



Australian Capital Territory

# Human Rights Amendment Act 2008

A2008-3

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Australian Capital Territory

# Human Rights Amendment Act 2008

**A2008-3**

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An Act to amend the *Human Rights Act 2004*

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

**1 Name of Act**

This Act is the *Human Rights Amendment Act 2008*.

**2 Commencement**

- (1) Sections 7, 8 and 9 commence on 1 January 2009.
- (2) The remaining provisions commence on the day after this Act's notification day.

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

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

**3 Legislation amended**

This Act amends the *Human Rights Act 2004*.

**4 Human rights may be limited  
New section 28 (2)**

*insert*

- (2) In deciding whether a limit is reasonable, all relevant factors must be considered, including the following:
  - (a) the nature of the right affected;
  - (b) the importance of the purpose of the limitation;
  - (c) the nature and extent of the limitation;
  - (d) the relationship between the limitation and its purpose;
  - (e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

**5 Section 30**

*substitute*

**30 Interpretation of laws and human rights**

So far as it is possible to do so consistently with its purpose, a Territory law must be interpreted in a way that is compatible with human rights.

**6 Section 34**

*substitute*

**34 Notice to Attorney-General and commission**

- (1) This section applies—
  - (a) if—
    - (i) a question arises in a proceeding in the Supreme Court that involves the application of this Act; or
    - (ii) the Supreme Court is considering making a declaration of incompatibility in a proceeding; and
  - (b) the Territory is not a party to the proceeding.
- (2) The Supreme Court must not allow the proceeding to continue or make the declaration unless the court is satisfied that—
  - (a) notice of the proceeding has been given to the Attorney-General and the commission; and
  - (b) a reasonable time has passed since the giving of the notice for the Attorney-General and the commission to decide whether to intervene in the proceeding.

- (3) For subsection (2), the Supreme Court may—
  - (a) direct a party to give notice of the proceeding to the Attorney-General and the commission; and
  - (b) continue to hear evidence and argument concerning matters severable from any matter involving the application of this Act.
- (4) Subsection (2) does not prevent the Supreme Court from hearing and deciding a proceeding, to the extent that the proceeding relates to the grant of urgent relief of an interlocutory nature, if the court considers it necessary in the interests of justice.

## **7 New part 5A**

*insert*

### **Part 5A Obligations of public authorities**

#### **40 Meaning of *public authority***

- (1) Each of the following is a *public authority*:
  - (a) an administrative unit;
  - (b) a territory authority;
  - (c) a territory instrumentality;
  - (d) a Minister;
  - (e) a police officer, when exercising a function under a Territory law;
  - (f) a public employee;

- (g) an entity whose functions are or include functions of a public nature, when it is exercising those functions for the Territory or a public authority (whether under contract or otherwise).

*Note* A reference to an entity includes a reference to a person exercising a function of the entity, whether under a delegation, subdelegation or otherwise (see Legislation Act, s 184A (1)).

- (2) However, **public authority** does not include—
  - (a) the Legislative Assembly, except when acting in an administrative capacity; or
  - (b) a court, except when acting in an administrative capacity.

#### **40A Meaning of function of a public nature**

- (1) In deciding whether a function of an entity is a **function of a public nature**, the following matters may be considered:
  - (a) whether the function is conferred on the entity under a territory law;
  - (b) whether the function is connected to or generally identified with functions of government;
  - (c) whether the function is of a regulatory nature;
  - (d) whether the entity is publicly funded to perform the function;
  - (e) whether the entity performing the function is a company (within the meaning of the Corporations Act) the majority of the shares in which are held by or for the Territory.
- (2) Subsection (1) does not limit the matters that may be considered in deciding whether a function is of a public nature.

- (3) Without limiting subsection (1) or (2), the following functions are taken to be of a public nature:
- (a) the operation of detention places and correctional centres;
  - (b) the provision of any of the following services:
    - (i) gas, electricity and water supply;
    - (ii) emergency services;
    - (iii) public health services;
    - (iv) public education;
    - (v) public transport;
    - (vi) public housing.

**40B Public authorities must act consistently with human rights**

- (1) It is unlawful for a public authority—
- (a) to act in a way that is incompatible with a human right; or
  - (b) in making a decision, to fail to give proper consideration to a relevant human right.
- (2) Subsection (1) does not apply if the act is done or decision made under a law in force in the Territory and—
- (a) the law expressly requires the act to be done or decision made in a particular way and that way is inconsistent with a human right; or
  - (b) the law cannot be interpreted in a way that is consistent with a human right.

*Note* A law in force in the Territory includes a Territory law and a Commonwealth law.

- (3) In this section:

*public authority* includes an entity for whom a declaration is in force under section 40D.

#### **40C Legal proceedings in relation to public authority actions**

- (1) This section applies if a person—
- (a) claims that a public authority has acted in contravention of section 40B; and
  - (b) alleges that the person is or would be a victim of the contravention.
- (2) The person may—
- (a) start a proceeding in the Supreme Court against the public authority; or
  - (b) rely on the person's rights under this Act in other legal proceedings.
- (3) A proceeding under subsection (2) (a) must be started not later than 1 year after the day (or last day) the act complained of happens, unless the court orders otherwise.
- (4) The Supreme Court may, in a proceeding under subsection (2), grant the relief it considers appropriate except damages.
- (5) This section does not affect—
- (a) a right a person has (otherwise than because of this Act) to seek relief in relation to an act or decision of a public authority; or
  - (b) a right a person has to damages (apart from this section).

*Note* See also s 18 (7) and s 23.

- (6) In this section:

*public authority* includes an entity for whom a declaration is in force under section 40D.

**40D Other entities may choose to be subject to obligations of public authorities**

- (1) An entity that is not a public authority under section 40 may ask the Minister, in writing, to declare that the entity is subject to the obligations of a public authority under this part.
- (2) On request under subsection (1), the Minister must make the declaration.
- (3) The Minister may revoke the declaration only if the entity asks the Minister, in writing, to revoke it.
- (4) A declaration under this section is a notifiable instrument.

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

**8 Dictionary, note 2, new dot point**

*insert*

- emergency service

**9 Dictionary, new definitions**

*insert*

*act*, for part 5A (Obligations of public authorities), includes fail to act and propose to act.

*function of a public nature*—see section 40A.

*public authority*—see section 40.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 6 December 2007.

**2 Notification**

Notified under the Legislation Act on 17 March 2008.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Human Rights Amendment Bill 2008, which originated in the Legislative Assembly as the Human Rights Amendment Bill 2007 and was passed by the Assembly on 4 March 2008.

Clerk of the Legislative Assembly

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