



Australian Capital Territory

# Human Rights Commission Legislation Amendment Act 2005

A2005-41

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2004 134B

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

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Australian Capital Territory

# Human Rights Commission Legislation Amendment Act 2005

**A2005-41**

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An Act to amend various laws because of the establishment of the Human Rights Commission, and for other purposes

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

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2004 134B

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

**1 Name of Act**

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

**2 Commencement**

- (1) Schedule 1, part 1.12 (Remuneration Tribunal Act 1995) commences on the day after this Act's notification day.
- (2) The remaining provisions commence on the day the *Human Rights Commission Act 2005* commences.

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

**3 Legislation amended**

This Act amends the legislation mentioned in schedule 1.

**4 Legislation repealed**

The *Community and Health Services Complaints Act 1993* A1993-96 is repealed.

## **Schedule 1      Consequential amendments**

### **Part 1.1              Civil Law (Wrongs) Regulation 2003**

#### **[1.1]      Section 2, note 1**

*substitute*

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

For example, the signpost definition ‘*health service*—see the *Human Rights Commission Act 2005*, section 7 (1) and (3) (a).’ means that the term ‘health service’ is defined in that section and the definition applies to this regulation.

#### **[1.2]      Dictionary, definitions of *health service* and *provider***

*substitute*

*health service*—see the *Human Rights Commission Act 2005*, section 7 (1) and (3) (a).

*provider*—see the *Human Rights Commission Act 2005*, section 10.

### **Part 1.2              Discrimination Act 1991**

#### **[1.3]      Section 5**

*omit*

**[1.4] Section 6A, note 1**

*substitute*

*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*).

**[1.5] Section 68**

*substitute*

**68 Victimisation**

- (1) It is unlawful for a person (the *first person*) to subject someone else (the *other person*) to any detriment because—
  - (a) the other person has—
    - (i) begun a proceeding under this Act; or
    - (ii) given evidence, or produced a document or thing, to the tribunal; or
    - (iii) reasonably asserted any rights that a person (including the other person) has under this Act; or
    - (iv) claimed that a person has committed an act that is unlawful under this Act; or
  - (b) the first person believes that the other person proposes to do something mentioned in paragraph (a).
- (2) Subsection (1) (a) (iv) does not apply in relation to a claim that is false and is not made honestly.

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**[1.6] Part 8**

*substitute*

## **Part 8**                      **General principles about unlawful acts**

### **70                      Onus of establishing exception etc**

If, apart from an exception, exemption, excuse, qualification or justification under this Act, conduct would be unlawful under part 3, part 5, section 66 or part 7, the onus of establishing the exception, exemption, excuse, qualification or justification lies on the person seeking to rely on it.

### **71                      Unlawful act not an offence**

The doing of an act is not an offence only because it is unlawful under part 3, part 5, section 66 or part 7.

### **72                      Unlawful act no basis for civil action**

This Act does not give a person any right of action in relation to the doing of an act that is unlawful under part 3, part 5, section 66 or part 7.

### **73                      Aiding etc unlawful acts**

A person who aids, abets, counsels or procures someone else to do an act that is unlawful under part 3, part 5, section 66 or part 7 is taken, for this Act, also to have done the act.

## Part 9 Hearing of complaints

### Division 9.1 Preliminary

#### 74 Meaning of *party* for pt 9

In this part:

*party*, in relation to the hearing of a complaint, means—

- (a) the complainant; and
- (b) the respondent; and
- (c) anyone joined by the tribunal under section 83.

#### 75 Reliance on exceptions and exemptions

In considering whether an act is unlawful under part 3, part 5, section 66 or part 7, the tribunal need not consider any exception in part 4 or exemption in part 10, unless the tribunal has information suggesting the exception or exemption applies to the act.

#### 76 Complaints about unlawful discrimination

For this Act, a complaint claiming that a person has done an act that is unlawful under part 3, part 5, section 66 or part 7 is a ***complaint about unlawful discrimination***.

*Note* Complaints about unlawful discrimination are made under the HRC Act (see s 42).

### Division 9.2 Hearings by tribunal

#### 77 Hearings by tribunal

- (1) The tribunal is to hear the following matters:
  - (a) a complaint referred to it by HRC under the HRC Act, section 53;



- (b) an application under section 78 for a complaint to be heard;
  - (c) a complaint in relation to which an application under section 78 is made if the application is granted;
  - (d) an application under section 79 to strike out a complaint;
  - (e) an application for an interim order under section 97 or section 98.
- (2) At least 7 days before a hearing mentioned in subsection (1) (d) and 14 days before any other hearing mentioned in subsection (1), the registrar must give written notice to the parties of the time, date and place of the hearing.
- (3) The tribunal must begin hearing a matter mentioned in subsection (1) (d) within 14 days after the day the application is made.

## **78 Late application in exceptional circumstances**

- (1) This section applies if—
- (a) a complainant has been given a statement under the HRC Act, section 45 (2) (d), section 63 or section 81; and
  - (b) the complainant has not required the commission to refer the complaint to the tribunal within 60 days after the day the statement is given to the complainant.
- (2) The complainant may apply to the tribunal for the complaint to be heard by the tribunal.
- (3) The tribunal may grant the application only if satisfied that exceptional circumstances prevented the complainant from requiring the complaint to be referred to the tribunal within the 60 days.

**79 Application to strike out complaint**

The person against whom a complaint is made may, at any time after the complaint is referred to the tribunal and before the tribunal begins hearing the complaint (other than a time when the complaint is being conciliated under the HRC Act), apply to the tribunal to strike out the complaint on any of the following grounds:

- (a) the complaint is frivolous, vexatious or not made honestly;
- (b) the complaint lacks substance.

**Division 9.3 Tribunal procedure**

**80 Tribunal to decide own procedures**

The tribunal may decide its own procedure in relation to a particular matter in a hearing or a step in a proceeding if no procedure is prescribed under this Act.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

**81 Hearings may be closed**

The tribunal may, on application or on its own initiative, direct that a hearing or part of a hearing be closed to the public and give directions about the people who may be present.

**82 Sittings**

- (1) The tribunal may sit in the places in the ACT that the president decides.
- (2) However, the tribunal must not sit in a place customarily used by a court for hearings unless the president is satisfied that no other suitable place is available or appropriate in the circumstances.

**83      Joining parties**

If the tribunal considers a person ought to be joined as a party to the hearing of a complaint by the tribunal, the tribunal may, by written notice given to the person, join the person as a party.

**84      Appearances**

A party to a tribunal hearing may appear at the hearing.

**85      Representation**

- (1) A party is not entitled to be represented at a hearing unless the tribunal consents to the representation.
- (2) Subsection (1) does not prevent the representation of a party that is a body by a member, officer or employee of the party.
- (3) In this section:  
*party* includes an unincorporated association.

**86      Witness subpoenas**

- (1) For the purposes of a tribunal hearing, the tribunal may subpoena a person to appear as a witness before it—
  - (a) to give evidence; or
  - (b) to produce any document or other thing, stated in the subpoena, in the possession, custody or control of the person; or
  - (c) to give evidence and produce any document or other thing, stated in the subpoena, in the possession, custody or control of the person.
- (2) The tribunal may give a party leave to inspect a document or other thing produced under a subpoena.
- (3) A person is taken to have complied with a subpoena under subsection (1) (b) if the person gives the document or other thing to

the registrar before the date stated in the subpoena for the production of the document or other thing.

- (4) A subpoena must be—
- (a) in writing; and
  - (b) served on the person named in the subpoena.

### **87 Expenses of witnesses etc**

- (1) This section applies to a person attending before the tribunal under a subpoena under section 86.
- (2) The person is entitled to be paid by the Territory for expenses reasonably incurred by the person for the attendance an amount authorised by the tribunal in accordance with the scale and conditions applying to people who attend as witnesses before the Magistrates Court.

*Note* For the amounts paid to witnesses in the Magistrates Court, see the *Magistrates Court (Civil Jurisdiction) Rules 2004*, s 269.

### **88 Failure to attend or produce document**

- (1) A person commits an offence if—
- (a) the person is required by a subpoena under section 86 to appear as a witness before the tribunal; and
  - (b) the person—
    - (i) fails to appear as required by the subpoena; or
    - (ii) fails to continue to attend as reasonably required by the tribunal until excused from further attendance.

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

- (2) A person commits an offence if—
- (a) the person is required by a subpoena under section 86 to produce a document or thing stated in the subpoena to the tribunal; and
  - (b) the person fails to produce the document or thing as required by the subpoena.

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

- (3) This section does not apply if the person has a reasonable excuse.

## **89 Appearance by audiovisual or audio links**

- (1) This section applies if, in relation to a hearing or a part of a hearing (the *relevant hearing*), the tribunal has given a direction under the *Evidence (Miscellaneous Provisions) Act 1991*, section 20 (Territory courts may take evidence and submissions from outside ACT) or section 32 (Use of link in proceedings).
- (2) A person may appear in the relevant hearing, and take part or give evidence, in accordance with the direction, if the person—
- (a) is required or entitled to appear personally, whether as a party or as a witness; or
  - (b) is entitled to appear for someone else.
- (3) A person who appears in the relevant hearing under this section is taken to be before the tribunal.

## **90 Taking evidence**

The tribunal may take evidence on oath or affirmation and, for that purpose—

- (a) may require a person attending before the tribunal to take an oath or make an affirmation; and

(b) may administer an oath or affirmation to the person.

**91 Refusing to take oath or make affirmation**

- (1) A person must not fail to take an oath or make an affirmation when required to do so under section 90 (a).

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

- (2) This section does not apply if the person has a reasonable excuse.

**92 Requiring answer or document**

- (1) The tribunal may require a person appearing before the tribunal—

- (a) to answer a question relevant to the hearing; or  
(b) to produce a document or other thing relevant to the hearing.

- (2) A person must not fail to comply with a requirement made of the person under subsection (1).

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

- (3) This section does not apply if the person has a reasonable excuse.

**93 Prohibiting or controlling publication**

- (1) This section applies to the following material (*protected material*):

- (a) any evidence given before the tribunal;  
(b) the contents of any document produced to the tribunal;  
(c) any information that might allow a person who has appeared before the tribunal to be identified.

- (2) The tribunal may, in writing, direct that protected material must not be—
- (a) published; or
  - (b) published except in the way, or to the people, stated by the tribunal.

(3) A direction to a particular person must be given to the person.

(4) A direction to people generally is a notifiable instrument.

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

(5) A direction takes effect—

- (a) if it is given to a person—on the day it is given to the person; or
- (b) if it is notified—on the day after the day it is notified; or
- (c) in any case if a later date of effect is stated in the direction—on the later date.

(6) A person commits an offence if—

- (a) the person publishes anything; and
- (b) the publication contravenes a direction under this section.

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

**94 Privileges against selfincrimination and exposure to civil penalty**

(1) This section applies if—

- (a) a person is required by a subpoena under section 86 to produce a document or other thing; or
- (b) a person is required under section 92 to answer a question or to produce a document or other thing.

- (2) The person cannot rely on the common law privileges against selfincrimination and exposure to the imposition of a civil penalty to refuse to produce the document or other thing or answer the question.

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

- (3) However, any information, document or other thing obtained, directly or indirectly, because of 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 division; or
  - (b) any other offence in relation to the falsity of the document, other thing or answer.

## **95 Protection of members of tribunal etc**

- (1) A member of the tribunal has, in the exercise of his or her functions as a member, the same protection and immunity as a judge.
- (2) A lawyer appearing for a party to a hearing before the tribunal has the same protection and immunity as a barrister has in appearing for a party in a proceeding in the Supreme Court.

*Note* Section 85 deals with the representation of parties at a hearing.

- (3) A person appearing as a witness before the tribunal—
- (a) has the same protection as a witness in a proceeding in the Supreme Court; and
  - (b) in addition to the penalties provided by this Act, is subject to the same liabilities as a witness in a proceeding in the Supreme Court.



**96 Contempt of tribunal etc**

- (1) A person commits an offence if the person does something in the face of, or within the hearing of, the tribunal that would, if the tribunal were a court of record, be contempt of court.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) A person commits an offence if the person—
- (a) intentionally obstructs or hinders the tribunal in the exercise of its functions; or
  - (b) intentionally causes a substantial disruption to a proceeding before the tribunal.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

**Division 9.4 Granting of relief by tribunal**

**97 Interim orders—complaint before HRC**

- (1) If a complaint has been given to HRC under the *Human Rights Commission Act 2005* (the *HRC Act*) but has not been referred to the tribunal by HRC, the complainant or respondent may apply to the tribunal for an interim order under this section.

*Note* If a form is approved under s 120 for an application, the form must be used.

- (2) If the tribunal is satisfied that an interim order under this section is necessary to preserve the rights of, or state of affairs between, the parties, the tribunal may make the interim order it considers appropriate.
- (3) An interim order remains in force until—
- (a) the commission makes a decision—

- (i) to refer the complaint for conciliation under the HRC Act, section 51; or
    - (ii) to close the complaint under the HRC Act, section 77; or
  - (b) the president of HRC makes a decision under the HRC Act, section 65 (1) (d) that the conciliation of the complaint is unlikely to be successful.
- (4) If a person against whom an interim order is made is not present when the order is made, the registrar must serve a copy of the order on the person as soon as practicable after the order is made.

**98 Interim orders—complaint before tribunal**

- (1) A party to a hearing before the tribunal may apply to the tribunal for an interim order under this section, at any time before or during the hearing.

*Note* If a form is approved under s 120 for an application, the form must be used.

- (2) If the tribunal is satisfied that an interim order under this section is necessary to preserve the rights of, or state of affairs between, the parties, the tribunal may make the interim order it considers appropriate.
- (3) An interim order remains in force until the earlier of the following:
- (a) the tribunal revokes the order;
  - (b) the tribunal dismisses the complaint, or makes an order, under section 99 after hearing the complaint.
- (4) If an interim order is in force, the tribunal may amend or revoke the order on application by a party.
- (5) If a person against whom an interim order is made is not present when the order is made, the registrar must serve a copy of the order on the person as soon as practicable after the order is made.

**99 Decisions following hearing**

- (1) This section applies after the tribunal has heard a complaint.
- (2) If the tribunal is satisfied the complaint is frivolous or vexatious, is not made honestly, or lacks substance, the tribunal must dismiss the complaint.
- (3) If the tribunal is satisfied that the respondent has engaged in unlawful conduct, the tribunal must make 1 or more of the following orders:
  - (a) that the respondent not repeat or continue the unlawful conduct;
  - (b) that the respondent perform a stated reasonable act to redress any loss or damage suffered by a person because of the unlawful conduct;
  - (c) except if the complaint has been dealt with as a representative complaint—that the respondent pay to a person a stated amount by way of compensation for any loss or damage suffered by the person because of the unlawful conduct.
- (4) If the tribunal dismisses the complaint because it is satisfied that the complaint is frivolous or vexatious, or is not made honestly, the tribunal may, by written notice given to the complainant, order the complainant to pay the respondent a stated amount in relation to the expenses reasonably incurred by the respondent in relation to the hearing.
- (5) An amount ordered to be paid to a person under subsection (3) (c) may include an amount in relation to the expenses reasonably incurred by the person in relation to the hearing.

- (6) An amount mentioned in subsection (4) or (5) must be fixed in accordance with the scale of costs applying to a civil proceeding in the Magistrates Court.

*Note* For the scale of costs in the Magistrates Court, see the *Magistrates Court (Civil Jurisdiction) Rules 2004*, s 259.

- (7) If, under this section, the tribunal dismisses the complaint or makes an order in relation to the complaint, the tribunal must, within 28 days after the day it makes the decision, give the parties to the hearing written notice of the decision and the terms of any order.

- (8) In this section:

***unlawful conduct*** means conduct that is unlawful under part 3, part 5, section 66 or part 7.

***representative complaint*** means a complaint that is dealt with by HRC as a representative complaint under the HRC Act, section 71.

- (9) In subsection (8):

***representative complaint*** includes a complaint that has been dealt with as a representative complaint by the discrimination commissioner under section 78 at any time before the commencement of the HRC Act.

- (10) Subsection (9) and this subsection expire 1 month after the day they commence.

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## **Division 9.5                  Enforcement of orders and decisions of tribunal**

### **100                  Failure to comply with tribunal order**

A party to a hearing commits an offence if the party fails to take all reasonable steps to comply with an order of the tribunal.

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

### **101                  Enforcement of tribunal orders**

An order of the tribunal is enforceable as if it were a judgment given by the Magistrates Court in a personal action at law that the court has jurisdiction to hear and decide under the *Magistrates Court Act 1930*, chapter 4 (Civil proceedings).

## **Division 9.6                  Miscellaneous**

### **102                  Statement of reasons**

- (1) This section applies if—
  - (a) the tribunal makes a decision in hearing a complaint; and
  - (b) a party to the hearing asks for a statement of reasons for the decision within 14 days after the day the decision is made.
- (2) The tribunal must give the party a written statement of reasons.

*Note*        The Legislation Act, s 179 deals with what must be included in a statement of reasons.

### **103                  Referral of questions of law to Supreme Court**

- (1) If the tribunal considers that a question of law raises an issue of public importance, the tribunal may refer the question to the Supreme Court.

- (2) The tribunal may act under subsection (1) on its own initiative or on application by a party.

**104 Appeals from tribunal decisions**

- (1) A party to a tribunal hearing may, with the Supreme Court's leave, appeal to the court on a question of law from a decision of the tribunal in the hearing.
- (2) An appeal by a person under subsection (1) must be begun within—
  - (a) 28 days after the day the person is given written notice of the tribunal's decision under section 99 (7); or
  - (b) any further time the Supreme Court allows (whether before or after the end of the 28-day period).
- (3) The Supreme Court must decide the appeal, and may make any of the following orders:
  - (a) an order confirming or setting aside the decision of the tribunal;
  - (b) an order remitting the case to be heard and decided again, either with or without the hearing of further evidence, by the tribunal in accordance with the court's directions;
  - (c) an order for costs.
- (4) The Supreme Court may also make any other order the court considers appropriate.
- (5) This section applies in relation to a decision of the tribunal made on or after the day this section commences.
- (6) Subsection (5) and this subsection expire on 10 January 2006.

**[1.7] Sections 109 and 110**

*omit*

commissioner

*substitute*

HRC

**[1.8] Part 9**

*renumber as part 10*

**[1.9] Part 9A**

*renumber as part 11*

**[1.10] Divisions 9A.1, 9A.2, 9A.3 and 9A.4**

*renumber as divisions 11.1, 11.2, 11.3 and 11.4*

**[1.11] Sections 110A to 110K**

*renumber as sections 111 to 120*

**[1.12] Part 10**

*omit*

**[1.13] Part 11**

*substitute*

## **Part 12 Miscellaneous**

### **121 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) a member of the tribunal; or
  - (ii) the registrar of the tribunal; or
  - (iii) a member of the staff of the tribunal; 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—
- (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 of protected information about someone with the person's consent.
- (5) A person to whom this section applies need not divulge 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.
- (6) In subsection (1):
- person to whom this section applies* includes a person who was the discrimination commissioner under this Act, or a member of the staff of the commission, at any time before the commencement of the HRC Act.
- (7) Subsection (6) and this subsection expire 1 month after the day they commence.

## **122 Relationship to other laws**

This Act is additional to any other territory law that provides for the protection of a person from conduct that is or would be unlawful under this Act.

**123 Regulation-making power**

- (1) The Executive may make regulations for this Act.

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

- (2) The regulations may except people, activities or other things from the operation of particular provisions of part 3, part 5 or part 7.

**[1.14] Dictionary, definitions of *commissioner* and *Commonwealth commission***

*omit*

**[1.15] Dictionary, definition of *complainant***

*substitute*

***complainant***, in relation to a complaint, means the person who made the complaint.

**[1.16] Dictionary, definition of *complaint***

*substitute*

***complaint*** means a complaint about unlawful discrimination that may be made under the HRC Act.

**[1.17] Dictionary, new definitions**

*insert*

***complaint about unlawful discrimination***—see section 76.

***HRC*** means the human rights commission.

***HRC Act*** means the *Human Rights Commission Act 2005*.

**[1.18] Dictionary, definition of *investigation***

*omit*

**[1.19] Dictionary, definition of *party***

*substitute*

*party*, for part 9 (Hearing of complaints)—see section 74.

**[1.20] Dictionary, definition of *representative complaint***

*omit*

**[1.21] Dictionary, definition of *respondent***

*substitute*

*respondent*, in relation to a complaint, means the person against whom the complaint is made.

**[1.22] Dictionary, definition of *staff***

*omit*

**[1.23] Dictionary, definition of *tribunal***

*substitute*

*tribunal* means the Discrimination Tribunal established by section 111.

## **Part 1.3 Freedom of Information Act 1989**

**[1.24] Section 6 (3)**

*substitute*

- (3) The human rights commission is exempt from the operation of this Act in relation to documents created or received by the commission in relation to—
  - (a) a complaint made to the commission under the Health Records Act, section 18; or

- (b) the exercise of a function under the *Human Rights Commission Act 2005* in relation to a complaint mentioned in paragraph (a).

*Note* **Exercise** and **function** are defined in the Legislation Act, dict, pt 1.

**[1.25] New section 6 (5)**

*insert*

- (5) If the CHSC commissioner was exempt from the operation of this Act in relation to a document created or received before the HRC commencement day—
- (a) the document is taken to be held by the human rights commission from the HRC commencement day; and
- (b) the commission is exempt from the operation of this Act in relation to the document.

- (6) In subsection (5):

**CHSC commissioner** means the commissioner for community and health services complaints under the *Community and Health Services Complaints Act 1993*, as in force at any time before the HRC commencement day.

**HRC commencement day** means the day the *Human Rights Commission Act 2005* commences.

- (7) Subsections (5) and (6) and this subsection expire 1 month after they commence.

*Note* The expiry of transitional provisions does not end their effect (see Legislation Act, s 88).

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## **Part 1.4 Health Professionals Act 2004**

### **[1.26] Section 8 (b)**

*substitute*

- (b) a complaint is made under the *Human Rights Commission Act 2005*; or

### **[1.27] Section 9 (2)**

*substitute*

- (2) A report is considered by the health profession board and by the commission together (see part 10).

### **[1.28] Section 11 (2)**

*omit*

or complaint

### **[1.29] Section 12**

*substitute*

## **12 Interaction with Human Rights Commission Act**

- (1) The commission must consult with the health profession board for a health profession in relation to a complaint made to the commission under the *Human Rights Commission Act 2005* (the ***HRC Act***) relating to a health professional in the profession.
- (2) In considering a report (which may be a final review report under section 39) relating to a registered health professional, the health profession board must consult with the commission.
- (3) If the health profession board and the commission cannot agree about the action to be taken in relation to a report, the most serious action chosen by the board or commission prevails (see section 86 (2)).

- (4) This Act and the HRC Act set out a flexible system for dealing with reports and complaints.

*Note* The health services commissioner generally exercises the commission's functions in relation to health services.

**[1.30] Section 18 (3)**

*substitute*

- (3) However, if a regulation prescribes something that is inconsistent with the health code under the *Human Rights Commission Act 2005*, the regulation is ineffective to the extent of the inconsistency.

**[1.31] Section 44 (1) (b)**

*omit*

or complaint

**[1.32] Section 78, note 1**

*substitute*

*Note 1* People may also be able to make complaints to the commission under the *Human Rights Commission Act 2005*.

**[1.33] Section 79**

*substitute*

**79 Who may be given a report?**

- (1) A report may be given to the relevant health profession board.
- (2) The health profession board must—
- (a) refer the report to the commission; and
  - (b) give a copy of the report, and all documents in its possession that relate to the report, to the commission.

**[1.34] Section 81 (2) and (3)**

*omit*

or the commissioner

**[1.35] Section 81 (3) and (4)**

*omit*

or commissioner

**[1.36] Section 82**

*substitute*

**82 Help in making report**

The executive officer of a health profession board may, but is not required to, help someone make a report.

**[1.37] Section 84 (1)**

*omit*

or the commissioner

**[1.38] Section 84 (2)**

*omit*

or commissioner

**[1.39] Section 84 (2) (b)**

*omit*

and commissioner

**[1.40] Section 84 (2), notes 1 and 2**

*substitute*

*Note* Section 128 prevents the disclosure of a report if there is reason to believe the disclosure would put someone's health or safety at risk, cause someone to receive a lowered standard of health service or prejudice the management of the report or its consideration.

**[1.41] Part 10 heading**

*substitute*

## **Part 10 Joint consideration with commission**

**[1.42] Section 85 (a), (b) and (d)**

*omit*

or complaint

**[1.43] Section 86 heading**

*substitute*

### **86 Consultation with commission etc**

**[1.44] Section 86 (1)**

*substitute*

- (1) The health profession board must—
  - (a) consult with the commission when it is considering what to do in relation to a report to which this part applies; and
  - (b) endeavour to agree with the commission about the action to be taken in relation to the report.



**[1.45] Section 86 (2)**

*omit*

commissioner

*substitute*

commission

**[1.46] Section 86 (2) and (3)**

*omit*

matter

*substitute*

report

**[1.47] Section 86 (3) (c)**

*substitute*

(c) consideration under the *Human Rights Commission Act 2005* of a report referred to the commission;

**[1.48] Section 86 (3) (f)**

*omit*

**[1.49] Section 86 (3)**

*renumber paragraphs when Act next republished under Legislation Act*

**[1.50] Section 86 (4)**

*omit*

commissioner

*substitute*

commission

**[1.51] Section 86 (4) and (5)**

*omit*

matter

*substitute*

report

**[1.52] Section 86 (5), example**

*substitute*

**Example**

If the health profession board decides that a report about a health professional does not suggest that the health professional may be contravening, or may have contravened, the required standard of practice, the board may refer the report to a personal assessment panel. If the personal assessment panel recommends that the report be referred to a professional standards panel because, on further examination, the report raises the possibility that the health professional may be contravening, or may have contravened, the required standard of practice, the board would then consult with the commission under this section, even though the board has already taken action in relation to the report.

**[1.53] Section 87 (1), (2) and (3)**

*omit*

matter

*substitute*

report

**[1.54] Section 87 (3)**

*omit*

commissioner

*substitute*

commission

**[1.55] Section 88 (2)**

*omit*

or complaint

**[1.56] Section 88 (3)**

*substitute*

- (3) The health profession board must refer a report about a health professional to a personal assessment panel if the commission asks it to refer the report.

**[1.57] Section 89 (4) (a)**

*omit*

or complaint

**[1.58] Section 90 (3)**

*omit*

complaint or

**[1.59] Section 91 (6)**

*omit*

or complaints

**[1.60] Section 93 (1) (a)**

*omit*

or complaint

**[1.61] Section 93 (1) (b)**

*substitute*

- (b) any information provided by the commission or the person who made the report;

**[1.62] Section 94 (1)**

*omit*

or complaint

**[1.63] Section 94 (2) (a)**

*omit*

, complaint

**[1.64] Section 98 (1)**

*substitute*

- (1) This section applies to a report, or an application for a condition review, if the personal assessment panel believes, on reasonable grounds, that the report or application (the *matter*) has been inappropriately referred to the panel.

**[1.65] Section 99 and 100 (1)**

*omit*

or complaint

**[1.66] Section 100 (3) (a)**

*omit*

commissioner

*substitute*

commission

**[1.67] Section 100 (4) (c)**

*omit*

**[1.68] Section 100 (4)**

*renumber paragraphs when Act next republished under Legislation Act*

**[1.69] Section 102 (1)**

*omit*

or complaint

**[1.70] Section 102 (2) (b)**

*substitute*

(b) must give written notice of the decision to the commission.

**[1.71] Section 103 (1)**

*omit*

or complaint

**[1.72] Section 105 (3) (b)**

*omit*

commissioner

*substitute*

commission

**[1.73] Section 105 (4)**

*substitute*

- (4) If the health profession board makes a decision without consulting the commission, the board must tell the commission about the decision.

**[1.74] Section 107 (2) (a)**

*omit*

or complaint

**[1.75] Section 107 (2) (b)**

*substitute*

(b) any information provided by the commission or the person who made the report;

**[1.76] Sections 107 (4), 110 (1) and (2) and 112 (1) and (2)**

*omit*

or complaint

**[1.77] Section 112 (4)**

*omit*

commissioner

*substitute*

commission

**[1.78] Section 113 (1)**

*omit*

or complaint

**[1.79] Section 113 (1) (b) (iii)**

*substitute*

(iii) the commission.

**[1.80] Section 113 (2)**

*omit*

or complaint

**[1.81] Section 116**

*substitute*

**116 Role of commission**

- (1) At a standards inquiry, the commission may—
  - (a) be represented; and
  - (b) give evidence about the consideration of a complaint under the *Human Rights Commission Act 2005*; and
  - (c) may be present at the inquiry even if not giving evidence.
- (2) A reference in this section to the consideration of a complaint by the human rights commission includes a reference to the investigation of a complaint by the community and health services complaints commissioner under the *Community and Health Services Complaints Act 1993* as in force at any time.
- (3) Subsection (2) and this subsection expire 1 month after the day they commence.

**[1.82] Section 120 (1) (b)**

*substitute*

(b) the commission;

**[1.83] Section 122 (2) (i)**

*omit*

, complaint

**[1.84] Section 123 (2) (c)**

*substitute*

(c) the commission.

**[1.85] Section 126 (1) (a)**

*omit*

or complaint

**[1.86] Section 128 (2) (c)**

*substitute*

(c) prejudice the management of the report or its consideration by the commission or a health profession board.

**[1.87] Section 150B**

*substitute*

**150B People previously registered under Act or repealed Act**

In this Act:

*registered health professional*, in relation to a report under division 9.2, includes a person who was registered under this Act or a repealed Act at the time of the act or omission reported.

**[1.88] New section 150K**

*insert*

**150K Complaints made before HRC commencement day**

(1) In this section:

*HRC commencement day* means the day the *Human Rights Commission Act 2005* commences.



(2) In this Act:

*complaint* includes a complaint made to the community and health services complaints commissioner before HRC commencement day.

**[1.89] Dictionary, new definition of *commission***

*insert*

*commission* means the human rights commission.

**[1.90] Dictionary, definitions of *commissioner*, *complaint* and *report***

*substitute*

*commissioner* means the health services commissioner.

*complaint* means a health service complaint under the *Human Rights Commission Act 2005*.

*report* means—

- (a) a report under division 9.2; and
- (b) includes a complaint made under the *Human Rights Commission Act 2005* that is referred to a health profession board by the commission.

## Part 1.5 Health Professionals (Special Events Exemptions) Act 2000

**[1.91] Section 12 (1) and (2)**

*omit*

*Community and Health Services Complaints Act 1993*

*substitute*

*Human Rights Commission Act 2005*

## Part 1.6 Health Records (Privacy and Access) Act 1997

### [1.92] Section 1

*substitute*

#### 1 Name of Act

This Act is the *Health Records (Privacy and Access) Act 1997*.

### [1.93] Section 4, definitions of *commissioner, consumer, disability, guardian, health record, health service, health service provider, immediate family member, personal health information, record, record keeper, registration board*

*omit*

### [1.94] Section 4, definitions (as amended)

*relocate to dictionary*

### [1.95] Section 4, remainder

*substitute*

#### 4 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 ‘*disability*—see the *Human Rights Commission Act 2005*, section 8 (2).’ means that the term ‘disability’ is defined in that subsection and the definition applies to this Act.

*Note 2* A definition in the dictionary 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)).

#### **4A 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.

#### **4B 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 the offences against section 23 (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.

### **[1.96] Part 4**

*substitute*

## **Part 4 Complaints**

### **18 Grounds for complaint**

- (1) A person may make a complaint about an act or omission to the commission on the following grounds:
  - (a) the act or omission contravenes the privacy principles in relation to a consumer;

- (b) the act or omission is a refusal to give access in accordance with this Act to a health record relating to a consumer;
  - (c) the act or omission is a refusal by a record keeper of a health record to give access to the health record under this Act.
- (2) A complaint on a ground mentioned in subsection (1) (a) in relation to a dead consumer may be made whether or not the act or omission happened in the lifetime or after the death of the consumer.

*Note* Complaints about unlawful discrimination are made under the HRC Act (see s 42).

**[1.97] Section 23**

*substitute*

**23 People not to be unlawfully penalised**

- (1) 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 or pursue a request under part 3 for access; or
  - (b) to withdraw a request.
- Maximum penalty: 50 penalty units, imprisonment for 6 months or both.
- (2) A person commits an offence if—
- (a) the person makes a representation to someone else; and
  - (b) the representation is false in a material particular; and
  - (c) the person is reckless about whether the representation is false; and
  - (d) the person makes the representation with the intention of causing the other person—

(i) not to make or pursue a request under part 3 for access;  
or

(ii) to withdraw a request.

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

(3) It is a defence to a prosecution for an offence against subsection (2) if the defendant proves that—

(a) the defendant had another ground for engaging in the conduct complained of; and

(b) the ground was a reasonable one.

**[1.98] Section 31 (2) (a)**

*omit*

commissioner

*substitute*

health services commissioner

**[1.99] Section 35**

*omit*

commissioner

*substitute*

commission

**[1.100] New dictionary**

*insert*

## Dictionary

(see s 4)

*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:

- adult
- Commonwealth
- contravene
- entity
- individual.

***commission*** means the human rights commission.

***consumer*** means an individual who uses, or has used, a health service, or in relation to whom a health record has been created, and includes—

- (a) a person authorised by the consumer under section 13 (7) to have access to the health record; and
- (b) if the consumer is a young person or a legally incompetent person—a guardian of the consumer; and
- (c) if the consumer has died—a legal representative of the deceased consumer.

***disability***—see the *Human Rights Commission Act 2005*, section 8 (2).

***guardian*** means—

- (a) of a young person—a parent or legally appointed guardian of the young person; or

- (b) of a legally incompetent person—a person who—
  - (i) is either—
    - (A) a legally appointed guardian of the legally incompetent person; or
    - (B) an attorney, appointed under an enduring power of attorney that has become operative, of the legally incompetent person; and
  - (ii) has power to make decisions about the medical treatment or health care of the legally incompetent person.

***health record*** means any record, or any part of a record—

- (a) held by a health service provider and containing personal information; or
- (b) containing personal health information.

***health service*** means—

- (a) any activity that is intended or claimed (expressly or by implication), by the person providing it, to assess, record, improve or maintain the physical, mental or emotional health of a consumer or to diagnose or treat an illness or disability of a consumer; or
- (b) a disability, palliative care or aged care service that involves the making or keeping of personal health information;

but does not include any service declared by regulation to be an exempt service.

***health service provider*** means an entity that provides a health service in the ACT.

***immediate family member***, of a consumer, means a person who—

- (a) is—

- (i) a parent of the consumer; or
- (ii) a domestic partner of the consumer; or
- (iii) an adult child or sibling of the consumer; or

*Note* For the meaning of **domestic partner**, see the Legislation Act, s 169.

- (b) is a member of the same household as the consumer and is—
  - (i) another relative of the consumer; or
  - (ii) a close friend of the consumer.

**personal health information**, of a consumer, means any personal information, whether or not recorded in a health record—

- (a) relating to the health, an illness or a disability of the consumer; or
- (b) collected by a health provider in relation to the health, an illness or a disability of the consumer.

**record** means a record in documentary or electronic form that consists of or includes personal health information in relation to a consumer (other than research material that does not disclose the identity of the consumer), and includes—

- (a) a photograph or other pictorial or digital representation of any part of the consumer; and
- (b) test results, medical imaging materials and reports, and clinical notes, relating to the consumer; and
- (c) any part of a record; and
- (d) a copy of a record or any part of a record.

**record keeper** means an entity that has possession or control of a health record.

**registration board** means a health profession board under the *Health Professions Act 2004*.



## **Part 1.7                      Human Rights Act 2004**

### **[1.101]    Section 34 heading**

*substitute*

### **34            Notice to Attorney-General and commission**

#### **[1.102]    Section 34 (2) (a)**

*omit*

human rights commissioner

*substitute*

commission

#### **[1.103]    Section 34 (2) (b)**

*omit*

commissioner

*substitute*

the commission

#### **[1.104]    Section 34 (3)**

*omit*

human rights commissioner

*substitute*

the commission

#### **[1.105]    Part 6**

*omit*

**[1.106] New section 41**

*in part 7, insert*

**41 Review of effect of territory laws on human rights**

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

**[1.107] Part 7**

*renumber as part 6*

**[1.108] Dictionary, new definition of *commission***

*insert*

*commission* means the human rights commission.

**[1.109] Dictionary, definition of *human rights commissioner***

*omit*

## **Part 1.8                      Legislation Act 2001**

**[1.110] Dictionary, part 1, definition of *commissioner for health complaints***

*omit*

**[1.111] Dictionary, part 1, new definition of *disability and community services commissioner***

*insert*

*disability and community services commissioner* means the Disability and Community Services Commissioner under the *Human Rights Commission Act 2005*.

**[1.112] Dictionary, part 1, definition of *discrimination commissioner***

*substitute*

*discrimination commissioner* means the Discrimination Commissioner under the *Human Rights Commission Act 2005*.

**[1.113] Dictionary, part 1, new definitions of *health services commissioner, human rights commission and human rights commissioner***

*insert*

*health services commissioner* means the Health Services Commissioner under the *Human Rights Commission Act 2005*.

*human rights commission* means the Human Rights Commission established under the *Human Rights Commission Act 2005*.

*human rights commissioner* means the Human Rights Commissioner under the *Human Rights Commission Act 2005*.

## **Part 1.9 Limitation Act 1985**

**[1.114] Section 30B (5)**

*substitute*

(5) In this section:

*health service*—see the *Human Rights Commission Act 2005*, section 7 (1) and (3) (a).

## **Part 1.10 Ombudsman Act 1989**

**[1.115] Section 1**

*substitute*

**1 Name of Act**

This Act is the *Ombudsman Act 1989*.

**[1.116] Section 3, definition of *prescribed authority*, paragraph (c)**

*omit*

or commissioner for health complaints

**[1.117] Section 5 (2) (i)**

*substitute*

- (i) action taken by the human rights commission, a member of the commission, or a member of the staff of the commission, in the exercise of the commission's deliberative functions; or

**[1.118] Section 5 (2) (n)**

*substitute*

- (n) action taken by an agency—
- (i) for the purpose or in the course of providing, or purporting to provide, a health service, a service for people with a disability or a service for older people; or
  - (ii) in refusing to provide a health service, a service for people with a disability or a service for older people; or

**[1.119] Section 5 (6)**

*substitute*

- (6) In this section:

*health service*—see the *Human Rights Commission Act 2005*, section 7.

*service for older people*—see the *Human Rights Commission Act 2005*, section 9.

*service for people with a disability*—see the *Human Rights Commission Act 2005*, section 8.

**[1.120] Section 6B (1) (b)**

*substitute*

- (b) the human rights commission;

## **Part 1.11 Public Health Act 1997**

**[1.121] Section 102 (4) (b)**

*substitute*

- (b) is a ground for the patient to make a complaint to the human rights commission under the *Human Rights Commission Act 2005*.

**[1.122] Section 102 (5) (b)**

*substitute*

- (b) is a ground for the patient to make a complaint to the human rights commission under the *Human Rights Commission Act 2005*.

## **Part 1.12 Remuneration Tribunal Act 1995**

**[1.123] Section 1**

*substitute*

**1 Name of Act**

This Act is the *Remuneration Tribunal Act 1995*.

---

**[1.124] Section 10**

*substitute*

**10 Inquiries about holders of certain positions**

- (1) The tribunal must inquire into, and determine, the remuneration, allowances and other entitlements of—
  - (a) the holders of the positions mentioned in schedule 1; and
  - (b) the holders of any other position or appointment notified in writing to the tribunal by the Chief Minister for this paragraph.
- (2) The tribunal is authorised under subsection (1) to inquire into, and determine, the remuneration, allowances and other entitlements of the Chief Justice or the President of the Court of Appeal only in relation to that position in addition to any remuneration, allowances and entitlements of the Chief Justice or the President as a resident judge or a judge of the Federal Court.
- (3) This section does not apply to—
  - (a) a resident judge who is also a judge of the Federal Court; or
  - (b) a resident judge to whom the *Supreme Court Act 1933*, section 37U applies; or
  - (c) an additional judge of the Supreme Court; or
  - (d) an acting judge of the Supreme Court.
- (4) An instrument under subsection (1) (b) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.
- (5) An instrument under subsection (1) (b) must be notified under the Legislation Act within 14 days after the day the instrument is given to the tribunal.

- (6) The tribunal must inquire into, and determine, the remuneration, allowances and other entitlements of the commissioner for health complaints.
- (7) Subsection (6) and this subsection expire on the day the *Human Rights Commission Act 2005* commences.

**[1.125] New schedule 1**

*insert*

## **Schedule 1**      **Positions to which Act applies**

(see s 10)

### **Part 1.1**                      **Judicial positions**

- Chief Justice
- President of the Court of Appeal
- judge
- master of the Supreme Court
- Chief Magistrate
- magistrate

### **Part 1.2**                      **Other positions**

- assistant executive officer of the legal aid commission
- auditor-general
- chief executive
- chief executive officer of the legal aid commission
- clerk of the Legislative Assembly
- community advocate
- director of public prosecutions
- director of the Canberra Institute of Technology
- disability and community services commissioner



- discrimination commissioner
- electoral commissioner
- executive within the meaning of the *Public Sector Management Act 1994*
- health services commissioner
- human rights commissioner
- president of the human rights commission

## **Part 1.13**                      **Territory Records Act 2002**

### **[1.126] Section 6 (2)**

*substitute*

- (2) This Act does not apply to records of the human rights commission in relation to—
- (a) a complaint made to the commission under the Health Records Act, section 18; or
  - (b) the exercise of a function under the *Human Rights Commission Act 2005* in relation to a complaint mentioned in paragraph (a).

## **Part 1.14**                      **Victims of Crime Regulation 2000**

### **[1.127] Section 42 (1) (c)**

*omit*

commissioner

*substitute*

commission

**[1.128] Section 42 (2)**

*substitute*

(2) In this section:

*commission* means the human rights commission.

**[1.129] Dictionary, note 2**

*omit*

- commissioner for health complaints

**[1.130] Dictionary, note 2**

*insert*

- human rights commission
- 

## 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](http://www.legislation.act.gov.au).

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

Clerk of the Legislative Assembly

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