

2007

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Attorney-General)

## Human Rights Amendment Bill 2007

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## Human Rights Amendment Bill 2007

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### A Bill for

An Act to amend the *Human Rights Act 2004*

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

1 **1 Name of Act**

2 This Act is the *Human Rights Amendment Act 2007*.

3 **2 Commencement**

4 (1) Sections 7, 8 and 9 commence on 1 January 2009.

5 (2) The remaining provisions commence on the day after this Act's  
6 notification day.

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

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

12 **3 Legislation amended**

13 This Act amends the *Human Rights Act 2004*.

14 **4 Human rights may be limited**  
15 **New section 28 (2)**

16 *insert*

17 (2) In deciding whether a limit is reasonable, all relevant factors must  
18 be considered, including the following:

19 (a) the nature of the right affected;

20 (b) the importance of the purpose of the limitation;

21 (c) the nature and extent of the limitation;

22 (d) the relationship between the limitation and its purpose;

23 (e) any less restrictive means reasonably available to achieve the  
24 purpose the limitation seeks to achieve.

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**5 Section 30***substitute***30 Interpretation of laws and human rights**

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

**6 Section 34***substitute***34 Notice to Attorney-General and commission**

(1) This section applies—

(a) if—

(i) a question arises in a proceeding in the Supreme Court that involves the application of this Act; or

(ii) the Supreme Court is considering making a declaration of incompatibility in a proceeding; and

(b) the Territory is not a party to the proceeding.

(2) The Supreme Court must not allow the proceeding to continue or make the declaration unless the court is satisfied that—

(a) notice of the proceeding has been given to the Attorney-General and the commission; and

(b) a reasonable time has passed since the giving of the notice for the Attorney-General and the commission to decide whether to intervene in the proceeding.

- 1 (3) For subsection (2), the Supreme Court may—
- 2 (a) direct a party to give notice of the proceeding to the
- 3 Attorney-General and the commission; and
- 4 (b) continue to hear evidence and argument concerning matters
- 5 severable from any matter involving the application of this Act.
- 6 (4) Subsection (2) does not prevent the Supreme Court from hearing
- 7 and deciding a proceeding, to the extent that the proceeding relates
- 8 to the grant of urgent relief of an interlocutory nature, if the court
- 9 considers it necessary in the interests of justice.

10 **7 New part 5A**

11 *insert*

12 **Part 5A Obligations of public authorities**

13 **40 Meaning of *public authority***

- 14 (1) Each of the following is a *public authority*:
- 15 (a) an administrative unit;
- 16 (b) a territory authority;
- 17 (c) a territory instrumentality;
- 18 (d) a Minister;
- 19 (e) a police officer, when exercising a function under a Territory
- 20 law;
- 21 (f) a public employee;

- 1 (g) an entity whose functions are or include functions of a public  
2 nature, when it is exercising those functions for the Territory or  
3 a public authority (whether under contract or otherwise).

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

7 (2) However, ***public authority*** does not include—

8 (a) the Legislative Assembly, except when acting in an  
9 administrative capacity; or

10 (b) a court, except when acting in an administrative capacity.

11 **40A Meaning of *function of a public nature***

12 (1) In deciding whether a function of an entity is a ***function of a public***  
13 ***nature***, the following matters may be considered:

14 (a) whether the function is conferred on the entity under a territory  
15 law;

16 (b) whether the function is connected to or generally identified  
17 with functions of government;

18 (c) whether the function is of a regulatory nature;

19 (d) whether the entity is publicly funded to perform the function;

20 (e) whether the entity performing the function is a company  
21 (within the meaning of the Corporations Act) the majority of  
22 the shares in which are held by or for the Territory.

23 (2) Subsection (1) does not limit the matters that may be considered in  
24 deciding whether a function is of a public nature.

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

11   **40B       Public authorities must act consistently with human**  
12   **rights**

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

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



- 1           (3) In this section:  
2                 *public authority* includes an entity for whom a declaration is in  
3                 force under section 40D.
- 4   **40C       Legal proceedings in relation to public authority actions**
- 5           (1) This section applies if a person—  
6                 (a) claims that a public authority has acted in contravention of  
7                 section 40B; and  
8                 (b) alleges that the person is or would be a victim of the  
9                 contravention.
- 10          (2) The person may—  
11                 (a) start a proceeding in the Supreme Court against the public  
12                 authority; or  
13                 (b) rely on the person's rights under this Act in other legal  
14                 proceedings.
- 15          (3) A proceeding under subsection (2) (a) must be started not later than  
16                 1 year after the day (or last day) the act complained of happens,  
17                 unless the court orders otherwise.
- 18          (4) The Supreme Court may, in a proceeding under subsection (2), grant  
19                 the relief it considers appropriate except damages.
- 20          (5) This section does not affect—  
21                 (a) a right a person has (otherwise than because of this Act) to  
22                 seek relief in relation to an act or decision of a public authority;  
23                 or  
24                 (b) a right a person has to damages (apart from this section).
- 25          *Note*       See also s 18 (7) and s 23.

- 1 (6) In this section:  
2 *public authority* includes an entity for whom a declaration is in  
3 force under section 40D.

4 **40D Other entities may choose to be subject to obligations of**  
5 **public authorities**

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

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

15 **8 Dictionary, note 2, new dot point**

16 *insert*

- 17 • emergency service

18 **9 Dictionary, new definitions**

19 *insert*

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

22 *function of a public nature*—see section 40A.

23 *public authority*—see section 40.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2007.

**2 Notification**

Notified under the Legislation Act on 2007.

**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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