

2004

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mrs Jacqui Burke)

Commissioner for the Family Bill 2004

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Commissioner for the Family Bill 2004

A Bill for

An Act to provide for the establishment of a commissioner for the family, and
for related purposes

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Commissioner for the Family Act 2004*.

4 **2 Commencement**

5 This Act commences on a day fixed by the Minister by written
6 notice.

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

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

12 *Note 3* If a provision has not commenced within 6 months beginning on the
13 notification day, it automatically commences on the first day after that
14 period (see Legislation Act, s 79).

15 **3 Objects**

16 The objects of this Act are—

- 17 (a) to promote the interests of the family as a unit in society; and
18 (b) to encourage government authorities that provide services
19 affecting families or family members to take into account the
20 interests of the family in the provision of the services.

1 **4 Dictionary**

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

3 *Note 1* The dictionary at the end of this Act defines terms used in this Act.

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

8 **5 Notes**

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

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

11 **6 Meaning of *family* and *family services***

12 In this Act:

13 *family* means—

14 (a) a parent or parents, and a child or children of the parent or
15 parents, whether or not living together; or

16 (b) an adult or adults and a child or children, living together as a
17 family, whether or not they are related by blood.

18 *family services* means services provided by agencies that affect, or
19 might affect, families or family members.

20 **7 Meaning of *agency***

21 (1) In this Act:

22 *agency* means an administrative unit or government authority.

- 1 (2) In this section:
- 2 ***government authority*** means—
- 3 (a) a body corporate, or an unincorporated body, established for a
- 4 public purpose by, or in accordance with, a law of the
- 5 Territory, other than—
- 6 (i) an incorporated company or association; or
- 7 (ii) a body that is declared under the regulations not to be a
- 8 government authority; or
- 9 (b) any other body, whether incorporated or unincorporated, that is
- 10 declared by the regulations to be a government authority, if the
- 11 body is—
- 12 (i) established by the Executive or by a Minister; or
- 13 (ii) an incorporated company or association over which the
- 14 Territory is in a position to exercise control; or
- 15 (c) a person performing the duties of a position declared under the
- 16 regulations to be a government authority, if the position is
- 17 created by the Executive or by a Minister otherwise than under
- 18 a law of the Territory.
- 19 (3) An unincorporated body that is a board, council, committee,
- 20 subcommittee or other body established under a law of the Territory
- 21 for assisting, or exercising functions connected with, a government
- 22 authority is taken not to be a government authority.
- 23 (4) However, anything done by a body mentioned in subsection (3), or
- 24 by a person on its behalf, is taken to have been done by the
- 25 government authority.
- 26 (5) A person is not taken to be a government authority only because the
- 27 person performs the duties of—
- 28 (a) an office prescribed under the regulations; or

- 1 (b) an office the duties of which the person performs as duties of
2 his or her employment as an officer of an agency; or
3 (c) an office of member of a body; or
4 (d) an office established by a law of the Territory for a government
5 authority.
6 (6) However, anything done by or on behalf of a person performing the
7 duties of an office mentioned in subsection (5) is taken to have been
8 done by the agency or body concerned.

1 **Part 2 Commissioner for the family**

2 **Division 2.1 Establishment**

3 **8 Establishment of commissioner**

4 The office of Commissioner for the Family is established.

5 **9 Appointment of commissioner**

6 The Minister must appoint a person to be the commissioner.

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

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

11 *Note 3* Certain Ministerial appointments require consultation with an Assembly
12 committee and are disallowable (see Legislation Act, div 19.3.3).

13 **10 Term of appointment of commissioner**

14 The commissioner must be appointed for a term of not longer than 3
15 years.

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

19 **11 Conditions of appointment of commissioner**

20 The commissioner holds the position on the conditions stated in—

21 (a) this Act; and

22 (b) the instrument of appointment.

12 Ending of appointment of commissioner

The Minister may end the commissioner's appointment for misbehaviour or physical or mental incapacity.

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

Division 2.2 Commissioner's functions

13 Functions

The commissioner has the following functions:

- (a) to promote laws, policies and practices that support the objects of this Act;
- (b) to encourage, facilitate and support the development and coordination of advocacy and support services for families;
- (c) to promote an understanding of, and informed discussion about, the rights, interests and wellbeing of families;
- (d) to promote and engage in research about the rights, interests and wellbeing of families;
- (e) to conduct investigations into complaints about the provision of family services by agencies;
- (f) to disseminate information about the operation of this Act and the functions of the commissioner;
- (g) to advise the Minister on any matters relating to the family, whether at the Minister's request or at the commissioner's initiative;
- (h) to liaise with any agency of the Commonwealth, a State or another Territory about the exercise of functions by the agency in relation to family services;

- 1 (i) to exercise any other function given to the commissioner under
2 this Act or any other Territory law.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

3 **14 Independence of commissioner**

4 The commissioner is not subject to the control of the Minister in
5 relation to the exercise of any of the commissioner's functions under
6 this Act.

7 **Division 2.3 Administration**

8 **15 Staff**

- 9 (1) The staff assisting the commissioner must be employed under the
10 *Public Sector Management Act 1994*.
11 (2) The *Public Sector Management Act 1994* applies to the management
12 of the staff assisting the commissioner.

13 **16 Appointment of authorised people**

- 14 (1) The commissioner may appoint a public servant as an authorised
15 person for this Act.

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

18 *Note 2* In particular, a person may be appointed for a particular provision of a law
19 (see Legislation Act, s 7 (3)) and an appointment may be made by naming a
20 person or nominating the occupant of a position (see Legislation Act, s 207).

- 21 (2) A person may be appointed as an authorised person only if—
22 (a) the person is an Australian citizen or a permanent resident of
23 Australia; and

- 1 (b) the commissioner is satisfied that the person is a suitable
2 person to be appointed, having regard in particular to—
3 (i) the person's criminal record (if any); and
4 (ii) the person's employment record; and
5 (iii) whether the person has satisfactorily completed adequate
6 training to exercise the powers of an authorised person.

7 **17 Identity cards for authorised persons**

- 8 (1) The commissioner must give an authorised person an identity card
9 that states that the person is an authorised person for this Act, and
10 shows—
11 (a) a recent photograph of the person; and
12 (b) the name of the person; and
13 (c) the date of issue of the card; and
14 (d) an expiry date for the card; and
15 (e) anything else prescribed under the regulations.
16 (2) A person who ceases to be an authorised person must return his or
17 her identity card to the commissioner as soon as practicable, but
18 within 21 days after the day the person ceases to be an authorised
19 person.
20 Maximum penalty: 1 penalty unit.
21 (3) An offence against subsection (2) is a strict liability offence.

1 **Part 3 Investigations**

2 **18 Complaints**

- 3 (1) The commissioner may, if asked by a person, or at the
4 commissioner's own initiative, investigate any complaint about the
5 provision or lack of provision of family services if the commissioner
6 believes on reasonable grounds that it is desirable to do so to
7 support the objects of this Act.

8 *Note* If a form is approved under s 29 for a request to investigate a complaint,
9 the form must be used.

- 10 (2) The commissioner is not authorised to investigate action taken by—
11 (a) a judge or the master of the Supreme Court; or
12 (b) a magistrate or coroner for the Territory; or
13 (c) a royal commission under the *Royal Commissions Act 1991*; or
14 (d) a board of inquiry under the *Inquiries Act 1991*; or
15 (e) a panel conducting an inquiry under the *Land (Planning and*
16 *Environment) Act 1991*; or
17 (f) the ombudsman; or
18 (g) the commissioner for the environment; or
19 (h) the commissioner for health complaints.

20 **19 Discretion not to investigate complaints about provision**
21 **of family services**

- 22 (1) If a complaint is made to the commissioner about action taken by an
23 agency, the commissioner may decide not to investigate the matter
24 or, if an investigation has begun, decide not to investigate the action
25 further if, in the opinion of the commissioner—

- 1 (a) the complaint is frivolous or vexatious or is not made in good
2 faith; or
- 3 (b) an investigation, or further investigation, of the action is not
4 warranted having regard to all the circumstances.
- 5 (2) In addition, if a person who makes a complaint to the commissioner
6 about action taken by an agency has not made a complaint to the
7 agency about the action, the commissioner may decide not to
8 investigate the action.
- 9 (3) The commissioner may investigate action taken by an agency on the
10 basis of a complaint if—
- 11 (a) the complainant—
- 12 (i) has complained to the agency about that action; and
- 13 (ii) tells the commissioner that the agency has not responded
14 or has not responded adequately; and
- 15 (b) the commissioner is of the opinion that—
- 16 (i) if the agency has not responded—since the complaint was
17 made, a reasonable period has elapsed in which the
18 agency could have responded; or
- 19 (ii) if the agency has responded—the response was not
20 adequate.
- 21 (4) If a complainant causes action to which the complaint relates to be
22 reviewed by a court, or by a tribunal constituted by or under a law of
23 the Territory, the commissioner must not investigate, or continue to
24 investigate, the action unless the commissioner is of the opinion that
25 there are special reasons justifying the investigation.
- 26 (5) If the commissioner is of the opinion that a complainant has or had a
27 right to cause the action to which the complaint relates to be
28 reviewed by a court, or by a tribunal constituted under a law of the
29 Territory, but has not exercised that right, the commissioner may
30 decide not to investigate the action or not to investigate the action
-

- 1 further, if he or she is of the opinion that, in all the circumstances, it
2 would be reasonable for the complainant to exercise, or would have
3 been reasonable for the complainant to have exercised, that right.
- 4 (6) If, before the commissioner begins, or after the commissioner has
5 begun, to investigate action taken by an agency on the basis of a
6 complaint, the commissioner forms the opinion that adequate
7 provision is made under an administrative practice for the review of
8 action of that kind, the commissioner may decide not to investigate
9 the action or not to investigate the action further—
- 10 (a) if the action has been, is being or is to be reviewed under that
11 practice at the request of the complainant; or
- 12 (b) if the commissioner is satisfied that the complainant is entitled
13 to cause the action to be reviewed under that practice and it
14 would be reasonable for the complainant to cause it to be so
15 reviewed.
- 16 (7) If a complaint is made to the commissioner by a person at the
17 request of another person or of a body of people, this section applies
18 as if references to the complainant were references to the person or
19 the body of people at whose request the complaint is made.

20 **20 Investigations**

- 21 (1) The commissioner must, before beginning an investigation of action
22 taken by an agency, tell the principal officer of the agency that the
23 action is to be investigated.
- 24 (2) The commissioner may from time to time make an arrangement
25 with the principal officer of an agency about how, and the period
26 within which, the commissioner is to tell the principal officer that he
27 or she proposes to investigate particular action taken by the agency.
- 28 (3) An investigation may be conducted in any way the commissioner
29 considers appropriate.

- 1 (4) The commissioner may, for this Act, obtain information from
2 people, and make inquiries, as the commissioner considers
3 appropriate.

4 **Examples**

- 5 1 face to face
6 2 by correspondence
7 3 by telephone
8 4 by email

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

- 12 (5) It is not necessary for a complainant or any other person to be given
13 an opportunity to appear before the commissioner or any other
14 person in connection with an investigation.

15 **21 Investigations—critical reports about agencies**

- 16 (1) This section applies if the commissioner proposes to make a report
17 in relation to an investigation in which the commissioner states an
18 opinion that is either expressly or impliedly critical of an agency or
19 person.

- 20 (2) Before completing the investigation, the commissioner must—

- 21 (a) if the opinion relates to an agency—give the principal officer
22 of the agency and the officer principally concerned in the
23 action to which the investigation relates an opportunity to
24 appear before the commissioner or before an authorised
25 person, and make submissions, either orally or in writing, in
26 relation to the action; and
27 (b) if the opinion relates to a person—give the person an
28 opportunity to appear before the commissioner or before an
29 authorised person, and make submissions, either orally or in
30 writing, in relation to the action to which the investigation
31 relates.

- 1 (3) If the commissioner gives a person other than the principal officer of
2 an agency an opportunity to appear before the commissioner or
3 before an authorised person under subsection (2), the person may,
4 with the approval of the commissioner or of the authorised person,
5 be represented by another person.
- 6 (4) If the investigation is based on an oral complaint, the complaint
7 must be put in writing and signed by the complainant.

8 **22 Obligations in relation to breaches of duty**

- 9 (1) This section applies if the commissioner is of the opinion, either
10 before, during or after completing an investigation, that there is
11 evidence that an officer of an agency has breached a duty or
12 engaged in misconduct.
- 13 (2) The commissioner must report the possible breach of duty or
14 misconduct—
- 15 (a) to the ombudsman for further investigation; and
- 16 (b) either—
- 17 (i) if the officer is the principal officer of the agency—to the
18 Minister responsible for the agency; or
- 19 (ii) to the principal officer of the agency.

20 **Example of breach of duty or misconduct**

21 failure to comply with the *Public Sector Management Act 1994* or the
22 management standards made under that Act, section 25

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

26 **23 Disclosure of information about investigations**

- 27 (1) This Act does not prevent the commissioner from disclosing
28 information to a person or to members of the public about a matter
29 that is the subject of an investigation if the commissioner is satisfied

- 1 that the disclosure is necessary and reasonable in the exercise of a
2 function under this Act.
- 3 (2) In a disclosure mentioned in subsection (1), the commissioner must
4 not—
- 5 (a) express an opinion that is (expressly or impliedly) critical of a
6 person unless the commissioner has given the person an
7 opportunity to answer the criticism; or
- 8 (b) identify a person (directly or indirectly) unless it is necessary
9 and reasonable to do so.

1 **Part 4 Reports**

2 **24 Reports**

- 3 (1) If the commissioner has conducted an investigation, the
4 commissioner must—
- 5 (a) prepare a report on the investigation; and
- 6 (b) within 28 days of the completing the report, give the report to
7 the Minister.
- 8 (2) The commissioner may, at any time, give the Minister a report about
9 any matter concerning the exercise of the commissioner's functions
10 under this Act.

11 **25 Minister to table reports**

- 12 (1) This section applies if the commissioner, in writing, directs the
13 Minister to give a report by the commissioner under section 24 to
14 the Legislative Assembly.
- 15 (2) The Minister must, within 6 sitting days after receiving the report,
16 present the report to the Legislative Assembly.
- 17 (3) However, if there are no sitting days within the period of 28 days
18 beginning on the day after the report is given to the Minister under
19 section 24, the Minister must give the report and a copy for each
20 member of the Legislative Assembly to the Speaker before the end
21 of that period.
- 22 (4) The Speaker must arrange for a copy of the report to be given to
23 each member of the Legislative Assembly on the day the Minister
24 gives the report to the Speaker.

- 1 **26 Other reports by commissioner**
- 2 (1) As soon as practicable after the end of each financial year, the
- 3 commissioner must give the Minister a report about the
- 4 commissioner's operations under this Act.
- 5 (2) The Minister must present a copy of a report under this section to
- 6 the Legislative Assembly within 6 sitting days after the day the
- 7 Minister receives the report.
- 8 (3) A report presented by the commissioner, or information provided by
- 9 the commissioner, under the *Annual Reports (Government*
- 10 *Agencies) Act 1995*, section 8 must include details (including
- 11 reasons) of any decision not to investigate a complaint during the
- 12 period to which the report or information relates.

- 1 **Part 5** **Miscellaneous**
- 2 **27** **Secrecy**
- 3 (1) In this section:
- 4 *court* includes any tribunal or other entity having power to require
- 5 the production of documents or the answering of questions.
- 6 *produce* includes permit access to.
- 7 *protected information* means information about a person that is
- 8 disclosed to, or obtained by, a person to whom this section applies
- 9 because of the person's position under this Act or the exercise of a
- 10 function under this Act.
- 11 (2) A person who is, or has been, the commissioner commits an offence
- 12 if the person—
- 13 (a) makes a record of protected information; or
- 14 (b) directly or indirectly discloses or communicates to a person
- 15 protected information about someone else.
- 16 Maximum penalty: 50 penalty units, imprisonment for 6 months or
- 17 both.
- 18 (3) Subsection (2) does not apply if the record is made, or the
- 19 information is disclosed or communicated—
- 20 (a) under this or any other Act; or
- 21 (b) in relation to the exercise of a function as commissioner under
- 22 this or any other Act.
- 23 (4) Subsection (2) does not prevent the commissioner from
- 24 communicating protected information to a person about someone
- 25 else with the consent of the other person.

- 1 (5) Unless it is necessary to do so for this Act or another Act, the
2 commissioner is not required—
3 (a) to communicate protected information to a court; or
4 (b) to produce a document containing protected information to a
5 court.

6 **28 Protection from liability**

- 7 (1) The commissioner, or a member of the commission's staff, does not
8 incur civil or criminal liability for an act or omission done honestly
9 and without negligence for this Act.
10 (2) A civil liability that would, apart from this section, attach to the
11 commissioner or a member of the commissioner's staff attaches
12 instead to the Territory.

13 **29 Approved forms**

- 14 (1) The commissioner may, in writing, approve forms for this Act.
15 (2) If the commissioner approves a form for a particular purpose, the
16 approved form must be used for that purpose.
17 (3) An approved form is a notifiable instrument.

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

19 **30 Regulation-making power**

20 The Executive may make regulations for this Act.

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

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:

- ACT
- administrative unit
- adult
- chief executive (see s 163)
- child
- Executive
- exercise
- function
- in relation to
- law (of the Territory)
- liability
- position
- the Territory.

agency—see section 7.

authorised person—see section 16.

commissioner means the Commissioner for the Family appointed under section 9.

family—see section 6.

family services—see section 6.

government authority—see section 7.

investigation means an investigation under section 20.

officer, of an agency, means—

(a) for an agency that is an administrative unit—

(i) a public servant (including the principal officer of the unit) who is a member of the unit; or

(ii) any other person (not being a Minister) authorised to exercise functions on behalf of the unit by the principal officer of the unit; or

(b) for an agency that is a government authority—

(i) the person who constitutes, or is acting as the person who constitutes, the authority; or

(ii) a person who is, or is acting as, a member of the authority or is a deputy of such a member; or

(iii) a person who is employed in the service of, or is a member of the staff of, the authority, whether or not the person is employed by the authority; or

(iv) a person authorised by the authority to exercise any functions of the authority on behalf of the authority.

principal officer, of an agency, means—

(a) for an agency that is an administrative unit—the Commissioner for Public Administration or the chief executive of the unit; or

(b) for an agency that is a government authority—

(i) if the regulations declare an office to be the principal office in relation to the authority—the person occupying that position; or

(ii) in any other case—the person performing the duties of the position or, if the authority is constituted by 2 or more persons, the person who is entitled to preside at any meeting of the authority at which the person is present.

- 1 ***responsible Minister***, for an agency, means—
- 2 (a) for an agency that is an administrative unit—the Minister
- 3 responsible for the unit; or
- 4 (b) for an agency that is a government authority mentioned in
- 5 section 7 (2), definition of ***government authority***,
- 6 paragraph (a)—the Minister administering the law of the
- 7 Territory concerned; or
- 8 (c) for an agency that is a government authority mentioned in the
- 9 definition of ***government authority***, paragraph (b) or (c)—the
- 10 Minister declared by the regulations to be the responsible
- 11 Minister for the authority; or
- 12 (d) for any agency—another Minister acting for the Minister
- 13 mentioned in paragraph (a), (b) or (c).

Endnotes

1 **Presentation speech**

Presentation speech made in the Legislative Assembly on 2004.

2 **Notification**

Notified under the Legislation Act on 2004.

3 **Republications of amended laws**

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