy and Access) Act 1997*
- *Human Rights Act 2004*.

- (2) To remove any doubt, the Minister may, but need not, present advice mentioned in subsection (1) (f) to the Legislative Assembly.

Note A report under s 87 must be presented to the Legislative Assembly.

15 Functions and human rights

The commission must act in accordance with the human rights under the *Human Rights Act 2004* when exercising a function under this Act or a related Act.

16 Independence of commission

The commission is not subject to the direction of anyone else in relation to the exercise of a function under this Act or a related Act, subject to section 17.

17 Minister's directions

- (1) The Minister may, in writing, direct the commission to inquire into and report to the Minister in relation to a matter that can be complained about under this Act.
- (2) The commission must comply with the direction.

Division 3.2 Commission president

18 Appointment of president

- (1) The Executive must appoint a person to be the President of the commission.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (2) However, the Executive must not appoint a person as president unless satisfied that the person has the experience or expertise necessary to exercise the functions of the president.

- (3) The president must not be appointed for a term of longer than 5 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

- (4) The conditions of appointment of the president are the conditions agreed between the Executive and the president, subject to any determination under the *Remuneration Tribunal Act 1995*.

Note The president's appointment may be ended under s 29.

19 President's functions

- (1) The president has the following functions:
- (a) to manage the administrative affairs of the commission;
 - (b) to conciliate complaints referred to the president;
 - (c) to exercise any other function given to the president under this Act or any other territory law.

Note The president is not to consider complaints (see s 50 (2)).

- (2) The exercise of the function mentioned in subsection (1) (a) is subject to any decision of the commission about the management of its administrative affairs.

Division 3.3 Disability and community services commissioner

20 Appointment of disability and community services commissioner

- (1) The Executive must appoint a person to be the Disability and Community Services Commissioner.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (2) However, the Executive must not appoint a person as disability and community services commissioner unless satisfied that the person has the experience or expertise necessary to exercise the functions of the commissioner.

- (3) The disability and community services commissioner must not be appointed for a term of longer than 5 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

- (4) The conditions of appointment of the disability and community services commissioner are the conditions agreed between the Executive and the commissioner, subject to any determination under the *Remuneration Tribunal Act 1995*.

Note The disability and community services commissioner's appointment may be ended under s 29.

21 Disability and community services commissioner's functions

- (1) The disability and community services commissioner has the following functions:
 - (a) to exercise functions for the commission in relation to services for people with a disability;
 - (b) to exercise any other function given to the commissioner under this Act or any other territory law.
- (2) The exercise of the function mentioned in subsection (1) (a) is subject to any decision of the commission about the exercise of its functions in relation to services for people with a disability.

Division 3.4 Discrimination commissioner

22 Appointment of discrimination commissioner

- (1) The Executive must appoint a person to be the Discrimination Commissioner.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (2) However, the Executive must not appoint a person as discrimination commissioner unless satisfied that the person has the experience or expertise necessary to exercise the functions of the commissioner.
- (3) The discrimination commissioner must not be appointed for a term of longer than 5 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

- (4) The conditions of appointment of the discrimination commissioner are the conditions agreed between the Executive and the commissioner, subject to any determination under the *Remuneration Tribunal Act 1995*.

Note The discrimination commissioner's appointment may be ended under s 29.

23 Discrimination commissioner's functions

- (1) The discrimination commissioner has the following functions:
- (a) to exercise functions for the commission in relation to discrimination;
 - (b) to exercise any other function given to the commission under this Act or another territory law.
- (2) The functions of the commission in relation to discrimination include the following:
- (a) to promote the right of people to be free from unlawful discrimination in—
 - (i) the areas of work, education and access to premises;
 - (ii) the provision of goods, services, facilities and accommodation; and
 - (iii) the activities of clubs;
 - (b) to promote the right of people to be free from sexual harassment in—
 - (i) the areas of work, education and access to premises; and
 - (ii) the provision of goods, services, facilities and accommodation; and
 - (iii) the activities of clubs;
 - (c) to promote recognition and acceptance within the community of the equality of men and women;

- (d) to promote recognition and acceptance within the community of the principle of equality of opportunity for all people.
- (3) The exercise of the function mentioned in subsection (1) (a) is subject to any decision of the commission about the exercise of its functions in relation to discrimination.
- (4) A term used in subsection (2) has the same meaning as in the *Discrimination Act 1991*.

Division 3.5 Health services commissioner

24 Appointment of health services commissioner

- (1) The Executive must appoint a person to be the Health Services Commissioner.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (2) However, the Executive must not appoint a person as health services commissioner unless satisfied that the person has the experience or expertise necessary to exercise the functions of the commissioner.
- (3) The health services commissioner must not be appointed for a term of longer than 5 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

- (4) The conditions of appointment of the health services commissioner are the conditions agreed between the Executive and the commissioner, subject to any determination under the *Remuneration Tribunal Act 1995*.

Note The health services commissioner's appointment may be ended under s 29.

25 Health services commissioner's functions

- (1) The health services commissioner has the following functions:
 - (a) to exercise functions for the commission in relation to health services and services for older people;
 - (b) to exercise any other function given to the commissioner under this Act or any other territory law.
- (2) The exercise of the function mentioned in subsection (1) (a) is subject to any decision of the commission about the exercise of its functions in relation to health services and services for older people.

Division 3.6 Human rights commissioner

26 Human rights commissioner

There is to be a Human Rights Commissioner.

27 Human rights commissioner's functions

- (1) The human rights commissioner has the following functions:
 - (a) to exercise functions for the commission in relation to human rights;
 - (b) to exercise any other function given to the commissioner under this Act or any other territory law.
- (2) The functions of the commission in relation to human rights include the following:
 - (a) to provide education about human rights and the *Human Rights Act 2004*; and
 - (b) to advise the Attorney-General on anything relevant to the operation of the *Human Rights Act 2004*.

- (3) The exercise of the function mentioned in subsection (1) (a) is subject to any decision of the commission about the exercise of its functions in relation to human rights.

Division 3.7 Ending appointments

28 Application of div 3.7

This division applies to each of the following positions:

- (a) the president;
- (b) the disability and community services commissioner;
- (c) the discrimination commissioner;
- (d) the health services commissioner.

29 Ending appointments

- (1) The Executive may end the appointment of a person to a position to which this division applies—
- (a) if the person contravenes a territory law; or
 - (b) for misbehaviour; or
 - (c) if the person becomes bankrupt or executes a personal insolvency agreement; or
 - (d) if the person is convicted, in the ACT, of an offence punishable by imprisonment for at least 1 year; or
 - (e) if the person is convicted outside the ACT, in Australia or elsewhere, of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year.
- (2) The Executive must end the person's appointment—
- (a) if the person is absent, other than on leave approved by the Minister, for 14 consecutive days or for 28 days in any 12-month period; or

- (b) for physical or mental incapacity, if the incapacity substantially affects the exercise of the person's functions.

Note A person's appointment also ends if the person resigns (see Legislation Act, s 210).

Division 3.8 Commission procedures

30 Time and place of commission meetings

- (1) Meetings of the commission are to be held when and where it decides.
- (2) However, the commission must meet at least once each month.
- (3) The president—
 - (a) may at any time call a meeting of the commission; and
 - (b) must call a meeting if asked by at least 2 members.
- (4) The president must give the other members reasonable notice of the time and place of a meeting called by the president.

31 Presiding member at meetings

- (1) The president presides at all meetings at which the president is present.
- (2) If the president is absent, the member chosen by the members present presides.

32 Quorum at meetings

Business may be carried on at a meeting of the commission only if at least $\frac{1}{2}$ the members of the commission are present.

33 Voting at meetings

- (1) At a meeting of the commission each member has a vote on each question to be decided.

- (2) A question is decided by a majority of the votes of the members present and voting but, if the votes are equal and the president is present, the president has a deciding vote.

34 Individual with more than 1 role

- (1) This section applies if—
- (a) a person holds 2 or more positions under this Act; and
 - (b) the person is a member of the commission because of each of the positions.

Example

The discrimination commissioner may be appointed to be the human rights commissioner.

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).

- (2) The person is only entitled to 1 vote at commission meetings.
- (3) In working out whether $\frac{1}{2}$ the members are present at a meeting for section 32 (Quorum at meetings), the number of members is taken to be the number of individuals who are members.

Example

If the discrimination commissioner is also the human rights commissioner, the number of members is taken to be 4. Therefore, 2 members (rather than 3) would need to be present at a meeting to carry on business.

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).

35 Conduct of meetings etc

- (1) A meeting may be held using a method of communication, or a combination of methods of communication, that allows a commission member taking part to hear what each other member

taking part says without the members being in each other's presence.

Examples

a phone link, a satellite link

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).

- (2) A commission member who takes part in a meeting conducted under subsection (1) is taken, for all purposes, to be present at the meeting.
- (3) A resolution is a valid resolution of the commission, even if it is not passed at a meeting of the commission, if—
 - (a) notice of the resolution is given under procedures decided by the commission; and
 - (b) all members agree, in writing, to the proposed resolution.
- (4) The commission must keep minutes of its meetings.

Division 3.9 Staff and consultants of commission

36 Staff of commission

The commission staff must be employed under the *Public Sector Management Act 1994*.

37 Consultants of commission

- (1) The commission may engage consultants for this Act.
- (2) Consultants are to be engaged on terms decided by the commission.
- (3) However, this section does not give the commission a power to enter into a contract of employment.

Part 4 Complaints

Division 4.1 Making complaints

38 Outline—div 4.1

This division sets out the complaints that may be made under this Act, who can complain and how.

39 When may someone complain about a health service?

- (1) A person may complain to the commission about a health service if—
- (a) the service is not being provided appropriately; or
 - (b) the person believes that the provider of the service has acted inconsistently with any of the following:
 - (i) the health code;
 - (ii) if there is no health code—the health provision principles;
 - (iii) a generally accepted standard of health service delivery expected of providers of the same kind as the provider;
 - (iv) any standard of practice applying to the provider under the *Health Professionals Act 2004*;
 - (v) the National Standards for Mental Health Services endorsed by the Australian Health Ministers Advisory Council's National Mental Health Working Group, as amended from time to time;
 - (vi) any other standard prescribed by regulation; or
 - (c) the service is not being provided.

(2) In this section:

health provision principles—see section 90 (2).

40 When may someone complain about a service for people with a disability?

A person may complain to the commission about a service for people with a disability if—

- (a) the service is not being provided appropriately; or
- (b) the person believes that the provider of the service has acted inconsistently with any of the following:
 - (i) the Home and Community Care National Service Standards, as amended from time to time;
 - (ii) the human rights principles set out in the *Disability Services Act 1991*, schedule 1;
 - (iii) the requirements to be complied with in relation to the design and implementation of programs and services relating to people with disabilities set out in the *Disability Services Act 1991*, schedule 2;
 - (iv) the National Standards for Mental Health Services endorsed by the Australian Health Ministers Advisory Council's National Mental Health Working Group, as amended from time to time;
 - (v) the generally accepted standard of service delivery expected of a provider of the kind of service to which the complaint relates;
 - (vi) any other standard prescribed by regulation; or

- (c) the service is not being provided.

Note For the availability and the appropriate version of the standards mentioned in par (b) (i) and (iv), see s 96 (Inspection of incorporated documents) and s 97 (Notification of certain incorporated documents) (see also dict, def *incorporated document*).

41 When may someone complain about a service for older people?

A person may complain to the commission about a service for older people if—

- (a) the service is not being provided appropriately; or
- (b) the provider of the service has acted inconsistently with any of the following:
- (i) the Home and Community Care National Service Standards, as amended from time to time;
 - (ii) the generally accepted standard of service delivery expected of a provider of the kind of service to which the complaint relates;
 - (iii) any other standard prescribed by regulation; or
- (c) the service is not being provided.

42 What complaints may be made under this Act?

- (1) The following complaints may be made under this Act:
- (a) a health service complaint; or
 - (b) a disability service complaint; or
 - (c) an older people service complaint; or

- (d) a complaint (a *discrimination complaint*) about an unlawful act under the *Discrimination Act 1991*, part 3 (Unlawful discrimination), part 5 (Sexual harassment), section 66 (Unlawful vilification—race, sexuality etc) or part 7 (Other unlawful acts); or
- (e) a complaint on a ground mentioned in the *Health Records (Privacy and Access) Act 1997*, section 18.

Note 1 A health professional report is dealt with by way of commission-initiated consideration (see s 94 (2)).

Note 2 The commission may also consider matters that have not been raised by complaints under pt 3.4 (see s 48).

- (2) To remove any doubt, a complaint that may be made under this Act is made under this division.

43 Who may make a complaint under this Act?

- (1) A complaint about an act may be made to the commission under this Act by—
 - (a) a person (the *aggrieved person*) aggrieved by the act; or
 - (b) an agent of an aggrieved person; or
 - (c) if the aggrieved person is a child—a parent or guardian of the aggrieved person; or
 - (d) if a person (the *carer*) has guardianship or control of the affairs of the aggrieved person under another law or an order of a court or tribunal—the carer; or
 - (e) if the aggrieved person cannot complain for any reason and no-one has guardianship or control of the aggrieved person's affairs under another law or an order of a court or tribunal—a person approved by the commission to make a complaint for the aggrieved person; or

- (f) if the complaint is a health service complaint, disability service complaint or older people service complaint—anyone.

Note If a complaint is made under par (f) by a person who could not otherwise complain under another paragraph, the commission may conduct a commission-initiated consideration into the matters raised by the complaint (see s 48 (2)).

- (2) To remove any doubt—
- (a) no-one may be required to make a complaint; and
- (b) if a complaint is made under subsection (1) (f)—the complainant cannot require the complaint to be considered.
- (3) A person may act as the agent of an aggrieved person only if the person is—
- (a) authorised in writing to act for the aggrieved person; or
- (b) authorised by the commission to act for the aggrieved person.
- (4) The commission may authorise a person to act as the agent of an aggrieved person only if the commission is satisfied, on reasonable grounds, that the aggrieved person cannot for any reason make a complaint or authorise a person to make a complaint for the aggrieved person.
- (5) A single complaint may be made by or for 2 or more aggrieved people.

44 Complaint to be in writing

- (1) A complaint must—
- (a) be in writing; and
- (b) if the complaint is made by an agent—state that it is made for an aggrieved person and name the aggrieved person; and
- (c) state the complaint and the grounds on which it is based; and
- (d) include the name and address of the complainant.

- (2) However, a person is entitled to reasonable assistance from the commission to put the complaint into writing.

Examples of when assistance would be reasonable

- 1 if the person cannot put the complaint in writing
- 2 if the person has difficulty putting the complaint in writing

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).

45 Commission's obligation to be prompt and efficient

- (1) The commission must deal with complaints promptly and efficiently.
- (2) In particular, the commission must—
 - (a) allocate each complaint as soon as possible; and
 - (b) if the commission decides to consider the complaint by a commission-initiated consideration under section 48 (2)—tell the person who made the complaint, in writing, about the decision and that the person will not receive progress reports about the consideration; and
 - (c) before considering the complaint, tell the complainant and the person complained about, in writing, that the complaint is to be considered; and
 - (d) if the complaint is a discrimination complaint and the commission decides not to refer the complaint for conciliation—tell the complainant, in writing, that the complaint will not be referred for conciliation and include a discrimination referral statement with the notice; and
 - (e) tell the complainant, in writing, how consideration of the complaint by the commission is progressing not later than 6 weeks after the last time the commission told the complainant, in writing, about the complaint's progress; and

- (f) if the complaint is closed for any reason—tell the complainant and the person complained about, in writing, that the complaint has been closed within 4 weeks after the day the complaint is closed.

Example for par (e)

The commission tells a complainant, in writing, that his complaint has been allocated to a particular commissioner on 30 June. On 28 July the commission tells the complainant, in writing, that the complaint is being referred to conciliation and the conciliation will take place on 15 August. The commission is not required to tell the complainant anything further until 6 weeks after 28 July.

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).

46 Complainant's obligations in relation to complaint

The complainant for a complaint must—

- (a) keep the commission informed of any change in the complainant's name or address while the commission is dealing with the complaint; and
- (b) if the commission requires the complainant under section 73 to provide further information, or produce any document or thing—provide the further information, or produce the document or thing, as required; and
- (c) if the commission requires the complainant under section 74 to attend before a person to answer questions—attend before the person, and answer questions, as required.

Note 1 A complaint may be closed if the complainant does not comply with a requirement under s 73 or s 74 (see s 78 (1) (c) or (d)).

Note 2 If the commission requires a person other than the complainant or aggrieved person (eg the person complained about) to provide information, produce a document or thing or attend to answer questions, the person commits an offence if the person does not comply with the requirement (see s 73 and s 74).

Division 4.2 Dealing with complaints

Note to div 4.2

The commission must close certain complaints. For example, the commission must close a complaint that is frivolous or vexatious, or a complaint that has been or is being dealt with by a court or tribunal (see s 78 (2), esp par (c) (ii) and (iii)).

47 Outline—div 4.2

- (1) This division sets out how the commission deals with the complaints it receives.
- (2) In summary, complaints may, but need not, go through the following steps:
 - (a) allocation;
 - (b) consideration;
 - (c) conciliation;
 - (d) closure;
 - (e) reporting.
- (3) Complaints need not go through the steps mentioned in subsection (2) in the order they appear in that subsection.

48 Consideration without complaint or appropriate complainant

- (1) The commission may, on its own initiative, consider (by a *commission-initiated consideration*)—
 - (a) an act that appears to the commission to be an act that a person could make, but has not made, a complaint about under this Act; or
 - (b) any other matter related to the commission's functions.

Examples

The commission may consider an issue of public interest or public safety that relates to its functions.

Note 1 A health professional report may also be dealt with by commission-initiated consideration (see s 94).

Note 2 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).

(2) The commission may, on its own initiative, also consider (by a ***commission-initiated consideration***) a complaint that is a disability service complaint, health service complaint or older people service complaint, if—

(a) the person who made the complaint could not have made the complaint under section 43 (1) (a) to (d); and

(b) the commission does not approve the person under section 43 (1) (e) to make the complaint for the aggrieved person.

Note Under s 43 (1) (a) to (e), complaints may be made by an aggrieved person, an agent of an aggrieved person, a parent or guardian of an aggrieved person who is a child, a person with guardianship or control of an aggrieved person or a person approved by the commission to make the complaint on an aggrieved person's behalf.

(3) Without limiting when the commission may consider a matter by a commission-initiated consideration, the commission may consider a complaint by a commission-initiated consideration if—

(a) the complainant has withdrawn the complaint for any reason; but

(b) the commission is satisfied that it is in the public interest to consider the complaint.

Examples of when it may be in the public interest to consider withdrawn complaint

- 1 The complaint appears to reveal a systemic problem relating to the provision of a service or another act.
 - 2 The complaint, if substantiated, raises a significant issue for the ACT, or an issue of public safety.
 - 3 It may be possible for action in relation to the complaint to be taken under another Act if the complaint is substantiated by, for example, reporting a health professional to a health profession board or referring a complaint to the discrimination tribunal.
- (4) A commission-initiated consideration must, as far as practicable, be conducted as if it were a consideration of a complaint.

Note The commission is the complainant for a commission-initiated consideration (see dict, def *complainant*).

49 Treatment of complaint if complaint dealt with as commission-initiated consideration

- (1) This section applies if the commission decides to consider a complaint by commission-initiated consideration under section 48 (2).
- (2) The person who made the complaint stops being the complainant and the commission becomes the complainant.
- (3) However, the commission continues to have the same obligations under section 45 (2) (f) in relation to the person as the commission would have if the person were the complainant, but must not give the person information about the aggrieved person or the person complained about.

Note Under s 80 (3) the commission need not give the person a final report in relation to the complaint.

50 Allocating complaints

- (1) The commission allocates a complaint by deciding which commissioner will be responsible for considering the complaint under division 4.4 for the commission.

Example

The commission may decide that the disability and community services commissioner and the discrimination commissioner will jointly consider a complaint about services provided discriminatively in relation to a person with a disability.

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).

- (2) However, the commission must not give responsibility for considering the complaint to the president.

51 Referring complaints for conciliation

- (1) The commission may, at any time, refer a complaint, or matter that forms part of a complaint, for conciliation if satisfied that—
 - (a) the complaint or matter is likely to be successfully conciliated; and
 - (b) the matter is appropriate for conciliation.

Note Conciliation is dealt with in div 4.3.

- (2) The commission may continue to consider a complaint that has been referred, or part of which has been referred, for conciliation.

52 Considering complaints

- (1) The commissioner given responsibility for considering a complaint for the commission must consider the complaint.
- (2) The commissioner may, but need not, continue to consider the complaint while the complaint is being conciliated.

53 Referral of discrimination complaints

- (1) This section applies if—

- (a) either—
 - (i) a complainant is given a discrimination referral statement under section 45 (2) (d) or section 64; or
 - (ii) a statement under section 82 (1) is included in a final report in relation to a complaint; and
 - (b) the complainant requires the commission to refer the complaint to the discrimination tribunal.
- (2) The commission must—
- (a) refer the complaint to the discrimination tribunal; and
 - (b) tell the complainant and the person complained about in writing about the referral.

Note The complaint must also be closed (see s 78 (2) (d)).

Division 4.3 Conciliation of complaints

54 Outline—div 4.3

This division sets out the process to help a complainant and the person complained about to endeavour to reach agreement on some or all of the matters complained about in a complaint.

55 What is *conciliation*?

- (1) For this Act, *conciliation* of a complaint involves an impartial third-party (the *conciliator*) helping the parties to the conciliation to endeavour to resolve the matters raised by the complaint.
- (2) Conciliation requires the parties' willing and informed agreement to take part in the conciliation.

Note The president may require a party to attend conciliation, but may not require the party to take part.

- (3) The parties to conciliation decide the outcome of the conciliation, usually with advice from the conciliator.

56 Delegation of president’s function of conciliation

- (1) The president may delegate the function of conciliation to someone else.

Note For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

- (2) However, the president must not delegate the function of conciliation to a commissioner.

57 Parties to conciliation

- (1) The parties to the conciliation are the complainant and the person complained about.
- (2) The president may allow other people to attend the conciliation if the president considers that their attendance will help the conciliation.
- (3) However, neither the complainant nor the person complained about may be represented by anyone else in the conciliation unless the president is satisfied that the representation is likely to help the conciliation substantially.

58 Request for third-party to attend

The president may, in writing, ask a person other than a party to attend the conciliation if satisfied that the person’s attendance is likely to help the conciliation.

59 Compulsory attendance at conciliation

- (1) The president may, in writing, require a party to attend the conciliation.
- (2) The requirement to attend must state the time and place that the person is required to attend.

Note For the entitlement to representation at conciliation, see s 57 (3).

- (3) A person commits an offence if—
- (a) the person is required to attend a conciliation; and
 - (b) the person does not attend as required.
- Maximum penalty: 50 penalty units.
- (4) Subsection (3) does not apply if the person has a reasonable excuse for not attending the conciliation as required.

60 Conduct of conciliation

Conciliation is to be conducted in the way the president decides.

Example

The president may decide that a complaint is to be split and the parts are to be conciliated separately.

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).

61 Relationship between conciliation and consideration

- (1) Conciliation of the complaint must be separate from, and independent of, any consideration of the complaint.

Examples

- 1 Information obtained during the conciliation must not be used for the consideration of the complaint.
- 2 A person considering a complaint must not conciliate, or take part in the conciliation of, the complaint.

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).

- (2) However—
- (a) the president may use information from the consideration to help with conciliation; and

- (b) this section does not apply to a conciliation agreement, or part of a conciliation agreement, if the parties have agreed under section 63 to allow the commission to use the agreement or part.

Note The president must also tell the other members of the commission about the end of conciliation (see s 65 (2)).

62 Conciliated agreements

- (1) If a complaint is resolved by conciliation, the president must help the parties make a written record (the *conciliation agreement*) of the agreement they have reached.
- (2) Each party must sign the agreement.
- (3) The president must—
 - (a) give each party a copy of the conciliation agreement; and
 - (b) if the complaint is a discrimination complaint—give the agreement to the discrimination tribunal; and
 - (c) tell the other members of the commission that an agreement has been reached.
- (4) If the complaint to which the conciliation agreement relates is a discrimination complaint, the agreement is enforceable as if it were an order of the discrimination tribunal.

63 Provision of conciliation agreement to commission

- (1) This section applies if the parties to the conciliation make a conciliation agreement.
- (2) The president must give a copy of the conciliation agreement to the other members of the commission.

- (3) However, the commission may use information in the conciliation agreement, whether for considering the complaint to which the agreement relates or otherwise, only if the parties agree to the use by the commission of the agreement or the part of the agreement containing the information.
- (4) An agreement to allow the commission to use a conciliation agreement, or part of a conciliation agreement, may be in the conciliation agreement or elsewhere.
- (5) If the parties agree to the use by the commission of the conciliation agreement, or a part of the agreement, the commission may use anything in the conciliation agreement, or the part of the agreement, as the commission considers appropriate.

64 Unsuccessful conciliation of discrimination matter

If, at any time during the conciliation of a discrimination matter, the president decides that conciliation is unlikely to be successful, the president must tell the parties in writing about the decision and include a discrimination referral statement with the notice.

65 End of conciliation

- (1) Conciliation of a complaint ends if—
 - (a) agreement is reached on the matters raised by the complaint and the parties end the conciliation; or
 - (b) the parties agree to end the conciliation; or
 - (c) a party withdraws from the conciliation; or
 - (d) the president is satisfied that the conciliation is unlikely to be successful.

- (2) If the conciliation ends, the president must, as soon as practicable, tell the following people that the conciliation has ended and why it has ended:
- (a) the other members of the commission;
 - (b) the complainant;
 - (c) the person complained about.

66 Admissibility of evidence

- (1) This section—
- (a) applies to—
 - (i) a communication made between people attending a conciliation (including the conciliator); and
 - (ii) a document (whether delivered or not) that has been prepared in relation to the conciliation; but
 - (b) does not apply to a conciliation agreement, or part of a conciliation agreement, if the parties have agreed under section 63 to allow the commission to use the agreement or part.
- (2) The *Evidence Act 1995* (Cwlth), section 131 (Exclusion of evidence of settlement negotiations) applies to a communication or document to which this section applies as if the communication or document were a communication or document mentioned in that Act, section 131 (1).

67 Conciliation attendees protected from civil liability

A person attending conciliation does not incur civil liability for an act done honestly and without recklessness at the conciliation.

Division 4.4 Consideration of complaints

68 Outline—div 4.4

This division sets out the process the commission follows, and the powers the commission may exercise, in considering a complaint.

69 Purpose of considering complaints

A consideration of a complaint has the following 3 main purposes:

- (a) to allow the commission to decide whether the complaint is a complaint that may be made under this Act and whether the complainant is a person who may make the complaint under this Act;
- (b) to provide information that may be used to help conciliation of the complaint;
- (c) to work out whether the conduct complained about was engaged in in the way complained about and, however it was engaged in, whether there is an adequate ground for the commission to report.

70 Single consideration of several complaints

The commission may conduct a single consideration in relation to 2 or more complaints that arise out of the same or substantially the same circumstances or subject matter.

71 Representative complaints

The commission may deal with a complaint as a representative complaint if the commission believes, on reasonable grounds, that—

- (a) the complainant is a member of a class of people the members of which have, or are reasonably likely to have, complaints against a single person or group; and

- (b) the material facts of the complainant's complaint are the same as, or similar or related to, the material facts of the complaints of other members of the class; and
- (c) common questions of law or fact arise, or would arise, in the consideration of complaints that have been, or could be, made by other members of the class in relation to the complaints; and
- (d) it is desirable to deal with the complaint as a representative complaint.

72 Conduct of consideration

A consideration in relation to a complaint must be conducted in the way the commission decides, unless otherwise expressly provided by this Act.

Example

The commission may decide that a complaint is to be split and the parts are to be considered separately.

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).

73 Power to ask for information, documents and other things

- (1) This section applies if the commission believes, on reasonable grounds, that a person can provide information or produce a document or something else relevant to a consideration in relation to a complaint.
- (2) The commission may, by written notice given to the person, require the person to provide the information or produce the document or other thing.
- (3) The notice must state how, and the time within which, the person must comply with the requirement.

- (4) A person commits an offence if—
- (a) the person is required by a notice under this section to provide information to the commission for a consideration in relation to a complaint; and
 - (b) the person is not the complainant or the aggrieved person for the complaint; and
 - (c) the person fails to provide the information to the commission as required.

Maximum penalty: 50 penalty units.

Note 1 The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

Note 2 If the commission requires a complainant to provide information or produce a document or other thing and the complainant does not comply with the requirement, the commission may close the complaint (see s 78 (1) (d)).

Note 3 Giving false information is an offence against the Criminal Code, s 338.

- (5) Subsection (4) does not apply if the person has a reasonable excuse for failing to provide the information to the commission as required.

- (6) A person commits an offence if—
- (a) the person is required by a notice under this section to produce to the commission a document or other thing for a consideration in relation to a complaint; and
 - (b) the person is not the complainant or the aggrieved person for the complaint; and
 - (c) the person fails to produce the document or other thing to the commission as required.

Maximum penalty: 50 penalty units.

- (7) Subsection (6) does not apply if the person has a reasonable excuse for failing to produce the document or other thing to the commission as required.

74 Requiring attendance etc

- (1) If the commission believes, on reasonable grounds, that someone can provide information relevant to a consideration in relation to a complaint, the commission may, by written notice given to the person, require the person to attend before a named person (an *interviewer*), at the reasonable time and place stated in the notice, to answer questions relevant to the consideration.

Note For how documents may be served, see the Legislation Act, pt 19.5.

- (2) A person who attends before an interviewer under a notice under subsection (1) must continue to attend as reasonably required by the interviewer to answer questions relevant to the consideration.
- (3) A person commits an offence if—
- (a) the person is required by a notice under subsection (1) to attend before an interviewer to answer questions for a consideration in relation to a complaint; and
 - (b) the person is not the complainant or the aggrieved person for the complaint; and
 - (c) the person does not attend before the interviewer as required.

Maximum penalty: 50 penalty units.

- (4) Subsection (3) does not apply if the person has a reasonable excuse for not attending before the interviewer as required.
- (5) A person commits an offence if—
- (a) the person is required by a notice under subsection (1) to attend before an interviewer to answer questions for a consideration in relation to a complaint; and

- (b) the person is not the complainant or the aggrieved person for the complaint; and
- (c) the person attends before the interviewer as required; and
- (d) the person fails to continue to attend as reasonably required by the interviewer to answer questions relevant to the consideration.

Maximum penalty: 50 penalty units.

- (6) Subsection (5) does not apply if the person has a reasonable excuse for failing to continue to attend as required by the interviewer.
- (7) A person commits an offence if—
 - (a) the person is required by a notice under subsection (1) to attend before an interviewer to answer questions for a consideration in relation to a complaint; and
 - (b) the person attends before the interviewer as required; and
 - (c) the interviewer requires the person to answer a question; and
 - (d) the person fails to answer the question.

Maximum penalty: 50 penalty units.

Note 1 The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

Note 2 Giving false information is an offence against the Criminal Code, s 338.

- (8) Subsection (7) does not apply if the person has a reasonable excuse for failing to answer the question.

75 Privileges against selfincrimination and exposure to civil penalty

- (1) This section applies if a person is required by a notice under section 73 to provide information or produce a document or other thing.

- (2) This section also applies if—
- (a) a person is attending before an interviewer in accordance with a requirement under section 74; and
 - (b) the interviewer requires the person to answer a question.
- (3) The person cannot rely on the common law privileges against selfincrimination and exposure to the imposition of a civil penalty to refuse to provide the information, produce the document or other thing or answer the question.

Note The Legislation Act, s 171 deals with client legal privilege.

- (4) However, any information, document or other thing obtained, directly or indirectly, because of providing the information, the producing of the document or other thing, or the answering of the question is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for—
- (a) an offence against this part; or
 - (b) any other offence in relation to the falsity of the information, document, other thing or answer.

76 Commission may keep document or other thing etc

- (1) If a document or something else is produced in accordance with a requirement under section 73 (Power to ask for information, documents and other things), the commission—
- (a) may take possession of, make copies of, or take extracts from, the document or may take possession of the other thing; and
 - (b) may keep the document or other thing for the period that is necessary for the consideration to which the document or thing relates; and

- (c) during that period, must allow anyone who would be entitled to inspect the document or other thing, if it were not in the possession of the commission, to inspect it and, for a document, make copies of, or take extracts from, it.
- (2) The commission must return a document or something else produced in accordance with a requirement under section 73 if the commission is no longer entitled to keep the document or thing under this section.

Division 4.5 Closing complaints and reporting

77 Outline—div 4.5

- (1) This division sets out when a complaint can be closed and how it is closed, including the making of closing and other reports.
- (2) This division also sets out what a report can contain, the people to whom it may be provided and what happens after a report is made.

78 When complaints can be closed

- (1) The commission may close a complaint at any time if—
 - (a) more than 2 years have elapsed since the circumstances that gave rise to the complaint happened; or
 - (b) the complainant has, without good reason, failed to take reasonable steps to resolve the complaint; or
 - (c) the complainant has failed to comply with a requirement under section 73 (Power to ask for information, documents and other things) or section 74 (Requiring attendance etc); or
 - (d) the complainant tells the commission in writing that the complainant wishes to withdraw the complaint, whether or not because it has been conciliated to the complainant's satisfaction; or
 - (e) the complaint has been referred to a health profession board; or

(f) the matters raised by the complaint have been successfully conciliated.

(2) The commission must close a complaint made to it if—

(a) the complaint is not a complaint that may be made under this Act; or

Note For complaints that may be made under this Act, see s 42.

(b) the complaint is not made by a person who may make a complaint under this Act; or

Note For people who may make a complaint under this Act, see s 43.

(c) satisfied that—

(i) the complainant has been given a reasonable explanation and the complaint needs no further action by the commission; or

(ii) the complaint is frivolous, vexatious or not made honestly; or

(iii) the matters raised by the complaint have been, or are being, dealt with by a court or tribunal or have been dealt with by the commission; or

(iv) the complaint lacks substance; or

Example of complaint lacking substance

The complaint is about discrimination, but the discrimination is not unlawful under the *Discrimination Act 1991*, part 3, part 5, section 66 or part 7.

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).

(d) the complaint is a discrimination complaint that has been referred to the discrimination tribunal; or

(e) the complaint has been considered to the commission's satisfaction.

79 Reopening complaints

- (1) The commission may, but need not, reopen a complaint if—
 - (a) the complaint was closed under section 78 (1) (c) because the complainant had not complied with a requirement mentioned in the paragraph; and
 - (b) the complainant complies with the requirement.
- (2) If the requirement was a requirement to do something by a stated time, the requirement is taken to have been complied with for subsection (1) even though the complainant did not do it within the required time.

80 How complaints are closed

- (1) The commission closes a complaint by giving a written report (the *final report*) to—
 - (a) the complainant; and
 - (b) the person complained about.

Note 1 If the complaint is dealt with by commission-initiated consideration, the commission cannot give the complainant information about the aggrieved person (see s 49).

Note 2 For how documents may be served, see the Legislation Act, pt 19.5.

- (2) However, the commission must not include an adverse comment in relation to a person in the final report unless the commission has given the person a reasonable opportunity to respond to the proposed comment.
- (3) The commission need not give a final report to close a commission-initiated consideration.

81 **Final report**

- (1) If the commission is satisfied that the person complained about has acted inconsistently with an applicable standard, the final report may make recommendations to the person.

Note *Applicable standard*—see dict.

- (2) A recommendation in a final report need not be limited to matters raised by the complaint being closed.
- (3) If a recommendation recommends that action be taken, it must state the reasonable time within which the action should be taken.

82 **Closing discrimination complaints**

- (1) The final report in relation to a discrimination complaint must include a statement to the effect that—
 - (a) the complainant may ask the commission to refer the complaint to the discrimination tribunal within 60 days after the day the final report is given to the complainant; and
 - (b) after the 60 days, the complainant may apply to the tribunal under the *Discrimination Act 1991*, section 78 for the complaint to be heard.

Note The commission must refer the complaint to the tribunal if the complainant asks it to refer the complaint within the 60 days (see s 53).

- (2) However, subsection (1) does not apply if the parties to the complaint have made a conciliation agreement in relation to the complaint.
- (3) This section is additional to the other requirements of this Act for a final report.

83 Third-party reports

- (1) The commission may make recommendations to a third-party in a report (a *third-party report*) other than a final report if, after considering a complaint, the commission is satisfied—

(a) that—

- (i) the third-party has acted inconsistently with an applicable standard that applies to the third-party, or is otherwise failing to adequately do something the third-party is required to do; or

Note *Applicable standard*—see dict.

- (ii) the recommendations are about matters of public policy; or

- (iii) the recommendations are about matters that the third-party has an appropriate interest in; and

(b) that it is in the public interest to make the report.

Example of people to whom third-party report may be given

- 1 a Minister
- 2 a non-government provider
- 3 the employer of the person complained about
- 4 a health profession board
- 5 a hospital or other institution where services are provided by the person complained about
- 6 a funding body

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).

- (2) A recommendation need not be limited to matters raised by the complaint.
- (3) If a recommendation recommends that action be taken, it must state the reasonable time within which the action should be taken.

- (4) However, the commission must not include an adverse comment in relation to a person in a third-party report unless the commission has given the person a reasonable opportunity to respond to the proposed comment.
- (5) To remove any doubt, a third-party report may be made after a final report has been made, whether or not the person complained about has complied with any recommendation made to the person.
- (6) In this section:
third-party means an entity other than the complainant or the person complained about.

84 Commission-initiated reports

- (1) The commission may prepare a report (a *commission-initiated report*) of a commission-initiated consideration and give it to anyone the commission considers appropriate.
- (2) However, the commission must not include an adverse comment in relation to a person in a commission-initiated report unless the commission has given the person a reasonable opportunity to respond to the proposed comment.

85 Responding to recommendations

- (1) An entity commits an offence if—
 - (a) a final report, a third-party report or commission-initiated report recommends that an entity take action within a stated time; and
 - (b) the entity has been given a copy of the report; and
 - (c) the entity fails to tell the commission in writing about the action the entity has taken in relation to the recommendation within 45 days after the later of the following:

- (i) the end of the stated time or any further period allowed by the commission;
- (ii) 3 weeks after the day the entity is given the report.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) The commission may extend, by no longer than 15 days, the period of 45 days mentioned in subsection (1) if, before the end of the period, the entity asks the commission in writing to extend the period.

Note If the entity has not complied with the recommendation, the commission may be able to make a third-party report or publish the entity's name etc under s 86.

86 Publication of name and details of non-complying entity

- (1) For this section, an entity is a *non-complying entity* if—
 - (a) a final report or third-party report recommends that the entity do something within, or stop doing something by, a stated time; and
 - (b) the entity has been given a copy of the report; and
 - (c) the entity has not done the thing, or stopped doing the thing, by the end of the time.
- (2) An entity is also a *non-complying entity* if—
 - (a) the commission has required the entity under this Act to provide information, produce a document or thing or attend to answer questions; and
 - (b) the entity has not complied with the requirement.

- (3) The commission may do either or both of the following in relation to the non-complying entity's name and details of the entity's failure mentioned in subsection (1) or (2):
- (a) publish them;
 - (b) report them to the Minister.

Examples of where name and details may be published for par (a)

- 1 on the commission website
- 2 in a newspaper
- 3 in the commission's annual report

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).

- (4) However, the commission must not publish or report under subsection (3) unless—
- (a) the commission has given the entity a written notice that—
 - (i) gives details of the entity's failure to which the notice relates; and
 - (ii) explains that the commission proposes to publish under subsection (3) the entity's name and details of the entity's failure; and
 - (iii) invites submissions about the proposed publication within the time stated in the notice (not less than 2 weeks after the day the entity is given the notice); and
 - (b) the time stated in the notice has ended; and
 - (c) the commission has considered any submission made by the entity within the time and is satisfied that it is in the public interest to publish the entity's name and details of the entity's failure.

- (5) To remove any doubt, if the commission reports to the Minister under subsection (3), the Minister may, but need not, present the report to the Legislative Assembly.

87 Reporting to Minister

- (1) The commission may, on its own initiative, give the Minister a written report about any matter of public importance related to the commission, the commission's functions or a matter that may be complained about under this Act.

Note The Minister may direct the commission to report under s 17.

- (2) If the commission gives the Minister a report mentioned in subsection (1) or a third-party report, the Minister must present the report to the Legislative Assembly within 6 sitting days after the day the Minister receives the report.

88 Discrimination referral statements

A *discrimination referral statement* is a statement in a notice in relation to a complaint to the effect that—

- (a) if, within 60 days after the day the notice is given to the complainant, the complainant does not require the commission to refer the complaint to the discrimination tribunal, the commission will close the complaint and take no further action in relation to it; and
- (b) after the 60 days, the complainant may apply to the tribunal under the *Discrimination Act 1991*, section 78 for the complaint to be heard.

Part 5 Health code and health profession boards

Division 5.1 Health code of health rights and responsibilities

89 Approval of health code

- (1) The Minister may, in writing, approve a code (the *health code*) of health rights and responsibilities.
- (2) An approved code is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

90 Contents of health code

- (1) The health code—
 - (a) must deal with the implementation of the health provision principles; and
 - (b) may deal with anything else relevant to the provision or use of a health service.

- (2) In this section:

health provision principles means the following principles:

- (a) a person is entitled to receive appropriate health services of a high standard;
- (b) a person is entitled to be informed and educated about health matters, and available health services, that may be relevant to the person;
- (c) a person who can take part effectively in the making of a decision dealing with the person's health is entitled to do so;

- (d) a person is entitled to be provided with health services in a considerate way that takes into account his or her background, needs and wishes;
- (e) a provider, or person who provides care for a consumer, should be given consideration and recognition for the provider's, or person's, contribution to health care;
- (f) the confidentiality of information about a person's health should be preserved;
- (g) a person is entitled to reasonable access to information about a person's health;
- (h) a person is entitled to reasonable access to procedures for dealing with grievances about the provision of health services.

Division 5.2 Relationship between commission and health profession boards

91 Meaning of registered health professional for div 5.2

In this division:

registered health professional, in relation to a complaint, includes a health professional who was registered at the time the matter complained about happened or failed to happen.

92 Referral of complaints to health profession board

- (1) This section applies if the commission considers that a complaint about a health service indicates that a registered health professional may be contravening, or may have contravened, the required standard of practice, or does not satisfy the suitability to practise requirements, under the *Health Professionals Act 2004*.
- (2) The commission must give the health profession board a copy of—
 - (a) the complaint; and

- (b) all documents it has or gets relating to the complaint.
- (3) To remove any doubt, the referral of a complaint to the health profession board does not prevent the commission from considering the complaint.

93 Complaints referred to health profession board

A health profession board to which the commission has given a complaint in relation to a registered health professional must tell the commission, in writing—

- (a) whether or not the board intends to take action in relation to the health professional; and
- (b) if the board intends to take action in relation to the health professional—what action it proposes to take.

Note The *Health Professionals Act 2004*, pt 10 provides for joint consideration of complaints and health profession reports.

94 Consideration of health professional reports

- (1) The commission may consider a health professional report.
- (2) The consideration must be a commission-initiated consideration.
- (3) The health profession board (the *relevant health profession board*) that regulates the health professional's health profession must be kept informed about the consideration as if the board were the complainant.

Example

The commission must give the health profession board a final report.

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).

- (4) The commission may give the relevant health profession board any information, documents or other things the commission has in relation to the consideration.

Part 6 Miscellaneous

95 Information about complaints

- (1) This section applies to the following services:
 - (a) a disability service;
 - (b) a health service;
 - (c) a service for older people.
- (2) If the service is provided at premises, the provider must provide information at the premises to service consumers about their right to make complaints under this Act and how feedback may be given to the service provider.

Examples of providing information

- 1 a notice on the wall or a pamphlet in the waiting room
- 2 for a service provided at a person's home—giving the person a pamphlet

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).

- (3) A service provider commits an offence if the provider fails to comply with subsection (2).

Maximum penalty: 5 penalty units.

- (4) An offence against subsection (3) is a strict liability offence.

96 Inspection of incorporated documents

- (1) This section applies to an incorporated document, or an amendment or replacement of an incorporated document.

Note For the meaning of *incorporated document*, see the dictionary.

- (2) The chief executive must ensure that the document, amendment or replacement is made available for inspection free of charge to the public on business days at reasonable times at the office of the commission or an administrative unit administered by the chief executive.
- (3) In this section:
amendment, of an incorporated document—see section 97 (6).

97 Notification of certain incorporated documents

- (1) This section applies to—
 - (a) an incorporated document; or
 - (b) an amendment of, or replacement for, an incorporated document.

Example of replacement document

a new edition of the incorporated document

Note 1 For the meaning of *incorporated document*, see the dictionary.

Note 2 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).

- (2) The chief executive may prepare a written notice (an *incorporated document notice*) for the incorporated document, amendment or replacement that contains the following information:
 - (a) for an incorporated document—details of the document, including its title, author and date of publication;
 - (b) for a replacement of an incorporated document—details of the replacement, including its title, author and date of publication;
 - (c) for an amendment of an incorporated document—the date of publication of the amendment (or of the document as amended) and a brief summary of the effect of the amendment;

- (d) for an incorporated document or any amendment or replacement—
- (i) a date of effect (no earlier than the day after the day of notification of the notice); and
 - (ii) details of how access to inspect the document, amendment or replacement may be obtained under section 96 (Inspection of incorporated documents); and
 - (iii) details of how copies may be obtained, including an indication of whether there is a cost involved.
- (3) An incorporated document notice is a notifiable instrument.
- Note* A notifiable instrument must be notified under the Legislation Act.
- (4) An incorporated document, and any amendment or replacement of an incorporated document, has no effect under this Act unless—
- (a) an incorporated document notice is notified in relation to the document, amendment or replacement; or
 - (b) the document, amendment or replacement is notified under the Legislation Act, section 47 (6).
- (5) The Legislation Act, section 47 (7) does not apply in relation to incorporated documents.
- (6) In this section:
- amendment***, of an incorporated document, includes an amendment of a replacement for the incorporated document.
- replacement***, for an incorporated document, means—
- (a) a document that replaces the incorporated document; or
 - (b) a document (an ***initial replacement***) that replaces a document mentioned in paragraph (a); or
 - (c) a document (a ***further replacement***) that replaces an initial replacement or any further replacement.

98 Victimisation etc

- (1) A person (the *first person*) commits an offence if the first person causes or threatens to cause a detriment to someone else (the *other person*) because—
- (a) the other person has—
 - (i) made a complaint under this Act; or
 - (ii) given information or produced a document or other thing to a person exercising a function under this Act or a rights Act; or
 - (iii) given information, produced a document or other thing or answered a question as required under this Act; or
 - (b) the first person believes that the other person intends to do something mentioned in paragraph (a).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A person commits an offence if the person threatens or intimidates someone else with the intention of causing the other person—
- (a) not to make a complaint under this Act; or
 - (b) to withdraw a complaint made under this Act.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

99 Secrecy

- (1) In this section:

court includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

divulge includes communicate.

person to whom this section applies means a person who—

- (a) is or has been—
 - (i) the president; or
 - (ii) a commissioner; or
 - (iii) a person present at conciliation; or
 - (iv) a member of the staff of the commission; or
- (b) exercises, or has exercised, a function under this Act.

produce includes allow access to.

protected information means information about a person that is disclosed to, or obtained by, a person to whom this section applies because of the exercise of a function under this Act by the person or someone else.

- (2) A person to whom this section applies commits an offence if—
 - (a) the person—
 - (i) makes a record of protected information about someone else; and
 - (ii) is reckless about whether the information is protected information about someone else; or
 - (b) the person—
 - (i) does something that divulges protected information about someone else; and
 - (ii) is reckless about whether—
 - (A) the information is protected information about someone else; and

- (B) doing the thing would result in the information being divulged to someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) Subsection (2) does not apply if the record is made, or the information is divulged or communicated—
- (a) under this or any other Act; or
 - (b) in relation to the exercise of a function, as a person to whom this section applies, under this Act or another territory law.
- (4) Subsection (2) does not apply to the divulging or communicating protected information about someone with the person's consent.
- (5) A person to whom this section applies need not divulge or communicate protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another territory law.

100 Protection of officials from liability

- (1) In this section:
- official* means—
- (a) the president; or
 - (b) a commissioner; or
 - (c) a member of staff of the commission; or
 - (d) a person who exercises a function under this Act.
- (2) An official, or anyone engaging in conduct under the direction of an official, is not personally liable for anything done or omitted to be done honestly and without recklessness—

- (a) in the exercise of a function under this Act; or
 - (b) in the reasonable belief that the conduct was in the exercise of a function under this Act.
- (3) Any civil liability that would, apart from subsection (2), attach to an official attaches instead to the Territory.

101 Intergovernmental arrangements

- (1) The Minister may make an arrangement with a Commonwealth Minister in relation to—
- (a) the exercise on a joint basis of any of the Commonwealth commission's functions; or
 - (b) the exercise by the commission, on behalf of the Commonwealth, of any of the Commonwealth commission's functions; or
 - (c) the exercise by the Commonwealth commission, on behalf of the Territory, of any of the commission's functions.
- (2) An arrangement may contain the incidental or supplementary provisions that the Minister and the Commonwealth Minister consider necessary.
- (3) The Minister may arrange with the Commonwealth Minister for the variation or revocation of an arrangement.
- (4) An arrangement, and any variation or revocation of an arrangement, must be in writing.
- (5) An arrangement, or a variation or revocation of an arrangement, is a notifiable instrument.

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

102 Exercise of functions under intergovernmental arrangement

- (1) This section applies to an act done by or in relation to the Commonwealth commission under an arrangement made under section 101 in relation to the exercise by the Commonwealth commission of any of the human rights commission's functions.
- (2) The act is taken, for this Act and all other territory laws, to have been done by or in relation to the human rights commission.

103 Determination of fees and expenses for people asked to attend conciliation

- (1) The Minister may, in writing, determine the fees and expenses payable to people attending the conciliation in accordance with a request under section 58.
- (2) A determination is a notifiable instrument.

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

104 Approved forms

- (1) The commission may approve forms for this Act.
- (2) An approved form is a notifiable instrument.

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

105 Regulation-making power

The Executive may make regulations for this Act.

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

Part 7 Transitional

106 Definitions for pt 7

In this part:

commencement day means the day this Act commences.

community and health services complaints commissioner means the commissioner under the *Community and Health Services Complaints Act 1993* (repealed).

HR(PA) Act means the *Health Records (Privacy and Access) Act 1997*, as in force at any time before commencement day.

pre-amendment Discrimination Act means the *Discrimination Act 1991*, as in force at any time before commencement day.

previous discrimination commissioner means the discrimination commissioner under the pre-amendment Discrimination Act.

107 Conduct engaged in by previous discrimination commissioner

- (1) This section applies to conduct engaged in by the previous discrimination commissioner in relation to a complaint (the *complaint*) made under the pre-amendment Discrimination Act.
- (2) The conduct is taken also to have been engaged in by the commissioner when the conduct was engaged in by the discrimination commissioner.
- (3) This section does not create or continue a right (the *new right*) in a person unless the person had a right equivalent to the new right under the pre-amendment Discrimination Act immediately before commencement day.

108 Conduct engaged in by community and health services complaints commissioner

- (1) This section applies to conduct engaged in by the community and health services complaints commissioner before commencement day.
- (2) The conduct is also taken to have been engaged in by the commission when the conduct was engaged in by the community and health services complaints commissioner.
- (3) This section does not create or continue a right (the *new right*) in a person unless the person had a right equivalent to the new right under the *Community and Health Services Complaints Act 1993* (repealed).

109 Complaints under CHSC Act and HR(PA) Act

- (1) This section applies to a complaint made under the *Community and Health Services Complaints Act 1993*, or the HR(PA) Act, before commencement day.
- (2) The complaint is taken to be a complaint made under this Act at the time the complaint was made under the relevant Act mentioned in subsection (1).
- (3) This section does not require the commission to take action in relation to a complaint that was not being assessed or investigated by the community and health services complaints commissioner immediately before commencement day.

110 Undeclared complaints under pre-amendment Discrimination Act

- (1) This section applies to a complaint made under the pre-amendment Discrimination Act, division 8.2 (Making, investigation, conciliation and referral of complaints) before commencement day that had not been declined under that Act.

- (2) The complaint is taken to have been made under this Act.

111 Investigations under pre-amendment Discrimination Act

An investigation under the pre-amendment Discrimination Act that was not completed before commencement day is taken to be a consideration under this Act.

112 Right to make applications to discrimination tribunal

- (1) This section applies if, immediately before commencement day, a person had a right to make an application to the discrimination tribunal.
- (2) The right to make the application is not affected by the amendments to the pre-amendment Discrimination Act by the *Human Rights Commission Legislation Amendment Act 2005*.
- (3) The discrimination tribunal—
- (a) has jurisdiction to hear and decide the application; and
 - (b) may do anything necessary or convenient to be done to hear and decide the application; and
 - (c) may make any appropriate order.

113 Requirement under pre-amendment Discrimination Act

- (1) This section applies if—
- (a) the previous discrimination commissioner made a requirement of a person under the pre-amendment Discrimination Act, section 108C; and
 - (b) the time for complying with the requirement had not ended immediately before commencement day.
- (2) If the requirement was to provide information or produce a document, it is taken to be a requirement under section 73, made at the time it was made under the pre-amendment Discrimination Act.

- (3) If the requirement was to attend before the commissioner to answer questions, it is taken to be a requirement under section 74.

114 Direction by discrimination commissioner

- (1) This section applies if the previous commissioner gave a direction under the pre-amendment Discrimination Act, section 108 (Prohibiting or controlling publication) and the direction has not been set aside by the discrimination tribunal.
- (2) The direction continues in force in accordance with the pre-amendment Discrimination Act as if the amendments of that Act made by the *Human Rights Commission Legislation Amendment Act 2005* had not been made.

115 Undecided applications to discrimination tribunal to strike out complaint

- (1) This section applies if—
- (a) a person applied to the discrimination tribunal under the pre-amendment Discrimination Act, section 89 to strike out a complaint; and
 - (b) immediately before commencement day—
 - (i) the application had not been withdrawn; and
 - (ii) the tribunal had not decided the application.
- (2) The application is taken to have been made under the *Discrimination Act 1991*, section 79 (Application to strike out complaint).

116 Other undecided applications to discrimination tribunal

- (1) This section applies if—
- (a) a person applied to the discrimination tribunal under the pre-amendment Discrimination Act; and

- (b) the application was not an application to strike out a complaint or to review a requirement made by the previous discrimination commissioner; and
- (c) immediately before commencement day—
 - (i) the application had not been withdrawn; and
 - (ii) the tribunal had not decided the application.
- (2) The application is taken to be an application that may be heard by the discrimination tribunal.
- (3) The complaint to which the application relates is taken to have been made under this Act when the complaint was made.

117 Requests to review under HR(PA) Act

- (1) This section applies to a request to review made under the HR(PA) Act if, immediately before commencement day—
 - (a) the request had been accepted by the community and health services complaints commissioner; and
 - (b) the person who made the request had not withdrawn it; and
 - (c) the commissioner had not made a decision in relation to it.
- (2) The request to review is taken to be a complaint made under this Act when the request was made under the HR(PA) Act.

118 Appeal rights in relation to requests to review

- (1) This section applies if, immediately before commencement day, a person had a right to—
 - (a) apply for review under the *Community and Health Services Complaints Act 1993* (the **CHSC Act**), section 39F; or
 - (b) appeal to the Supreme Court under the **CHSC Act**, section 39G.

- (2) The right to apply for review and then appeal, or the right to appeal—
 - (a) is not affected by the repeal of the CHSC Act; and
 - (b) may be exercised subject to the CHSC Act, section 39F and section 39G as if the Act had not been repealed.

119 References to community and health services complaints commissioner

In an Act or statutory instrument, a reference to the community and health services complaints commissioner includes a reference to the health services commissioner.

120 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act or the *Human Rights Commission Legislation Amendment Act 2005*.
- (2) A regulation may modify this part (including its operation in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.

121 Expiry of pt 7

This part expires 1 year after commencement day.

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
- child
- discrimination tribunal
- document
- entity
- may (see s 146)
- must (see s 146)
- under.

act includes omission.

aggrieved person, in relation to a complaint—see section 43 (1) (a).

applicable standard, in relation to a service provider, means anything mentioned in any of the following provisions that applies to the provider:

- section 39 (1) (b) (When may someone complain about a health service?)
- section 40 (b) (When may someone complain about a service for people with a disability?)
- section 41 (b) (When may someone complain about a service for older people?).

commission—

(a) see section 11; but

(b) in relation to the consideration of a complaint—means the commissioner considering the complaint for the commission.

commission-initiated consideration—see section 48 (1) and (2).

Commonwealth commission means the Human Rights and Equal Opportunity Commission established by the *Human Rights and Equal Opportunity Commission Act 1986* (Cwlth).

complainant means—

- (a) in relation to a complaint—the person who made the complaint; but
- (b) in relation to a commission-initiated consideration under section 48 (2)—the commission and not the person who made the complaint (see s 49).

conciliation, of a complaint—see section 55 (1).

conciliation agreement—see section 62 (1).

conciliator, for a complaint—see section 55 (1).

conduct means an act, an omission to do an act or a state of affairs.

consideration, of a complaint, means consideration of the complaint under division 4.4.

disability service complaint means a complaint about a service for people with a disability that may be made, or is made, under section 40.

disability and community services commissioner means the Disability and Community Services Commissioner under section 20.

discrimination complaint—see section 42 (1) (d).

discrimination referral statement—see section 88.

engage in conduct means—

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

final report, in relation to a complaint—see section 81.

funding body means an entity that has a function of paying for services provided to others.

health code—see section 89.

health professional—see the *Health Professionals Act 2004*, section 14.

health professional report means a report about a health professional that may be made, or is made, under the *Health Professionals Act 2004*, section 78 (Who may report?).

health service—see section 7.

health service complaint means a complaint about a health service that may be made, or is made, under section 39.

health services commissioner means the Health Services Commissioner under section 24.

human rights commissioner means the Human Rights Commissioner under section 26.

incorporated document means—

- (a) the standards mentioned in section 39 (1) (b) (v) (When may someone complain about a health service?); or
- (b) the standards mentioned in section 40 (b) (i) or (iv) (When may someone complain about a service for people with a disability?); or
- (c) an instrument applied, adopted or incorporated by a statutory instrument under this Act.

older people service complaint means a complaint about a service for older people that may be made, or is made, under section 40.

party, to the conciliation of a complaint—the complainant and the person complained about are each a ***party*** to the conciliation (see section 57 (1)).

president means the President of the commission.

provider, of a service—see section 10.

registered, for a health professional, means registered under the *Health Professionals Act 2004*.

related Act—each of the following is a **related Act**:

- (a) *Disability Services Act 1991*;
- (b) *Discrimination Act 1991*;
- (c) *Health Professionals Act 2004*;
- (d) *Health Records (Privacy and Access) Act 1997*;
- (e) *Human Rights Act 2004*.

service for older people—see section 9.

service for people with a disability—see section 8.

third-party report—see section 83 (1).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 7 April 2005.

2 Notification

Notified under the Legislation Act on 1 September 2005.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Human Rights Commission Bill 2005, which was passed by the Legislative Assembly on 23 August 2005.

Clerk of the Legislative Assembly

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