

2009

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Human Rights Commission Legislation Amendment Bill 2009

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(Attorney-General)

Human Rights Commission Legislation Amendment Bill 2009

A Bill for

An Act to amend legislation relating to the Human Rights Commission, and for other purposes

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

J2008-913

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Human Rights Commission Legislation*
4 *Amendment Act 2009*.

5 **2 Commencement**

6 This Act commences on the 7th day after its notification day.

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

1 Part 2 Discrimination Act 1991

2 3 Legislation amended—pt 2

3 This part amends the *Discrimination Act 1991*.

4 4 Grounds 5 Section 7 (1) (c)

6 *substitute*

7 (c) gender identity;

8 5 Section 7 (1) (k)

9 *substitute*

10 (k) industrial activity;

11 6 Unlawful vilification—race, sexuality etc 12 Section 66 (1) (c)

13 *substitute*

14 (c) gender identity;

15 7 Serious vilification offence—race, sexuality etc 16 Section 67 (1) (d) (iii)

17 *substitute*

18 (iii) gender identity;

19 8 Victimisation 20 New section 68 (1) (a) (ia) to (ic)

21 *insert*

22 (ia) made a discrimination complaint; or

- 1 (ib) given information or produced a document or other thing
2 to a person exercising a discrimination function; or
- 3 (ic) given information, produced a document or thing or
4 answered a question when required to do so under the
5 HRC Act in relation to a discrimination complaint; or

6 **9 New section 68 (3)**

7 *insert*

8 (3) In this section:

9 ***discrimination complaint*** means a complaint under the HRC Act
10 about an unlawful act under this Act, part 3 (Unlawful
11 discrimination), part 5 (Sexual harassment), section 66 (Unlawful
12 vilification—race, sexuality etc) or this part.

13 ***discrimination function*** means a function under the HRC Act in
14 relation to a discrimination complaint.

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

16 **10 Dictionary, new definitions**

17 *insert*

18 ***gender identity*** means—

- 19 (a) the identification on a genuine basis by a person of one sex as a
20 member of the other sex (whether or not the person is
21 recognised as such)—
- 22 (i) by assuming characteristics of the other sex, whether by
23 way of medical intervention, style of dressing or
24 otherwise; or
- 25 (ii) by living, or seeking to live, as a member of the other
26 sex; or

- 1 (b) the identification on a genuine basis by a person of
2 indeterminate sex as a member of a particular sex (whether or
3 not the person is recognised as such)—
- 4 (i) by assuming characteristics of that sex, whether by way
5 of medical intervention, style of dressing or otherwise; or
6 (ii) by living, or seeking to live, as a member of that sex.
- 7 ***industrial activity*** means any of the following:
- 8 (a) being or not being a member of, or joining, not joining or
9 refusing to join, an industrial organisation or industrial
10 association;
- 11 (b) establishing or being involved in establishing an industrial
12 organisation or forming or being involved in forming an
13 industrial association;
- 14 (c) organising or promoting or proposing to organise or promote a
15 lawful activity on behalf of an industrial organisation or
16 industrial association;
- 17 (d) encouraging, assisting, participating in or proposing to
18 encourage, assist or participate in a lawful activity organised or
19 promoted by an industrial organisation or industrial
20 association;
- 21 (e) not participating in or refusing to participate in a lawful
22 activity organised or promoted by an industrial organisation or
23 industrial association;
- 24 (f) representing or advancing the views, claims or interests of
25 members of an industrial organisation or industrial association.

1

industrial association—

2

(a) means a group of employees or employers formed formally or informally to represent or advance the views, claims or interests of the employees or employers in a particular industry, trade, profession, business or employment; but

3

4

5

6

(b) does not include an industrial organisation.

7

industrial organisation means any of the following that is registered or recognised under the law of the Commonwealth, a State or another Territory:

8

9

10

(a) an organisation of employees;

11

(b) an organisation of employers;

12

(c) any other organisation established for the purposes of people who carry on a particular industry, trade, profession, business or employment.

13

14

15

11 Dictionary, definition of *transsexual*

16

omit

1 **Part 3** **Health Professionals Act 2004**

2 **12** **Legislation amended—pt 3**

3 This part amends the *Health Professionals Act 2004*.

4 **13** **Notice to health professional reported**
5 **Section 84 (1), new note 2**

6 *insert*

7 *Note 2* In this division, *report* does not include a complaint made under the
8 *Human Rights Commission Act 2005* that is referred to a health
9 profession board by the commission (see dict, def *report*).

10 **14** **Dictionary, definition of *report***

11 *substitute*

12 *report*—

- 13 (a) means a report under division 9.2; and
14 (b) except in division 9.2—includes a complaint made under the
15 *Human Rights Commission Act 2005* that is referred to a health
16 profession board by the commission.

1 **Part 4** **Human Rights Commission**
2 **Act 2005**

3 **15** **Legislation amended—pt 4**

4 This part amends the *Human Rights Commission Act 2005*.

5 **16** **Commission's obligation to be prompt and efficient**
6 **Section 45 (2) (e)**

7 *substitute*

- 8 (e) tell the complainant, in writing, how consideration of the
9 complaint by the commission is progressing not later than—
- 10 (i) 6 weeks after the last time the commission told the
11 complainant, in writing, (by a *progress report*) about the
12 complaint's progress; or
- 13 (ii) if the latest progress report includes a statement to the
14 effect that, for stated reasons, a further progress report
15 will not be provided until a stated time or event—the
16 time or the happening of the event stated in the latest
17 progress report; and

17 Section 45 (2), examples

substitute

Examples—par (e) (ii)

- 1 A complainant tells the commission that she is going overseas for 3 months. The commission may tell the complainant that the next progress report will not be given until the complainant returns from overseas and notifies the commission.
- 2 The commission decides that it cannot consider a complaint further until an expert report about the complainant's medical condition is provided. The commission may tell the complainant that the next progress report will not be given until 1 week after the commission receives the expert 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).

18 New section 45 (3) (d)

insert

- (d) the complainant withdraws the complaint, whether in writing or otherwise, before notice of the complaint has been given to the person complained about.

19 New section 71A

insert

71A Commission may treat person as person complained about

- (1) This section applies if the commission is considering a complaint, and is satisfied on reasonable grounds that—
 - (a) the complaint should have been made against someone (the *new person*) other than the person complained about; or

Section 20

- 1 (b) the complaint could have been made by the complainant
2 against someone else (also the *new person*) as well as the
3 person complained about.
- 4 (2) The commission may, by written notice given to the complainant
5 and the new person, elect to treat the new person as a person
6 complained about in the complaint.
- 7 (3) If the commission elects to treat the new person as a person
8 complained about in the complaint—
- 9 (a) the new person is taken to be a person complained about in the
10 complaint for this Act and related Acts; and
- 11 (b) the complaint is taken to have been made against the new
12 person at the time the commission elected to treat the new
13 person as a person complained about.
- 14 (4) Also, the commission must take reasonably practicable steps to
15 ensure that the new person is not disadvantaged only because the
16 commission elected to treat the person as a person complained about
17 in the complaint rather than waiting for a new complaint to be made
18 about the person.

19 **20 Referral of complaints to health profession board**
20 **Section 92 (1)**

21 *substitute*

- 22 (1) This section applies if—
- 23 (a) the commission receives a complaint about a registered health
24 professional; or
- 25 (b) as part of a complaint about a health service, the commission
26 considers a registered health professional's behaviour.

21 New section 92 (4) to (6)

insert

- (4) This section also applies if—
- (a) before the commencement day the commission received a complaint; and
 - (b) immediately before the commencement day the complaint had not been closed; and
 - (c) if the complaint had been received on or after the commencement day, the commission would have been required to give a copy of the complaint, and all documents it has or gets relating to the complaint, to the health profession board; and
 - (d) the commission has not given the complaint, or documents, to the board.
- (5) The commission must give the health profession board a copy of—
- (a) the complaint; and
 - (b) all documents it has relating to the complaint.
- (6) Subsections (4) and (5) and this subsection expire 3 months after the commencement day.

1 **22 New section 100A**

2 *insert*

3 **100A Protection of others from liability**

4 Civil proceedings do not lie against a person in relation to loss,
5 damage or injury of any kind suffered by another person as a result
6 of any of the following things done honestly and without
7 recklessness:

- 8 (a) the making of a complaint;
- 9 (b) the making of a statement, or the giving of a document or
10 information, for this Act, to a commissioner or a member of
11 staff of the commission.

1 **Part 5** **Mental Health (Treatment and**
2 **Care) Act 1994**

3 **23** **Legislation amended—pt 5**

4 This part amends the *Mental Health (Treatment and Care) Act 1994*.

5 **24** **Notice of hearing**
6 **Section 85 (j)**

7 *omit*

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2009.

2 Notification

Notified under the Legislation Act on 2009.

3 Republications of amended laws

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

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