

2022

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for Human Rights)

# Aboriginal and Torres Strait Islander Children and Young People Commissioner Bill 2022

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2022

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for Human Rights)

# **Aboriginal and Torres Strait Islander Children and Young People Commissioner Bill 2022**

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## **A Bill for**

An Act to establish the office of the Aboriginal and Torres Strait Islander Children and Young People Commissioner, and for other purposes

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

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J2022-274

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Aboriginal and Torres Strait Islander Children and*  
4 *Young People Commissioner Act 2022.*

5 **2 Commencement**

6 This Act commences on the 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)).

9 **3 Dictionary**

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

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

14 For example, the signpost definition '*protected information*, for part 5  
15 (Information gathering and sharing)—see section 26.' means that the  
16 term 'protected information' is defined in that section.

17 *Note 2* A definition in the dictionary (including a signpost definition) applies to  
18 the entire Act unless the definition, or another provision of this Act,  
19 provides otherwise or the contrary intention otherwise appears (see  
20 [Legislation Act](#), s 155 and s 156 (1)).

21 **4 Notes**

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

1   **5           Offences against Act—application of Criminal Code etc**

2           Other legislation applies in relation to offences against this Act.

3           *Note 1   Criminal Code*

4           The [Criminal Code](#), ch 2 applies to all offences against this Act (see  
5           Code, pt 2.1).

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

10          *Note 2   Penalty units*

11          The [Legislation Act](#), s 133 deals with the meaning of offence penalties  
12          that are expressed in penalty units.

- 1 **Part 2** **Objects and important concepts**
- 2 **6** **Objects of Act**
- 3 (1) The main objects of this Act are to—
- 4 (a) promote and protect the rights of Aboriginal and Torres Strait  
5 Islander children and young people; and
- 6 (b) establish the office of the Aboriginal and Torres Strait Islander  
7 Children and Young People Commissioner; and
- 8 (c) provide for the commissioner’s office to—
- 9 (i) advocate for the rights of Aboriginal and Torres Strait  
10 Islander children and young people, individually and  
11 collectively; and
- 12 (ii) identify and examine issues that affect the human rights  
13 and wellbeing of Aboriginal and Torres Strait Islander  
14 children and young people; and
- 15 (iii) make recommendations to government and  
16 non-government agencies on legislation, policies, practices  
17 and services that affect Aboriginal and Torres Strait  
18 Islander children and young people.
- 19 (2) The objects are intended to operate consistently with—
- 20 (a) the *Human Rights Act 2004*; and
- 21 (b) the principles set out in the *Convention on the Rights of the*  
22 *Child*; and
- 23 (c) the principles set out in the *Declaration on the Rights of*  
24 *Indigenous Peoples*.



1 (3) In this section:

2 ***Convention on the Rights of the Child*** means the United Nations  
3 Convention on the Rights of the Child adopted by the General  
4 Assembly of the United Nations on 20 November 1989, as amended  
5 and in force for Australia from time to time.

6 *Note* The Convention on the Rights of the Child is accessible at  
7 [www.ohchr.org/en/instruments-mechanisms/instruments/convention-](http://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child)  
8 [rights-child](http://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child).

9 ***Declaration on the Rights of Indigenous Peoples*** means the United  
10 Nations Declaration on the Rights of Indigenous Peoples adopted by  
11 the General Assembly of the United Nations on 13 September 2007,  
12 as amended and in force for Australia from time to time.

13 *Note* The Declaration on the Rights of Indigenous Peoples is accessible at  
14 [www.un.org/development/desa/indigenouspeoples/declaration-on-the-](http://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html)  
15 [rights-of-indigenous-peoples.html](http://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html).

## 16 **7 Aboriginal and Torres Strait Islander cultural principles**

17 (1) A person exercising a function under this Act must recognise that  
18 Aboriginal and Torres Strait Islander children and young people need  
19 strong connections with culture, family, Elders, communities and  
20 Country to develop and thrive and to be protected from harm.

21 (2) Without limiting the ways in which a person exercising a function  
22 under this Act recognises the need for the connections mentioned in  
23 subsection (1), the person must apply the following principles (the  
24 ***Aboriginal and Torres Strait Islander cultural principles***) when  
25 exercising the function:

26 (a) it is important for Aboriginal and Torres Strait Islander children  
27 and young people to maintain their Aboriginal or Torres Strait  
28 Islander cultural and linguistic environment, and their set of  
29 values (including Aboriginal tradition or Island custom);

- 1 (b) it is important to respect the kinship rules of Aboriginal and  
2 Torres Strait Islander people, as identified by reference to an  
3 Aboriginal or Torres Strait Islander person’s family and kinship  
4 relationships and the community with which the child or young  
5 person has the strongest affiliation;
- 6 (c) it is important to acknowledge the spiritual, social, historical,  
7 cultural and economic importance of Country to Aboriginal and  
8 Torres Strait Islander children and young people and the  
9 traditional, customary or historical affiliation Aboriginal and  
10 Torres Strait Islander people have with particular areas.
- 11 (3) In this section:
- 12 ***Aboriginal tradition***—
- 13 (a) means the body of traditions, observances, customs and beliefs  
14 of Aboriginal people generally, or of a particular community or  
15 group of Aboriginal people; and
- 16 (b) includes any traditions, observances, customs and beliefs  
17 mentioned in paragraph (a) that relate to particular people, areas,  
18 objects or relationships.
- 19 ***Island custom***, known in the Torres Strait as Ailan Kastom—
- 20 (a) means the body of customs, traditions, observances and beliefs  
21 of Torres Strait Islanders generally, or of a particular community  
22 or group of Torres Strait Islanders; and
- 23 (b) includes any traditions, observances, customs and beliefs  
24 mentioned in paragraph (a) that relate to particular people, areas,  
25 objects or relationships.

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- 1 **Part 3** **Office of the Aboriginal and**  
2 **Torres Strait Islander Children**  
3 **and Young People Commissioner**
- 4 **Division 3.1** **Establishment of commissioner's**  
5 **office etc**
- 6 **8** **Establishment of commissioner's office**
- 7 The office of the Aboriginal and Torres Strait Islander Children and  
8 Young People Commissioner is established.
- 9 **9** **Independence of commissioner's office**
- 10 Except as provided in this Act or another territory law, the  
11 commissioner's office is not subject to the direction of anyone else in  
12 relation to the exercise of a function under this Act.
- 13 **Division 3.2** **Aboriginal and Torres Strait Islander**  
14 **Children and Young People**  
15 **Commissioner**
- 16 **10** **Appointment of commissioner**
- 17 (1) The Executive must appoint a person as the Aboriginal and Torres  
18 Strait Islander Children and Young People Commissioner.
- 19 *Note* For laws about appointments, see the [Legislation Act](#), pt 19.3.
- 20 (2) A person appointed as the commissioner must be either or both of the  
21 following:
- 22 (a) an Aboriginal person;
- 23 (b) a Torres Strait Islander person.

- 1 (3) The Executive must not appoint a person as the commissioner unless  
2 the Executive—
- 3 (a) has involved members of the Aboriginal and Torres Strait  
4 Islander community in the process for selecting the  
5 commissioner; and
- 6 (b) is satisfied that the person has the experience or expertise  
7 necessary to exercise the commissioner’s functions.
- 8 (4) A person must be appointed for a term not longer than 5 years.
- 9 (5) The commissioner’s conditions of appointment are the conditions  
10 agreed between the Minister and the commissioner stated in the  
11 instrument of appointment, subject to any determination under the  
12 *Remuneration Tribunal Act 1995*.
- 13 (6) The appointment of the commissioner is a notifiable instrument.
- 14 (7) In this section:
- 15 ***Aboriginal person*** means a person who—
- 16 (a) is a descendant of an Aboriginal person; and
- 17 (b) identifies as an Aboriginal person; and
- 18 (c) is accepted as an Aboriginal person by an Aboriginal  
19 community.
- 20 ***Torres Strait Islander*** means a person who—
- 21 (a) is a descendant of a Torres Strait Islander; and
- 22 (b) identifies as a Torres Strait Islander; and
- 23 (c) is accepted as a Torres Strait Islander by a Torres Strait Islander  
24 community.

1 **11 Commissioner's functions**

- 2 (1) The commissioner has the following functions:
- 3 (a) to advocate on behalf of Aboriginal and Torres Strait Islander  
4 children and young people, individually and collectively;
- 5 (b) to intervene on behalf of Aboriginal and Torres Strait Islander  
6 children and young people in relation to decisions that will affect  
7 their rights or interests, including in relevant court proceedings;
- 8 (c) to inquire into matters relating to the rights, development, safety  
9 and wellbeing of Aboriginal and Torres Strait Islander children  
10 and young people;
- 11 (d) to promote the enjoyment by Aboriginal and Torres Strait  
12 Islander children and young people, and their families, of their  
13 rights;
- 14 (e) to advise the government about policy, services and other  
15 matters affecting Aboriginal and Torres Strait Islander children  
16 and young people, and their families;
- 17 (f) any other function given to the commissioner under this Act or  
18 another territory law.

19 *Note* A provision of a law that gives an entity a function also gives the entity  
20 powers necessary and convenient to exercise the function (see [Legislation](#)  
21 [Act](#), s 196).

- 22 (2) In exercising the functions mentioned in subsection (1), the  
23 commissioner must take all reasonable steps to—
- 24 (a) consult Aboriginal and Torres Strait Islander children, young  
25 people and their families in ways that promote their participation  
26 in decision-making; and
- 27 (b) listen to and seriously consider the views of Aboriginal and  
28 Torres Strait Islander children and young people; and

1 (c) ensure the commissioner is accessible to Aboriginal and Torres  
2 Strait Islander children and young people; and

3 (d) engage regularly with the Aboriginal and Torres Strait Islander  
4 community.

5 *Note* The commissioner must apply the Aboriginal and Torres Strait Islander  
6 cultural principles when exercising the commissioner's functions  
7 (see s 7).

8 **12 Annual statement by commissioner**

9 (1) The commissioner must, for each year, prepare a statement  
10 (an *annual statement*) about the operation of the commissioner's  
11 office during the year, including—

12 (a) the number and kinds of advocacy matters the commissioner's  
13 office engaged in during the year; and

14 (b) a summary of the inquiries the commissioner conducted during  
15 the year; and

16 (c) a summary of the activities of any advisory committee assisting  
17 the commissioner during the year; and

18 (d) a summary of the community engagement undertaken by the  
19 commissioner's office during the year; and

20 (e) anything else the commissioner considers appropriate; and

21 (f) anything else prescribed by regulation.

22 (2) The annual statement must not, without a person's consent, include  
23 information—

24 (a) that identifies the person; or

25 (b) that would allow the person to be reasonably identifiable.

- 1 (3) The commissioner must give the annual statement to the following  
2 not later than 3 months after the end of the year:
- 3 (a) the Aboriginal and Torres Strait Islander community;  
4 (b) the Speaker.
- 5 (4) The Speaker must present the annual statement to the Legislative  
6 Assembly within 5 sitting days after the day the Speaker receives the  
7 statement.
- 8 (5) A regulation may prescribe other requirements for an annual  
9 statement.

10 **13 Ending commissioner's appointment**

- 11 (1) The Minister may end a person's appointment as the commissioner—
- 12 (a) if the person contravenes a territory law; or  
13 (b) for misbehaviour; or  
14 (c) if the person becomes bankrupt or personally insolvent; or  
15 (d) if the person is convicted, in the ACT, of an offence punishable  
16 by imprisonment for at least 1 year; or  
17 (e) if the person is convicted outside the ACT, in Australia or  
18 elsewhere, of an offence that, if it had been committed in the  
19 ACT, would be punishable by imprisonment for at least 1 year.
- 20 (2) The Executive must end the person's appointment—
- 21 (a) if the person is absent, other than on leave approved by the  
22 Minister, for 14 consecutive days or for 28 days in any 12-month  
23 period; or  
24 (b) for physical or mental incapacity, if the incapacity substantially  
25 affects the exercise of the person's functions.

1 **14 Delegation of commissioner's functions**

2 The commissioner may delegate the commissioner's functions under  
3 this Act or another territory law to a member of the staff of the  
4 commissioner's office or a public servant.

5 *Note* For laws about delegations, see the [Legislation Act](#), pt 19.4.

6 **15 Cooperation with human rights commission**

7 The commissioner's office should seek to work cooperatively with  
8 the human rights commission where practicable by, for example,  
9 liaising with the commission about coordinating the commissioner's  
10 activities with the human rights commission's activities to avoid  
11 unnecessary duplication of work.

12 **Division 3.3 Staff etc of commissioner's office**

13 **16 Advisory committees**

14 (1) The commissioner may establish advisory committees to assist the  
15 commissioner to exercise the commissioner's functions in relation to  
16 matters affecting Aboriginal and Torres Strait Islander children and  
17 young people.

18 (2) Without limiting who may be appointed to an advisory committee,  
19 the commissioner may appoint Aboriginal and Torres Strait Islander  
20 community members, including Aboriginal and Torres Strait Islander  
21 children and young people, to the committee.

22 **17 Arrangements for staff and facilities**

23 The commissioner may arrange with the head of service to use the  
24 services of a public servant or territory facilities.

25 *Note* The head of service may delegate powers in relation to the management  
26 of public servants to a public servant or another person (see [Public Sector  
27 Management Act 1994](#), s 18).



1 **18** **Consultants and contractors**

2 (1) The commissioner may engage consultants and contractors.

3 (2) However, the commissioner must not enter into a contract of  
4 employment under this section.

5 **19** **Engagement of lawyer by commissioner**

6 The commissioner may engage a lawyer to appear before a court in  
7 relation to the exercise of the commissioner's functions under this  
8 Act.

1 **Part 4** **Advocacy and inquiry by**  
2 **commissioner**

3 **Division 4.1** **Inquiry by commissioner**

4 **20** **Commissioner may conduct inquiry**

5 The commissioner may conduct an inquiry into any matter relating to  
6 systemic issues that affect, or may affect, the rights, development,  
7 safety and wellbeing of Aboriginal and Torres Strait Islander children  
8 and young people generally, or a particular group of Aboriginal and  
9 Torres Strait Islander children and young people.

10 **21** **Conduct of inquiry**

- 11 (1) An inquiry under section 20 may be conducted in the way the  
12 commissioner considers most appropriate, taking into account—
- 13 (a) the nature of the matter to which the inquiry relates; and
  - 14 (b) the wishes, if known, of any children or young people on whose  
15 behalf the commissioner is conducting the inquiry; and
  - 16 (c) the rules of natural justice and procedural fairness.
- 17 (2) However, the commissioner must not conduct an inquiry in a way that  
18 is likely to impede an investigation or proposed investigation, or the  
19 conduct of a proceeding, by any of the following:
- 20 (a) the Australian Federal Police;
  - 21 (b) a coroner;
  - 22 (c) a court;
  - 23 (d) the integrity commissioner;
  - 24 (e) the ombudsman;
  - 25 (f) the public sector standards commissioner.

1 (3) In this section:

2 *Australian Federal Police* means the Australian Federal Police  
3 constituted under the *Australian Federal Police Act 1979* (Cwlth),  
4 section 6.

5 **22 Notice of inquiry**

6 Before starting an inquiry relevant to an entity, the commissioner  
7 must give the person in charge of the entity written notice of—

- 8 (a) the nature of the inquiry; and  
9 (b) how the commissioner expects to seek information from the  
10 entity.

11 **23 Recommendation in relation to inquiry**

12 (1) This section applies if the commissioner conducts an inquiry under  
13 section 20.

14 (2) The commissioner may give the person in charge of an entity a written  
15 notice setting out—

- 16 (a) any recommendation to the entity in relation to the rights,  
17 development, safety and wellbeing of Aboriginal and Torres  
18 Strait Islander children and young people; and  
19 (b) a reasonable stated time within which the entity must give the  
20 commissioner a written response to the recommendation.

21 (3) The person in charge of the entity must respond to the commissioner  
22 within the stated time.

23 (4) Subsection (3) does not apply if the person in charge of the entity has  
24 a reasonable excuse for not responding.

1     **Division 4.2**                    **Advocacy by commissioner for**  
2    **individuals**

3     **24**                    **Recommendation in relation to advocacy**

- 4             (1) This section applies if the commissioner advocates, or has advocated,  
5             on behalf of an Aboriginal or Torres Strait Islander child or young  
6             person.
- 7             (2) The commissioner may give the person in charge of an entity a written  
8             notice setting out—
- 9                 (a) the matter in relation to which the commissioner is advocating,  
10                 or has advocated, for the Aboriginal or Torres Strait Islander  
11                 child or young person; and
- 12                 (b) any recommendation to the entity in relation to the safety,  
13                 wellbeing and rights of the child or young person; and
- 14                 (c) a stated reasonable time within which the entity must give the  
15                 commissioner a written response to the recommendation.
- 16             (3) The person in charge of the entity must respond to the commissioner  
17             within the stated time.
- 18             (4) Subsection (3) does not apply if the person in charge of the entity has  
19             a reasonable excuse for not responding.

20     **Division 4.3**                    **Report in relation to inquiry etc**

21     **25**                    **Report in relation to inquiry or matter of public**  
22    **importance**

- 23             (1) The commissioner may at any time, on the commissioner's own  
24             initiative, prepare a written report in relation to the following and give  
25             it to anyone the commissioner considers appropriate:
- 26                 (a) an inquiry under section 20;

- 1           (b) any matter of public importance related to the commissioner's  
2           functions.
- 3           (2) However, the commissioner must not include an adverse comment in  
4           relation to a person in a report unless the commissioner has given the  
5           person a reasonable opportunity to respond to the proposed comment.
- 6           (3) If the commissioner gives the Minister a report mentioned in  
7           subsection (1), the Minister must present the report to the Legislative  
8           Assembly within 6 sitting days after the day the Minister receives the  
9           report.

1 **Part 5** **Information gathering and**  
2 **sharing**

3 **26** **Definitions—pt 5**

4 In this part:

5 *consent*, of an individual who is an Aboriginal or Torres Strait  
6 Islander child or young person, includes consent of a person with  
7 parental responsibility for the child or young person.

8 *disclose* includes communicate or publish.

9 *information* means information, whether true or not, in any form and  
10 includes an opinion and advice.

11 *personal information*—see the [Information Privacy Act 2014](#),  
12 section 8.

13 *person with parental responsibility*, for an Aboriginal or Torres Strait  
14 Islander child or young person, means a parent or someone else with  
15 parental responsibility for the child or young person under the  
16 [Children and Young People Act 2008](#), division 1.3.2.

17 *produce* includes allow access to.

18 *protected information* means information about a person that is  
19 disclosed to, or obtained by, an official because of the exercise of a  
20 function under this Act by the official or someone else.

21 **27** **Power to require information, documents and other**  
22 **things**

- 23 (1) This section applies if the commissioner believes on reasonable  
24 grounds that a person can give information or produce a document or  
25 other thing that the commissioner considers necessary to exercise the  
26 commissioner's functions under section 11 (1) (a), (b) and (c).

1 (2) The commissioner may, by written notice given to the person, require  
2 the person to give the commissioner the information, or produce the  
3 document or other thing.

4 *Note* It is an offence to make a false or misleading statement, give false or  
5 misleading information or produce a false or misleading document (see  
6 [Criminal Code](#), pt 3.4).

7 (3) Subsection (2) does not apply to sensitive information, including  
8 sensitive information in a document or other thing.

9 *Note* The commissioner may also ask for information under the [Children and](#)  
10 [Young People Act 2008](#), including under that [Act](#), s 879.

11 (4) The notice must state how, and the time within which, the person must  
12 comply with the requirement.

13 (5) However, the commissioner must not require an Aboriginal or Torres  
14 Strait Islander child or young person, or a member of the child or  
15 young person's family, to give the commissioner information, or  
16 produce a document or other thing.

17 (6) In this section:

18 *sensitive information*—see the [Children and Young People Act 2008](#),  
19 section 845.

20 **28 Limit on power to ask for information, documents and**  
21 **other things—identifying information**

22 (1) This section applies if—

23 (a) a person is required under section 27 to give the commissioner  
24 information, or produce a document or other thing in relation to  
25 the conduct of an inquiry under section 20; and

26 (b) the information, document or other thing includes identifying  
27 information about an individual.

- 1 (2) The commissioner must ask the person to remove the identifying  
2 information, if practicable, before giving the information, or  
3 producing a document or other thing.
- 4 (3) In this section:
- 5 *identifying information* means information that—
- 6 (a) identifies a person; or
- 7 (b) would allow a person’s identity to be worked out.
- 8 **29 Limit on power to ask for information, documents and**  
9 **other things—consent for personal information**
- 10 (1) This section applies if the commissioner requires a person to give  
11 information, or produce a document or other thing under section 27,  
12 other than in relation an inquiry under section 20.
- 13 (2) The commissioner must not require the person to give the  
14 information, or produce the document or other thing if it contains  
15 personal information about an individual, unless—
- 16 (a) the commissioner has taken reasonable steps to seek the  
17 individual’s consent before making the requirement; and
- 18 (b) either—
- 19 (i) the individual has given consent; or
- 20 (ii) the commissioner reasonably believes—
- 21 (A) there may be a significant risk to the wellbeing of an  
22 Aboriginal or Torres Strait Islander child or young  
23 person; and
- 24 (B) accessing the information is necessary to effectively  
25 advocate for the child or young person.



- 1     **30           Failure to give information, document or other thing**
- 2           (1) A person commits an offence if—
- 3               (a) the person is required under section 27 to give information to the
- 4                 commissioner; and
- 5               (b) the person fails to give the information to the commissioner as
- 6                 required.
- 7               Maximum penalty: 50 penalty units.
- 8           (2) Subsection (1) does not apply if the person has a reasonable excuse
- 9               for failing to provide the information to the commissioner as required.
- 10           *Note*     The defendant has an evidential burden in relation to the matters
- 11               mentioned in s (2) and s (4) (see [Criminal Code](#), s 58).
- 12           (3) A person commits an offence if—
- 13               (a) the person is required under section 27 to produce to the
- 14                 commissioner a document or other thing; and
- 15               (b) the person fails to produce the document or other thing to the
- 16                 commissioner as required.
- 17               Maximum penalty: 50 penalty units.
- 18           (4) Subsection (3) does not apply if the person has a reasonable excuse
- 19               for failing to produce the document or other thing to the
- 20                 commissioner as required.
- 21     **31           Power to require attendance**
- 22           (1) This section applies if the commissioner believes on reasonable
- 23               grounds that a relevant person for an entity can give information
- 24                 relevant to the conduct of an inquiry under section 20.

- 1           (2) The commissioner may, by written notice given to the relevant  
2           person, require the person to attend before an official, at the  
3           reasonable time and place stated in the notice, to answer questions in  
4           relation to the inquiry.
- 5           (3) However, the commissioner must not require an Aboriginal or Torres  
6           Strait Islander child or young person, or a member of the child or  
7           young person's family, to attend before an official under  
8           subsection (2).
- 9           (4) A person required to attend before an official under subsection (2)  
10          must continue to attend as reasonably required by the official to  
11          answer questions in relation to the inquiry.
- 12          (5) In this section:
- 13               *employed* includes engaged as a volunteer, consultant or contractor.
- 14               *relevant person*, in relation to an entity, means a person who is or was  
15               employed by, or involved in the management or administration of, the  
16               entity.

## 17   **32        Failure to attend**

- 18          (1) A person commits an offence if—
- 19               (a) the person is required under section 31 to attend before an  
20               official to answer questions in relation to the conduct of an  
21               inquiry; and
- 22               (b) the person does not attend before the official as required.
- 23          Maximum penalty: 50 penalty units.
- 24          (2) Subsection (1) does not apply if the person has a reasonable excuse  
25          for not attending before the official as required.
- 26          *Note*     The defendant has an evidential burden in relation to the matters  
27          mentioned in ss (2), (4) and (6) (see [Criminal Code](#), s 58).

- 1 (3) A person commits an offence if—
- 2 (a) the person is required under section 31 to attend before an
- 3 official to answer questions in relation to the conduct of an
- 4 inquiry; and
- 5 (b) the person attends before the official as required; and
- 6 (c) the person fails to continue to attend as reasonably required by
- 7 the official to answer questions in relation to the inquiry.
- 8 Maximum penalty: 50 penalty units.
- 9 (4) Subsection (3) does not apply if the person has a reasonable excuse
- 10 for failing to continue to attend as required by the official.
- 11 (5) A person commits an offence if—
- 12 (a) the person is required under section 31 to attend before an
- 13 official to answer questions in relation to the conduct of an
- 14 inquiry; and
- 15 (b) the person attends before the official as required; and
- 16 (c) the official requires the person to answer a question; and
- 17 (d) the person fails to answer the question.
- 18 Maximum penalty: 50 penalty units.
- 19 *Note 1* The [Legislation Act](#), s 170 and s 171 deal with the application of the
- 20 privilege against self-incrimination and client legal privilege.
- 21 *Note* Giving false or misleading information is an offence against the [Criminal](#)
- 22 [Code](#), s 338.
- 23 (6) Subsection (5) does not apply if the person has a reasonable excuse
- 24 for failing to answer the question.

1     **33           Abrogation of privilege against self-incrimination**

2           (1) A person is not excused from answering a question, or providing  
3           information or a document or other thing, under this part on the  
4           ground that the answer to the question, or the information, document  
5           or thing, may tend to incriminate the person or expose the person to a  
6           penalty.

7           *Note*     The [Legislation Act](#), s 170 deals with the application of the privilege  
8           against self-incrimination.

9           (2) However, any information, document or other thing obtained, directly  
10          or indirectly, because of the giving of the answer or the production of  
11          the document or other thing, is not admissible in evidence against the  
12          person in a civil or criminal proceeding, other than a proceeding for—

13           (a) an offence against this part; or

14           (b) any other offence arising out of the false or misleading nature of  
15          the answer, information, document or other thing.

16     **34           Information sharing—human rights commission**

17          (1) The commissioner may disclose to a member of the human rights  
18          commission any information that has been disclosed to, or obtained  
19          by, the commissioner in the exercise of a function under this Act, if—

20           (a) the commissioner is reasonably satisfied that the information is  
21           relevant to the exercise of the member’s functions under the  
22           [Human Rights Commission Act 2005](#); and

23           (b) if the information is personal information about an individual—  
24          the individual has given consent.

- 1 (2) However, the commissioner may disclose personal information about  
2 an individual to a member of the human rights commission without  
3 the individual's consent if the commissioner believes on reasonable  
4 grounds that the disclosure is necessary to ensure that—
- 5 (a) the commissioner and the human rights commission are able to  
6 take a coordinated approach in relation to a matter affecting an  
7 Aboriginal or Torres Strait Islander child or young person; or
- 8 (b) effective advocacy is able to be undertaken for an Aboriginal or  
9 Torres Strait Islander child or young person.
- 10 (3) If a member of the human rights commission uses information  
11 disclosed to the member under this section—
- 12 (a) a secrecy requirement is taken to apply to the member in relation  
13 to the information; and
- 14 (b) the member is taken to be a person engaged in the administration  
15 of the provision that contains the secrecy requirement.
- 16 (4) This section applies despite any other territory law.
- 17 (5) In this section:
- 18 *secrecy requirement* means a prohibition on the disclosure of  
19 information that applies to the commissioner in relation to  
20 information disclosed to a member of the human rights commission,  
21 whether the prohibition is absolute or subject to stated exceptions or  
22 qualifications.

## 23 **35 Secrecy**

- 24 (1) An information holder commits an offence if—
- 25 (a) the information holder—
- 26 (i) makes a record of protected information about someone  
27 else; and

- 1                   (ii) is reckless about whether the information is protected  
2                   information about someone else; or
- 3           (b) the information holder—
- 4                   (i) does something that discloses protected information about  
5                   someone else; and
- 6                   (ii) is reckless about whether—
- 7                   (A) the information is protected information about  
8                   someone else; and
- 9                   (B) doing the thing would result in the information being  
10                  disclosed to someone else.
- 11           Maximum penalty: 50 penalty units, imprisonment for 6 months or  
12           both.
- 13           (2) Subsection (1) does not apply if the record is made, or the information  
14           is disclosed—
- 15                   (a) under this Act or another territory law; or
- 16                   (b) in relation to the exercise of a function, as an information holder,  
17                   under this Act or another territory law.
- 18           (3) Subsection (1) does not apply to the divulging of protected  
19           information about someone with the person’s consent.
- 20           (4) An information holder need not disclose protected information to a  
21           court, or produce a document containing protected information to a  
22           court, unless it is necessary to do so for this Act or another territory  
23           law.

- 1           (5) In this section:
- 2           ***information holder*** means—
- 3           (a) a person who is or has been an official; or
- 4           (b) anyone else who exercises or has exercised a function under this
- 5           Act; or
- 6           (c) a person who is required under section 27 to give the
- 7           commissioner information, or produce a document or other
- 8           thing; or
- 9           (d) a person who is required under section 31 to attend before an
- 10          official to answer questions in relation to an inquiry.





1 **Part 7** **Legislation amended**

2 **39** **Legislation amended—sch 1**

3 This Act amends the legislation mentioned in schedule 1.

1 **Schedule 1 Consequential amendments**

2 (see s 39)

3 **Part 1.1 Children and Young People Act**  
4 **2008**

5 **[1.1] Section 137, definition of *accredited person*, new**  
6 **paragraph (fa)**

7 *insert*

8 (fa) the Aboriginal and Torres Strait Islander children and young  
9 people commissioner;

10 **[1.2] New section 144 (2) (b) (va)**

11 *insert*

12 (va) the Aboriginal and Torres Strait Islander children and  
13 young people commissioner;

14 **[1.3] Section 153A**

15 *after*

16 *Human Rights Commission Act 2005*

17 *insert*

18 , the Aboriginal and Torres Strait Islander children and young people  
19 commissioner

20 **[1.4] New section 179 (da)**

21 *insert*

22 (da) the Aboriginal and Torres Strait Islander children and young  
23 people commissioner;

1 **[1.5] Section 200 (5), definition of *protected electronic***  
2 ***communication*, new paragraph (da)**

3 *insert*

4 (da) the Aboriginal and Torres Strait Islander children and young  
5 people commissioner;

6 **[1.6] Section 201 (4), definition of *protected mail*, new**  
7 **paragraph (da)**

8 *insert*

9 (da) the Aboriginal and Torres Strait Islander children and young  
10 people commissioner;

11 **[1.7] New section 207 (2) (e)**

12 *insert*

13 (e) if the young detainee is an Aboriginal or Torres Strait Islander  
14 child or young person—the Aboriginal and Torres Strait  
15 Islander children and young people commissioner.

16 **[1.8] New section 222 (3) (ea)**

17 *insert*

18 (ea) the Aboriginal and Torres Strait Islander children and young  
19 people commissioner;

20 **[1.9] Section 280 (5), definition of *protected mail*, new**  
21 **paragraph (ea)**

22 *insert*

23 (ea) the Aboriginal and Torres Strait Islander children and young  
24 people commissioner;

1 **[1.10] Section 286, definition of *support person*, new example**

2 *insert*

3 1A the Aboriginal and Torres Strait Islander children and young people  
4 commissioner

5 **[1.11] Section 356 (3), definition of *mandated reporter*, new  
6 paragraph (na)**

7 *insert*

8 (na) the Aboriginal and Torres Strait Islander children and young  
9 people commissioner;

10 **[1.12] Section 359 heading**

11 *substitute*

12 **359 Reports made to public advocate or Aboriginal and  
13 Torres Strait Islander children and young people  
14 commissioner**

15 **[1.13] Section 359 (1), (2) and (4)**

16 *after*

17 public advocate

18 *insert*

19 or Aboriginal and Torres Strait Islander children and young people  
20 commissioner

21 **[1.14] New section 377 (2) (e)**

22 *insert*

23 (e) if the child or young person is an Aboriginal or Torres Strait  
24 Islander person—the Aboriginal and Torres Strait Islander  
25 children and young people commissioner.

1 **[1.15] New section 379 (1) (e)**

2 *insert*

- 3 (e) if the child or young person is an Aboriginal or Torres Strait  
4 Islander person—the Aboriginal and Torres Strait Islander  
5 children and young people commissioner.

6 **[1.16] New section 386 (c)**

7 *before the note, insert*

- 8 (c) if the appraisal order is for an Aboriginal or Torres Strait  
9 Islander child or young person—the Aboriginal and Torres  
10 Strait Islander children and young people commissioner.

11 **[1.17] New section 390 (5)**

12 *insert*

- 13 (5) If the child or young person is an Aboriginal or Torres Strait Islander  
14 person, the director-general must also give the Aboriginal and Torres  
15 Strait Islander children and young people commissioner a copy of the  
16 application.

17 **[1.18] New section 392 (1A)**

18 *insert*

- 19 (1A) If the child or young person is an Aboriginal or Torres Strait Islander  
20 person, the court must also give the Aboriginal and Torres Strait  
21 Islander children and young people commissioner a registration  
22 notice.

1 **[1.19] New section 408 (3) (ba)**

2 *insert*

- 3 (ba) if the child or young person is an Aboriginal or Torres Strait  
4 Islander person—the Aboriginal and Torres Strait Islander  
5 children and young people commissioner;

6 **[1.20] New section 417 (2) (f)**

7 *before the notes, insert*

- 8 (f) if the child or young person is an Aboriginal or Torres Strait  
9 Islander person—the Aboriginal and Torres Strait Islander  
10 children and young people commissioner.

11 **[1.21] New section 419 (f)**

12 *before the note, insert*

- 13 (f) if the child or young person is an Aboriginal or Torres Strait  
14 Islander person—the Aboriginal and Torres Strait Islander  
15 children and young people commissioner.

16 **[1.22] Section 425 (3), except notes**

17 *substitute*

- 18 (3) If the other applicant applies for a care and protection order for a child  
19 or young person, the following may each appear and be heard in the  
20 proceeding:  
21 (a) the director-general;  
22 (b) the public advocate;  
23 (c) if the child or young person is an Aboriginal or Torres Strait  
24 Islander person—the Aboriginal and Torres Strait Islander  
25 children and young people commissioner.

1 **[1.23] New section 427 (1) (f)**

2 *insert*

3 (f) if the child or young person is an Aboriginal or Torres Strait  
4 Islander person—the Aboriginal and Torres Strait Islander  
5 children and young people commissioner.

6 **[1.24] New section 435 (3) (d)**

7 *insert*

8 (d) if the child or young person is an Aboriginal or Torres Strait  
9 Islander person—the Aboriginal and Torres Strait Islander  
10 children and young people commissioner.

11 **[1.25] New section 445 (1) (e)**

12 *insert*

13 (e) if the child or young person is an Aboriginal or Torres Strait  
14 Islander person—the Aboriginal and Torres Strait Islander  
15 children and young people commissioner.

16 **[1.26] New section 452 (d)**

17 *before the note, insert*

18 (d) if the assessment order is for an Aboriginal or Torres Strait  
19 Islander child or young person—on application by the  
20 Aboriginal and Torres Strait Islander children and young people  
21 commissioner.

22 **[1.27] New section 459 (3) (d)**

23 *before the note, insert*

24 (d) if the care and protection order is for an Aboriginal or Torres  
25 Strait Islander child or young person—the Aboriginal and  
26 Torres Strait Islander children and young people commissioner.

1 **[1.28] New section 469 (d)**

2 *before the note, insert*

- 3 (d) if the care and protection order is for an Aboriginal or Torres  
4 Strait Islander child or young person—the Aboriginal and  
5 Torres Strait Islander children and young people commissioner.

6 **[1.29] Section 496 (2) (d), example**

7 *substitute*

8 **Examples—par (d)**

- 9 1 the Aboriginal and Torres Strait Islander children and young people  
10 commissioner  
11 2 the public advocate

12 **[1.30] New section 497 (1) (e)**

13 *before the note, insert*

- 14 (e) if the child or young person is an Aboriginal or Torres Strait  
15 Islander person—the Aboriginal and Torres Strait Islander  
16 children and young people commissioner.

17 **[1.31] Section 500 (2) and (3)**

18 *substitute*

- 19 (2) The following may apply to the Childrens Court for an order requiring  
20 the director-general to give the annual review report to the person  
21 (an ***annual review report order***):

- 22 (a) the public advocate;
- 23 (b) if the annual review report is for a care and protection order for  
24 an Aboriginal or Torres Strait Islander child or young person—  
25 the Aboriginal and Torres Strait Islander children and young  
26 people commissioner.



- 1           (3) The applicant for the annual review report order must give the  
2           director-general a copy of the application promptly after the  
3           application is filed.

4           **[1.32] Section 507 heading**

5           *substitute*

6           **507 Public advocate etc to be told about action following**  
7           **appraisals**

8           **[1.33] New section 507 (3)**

9           *insert*

- 10           (3) If the child or young person is an Aboriginal or Torres Strait Islander  
11           person, the director-general must also give the Aboriginal and Torres  
12           Strait Islander children and young people commissioner the report  
13           mentioned in subsection (2).

14           **[1.34] Section 536, definition of *therapeutic protection plan*,**  
15           **new note**

16           *insert*

- 17           *Note 2* If the child or young person is an Aboriginal or Torres Strait Islander  
18           person, the director -general must also, if asked by the Aboriginal and  
19           Torres Strait Islander children and young people commissioner, give a  
20           copy promptly to the commissioner (see s 631 (2)).

21           **[1.35] New section 541 (1) (e)**

22           *insert*

- 23           (e) if the child or young person is an Aboriginal or Torres Strait  
24           Islander person—the Aboriginal and Torres Strait Islander  
25           children and young people commissioner.

1 **[1.36] New section 555 (2) (ea)**

2 *insert*

3 (ea) if the child or young person is an Aboriginal or Torres Strait  
4 Islander person—the Aboriginal and Torres Strait Islander  
5 children and young people commissioner;

6 **[1.37] New section 556 (3) (f)**

7 *insert*

8 (f) if the child or young person is an Aboriginal or Torres Strait  
9 Islander person—the Aboriginal and Torres Strait Islander  
10 children and young people commissioner.

11 **[1.38] New section 560 (c)**

12 *before the note, insert*

13 (c) if the therapeutic protection order is for an Aboriginal or Torres  
14 Strait Islander child or young person—the Aboriginal and  
15 Torres Strait Islander children and young people commissioner.

16 **[1.39] New section 564 (f)**

17 *before the note, insert*

18 (f) if the child or young person is an Aboriginal or Torres Strait  
19 Islander person—the Aboriginal and Torres Strait Islander  
20 children and young people commissioner.

21 **[1.40] New section 567 (d)**

22 *before the note, insert*

23 (d) if the therapeutic protection order was for an Aboriginal or  
24 Torres Strait Islander child or young person—the Aboriginal  
25 and Torres Strait Islander children and young people  
26 commissioner.

1 **[1.41] Section 576, definition of *accredited person*, new**  
2 **paragraph (fa)**

3 *insert*

4 (fa) if the child or young person is an Aboriginal or Torres Strait  
5 Islander person—the Aboriginal and Torres Strait Islander  
6 children and young people commissioner;

7 **[1.42] Section 631 heading**

8 *substitute*

9 **631 Public advocate etc may be given therapeutic protection**  
10 **plan**

11 **[1.43] New section 631 (2)**

12 *after the note, insert*

13 (2) If the Aboriginal and Torres Strait Islander children and young people  
14 commissioner asks the director-general for a therapeutic protection  
15 plan for an Aboriginal or Torres Strait Islander child or young person,  
16 the director-general must promptly give the commissioner a copy of  
17 the plan.

18 **[1.44] New section 646 (2) (e)**

19 *insert*

20 (e) if the child or young person is an Aboriginal or Torres Strait  
21 Islander person—the Aboriginal and Torres Strait Islander  
22 children and young people commissioner.

1 **[1.45] New section 648 (2) (c)**

2 *insert*

3 (c) if the original order is for an Aboriginal or Torres Strait Islander  
4 child or young person—the Aboriginal and Torres Strait  
5 Islander children and young people commissioner.

6 **[1.46] New section 658 (2) (e)**

7 *insert*

8 (e) if the order relates to an Aboriginal or Torres Strait Islander  
9 child or young person—the Aboriginal and Torres Strait  
10 Islander children and young people commissioner.

11 **[1.47] Section 700 (2)**

12 *after*

13 public advocate

14 *insert*

15 or the Aboriginal and Torres Strait Islander children and young  
16 people commissioner

17 **[1.48] Section 704 (3)**

18 *substitute*

19 (3) However, if the applicant is the public advocate or the Aboriginal and  
20 Torres Strait Islander children and young people commissioner, the  
21 court must join the applicant as a party to the proceeding.

1 **[1.49] New section 706 (2) (c)**

2 *insert*

3 (c) if the application relates to an Aboriginal or Torres Strait  
4 Islander child or young person—the Aboriginal and Torres  
5 Strait Islander children and young people commissioner.

6 **[1.50] New section 720 (ba)**

7 *insert*

8 (ba) if the order relates to an Aboriginal or Torres Strait Islander  
9 child or young person—the Aboriginal and Torres Strait  
10 Islander children and young people commissioner; and

11 **[1.51] New section 721 (2) (ca)**

12 *insert*

13 (ca) if the order or revised order is for an Aboriginal or Torres Strait  
14 Islander child or young person—the Aboriginal and Torres  
15 Strait Islander children and young people commissioner;

16 **[1.52] Section 843, definition of *information holder*, new**  
17 **paragraph (a) (iia)**

18 *insert*

19 (iia) the Aboriginal and Torres Strait Islander children and  
20 young people commissioner; or

1 **[1.53] Section 845 (2), definition of *care and protection***  
2 ***appraisal information*, paragraph (c)**

3 *substitute*

4 (c) in a report (an *incident report*) to the public advocate or  
5 Aboriginal and Torres Strait Islander children and young people  
6 commissioner under section 507 (Public advocate etc to be told  
7 about action following appraisals); or

8 **[1.54] Section 874 (2) (i)**

9 *substitute*

10 (i) a person to the public advocate or Aboriginal and Torres Strait  
11 Islander children and young people commissioner under  
12 section 359 (Reports made to public advocate or Aboriginal and  
13 Torres Strait Islander children and young people commissioner);  
14 and

15 **[1.55] Section 874 (2) (s), except note**

16 *substitute*

17 (s) an ACT child welfare service to the public advocate or  
18 Aboriginal and Torres Strait Islander children and young people  
19 commissioner under section 879 (ACT child welfare services to  
20 assist certain statutory office holders).

21 **[1.56] Section 879 heading**

22 *substitute*

23 **879 ACT child welfare services to assist certain statutory**  
24 **office holders**

1 **[1.57] Section 879 (1)**

2 *substitute*

3 (1) The following people may, for the purpose of exercising a statutory  
4 function, ask an ACT child welfare service to provide information,  
5 advice, guidance, assistance, documents, facilities or services in  
6 relation to the physical or emotional welfare of children and young  
7 people:

8 (a) the public advocate;

9 (b) if the request relates to Aboriginal and Torres Strait Islander  
10 children and young people—the Aboriginal and Torres Strait  
11 Islander children and young people commissioner.

12 **[1.58] Section 879 (2)**

13 *after*

14 public advocate

15 *insert*

16 or Aboriginal and Torres Strait Islander children and young people  
17 commissioner

18 **[1.59] Dictionary, new definitions**

19 *insert*

20 ***Aboriginal and Torres Strait Islander children and young people***  
21 ***commissioner*** means the person appointed as the Aboriginal and  
22 Torres Strait Islander Children and Young People Commissioner  
23 under the *Aboriginal and Torres Strait Islander Children and Young*  
24 *People Commissioner Act 2022*, section 10.

25 ***Aboriginal or Torres Strait Islander child or young person*** means a  
26 child or young person who is an Aboriginal or Torres Strait Islander  
27 person.

1 *Aboriginal or Torres Strait Islander person*—see the *Aboriginal and*  
2 *Torres Strait Islander Children and Young People Commissioner*  
3 *Act 2022*, dictionary.

4 **[1.60] Dictionary, definition of *investigative entity***

5 *after*

6 public advocate,

7 *insert*

8 the Aboriginal and Torres Strait Islander children and young people  
9 commissioner,

10 **Part 1.2 Children and Young People**  
11 **Regulation 2009**

12 **[1.61] New sections 3AA, 3AB and 3AC**

13 *before section 3A, insert*

14 **3AA Register of searches and uses of force—details in**  
15 **relation to search—Act, s 195 (2) (h)**

16 The register must state in relation to each search if the young detainee  
17 is an Aboriginal or Torres Strait Islander person.

18 **3AB Register of searches and uses of force—inspection—Act,**  
19 **s 195 (5) (g)**

20 The Aboriginal and Torres Strait Islander children and young people  
21 commissioner is prescribed.



1 **3AC Therapeutic protection register—who may have access—**  
2 **Act, s 634 (1) (h)**

3 The Aboriginal and Torres Strait Islander children and young people  
4 commissioner is prescribed.

5 **[1.62] New dictionary**

6 *insert*

7 **Dictionary**

8 *Note* Terms used in this regulation have the same meaning that they have in  
9 the *Children and Young People Act 2008*. For example, the following  
10 terms are defined in the *Children and Young People Act 2008*, dict:

- 11 • Aboriginal and Torres Strait Islander children and young people  
12 commissioner  
13 • Aboriginal or Torres Strait Islander person.

14 **Part 1.3 Court Procedures Act 2004**

15 **[1.63] Section 68A (1), new definitions**

16 *insert*

17 *Aboriginal and Torres Strait Islander children and young people*  
18 *commissioner* means the person appointed as the Aboriginal and  
19 Torres Strait Islander Children and Young People Commissioner  
20 under the *Aboriginal and Torres Strait Islander Children and Young*  
21 *People Commissioner Act 2022*, section 10.

22 *Aboriginal or Torres Strait Islander child or young person* means a  
23 child or young person who is an Aboriginal or Torres Strait Islander  
24 person.

25 *Aboriginal or Torres Strait Islander person*—see the *Aboriginal and*  
26 *Torres Strait Islander Children and Young People Commissioner*  
27 *Act 2022*, dictionary.

1 **[1.64] New section 72 (1) (ga)**

2 *insert*

3 (ga) if the child or young person is an Aboriginal or Torres Strait  
4 Islander person—

5 (i) the Aboriginal and Torres Strait Islander children and  
6 young people commissioner; or

7 (ii) a person authorised by the Aboriginal and Torres Strait  
8 Islander children and young people commissioner for this  
9 section;

10 **[1.65] New section 72 (3A)**

11 *insert*

12 (3A) If an Aboriginal or Torres Strait Islander child or young person is the  
13 subject of a proceeding in a court, the Aboriginal and Torres Strait  
14 Islander children and young people commissioner may also make  
15 submissions to the court about whether the court should require or  
16 permit a person to be present under subsection (1) (1), or exclude a  
17 person under subsection (2).

18 **[1.66] Section 74C heading**

19 *substitute*

20 **74C Director-general, public advocate and Aboriginal and**  
21 **Torres Strait Islander children and young people**  
22 **commissioner etc may appear at proceedings**

1 **[1.67] New section 74C (2) (e)**

2 *insert*

3 (e) if the proceeding is against an Aboriginal or Torres Strait  
4 Islander child or young person—

5 (i) the Aboriginal and Torres Strait Islander children and  
6 young people commissioner; or

7 (ii) a person authorised by the Aboriginal and Torres Strait  
8 Islander children and young people commissioner for this  
9 section.

10 **[1.68] New section 74K (2) (c)**

11 *insert*

12 (c) if the child or young person is an Aboriginal or Torres Strait  
13 Islander person—the Aboriginal and Torres Strait Islander  
14 children and young people commissioner.

15 **[1.69] Section 74L heading**

16 *substitute*

17 **74L Director-general must report to court, public advocate**  
18 **and Aboriginal and Torres Strait Islander children and**  
19 **young people commissioner**

20 **[1.70] Section 74L (2)**

21 *after*

22 public advocate

23 *insert*

24 , the Aboriginal and Torres Strait Islander children and young people  
25 commissioner

1 **[1.71] New section 74L (2A)**

2 *insert*

3 (2A) However, for subsection (2), the director-general need only tell the  
4 Aboriginal and Torres Strait Islander children and young people  
5 commissioner about action taken or proposed to be taken (or that no  
6 action is proposed) in relation to an Aboriginal or Torres Strait  
7 Islander child or young person.

8 **[1.72] Section 74L (3) (b)**

9 *substitute*

10 (b) gives a copy of the application to—

11 (i) the public advocate; and

12 (ii) if the child or young person is an Aboriginal or Torres  
13 Strait Islander person—the Aboriginal and Torres Strait  
14 Islander children and young people commissioner.

15 **[1.73] Section 74LA (4)**

16 *after*

17 public advocate

18 *insert*

19 , the Aboriginal and Torres Strait Islander children and young people  
20 commissioner

21 **[1.74] Dictionary, new definitions**

22 *insert*

23 ***Aboriginal and Torres Strait Islander children and young people***  
24 ***commissioner***, for part 7A (Procedural provisions—proceedings  
25 involving children or young people)—see section 68A (1).



1 **[1.77] New sections 99B and 99C**

2 *insert*

3 **99B Information sharing with Aboriginal and Torres Strait**  
4 **Islander children and young people commissioner**

5 (1) A commissioner may disclose to the Aboriginal and Torres Strait  
6 Islander children and young people commissioner any information  
7 that has been disclosed to, or obtained by, the commissioner in the  
8 exercise of a function under this Act, if—

9 (a) the commissioner is reasonably satisfied that the information is  
10 relevant to the exercise of the Aboriginal and Torres Strait  
11 Islander children and young people commissioner's functions  
12 under the *Aboriginal and Torres Strait Islander Children and*  
13 *Young People Commissioner Act 2022*; and

14 (b) if the information is personal information about an individual—  
15 the individual has given consent.

16 (2) However, the commissioner may disclose personal information about  
17 an individual to the Aboriginal and Torres Strait Islander children and  
18 young people commissioner without the individual's consent if the  
19 commissioner believes on reasonable grounds that the disclosure is  
20 necessary to ensure that—

21 (a) the commissioner and the Aboriginal and Torres Strait Islander  
22 children and young people commissioner are able to take a  
23 coordinated approach in relation to a matter affecting an  
24 Aboriginal or Torres Strait Islander child or young person; or

25 (b) effective advocacy is able to be undertaken for an Aboriginal or  
26 Torres Strait Islander child or young person.

- 1 (3) If the Aboriginal and Torres Strait Islander children and young people  
2 commissioner uses information disclosed to the commissioner under  
3 this section—
- 4 (a) a secrecy requirement is taken to apply to the commissioner in  
5 relation to the information; and
- 6 (b) the commissioner is taken to be a person engaged in the  
7 administration of the provision that contains the secrecy  
8 requirement.
- 9 (4) This section applies despite any other territory law.
- 10 (5) In this section:
- 11 *secrecy requirement* means a prohibition on the disclosure of  
12 information that applies to a commissioner in relation to information  
13 disclosed to the Aboriginal and Torres Strait Islander children and  
14 young people commissioner, whether the prohibition is absolute or  
15 subject to stated exceptions or qualifications.

16 **99C Cooperation with Aboriginal and Torres Strait Islander**  
17 **children and young people commissioner's office**

- 18 (1) The human rights commission should seek to work cooperatively  
19 with the Aboriginal and Torres Strait Islander children and young  
20 people commissioner's office where practicable by, for example,  
21 liaising with the commissioner's office about coordinating the human  
22 rights commission's activities with the Aboriginal and Torres Strait  
23 Islander children and young people commissioner's activities to  
24 avoid unnecessary duplication of work.
- 25 (2) In this section:
- 26 *Aboriginal and Torres Strait Islander children and young people*  
27 *commissioner's office* means the Aboriginal and Torres Strait  
28 Islander Children and Young People Commissioner's office  
29 established under the *Aboriginal and Torres Strait Islander Children*  
30 *and Young People Commissioner Act 2022*, section 8.

1 **[1.78] Dictionary, new definitions**

2 *insert*

3 *Aboriginal and Torres Strait Islander children and young people*  
4 *commissioner* means the person appointed as the Aboriginal and  
5 Torres Strait Islander Children and Young People Commissioner  
6 under the *Aboriginal and Torres Strait Islander Children and Young*  
7 *People Commissioner Act 2022*, section 10.

8 *Aboriginal or Torres Strait Islander child or young person* means a  
9 child or young person who is an Aboriginal or Torres Strait Islander  
10 person.

11 *Aboriginal or Torres Strait Islander person*—see the *Aboriginal and*  
12 *Torres Strait Islander Children and Young People Commissioner*  
13 *Act 2022*, dictionary.

14 **Part 1.5 Official Visitor Act 2012**

15 **[1.79] New section 16 (2) (b) (iia)**

16 *insert*

17 (iia) if the entitled person is an Aboriginal or Torres Strait  
18 Islander child or young person—the Aboriginal and Torres  
19 Strait Islander children and young people commissioner;  
20 and

21 **[1.80] New section 17 (4) (ba)**

22 *insert*

23 (ba) if the report includes matters in relation to Aboriginal and Torres  
24 Strait Islander children or young people—the Aboriginal and  
25 Torres Strait Islander children and young people commissioner;



1 **[1.81] Section 17 (6), definition of *investigative entity***

2 *after*

3 the human rights commission,

4 *insert*

5 the Aboriginal and Torres Strait Islander children and young people  
6 commissioner,

7 **[1.82] Section 23DA (4), definition of *investigative entity***

8 *after*

9 the human rights commission,

10 *insert*

11 the Aboriginal and Torres Strait Islander children and young people  
12 commissioner,

13 **[1.83] New section 23DB (3) (da)**

14 *insert*

15 (da) the Aboriginal and Torres Strait Islander children and young  
16 people commissioner;

17 **[1.84] Dictionary, new definitions**

18 *insert*

19 ***Aboriginal and Torres Strait Islander children and young people***  
20 ***commissioner*** means the person appointed as the Aboriginal and  
21 Torres Strait Islander Children and Young People Commissioner  
22 under the *Aboriginal and Torres Strait Islander Children and Young*  
23 *People Commissioner Act 2022*, section 10.

24 ***Aboriginal or Torres Strait Islander child or young person*** means a  
25 child or young person who is an Aboriginal or Torres Strait Islander  
26 person.

- 1 *Aboriginal or Torres Strait Islander person*—see the *Aboriginal and*  
2 *Torres Strait Islander Children and Young People Commissioner*  
3 *Act 2022*, dictionary.

# Dictionary

(see s 3)

*Note* The [Legislation Act](#) contains definitions relevant to this Act.  
For example:

- administrative unit
- adult
- bankrupt or personally insolvent
- chief police officer
- coroner
- director-general (see s 163)
- document
- domestic partner (see s 169 (1))
- Executive
- fail
- function
- human rights commission
- integrity commissioner
- ombudsman
- State
- territory law.

*Aboriginal and Torres Strait Islander cultural principles*—see section 7 (2).

*Aboriginal or Torres Strait Islander child* means an Aboriginal or Torres Strait Islander person who is under 12 years old.

*Aboriginal or Torres Strait Islander person* means a person who—

- (a) is a descendant of an Aboriginal person or a Torres Strait Islander person; and
- (b) identifies as an Aboriginal person or a Torres Strait Islander person; and

- 1 (c) is accepted as an Aboriginal person or a Torres Strait Islander  
2 person by an Aboriginal community or Torres Strait Islander  
3 community.
- 4 ***Aboriginal or Torres Strait Islander young person*** means an  
5 Aboriginal or Torres Strait Islander person who is 12 years old or  
6 older, but not yet an adult.
- 7 ***association*** means an association declared under the [Associations](#)  
8 [Incorporation Act 1991](#), section 15 and incorporated under that Act.
- 9 ***commissioner*** means the Aboriginal and Torres Strait Islander  
10 Children and Young People Commissioner appointed under  
11 section 10 (1).
- 12 ***commissioner's office*** means the office of the Aboriginal and Torres  
13 Strait Islander Children and Young People Commissioner established  
14 under section 8.
- 15 ***consent***, of an individual who is an Aboriginal or Torres Strait  
16 Islander child or young person, for part 5 (Information gathering and  
17 sharing)—see section 26.
- 18 ***court*** includes a tribunal, authority or person having power to require  
19 the production of documents or the answering of questions.
- 20 ***disclose***, for part 5 (Information gathering and sharing)—see  
21 section 26.
- 22 ***executive officer***, of a corporation, means a person, however  
23 described and whether or not the person is a director of the  
24 corporation, who is concerned with, or takes part in, the corporation's  
25 management.

- 1            *family*, of an Aboriginal or Torres Strait Islander child or young  
2            person—
- 3            (a) means a person who is, or has been, the child or young  
4            person’s—
- 5                    (i) father, mother, grandfather, grandmother, stepfather,  
6                    stepmother, father-in-law or mother-in-law; or
- 7                    (ii) son or daughter; or
- 8                    (iii) brother, sister, half-brother, half-sister, stepbrother,  
9                    stepsister, brother-in-law or sister-in-law; or
- 10                   (iv) uncle, aunt, uncle-in-law or aunt-in-law; or
- 11                   (v) nephew, niece or cousin; or
- 12                   (vi) domestic partner; and
- 13            (b) includes—
- 14                    (i) someone the person has responsibility for, or an interest in,  
15                    in accordance with the traditions and customs of the  
16                    person’s Aboriginal or Torres Strait Islander community;  
17                    and
- 18                    (ii) someone who has responsibility for, or an interest in, the  
19                    person in accordance with the traditions and customs of the  
20                    person’s Aboriginal or Torres Strait Islander community;  
21                    and
- 22                    (iii) someone regarded and treated by the person as a relative;  
23                    and
- 24                    (iv) someone with whom the person has a family-like  
25                    relationship; and
- 26                    (v) anyone else who could reasonably be considered to be, or  
27                    have been, a relative of the person.

- 1            **information**, for part 5 (Information gathering and sharing)—see  
2            section 26.
- 3            **member**, of the human rights commission, means a person appointed  
4            to a statutory office under the *Human Rights Commission Act 2005*.
- 5            **official** means—
- 6            (a) the commissioner; or
- 7            (b) a member of staff of the commissioner’s office; or
- 8            (c) a person who exercises a function under this Act.
- 9            **personal information**, for part 5 (Information gathering and  
10            sharing)—see the *Information Privacy Act 2014*, section 8.
- 11           **person in charge**, of an entity, means—
- 12           (a) if the entity is an administrative unit—the relevant  
13           director-general; and
- 14           (b) if the entity is a public sector body—the head of the public sector  
15           body; and
- 16           (c) if the entity is an individual—the individual; and
- 17           (d) if the entity is a partnership—a partner in the partnership; and
- 18           (e) if the entity is a corporation—an executive officer of the  
19           corporation; and
- 20           (f) if the entity is an association—an office bearer for the  
21           association.
- 22           **person with parental responsibility**, for an Aboriginal or Torres Strait  
23           Islander child or young person, for part 5 (Information gathering and  
24           sharing)—see section 26.
- 25           **produce**, for part 5 (Information gathering and sharing)—see  
26           section 26.

