

**2005**

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**HUMAN RIGHTS COMMISSION BILL 2005**

**EXPLANATORY STATEMENT**

Circulated by authority of the  
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Attorney General

## **HUMAN RIGHTS COMMISSION BILL 2005**

### **BACKGROUND**

In April 2003, the ACT Government commissioned the Foundation for Effective Markets and Governance (FEMAG) to conduct a Review of Statutory Oversight and Community Advocacy Agencies. The Review looked at a broad range of statutory oversight and community advocacy bodies, taking a holistic view of the system so that it could make recommendations on improvements in the system as a whole. The final report was released in December 2003.

The FEMAG Review report confirmed the need identified in the ACT Health Review (the Reid Report, released in June 2002) to consolidate the existing complaint bodies to ensure an optimum system for consumers and citizens, and to allow flexibility in the use of resources. The report noted that “a series of small stand-alone agencies will not be able to undertake the challenging tasks expected of them”.

The Human Rights Commission Bill 2005 (HRC Bill) establishes a new structure for statutory oversight in the ACT to deliver better quality services to the community and to government – both in oversight and advocacy terms and also by actively promoting improvements in the delivery of human services.

The HRC Bill establishes a new statutory authority called the Human Rights Commission (HRC), which will have the functions of dealing with complaints about discrimination, health services, disability services and services for older people, as well as facilitating service improvement and developing awareness in government and the community of human rights.

The HRC amalgamates the offices of the Community and Health Services Complaints Commissioner and the Human Rights Office.

### **SUMMARY**

The HRC Bill establishes the HRC. It is constituted by the president and a number of specialist commissioners. The commissioners will be

- the Discrimination Commissioner
- the Human Rights Commissioner
- the Health Services Commissioner
- the Disability and Community Services Commissioner.

The members of the HRC will work together in a collegiate manner and will decide how the HRC will carry out its statutory functions. The specialist commissioners will (subject to any contrary decision by the HRC) be responsible for dealing with complaints, inquiries, preparation of advice and community education in relation to particular areas of expertise. The president will take responsibility for the day to day administration of the HRC, including receipt of complaints and staffing matters, and will also be responsible for conciliation of complaints that are suitable for conciliating and appear likely to be resolved

by that means. The president will also have a casting vote in any disputes arising in the HRC.

The health services commissioner established in the HRC Bill will replace the Community and Health Services Complaints Commissioner established in the *Community and Health Services Complaints Act 1993*. The new positions of president of the HRC and disability and community services commissioner are created by the HRC Bill. The existing positions of human rights commissioner and discrimination commissioner are provided for in the HRC Bill and current provisions establishing those positions will be removed from the *Discrimination Act 1991* and the *Human Rights Act 2004* by consequential amendments contained in the Human Rights Legislation Amendment Bill 2005.

The HRC Bill does not make substantial changes to the law relating to complaints about discrimination, health services, services for older people and disability services but it updates and revises the language while at the same time providing for a uniform system of handling those disparate matters. The provisions about complaints and complaint handling are based on those in the *Community and Health Services Complaints Act 1993* and the *Discrimination Act 1991*.

The HRC Bill provides a broad and flexible operational structure for the HRC. The members of the HRC have wide scope to determine how the HRC can most effectively fulfil its functions.

An important function is to provide an independent mechanism for resolution of disputes about the provision of health services, disability services and services for older people. Relevant services will be those provided in the ACT. The HRC will not be able to consider issues arising where a person is not entitled to or eligible for services within the ACT.

In replacing the Community and Health Services Complaints Commissioner the HRC will continue to have a special relationship with the health profession boards established under the *Health Professionals Act 2004*. Those boards carry out a regulatory and standard setting function on behalf of the government to ensure that registered health professionals meet appropriate personal and professional standards. The Health Services Commissioner will represent the HRC in discussing complaints and reports under the *Health Professionals Act 2004* with relevant health profession boards.

## **REVENUE/COST IMPLICATIONS**

Although funding will be transferred from the Human Rights Office and the Office of the Community and Health Services Complaints Commissioner, there will be additional costs associated with the establishment of a president for the HRC and the creation of a disability and community services commissioner.

## **SUMMARY OF CLAUSES**

In the summary of clauses the HRC is referred to as ‘the commission’.

## Part 1 – Preliminary

### Formal Clauses

Clause 1 sets out the name of the Act.

Clause 2 provides for the Act to commence on a day set by the Attorney General. However, the Act will commence automatically after six months if no earlier day is set by the Minister.

Clause 3 says that the definitions for the Act are in the dictionary at the end of the Act.

Clause 4 says that notes can be included to explain provisions in the Act but they are not part of the Act itself.

Clause 5 mentions other legislation that applies to offences against the Act. The Criminal Code relates to offences and the *Legislation Act 2001* sets out what penalty units are.

## Part 2      Objects and important concepts

Clause 6 sets out the main objects of the Act. They identify the general aims sought to be achieved by the Act. Objects help to clarify the intention of the Act and may assist in clarifying other provisions where their meaning is unclear.

### Health service

Clause 7 defines what is meant in the Act by the term ‘health service’. The term is given a wide definition to cover a wide variety of services provided to people in a broadly health related context. It includes services provided to assess, record, maintain or improve a person’s physical, mental or emotional health, comfort or wellbeing as well as diagnosing or treating an illness, disability disorder or condition. In order to capture other things done by health professionals in the course of their professional practice, the definition also includes anything done by a health professional in his or her professional capacity. Services provided to people because they are carers for people receiving health services or who have physical or mental conditions that require attention are included in the definition of ‘health service’.

Concerns about actions of registered health providers (for example doctors or dentists) that do not relate to provision of a health service can be expressed in a report to the relevant health profession board under the *Health Professionals Act 2004*. Those reports will be discussed with the commission and may be considered by the commission.

### Service for people with a disability

Clause 8 defines ‘service for people with a disability’ as a service provided specifically for people with a disability or their carers. The meaning is restricted to those services provided

in the ACT. The meaning of disability for the purpose of this definition is set out in clause 8(3). Other definitions of disability apply in other legislative provisions such as the *Discrimination Act 1991*.

### **Service for older people**

Clause 9 defines ‘service for older people’ as a service specifically for older people or their carers. To be within the definition the services must be provided in the ACT.

### **Providers**

Clause 10 defines what a provider of a service is for the purposes of the Act. A provider is an entity that encourages people to believe that it is able to provide a particular kind of service. An entity can be a person, a company, an association, a government agency or any other kind of body or position holder. Employers of providers and volunteers who provide a service for an entity that is a provider are also included within the definition of provider.

If a funding body simply pays for services to be provided to people with a disability or for a service for older people then it is not considered a provider of services since it will not have day-to-day control over the ways in which services are provided as someone else will be providing the actual service.

## **Part 3 – The commission**

### **Division 3.1 Establishment, constitution and functions of the commission**

Clause 11 establishes the Human Rights Commission.

### **Members**

Clause 12 provides that the commission is made up of the President, the Disability and Community Services Commissioner, the Discrimination Commissioner, the Health Services Commissioner and the Human Rights Commissioner. Those positions are in turn all established in the Act. A person can hold more than one of those positions but cannot be the president and a commissioner at the same time.

### **Collegiate action**

Clause 13 emphasises that the members of the commission must work together to enable the commission to carry out its statutory functions. It requires the members to act in ways that promote the collegiate nature of the commission.

### **Function of the commission**

Clause 14 sets out the functions of the commission. They are broad ranging across the areas of health services, disability services, human rights and discrimination. Included are functions related to improving community awareness, improving service quality, inquiring about issues related to the subject areas covered by the commission and providing advice to government. The commission can also carry out other functions given to it under ACT legislation.

**Human rights obligation**

Clause 15 requires the commission to make its actions compatible with the rights set out in the *Human Rights Act 2004*.

**Independence**

Clause 16 expresses the independent nature of the commission. It is not subject to direction in the carrying out of its statutory functions except that, under the provisions of clause 17 the minister is able to issue written directions to the commission to conduct an inquiry into a particular matter and to report on that inquiry. The commission is obliged to comply with a direction given under clause 17.

**Division 3.2            The commission president****Appointment and termination**

Clause 18 deals with the appointment of the president. The president is appointed by the Executive for a period of up to five years. Conditions of appointment are agreed between the president and the Executive but are subject to any determinations made by the Remuneration Tribunal. The Executive must choose a person who has appropriate experience and expertise for the position.

The termination of an appointment to the position of president is regulated in Division 3.7. Clause 29 gives the Executive the option of ending a president's appointment

- if the president breaks an ACT law
- for misbehaviour
- on bankruptcy
- on conviction for an offence attracting a penalty of imprisonment for at least one year or that would, if committed in the ACT have attracted that penalty.

The Executive is required to end a president's appointment if the president is absent without leave for 14 days in a row or for 48 days in a 12 month period. The appointment must also be ended if the president suffers from mental or physical incapacity of a kind that substantially affects the performance of the president's functions.

**Functions**

The president has the functions set out in clause 19. They are

- managing the administration of the commission
- conciliating complaints

The president may be given other functions by ACT legislation.

Because it is important to keep conciliation separate from the investigation of a complaint, the president is not able to consider complaints on behalf of the commission. Conciliation needs to be kept separate from the process in which a complaint is considered and decisions are made about the merit of the complaint and about recommendations flowing from the complaint in order that parties participating in conciliation are able to freely discuss the

issues and come to an agreement without being constrained by the fear that things said in conciliation will be used for other purposes.

### **Division 3.3                    Disability and Community Services Commissioner**

#### **Appointment and termination**

The position of Disability and Community Services Commissioner is established in clause 20. The Executive appoints a person to be the Disability and Community Services Commissioner for a period of up to five years. Conditions of appointment are agreed between the Disability and Community Services Commissioner and the Executive but are subject to any determinations made by the Remuneration Tribunal. The Executive must choose a person who has appropriate experience and expertise for the position.

The termination of an appointment to the position of Disability and Community Services Commissioner is regulated in Division 3.7. Clause 29 gives the Executive the option of ending a commissioner's appointment

- if the commissioner breaks an ACT law
- for misbehaviour
- on bankruptcy
- on conviction for an offence attracting a penalty of imprisonment for at least one year or that would, if committed in the ACT have attracted that penalty.

The Executive is required to end a commissioner's appointment if the commissioner is absent without leave for 14 days in a row or for 48 days in a 12 month period. The appointment must also be ended if the commissioner suffers from mental or physical incapacity of a kind that substantially affects the performance of the commissioner's functions.

#### **Functions**

The Disability and Community Services Commissioner will bring to the commission specialist knowledge of the disability services area and will represent the commission in dealing with disability services issues. Clause 21 provides that the Disability and Community Services Commissioner is to exercise the functions of the commission that relate to disability services. However, the commission can arrange to handle matters differently on occasion if it considers that to do so is appropriate.

### **Division 3.4                    Discrimination Commissioner**

#### **Appointment and termination**

The position of Discrimination Commissioner is established in clause 22. The Executive appoints a person to be the Discrimination Commissioner for a period of up to five years.

Conditions of appointment are agreed between the Health Services Commissioner and the Executive but are subject to any determinations made by the Remuneration Tribunal.

The termination of an appointment to the position of Discrimination Commissioner is regulated in Division 3.7. Clause 29 gives the Executive the option of ending a commissioner's appointment

- if the commissioner breaks an ACT law
- for misbehaviour
- on bankruptcy
- on conviction for an offence attracting a penalty of imprisonment for at least one year or that would, if committed in the ACT have attracted that penalty.

The Executive is required to end a commissioner's appointment if the commissioner is absent without leave for 14 days in a row or for 48 days in a 12 month period. The appointment must also be ended if the commissioner suffers from mental or physical incapacity of a kind that substantially affects the performance of the commissioner's functions.

### **Functions**

The Discrimination Commissioner will bring to the commission specialist knowledge of discrimination law and will represent the commission in dealing with issues relating to discrimination. Clause 23 provides that the Discrimination Commissioner is to exercise the functions of the commission that relate to discrimination. However, the commission can arrange to handle matters differently on occasion if it considers that to do so is appropriate.

The functions of the commission in relation to discrimination are set out in clause 23. They include promoting the right of people to be free from unlawful discrimination and sexual harassment and promoting equality of opportunity for all people within the community.

## **Division 3.5 Health Services Commissioner**

### **Appointment and termination**

The position of Health Services Commissioner is established in clause 24. The Executive appoints a person to be the Health Services Commissioner for a period of up to five years. Conditions of appointment are agreed between the Health Services Commissioner and the Executive but are subject to any determinations made by the Remuneration Tribunal.

The termination of an appointment to the position of Health Services Commissioner is regulated in Division 3.7. Clause 29 gives the Executive the option of ending a commissioner's appointment

- if the commissioner breaks an ACT law
- for misbehaviour
- on bankruptcy
- on conviction for an offence attracting a penalty of imprisonment for at least one year or that would, if committed in the ACT have attracted that penalty.

The Executive is required to end a commissioner's appointment if the commissioner is absent without leave for 14 days in a row or for 48 days in a 12 month period. The appointment must also be ended if the commissioner suffers from mental or physical incapacity of a kind that substantially affects the performance of the commissioner's functions.

### **Functions**

The Health Services Commissioner will bring to the commission specialist knowledge of the health services area and will represent the commission in dealing with issues relating to health services and services for older people. Clause 25 provides that the Health Services Commissioner is to exercise the functions of the commission that relate to health services and services for older people. However, the commission can arrange to handle matters differently on occasion if it considers that to do so is appropriate.

## **Division 3.6 Human Rights Commissioner**

### **Appointment and termination**

The position of Human Rights Commissioner is established in clause 26. The Discrimination Commissioner is also to be the Human Rights Commissioner. This reflects the position prior to the creation of the commission.

### **Functions**

The Human Rights Commissioner will bring to the commission specialist knowledge of human rights law and will represent the commission in dealing with issues relating to human rights. Clause 27 provides that the Human Rights Commissioner is to exercise the functions of the commission that relate to human rights. However, the commission can arrange to handle matters differently on occasion if it considers that to do so is appropriate.

The Human Rights Commissioner also has the ability, under the *Human Rights Act 2004*, to intervene in a court proceeding that involves application of that Act.

## **Division 3.7 Ending appointments**

This division sets out the basis for termination of appointments. Clause 28 makes the provisions of the division apply to the president and the commissioners.

Clause 29 gives the Executive the option of ending a president's or a commissioner's appointment

- if the president or commissioner breaks an ACT law
- for misbehaviour
- on bankruptcy
- on conviction for an offence attracting a penalty of imprisonment for at least one year or that would, if committed in the ACT have attracted that penalty.

The Executive is required to end a president's or a commissioner's appointment if the president or commissioner is absent without leave for 14 days in a row or for 48 days in a

12 month period. The appointment must also be ended if the president or commissioner suffers from mental or physical incapacity of a kind that substantially affects the performance of that person's statutory functions.

### **Division 3.8                    Commission procedures**

#### **Meetings**

Clause 30 allows the commission to meet when and where it chooses but requires it to meet at least once a month. Meetings can be called by the president. If at least two other members want a meeting the president must arrange one.

Clause 31 provides that the president presides when he or she is present at a meeting of the commission but that the members can choose a member to run a meeting if the president is not there. Clause 32 says that if at least half the members of the commission are at a meeting the business of the commission can be carried on.

Clause 33 gives each member one vote on any matter to be decided at a meeting of the commission but provides for the president to have a deciding vote if there is not a majority vote otherwise.

As it is possible that one person may fill more than one of the positions in the commission, clause 34 provides that a person holding more than one appointment still only have one vote on any question being decided by a meeting of the commission. Clause 34 also provides that the number of members is worked out on the basis of the number of individuals appointed to positions on the commission.

The provisions of clause 35 allow the commission scope to conduct meetings as the members decide including by way of electronic communication such as a telephone link. Minutes must be kept of the meetings however conducted. There is also provision for the commission to make valid resolutions otherwise than at a formal meeting.

### **Division 3.9                    Staff and consultants of commission**

Clause 36 provides for all the staff of the commission to be employed under the *Public Sector Management Act 1994*, which regulates the employment of ACT Government employees.

Clause 37 allows the commission to engage consultants.

## **Part 4 – Complaints**

### **Division 4.1                    Making complaints**

### Outline

Clause 38 is an outline of the effect of the provisions in the division. It is intended to provide assistance to people reading the legislation by giving an idea of what the provisions in the division are intended to do.

The division establishes what the basis of a complaint is, when someone can complain, who can complain and how a person can go about making a complaint. Complaints are not the only matters that the commission deals with but they are an important part of its functions.

### When

Clause 39 sets out when a person can complain about a health service.

A person can complain if he or she thinks that a provider of a health service has acted in a way that is inconsistent with standards that apply to that health service. Providers and other people will assess the provision of the particular health service against standards set in:

- The health code. Clause 89 gives the Minister the power to approve a health code that sets out rights and responsibilities in relation to health matters. However, there is no obligation on the Minister to approve a health code. These provisions were previously in section 53 of the *Community and Health Services Complaints Act 1993*.
- The health provision principles. These may be dealt with in the health code, if one has been approved. Clause 90 deals with the contents of the health code. It requires the code to deal with implementation of the health provision principles but the code may also deal with other relevant matters. Clause 90(2) sets out the health provision principles. Those principles were previously set out in section 55 of the *Community and Health Services Complaints Act 1993*.
- A generally accepted standard of health service delivery expected of providers of that kind of health service.
- Any standard of practice for that kind of health service provider under the *Health Professionals Act 2004*. Section 18 of the *Health Professionals Act 2004* defines 'required standard of practice' for a health professional as the exercise of professional judgment, knowledge, skill and conduct at a level that maintains public protection and safety. Regulations under that Act may prescribe but not limit the behaviour that meets or does not meet the required standard of practice. However, the *Health Professionals Act 2004* only applies to those health professions that are regulated under it.
- The National Standards for Mental Health Services.

A person can also complain if a health service is not being provided or a health service is not being provided appropriately. The principles and standards set out above will be relevant in determining whether or not the health service was provided appropriately. Where a complaint is that a health service has not been provided, those standards and principles will be used in determining whether the health service ought to have been provided.

Clause 40 sets out when a person can complain about a service for people with a disability. A complaint can be made when a service is not being provided or when the service is not being provided appropriately. A complaint about a service for people with a disability can also be made if a person thinks that the provider of the service has acted inconsistently with

- The Home and Community Care National Service Standards.
- Human rights principles or requirements for programs and services for people with disabilities set out in the *Disability Services Act 1991*.
- The National Standards for Mental Health Services.
- Requirements set out in the *Disability Services Act 1991* for the design and implementation of programs and services relating to people with disabilities.
- The generally accepted standard of service delivery expected of providers of that kind of service.
- Other standards prescribed by regulation.

Clause 41 sets out when a person can complain about a service for older people. A complaint can be made when a service is not being provided or when the service is not being provided appropriately. A complaint about a service for older people can also be made if a person thinks that the provider of the service has acted inconsistently with

- The Home and Community Care National Service Standards
- The generally accepted standard of service delivery expected of providers of that kind of service
- Other standards prescribed by regulation.

The term “older people” has replaced the term “aged people”, which was used in the *Community and Health Services Complaints Act 1993* provisions relating to these services. Section 147 of the *Legislation Act 2001* provides that updating of terms of this nature does not affect the meaning in the legislation or alter the substantive effect of the provisions.

### **What**

Clause 42 establishes that complaints that are made under the Act are all to be treated as being made under division 4.1. Health service complaints, disability service complaints, older people service complaints, complaints about access to health records and discrimination complaints can be made under the Act.

Discrimination complaints are complaints about unlawful discrimination, unlawful vilification, sexual harassment, victimisation and unlawful advertising. They are made under the *Discrimination Act 1991* and that Act contains the provisions that establish what constitutes unlawful discrimination, who can complain about it and when.

Complaints in relation to access to health records can be made under section 18 of the *Health Records (Privacy and Access) Act 1997* if a person believes that there has been a breach of the privacy principles that apply to health records.

### **Who**

Clause 43 sets out who is able to make one of the complaints that can be made to the commission under the Act. Essentially a person may make a complaint if the person is

aggrieved by the way in which a provider or other person has acted and as a result the person thinks that grounds for making a complaint exist. To be aggrieved by an act the person has to be in some way affected by it. If the person aggrieved by the act is not legally capable of taking action on his or her own behalf, that person can be represented by a parent or guardian. An aggrieved person may also make a complaint by way of an agent appointed by him or her in writing or authorised by the commission to act for the person.

If the complaint is about a health service or a service for people with a disability or a service for older people then anyone can make a complaint. For those sorts of complaint there is no need for the complainant to be a person closely affected by the action complained about. However, if the complaint is made by a person who is not an aggrieved person the commission will treat that person differently from a person who is personally affected by the action complained about.

An example is that a friend of a person receiving services for older people might believe that the provider is not acting in accordance with the generally accepted standard for provision of that kind of service. The friend is not directly affected by the actions of the provider but might make a complaint to the commission. The commission would be able to consider the complaint but would not involve the friend in the process. While the complaint would be considered by the commission, the privacy of the person receiving the service complained of would be protected.

No-one can be obliged to make a complaint if they do not want to do so.

A complaint may be made jointly by two or more aggrieved people.

### **Complaint in writing**

Clause 44 says that a complaint must be in writing and must contain certain information about the person making the complaint. However, the commission must provide reasonable assistance to a person who wants to put a complaint in writing. The assistance will be provided to the extent that it is reasonable to do so in all the circumstances. It would be reasonable to put a complaint in writing for a person who was physically unable to do so but not for a person who was capable but did not feel inclined to write out the complaint.

### **Commission to be prompt and efficient**

Clause 45 provides that the commission has an obligation to be prompt and efficient in dealing with complaints. This includes

- Deciding which commissioner will consider each complaint as soon as possible after the complaint being received
- Writing to tell the person who made the complaint and the person complained about that the commission is going to consider the complaint
- If the complaint has been made by someone other than a person aggrieved by the action complained about, tell the person who made the complaint that the commission is going to consider it
- Write to the complainant every six weeks about the progress of the complaint

- Write to the person who made the complaint and the person complained about within four weeks of the complaint being closed by the commission to explain why the complaint was closed.

There are special requirements in relation to a discrimination complaint because the *Discrimination Act 1991* in section 87 gives a person who makes a discrimination complaint the ability to have the complaint referred to the Discrimination Tribunal for adjudication if not satisfied with the way in which the commission has dealt with the complaint. If the commission decides not to refer a complaint about discrimination for conciliation, clause 45 provides that it must write to the complainant about that decision and tell the complainant about the right to have the complaint referred to the Discrimination Tribunal.

### **Obligations of complainant**

Clause 46 contains the obligations that a person who makes a complaint has in relation to the commission. The person who makes a complaint must, during the time that the commission is looking into the complaint, tell the commission about any change of name or address. Also the complainant has an obligation to give the commission any information that it asks for in relation to the complaint. That information has to be provided within a reasonable time. These obligations are imposed in order that the commission can look into the concerns raised by the person in a timely and efficient manner.

## **Division 4.2            Dealing with complaints**

### **Outline**

Clause 47 is an outline of the effect of the provisions in the division. It is intended to provide assistance to people reading the legislation by giving an idea of what the provisions in the division are intended to do.

The division sets out what the commission can do with the complaints it receives.

### **Own motion consideration**

Clause 48 allows the commission to consider matters that it considers relevant and important without the need to have a person make a complaint about that matter or have a ministerial direction to inquire into the matter. When the commission decides to do that it is called a ‘commission-initiated consideration’.

If a complaint is made under the provisions of clause 43(1)(f) and the person making the complaint is not the person aggrieved by the action or complaining on behalf of the person aggrieved, then the commission will treat the matter as a commission initiated consideration. This enables the commission to look into and report on the issues raised while protecting the privacy of the person actually affected by the action of the service provider.

Similarly, if a complainant withdraws a complaint the commission can decide to do a commission initiated consideration if it believes that to do so is in the public interest. In

this way matters that are of genuine public interest or concern to the community can be considered by the commission even though the person who raised them no longer wants to be involved in the process.

Under the provisions of clause 92 the commission can deal with reports under the *Health Professionals Act 2004* as commission-initiated considerations. This enables the commission to work with the relevant health profession board in looking into issues raised about registered health professionals and in deciding how best to resolve those issues.

Clause 49 provides special conditions that apply to commission-initiated considerations. The person who brought the matter to the attention of the commission is not treated as a complainant and the commission itself stands in the position of the complainant. The commission still has to tell the person about the closure of the complaint when it decides to stop considering the matter. To protect the privacy of the people concerned, the commission is not to give the person information about the person who was complained about or the person affected by the behaviour complained about.

### **Allocating complaints**

After receiving a complaint the commission must decide which commissioner will consider it on behalf of the commission. Clause 50 sets out the requirements for allocation of complaints.

Generally complaints about health services and services for older people will be considered by the health services commissioner, complaints about discrimination will be considered by the discrimination commissioner and complaints about disability services will be considered by the disability and community services commissioner. The commission may decide that a complaint is appropriate for consideration by more than one commissioner as for example when it contains elements relating to both discrimination and disability services.

Clause 50 provides that the president is not able to consider a complaint on behalf of the commission. This is in order to keep the consideration of complaints separate from conciliation.

### **Conciliation**

Clause 51 allows the commission to refer issues arising from a complaint for conciliation. A complaint or issues arising from it can be referred for conciliation at any time. The commission will refer a matter for conciliation if it considers that the issues involved are likely to be resolved by conciliation. Matters can only be referred for conciliation if the commission considers that they are suitable for resolution in that way. Sometimes public interest issues or the relationship between the parties may mean that conciliation is not appropriate.

Referring a complaint or part of a complaint for conciliation does not prevent the commission from continuing to consider the complaint.

Division 4.3 sets out what conciliation is and how it operates in the context of complaints made to the commission.

### **Consideration**

Clause 52 contains a requirement that the commissioner to whom the commission allocates a complaint must consider that complaint on the commission's behalf.

### **Referral**

Discrimination complaints can be referred to the Discrimination Tribunal under the provisions of the *Discrimination Act 1991*. Clause 53 requires the commission to refer complaints about discrimination to the Discrimination Tribunal under certain circumstances.

## **Division 4.3 Conciliation of complaints**

### **Outline**

Clause 54 is an outline of the effect of the provisions in the division. It is intended to provide assistance to people reading the legislation by giving an idea of what the provisions in the division are intended to do.

The division sets out what conciliation is and how it operates in the context of complaints made to the commission.

### **Conciliation**

Clause 55 describes conciliation. The description is based on a general understanding of what constitutes this widely used process for enabling people in dispute with each other to come to an understanding of each other's concerns and an agreement about ending the dispute. As such conciliation is a process for the benefit of the parties to a dispute rather than an investigative or regulatory tool.

Clause 55 sets out the elements of conciliation as

- Having an independent conciliator who helps the parties to the dispute attempt to resolve the issues between them.
- Requiring the parties to the conciliation to be willing to be involved and informed about the process.
- Allowing the parties to determine the outcome of the conciliation process with some advice from the conciliator.

### **Delegation of conciliation function**

Clause 56 allows the president to delegate the function of conciliating complaints to other people such as staff of the commission or consultants engaged by the commission but not to a commissioner.

### **Parties to conciliation**

Clause 57 sets out who are the parties to a conciliation. They are

- The person who made the complaint and

- The person complained about.

The president can allow other people to attend the conciliation if it seems that they will assist the process but they will not be parties to the conciliation. The commission is not a party to the conciliation. Unless the president thinks that the process will be substantially assisted, parties to the conciliation cannot be represented by anyone for the conciliation process.

### **Third party attendance**

Clause 58 allows the president to write to a person not otherwise involved in a conciliation and ask them to attend the conciliation if it seems that the person's presence will help the conciliation process.

### **Compulsory attendance**

Sometimes the commission may believe that a matter is suitable for conciliation and could be resolved through that process but one or both of the parties may be reluctant to attend. If the president thinks that a party would in fact willingly participate in conciliation if that party could be persuaded to come along and give it a try the president may require that party to attend. Although this provision gives the president the power to compel attendance it does not include power to compel participation in conciliation. As a result it is not inconsistent with the definition of conciliation in clause 55. A party who was compelled to attend but did not want to participate would be free to leave at any time. The power is consistent with existing provisions in the *Discrimination Act 1991*. To be effective it must be used only when the circumstances warrant it but it can be effective in overcoming a power imbalance between the complainant and the person complained about and can lead to resolution of conflict through conciliation.

### **Conduct**

Clause 60 allows conciliations to be conducted in whatever way the president decides. This allows, for example, separate issues in a complaint to be conciliated separately.

### **Relationship between conciliation and consideration**

Clause 61 emphasises that conciliation and consideration of a complaint are separate. This supports the provisions that prevent the commission from allocating a complaint to the president for consideration and prevent the president from delegating conciliation functions to a commissioner. It means that, although staff of the commission may do both conciliation work and consideration work, no staff member may work on consideration and conciliation of the same complaint.

Despite this division, clause 61 allows the president to use information from the consideration process to assist with the conciliation process. This means that if the commission has considered a complaint and has some information about the circumstances surrounding the action complained about, that information can be given in a briefing to the president and will inform the conciliator so that the conciliator can advise the parties during the conciliation process.

Clause 63 provides for the parties to a conciliation to allow the commission to use their agreement in the consideration process and clause 61 expresses this as an exception to the general rule that conciliation and consideration are separate.

### **Conciliated agreements**

Clause 62 requires the president to help the parties to a conciliation to make a written record of their agreement if they reach one. Each of the parties to the conciliation must sign the conciliation agreement. When the agreement is completed the president must give a copy to

- Each of the parties to the conciliation (the person who made the complaint and the person complained about)
- If the complaint is a discrimination complaint – the Discrimination Tribunal.

The president must also tell the other members of the commission that agreement has been reached in conciliation of the complaint.

If the complaint is a discrimination complaint the agreement is enforceable as if it was an order of the Discrimination Tribunal. This continues in effect existing provisions in the *Discrimination Act 1991*, which are designed to encourage parties to reach agreement rather than go to the Discrimination Tribunal.

### **Giving a conciliation agreement to the commission**

Clause 63 provides for the parties to a conciliation to over-ride the usual barrier between conciliation and consideration of a complaint by agreeing to allow the commission to use their conciliation agreement in the consideration process. Although the president must always give the other members of the commission a copy of a conciliation agreement, it is only if the parties agree that the commission is permitted to use that agreement as part of the consideration of the complaint. The parties can agree to the use of all or part of the conciliation agreement.

### **Unsuccessful conciliation**

Clause 64 allows the president to decide at any time during the conciliation of a discrimination complaint that it is unlikely to be successful. If that happens the president must write to the complainant and the person complained about telling about that decision. The president must include a discrimination referral statement when he writes. Clause 88 describes a discrimination referral statement. It contains information about the complainant's right to have their discrimination complaint referred to the Discrimination Tribunal.

### **Ending conciliation**

Clause 65 describes when a conciliation is ended. When a conciliation ends the president must tell the other members of the commission, the complainant and the person complained about that the conciliation process is at an end and why it has ended. A conciliation ends when

- The conciliation process results in an agreement between the parties

- The parties agree to end the conciliation even though they haven't reached an agreement about the issues in the complaint
- One of the parties decides to withdraw from the conciliation process
- The president decides that the conciliation is unlikely to be successful.

#### **Using conciliation material as evidence**

Clause 66 protects material used in conciliation and anything said in conciliation from being used as evidence in court proceedings. This allows parties to participate in conciliation on the basis that the process is confidential and what they say will not prejudice them in subsequent actions.

#### **Protecting conciliation participants from civil liability**

Clause 67 provides that a person attending a conciliation who acts honestly and sensibly will not be liable in a civil law action for anything they do or fail to do.

### **Division 4.4            Consideration of complaints**

#### **Outline**

Clause 68 is an outline of the effect of the provisions in the division. It is intended to provide assistance to people reading the legislation by giving an idea of what the provisions in the division are intended to do.

The division describes the process of consideration of a complaint by the commission.

#### **Purpose**

Clause 69 explains that the purpose of consideration of a complaint is to

- Enable the commission to decide if the complaint has been validly made under the provisions that give the right to make a complaint
- Provide information that can be used to help conciliate the complaint
- Allow the commission to form a view about the issues raised in the complaint and the action complained about and also whether it should make a report, what should be in the report and where the report should be sent.

#### **Complaints considered together**

Clause 70 allows the commission to consider more than one complaint in a single consideration process if the complaints are about the same or very similar issues or circumstances.

#### **Representative complaints**

Clause 71 allows a complaint to be treated as a representative complaint if the commission thinks all of the following apply:

- The complainant is just one of a number of people with complaints relating to a particular person or group of people
- The facts in the complaint are similar to or connected with the facts in the complaints of the other people

- The complaint and the complaints of the other people raise the same questions of law or fact
- It would be a good idea to treat the complaint as a representative complaint.

### **Conduct of consideration**

Clause 72 allows the commission to conduct a consideration in whatever way it decides it appropriate. This provides a flexible structure for the commission to seek out information about the issues and conduct covered by the complaint in the way that best suits the circumstances of everyone involved. In particular it allows for the commission to consider different aspects of the complaint separately if it decides that to do so is appropriate.

### **Information and documents**

Clause 73 gives the commission power to ask people to provide it with documents or information relevant to the consideration of a complaint. This power is one that is commonly given to investigative bodies and is consistent with the powers currently available under the *Discrimination Act 1991* and the *Community and Health Services Complaints Act 1993*.

When asking for information or documents the commission has to write to the person who has them and tell the person how and when to comply with the request. If the person does not comply with the request they commit an offence, unless the person is also the complainant. Complainants are not covered by the offence provisions because they have obligations under clause 46 to provide information about their complaint to the commission and if they do not meet those obligations clause 76 provides that the complaint can be closed.

### **Attendance**

Clause 74 gives the commission power to ask people to present themselves to answer questions relating to a consideration of a complaint. When the commission asks a person to answer questions it must give the person a written notice of the time and place and the person they will be speaking to. The person commits an offence if they do not attend and answer the questions. Complainants are not covered by the offence provisions because they have obligations under clause 46 to provide information about their complaint to the commission and if they do not meet those obligations clause 76 provides that the complaint can be closed.

This power is one that is often given to investigative bodies and is consistent with the powers currently available under the *Discrimination Act 1991* and the *Community and Health Services Complaints Act 1993*.

### **Privileges**

Clause 75 removes the common law privilege against self-incrimination and civil liability that would otherwise allow a person to refuse to answer questions or produce documents as requested by the commission. This allows discrimination and service provision matters to be fully considered using all available information. In order to protect the people required to provide the information, the clause provides that material obtained as a result of them

having to act without the protection of the privilege cannot be used as evidence against them in court proceedings.

### **Keeping documents**

If the commission has asked a person to provide it with documents or other things (under clause 73) clause 76 allows the commission to keep the documents or things for as long as necessary to complete the consideration and to make copies. It must return the items when they are no longer needed and while it has them must let people who would ordinarily be entitled to have the items to inspect them or copy them.

## **Division 4.5 Closing complaints and reporting**

### **Outline**

Clause 77 is an outline of the effect of the provisions in the division. It is intended to provide assistance to people reading the legislation by giving an idea of what the provisions in the division are intended to do.

The division explains when a complaint can be closed by the commission. It also explains what is contained in a report by the commission and what happens when the commission makes a report.

### **When can a complaint be closed?**

Clause 78 contains two lists of circumstances. The first is a list of circumstances in which the commission may choose to close a complaint. The second is a list of circumstances in which the commission is obliged to close a complaint.

The commission has the option of closing a complaint at any time if

- More than two years have passed since the things happened that gave rise to the complaint
- With no good reason the complainant has not taken reasonable steps to resolve the complaint
- The complainant has not answered questions relevant to the consideration of the complaint when asked to do so
- The complainant has not provided information or documents relevant to the consideration of the complaint when asked to do so
- The complainant tells the commission that they want to withdraw the complaint
- The complaint is about a registered health professional and has been referred to the relevant health profession board for consideration
- Conciliation of the complaint has been successful.

The commission is required to close a consideration if

- The complaint being considered is not one that can validly be made to it

- The person making the complaint is not entitled to make the complaint
- The commission is satisfied that the complainant has been given a reasonable explanation for the conduct complained about and no further action on the complaint is needed
- The commission is satisfied that the complaint is frivolous, vexatious or not made honestly
- The commission is satisfied that the matters with which the complaint is concerned have been or are being dealt with by a court or tribunal
- The commission is satisfied that the matters raised by the complaint have been dealt with by the commission or the complaint has been considered sufficiently
- The complaint lacks substance.

### **Reopening complaints that have been closed**

Clause 79 gives the commission the option of reopening a complaint that has been closed because the complainant has not provided information or documents or answers to questions related to the consideration of the complaint but then later provides them.

### **How are complaints closed?**

Clause 80 sets out how the commission goes about closing a complaint. If the commission decides to close a complaint it must give a report called a final report to the complainant and the person complained about. However, clause 49 provides that in certain circumstances where the complainant is not the person affected by the action complained about, the commission cannot give information about the person affected to the complainant since that would be a breach of the person's privacy.

If the commission wants to include something adverse about a person in a final report the commission must first give that person an opportunity to respond to the proposed adverse comment.

A commission-initiated consideration (under clause 48) is treated differently and can be closed without a final report being prepared.

### **Final report**

Clause 81 explains what should be in a final report. If the complaint is about a health service, a service for people with a disability or a service for older people the actions complained about may be judged against relevant standards for service provision that are set out in clauses 39, 40 and 41. If the commission is satisfied after consideration of the complaint that the person complained about has acted in a way that is not consistent with one of those standards then the final report can contain recommendations directed to that person.

Recommendations do not have to be about matters raised by the complaint that is being closed.

If a recommendation is that something be done then the report must give a reasonable time frame for that to happen.

### **Closing discrimination complaints**

Clause 82 explains what must happen when a complaint about discrimination is closed. Because the *Discrimination Act 1991* creates an enforceable right of a person not to be subject to acts of unlawful discrimination, the outcome from a discrimination complaint differs slightly from other complaints. If a person has made a discrimination complaint and the complaint has not been resolved by conciliation (with a signed conciliation agreement being sent to the Discrimination Tribunal) then the final report must explain that the complainant can ask the commission to refer the complaint to the Discrimination Tribunal. If the complainant wants the complaint to be dealt with by the Discrimination Tribunal the commission must refer it on and the complainant can apply to the Discrimination Tribunal to have the matter heard. Details about the operation of the Discrimination Tribunal are in the *Discrimination Act 1991*.

### **Third-party reports**

The commission may decide to report in another way as well as making the final report to the complainant and the person complained about. A report that directs commission recommendations to a third party is called a third-party report. Clause 83 sets out when the commission can make a third-party report.

The commission can make a third-party report if it is satisfied that:

- The third-party acted in a way that was inconsistent with standards applying to the kind of service that person was providing or did not properly do something that that person was required to do
- Recommendations that it plans to include in the third-party report are about matters of public policy
- Recommendations that it plans to include in the third-party report are within the third-party's proper area of interest

The commission also has to be satisfied that making the third-party report is in the public interest.

A third-party report can be directed to anyone so long as those conditions are met. This provision gives the commission the ability to direct a report containing relevant recommendations to people whom the commission considers should see them in order to be alerted to matters that in the public interest require attention. A third-party report could, for example, be given by the commission to a government minister, a funding body, an employer or a health profession board. Third-party reports can contain recommendations not directly linked to the matters in the original complaint.

The commission may recommend that certain action be taken and if it does, it must also give a reasonable time limit for that to happen.

In order to accord natural justice to all concerned, the commission must not include an adverse comment about a person in a third-party report unless it has previously given that person an opportunity to respond to that adverse comment.

### **Commission-initiated reports**

Clause 84 provides that if the commission carries out a consideration that is not centred on a complaint it has the ability to prepare a report and give it to anyone it decides. Clause 48 sets out when a commission-initiated consideration can be made. The effect of these provisions is that the commission has a broad scope for deciding to consider issues of importance or concern and then to report to people who it thinks ought to be informed about the outcome of its consideration.

In order to accord natural justice to all concerned, the commission must not include an adverse comment about a person in a third-party report unless it has previously given that person an opportunity to respond to that adverse comment.

### **Responding**

Clause 85 ensures that recommendations in a commission report are responded to within a reasonable time. It provides that if a final report or a third-party or a commission-initiated report contains a recommendation that something be done within a particular time and the person or body that the recommendation is directed to doesn't respond to the commission by saying what action has been taken in relation to the recommendation then the person or body commits an offence. A response must be made in writing to the commission within 45 days after either

- the end of the time given by the commission for the action to be taken or
- three weeks from when the person or body was given the report.

The commission can extend the period for giving the response.

### **Publication of non-complying entities**

Clause 86 contains a further incentive for a person or body to comply with recommendations made by the commission in a third-party report. It gives the commission the discretion to make public the names of those non-complying entities by publishing them or reporting them to the Minister. The commission can do the same thing if a person or body has been asked to provide information of documents or to answer questions and has not done so. In order to be fair to the non-complying entity the commission must write to the person or body explaining what was involved in the failure to comply and that the commission intends to make public their name and those details. When writing the commission has to ask the non-complying entity to discuss the proposed publication with it.

When the time set by the commission for discussion is over and the commission has considered anything that the entity has put forward to it about the publication, the commission can make the details public if it considers that to do so is in the public interest.

The purpose of the provision is to provide a real incentive to entities to respond positively to recommendations made by the commission after consideration of complaints or other issues brought to its attention.

### **Reporting to the Minister**

Clause 87 allows the commission to report to the Minister on any matter related to its functions or to matters about which it can receive complaints if the issue is of public importance.

Certain reports given to the Minister by the commission must be presented to the Legislative Assembly. They are reports about a matter of public importance given to the Minister under the provisions of clause 87 and third-party reports given to the Minister under the provisions of clause 83. The Minister has six sitting days after receiving the report in which to present it to the Legislative Assembly.

### **Discrimination referral statements**

Clause 88 explains what a discrimination referral statement is. A discrimination referral statement is a special statement that the commission gives to people who have made a discrimination complaint. In the case of a discrimination complaint a complainant who is not satisfied with the way in which the complaint is dealt with by the commission and who has not signed a conciliated agreement can ask for the complaint to be considered by the Discrimination Tribunal. If the complainant wants the matter referred to the Discrimination Tribunal they have 60 days from getting the discrimination referral notice to ask the commission to make the referral. The discrimination referral notice also tells the complainant that the *Discrimination Act 1991* makes provision for them to take the matter to the Discrimination Tribunal after the 60 is up if there are exceptional circumstances.

## **Part 5 – Health code and health profession boards**

### **Division 5.1 Health code of health rights and responsibilities**

#### **Approval**

Clause 89 gives the Minister the power to approve a code of health rights and responsibilities.

#### **Contents**

Clause 89 explains what can be in the health code. The health code must deal with the health provision principle and it may also deal with anything else relevant to providing or using a health service. Clause 89 also sets out what the health provision principles are.

The health provision principles provide guidance about the way in which health services should be provided, focussing on the interaction between the provider and the service user. Previously they were contained in the *Community and Health Services Complaints Act 1993*. Because the principles are set out in legislation they can form a guide for the commission in considering whether health services have been provided in an appropriate manner. This is confirmed by clause 39, which says that if a person believes that the provider of a health service has acted in a way not consistent with the health provision principles the person may complain to the commission.

### **Division 5.2 Relationship between commission and health profession boards**

### **Registered health professional**

A person who is a registered health professional is one who is registered under the *Health Professionals Act 2004*. Clause 91 provides that for the purposes of a complaint the term includes a person who was a registered health professional at the time when the action or failure to act that is the subject of the complaint happened.

### **Referring complaints to health profession board**

Clauses 92, 93 and 94 set out the special relationship between the commission, particularly in relation to health service matters, and the health profession boards that are established under the *Health Professionals Act 2004* and are responsible for overseeing the registration of certain kinds of health professional. Each health profession board is responsible for a particular area of health service where registration is required before a practitioner can practise. Concerns about registered health professionals can be raised either by way of a complaint to the commission or by way of a report given to the relevant health profession board. The *Health Professionals Act 2004* requires that complaints and reports about registered health professionals must be discussed between the health services commissioner and the relevant health profession board and they must jointly decide what should be done. The health services commissioner (representing the commission) is well equipped to look into issues raised by a complaint or report while the health profession boards have the power under the *Health Professionals Act 2004* to establish special panels to examine personal or professional issues relating to registered health professionals. The provisions in division 5.2 are intended to work together with the provisions in the *Health Professionals Act 2004* to ensure that issues relating the health service provision by registered health professionals can be dealt with in the most appropriate and effective manner.

Clause 92 requires the commission to give to the relevant health profession board a copy of any complaint about a health service that seems to indicate that a registered health professional has not met relevant standards. The relevant health profession board is to get a copy of the complaint and any documents relating to it. However, referring the complaint to the health profession board in this way does not stop the commission from considering the complaint.

Clause 93 requires the health profession board, after having a complaint referred to it, to tell the commission what action it intends to take in relation to the health professional concerned.

Provisions in the *Health Professionals Act 2004* give the health profession boards the capacity to treat complaints referred by the commission as if they were reports under that Act.

### **Consideration of health profession reports**

Clause 94 gives the commission the power to consider reports made under the *Health Professionals Act 2004* and referred to it by the health profession boards as if they were complaints. In those cases the consideration must be a commission-initiated consideration. Under clauses 48 and 49 special rules apply to complaints dealt with by way of commission-initiated consideration. Clause 93 requires the commission to keep the

relevant health profession board informed about its consideration as if the board was a complainant and the report was its complaint. As well the commission is permitted to give to the relevant health profession board any information and documents it has in relation to its consideration.

## **Part 6 – Miscellaneous**

### **Information to be provided**

Clause 95 sets up a requirement for service providers to give the people to whom they provide health services, disability services or services for older people information about making complaints to the commission. The information could be provided by way of a poster or notice on the wall of the provider's office or it could be given in a pamphlet handed to service users. Failure to provide the information is an offence.

### **Inspection of incorporated documents**

Clause 96 ensures that incorporated documents are available for inspection by the public. Incorporated documents are described in the dictionary at the end of the Act. They are documents that are created other than by the authority of legislation. In particular the documents referred to in clause 40(b)(i) and (iv) are incorporated documents. They are the Home and Community Care National Service Standards, as amended from time to time and 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. This mechanism ensures that these documents, which provide standards against which service provision can be judged, are easily accessible to the public.

### **Notification of incorporated documents**

Clause 97 sets out the procedure for making incorporated documents accessible to the public. It also explains how changes to incorporated documents are to be notified.

### **Victimisation**

Clause 98 establishes an offence of victimisation. It is designed to protect people who make complaints under the Act about service providers from being threatened or treated badly as a result. The provision also protects people who provide information or documents to the commission as part of its consideration of complaints or related issues. Clause 98 makes it an offence to subject someone to detriment because they make a complaint or assist the commission by giving information to it. Detriment is a broad term, which could include not providing a service or providing a service in a less beneficial way. The provision also covers situations where the person making the complaint is made to believe that they will be subjected to detriment because of making the complaint.

### **Secrecy**

Clause 99 is a secrecy provision that protects information provided to the commission in relation to the Act. It ensures that commission members and staff are not compelled to reveal information obtained through their work.

### **Protection of officials**

Clause 100 protects commission members and staff from personal liability for things done for the purpose of putting the act into effect provided that they act honestly and not recklessly. The liability that would otherwise have attached to commission members and staff is taken up by the Territory instead.

### **Intergovernmental agreements**

Clauses 101 and 102 provide for intergovernmental agreements that involve co-operative arrangements between the commission and the Commonwealth Human Rights and Equal Opportunity Commission.

### **Fees and expenses**

Clause 103 gives the Minister power to determine fees for the Act and expenses for people attending conciliation at the request of the commission. Clause 58 allows the commission to ask a third party to attend a conciliation under certain circumstances and this provision allows the Minister to decide what payments may be made to cover the expenses of that attendance.

### **Forms**

Clause 104 is a standard clause allowing the commission to approve forms for the purposes of the Act. Those forms are then available electronically from the ACT government.

### **Regulations**

Clause 105 is a standard provision giving the Executive power to make regulations under the Act.

## **Part 7 – Transitional**

This part contains provisions to ensure a smooth transition between the operation of the Human Rights Office and the Office of the Community and Health Services Complaints Commissioner and the coming into operation of the commission.

### **Definitions**

Clause 106 sets out definitions for the transitional provisions.

### **Discrimination commissioner**

Clause 107 provides for actions taken by the discrimination commissioner prior to the commencement of the Act to be treated as the actions of the commission. It does not create any new rights but preserves the rights that people would have had if the commission had not been established and the consequential amendments had not been made.

### **Community and health services complaints commissioner**

Clause 108 provides for actions taken by the community and health services complaints commissioner prior to the commencement of the Act to be treated as the actions of the commission. It does not create any new rights but preserves the rights that people would have had if the commission had not been established and the consequential amendments had not been made.

**Previous complaints**

Clause 109 ensures continuity of complaints that have been made under the *Community and Health Services Complaints Act 1993* or the *Health Records (Privacy and Access) Act 1997* prior to commencement of this Act but does not impose any obligation on the commission to consider complaints that were not previously being assessed or investigated.

Clause 110 ensures continuity of complaints made under the *Discrimination Act 1991* before the commencement of this Act. Clause 111 ensures that investigations on foot in relation to discrimination complaints will be treated as considerations by the commission after the commencement of the Act.

Clause 112 preserves rights to take matters to the Discrimination Tribunal.

Clause 113 continues the effect of requirements under the *Discrimination Act 1991* to provide information or documents. Those requirements are to be treated as if they were made by the commission under the provisions of clause 73 or 74.

Clause 114 continues in force directions by the discrimination commissioner under the *Discrimination Act 1991* in relation to control of publication of information.

Clauses 115 and 116 continue the effect of applications to the Discrimination Tribunal that are not decided at the time the Act commences.

Clause 117 ensures the continuity of complaints under the *Health Records (Privacy and Access) Act 1997*.

**Rights to review and appeal**

Clause 118 preserves rights to apply for review or to appeal to the Supreme Court under the *Community and Health Services Complaints Act 1993*.

**References to Community and Health Services Commissioner**

Clause 119 is a general transitional provision that will allow existing legal documents that refer to the Community and Health Services Commissioner will also be taken to include the health services commissioner.

**Transitional regulations**

Clause 120 provides the power to make regulations that deal with issues of transition that occur as a result of establishing the commission.

**Expiry**

Clause 121 provides that part 7 ceases to operate after one year because it contains transitional provisions that are only required during the period of transition to the new legislative framework.

**Dictionary**

The dictionary contains definitions of terms used in the Bill. It also contains references to definitions in the Legislation Act of terms used in the Bill.