



Australian Capital Territory

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

**A2022-25**

**Republication No 1**

**Effective: 15 December 2022**

Republication date: 15 December 2022

Act not amended

## About this republication

### The republished law

This is a republication of the *Aboriginal and Torres Strait Islander Children and Young People Commissioner Act 2022* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 15 December 2022. It also includes any commencement, repeal or expiry affecting this republished law.

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

### Kinds of republications

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

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

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

### Editorial changes

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

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

### Uncommenced provisions and amendments

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

### Modifications

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

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$160 for an individual and \$810 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

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

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Australian Capital Territory

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

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

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People Commissioner Act 2022

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## Part 1 Preliminary

### 1 Name of Act

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

### 3 Dictionary

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

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

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

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

### 4 Notes

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



## 5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

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

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

*Note 2 Penalty units*

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

## Part 2 Objects and important concepts

### 6 Objects of Act

- (1) The main objects of this Act are to—
  - (a) promote and protect the rights of Aboriginal and Torres Strait Islander children and young people; and
  - (b) establish the office of the Aboriginal and Torres Strait Islander Children and Young People Commissioner; and
  - (c) provide for the commissioner’s office to—
    - (i) advocate for the rights of Aboriginal and Torres Strait Islander children and young people, individually and collectively; and
    - (ii) identify and examine issues that affect the human rights and wellbeing of Aboriginal and Torres Strait Islander children and young people; and
    - (iii) make recommendations to government and non-government agencies on legislation, policies, practices and services that affect Aboriginal and Torres Strait Islander children and young people.
- (2) The objects are intended to operate consistently with—
  - (a) the *Human Rights Act 2004*; and
  - (b) the principles set out in the *Convention on the Rights of the Child*; and
  - (c) the principles set out in the *Declaration on the Rights of Indigenous Peoples*.

- (3) In this section:

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

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

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

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

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

- (1) A person exercising a function under this Act must recognise that Aboriginal and Torres Strait Islander children and young people need strong connections with culture, family, Elders, communities and Country to develop and thrive and to be protected from harm.
- (2) Without limiting the ways in which a person exercising a function under this Act recognises the need for the connections mentioned in subsection (1), the person must apply the following principles (the ***Aboriginal and Torres Strait Islander cultural principles***) when exercising the function:
- (a) it is important for Aboriginal and Torres Strait Islander children and young people to maintain their Aboriginal or Torres Strait Islander cultural and linguistic environment, and their set of values (including Aboriginal tradition or Island custom);

- (b) it is important to respect the kinship rules of Aboriginal and Torres Strait Islander people, as identified by reference to an Aboriginal or Torres Strait Islander person's family and kinship relationships and the community with which the child or young person has the strongest affiliation;
- (c) it is important to acknowledge the spiritual, social, historical, cultural and economic importance of Country to Aboriginal and Torres Strait Islander children and young people and the traditional, customary or historical affiliation Aboriginal and Torres Strait Islander people have with particular areas.

(3) In this section:

***Aboriginal tradition***—

- (a) means the body of traditions, observances, customs and beliefs of Aboriginal people generally, or of a particular community or group of Aboriginal people; and
- (b) includes any traditions, observances, customs and beliefs mentioned in paragraph (a) that relate to particular people, areas, objects or relationships.

***Island custom***, known in the Torres Strait as Ailan Kastom—

- (a) means the body of customs, traditions, observances and beliefs of Torres Strait Islanders generally, or of a particular community or group of Torres Strait Islanders; and
- (b) includes any traditions, observances, customs and beliefs mentioned in paragraph (a) that relate to particular people, areas, objects or relationships.

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## **Part 3**                      **Office of the Aboriginal and Torres Strait Islander Children and Young People Commissioner**

### **Division 3.1**              **Establishment of commissioner's office etc**

#### **8**                      **Establishment of commissioner's office**

The office of the Aboriginal and Torres Strait Islander Children and Young People Commissioner is established.

#### **9**                      **Independence of commissioner's office**

Except as provided in this Act or another territory law, the commissioner's office is not subject to the direction of anyone else in relation to the exercise of a function under this Act.

### **Division 3.2**              **Aboriginal and Torres Strait Islander Children and Young People Commissioner**

#### **10**                      **Appointment of commissioner**

- (1) The Executive must appoint a person as the Aboriginal and Torres Strait Islander Children and Young People Commissioner.

*Note*      For laws about appointments, see the [Legislation Act](#), pt 19.3.

- (2) A person appointed as the commissioner must be either or both of the following:
- (a) an Aboriginal person;
  - (b) a Torres Strait Islander person.

- (3) The Executive must not appoint a person as the commissioner unless the Executive—
- (a) has involved members of the Aboriginal and Torres Strait Islander community in the process for selecting the commissioner; and
  - (b) is satisfied that the person has the experience or expertise necessary to exercise the commissioner’s functions.
- (4) A person must be appointed for a term not longer than 5 years.
- (5) The commissioner’s conditions of appointment are the conditions agreed between the Minister and the commissioner stated in the instrument of appointment, subject to any determination under the [Remuneration Tribunal Act 1995](#).
- (6) The appointment of the commissioner is a notifiable instrument.
- (7) In this section:
- Aboriginal person** means a person who—
- (a) is a descendant of an Aboriginal person; and
  - (b) identifies as an Aboriginal person; and
  - (c) is accepted as an Aboriginal person by an Aboriginal community.
- Torres Strait Islander** means a person who—
- (a) is a descendant of a Torres Strait Islander; and
  - (b) identifies as a Torres Strait Islander; and
  - (c) is accepted as a Torres Strait Islander by a Torres Strait Islander community.

## **11 Commissioner's functions**

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

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

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

- (c) ensure the commissioner is accessible to Aboriginal and Torres Strait Islander children and young people; and
- (d) engage regularly with the Aboriginal and Torres Strait Islander community.

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

## **12 Annual statement by commissioner**

- (1) The commissioner must, for each year, prepare a statement (an *annual statement*) about the operation of the commissioner's office during the year, including—
  - (a) the number and kinds of advocacy matters the commissioner's office engaged in during the year; and
  - (b) a summary of the inquiries the commissioner conducted during the year; and
  - (c) a summary of the activities of any advisory committee assisting the commissioner during the year; and
  - (d) a summary of the community engagement undertaken by the commissioner's office during the year; and
  - (e) anything else the commissioner considers appropriate; and
  - (f) anything else prescribed by regulation.
- (2) The annual statement must not, without a person's consent, include information—
  - (a) that identifies the person; or
  - (b) that would allow the person to be reasonably identifiable.



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

### **13 Ending commissioner's appointment**

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

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

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

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

## **15 Cooperation with human rights commission**

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

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

### **16 Advisory committees**

- (1) The commissioner may establish advisory committees to assist the commissioner to exercise the commissioner's functions in relation to matters affecting Aboriginal and Torres Strait Islander children and young people.
- (2) Without limiting who may be appointed to an advisory committee, the commissioner may appoint Aboriginal and Torres Strait Islander community members, including Aboriginal and Torres Strait Islander children and young people, to the committee.

### **17 Arrangements for staff and facilities**

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

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

**18            Consultants and contractors**

- (1) The commissioner may engage consultants and contractors.
- (2) However, the commissioner must not enter into a contract of employment under this section.

**19            Engagement of lawyer by commissioner**

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

## **Part 4**                      **Advocacy and inquiry by commissioner**

### **Division 4.1**              **Inquiry by commissioner**

#### **20**                      **Commissioner may conduct inquiry**

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

#### **21**                      **Conduct of inquiry**

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

- (3) In this section:

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

## **22 Notice of inquiry**

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

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

## **23 Recommendation in relation to inquiry**

- (1) This section applies if the commissioner conducts an inquiry under section 20.
- (2) The commissioner may give the person in charge of an entity a written notice setting out—
  - (a) any recommendation to the entity in relation to the rights, development, safety and wellbeing of Aboriginal and Torres Strait Islander children and young people; and
  - (b) a reasonable stated time within which the entity must give the commissioner a written response to the recommendation.
- (3) The person in charge of the entity must respond to the commissioner within the stated time.
- (4) Subsection (3) does not apply if the person in charge of the entity has a reasonable excuse for not responding.

## **Division 4.2 Advocacy by commissioner for individuals**

### **24 Recommendation in relation to advocacy**

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

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

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

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

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

## Part 5 Information gathering and sharing

### 26 Definitions—pt 5

In this part:

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

*disclose* includes communicate or publish.

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

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

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

*produce* includes allow access to.

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

### 27 Power to require information, documents and other things

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



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

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

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

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

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

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

- (6) In this section:

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

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

- (1) This section applies if—
- (a) a person is required under section 27 to give the commissioner information, or produce a document or other thing in relation to the conduct of an inquiry under section 20; and
  - (b) the information, document or other thing includes identifying information about an individual.

- (2) The commissioner must ask the person to remove the identifying information, if practicable, before giving the information, or producing a document or other thing.
- (3) In this section:  
*identifying information* means information that—
  - (a) identifies a person; or
  - (b) would allow a person’s identity to be worked out.

**29 Limit on power to ask for information, documents and other things—consent for personal information**

- (1) This section applies if the commissioner requires a person to give information, or produce a document or other thing under section 27, other than in relation an inquiry under section 20.
- (2) The commissioner must not require the person to give the information, or produce the document or other thing if it contains personal information about an individual, unless—
  - (a) the commissioner has taken reasonable steps to seek the individual’s consent before making the requirement; and
  - (b) either—
    - (i) the individual has given consent; or
    - (ii) the commissioner reasonably believes—
      - (A) there may be a significant risk to the wellbeing of an Aboriginal or Torres Strait Islander child or young person; and
      - (B) accessing the information is necessary to effectively advocate for the child or young person.

**30 Failure to give information, document or other thing**

- (1) A person commits an offence if—
- (a) the person is required under section 27 to give information to the commissioner; and
  - (b) the person fails to give the information to the commissioner as required.

Maximum penalty: 50 penalty units.

- (2) Subsection (1) does not apply if the person has a reasonable excuse for failing to provide the information to the commissioner as required.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (2) and s (4) (see [Criminal Code](#), s 58).

- (3) A person commits an offence if—
- (a) the person is required under section 27 to produce to the commissioner a document or other thing; and
  - (b) the person fails to produce the document or other thing to the commissioner as required.

Maximum penalty: 50 penalty units.

- (4) Subsection (3) does not apply if the person has a reasonable excuse for failing to produce the document or other thing to the commissioner as required.

**31 Power to require attendance**

- (1) This section applies if the commissioner believes on reasonable grounds that a relevant person for an entity can give information relevant to the conduct of an inquiry under section 20.
- (2) The commissioner may, by written notice given to the relevant person, require the person to attend before an official, at the reasonable time and place stated in the notice, to answer questions in relation to the inquiry.

- (3) However, the commissioner must not require an Aboriginal or Torres Strait Islander child or young person, or a member of the child or young person's family, to attend before an official under subsection (2).
- (4) A person required to attend before an official under subsection (2) must continue to attend as reasonably required by the official to answer questions in relation to the inquiry.
- (5) In this section:

*employed* includes engaged as a volunteer, consultant or contractor.

*relevant person*, in relation to an entity, means a person who is or was employed by, or involved in the management or administration of, the entity.

## 32 Failure to attend

- (1) A person commits an offence if—
  - (a) the person is required under section 31 to attend before an official to answer questions in relation to the conduct of an inquiry; and
  - (b) the person does not attend before the official as required.

Maximum penalty: 50 penalty units.

- (2) Subsection (1) does not apply if the person has a reasonable excuse for not attending before the official as required.

*Note* The defendant has an evidential burden in relation to the matters mentioned in ss (2), (4) and (6) (see [Criminal Code](#), s 58).

- (3) A person commits an offence if—
  - (a) the person is required under section 31 to attend before an official to answer questions in relation to the conduct of an inquiry; and
  - (b) the person attends before the official as required; and

- (c) the person fails to continue to attend as reasonably required by the official to answer questions in relation to the inquiry.

Maximum penalty: 50 penalty units.

- (4) Subsection (3) does not apply if the person has a reasonable excuse for failing to continue to attend as required by the official.
- (5) A person commits an offence if—
- (a) the person is required under section 31 to attend before an official to answer questions in relation to the conduct of an inquiry; and
  - (b) the person attends before the official as required; and
  - (c) the official requires the person to answer a question; and
  - (d) the person fails to answer the question.

Maximum penalty: 50 penalty units.

*Note 1* The [Legislation Act](#), s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

*Note* Giving false or misleading information is an offence against the [Criminal Code](#), s 338.

- (6) Subsection (5) does not apply if the person has a reasonable excuse for failing to answer the question.

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

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

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

- (2) However, any information, document or other thing obtained, directly or indirectly, because of the giving of the answer or the production of the document or other thing, is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for—
  - (a) an offence against this part; or
  - (b) any other offence arising out of the false or misleading nature of the answer, information, document or other thing.

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

- (1) The commissioner may disclose to a member of the human rights commission any information that has been disclosed to, or obtained by, the commissioner in the exercise of a function under this Act, if—
  - (a) the commissioner is reasonably satisfied that the information is relevant to the exercise of the member’s functions under the *Human Rights Commission Act 2005*; and
  - (b) if the information is personal information about an individual—the individual has given consent.
- (2) However, the commissioner may disclose personal information about an individual to a member of the human rights commission without the individual’s consent if the commissioner believes on reasonable grounds that the disclosure is necessary to ensure that—
  - (a) the commissioner and the human rights commission are able to take a coordinated approach in relation to a matter affecting an Aboriginal or Torres Strait Islander child or young person; or
  - (b) effective advocacy is able to be undertaken for an Aboriginal or Torres Strait Islander child or young person.
- (3) If a member of the human rights commission uses information disclosed to the member under this section—
  - (a) a secrecy requirement is taken to apply to the member in relation to the information; and

- (b) the member is taken to be a person engaged in the administration of the provision that contains the secrecy requirement.
- (4) This section applies despite any other territory law.
- (5) In this section:

*secrecy requirement* means a prohibition on the disclosure of information that applies to the commissioner in relation to information disclosed to a member of the human rights commission, whether the prohibition is absolute or subject to stated exceptions or qualifications.

### **35 Secrecy**

- (1) An information holder commits an offence if—
  - (a) the information holder—
    - (i) makes a record of protected information about someone else; and
    - (ii) is reckless about whether the information is protected information about someone else; or
  - (b) the information holder—
    - (i) does something that discloses protected information about someone else; and
    - (ii) is reckless about whether—
      - (A) the information is protected information about someone else; and
      - (B) doing the thing would result in the information being disclosed to someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) Subsection (1) does not apply if the record is made, or the information is disclosed—
- (a) under this Act or another territory law; or
  - (b) in relation to the exercise of a function, as an information holder, under this Act or another territory law.
- (3) Subsection (1) does not apply to the divulging of protected information about someone with the person’s consent.
- (4) An information holder need not disclose protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another territory law.
- (5) In this section:
- information holder*** means—
- (a) a person who is or has been an official; or
  - (b) anyone else who exercises or has exercised a function under this Act; or
  - (c) a person who is required under section 27 to give the commissioner information, or produce a document or other thing; or
  - (d) a person who is required under section 31 to attend before an official to answer questions in relation to an inquiry.



## Part 6                      Miscellaneous

### 36                      Protection of officials from liability

- (1) An official, or anyone engaging in conduct under the direction of an official, is not personally liable for anything done or omitted to be done honestly and without recklessness—
  - (a) in the exercise of a function under this Act; or
  - (b) in the reasonable belief that the conduct was in the exercise of a function under this Act.
- (2) Any civil liability that would, apart from subsection (1), attach to an official attaches instead to the Territory.

### 37                      Protection of others from liability

- (1) Civil or criminal liability is not incurred only because of any of the following done honestly and without recklessness:
  - (a) giving information, or producing a document or thing to an official;
  - (b) answering a question or making a statement to an official.
- (2) Also, any information given honestly and without recklessness to an official is not—
  - (a) a breach of confidence; or
  - (b) a breach of professional etiquette or ethics; or
  - (c) a breach of a rule of professional conduct.

### 38                      Regulation-making power

The Executive may make regulations for this Act.

## Dictionary

(see s 3)

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

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

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

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

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

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

(c) is accepted as an Aboriginal person or a Torres Strait Islander person by an Aboriginal community or Torres Strait Islander community.

***Aboriginal or Torres Strait Islander young person*** means an Aboriginal or Torres Strait Islander person who is 12 years old or older, but not yet an adult.

***association*** means an association declared under the [Associations Incorporation Act 1991](#), section 15 and incorporated under that Act.

***commissioner*** means the Aboriginal and Torres Strait Islander Children and Young People Commissioner appointed under section 10 (1).

***commissioner's office*** means the office of the Aboriginal and Torres Strait Islander Children and Young People Commissioner established under section 8.

***consent***, of an individual who is an Aboriginal or Torres Strait Islander child or young person, for part 5 (Information gathering and sharing)—see section 26.

***court*** includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

***disclose***, for part 5 (Information gathering and sharing)—see section 26.

***executive officer***, of a corporation, means a person, however described and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

*family*, of an Aboriginal or Torres Strait Islander child or young person—

- (a) means a person who is, or has been, the child or young person's—
  - (i) father, mother, grandfather, grandmother, stepfather, stepmother, father-in-law or mother-in-law; or
  - (ii) son or daughter; or
  - (iii) brother, sister, half-brother, half-sister, stepbrother, stepsister, brother-in-law or sister-in-law; or
  - (iv) uncle, aunt, uncle-in-law or aunt-in-law; or
  - (v) nephew, niece or cousin; or
  - (vi) domestic partner; and
- (b) includes—
  - (i) someone the person has responsibility for, or an interest in, in accordance with the traditions and customs of the person's Aboriginal or Torres Strait Islander community; and
  - (ii) someone who has responsibility for, or an interest in, the person in accordance with the traditions and customs of the person's Aboriginal or Torres Strait Islander community; and
  - (iii) someone regarded and treated by the person as a relative; and
  - (iv) someone with whom the person has a family-like relationship; and
  - (v) anyone else who could reasonably be considered to be, or have been, a relative of the person.

**information**, for part 5 (Information gathering and sharing)—see section 26.

**member**, of the human rights commission, means a person appointed to a statutory office under the *Human Rights Commission Act 2005*.

**official** means—

- (a) the commissioner; or
- (b) a member of staff of the commissioner’s office; or
- (c) a person who exercises a function under this Act.

**personal information**, for part 5 (Information gathering and sharing)—see the *Information Privacy Act 2014*, section 8.

**person in charge**, of an entity, means—

- (a) if the entity is an administrative unit—the relevant director-general; and
- (b) if the entity is a public sector body—the head of the public sector body; and
- (c) if the entity is an individual—the individual; and
- (d) if the entity is a partnership—a partner in the partnership; and
- (e) if the entity is a corporation—an executive officer of the corporation; and
- (f) if the entity is an association—an office bearer for the association.

**person with parental responsibility**, for an Aboriginal or Torres Strait Islander child or young person, for part 5 (Information gathering and sharing)—see section 26.

**produce**, for part 5 (Information gathering and sharing)—see section 26.

*protected information*, for part 5 (Information gathering and sharing)—see section 26.

*safety* includes cultural safety.

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

#### **Aboriginal and Torres Strait Islander Children and Young People Commissioner Act 2022 A2022-25**

notified LR 14 December 2022

s 1, s 2 commenced 14 December 2022 (LA s 75 (1))

remainder commenced 15 December 2022 (s 2)



## 4 Amendment history

### Commencement

s 2 om LA s 89 (4)

### Legislation amended

pt 7 hdg om LA s 89 (3)

### Legislation amended—sch 1

s 39 om LA s 89 (3)

### Consequential amendments

sch 1 om LA s 89 (3)

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