Australian Capital Territory

Human Rights Commission Act 2005

A2005-40

Republication No 23

Effective: 1 September 2016

Republication date: 1 September 2016

Last amendment made by A2016-52

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Human Rights Commission Act 2005* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 September 2016. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 1 September 2016.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register (www.legislation.act.gov.au). For more information, see the home page for this law on the register.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is $150 for an individual and $750 for a corporation (see *Legislation Act 2001*, s 133).

Australian Capital Territory

Human Rights Commission Act 2005

Contents

Page

Part 1 Preliminary

1 Name of Act 2
3 Dictionary 2
4 Notes 2
5 Offences against Act—application of Criminal Code etc 3

Part 2 Objects and important concepts

6 Main objects of Act 4
6A What is a *prescribed service*? 5
7 What is a *health service*? 6
8 What is a *disability service*? 6
8A What is a *service for children and young people*? 7
9 What is a *service for older people*? 8
9A What is a *service for victims of crime*? 8
10 Who is a *provider*? 9

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

Page

Part 3 The commission

Division 3.1 Establishment, constitution and functions of commission

11 Establishment of commission 10
12 Members of commission 10
13 Commission's collegiate nature to be promoted 10
14 Commission's functions 11
15 Functions and human rights 12
16 Independence of commission 12
17 Minister's directions 12

Division 3.2 President

18 President's functions 13
18A Governance and corporate support protocol 16
18B Client services charter 16
18C Operations protocol 17

Division 3.2A Appointment of commission members

18D Appointment of commission members 18
18E Ending appointments 18
18F Delegation of member's functions 19

Division 3.3 Children and young people commissioner

19B Children and young people commissioner's functions 19
19C Advisory committees for services for children and young people 20

Division 3.4 Disability and community services commissioner

21 Disability and community services commissioner's functions 21

Division 3.5 Discrimination commissioner

23 Discrimination commissioner's functions 21

Division 3.6 Health services commissioner

25 Health services commissioner's functions 23

Division 3.7 Human rights commissioner

27 Human rights commissioner's functions 23

Division 3.7A Public advocate

27B Public advocate's functions 24
27BA Public advocate to report to ACAT 26

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

Page

27BB Disclosure of information about investigations by public advocate 26
27BC Engagement of lawyer by public advocate 26

Division 3.7B Victims of crime commissioner

27C Victims of crime commissioner's functions 27

Division 3.9 Commission procedures

30 Time and place of commission meetings 27
31 Presiding member at meetings 28
32 Quorum at meetings 28
33 Voting at meetings 28
34 Individual with more than 1 role 28
35 Conduct of meetings etc 29

Division 3.10 Consultants of commission

37 Consultants of commission 30

Part 4 Complaints

Division 4.1 Making complaints

38 Outline—div 4.1 31
39 When may someone complain about a health service? 31
40 When may someone complain about a disability service? 32
40A When may someone complain about a service for children and young people? 33
41 When may someone complain about a service for older people? 34
42 What complaints may be made under this Act? 34
43 Who may make a complaint under this Act? 35
44 Complaint to be in writing 37
45 Commission's obligation to be prompt and efficient 38
46 Complainant's obligations in relation to complaint 41

Division 4.2 Dealing with complaints

47 Outline—div 4.2 42
48 Consideration without complaint or appropriate complainant 43
49 Treatment of complaint if complaint dealt with as commission-initiated consideration 44
51 Referring complaints for conciliation 45
51A Referral of advocacy matters 45

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

		Page
52	Considering complaints	46
52A	Referral to appropriate statutory office-holder	46
Division 4.2A	**Discrimination complaints to ACAT**	
53	Meaning of *unlawful act*—div 4.2A	47
53A	Referral of discrimination complaints	47
53B	Late application in exceptional circumstances	48
53C	Parties to ACAT proceeding on discrimination complaint	48
53CA	Onus of establishing complaint about discrimination etc	49
53D	Reliance on exceptions and exemptions	50
53DA	Commission to give information etc to ACAT	50
53E	Kinds of orders—unlawful acts under the Discrimination Act	51
Division 4.3	**Conciliation of complaints**	
54	Outline—div 4.3	52
55	What is *conciliation*?	53
56	Delegation of commission's function of conciliation	53
57	Parties to conciliation	53
58	Request for third-party to attend	54
59	Compulsory attendance at conciliation	54
60	Conduct of conciliation	54
61	Relationship between conciliation and consideration	55
62	Conciliated agreements	55
63	Use of conciliation agreement by commission	56
65	End of conciliation	56
66	Admissibility of evidence	57
67	Conciliation attendees protected from civil liability	57
Division 4.4	**Consideration of complaints**	
68	Outline—div 4.4	58
69	Purpose of considering complaints	58
70	Single consideration of several complaints	58
71	Representative complaints	58
71A	Commission may treat person as person complained about	59
72	Conduct of consideration	60
73	Power to ask for information, documents and other things	60
74	Requiring attendance etc	62

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

Page

75 Privileges against self-incrimination and exposure to civil penalty 63
76 Commission may keep document or other thing etc 64

Division 4.5 Closing complaints and reporting

77 Outline—div 4.5 65
78 When complaints can be closed 65
79 Reopening complaints 67
80 How complaints are closed 68
81 Final report 69
82 Closing discrimination complaints 69
83 Third-party reports 70
84 Commission-initiated reports 71
85 Responding to recommendations 71
86 Publication of name and details of non-complying entity 72
87 Reporting to Minister 74
88 Discrimination referral statements 74

Part 5 Health code, health profession boards and veterinary surgeons board

Division 5.1 Health code of health rights and responsibilities

89 Approval of health code 75
90 Contents of health code 75

Division 5.2 Relationship between commission, health profession boards and veterinary surgeons board

91 Meaning of *registered health practitioner* and *registered veterinary surgeon*—div 5.2 76
92 Referral of complaints to boards 77
93 Complaints referred to veterinary surgeons board 77
94 Consideration of complaints 78

Part 6 Miscellaneous

95 Information about complaints 79
96 Inspection of incorporated documents 79
97 Notification of certain incorporated documents 80
98 Victimisation etc 82
99 Secrecy 82

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

		Page
100	Protection of officials from liability	84
100A	Protection of others from liability	85
101	Intergovernmental arrangements	85
102	Exercise of functions under intergovernmental arrangement	86
103	Determination of fees and expenses for people asked to attend conciliation	86
104	Approved forms	86
105	Regulation-making power	87
105A	Review of protection of rights services legislation	87

Dictionary 88

Endnotes

1	About the endnotes	94
2	Abbreviation key	94
3	Legislation history	95
4	Amendment history	99
5	Earlier republications	109

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

Australian Capital Territory

Human Rights Commission Act 2005

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

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

Part 1 Preliminary

1 Name of Act

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

3 Dictionary

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

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

For example, the signpost definition '***unlawful act***, for division 4.2A (Discrimination complaints to ACAT)—see section 53.' means that the term 'unlawful act' is defined in that section for division 4.2A.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

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

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

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

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

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

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

Note 2 *Penalty units*

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

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

Part 2 Objects and important concepts

6 Main objects of Act

(1) The main object of the Act is to promote the human rights and welfare of people living in the ACT.

(2) The main object is to be achieved by establishing a commission that will—

(a) promote the provision of community education, information and advice in relation to human rights; and

(b) identify and examine issues that affect the human rights and welfare of vulnerable groups in the community; and

(c) make recommendations to government and non-government agencies on legislation, policies, practices and services that affect vulnerable groups in the community; and

(d) promote understanding and acceptance of, and compliance with, the *Discrimination Act 1991* and the *Human Rights Act 2004*; and

(e) acknowledge, protect and promote the rights of victims; and

(f) promote the protection of children and young people and people with a disability from abuse and exploitation; and

(g) promote improvements in the provision of prescribed services; and

(h) promote the rights of users of prescribed services; and

(i) promote an awareness of the rights and responsibilities of users and providers of services to which this Act relates; and

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

(j) provide an independent, fair and accessible process for the resolution of discrimination complaints and complaints between users and providers of prescribed services; and

(k) provide a process to encourage and assist users and providers of prescribed services to make improvements in the provision of services, particularly by encouraging and assisting service users and providers to contribute to the review and improvement of service quality; and

(l) foster community discussion, and the provision of community education and information, about—

(i) this Act and related Acts; and

(ii) the operation of the commission; and

(iii) the procedures for making complaints.

6A What is a *prescribed service*?

For this Act, a ***prescribed service*** means—

(a) a health service; and

(b) a disability service; and

(c) a service for children and young people; and

(d) a service for older people; and

(e) a service for victims of crime.

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

7 What is a *health service*?

(1) For this Act, a ***health service*** is a service provided in the ACT to someone (the ***service user***) for any of the following purposes:

(a) assessing, recording, maintaining or improving the physical, mental or emotional health, comfort or wellbeing of the service user;

(b) diagnosing or treating an illness, disability, disorder or condition of the service user.

(2) In applying this Act in relation to a veterinary surgeon, a ***health service*** is a service provided to an animal (the ***service user***) for any of the purposes mentioned in subsection (1) (a) or (b).

(3) A ***health service*** includes—

(a) a service provided by a health practitioner in the practitioner's capacity as a health practitioner; and

(b) a service provided specifically for carers of people receiving health services or carers of people with physical or mental conditions; and

(c) a service provided by a veterinary surgeon in the surgeon's capacity as a veterinary surgeon.

8 What is a *disability service*?

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

Examples of services for people with a disability or their carers

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

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

2 a service provided in association with the use of premises for the care, treatment or accommodation of people with a disability

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) In this section:

disability means a disability that—

(a) is attributable to an intellectual, psychiatric, sensory or physical impairment, or a combination of those impairments; and

(b) is permanent or likely to be permanent; and

(c) results in—

(i) the person having a substantially reduced capacity for communication, learning or mobility; and

(ii) the need for continuing support services for the person; and

(d) may, but need not, be of a chronic episodic nature.

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

8A What is a *service for children and young people*?

A ***service for children and young people*** is a service provided in the ACT specifically for children, young people, both children and young people, or their carers.

Examples of services for children and young people and their carers

1 a service that provides care, respite care, transport, assessment or referral of support needs, education, training and skill development, information services, coordination, food services, case management and brokerage, recreation, advocacy, community access, accommodation support, rehabilitation or employment services specifically for children, young people, or their carers

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

2 a service provided in relation to the use of premises for the care, treatment or accommodation of children, young people, or their carers

3 a service provided in relation to a detention place, therapeutic protection place or place of care under the *Children and Young People Act 2008*

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).

9 What is a *service for older people*?

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

Examples of services for older people

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

2 a service provided in association with the use of premises for the care, treatment or accommodation of older people.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

9A What is a *service for victims of crime*?

A ***service for victims of crime*** is a service provided in the ACT specifically for victims of crime.

Examples—services for victims of crime

- counselling and grief support services
- court support services

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).

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

10 Who is a *provider*?

(1) For this Act, a ***provider*** of a service is an entity that provides, or holds out that it can provide, the service.

(2) A ***provider*** of a service includes—

(a) an entity that employs someone who—

(i) provides the service; or

(ii) holds out that the person can provide the service; and

(b) a volunteer providing the service on behalf of someone else; and

(c) someone who was a provider when the service was provided, but is no longer providing the service.

(3) However, a funding body does not provide a service only because the body pays for the service to be provided by someone else.

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

Part 3 The commission

Division 3.1 Establishment, constitution and functions of commission

11 Establishment of commission

The Human Rights Commission (the ***commission***) is established.

12 Members of commission

(1) The commission has the following members:

(a) the president;

(b) the children and young people commissioner;

(c) the disability and community services commissioner;

(d) the discrimination commissioner;

(e) the health services commissioner;

(f) the human rights commissioner;

(g) the public advocate;

(h) the victims of crime commissioner.

Note The victims of crime commissioner is also the domestic violence project coordinator (see *Domestic Violence Agencies Act 1986*, s 11).

(2) The president of the commission is the human rights commissioner.

(3) A person may hold 2 or more positions mentioned in subsection (1).

13 Commission's collegiate nature to be promoted

The commission members must act in a way that promotes the collegiate nature of the commission.

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

14 Commission's functions

(1) The commission has the following functions:

(a) encouraging the resolution of complaints made under this Act, and assisting in their resolution, by providing an independent, fair and accessible process for resolving the complaints;

(b) encouraging and assisting users and providers of prescribed services to make improvements in the provision of services, particularly by encouraging and assisting service users and providers to contribute to the review and improvement of service quality;

(c) encouraging and assisting people providing prescribed services and people engaging in conduct that may be complained about under this Act, to develop and improve procedures for dealing with complaints;

(d) identifying, inquiring into and reviewing issues relating to the matters that may be complained about under this Act;

(e) exercising any other function given to the commission under this Act or another Territory law.

Note The following Acts give the commission functions:

- *Discrimination Act 1991*
- *Health Practitioner Regulation National Law (ACT)*
- *Health Records (Privacy and Access) Act 1997*
- *Human Rights Act 2004*
- *Veterinary Surgeons Act 2015*.

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

(2) The commission must exercise its functions—

(a) with regard to the principle—

(i) of the indivisibility and universality of human rights; and

(ii) that every person is free and equal in dignity and rights; and

(b) efficiently, with a view to providing the greatest possible benefit to the people of the ACT.

15 Functions and human rights

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

16 Independence of commission

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

17 Minister's directions

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

(2) The commission must comply with the direction.

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

Division 3.2 President

18 President's functions

(1) The president has the following functions:

(a) managing the administration of the commission;

(b) the efficient and effective financial management of the commission's resources;

(c) ensuring the commission's functions are exercised in an orderly and prompt way;

(d) developing a governance and corporate support protocol in accordance with section 18A;

(e) developing a client service charter in accordance with section 18B;

(f) developing an operations protocol in accordance with section 18C;

(g) ensuring, as far as practicable, the commission's functions are exercised in a way that takes into account, and is consistent with, the governance and corporate support protocol, the client service charter and the operations protocol;

(h) reporting, or coordinating reporting, on behalf of the commission in accordance with subsection (2);

(i) promoting community discussion, and providing community education and information, about—

(i) this Act and related Acts; and

(ii) the operation of the commission; and

(iii) the procedures for making complaints;

(j) advising the Minister about any matter in relation to this Act or a related Act;

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

(k) collecting information about the operation of this Act and related Acts, and publishing the information;

(l) dealing with complaints about the operation of the commission (but not a complaint about a decision of a commissioner in relation to a complaint made under division 4.1);

(m) if the president considers that a commissioner has a real or perceived conflict of interest in relation to a complaint—considering the complaint or allocating responsibility for consideration of the complaint to another commissioner;

(n) any other function given to the president under this Act or another territory law.

(2) The president—

(a) must for each inquiry and review mentioned in section 14 (1) (d)—

(i) report, in writing, to the Minister and other appropriate entities about the inquiry or review; and

(ii) advise the Minister and other appropriate entities about those matters; and

(b) is responsible for giving reports (other than a health practitioner report) under the following sections on behalf of the commission:

(i) section 17 (Minister's directions);

(ii) section 83 (Third-party reports);

(iii) section 84 (Commission-initiated reports);

(iv) section 87 (Reporting to Minister); and

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

(c) may report, in writing, to the Minister on the following systemic matters:

(i) a matter of public importance relating to the commission, including how the commission handles complaints under the Act;

(ii) a matter affecting the system—

(A) for the protection of the rights of users of prescribed services (or a class of user) as a whole, rather than a matter affecting an individual alone; and

(B) for the provision of prescribed services (or a class of prescribed services) as a whole, rather than a matter affecting an individual alone.

(3) The president may exercise any function given to any other commissioner under this Act or another territory law.

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

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

(5) In this section:

health practitioner report means—

(a) a notification under the *Health Practitioner Regulation National Law (ACT) Act 2010*, section 150 (2); or

(b) a report under that Act, section 150 (4A).

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

18A Governance and corporate support protocol

The president must—

(a) after consulting with the director-general and the other commissioners, prepare a draft governance and corporate support protocol for each 3-year period that includes—

(i) how the responsible directorate and the commission will consult and communicate with each other; and

(ii) a strategic plan for the 3-year period; and

(iii) how funding will be allocated within the commission for each year in the 3-year period; and

(iv) a budget for each commissioner mentioned in section 12 for each year in the 3-year period; and

(v) performance criteria to be met by the commission in each year of the 3-year period; and

(vi) financial and performance reporting and auditing requirements for the 3-year period; and

(vii) processes for requesting funding; and

(viii) anything else prescribed by regulation; and

(b) give the draft plan to the director-general for endorsement; and

(c) publish the approved plan on the commission's website.

18B Client services charter

The president must—

(a) every 3 years, after consulting with the ACT community for 8 weeks, prepare a client service charter that states—

(i) how the commission will provide services to the community; and

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

(ii) what the community can expect when dealing with the commission; and

(b) publish the charter on the commission's website.

18C Operations protocol

The president must—

(a) every 3 years, after consulting with the other commissioners, prepare a protocol that provides for the following:

(i) how enquiries and complaints generally will be received by the commission;

(ii) how enquiries will be dealt with within the commission;

(iii) how complaints will be referred within the commission;

(iv) how clients can access the commission's services;

(v) how the president undertakes advocacy and reporting on systemic matters under section 18 (2);

(vi) the kinds of questions or matters that may be considered at a commission meeting under section 33;

(vii) when complaints should be referred to other complaint handling entities;

(viii) anything else the commission considers appropriate;

(ix) anything else prescribed by regulation; and

Note For the making of complaints to the commission and how the commission deals with them, see pt 4.

(b) publish the protocol on the commission's website.

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

Division 3.2A Appointment of commission members

18D Appointment of commission members

(1) The Executive must appoint the commission members.

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

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

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

(3) A member must not be appointed for a term of longer than 5 years.

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

(4) A member's conditions of appointment are the conditions agreed between the Executive and the member, subject to any determination under the *Remuneration Tribunal Act 1995*.

18E Ending appointments

(1) The Executive may end the appointment of a person as a commission member—

(a) if the person contravenes a territory law; or

(b) for misbehaviour; or

(c) if the person becomes bankrupt or personally insolvent; or

Note ***Bankrupt or personally insolvent***—see the Legislation Act, dictionary, pt 1.

(d) if the person is convicted, in the ACT, of an offence punishable by imprisonment for at least 1 year; or

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

(e) if the person is convicted outside the ACT, in Australia or elsewhere, of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year.

(2) The Executive must end the person's appointment—

(a) if the person is absent, other than on leave approved by the Minister, for 14 consecutive days or for 28 days in any 12-month period; or

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

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

18F Delegation of member's functions

A commission member may delegate the member's functions under this Act or another territory law to another member or a commission staff member.

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

Division 3.3 Children and young people commissioner

19B Children and young people commissioner's functions

(1) The children and young people commissioner has the following functions:

(a) to exercise functions for the commission in relation to services for children and young people;

(b) to exercise any other function given to the commissioner under this Act or any other territory law.

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

(2) The exercise of the function mentioned in subsection (1) (a) is subject to any decision of the commission about the exercise of its functions in relation to services for children and young people.

(3) In exercising the children and young people commissioner's functions, the commissioner must endeavour to—

(a) consult with children and young people in ways that promote their participation in decision-making; and

(b) listen to and seriously consider the views of children and young people; and

(c) ensure that the commission is accessible to children and young people; and

(d) be sensitive to the linguistically and culturally diverse backgrounds of children and young people.

19C Advisory committees for services for children and young people

(1) The commission may establish advisory committees to assist the commission to exercise its functions in relation to services for children and young people.

(2) Without limiting the people who may be appointed to an advisory committee, the commission may appoint children and young people, and people with experience or expertise in relation to services for children and young people, to the committee.

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

Division 3.4 Disability and community services commissioner

21 Disability and community services commissioner's functions

(1) The disability and community services commissioner has the following functions:

(a) to exercise functions for the commission in relation to disability services;

(b) to exercise functions for the commission in relation to services for older people;

(c) to deal with the following complaints:

(i) a children and young people service complaint;

(ii) a disability service complaint;

(iii) an older people service complaint;

(d) to exercise any other function given to the commissioner under this Act or any other territory law.

(2) The exercise of the function mentioned in subsection (1) (a) is subject to any decision of the commission about the exercise of its functions in relation to disability services.

Division 3.5 Discrimination commissioner

23 Discrimination commissioner's functions

(1) The discrimination commissioner has the following functions:

(a) to exercise functions for the commission in relation to discrimination;

(b) to exercise any other function given to the commission under this Act or another territory law.

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

(2) The functions of the commission in relation to discrimination include the following:

(a) to promote the right of people to be free from unlawful discrimination in—

(i) the areas of work, education and access to premises;

(ii) the provision of goods, services, facilities and accommodation; and

(iii) the activities of clubs;

(b) to promote the right of people to be free from sexual harassment in—

(i) the areas of work, education and access to premises; and

(ii) the provision of goods, services, facilities and accommodation; and

(iii) the activities of clubs;

(c) to promote recognition and acceptance within the community of the equality of men and women;

(d) to promote recognition and acceptance within the community of the principle of equality of opportunity for all people.

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

(4) A term used in subsection (2) has the same meaning as in the *Discrimination Act 1991*.

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

Division 3.6 Health services commissioner

25 Health services commissioner's functions

(1) The health services commissioner has the following functions:

(a) to exercise functions for the commission in relation to health services;

(b) to exercise any other function given to the commissioner under this Act or any other territory law.

Note See, for example, the *Health Practitioner Regulation National Law (ACT)*, s 150 (Relationship with health complaints entity).

(2) The exercise of the function mentioned in subsection (1) (a) is subject to any decision of the commission about the exercise of its functions in relation to health services and services for older people.

Division 3.7 Human rights commissioner

27 Human rights commissioner's functions

(1) The human rights commissioner has the following functions:

(a) to exercise functions for the commission in relation to human rights;

(b) to exercise any other function given to the commissioner under this Act or any other territory law.

(2) The functions of the commission in relation to human rights include the following:

(a) to provide education about human rights and the *Human Rights Act 2004*; and

(b) to advise the Attorney-General on anything relevant to the operation of the *Human Rights Act 2004*.

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

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

Division 3.7A Public advocate

27B Public advocate's functions

(1) The public advocate has the following functions:

(a) to advocate for the rights of people with a disability and, as part of advocating for those rights, doing the following:

(i) fostering the provision of services and facilities for people with a disability;

(ii) supporting the establishment of organisations that support people with a disability;

(iii) encouraging the development of programs that benefit people with a disability (including advocacy programs, educational programs and programs to encourage people to act as guardians and managers);

(iv) promoting the protection of people with a disability from abuse and exploitation;

(b) to advocate for the rights of children and young people and, as part of advocating for those rights, doing the following:

(i) fostering the provision of services and facilities for children and young people;

(ii) supporting the establishment of organisations that support children and young people;

(iii) promoting the protection of children and young people from abuse and exploitation;

(c) to represent forensic patients before the ACAT or a court;

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

(d) to listen to and investigate concerns from children and young people about the provision of services for the protection of children and young people;

(e) investigate matters in relation to which the public advocate has a function;

(f) monitoring the provision of services for the protection of children and young people;

(g) dealing, on behalf of people with a disability and children and young people, with entities providing services;

(h) any other function given to the public advocate under this Act or any other territory law.

Note The public advocate also has functions under the *Children and Young People Act 2008*, the *Guardianship and Management of Property Act 1991* and the *Mental Health Act 2015*.

(2) In this section:

disability means one of the following conditions if the condition gives rise to a need for protection from abuse, exploitation or neglect, or a combination of those things:

(a) a physical, mental, psychological or intellectual condition;

(b) a condition that would make a person a forensic patient.

forensic patient includes a person who has been—

(a) apprehended by a police officer because the person's behaviour or statements indicate to the officer that the person may have a mental disorder or mental illness; or

(b) found by a court or the ACAT to be unfit to plead; or

(c) acquitted of a criminal charge because of mental impairment; or

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

(d) found guilty of a criminal offence and is, or while serving a sentence of imprisonment has become, a person with a mental disorder or mental illness.

mental disorder—see the *Mental Health Act 2015*, section 9.

mental illness—see the *Mental Health Act 2015*, section 10.

27BA Public advocate to report to ACAT

The public advocate must report to the ACAT about a matter before the ACAT if asked by the ACAT.

27BB Disclosure of information about investigations by public advocate

(1) Section 99 (Secrecy) does not prevent the public advocate from disclosing information to a person (including members of the public) about an investigation by the public advocate if the public advocate is satisfied that the disclosure is necessary and reasonable in the public interest.

(2) However, the public advocate must not make a disclosure—

(a) that is likely to prejudice the investigation; or

(b) that includes an opinion that is (expressly or impliedly) critical of a person or body unless the public advocate has given the person, or the principal officer of the body, an opportunity to answer the criticism; or

(c) if the investigation arises from a reported concern—that identifies the subject of the concern (directly or indirectly) unless it is necessary and reasonable to do so.

27BC Engagement of lawyer by public advocate

The public advocate may engage a lawyer to appear before a court or the ACAT in relation to the exercise of the public advocate's functions under this Act.

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

Division 3.7B Victims of crime commissioner

27C Victims of crime commissioner's functions

(1) The victims of crime commissioner has the following functions:

(a) to exercise functions for the commission in relation to services for victims of crime;

(b) to exercise any other function given to the commissioner under this Act or any other territory law.

Note The victims of crime commissioner also has functions under the *Domestic Violence Agencies 1986* (as the domestic violence project coordinator), the *Victims of Crime Act 1994* and the *Victims of Crime (Financial Assistance) Act 1983*.

(2) The exercise of the function mentioned in subsection (1) (a) is subject to any decision of the commission about the exercise of its functions in relation to services for victims of crime.

Division 3.9 Commission procedures

30 Time and place of commission meetings

(1) Meetings of the commission are to be held when and where it decides.

(2) However, the commission must meet at least once each month.

(3) The president may call a meeting of the commission.

(4) The president, when calling a meeting must give the other members reasonable notice of the time and place of the meeting.

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

31 Presiding member at meetings

(1) The president presides at all meetings at which the president is present.

(2) If the president is absent, the member chosen by the members present presides.

32 Quorum at meetings

Business may be carried on at a meeting of the commission only if at least 3 members of the commission are present.

33 Voting at meetings

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

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

34 Individual with more than 1 role

(1) This section applies if—

(a) a person holds 2 or more positions under this Act; and

(b) the person is a member of the commission because of each of the positions.

Example

The disability and community services commissioner may be appointed as the health services commissioner.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) The person is only entitled to 1 vote at commission meetings.

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

(3) In working out whether 3 members are present at a meeting for section 32 (Quorum at meetings), the number of members is taken to be the number of individuals who are members.

Example

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

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

35 Conduct of meetings etc

(1) A meeting may be held using a method of communication, or a combination of methods of communication, that allows a commission member taking part to hear what each other member taking part says without the members being in each other's presence.

Examples

a phone link, a satellite link, an internet or intranet link

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) A commission member who takes part in a meeting conducted under subsection (1) is taken, for all purposes, to be present at the meeting.

(3) A resolution is a valid resolution of the commission, even if it is not passed at a meeting of the commission, if—

(a) notice of the resolution is given under procedures decided by the commission; and

(b) all members agree, in writing, to the proposed resolution.

(4) The commission must keep minutes of its meetings.

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

Division 3.10 Consultants of commission

37 Consultants of commission

(1) The commission may engage consultants for this Act.

(2) Consultants are to be engaged on terms decided by the commission.

(3) However, this section does not give the commission a power to enter into a contract of employment.

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

Part 4 Complaints

Division 4.1 Making complaints

38 Outline—div 4.1

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

39 When may someone complain about a health service?

(1) A person may complain to the commission about a health service if—

(a) the service is not being provided appropriately; or

(b) the person believes that the provider of the service has acted inconsistently with any of the following:

(i) the health code;

(ii) if there is no health code—the health provision principles;

(iii) a generally accepted standard of health service delivery expected of providers of the same kind as the provider;

(iv) any standard of practice applying to the provider under the *Health Practitioner Regulation National Law (ACT)* or the *Veterinary Surgeons Act 2015*;

(v) the National Standards for Mental Health Services endorsed by the Australian Health Ministers Advisory Council's National Mental Health Working Group, as amended from time to time;

(vi) any other standard prescribed by regulation; or

(c) the service is not being provided.

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

(2) In this section:

health provision principles—see section 90 (2).

Note If the health services commissioner receives a complaint about a health practitioner, the commissioner must tell the national board for the practitioner's health profession about the complaint. The national board and commissioner must try to reach agreement about how the complaint is to be dealt with (see *Health Practitioner Regulation National Law (ACT)*, s 150).

40 When may someone complain about a disability service?

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

(a) the service is not being provided appropriately; or

(b) the person believes that the provider of the service has acted inconsistently with any of the following:

(i) the Home and Community Care National Service Standards, as amended from time to time;

(ii) the human rights principles set out in the *Disability Services Act 1991*, schedule 1;

(iii) the requirements to be complied with in relation to the design and implementation of programs and services relating to people with disabilities set out in the *Disability Services Act 1991*, schedule 2;

(iv) the National Standards for Mental Health Services endorsed by the Australian Health Ministers Advisory Council's National Mental Health Working Group, as amended from time to time;

(v) the generally accepted standard of service delivery expected of a provider of the kind of service to which the complaint relates;

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

(vi) standards (if any) approved under the *Disability Services Act 1991*, section 11 (Disability service standards);

(vii) any other standard prescribed by regulation; or

(c) the service is not being provided.

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

40A When may someone complain about a service for children and young people?

A person may complain to the commission about a service for children and young people if—

(a) the service is not being provided appropriately; or

(b) the provider of the service has acted inconsistently with any of the following:

(i) the generally accepted standard of service delivery expected of a provider of the kind of service to which the complaint relates;

(ii) any other standard prescribed by regulation; or

(c) the service is not being provided.

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

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

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

(a) the service is not being provided appropriately; or

(b) the provider of the service has acted inconsistently with any of the following:

(i) the Home and Community Care National Service Standards, as amended from time to time;

(ii) the generally accepted standard of service delivery expected of a provider of the kind of service to which the complaint relates;

(iii) any other standard prescribed by regulation; or

(c) the service is not being provided.

42 What complaints may be made under this Act?

(1) The following complaints may be made under this Act:

(a) a children and young people service complaint;

(b) a disability service complaint;

(c) a complaint about an unlawful act under the *Discrimination Act 1991* (a ***discrimination complaint***);

(d) a health service complaint;

(e) an older people service complaint;

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

(f) a complaint on a ground mentioned in the *Health Records (Privacy and Access) Act 1997*, section 18.

Note 1 A complaint about a health practitioner or a veterinary surgeon is dealt with by way of commission-initiated consideration (see s 94 (2)).

Note 2 The commission may also consider matters that have not been raised by complaints under div 3.5 (see s 48).

(1A) For a discrimination complaint, the complaint may be made in relation to unfavourable treatment—

(a) on the grounds of 2 or more attributes under the *Discrimination Act 1991*, section 7; and

(b) occurring on 2 or more occasions.

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

43 Who may make a complaint under this Act?

(1) A complaint about an act or service may be made to the commission under this Act by—

(a) a person (the ***aggrieved person***) aggrieved by the act or service; or

(b) an agent of the aggrieved person; or

(c) if the aggrieved person is a child or young person—a parent or guardian of the aggrieved person; or

(d) if a person has guardianship or control of the affairs of the aggrieved person under another law or an order of a court or tribunal—that person; or

(e) if the aggrieved person cannot complain for any reason and no-one has guardianship or control of the aggrieved person's affairs under another law or an order of a court or tribunal—a person approved by the commission to make a complaint for the aggrieved person; or

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

(f) if the complaint is a discrimination complaint—a person who has a sufficient interest in the complaint; or

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

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

(2) For subsection (1) (f), a person has a ***sufficient interest*** in a complaint if the conduct complained about is a matter of a genuine concern to the person because of the way conduct of that kind adversely affects, or has the potential to adversely affect, the interests of the person or interests or welfare of anyone the person represents.

(3) To remove any doubt—

(a) no-one may be required to make a complaint; and

(b) an aggrieved person may make a complaint under subsection (1) (a) even though the person is under a legal disability (for example, if a child is aggrieved, the child may make a complaint); and

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).

(c) if a complaint is made under subsection (1) (g)—the complainant cannot require the complaint to be considered.

(4) To remove any doubt, a carer may make a complaint as an agent of the aggrieved person under subsection (1) (b) even though the carer is under a legal disability (for example, if a child is a carer of the aggrieved person, the child may make a complaint as an agent of the person).

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

(5) A person may act as the agent of the aggrieved person only if the person is—

(a) authorised in writing to act for the aggrieved person; or

(b) authorised by the commission to act for the aggrieved person.

(6) A person mentioned in subsection (1) (f) may make a complaint only if the aggrieved person consents to the making of the complaint.

(7) The commission may authorise a person to act as the agent of the aggrieved person only if the commission is satisfied, on reasonable grounds, that the aggrieved person cannot for any reason make a complaint or authorise a person to make a complaint for the aggrieved person.

(8) A single complaint may be made by or for 2 or more aggrieved people.

44 Complaint to be in writing

(1) A complaint must—

(a) be in writing; and

(b) if the complaint is made by an agent—state that it is made for an aggrieved person and name the aggrieved person; and

(c) if the complaint is made by a person under section 43 (1) (f)—name the aggrieved person; and

(d) state the complaint and the grounds on which it is based; and

(e) include the name and address of the complainant.

(2) For a discrimination complaint, the complaint need not state whether the discrimination complained about is direct discrimination or indirect discrimination.

Note ***Discrimination*** occurs when a person directly or indirectly discriminates against someone (see *Discrimination Act 1991*, s 8).

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

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

Examples of when assistance would be reasonable

1 if the person cannot put the complaint in writing

2 if the person has difficulty putting the complaint in writing

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(4) Despite subsection (1) (a), a complaint may be made orally if the commission is satisfied on reasonable grounds that exceptional circumstances justify action without a written complaint.

Example—exceptional circumstances

Waiting until the complaint is put in writing would make action in response to the complaint impossible or impractical.

45 Commission's obligation to be prompt and efficient

(1) The commission must deal with complaints promptly and efficiently.

(2) In particular, the commission must—

(a) allocate each complaint as soon as possible; and

(b) if the commission decides to consider the complaint by a commission-initiated consideration under section 48 (2)—tell the person who made the complaint, in writing, about the decision and that the person will not receive progress reports about the consideration; and

(c) unless section 45 (4) applies—before considering the complaint, tell the complainant and the person complained about, in writing, that the complaint is to be considered; and

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

(d) if the complaint is a discrimination complaint and the commission decides not to refer the complaint for conciliation—tell the complainant, in writing, that the complaint will not be referred for conciliation and include a discrimination referral statement with the notice; and

(e) tell the complainant, in writing, how consideration of the complaint by the commission is progressing not later than—

(i) 6 weeks after the last time the commission told the complainant, in writing, (by a ***progress report***) about the complaint's progress; or

(ii) if the latest progress report includes a statement to the effect that, for stated reasons, a further progress report will not be provided until a stated time or event—the time or the happening of the event stated in the latest progress report; and

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

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).

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

(3) However, the commission need not consider a complaint if satisfied that—

(a) the complaint—

(i) is frivolous, vexatious or not made honestly; or

(ii) lacks substance; or

(iii) is to be referred to another statutory officer-holder or dealt with by a national board under the *Health Practitioner Regulation National Law (ACT)*; or

(iv) cannot be made by the complainant under the Act; or

(v) cannot otherwise be made under the Act; or

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

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

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

(4) Also, the commission need not give notice under subsection (2) to the person complained of if, because of subsection (3), it decides—

(a) not to consider the complaint; or

(b) not to consider the complaint further.

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

46 Complainant's obligations in relation to complaint

The complainant for a complaint must—

(a) keep the commission informed of any change in the complainant's name or address while the commission is dealing with the complaint; and

(b) if the commission requires the complainant under section 73 to provide further information, or produce any document or thing—provide the further information, or produce the document or thing, as required; and

(c) if the commission requires the complainant under section 74 to attend before a person to answer questions—attend before the person, and answer questions, as required.

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

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

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

Division 4.2 Dealing with complaints

Note to div 4.2

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

47 Outline—div 4.2

(1) This division sets out how the commission deals with the complaints it receives.

(2) In summary, complaints may, but need not, go through the following steps:

(a) allocation;

(b) consideration;

(c) conciliation;

(d) closure;

(e) reporting.

(3) Complaints need not go through the steps mentioned in subsection (2) in the order they appear in that subsection.

(4) Also, a complaint may be referred to another entity under section 52A (Referral to appropriate statutory office-holder).

Note If the health services commissioner receives a complaint about a health practitioner, the commissioner must tell the national board for the practitioner's health profession about the complaint. The national board and commissioner must try to reach agreement about how the complaint is to be dealt with (see *Health Practitioner Regulation National Law (ACT)*, s 150).

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

48 Consideration without complaint or appropriate complainant

(1) The commission may, on its own initiative, consider (by a ***commission-initiated consideration***)—

(a) an act or service that appears to the commission to be an act or service about which a person could make, but has not made, a complaint under this Act; or

(b) any other matter related to the commission's functions.

Examples

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

Note 1 A complaint about a health practitioner or a veterinary surgeon may also be dealt with by commission-initiated consideration (see s 94 (2)).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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

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

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

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

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

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

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

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

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

1 The complaint appears to reveal a systemic problem about an activity or a service.

2 The complaint, if substantiated, raises a significant issue for the ACT, or an issue of public safety.

3 It may be possible for action in relation to the complaint to be taken under another Act if the complaint is substantiated by, for example, reporting a veterinary surgeon to the veterinary surgeons board or making an application for an occupational discipline order in relation to the veterinary surgeon to the ACAT.

(4) A commission-initiated consideration must, as far as practicable, be conducted as if it were a consideration of a complaint.

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

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

(1) This section applies if the commission decides to consider a complaint by commission-initiated consideration under section 48 (2).

(2) The person who made the complaint stops being the complainant and the commission becomes the complainant.

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

(3) However, the commission continues to have the same obligations under section 45 (2) (f) in relation to the person as the commission would have if the person were the complainant, but must not give the person information about the aggrieved person or the person complained about.

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

51 Referring complaints for conciliation

(1) The commission may, at any time, refer a complaint, or matter that forms part of a complaint, for conciliation if satisfied that—

(a) the complaint or matter is likely to be successfully conciliated; and

(b) the matter is appropriate for conciliation.

Note Conciliation is dealt with in div 4.3.

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

51A Referral of advocacy matters

(1) This section applies to a children and young people complaint if—

(a) the complaint relates to a child or young person; and

(b) the director-general under the *Children and Young People Act 2008* has parental responsibility for the child or young person.

(2) The disability and community services commissioner may, at any time, refer the complaint, or a matter that forms part of the complaint, to the public advocate for advocacy if satisfied that—

(a) it is in the best interests of the child or young person that the complaint or matter be referred for advocacy; and

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

(b) the complaint or matter is appropriate for advocacy by the public advocate.

(3) The disability and community services commissioner may continue to consider a complaint that has been referred, or part of which has been referred, for advocacy.

52 Considering complaints

(1) The commissioner given responsibility for considering a complaint for the commission must consider the complaint.

Note 1 Responsibility for considering complaints may be in accordance with the operations protocol made under s 18C.

Note 2 If the president considers that a commissioner has a real or perceived conflict of interest in relation to a complaint, the president may consider the complaint or allocate responsibility for considering the complaint to another commissioner (see s 18 (1) (m)).

(2) The commissioner may, but need not, continue to consider the complaint while the complaint is being conciliated.

52A Referral to appropriate statutory office-holder

(1) This section applies if—

(a) the commission considers that the act or service to which a complaint relates is a matter that could—

(i) have been complained about to a statutory office-holder; and

(ii) be dealt with more conveniently or effectively by the statutory office-holder; and

(b) the commission considers it would be appropriate for the complaint to be referred to the statutory office-holder; and

(c) the commission has consulted the statutory office-holder about the referral.

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

(2) The commission may—

(a) decide not to deal with, or further deal with, the complaint; and

(b) if paragraph (a) applies—must refer the complaint, together with any relevant documents or information in its possession or control, to the statutory office-holder.

(3) In this section:

statutory office-holder means an office established under a territory law (other than this Act) or a law of the Commonwealth, a State or another Territory.

(4) To remove any doubt, this section is in addition to, and does not limit, section 51A (Referral of advocacy matters).

Division 4.2A Discrimination complaints to ACAT

53 Meaning of *unlawful act*—div 4.2A

In this division:

unlawful act means an unlawful act under the *Discrimination Act 1991*.

53A Referral of discrimination complaints

(1) This section applies if—

(a) either—

(i) a complainant is given a discrimination referral statement under section 45 (2) (d); or

(ii) a statement under section 82 (1) is included in a final report in relation to a complaint; and

(b) within 60 days after the statement is given, the complainant requires the commission to refer the complaint to the ACAT.

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

(2) The commission must—

(a) refer the complaint to the ACAT; and

(b) tell the complainant and the person complained about in writing about the referral.

Note The commissioner must also close the complaint (see s 78 (2) (d)).

53B Late application in exceptional circumstances

(1) This section applies if—

(a) a complainant has been given a statement under section 45 (2) (d) or section 82 (1); and

(b) the complainant has not required the commission to refer the complaint to the ACAT within 60 days after the day the statement is given to the complainant.

(2) The complainant may apply to the ACAT for the complaint to be heard by the ACAT.

(3) The ACAT may grant the application only if satisfied on reasonable grounds that exceptional circumstances prevented the complainant from requiring the complaint to be referred to the ACAT within the 60-day period.

(4) If the ACAT grants the application, the complaint is, for this Act, taken to have been referred to the ACAT.

53C Parties to ACAT proceeding on discrimination complaint

The parties to a complaint referred to the ACAT under this division are—

(a) the complainant; and

(b) the person complained about; and

(c) if, on application by the commission, the ACAT joins the commission as a party to the complaint—the commission.

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

53CA Onus of establishing complaint about discrimination etc

(1) This section applies to a discrimination complaint, referred to the ACAT under this division, about discrimination by a person against another person by—

(a) treating, or proposing to treat, the other person unfavourably because of a protected attribute of the other person (***direct discrimination***); or

(b) imposing, or proposing to impose, a condition or requirement that has, or is likely to have, the effect of disadvantaging the other person because of a protected attribute of the other person (other than a condition or requirement that is reasonable in the circumstances) (***indirect discrimination***).

(2) It is a rebuttable presumption that discrimination has occurred if the complainant—

(a) establishes that—

(i) for a complaint about direct discrimination—the treatment or proposed treatment is unfavourable; and

(ii) for a complaint about indirect discrimination—the condition or requirement has, or is likely to have, an effect of disadvantaging the other person; and

(b) presents evidence that would enable the ACAT to decide, in the absence of any other explanation—

(i) for a complaint about direct discrimination—that the treatment or proposed treatment is because of a protected attribute of the other person; or

(ii) for a complaint about indirect discrimination—that the effect of disadvantaging the other person is because of a protected attribute of the other person.

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

(3) The presumption under subsection (2) is rebutted if the person complained about establishes that—

(a) for a complaint about direct discrimination—the treatment is not because of a protected attribute of the other person; or

(b) for a complaint about indirect discrimination—the effect of disadvantaging a person is not because of a protected attribute of the other person.

Note The onus of establishing an exception or exemption to discrimination is on the person seeking to rely on it (see *Discrimination Act 1991*, s 70).

(4) In this section:

protected attribute means an attribute mentioned in the *Discrimination Act 1991*, section 7.

53D Reliance on exceptions and exemptions

In considering whether an act is an unlawful act, the ACAT need not consider any exception in the *Discrimination Act 1991*, part 4 or exemption in the *Discrimination Act 1991*, part 10, unless the ACAT has information suggesting the exception or exemption applies to the act.

53DA Commission to give information etc to ACAT

The commission must give the ACAT (if asked by it) any information or copies of documents in relation to a complaint referred to the ACAT under this division, other than—

(a) a communication or document to which section 66 (Admissibility of evidence) applies; or

(b) information, a document or something else relevant to a consideration in relation to a complaint given to the commission under section 73 (Power to ask for information, documents and other things); or

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

(c) information given to the commission under section 74 (Requiring attendance etc).

53E Kinds of orders—unlawful acts under the Discrimination Act

(1) This section applies if—

(a) the commission refers a complaint to the ACAT under this division; and

(b) the ACAT is satisfied that the person complained about engaged in an unlawful act.

(2) The ACAT must make 1 or more of the following orders:

(a) that the person complained about not repeat or continue the unlawful act;

(b) that the person complained about perform a stated reasonable act to redress any loss or damage suffered by a person because of the unlawful act;

(c) unless the complaint has been dealt with as a representative complaint—that the person complained about pay to a person a stated amount by way of compensation for any loss or damage suffered by the person because of the unlawful act.

(2A) In making an order under subsection (2) (c), the ACAT must consider—

(a) the person's right to equality before the law and the impact of the discrimination on the enjoyment of that right; and

(b) the inherent dignity of all people and the impact of the discrimination on the person's dignity; and

(c) the public interest in ensuring an appropriate balance between the right to equal and effective protection against discrimination and equality before the law without distinction or discrimination and other human rights; and

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

(d) the nature of the discrimination; and

(e) any mitigating factors.

Examples—par (b)—impact of discrimination

distress, humiliation, loss of self-esteem, loss of enjoyment of life

Example—par (c)—other human rights

freedom of expression

Examples—par (d)

serious or repeated discrimination, intentional or malicious discrimination, discrimination on the grounds of 2 or more attributes mentioned in the *Discrimination Act 1991*, s 7

Examples—par (e)

a public apology, systemic changes to protect against further discrimination

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).

(2B) The commission may, with the ACAT's consent, intervene in a complaint to make submissions about an order under subsection (2) (c).

(3) In this section:

representative complaint means a complaint that is dealt with by the commission as a representative complaint under section 71.

Division 4.3 Conciliation of complaints

54 Outline—div 4.3

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

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

55 What is *conciliation*?

(1) For this Act, ***conciliation*** of a complaint involves the commission acting as an impartial third-party to help the parties to the conciliation to endeavour to resolve the matters raised by the complaint.

(2) Conciliation requires the parties' willing and informed agreement to take part in the conciliation.

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

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

56 Delegation of commission's function of conciliation

The commission may delegate the function of conciliation of a complaint to—

(a) a commissioner other than the commissioner who is considering the complaint; or

(b) a member of staff or a consultant engaged by the commission for this Act.

Note 1 Consultants may be engaged for this Act under s 37.

Note 2 For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

57 Parties to conciliation

(1) The parties to the conciliation are the complainant and the person complained about.

(2) The commission may allow other people to attend the conciliation if the commission considers that their attendance will help the conciliation.

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

(3) However, neither the complainant nor the person complained about may be represented by anyone else in the conciliation unless the commission is satisfied that the representation is likely to help the conciliation substantially.

58 Request for third-party to attend

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

59 Compulsory attendance at conciliation

(1) The commission may, in writing, require a party to attend the conciliation.

(2) The requirement to attend must state the time and place that the person is required to attend.

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

(3) A person commits an offence if—

(a) the person is required to attend a conciliation; and

(b) the person does not attend as required.

Maximum penalty: 50 penalty units.

(4) Subsection (3) does not apply if the person has a reasonable excuse for not attending the conciliation as required.

60 Conduct of conciliation

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

Example

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

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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

61 Relationship between conciliation and consideration

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

Examples

1 Information obtained during the conciliation must not be used for the consideration of the complaint.

2 A person considering a complaint must not conciliate, or take part in the conciliation of, the complaint.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) However—

(a) the commission may use information from the consideration to help with conciliation; and

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

62 Conciliated agreements

(1) If a complaint is resolved by conciliation, the commission must help the parties make a written record (the ***conciliation agreement***) of the agreement they have reached.

(2) Each party must sign the agreement.

(3) The commission must—

(a) give each party a copy of the conciliation agreement; and

(b) if the complaint is a discrimination complaint—give the agreement to the ACAT.

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

(4) If the complaint to which the conciliation agreement relates is a discrimination complaint, the agreement is enforceable as if it were an order of the ACAT.

63 Use of conciliation agreement by commission

(1) This section applies if the parties to the conciliation make a conciliation agreement.

(2) The commission may use information in the conciliation agreement, whether for considering the complaint to which the agreement relates or otherwise, only if the parties agree to the use by the commission of the agreement or the part of the agreement containing the information.

(3) An agreement to allow the commission to use a conciliation agreement, or part of a conciliation agreement, may be in the conciliation agreement or elsewhere.

(4) If the parties agree to the use by the commission of the conciliation agreement, or a part of the agreement, the commission may use anything in the conciliation agreement, or the part of the agreement, as the commission considers appropriate.

65 End of conciliation

(1) Conciliation of a complaint ends if—

(a) agreement is reached on the matters raised by the complaint and the parties end the conciliation; or

(b) the parties agree to end the conciliation; or

(c) a party withdraws from the conciliation; or

(d) the commission is satisfied that the conciliation is unlikely to be successful.

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

(2) If the conciliation ends, the commission must, as soon as practicable, tell the following people that the conciliation has ended and why it has ended:

(a) the complainant;

(b) the person complained about.

66 Admissibility of evidence

(1) This section—

(a) applies to—

(i) a communication made between people attending a conciliation (including the commission); and

(ii) a document (whether delivered or not) that has been prepared in relation to the conciliation; but

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

(2) The *Evidence Act 2011*, section 131 (Exclusion of evidence of settlement negotiations) applies to a communication or document to which this section applies as if the communication or document were a communication or document mentioned in that Act, section 131 (1).

67 Conciliation attendees protected from civil liability

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

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

Division 4.4 Consideration of complaints

68 Outline—div 4.4

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

69 Purpose of considering complaints

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

(a) to allow the commission to decide whether the complaint is a complaint that may be made under this Act and whether the complainant is a person who may make the complaint under this Act;

(b) to provide information that may be used to help conciliation of the complaint;

(c) to work out whether the conduct complained about was engaged in in the way complained about and, however it was engaged in, whether there is an adequate ground for the commission to report.

70 Single consideration of several complaints

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

71 Representative complaints

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

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

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

(b) the material facts of the complainant's complaint are the same as, or similar or related to, the material facts of the complaints of other members of the class; and

(c) common questions of law or fact arise, or would arise, in the consideration of complaints that have been, or could be, made by other members of the class in relation to the complaints; and

(d) it is desirable to deal with the complaint as a representative complaint.

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

(b) the complaint could have been made by the complainant against someone else (also the ***new person***) as well as the person complained about.

(2) The commission may, by written notice given to the complainant and the new person, elect to treat the new person as a person complained about in the complaint.

(3) If the commission elects to treat the new person as a person complained about in the complaint—

(a) the new person is taken to be a person complained about in the complaint for this Act and related Acts; and

(b) the complaint is taken to have been made against the new person at the time the commission elected to treat the new person as a person complained about.

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

(4) Also, the commission must take reasonably practicable steps to ensure that the new person is not disadvantaged only because the commission elected to treat the person as a person complained about in the complaint rather than waiting for a new complaint to be made about the person.

72 Conduct of consideration

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

Example

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

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

73 Power to ask for information, documents and other things

(1) This section applies if the commission believes, on reasonable grounds, that a person can provide information or produce a document or something else relevant to a consideration in relation to a complaint.

(2) The commission may, by written notice given to the person, require the person to provide the information or produce the document or other thing.

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

(4) A person commits an offence if—

(a) the person is required by a notice under this section to provide information to the commission for a consideration in relation to a complaint; and

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

(b) the person is not the complainant or the aggrieved person for the complaint; and

(c) the person fails to provide the information to the commission as required.

Maximum penalty: 50 penalty units.

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

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

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

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

(6) A person commits an offence if—

(a) the person is required by a notice under this section to produce to the commission a document or other thing for a consideration in relation to a complaint; and

(b) the person is not the complainant or the aggrieved person for the complaint; and

(c) the person fails to produce the document or other thing to the commission as required.

Maximum penalty: 50 penalty units.

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

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

74 Requiring attendance etc

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

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

(2) A person who attends before an interviewer under a notice under subsection (1) must continue to attend as reasonably required by the interviewer to answer questions relevant to the consideration.

(3) A person commits an offence if—

(a) the person is required by a notice under subsection (1) to attend before an interviewer to answer questions for a consideration in relation to a complaint; and

(b) the person is not the complainant or the aggrieved person for the complaint; and

(c) the person does not attend before the interviewer as required.

Maximum penalty: 50 penalty units.

(4) Subsection (3) does not apply if the person has a reasonable excuse for not attending before the interviewer as required.

(5) A person commits an offence if—

(a) the person is required by a notice under subsection (1) to attend before an interviewer to answer questions for a consideration in relation to a complaint; and

(b) the person is not the complainant or the aggrieved person for the complaint; and

(c) the person attends before the interviewer as required; and

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

(d) the person fails to continue to attend as reasonably required by the interviewer to answer questions relevant to the consideration.

Maximum penalty: 50 penalty units.

(6) Subsection (5) does not apply if the person has a reasonable excuse for failing to continue to attend as required by the interviewer.

(7) A person commits an offence if—

(a) the person is required by a notice under subsection (1) to attend before an interviewer to answer questions for a consideration in relation to a complaint; and

(b) the person attends before the interviewer as required; and

(c) the interviewer requires the person to answer a question; and

(d) the person fails to answer the question.

Maximum penalty: 50 penalty units.

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

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

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

75 Privileges against self-incrimination and exposure to civil penalty

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

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

(2) This section also applies if—

(a) a person is attending before an interviewer in accordance with a requirement under section 74; and

(b) the interviewer requires the person to answer a question.

(3) The person cannot rely on the common law privileges against self-incrimination and exposure to the imposition of a civil penalty to refuse to provide the information, produce the document or other thing or answer the question.

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

(4) However, any information, document or other thing obtained, directly or indirectly, because of providing the information, the producing of the document or other thing, or the answering of the question is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for—

(a) an offence against this part; or

(b) any other offence in relation to the falsity of the information, document, other thing or answer.

76 Commission may keep document or other thing etc

(1) If a document or something else is produced in accordance with a requirement under section 73 (Power to ask for information, documents and other things), the commission—

(a) may take possession of, make copies of, or take extracts from, the document or may take possession of the other thing; and

(b) may keep the document or other thing for the period that is necessary for the consideration to which the document or thing relates; and

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

(c) during that period, must allow anyone who would be entitled to inspect the document or other thing, if it were not in the possession of the commission, to inspect it and, for a document, make copies of, or take extracts from, it.

(2) The commission must return a document or something else produced in accordance with a requirement under section 73 if the commission is no longer entitled to keep the document or thing under this section.

Division 4.5 Closing complaints and reporting

77 Outline—div 4.5

(1) This division sets out when a complaint can be closed and how it is closed, including the making of closing and other reports.

(2) This division also sets out what a report can contain, the people to whom it may be provided and what happens after a report is made.

78 When complaints can be closed

(1) The commission may close a complaint at any time if—

(a) more than 2 years have elapsed since the circumstances that gave rise to the complaint happened; or

(b) the complainant has, without good reason, failed to take reasonable steps to resolve the complaint; or

(c) the complainant has failed to comply with a requirement under section 73 (Power to ask for information, documents and other things) or section 74 (Requiring attendance etc); or

(d) the complainant tells the commission in writing that the complainant wishes to withdraw the complaint, whether or not because it has been conciliated to the complainant's satisfaction; or

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

(e) the complaint has been referred to a national board under the *Health Practitioner Regulation National Law (ACT)* or to the veterinary surgeons board; or

(f) the commission considers that conciliation is unlikely to succeed; or

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

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

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

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

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

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

(c) satisfied that—

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

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

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

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

(iv) the complaint lacks substance; or

Example of complaint lacking substance

The complaint is about discrimination, but the discrimination is not an unlawful act under the *Discrimination Act 1991*.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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

(e) the complaint has been dealt with to the commission's satisfaction; or

(f) the complaint has been referred under section 52A (Referral to appropriate statutory office-holder); or

(g) the complaint has otherwise been resolved.

79 Reopening complaints

(1) The commission may, but need not, reopen a complaint if—

(a) the complaint was closed under section 78 (1) (c) because the complainant had not complied with a requirement mentioned in the paragraph; and

(b) the complainant complies with the requirement.

(2) If the requirement was a requirement to do something by a stated time, the requirement is taken to have been complied with for subsection (1) even though the complainant did not do it within the required time.

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

(3) The commission may, but need not, reopen a complaint if the commission considers that it would be reasonable to do so—

(a) because of new information received about the complaint; or

(b) because of exceptional circumstances.

Example—exceptional circumstances

It appears to the commission that the original investigation was defective in some way.

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).

80 How complaints are closed

(1) The commission closes a complaint by giving a written report (the ***final report***) to—

(a) the complainant; and

(b) the person complained about; and

(c) if the complaint was referred to the commission by—

(i) a national board established under the *Health Practitioner Regulation National Law (ACT)*, section 31—the national board; or

(ii) the veterinary surgeons board—the board.

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

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

(2) However, the commission must not include an adverse comment in relation to a person in the final report unless the commission has given the person a reasonable opportunity to respond to the proposed comment.

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

(3) The commission need not give a final report to close a commission-initiated consideration.

81 Final report

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

Note ***Applicable standard***—see dict.

(2) A recommendation in a final report need not be limited to matters raised by the complaint being closed.

(3) If a recommendation recommends that action be taken, it must state the reasonable time within which the action should be taken.

82 Closing discrimination complaints

(1) The final report in relation to a discrimination complaint must include a discrimination referral statement.

Note ***Discrimination referral statement***—see s 88.

(2) However, subsection (1) does not apply if—

(a) the parties to the complaint have made a conciliation agreement in relation to the complaint; or

(b) the complainant has withdrawn the complaint.

(3) This section is additional to the other requirements of this Act for a final report.

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

83 Third-party reports

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

(a) that—

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

Note ***Applicable standard***—see the dictionary.

(ii) the report is about matters of public policy; or

(iii) the report is about matters that the third party has an appropriate interest in; and

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

Examples—people to whom third-party report may be given

1 a Minister

2 a non-government provider

3 the employer of the person complained about

4 the veterinary surgeons board

5 a hospital or other institution where services are provided by the person complained about

6 a funding body

Examples—what third-party report may be about

1 systemic issues

2 issues of public interest

3 issues relating to safety

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) A third-party report need not be limited to matters raised by the complaint.

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

(3) If a third-party report recommends that action be taken, it must state the reasonable time within which the action should be taken.

(4) However, the commission must not include an adverse comment in relation to a person in a third-party report unless the commission has given the person a reasonable opportunity to respond to the proposed comment.

(5) To remove any doubt, a third-party report may be made after a final report has been made, whether or not the person complained about has complied with any recommendation made to the person.

(6) In this section:

third-party means an entity other than the complainant or the person complained about.

84 Commission-initiated reports

(1) The commission may prepare a report (a ***commission-initiated report***) of a commission-initiated consideration and give it to anyone the commission considers appropriate.

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

85 Responding to recommendations

(1) An entity commits an offence if—

(a) a final report, a third-party report or commission-initiated report recommends that an entity take action within a stated time; and

(b) the entity has been given a copy of the report; and

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

(c) the entity fails to tell the commission in writing about the action the entity has taken in relation to the recommendation within 45 days after the later of the following:

(i) the end of the stated time or any further period allowed by the commission;

(ii) 3 weeks after the day the entity is given the report.

Maximum penalty: 50 penalty units.

(2) An offence against this section is a strict liability offence.

(3) The commission may extend, by no longer than 15 days, the period of 45 days mentioned in subsection (1) if, before the end of the period, the entity asks the commission in writing to extend the period.

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

86 Publication of name and details of non-complying entity

(1) For this section, an entity is a ***non-complying entity*** if—

(a) a final report or third-party report recommends that the entity do something within, or stop doing something by, a stated time; and

(b) the entity has been given a copy of the report; and

(c) the entity has not done the thing, or stopped doing the thing, by the end of the time.

(2) An entity is also a ***non-complying entity*** if—

(a) the commission has required the entity under this Act to provide information, produce a document or thing or attend to answer questions; and

(b) the entity has not complied with the requirement.

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

(3) The commission may do either or both of the following in relation to the non-complying entity's name and details of the entity's failure mentioned in subsection (1) or (2):

(a) publish them;

(b) report them to the Minister.

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

1 on the commission website

2 in a newspaper

3 in the commission's annual report

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(4) However, the commission must not publish or report under subsection (3) unless—

(a) the commission has given the entity a written notice that—

(i) gives details of the entity's failure to which the notice relates; and

(ii) explains that the commission proposes to publish under subsection (3) the entity's name and details of the entity's failure; and

(iii) invites submissions about the proposed publication within the time stated in the notice (not less than 2 weeks after the day the entity is given the notice); and

(b) the time stated in the notice has ended; and

(c) the commission has considered any submission made by the entity within the time and is satisfied that it is in the public interest to publish the entity's name and details of the entity's failure.

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

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

87 Reporting to Minister

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

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

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

88 Discrimination referral statements

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

(a) the commission has closed the complaint; and

(b) the complainant may ask the commission to refer the complaint to the ACAT within 60 days after the day the notice is given to the complainant; and

(c) after the 60-day period, the complainant may apply to the ACAT under section 53B (Late application in exceptional circumstances) for the complaint to be heard.

Note The commission must refer the complaint to the ACAT if the complainant asks it to refer the complaint within the 60-day period (see s 53A).

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

Part 5 Health code, health profession boards and veterinary surgeons board

Division 5.1 Health code of health rights and responsibilities

89 Approval of health code

(1) The Minister may approve a code (the ***health code***) of health rights and responsibilities.

(2) An approved code is a disallowable instrument.

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

90 Contents of health code

(1) The health code—

(a) must deal with the implementation of the health provision principles; and

(b) may deal with anything else relevant to the provision or use of a health service.

(2) In this section:

health provision principles means the following principles:

(a) a person is entitled to receive appropriate health services of a high standard;

(b) a person is entitled to be informed and educated about health matters, and available health services, that may be relevant to the person;

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

(c) a person who can take part effectively in the making of a decision dealing with the person's health is entitled to do so;

(d) a person is entitled to be provided with health services in a considerate way that takes into account his or her background, needs and wishes;

(e) a provider, or person who provides care for a consumer, should be given consideration and recognition for the provider's, or person's, contribution to health care;

(f) the confidentiality of information about a person's health should be preserved;

(g) a person is entitled to reasonable access to information about a person's health;

(h) a person is entitled to reasonable access to procedures for dealing with grievances about the provision of health services.

Division 5.2 Relationship between commission, health profession boards and veterinary surgeons board

91 Meaning of *registered health practitioner* and *registered veterinary surgeon*—div 5.2

In this division:

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

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

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

92 Referral of complaints to boards

(1) This section applies if—

(a) the commission receives a complaint about a registered health practitioner or veterinary surgeon; or

(b) as part of a complaint about a service—the commission considers the behaviour of a registered health practitioner or veterinary surgeon.

(2) The commission must give the relevant board a copy of—

(a) the complaint; and

(b) all documents it has or gets relating to the complaint.

(3) To remove any doubt, the referral of a complaint to a board does not prevent the commission from considering the complaint.

93 Complaints referred to veterinary surgeons board

If a relevant board receives a complaint in relation to a registered health practitioner or veterinary surgeon from the commission, the board must tell the commission, in writing—

(a) whether or not the board intends to take action in relation to the health practitioner or veterinary surgeon; and

(b) if the board intends to take action in relation to the health practitioner or veterinary surgeon—what action it proposes to take.

Note The *Veterinary Surgeons Act 2015*, pt 7 provides for joint consideration of complaints and reports for veterinary surgeons.

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

94 Consideration of complaints

(1) The commission may consider a complaint about a health practitioner or a veterinary surgeon.

(2) The consideration must be a commission-initiated consideration.

(3) The relevant board must be kept informed about the consideration as if the board were the complainant.

Example

The commission must give the relevant board a final report.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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

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

Part 6 Miscellaneous

95 Information about complaints

(1) This section applies to the following services:

(a) a disability service;

(b) a health service;

(c) a service for children and young people;

(d) a service for older people.

(2) If the service is provided at premises, the provider must provide information in a prominent position at the premises to service consumers about their right to make complaints under this Act and the *Health Practitioner Regulation National Law (ACT)* and how feedback may be given to the service provider.

Examples of providing information

1 a notice on the wall or a pamphlet in the waiting room

2 for a service provided at a person's home—giving the person a pamphlet

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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

Maximum penalty: 5 penalty units.

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

96 Inspection of incorporated documents

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

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

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

(2) The director-general must ensure that the document, amendment or replacement is made available for inspection free of charge to the public on business days at reasonable times at the office of the commission or an administrative unit administered by the director-general.

(3) In this section:

amendment, of an incorporated document—see section 97 (6).

97 Notification of certain incorporated documents

(1) This section applies to—

(a) an incorporated document; or

(b) an amendment of, or replacement for, an incorporated document.

Example of replacement document

a new edition of the incorporated document

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

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) The director-general may prepare a written notice (an ***incorporated document notice***) for the incorporated document, amendment or replacement that contains the following information:

(a) for an incorporated document—details of the document, including its title, author and date of publication;

(b) for a replacement of an incorporated document—details of the replacement, including its title, author and date of publication;

(c) for an amendment of an incorporated document—the date of publication of the amendment (or of the document as amended) and a brief summary of the effect of the amendment;

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

(d) for an incorporated document or any amendment or replacement—

(i) a date of effect (no earlier than the day after the day of notification of the notice); and

(ii) details of how access to inspect the document, amendment or replacement may be obtained under section 96 (Inspection of incorporated documents); and

(iii) details of how copies may be obtained, including an indication of whether there is a cost involved.

(3) An incorporated document notice is a notifiable instrument.

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

(4) An incorporated document, and any amendment or replacement of an incorporated document, has no effect under this Act unless—

(a) an incorporated document notice is notified in relation to the document, amendment or replacement; or

(b) the document, amendment or replacement is notified under the Legislation Act, section 47 (6).

(5) The Legislation Act, section 47 (7) does not apply in relation to incorporated documents.

(6) In this section:

amendment, of an incorporated document, includes an amendment of a replacement for the incorporated document.

replacement, for an incorporated document, means—

(a) a document that replaces the incorporated document; or

(b) a document (an ***initial replacement***) that replaces a document mentioned in paragraph (a); or

(c) a document (a ***further replacement***) that replaces an initial replacement or any further replacement.

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

98 Victimisation etc

(1) A person (the ***first person***) commits an offence if the first person causes or threatens to cause a detriment to someone else (the ***other person***) because—

(a) the other person has—

(i) made a complaint under this Act; or

(ii) given information or produced a document or other thing to a person exercising a function under this Act or a rights Act; or

(iii) given information, produced a document or other thing or answered a question as required under this Act; or

(b) the first person believes that the other person intends to do something mentioned in paragraph (a).

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

(2) A person commits an offence if the person threatens or intimidates someone else with the intention of causing the other person—

(a) not to make a complaint under this Act; or

(b) to withdraw a complaint made under this Act.

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

99 Secrecy

(1) In this section:

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

divulge includes communicate.

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

person to whom this section applies means a person who—

(a) is or has been—

(i) a commissioner; or

(ii) a person present at conciliation; or

(iii) a member of the staff of the commission; or

(b) exercises, or has exercised, a function under this Act.

produce includes allow access to.

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

(2) A person to whom this section applies commits an offence if—

(a) the person—

(i) makes a record of protected information about someone else; and

(ii) is reckless about whether the information is protected information about someone else; or

(b) the person—

(i) does something that divulges protected information about someone else; and

(ii) is reckless about whether—

(A) the information is protected information about someone else; and

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

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

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

(3) Subsection (2) does not apply if the record is made, or the information is divulged—

(a) under this Act or another territory law; 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) A person to whom this section applies does not commit an offence under subsection (2) only because the person discloses information in relation to a discrimination complaint if—

(a) the person discloses the information in exercising a function under this Act in relation to education or research; and

(b) all relevant parties consent to the information being disclosed.

100 Protection of officials from liability

(1) In this section:

official means—

(a) a commissioner; or

(b) a member of staff of the commission; or

(c) a person who exercises a function under this Act.

(2) An official, or anyone engaging in conduct under the direction of an official, is not personally liable for anything done or omitted to be done honestly and without recklessness—

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

(a) in the exercise of a function under this Act; or

(b) in the reasonable belief that the conduct was in the exercise of a function under this Act.

(3) Any civil liability that would, apart from subsection (2), attach to an official attaches instead to the Territory.

100A Protection of others from liability

(1) Civil or criminal liability is not incurred only because of any of the following done honestly and without recklessness:

(a) the making of a complaint;

(b) the making of a statement, or the giving of a document or information, as required or permitted under a territory law, to a commissioner or a member of staff of the commission.

(2) Also, any information, given honestly and without recklessness, to a commissioner or a member of staff of the commission is not—

(a) a breach of confidence; or

(b) a breach of professional etiquette or ethics; or

(c) a breach of a rule of professional conduct.

101 Intergovernmental arrangements

(1) The Minister may make an arrangement with a Commonwealth Minister in relation to—

(a) the exercise on a joint basis of any of the Commonwealth commission's functions; or

(b) the exercise by the commission, on behalf of the Commonwealth, of any of the Commonwealth commission's functions; or

(c) the exercise by the Commonwealth commission, on behalf of the Territory, of any of the commission's functions.

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

(2) An arrangement may contain the incidental or supplementary provisions that the Minister and the Commonwealth Minister consider necessary.

(3) The Minister may arrange with the Commonwealth Minister for the variation or revocation of an arrangement.

(4) An arrangement, or a variation or revocation of an arrangement, is a notifiable instrument.

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

102 Exercise of functions under intergovernmental arrangement

(1) This section applies to an act done by or in relation to the Commonwealth commission under an arrangement made under section 101 in relation to the exercise by the Commonwealth commission of any of the human rights commission's functions.

(2) The act is taken, for this Act and all other territory laws, to have been done by or in relation to the human rights commission.

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

(1) The Minister may determine the fees and expenses payable to people attending the conciliation in accordance with a request under section 58.

(2) A determination is a notifiable instrument.

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

104 Approved forms

(1) The commission may approve forms for this Act.

(2) An approved form is a notifiable instrument.

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

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

105 Regulation-making power

The Executive may make regulations for this Act.

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

105A Review of protection of rights services legislation

(1) The Minister must review the operation of this Act and the *Public Trustee and Guardian Act 1985*, as amended by the protection of rights services amendments, to review the effectiveness of the restructuring of the rights protection services including how the amendments promote the objects (express or implicit) of the Acts.

(2) The review must be started as soon as practicable after 1 April 2019.

(3) The Minister must present a report of the review to the Legislative Assembly within 12 months after the day the review is started.

(4) In this section:

protection of rights services amendments means amendments of this Act and the *Public Trustee Act 1985* made by the *Protection of Rights (Services) Legislation Amendment Act 2016* and the *Protection of Rights (Services) Legislation Amendment Act 2016 (No 2)*.

(5) This section expires 5 years after the day it commences.

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

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACAT
- ACT
- bankrupt or personally insolvent
- director-general (see s 163)
- document
- entity
- health practitioner
- may (see s 146)
- must (see s 146)
- occupational discipline order
- public advocate
- under
- veterinary surgeon.

act includes omission.

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

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

(a) section 39 (1) (b) (When may someone complain about a health service?);

(b) section 40 (b) (When may someone complain about a disability service?);

(c) section 40A (b) (When may someone complain about a service for children and young people?);

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

(d) section 41 (b) (When may someone complain about a service for older people?).

child means a person who is under 12 years old.

children and young people commissioner means the commission member exercising the functions under section 19B.

children and young people service complaint means a complaint about a service for children and young people that may be made, or is made, under section 40A.

commission—

(a) see section 11; but

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

commissioner means the following:

(a) the human rights commissioner;

(b) the disability and community services commissioner;

(c) the discrimination commissioner;

(d) the health services commissioner;

(e) the children and young people commissioner;

(f) the public advocate;

(g) the victims of crime commissioner.

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

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

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

complainant means—

(a) in relation to a complaint—the person who made the complaint; but

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

complaint—

(a) about a health practitioner—means a complaint or a notification about the health practitioner that may be made, or is made, under this Act or the *Health Practitioner Regulation National Law (ACT)*, part 8 (Health, performance and conduct); and

(b) about a veterinary surgeon—means a complaint about the veterinary surgeon that may be made, or is made, under this Act or the *Veterinary Surgeons Act 2015*, section 50 (Who may complain?).

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

conciliation agreement—see section 62 (1).

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

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

disability service—see section 8.

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

disability and community services commissioner means the commission member exercising the functions under section 21.

discrimination commissioner means the commission member exercising the functions under section 23.

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

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

discrimination referral statement—see section 88.

engage in conduct means—

(a) do an act; or

(b) omit to do an act.

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

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

health code—see section 89.

health service—see section 7.

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

health services commissioner means the commission member exercising the functions under section 25.

human rights commissioner means the commission member exercising the functions under section 27.

incorporated document means—

(a) the standards mentioned in section 39 (1) (b) (v) (When may someone complain about a health service?); or

(b) the standards mentioned in section 40 (b) (i) or (iv) (When may someone complain about a disability service?); or

(c) an instrument applied, adopted or incorporated by a statutory instrument under this Act.

older people service complaint means a complaint about a service for older people that may be made, or is made, under section 41.

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

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

president, of the commission—see section 12 (2).

provider, of a service—see section 10.

public advocate means the commission member exercising the functions under section 27B.

registered means—

(a) for a health practitioner—registered under the *Health Practitioner Regulation National Law (ACT)*; and

(b) for a veterinary surgeon—registered under the *Veterinary Surgeons Act 2015*.

registered veterinary surgeon, for division 5.2 (Relationship between commission, health profession boards and veterinary surgeons board)—see section 91.

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

(a) *Disability Services Act 1991*;

(b) *Discrimination Act 1991*;

(c) *Domestic Violence Agencies Act 1986*;

(d) *Health Records (Privacy and Access) Act 1997*;

(e) *Human Rights Act 2004*;

(f) *Veterinary Surgeons Act 2015*;

(g) *Victims of Crime Act 1994*;

(h) *Victims of Crime (Financial Assistance) Act 1983*.

relevant board means—

(a) for a health practitioner regulated under the *Health Practitioner Regulation National Law (ACT)*—the national board for the practitioner under that Act; and

(b) for a veterinary surgeon—the veterinary surgeons board.

service for children and young people—see section 8A.

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

service for older people—see section 9.

service for victims of crime—see section 9A.

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

unlawful act, for division 4.2A (Discrimination complaints to ACAT)—see section 53.

victims of crime commissioner means the commission member exercising the functions under section 27C.

young person means a person who is 12 years old or older, but not yet an adult.

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

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

A = Act
AF = Approved form
am = amended
amdt = amendment
AR = Assembly resolution
ch = chapter
CN = Commencement notice
def = definition
DI = Disallowable instrument
dict = dictionary
disallowed = disallowed by the Legislative Assembly
div = division
exp = expires/expired
Gaz = gazette
hdg = heading
IA = Interpretation Act 1967
ins = inserted/added
LA = Legislation Act 2001
LR = legislation register
LRA = Legislation (Republication) Act 1996
mod = modified/modification
NI = Notifiable instrument
o = order
om = omitted/repealed
ord = ordinance
orig = original
par = paragraph/subparagraph
pres = present
prev = previous
(prev...) = previously
pt = part
r = rule/subrule
reloc = relocated
renum = renumbered
R[X] = Republication No
RI = reissue
s = section/subsection
sch = schedule
sdiv = subdivision
SL = Subordinate law
sub = substituted
<u>underlining</u> = whole or part not commenced or to be expired

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

3 Legislation history

Human Rights Commission Act 2005 A2005-40

notified LR 1 September 2005
s 1, s 2 commenced 1 September 2005 (LA s 75 (1))
remainder commenced 1 November 2006 (s 2 and CN2006-21)

as amended by

Human Rights Commission (Children and Young People Commissioner) Amendment Act 2005 A2005-46 (as am by A2006-3 sch 1 pt 1.2)

notified LR 2 September 2005
s 1, s 2 commenced 1 September 2005 (LA s 75 (1))
remainder commenced 1 November 2006 (s 2 and see A2005-40, s 2 and CN2006-21)

Human Rights Commission Legislation Amendment Act 2006 A2006-3 s 4

notified LR 22 February 2006
s 1, s 2 commenced 22 February 2006 (LA s 75 (1))
s 4 commenced 23 February 2006 (s 2)

Justice and Community Safety Legislation Amendment Act 2006 A2006-40 sch 1 pt 1.7

notified LR 28 September 2006
s 1, s 2 commenced 28 September 2006 (LA s 75 (1))
sch 1 pt 1.7 commenced 1 November 2006 (s 2 (2) and see A2005-40, s 2 and CN2006-21)

Human Rights Commission Amendment Act 2006 A2006-44

notified LR 25 October 2006
s 1, s 2 commenced 25 October 2006 (LA s 75 (1))
remainder commenced 1 November 2006 (s 2 and see A2005-40, s 2 and CN2006-21)

Carers Recognition Legislation Amendment Act 2006 A2006-47 pt 4

notified LR 28 November 2006
s 1, s 2 commenced 28 November 2006 (LA s 75 (1))
pt 4 commenced 28 May 2007 (s 2 and LA s 79)

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

Justice and Community Safety Legislation Amendment Act 2007 A2007-22 sch 1 pt 1.10

notified LR 5 September 2007
s 1, s 2 commenced 5 September 2007 (LA s 75 (1))
sch 1 pt 1.10 commenced 6 September 2007 (s 2)

Children and Young People (Consequential Amendments) Act 2008 A2008-20 sch 2 pt 2.9, sch 3 pt 3.16

notified LR 17 July 2008
s 1, s 2 commenced 17 July 2008 (LA s 75 (1))
s 3 commenced 18 July 2008 (s 2 (1))
sch 2 pt 2.9 commenced 9 September 2008 (s 2 (3) and see Children and Young People Act 2008 A2008-19, s 2 and CN2008-13)
sch 3 pt 3.16 commenced 27 October 2008 (s 2 (4) and see Children and Young People Act 2008 A2008-19, s 2 and CN2008-13)

Justice and Community Safety Legislation Amendment Act 2008 (No 2) A2008-22 sch 1 pt 1.5

notified LR 8 July 2008
s 1, s 2 commenced 8 July 2008 (LA s 75 (1))
sch 1 pt 1.5 commenced 29 July 2008 (s 2)

Statute Law Amendment Act 2008 A2008-28 sch 3 pt 3.34

notified LR 12 August 2008
s 1, s 2 commenced 12 August 2008 (LA s 75 (1))
sch 3 pt 3.34 commenced 26 August 2008 (s 2)

ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 A2008-36 sch 1 pt 1.31

notified LR 4 September 2008
s 1, s 2 commenced 4 September 2008 (LA s 75 (1))
sch 1 pt 1.31 commenced 2 February 2009 (s 2 (1) and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

Human Rights Commission Legislation Amendment Act 2010 A2010-5 pt 4

notified LR 2 March 2010
s 1, s 2 commenced 2 March 2010 (LA s 75 (1))
pt 4 commenced 9 March 2010 (s 2)

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

Health Practitioner Regulation National Law (ACT) Act 2010 A2010-10 sch 2 pt 2.12

notified LR 31 March 2010
s 1, s 2 commenced 31 March 2010 (LA s 75 (1))
sch 2 pt 2.12 commenced 1 July 2010 (s 2 (1) (a))

Justice and Community Safety Legislation Amendment Act 2010 (No 2) A2010-30 sch 1 pt 1.11

notified LR 31 August 2010
s 1, s 2 commenced 31 August 2010 (LA s 75 (1))
s 3 commenced 1 September 2010 (s 2 (1))
sch 1 pt 1.11 commenced 28 September 2010 (s 2 (2))

Justice and Community Safety Legislation Amendment Act 2010 (No 4) A2010-50 sch 1 pt 1.3

notified LR 14 December 2010
s 1, s 2 commenced 14 December 2010 (LA s 75 (1))
sch 1 pt 1.3 commenced 21 December 2010 (s 2 (1))

Administrative (One ACT Public Service Miscellaneous Amendments) Act 2011 A2011-22 sch 1 pt 1.82

notified LR 30 June 2011
s 1, s 2 commenced 30 June 2011 (LA s 75 (1))
sch 1 pt 1.82 commenced 1 July 2011 (s 2 (1))

Evidence (Consequential Amendments) Act 2011 A2011-48 sch 1 pt 1.21

notified LR 22 November 2011
s 1, s 2 commenced 22 November 2011 (LA s 75 (1))
sch 1 pt 1.21 commenced 1 March 2012 (s 2 (1) and see Evidence Act 2011 A2011-12, s 2 and CN2012-4)

Statute Law Amendment Act 2012 A2012-21 sch 3 pt 3.24

notified LR 22 May 2012
s 1, s 2 commenced 22 May 2012 (LA s 75 (1))
sch 3 pt 3.24 commenced 5 June 2012 (s 2 (1))

Disability Services Amendment Act 2013 A2013-8 s 7

notified LR 6 March 2013
s 1, s 2 commenced 6 March 2013 (LA s 75 (1))
s 7 commenced 7 March 2013 (s 2)

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

Justice and Community Safety Legislation Amendment Act 2014 (No 2) A2014-49 pt 5

notified LR 10 November 2014
s 1, s 2 commenced 10 November 2014 (LA s 75 (1))
pt 5 commenced 17 November 2014 (s 2)

Veterinary Surgeons Act 2015 A2015-29 sch 2 pt 2.7, sch 3

notified LR 20 August 2015
s 1, s 2 commenced 20 August 2015 (LA s 75 (1))
sch 2 pt 2.7 commenced 1 December 2015 (s 2 (1) and CN2015-22)
sch 3 commenced 1 December 2015 (s 2 (2) and CN2015-22)

Protection of Rights (Services) Legislation Amendment Act 2016 A2016-1 pt 2

notified LR 23 February 2016
s 1, s 2 commenced 23 February 2016 (LA s 75 (1))
pt 2 commenced 1 April 2016 (s 2)

Protection of Rights (Services) Legislation Amendment Act 2016 (No 2) A2016-13 sch 1 pt 1.25

notified LR 16 March 2016
s 1, s 2 commenced 16 March 2016 (LA s 75 (1))
sch 1 pt 1.25 commenced 1 April 2016 (s 2 and see Protection of Rights (Services) Legislation Amendment Act 2016 A2016-1 s 2)

Discrimination Amendment Act 2016 A2016-49 sch 1 pt 1.2

notified LR 23 August 2016
s 1, s 2 commenced 23 August 2016 (LA s 75 (1))
amdt 1.6, amdt 1.14, amdt 1.17 commence 3 April 2017 (s 2 (2))
sch 1 pt 1.2 remainder commenced 24 August 2016 (s 2 (1))

Public Sector Management Amendment Act 2016 A2016-52 sch 1 pt 1.37

notified LR 25 August 2016
s 1, s 2 commenced 25 August 2016 (LA s 75 (1))
sch 1 pt 1.37 commenced 1 September 2016 (s 2)

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

4 Amendment history

Commencement

s 2 — sub A2006-3 s 4
om R1 LA s 89 (4)

Dictionary

s 3 — am A2015-29 amdt 2.41

Main objects of Act

s 6 — am A2005-46 s 4, s 5; A2007-22 amdts 1.31-1.33; pars renum R3 LA
sub A2008-22 amdt 1.23
am A2016-1 ss 4-6; pars renum R21 LA

What is a *prescribed service*?

s 6A — ins A2016-1 s 7

What is a *health service*?

s 7 — am A2010-10 amdt 2.57; A2015-29 amdt 2.42, amdt 2.43

What is a *disability service*?

s 8 hdg — sub A2005-46 s 6
s 8 — am A2005-46 s 6

What is a *service for children and young people*?

s 8A — ins A2005-46 s 7
am A2008-20 amdt 2.20, amdt 3.31

What is a *service for victims of crime*?

s 9A — ins A2016-1 s 8

Members of commission

s 12 — am A2005-46 s 8; pars renum A2005-46 s 9; A2006-44 s 4, s 5; pars renum R1 LA; A2016-1 s 9, s 10; ss and pars renum R21 LA; A2016-13 amdt 1.69

Commission's functions

s 14 — am A2005-46 s 10, s 11; pars renum A2005-46 s 12; A2008-20 amdt 3.32; A2010-10 amdt 2.58; A2011-22 amdt 1.254; A2015-29 amdt 2.44, amdt 2.45; A2016-1 ss 11-14; ss and pars renum R21 LA

President

div 3.2 hdg — om A2006-44 s 6
ins A2016-1 s 15

President's functions

s 18 — om A2006-44 s 6
ins A2016-1 s 15
am A2016-13 amdt 1.70, amdt 1.71

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

Governance and corporate support protocol
s 18A ins A2016-1 s 15
am A2016-13 amdt 1.72, amdt 1.73

Client services charter
s 18B ins A2016-1 s 15

Operations protocol
s 18C ins A2016-1 s 15
am A2016-13 amdt 1.74, amdt 1.75

Appointment of commission members
div 3.2A hdg ins A2016-1 s 15

Appointment of commission members
s 18D ins A2016-1 s 15

Ending appointments
s 18E ins A2016-1 s 15

Delegation of member's functions
s 18F ins A2016-1 s 15

President's functions
s 19 om A2006-44 s 6

Children and young people commissioner
div 3.3 hdg orig div 3.3 hdg renum as div 3.4 hdg
ins A2005-46 s 13

Appointment of children and young people commissioner
s 19A ins A2005-46 s 13
om A2016-1 s 16

Children and young people commissioner's functions
s 19B ins A2005-46 s 13

Delegation of children and young people commissioner's functions
s 19BA ins A2006-40 amdt 1.20
am A2008-22 amdt 1.24
om A2016-1 s 16

Advisory committees for services for children and young people
s 19C ins A2005-46 s 13

Disability and community services commissioner
div 3.4 hdg orig div 3.4 hdg renum as div 3.5 hdg
(prev div 3.3 hdg) renum as div 3.4 hdg A2005-46 s 15

Appointment of disability and community services commissioner
s 20 om A2016-1 s 16

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

Disability and community services commissioner's functions

s 21	sub A2005-46 s 14 am A2016-1 s 17; A2016-13 amdt 1.76; pars renum R21 LA

Delegation of disability and community services commissioner's functions

s 21A	ins A2006-40 amdt 1.21 am A2008-22 amdt 1.24 om A2016-1 s 18

Discrimination commissioner

div 3.5 hdg	orig div 3.5 hdg renum as div 3.6 hdg (prev div 3.4 hdg) renum as div 3.5 hdg A2005-46 s 15

Appointment of discrimination commissioner

s 22	om A2016-1 s 18

Delegation of discrimination commissioner's functions

s 23A	ins A2006-40 amdt 1.22 am A2008-22 amdt 1.24 om A2016-1 s 18

Health services commissioner

div 3.6 hdg	orig div 3.6 hdg renum as div 3.7 hdg (prev div 3.5 hdg) renum as div 3.6 hdg A2005-46 s 15

Appointment of health services commissioner

s 24	om A2016-1 s 18

Health services commissioner's functions

s 25	am A2010-10 amdt 2.59; A2016-1 s 19

Delegation of health services commissioner's functions

s 25A	ins A2006-40 amdt 1.23 am A2008-22 amdt 1.24 om A2016-1 s 20

Human rights commissioner

div 3.7 hdg	orig div 3.7 hdg renum as div 3.8 hdg (prev div 3.6 hdg) renum as div 3.7 hdg A2005-46 s 15

Appointment of human rights commissioner

s 26	sub A2006-44 s 7 om A2016-1 s 20

Delegation of human rights commissioner's functions

s 27A	ins A2006-40 amdt 1.24 am A2008-22 amdt 1.24 om A2016-1 s 20

Public advocate

div 3.7A hdg	ins A2016-1 s 21

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

Public advocate's functions

s 27B	ins A2016-1 s 21 am A2016-13 amdts 1.77-1.84; pars renum R21 LA

Public advocate to report to ACAT

s 27BA	ins A2016-13 amdt 1.85

Disclosure of information about investigations by public advocate

s 27BB	ins A2016-13 amdt 1.85

Engagement of lawyer by public advocate

s 27BC	ins A2016-13 amdt 1.85

Victims of crime commissioner

div 3.7B hdg	ins A2016-1 s 21

Victims of crime commissioner's functions

s 27C	ins A2016-1 s 21

Ending appointments

div 3.8 hdg	orig div 3.8 hdg renum as div 3.9 hdg (prev div 3.7 hdg) renum as div 3.8 hdg A2005-46 s 19 om A2016-1 s 22

Application—div 3.8

s 28 hdg	sub A2005-46 s 16
s 28	am A2005-46 s 17; pars renum A2005-46 s 18 sub A2006-44 s 28 om A2016-1 s 22

Ending appointments

s 29	am A2010-30 amdt 1.30 om A2016-1 s 22

Commission procedures

div 3.9 hdg	orig div 3.9 hdg renum as div 3.10 hdg (prev div 3.8 hdg) renum as div 3.9 hdg A2005-46 s 19

Time and place of commission meetings

s 30	am A2006-44 s 9; A2016-13 amdt 1.86

Presiding member at meetings

s 31	om A2006-44 s 10 ins A2016-1 s 23

Quorum at meetings

s 32	am A2016-1 s 24

Voting at meetings

s 33	am A2006-44 s 11; A2016-1 s 25

Individual with more than 1 role

s 34	am A2016-1 s 26, s 27

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

Conduct of meetings etc
s 35 am A2008-28 amdt 3.99

Consultants of commission
div 3.10 hdg (prev div 3.9 hdg) renum as div 3.10 hdg A2005-46 s 19
sub A2016-52 amdt 1.103

Staff of commission
s 36 om A2016-52 amdt 1.104

When may someone complain about a health service?
s 39 am A2010-10 amdt 2.60, amdt 2.61; A2015-29 amdt 2.46

When may someone complain about a disability service?
s 40 hdg sub A2005-46 s 20
s 40 am A2005-46 s 20; A2013-8 s 7; pars renum R18 LA

When may someone complain about a service for children and young people?
s 40A ins A2005-46 s 21

What complaints may be made under this Act?
s 42 sub A2005-46 s 22; A2015-29 amdt 2.47, amdt 3.1
am A2016-49 amdt 1.4, amdt 1.5

Who may make a complaint under this Act?
s 43 am A2005-46 s 23, s 24; A2006-47 ss 22-25; ss renum R2 LA; A2008-22 amdt 1.25, amdt 1.26; A2016-49 amdts 1.7-1.9; ss and pars renum R22 LA

Complaint to be in writing
s 44 am A2010-50 amdt 1.4; A2016-49 amdt 1.10, amdt 1.11; ss and pars renum R22 LA

Commission's obligation to be prompt and efficient
s 45 am A2008-22 amdt 1.27, amdt 1.28; A2010-5 ss 16-18; A2010-10 amdt 2.62

Outline—div 4.2
s 47 am A2008-22 amdt 1.29; A2008-36 amdt 1.352; A2010-10 amdt 2.63

Consideration without complaint or appropriate complainant
s 48 am A2005-46 s 25; A2008-22 amdt 1.30, amdt 1.31; A2008-36 amdt 1.353; A2015-29 amdt 2.48, amdt 2.49, amdt 3.2

Allocating complaints
s 50 am A2006-44 s 12
om A2016-1 s 28

Referral of advocacy matters
s 51A ins A2005-46 s 26
am A2008-20 amdt 3.33; A2011-22 amdt 1.254; A2016-1 s 29

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

Considering complaints
s 52 am A2016-1 s 30

Referral to appropriate statutory office-holder
s 52A (prev s 53A) ins A2008-22 amdt 1.32
reloc and renum as s 52A A2008-36 amdt 1.355

Discrimination complaints to ACAT
div 4.2A hdg ins A2008-36 amdt 1.354

Meaning of *unlawful act*—div 4.2A
s 53 sub A2008-36 amdt 1.354; A2016-49 amdt 1.12

Referral of discrimination complaints
s 53A orig s 53A reloc and renum as s 52A
ins A2008-36 amdt 1.354
am A2010-50 amdt 1.5

Late application in exceptional circumstances
s 53B ins A2008-36 amdt 1.354
am A2010-50 amdt 1.6

Parties to ACAT proceeding on discrimination complaint
s 53C ins A2008-36 amdt 1.354

Onus of establishing complaint about discrimination etc
s 53CA ins A2016-49 amdt 1.13

Reliance on exceptions and exemptions
s 53D ins A2008-36 amdt 1.354

Commission to give information etc to ACAT
s 53DA ins A2016-49 amdt 1.15

Kinds of orders—unlawful acts under the Discrimination Act
s 53E ins A2008-36 amdt 1.354
am A2016-49 amdt 1.16

What is *conciliation*?
s 55 sub A2006-44 s 13

Delegation of commission's function of conciliation
s 56 sub A2006-44 s 14

Parties to conciliation
s 57 am A2006-44 s 25

Request for third-party to attend
s 58 am A2006-44 s 25

Compulsory attendance at conciliation
s 59 am A2006-44 s 25

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

Conduct of conciliation
s 60 am A2006-44 s 25

Relationship between conciliation and consideration
s 61 am A2006-44 s 15, s 16

Conciliated agreements
s 62 am A2006-44 s 17, s 25; A2008-36 amdt 1.356, amdt 1.357

Use of conciliation agreement by commission
s 63 sub A2006-44 s 18

Unsuccessful conciliation of discrimination matter
s 64 am A2006-44 s 25
om A2010-50 amdt 1.7

End of conciliation
s 65 am A2006-44 s 19, s 25

Admissibility of evidence
s 66 am A2006-44 s 20; A2011-48 amdt 1.33

Commission may treat person as person complained about
s 71A ins A2010-5 s 19

When complaints can be closed
s 78 am A2008-22 amdt 1.33; A2008-36 amdt 1.358, amdt 1.359; A2010-10 amdt 2.64; A2010-50 amdt 1.8; pars renum R14 LA; A2015-29 amdt 2.50; A2016-49 amdt 1.18

Reopening complaints
s 79 am A2010-50 amdt 1.9

How complaints are closed
s 80 am A2010-10 amdt 2.65; A2015-29 amdt 2.51

Closing discrimination complaints
s 82 am A2008-22 amdt 1.34

Third-party reports
s 83 am A2014-49 s 15, s 16; A2015-29 amdt 2.52

Discrimination referral statements
s 88 sub A2008-22 amdt 1.35; A2008-36 amdt 1.360

Health code, health profession boards and veterinary surgeons board
pt 5 hdg sub A2015-29 amdt 2.53, amdt 3.3

Approval of health code
s 89 am A2012-21 amdt 3.99

Relationship between commission, health profession boards and veterinary surgeons board
div 5.2 hdg sub A2015-29 amdt 2.54, amdt 3.4

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

Meaning of *registered health practitioner* and *registered veterinary surgeon*—div 5.2

s 91 hdg	sub A2015-29 amdt 3.5
s 91	sub A2015-29 amdt 2.54 am A2015-29 amdt 3.6

Referral of complaints to boards

s 92	am A2010-5 s 20, s 21 (4)-(6) exp 9 June 2010 (s 92 (6)) am A2010-10 amdt 2.66 sub A2015-29 amdt 2.54, amdt 3.7

Complaints referred to veterinary surgeons board

s 93	sub A2015-29 amdt 2.54 am A2015-29 amdt 3.8, amdt 3.9

Consideration of complaints

s 94 hdg	sub A2015-29 amdt 3.10
s 94	sub A2015-29 amdt 2.54 am A2015-29 amdt 3.11, amdt 3.12

Information about complaints

s 95	am A2005-46 s 27; A2010-10 amdt 2.67; A2014-49 s 17

Inspection of incorporated documents

s 96	am A2011-22 amdt 1.254

Notification of certain incorporated documents

s 97	am A2011-22 amdt 1.254

Secrecy

s 99	am A2005-46 s 28; A2006-44 s 21; pars renum R1 LA; A2016-49 amdt 1.19

Protection of officials from liability

s 100	am A2006-44 s 22; pars renum R1 LA

Protection of others from liability

s 100A	ins A2010-5 s 22 am A2016-1 s 31 sub A2016-13 amdt 1.87

Intergovernmental arrangements

s 101	am A2012-21 amdt 3.100; ss renum R17 LA

Determination of fees and expenses for people asked to attend conciliation

s 103	am A2012-21 amdt 3.101

Review of protection of rights services legislation

s 105A	ins A2016-13 amdt 1.88 exp 1 April 2021 (s 105A (5))

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

Transitional
pt 7 hdg exp 1 November 2007 (s 121)

Definitions for pt 7
s 106 exp 1 November 2007 (s 121)

Conduct engaged in by previous discrimination commissioner
s 107 exp 1 November 2007 (s 121)

Conduct engaged in by community and health services complaints commissioner
s 108 exp 1 November 2007 (s 121)

Complaints under CHSC Act and HR(PA) Act
s 109 exp 1 November 2007 (s 121)

Undeclined complaints under pre-amendment Discrimination Act
s 110 exp 1 November 2007 (s 121)

Investigations under pre-amendment Discrimination Act
s 111 exp 1 November 2007 (s 121)

Right to make applications to discrimination tribunal
s 112 exp 1 November 2007 (s 121)

Requirement under pre-amendment Discrimination Act
s 113 exp 1 November 2007 (s 121)

Direction by discrimination commissioner
s 114 exp 1 November 2007 (s 121)

Undecided applications to discrimination tribunal to strike out complaint
s 115 exp 1 November 2007 (s 121)

Other undecided applications to discrimination tribunal
s 116 exp 1 November 2007 (s 121)

Requests to review under HR(PA) Act
s 117 exp 1 November 2007 (s 121)

Appeal rights in relation to requests to review
s 118 exp 1 November 2007 (s 121)

References to community and health services complaints commissioner
s 119 exp 1 November 2007 (s 121)

Transitional regulations
s 120 exp 1 November 2007 (s 121)

Expiry of pt 7
s 121 exp 1 November 2007 (s 121)

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

Dictionary

dict

am A2005-46 s 29, s 30; A2008-36 amdts 1.361-1.363; A2010-10 amdt 2.68; A2010-30 amdt 1.31; A2011-22 amdt 1.255; A2015-29 amdt 2.55

def ***applicable standard*** sub A2005-46 s 31

def ***child*** ins A2005-46 s 32

def ***children and young people commissioner*** ins A2005-46 s 32

sub A2016-1 s 32

def ***children and young people service complaint*** ins A2005-46 s 32

def ***commissioner*** ins A2016-1 s 33

def ***complaint*** ins A2015-29 amdt 2.56

sub A2015-29 amdt 3.13

def ***conciliator*** om A2006-44 s 23

def ***disability and community services commissioner*** sub A2016-1 s 34

def ***disability service*** ins A2005-46 s 32

def ***discrimination commissioner*** ins A2005-46 s 32

sub A2016-1 s 34

def ***discrimination complaint*** sub A2005-46 s 33

def ***health professional*** om A2015-29 amdt 2.57

def ***health professional report*** om A2015-29 amdt 2.57

def ***health services commissioner*** sub A2016-1 s 35

def ***human rights commissioner*** sub A2016-1 s 35

def ***incorporated document*** sub A2005-46 s 34

def ***older people service complaint*** am A2012-21 amdt 3.102

def ***president*** om A2006-44 s 24

ins A2016-1 s 36

def ***public advocate*** ins A2016-1 s 36

def ***registered*** sub A2015-29 amdt 2.58, amdt 3.14

def ***registered veterinary surgeon*** ins A2015-29 amdt 2.59

am A2015-29 amdt 3.15

def ***related Act*** am A2015-29 amdt 2.60, amdt 2.61; pars renum R20 LA; A2016-1 s 37, s 38; pars renum R21 LA

def ***relevant board*** ins A2015-29 amdt 3.16

def ***service for children and young people*** ins A2005-46 s 35

def ***service for people with a disability*** om A2005-46 s 36

def ***service for victims of crime*** ins A2016-1 s 39

def ***unlawful act*** ins A2008-36 amdt 1.364

def ***victims of crime commissioner*** ins A2016-1 s 39

def ***young person*** ins A2005-46 s 37

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

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 1 Nov 2006	1 Nov 2006– 27 May 2007	A2006-44	new Act and amendments by A2005-46, A2006-3, A2006-40 and A2006-44
R2 28 May 2007	28 May 2007– 5 Sept 2007	A2006-47	amendments by A2006-47
R3 6 Sept 2007	6 Sept 2007– 1 Nov 2007	A2007-22	amendments by A2007-22
R4 2 Nov 2007	2 Nov 2007– 28 July 2008	A2007-22	commenced expiry
R5 29 July 2008	29 July 2008– 25 Aug 2008	A2008-22	amendments by A2008-22
R6 26 Aug 2008	26 Aug 2008– 8 Sept 2008	A2008-28	amendments by A2008-28
R7 9 Sept 2008	9 Sept 2008– 26 Oct 2008	A2008-36	amendments by A2008-20
R8 27 Oct 2008	27 Oct 2008– 1 Feb 2009	A2008-36	amendments by A2008-20
R9 2 Feb 2009	2 Feb 2009– 8 Mar 2010	A2008-36	amendments by A2008-36
R10 9 Mar 2010	9 Mar 2010– 9 June 2010	A2010-5	amendments by A2010-5
R11 10 June 2010	10 June 2010– 30 June 2010	A2010-10	commenced expiry

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

5 Earlier republications

Republication No and date	Effective	Last amendment made by	Republication for
R12 1 July 2010	1 July 2010– 27 Sept 2010	A2010-10	amendments by A2010-10
R13 28 Sept 2010	28 Sept 2010– 20 Dec 2010	A2010-30	amendments by A2010-30
R14 21 Dec 2010	21 Dec 2010– 30 June 2011	A2010-50	amendments by A2010-50
R15 1 July 2011	1 July 2011– 29 Feb 2012	A2011-22	amendments by A2011-22
R16 1 Mar 2012	1 Mar 2012– 4 June 2012	A2011-48	amendments by A2011-48
R17 5 June 2012	5 June 2012– 6 Mar 2013	A2012-21	amendments by A2012-21
R18 7 Mar 2013	7 Mar 2013- 16 Nov 2014	A2013-8	amendments by A2013-8
R19 17 Nov 2014	17 Nov 2014- 30 Nov 2015	A2014-49	amendments by A2014-49
R20 1 Dec 2015	1 Dec 2015- 31 Mar 2016	A2015-29	amendments by A2015-29
R21 1 Apr 2016	1 Apr 2016- 23 Aug 2016	A2016-13	amendments by A2016-1 and A2016-13
R22 24 Aug 2016	24 Aug 2016- 31 Aug 2016	A2016-49	amendments by A2016-49

© Australian Capital Territory 2016

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