

2005

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Human Rights Commission Legislation Amendment Bill 2005

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
4 Legislation repealed	2
Schedule 1 Consequential amendments	3
Part 1.1 Civil Law (Wrongs) Regulation 2003	3
Part 1.2 Discrimination Act 1991	3
Part 1.3 Freedom of Information Act 1989	25

2004 134B

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

Contents

		Page
Part 1.4	Health Professionals Act 2004	27
Part 1.5	Health Professionals (Special Events Exemptions) Act 2000	39
Part 1.6	Health Records (Privacy and Access) Act 1997	40
Part 1.7	Human Rights Act 2004	47
Part 1.8	Legislation Act 2001	49
Part 1.9	Limitation Act 1985	50
Part 1.10	Ombudsman Act 1989	50
Part 1.11	Public Health Act 1997	52
Part 1.12	Remuneration Tribunal Act 1995	52
Part 1.13	Territory Records Act 2002	55
Part 1.14	Victims of Crime Regulation 2000	55

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THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Human Rights Commission Legislation Amendment Bill 2005

A Bill for

An Act to amend various laws because of the establishment of the Human Rights Commission, and for other purposes

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

2004 134B

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

1 **1 Name of Act**

2 This Act is the *Human Rights Commission Legislation Amendment*
3 *Act 2005*.

4 **2 Commencement**

5 (1) Schedule 1, part 1.12 (Remuneration Tribunal Act 1995)
6 commences on the day after this Act's notification day.

7 (2) The remaining provisions commence on the day the *Human Rights*
8 *Commission Act 2005* commences.

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

11 **3 Legislation amended**

12 This Act amends the legislation mentioned in schedule 1.

13 **4 Legislation repealed**

14 The *Community and Health Services Complaints Act 1993*
15 A1993-96 is repealed.

1 **Schedule 1 Consequential amendments**

2 **Part 1.1 Civil Law (Wrongs) Regulation**
3 **2003**

4 **[1.1] Section 2, note 1**

5 *substitute*

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

9 For example, the signpost definition '*health service*—see the *Human*
10 *Rights Commission Act 2005*, section 7 (1) and (3) (a).' means that the
11 term 'health service' is defined in that section and the definition applies
12 to this regulation.

13 **[1.2] Dictionary, definitions of *health service* and *provider***

14 *substitute*

15 *health service*—see the *Human Rights Commission Act 2005*,
16 section 7 (1) and (3) (a).

17 *provider*—see the *Human Rights Commission Act 2005*, section 10.

18 **Part 1.2 Discrimination Act 1991**

19 **[1.3] Section 5**

20 *omit*

1 **[1.4] Section 6A, note 1**

2 *substitute*

3 *Note 1 Criminal Code*

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

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

10 **[1.5] Section 68**

11 *substitute*

12 **68 Victimisation**

13 (1) It is unlawful for a person (the *first person*) to subject someone else
14 (the *other person*) to any detriment because—

15 (a) the other person has—

16 (i) begun a proceeding under this Act; or

17 (ii) given evidence, or produced a document or thing, to the
18 tribunal; or

19 (iii) reasonably asserted any rights that a person (including
20 the other person) has under this Act; or

21 (iv) claimed that a person has committed an act that is
22 unlawful under this Act; or

23 (b) the first person believes that the other person proposes to do
24 something mentioned in paragraph (a).

25 (2) Subsection (1) (a) (iv) does not apply in relation to a claim that is
26 false and is not made honestly.

1 **[1.6] Part 8**

2 *substitute*

3 **Part 8** **General principles about**
4 **unlawful acts**

5 **70 Onus of establishing exception etc**

6 If, apart from an exception, exemption, excuse, qualification or
7 justification under this Act, conduct would be unlawful under part 3,
8 part 5, section 66 or part 7, the onus of establishing the exception,
9 exemption, excuse, qualification or justification lies on the person
10 seeking to rely on it.

11 **71 Unlawful act not an offence**

12 The doing of an act is not an offence only because it is unlawful
13 under part 3, part 5, section 66 or part 7.

14 **72 Unlawful act no basis for civil action**

15 This Act does not give a person any right of action in relation to the
16 doing of an act that is unlawful under part 3, part 5, section 66 or
17 part 7.

18 **73 Aiding etc unlawful acts**

19 A person who aids, abets, counsels or procures someone else to do
20 an act that is unlawful under part 3, part 5, section 66 or part 7 is
21 taken, for this Act, also to have done the act.

1 **Part 9 Hearing of complaints**

2 **Division 9.1 Preliminary**

3 **74 Meaning of *party* for pt 9**

4 In this part:

5 *party*, in relation to the hearing of a complaint, means—

- 6 (a) the complainant; and
7 (b) the respondent; and
8 (c) anyone joined by the tribunal under section 83.

9 **75 Reliance on exceptions and exemptions**

10 In considering whether an act is unlawful under part 3, part 5,
11 section 66 or part 7, the tribunal need not consider any exception in
12 part 4 or exemption in part 10, unless the tribunal has information
13 suggesting the exception or exemption applies to the act.

14 **76 Complaints about unlawful discrimination**

15 For this Act, a complaint claiming that a person has done an act that
16 is unlawful under part 3, part 5, section 66 or part 7 is a *complaint*
17 *about unlawful discrimination*.

18 *Note* Complaints about unlawful discrimination are made under the HRC Act
19 (see s 42).

20 **Division 9.2 Hearings by tribunal**

21 **77 Hearings by tribunal**

22 (1) The tribunal is to hear the following matters:

- 23 (a) a complaint referred to it by HRC under the HRC Act,
24 section 53;

- 1 (b) an application under section 78 for a complaint to be heard;
- 2 (c) a complaint in relation to which an application under
3 section 78 is made if the application is granted;
- 4 (d) an application under section 79 to strike out a complaint;
- 5 (e) an application for an interim order under section 97 or
6 section 98.
- 7 (2) At least 7 days before a hearing mentioned in subsection (1) (d) and
8 14 days before any other hearing mentioned in subsection (1), the
9 registrar must give written notice to the parties of the time, date and
10 place of the hearing.
- 11 (3) The tribunal must begin hearing a matter mentioned in
12 subsection (1) (d) within 14 days after the day the application is
13 made.

14 **78 Late application in exceptional circumstances**

- 15 (1) This section applies if—
- 16 (a) a complainant has been given a statement under the HRC Act,
17 section 45 (2) (d), section 63 or section 81; and
- 18 (b) the complainant has not required the commission to refer the
19 complaint to the tribunal within 60 days after the day the
20 statement is given to the complainant.
- 21 (2) The complainant may apply to the tribunal for the complaint to be
22 heard by the tribunal.
- 23 (3) The tribunal may grant the application only if satisfied that
24 exceptional circumstances prevented the complainant from requiring
25 the complaint to be referred to the tribunal within the 60 days.

1 **79 Application to strike out complaint**

2 The person against whom a complaint is made may, at any time
3 after the complaint is referred to the tribunal and before the tribunal
4 begins hearing the complaint (other than a time when the complaint
5 is being conciliated under the HRC Act), apply to the tribunal to
6 strike out the complaint on any of the following grounds:

- 7 (a) the complaint is frivolous, vexatious or not made honestly;
8 (b) the complaint lacks substance.

9 **Division 9.3 Tribunal procedure**

10 **80 Tribunal to decide own procedures**

11 The tribunal may decide its own procedure in relation to a particular
12 matter in a hearing or a step in a proceeding if no procedure is
13 prescribed under this Act.

14 *Note* A reference to an Act includes a reference to the statutory instruments
15 made or in force under the Act, including regulations (see Legislation
16 Act, s 104).

17 **81 Hearings may be closed**

18 The tribunal may, on application or on its own initiative, direct that
19 a hearing or part of a hearing be closed to the public and give
20 directions about the people who may be present.

21 **82 Sittings**

- 22 (1) The tribunal may sit in the places in the ACT that the president
23 decides.
24 (2) However, the tribunal must not sit in a place customarily used by a
25 court for hearings unless the president is satisfied that no other
26 suitable place is available or appropriate in the circumstances.

1 **83 Joining parties**

2 If the tribunal considers a person ought to be joined as a party to the
3 hearing of a complaint by the tribunal, the tribunal may, by written
4 notice given to the person, join the person as a party.

5 **84 Appearances**

6 A party to a tribunal hearing may appear at the hearing.

7 **85 Representation**

8 (1) A party is not entitled to be represented at a hearing unless the
9 tribunal consents to the representation.

10 (2) Subsection (1) does not prevent the representation of a party that is a
11 body by a member, officer or employee of the party.

12 (3) In this section:

13 *party* includes an unincorporated association.

14 **86 Witness subpoenas**

15 (1) For the purposes of a tribunal hearing, the tribunal may subpoena a
16 person to appear as a witness before it—

17 (a) to give evidence; or

18 (b) to produce any document or other thing, stated in the subpoena,
19 in the possession, custody or control of the person; or

20 (c) to give evidence and produce any document or other thing,
21 stated in the subpoena, in the possession, custody or control of
22 the person.

23 (2) The tribunal may give a party leave to inspect a document or other
24 thing produced under a subpoena.

25 (3) A person is taken to have complied with a subpoena under
26 subsection (1) (b) if the person gives the document or other thing to

1 the registrar before the date stated in the subpoena for the
2 production of the document or other thing.

3 (4) A subpoena must be—

4 (a) in writing; and

5 (b) served on the person named in the subpoena.

6 **87 Expenses of witnesses etc**

7 (1) This section applies to a person attending before the tribunal under a
8 subpoena under section 86.

9 (2) The person is entitled to be paid by the Territory for expenses
10 reasonably incurred by the person for the attendance an amount
11 authorised by the tribunal in accordance with the scale and
12 conditions applying to people who attend as witnesses before the
13 Magistrates Court.

14 *Note* For the amounts paid to witnesses in the Magistrates Court, see the
15 *Magistrates Court (Civil Jurisdiction) Rules 2004*, s 269.

16 **88 Failure to attend or produce document**

17 (1) A person commits an offence if—

18 (a) the person is required by a subpoena under section 86 to appear
19 as a witness before the tribunal; and

20 (b) the person—

21 (i) fails to appear as required by the subpoena; or

22 (ii) fails to continue to attend as reasonably required by the
23 tribunal until excused from further attendance.

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

- 1 (2) A person commits an offence if—
2 (a) the person is required by a subpoena under section 86 to
3 produce a document or thing stated in the subpoena to the
4 tribunal; and
5 (b) the person fails to produce the document or thing as required
6 by the subpoena.
7 Maximum penalty: 50 penalty units, imprisonment for 6 months or
8 both.
9 (3) This section does not apply if the person has a reasonable excuse.

10 **89 Appearance by audiovisual or audio links**

- 11 (1) This section applies if, in relation to a hearing or a part of a hearing
12 (the *relevant hearing*), the tribunal has given a direction under the
13 *Evidence (Miscellaneous Provisions) Act 1991*, section 20 (Territory
14 courts may take evidence and submissions from outside ACT) or
15 section 32 (Use of link in proceedings).
16 (2) A person may appear in the relevant hearing, and take part or give
17 evidence, in accordance with the direction, if the person—
18 (a) is required or entitled to appear personally, whether as a party
19 or as a witness; or
20 (b) is entitled to appear for someone else.
21 (3) A person who appears in the relevant hearing under this section is
22 taken to be before the tribunal.

23 **90 Taking evidence**

- 24 The tribunal may take evidence on oath or affirmation and, for that
25 purpose—
26 (a) may require a person attending before the tribunal to take an
27 oath or make an affirmation; and

1 (b) may administer an oath or affirmation to the person.

2 **91 Refusing to take oath or make affirmation**

3 (1) A person must not fail to take an oath or make an affirmation when
4 required to do so under section 90 (a).

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

7 (2) This section does not apply if the person has a reasonable excuse.

8 **92 Requiring answer or document**

9 (1) The tribunal may require a person appearing before the tribunal—

10 (a) to answer a question relevant to the hearing; or

11 (b) to produce a document or other thing relevant to the hearing.

12 (2) A person must not fail to comply with a requirement made of the
13 person under subsection (1).

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

16 (3) This section does not apply if the person has a reasonable excuse.

17 **93 Prohibiting or controlling publication**

18 (1) This section applies to the following material (*protected material*):

19 (a) any evidence given before the tribunal;

20 (b) the contents of any document produced to the tribunal;

21 (c) any information that might allow a person who has appeared
22 before the tribunal to be identified.

- 1 (2) The tribunal may, in writing, direct that protected material must not
2 be—
3 (a) published; or
4 (b) published except in the way, or to the people, stated by the
5 tribunal.
- 6 (3) A direction to a particular person must be given to the person.
- 7 (4) A direction to people generally is a notifiable instrument.
- 8 *Note* A notifiable instrument must be notified under the Legislation Act.
- 9 (5) A direction takes effect—
10 (a) if it is given to a person—on the day it is given to the person;
11 or
12 (b) if it is notified—on the day after the day it is notified; or
13 (c) in any case if a later date of effect is stated in the direction—on
14 the later date.
- 15 (6) A person commits an offence if—
16 (a) the person publishes anything; and
17 (b) the publication contravenes a direction under this section.
- 18 Maximum penalty: 50 penalty units, imprisonment for 6 months or
19 both.
- 20 **94 Privileges against selfincrimination and exposure to civil**
21 **penalty**
- 22 (1) This section applies if—
23 (a) a person is required by a subpoena under section 86 to produce
24 a document or other thing; or
25 (b) a person is required under section 92 to answer a question or to
26 produce a document or other thing.

1 (2) The person cannot rely on the common law privileges against
2 selfincrimination and exposure to the imposition of a civil penalty to
3 refuse to produce the document or other thing or answer the
4 question.

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

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

11 (a) an offence against this division; or

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

14 **95 Protection of members of tribunal etc**

15 (1) A member of the tribunal has, in the exercise of his or her functions
16 as a member, the same protection and immunity as a judge.

17 (2) A lawyer appearing for a party to a hearing before the tribunal has
18 the same protection and immunity as a barrister has in appearing for
19 a party in a proceeding in the Supreme Court.

20 *Note* Section 85 deals with the representation of parties at a hearing.

21 (3) A person appearing as a witness before the tribunal—

22 (a) has the same protection as a witness in a proceeding in the
23 Supreme Court; and

24 (b) in addition to the penalties provided by this Act, is subject to
25 the same liabilities as a witness in a proceeding in the Supreme
26 Court.

1 **96 Contempt of tribunal etc**

2 (1) A person commits an offence if the person does something in the
3 face of, or within the hearing of, the tribunal that would, if the
4 tribunal were a court of record, be contempt of court.

5 Maximum penalty: 100 penalty units, imprisonment for 1 year or
6 both.

7 (2) A person commits an offence if the person—

8 (a) intentionally obstructs or hinders the tribunal in the exercise of
9 its functions; or

10 (b) intentionally causes a substantial disruption to a proceeding
11 before the tribunal.

12 Maximum penalty: 100 penalty units, imprisonment for 1 year or
13 both.

14 **Division 9.4 Granting of relief by tribunal**

15 **97 Interim orders—complaint before HRC**

16 (1) If a complaint has been given to HRC under the *Human Rights*
17 *Commission Act 2005* (the *HRC Act*) but has not been referred to
18 the tribunal by HRC, the complainant or respondent may apply to
19 the tribunal for an interim order under this section.

20 *Note* If a form is approved under s 120 for an application, the form must be
21 used.

22 (2) If the tribunal is satisfied that an interim order under this section is
23 necessary to preserve the rights of, or state of affairs between, the
24 parties, the tribunal may make the interim order it considers
25 appropriate.

26 (3) An interim order remains in force until—

27 (a) the commission makes a decision—

- 1 (i) to refer the complaint for conciliation under the HRC
2 Act, section 51; or
- 3 (ii) to close the complaint under the HRC Act, section 77; or
- 4 (b) the president of HRC makes a decision under the HRC Act,
5 section 65 (1) (d) that the conciliation of the complaint is
6 unlikely to be successful.
- 7 (4) If a person against whom an interim order is made is not present
8 when the order is made, the registrar must serve a copy of the order
9 on the person as soon as practicable after the order is made.

10 **98 Interim orders—complaint before tribunal**

- 11 (1) A party to a hearing before the tribunal may apply to the tribunal for
12 an interim order under this section, at any time before or during the
13 hearing.

14 *Note* If a form is approved under s 120 for an application, the form must be
15 used.

- 16 (2) If the tribunal is satisfied that an interim order under this section is
17 necessary to preserve the rights of, or state of affairs between, the
18 parties, the tribunal may make the interim order it considers
19 appropriate.
- 20 (3) An interim order remains in force until the earlier of the following:
21 (a) the tribunal revokes the order;
22 (b) the tribunal dismisses the complaint, or makes an order, under
23 section 99 after hearing the complaint.
- 24 (4) If an interim order is in force, the tribunal may amend or revoke the
25 order on application by a party.
- 26 (5) If a person against whom an interim order is made is not present
27 when the order is made, the registrar must serve a copy of the order
28 on the person as soon as practicable after the order is made.

-
- 1 **99** **Decisions following hearing**
- 2 (1) This section applies after the tribunal has heard a complaint.
- 3 (2) If the tribunal is satisfied the complaint is frivolous or vexatious, is
4 not made honestly, or lacks substance, the tribunal must dismiss the
5 complaint.
- 6 (3) If the tribunal is satisfied that the respondent has engaged in
7 unlawful conduct, the tribunal must make 1 or more of the following
8 orders:
- 9 (a) that the respondent not repeat or continue the unlawful
10 conduct;
- 11 (b) that the respondent perform a stated reasonable act to redress
12 any loss or damage suffered by a person because of the
13 unlawful conduct;
- 14 (c) except if the complaint has been dealt with as a representative
15 complaint—that the respondent pay to a person a stated
16 amount by way of compensation for any loss or damage
17 suffered by the person because of the unlawful conduct.
- 18 (4) If the tribunal dismisses the complaint because it is satisfied that the
19 complaint is frivolous or vexatious, or is not made honestly, the
20 tribunal may, by written notice given to the complainant, order the
21 complainant to pay the respondent a stated amount in relation to the
22 expenses reasonably incurred by the respondent in relation to the
23 hearing.
- 24 (5) An amount ordered to be paid to a person under subsection (3) (c)
25 may include an amount in relation to the expenses reasonably
26 incurred by the person in relation to the hearing.

- 1 (6) An amount mentioned in subsection (4) or (5) must be fixed in
2 accordance with the scale of costs applying to a civil proceeding in
3 the Magistrates Court.
- 4 *Note* For the scale of costs in the Magistrates Court, see the *Magistrates*
5 *Court (Civil Jurisdiction) Rules 2004*, s 259.
- 6 (7) If, under this section, the tribunal dismisses the complaint or makes
7 an order in relation to the complaint, the tribunal must, within
8 28 days after the day it makes the decision, give the parties to the
9 hearing written notice of the decision and the terms of any order.
- 10 (8) In this section:
- 11 ***unlawful conduct*** means conduct that is unlawful under part 3,
12 part 5, section 66 or part 7.
- 13 ***representative complaint*** means a complaint that is dealt with by
14 HRC as a representative complaint under the HRC Act, section 71.
- 15 (9) In subsection (8):
- 16 ***representative complaint*** includes a complaint that has been dealt
17 with as a representative complaint by the discrimination
18 commissioner under section 78 at any time before the
19 commencement of the HRC Act.
- 20 (10) Subsection (9) and this subsection expire 1 month after the day they
21 commence.

1 **Division 9.5** **Enforcement of orders and decisions**
2 **of tribunal**

3 **100** **Failure to comply with tribunal order**

4 A party to a hearing commits an offence if the party fails to take all
5 reasonable steps to comply with an order of the tribunal.

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

8 **101** **Enforcement of tribunal orders**

9 An order of the tribunal is enforceable as if it were a judgment given
10 by the Magistrates Court in a personal action at law that the court
11 has jurisdiction to hear and decide under the *Magistrates Court*
12 *Act 1930*, chapter 4 (Civil proceedings).

13 **Division 9.6** **Miscellaneous**

14 **102** **Statement of reasons**

- 15 (1) This section applies if—
16 (a) the tribunal makes a decision in hearing a complaint; and
17 (b) a party to the hearing asks for a statement of reasons for the
18 decision within 14 days after the day the decision is made.
19 (2) The tribunal must give the party a written statement of reasons.

20 *Note* The Legislation Act, s 179 deals with what must be included in a
21 statement of reasons.

22 **103** **Referral of questions of law to Supreme Court**

- 23 (1) If the tribunal considers that a question of law raises an issue of
24 public importance, the tribunal may refer the question to the
25 Supreme Court.

- 1 (2) The tribunal may act under subsection (1) on its own initiative or on
2 application by a party.
- 3 **104 Appeals from tribunal decisions**
- 4 (1) A party to a tribunal hearing may, with the Supreme Court's leave,
5 appeal to the court on a question of law from a decision of the
6 tribunal in the hearing.
- 7 (2) An appeal by a person under subsection (1) must be begun within—
- 8 (a) 28 days after the day the person is given written notice of the
9 tribunal's decision under section 99 (7); or
- 10 (b) any further time the Supreme Court allows (whether before or
11 after the end of the 28-day period).
- 12 (3) The Supreme Court must decide the appeal, and may make any of
13 the following orders:
- 14 (a) an order confirming or setting aside the decision of the
15 tribunal;
- 16 (b) an order remitting the case to be heard and decided again,
17 either with or without the hearing of further evidence, by the
18 tribunal in accordance with the court's directions;
- 19 (c) an order for costs.
- 20 (4) The Supreme Court may also make any other order the court
21 considers appropriate.
- 22 (5) This section applies in relation to a decision of the tribunal made on
23 or after the day this section commences.
- 24 (6) Subsection (5) and this subsection expire on 10 January 2006.

- 1 **[1.7] Sections 109 and 110**
2 *omit*
3 commissioner
4 *substitute*
5 HRC
- 6 **[1.8] Part 9**
7 *renumber as part 10*
- 8 **[1.9] Part 9A**
9 *renumber as part 11*
- 10 **[1.10] Divisions 9A.1, 9A.2, 9A.3 and 9A.4**
11 *renumber as divisions 11.1, 11.2, 11.3 and 11.4*
- 12 **[1.11] Sections 110A to 110K**
13 *renumber as sections 111 to 120*
- 14 **[1.12] Part 10**
15 *omit*
- 16 **[1.13] Part 11**
17 *substitute*

18 **Part 12** **Miscellaneous**

19 **121** **Secrecy**

20 (1) In this section:

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

- 1 ***divulge*** includes communicate.
- 2 ***person to whom this section applies*** means a person who—
- 3 (a) is or has been—
- 4 (i) a member of the tribunal; or
- 5 (ii) the registrar of the tribunal; or
- 6 (iii) a member of the staff of the tribunal; or
- 7 (b) exercises, or has exercised, a function under this Act.
- 8 ***produce*** includes allow access to.
- 9 ***protected information*** means information about a person that is
- 10 disclosed to, or obtained by, a person to whom this section applies
- 11 because of the exercise of a function under this Act by the person or
- 12 someone else.
- 13 (2) A person to whom this section applies commits an offence if—
- 14 (a) the person—
- 15 (i) makes a record of protected information about someone
- 16 else; and
- 17 (ii) is reckless about whether the information is protected
- 18 information about someone else; or
- 19 (b) the person—
- 20 (i) does something that divulges protected information about
- 21 someone else; and
- 22 (ii) is reckless about whether—
- 23 (A) the information is protected information about
- 24 someone else; and

- 1 (B) doing the thing would result in the information
2 being divulged to someone else.
- 3 Maximum penalty: 50 penalty units, imprisonment for 6 months or
4 both.
- 5 (3) Subsection (2) does not apply if the record is made, or the
6 information is divulged—
- 7 (a) under this or any other Act; or
- 8 (b) in relation to the exercise of a function, as a person to whom
9 this section applies, under this Act or another territory law.
- 10 (4) Subsection (2) does not apply to the divulging of protected
11 information about someone with the person's consent.
- 12 (5) A person to whom this section applies need not divulge protected
13 information to a court, or produce a document containing protected
14 information to a court, unless it is necessary to do so for this Act or
15 another territory law.
- 16 (6) In subsection (1):
- 17 *person to whom this section applies* includes a person who was the
18 discrimination commissioner under this Act, or a member of the
19 staff of the commission, at any time before the commencement of
20 the HRC Act.
- 21 (7) Subsection (6) and this subsection expire 1 month after the day they
22 commence.

23 **122 Relationship to other laws**

24 This Act is additional to any other territory law that provides for the
25 protection of a person from conduct that is or would be unlawful
26 under this Act.

1 **123 Regulation-making power**

2 (1) The Executive may make regulations for this Act.

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

5 (2) The regulations may except people, activities or other things from
6 the operation of particular provisions of part 3, part 5 or part 7.

7 **[1.14] Dictionary, definitions of *commissioner* and**
8 ***Commonwealth commission***

9 *omit*

10 **[1.15] Dictionary, definition of *complainant***

11 *substitute*

12 *complainant*, in relation to a complaint, means the person who
13 made the complaint.

14 **[1.16] Dictionary, definition of *complaint***

15 *substitute*

16 *complaint* means a complaint about unlawful discrimination that
17 may be made under the HRC Act.

18 **[1.17] Dictionary, new definitions**

19 *insert*

20 *complaint about unlawful discrimination*—see section 76.

21 *HRC* means the human rights commission.

22 *HRC Act* means the *Human Rights Commission Act 2005*.

23 **[1.18] Dictionary, definition of *investigation***

24 *omit*

1 **[1.19] Dictionary, definition of *party***

2 *substitute*

3 *party*, for part 9 (Hearing of complaints)—see section 74.

4 **[1.20] Dictionary, definition of *representative complaint***

5 *omit*

6 **[1.21] Dictionary, definition of *respondent***

7 *substitute*

8 *respondent*, in relation to a complaint, means the person against
9 whom the complaint is made.

10 **[1.22] Dictionary, definition of *staff***

11 *omit*

12 **[1.23] Dictionary, definition of *tribunal***

13 *substitute*

14 *tribunal* means the Discrimination Tribunal established by
15 section 111.

16 **Part 1.3 Freedom of Information Act 1989**

17 **[1.24] Section 6 (3)**

18 *substitute*

19 (3) The human rights commission is exempt from the operation of this
20 Act in relation to documents created or received by the commission
21 in relation to—

22 (a) a complaint made to the commission under the Health Records
23 Act, section 18; or

1 (b) the exercise of a function under the *Human Rights Commission*
2 *Act 2005* in relation to a complaint mentioned in paragraph (a).

3 *Note* *Exercise* and *function* are defined in the Legislation Act, dict, pt 1.

4 **[1.25] New section 6 (5)**

5 *insert*

6 (5) If the CHSC commissioner was exempt from the operation of this
7 Act in relation to a document created or received before the HRC
8 commencement day—

9 (a) the document is taken to be held by the human rights
10 commission from the HRC commencement day; and

11 (b) the commission is exempt from the operation of this Act in
12 relation to the document.

13 (6) In subsection (5):

14 ***CHSC commissioner*** means the commissioner for community and
15 health services complaints under the *Community and Health*
16 *Services Complaints Act 1993*, as in force at any time before the
17 HRC commencement day.

18 ***HRC commencement day*** means the day the *Human Rights*
19 *Commission Act 2005* commences.

20 (7) Subsections (5) and (6) and this subsection expire 1 month after they
21 commence.

22 *Note* The expiry of transitional provisions does not end their effect (see
23 Legislation Act, s 88).

1 Part 1.4 Health Professionals Act 2004

2 [1.26] Section 8 (b)

3 *substitute*

4 (b) a complaint is made under the *Human Rights Commission*
5 *Act 2005*; or

6 [1.27] Section 9 (2)

7 *substitute*

8 (2) A report is considered by the health profession board and by the
9 commission together (see part 10).

10 [1.28] Section 11 (2)

11 *omit*

12 or complaint

13 [1.29] Section 12

14 *substitute*

15 12 Interaction with Human Rights Commission Act

16 (1) The commission must consult with the health profession board for a
17 health profession in relation to a complaint made to the commission
18 under the *Human Rights Commission Act 2005* (the *HRC Act*)
19 relating to a health professional in the profession.

20 (2) In considering a report (which may be a final review report under
21 section 39) relating to a registered health professional, the health
22 profession board must consult with the commission.

23 (3) If the health profession board and the commission cannot agree
24 about the action to be taken in relation to a report, the most serious
25 action chosen by the board or commission prevails (see
26 section 86 (2)).

- 1 (4) This Act and the HRC Act set out a flexible system for dealing with
2 reports and complaints.

3 *Note* The health services commissioner generally exercises the commission's
4 functions in relation to health services.

5 **[1.30] Section 18 (3)**

6 *substitute*

- 7 (3) However, if a regulation prescribes something that is inconsistent
8 with the health code under the *Human Rights Commission Act 2005*,
9 the regulation is ineffective to the extent of the inconsistency.

10 **[1.31] Section 44 (1) (b)**

11 *omit*

12 or complaint

13 **[1.32] Section 78, note 1**

14 *substitute*

15 *Note 1* People may also be able to make complaints to the commission under
16 the *Human Rights Commission Act 2005*.

17 **[1.33] Section 79**

18 *substitute*

19 **79 Who may be given a report?**

- 20 (1) A report may be given to the relevant health profession board.
21 (2) The health profession board must—
22 (a) refer the report to the commission; and
23 (b) give a copy of the report, and all documents in its possession
24 that relate to the report, to the commission.

1 **[1.34] Section 81 (2) and (3)**

2 *omit*

3 or the commissioner

4 **[1.35] Section 81 (3) and (4)**

5 *omit*

6 or commissioner

7 **[1.36] Section 82**

8 *substitute*

9 **82 Help in making report**

10 The executive officer of a health profession board may, but is not
11 required to, help someone make a report.

12 **[1.37] Section 84 (1)**

13 *omit*

14 or the commissioner

15 **[1.38] Section 84 (2)**

16 *omit*

17 or commissioner

18 **[1.39] Section 84 (2) (b)**

19 *omit*

20 and commissioner

1 **[1.40] Section 84 (2), notes 1 and 2**

2 *substitute*

3 *Note* Section 128 prevents the disclosure of a report if there is reason to
4 believe the disclosure would put someone's health or safety at risk,
5 cause someone to receive a lowered standard of health service or
6 prejudice the management of the report or its consideration.

7 **[1.41] Part 10 heading**

8 *substitute*

9 **Part 10 Joint consideration with**
10 **commission**

11 **[1.42] Section 85 (a), (b) and (d)**

12 *omit*

13 or complaint

14 **[1.43] Section 86 heading**

15 *substitute*

16 **86 Consultation with commission etc**

17 **[1.44] Section 86 (1)**

18 *substitute*

- 19 (1) The health profession board must—
- 20 (a) consult with the commission when it is considering what to do
21 in relation to a report to which this part applies; and
- 22 (b) endeavour to agree with the commission about the action to be
23 taken in relation to the report.

1	[1.45] Section 86 (2)
2	<i>omit</i>
3	commissioner
4	<i>substitute</i>
5	commission
6	[1.46] Section 86 (2) and (3)
7	<i>omit</i>
8	matter
9	<i>substitute</i>
10	report
11	[1.47] Section 86 (3) (c)
12	<i>substitute</i>
13	(c) consideration under the <i>Human Rights Commission Act 2005</i>
14	of a report referred to the commission;
15	[1.48] Section 86 (3) (f)
16	<i>omit</i>
17	[1.49] Section 86 (3)
18	<i>renumber paragraphs when Act next republished under Legislation</i>
19	<i>Act</i>
20	[1.50] Section 86 (4)
21	<i>omit</i>
22	commissioner
23	<i>substitute</i>
24	commission

1 **[1.51] Section 86 (4) and (5)**

2 *omit*

3 matter

4 *substitute*

5 report

6 **[1.52] Section 86 (5), example**

7 *substitute*

8 **Example**

9 If the health profession board decides that a report about a health professional
10 does not suggest that the health professional may be contravening, or may have
11 contravened, the required standard of practice, the board may refer the report to a
12 personal assessment panel. If the personal assessment panel recommends that the
13 report be referred to a professional standards panel because, on further
14 examination, the report raises the possibility that the health professional may be
15 contravening, or may have contravened, the required standard of practice, the
16 board would then consult with the commission under this section, even though the
17 board has already taken action in relation to the report.

18 **[1.53] Section 87 (1), (2) and (3)**

19 *omit*

20 matter

21 *substitute*

22 report

23 **[1.54] Section 87 (3)**

24 *omit*

25 commissioner

26 *substitute*

27 commission

1 **[1.55] Section 88 (2)**

2 *omit*

3 or complaint

4 **[1.56] Section 88 (3)**

5 *substitute*

6 (3) The health profession board must refer a report about a health
7 professional to a personal assessment panel if the commission asks
8 it to refer the report.

9 **[1.57] Section 89 (4) (a)**

10 *omit*

11 or complaint

12 **[1.58] Section 90 (3)**

13 *omit*

14 complaint or

15 **[1.59] Section 91 (6)**

16 *omit*

17 or complaints

18 **[1.60] Section 93 (1) (a)**

19 *omit*

20 or complaint

21 **[1.61] Section 93 (1) (b)**

22 *substitute*

23 (b) any information provided by the commission or the person
24 who made the report;

1 **[1.62] Section 94 (1)**

2 *omit*

3 or complaint

4 **[1.63] Section 94 (2) (a)**

5 *omit*

6 , complaint

7 **[1.64] Section 98 (1)**

8 *substitute*

9 (1) This section applies to a report, or an application for a condition
10 review, if the personal assessment panel believes, on reasonable
11 grounds, that the report or application (the *matter*) has been
12 inappropriately referred to the panel.

13 **[1.65] Section 99 and 100 (1)**

14 *omit*

15 or complaint

16 **[1.66] Section 100 (3) (a)**

17 *omit*

18 commissioner

19 *substitute*

20 commission

21 **[1.67] Section 100 (4) (c)**

22 *omit*

1 **[1.68] Section 100 (4)**
2 *renumber paragraphs when Act next republished under Legislation*
3 *Act*

4 **[1.69] Section 102 (1)**
5 *omit*
6 or complaint

7 **[1.70] Section 102 (2) (b)**
8 *substitute*
9 (b) must give written notice of the decision to the commission.

10 **[1.71] Section 103 (1)**
11 *omit*
12 or complaint

13 **[1.72] Section 105 (3) (b)**
14 *omit*
15 commissioner
16 *substitute*
17 commission

18 **[1.73] Section 105 (4)**
19 *substitute*
20 (4) If the health profession board makes a decision without consulting
21 the commission, the board must tell the commission about the
22 decision.

- 1 **[1.74] Section 107 (2) (a)**
2 *omit*
3 or complaint
- 4 **[1.75] Section 107 (2) (b)**
5 *substitute*
6 (b) any information provided by the commission or the person
7 who made the report;
- 8 **[1.76] Sections 107 (4), 110 (1) and (2) and 112 (1) and (2)**
9 *omit*
10 or complaint
- 11 **[1.77] Section 112 (4)**
12 *omit*
13 commissioner
14 *substitute*
15 commission
- 16 **[1.78] Section 113 (1)**
17 *omit*
18 or complaint
- 19 **[1.79] Section 113 (1) (b) (iii)**
20 *substitute*
21 (iii) the commission.

- 1 **[1.80] Section 113 (2)**
- 2 *omit*
- 3 or complaint
- 4 **[1.81] Section 116**
- 5 *substitute*
- 6 **116 Role of commission**
- 7 (1) At a standards inquiry, the commission may—
- 8 (a) be represented; and
- 9 (b) give evidence about the consideration of a complaint under the
- 10 *Human Rights Commission Act 2005*; and
- 11 (c) may be present at the inquiry even if not giving evidence.
- 12 (2) A reference in this section to the consideration of a complaint by the
- 13 human rights commission includes a reference to the investigation
- 14 of a complaint by the community and health services complaints
- 15 commissioner under the *Community and Health Services*
- 16 *Complaints Act 1993* as in force at any time.
- 17 (3) Subsection (2) and this subsection expire 1 month after the day they
- 18 commence.
- 19 **[1.82] Section 120 (1) (b)**
- 20 *substitute*
- 21 (b) the commission;
- 22 **[1.83] Section 122 (2) (i)**
- 23 *omit*
- 24 , complaint

1 **[1.84] Section 123 (2) (c)**

2 *substitute*

3 (c) the commission.

4 **[1.85] Section 126 (1) (a)**

5 *omit*

6 or complaint

7 **[1.86] Section 128 (2) (c)**

8 *substitute*

9 (c) prejudice the management of the report or its consideration by
10 the commission or a health profession board.

11 **[1.87] Section 150B**

12 *substitute*

13 **150B People previously registered under Act or repealed Act**

14 In this Act:

15 *registered health professional*, in relation to a report under
16 division 9.2, includes a person who was registered under this Act or
17 a repealed Act at the time of the act or omission reported.

18 **[1.88] New section 150K**

19 *insert*

20 **150K Complaints made before HRC commencement day**

21 (1) In this section:

22 *HRC commencement day* means the day the *Human Rights*
23 *Commission Act 2005* commences.

1 (2) In this Act:

2 *complaint* includes a complaint made to the community and health
3 services complaints commissioner before HRC commencement day.

4 **[1.89] Dictionary, new definition of *commission***

5 *insert*

6 *commission* means the human rights commission.

7 **[1.90] Dictionary, definitions of *commissioner*, *complaint* and
8 *report***

9 *substitute*

10 *commissioner* means the health services commissioner.

11 *complaint* means a health service complaint under the *Human
12 Rights Commission Act 2005*.

13 *report* means—

14 (a) a report under division 9.2; and

15 (b) includes a complaint made under the *Human Rights
16 Commission Act 2005* that is referred to a health profession
17 board by the commission.

18 **Part 1.5 Health Professionals (Special
19 Events Exemptions) Act 2000**

20 **[1.91] Section 12 (1) and (2)**

21 *omit*

22 *Community and Health Services Complaints Act 1993*

23 *substitute*

24 *Human Rights Commission Act 2005*

1 **Part 1.6 Health Records (Privacy and**
2 **Access) Act 1997**

3 **[1.92] Section 1**

4 *substitute*

5 **1 Name of Act**

6 This Act is the *Health Records (Privacy and Access) Act 1997*.

7 **[1.93] Section 4, definitions of commissioner, consumer,**
8 **disability, guardian, health record, health service, health**
9 **service provider, immediate family member, personal**
10 **health information, record, record keeper, registration**
11 **board**

12 *omit*

13 **[1.94] Section 4, definitions (as amended)**

14 *relocate to dictionary*

15 **[1.95] Section 4, remainder**

16 *substitute*

17 **4 Dictionary**

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

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

22 For example, the signpost definition '*disability*—see the *Human Rights*
23 *Commission Act 2005*, section 8 (2).' means that the term 'disability' is
24 defined in that subsection and the definition applies to this Act.

25 *Note 2* A definition in the dictionary applies to the entire Act unless the
26 definition, or another provision of the Act, provides otherwise or the

1 contrary intention otherwise appears (see Legislation Act, s 155 and
2 s 156 (1)).

3 **4A Notes**

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

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

7 **4B Offences against Act—application of Criminal Code etc**

8 Other legislation applies in relation to offences against this Act.

9 *Note 1 Criminal Code*

10 The Criminal Code, ch 2 applies to the offences against section 23 (see
11 Code, pt 2.1):

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

16 *Note 2 Penalty units*

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

19 **[1.96] Part 4**

20 *substitute*

21 **Part 4 Complaints**

22 **18 Grounds for complaint**

23 (1) A person may make a complaint about an act or omission to the
24 commission on the following grounds:

25 (a) the act or omission contravenes the privacy principles in
26 relation to a consumer;

1 (b) the act or omission is a refusal to give access in accordance
2 with this Act to a health record relating to a consumer;

3 (c) the act or omission is a refusal by a record keeper of a health
4 record to give access to the health record under this Act.

5 (2) A complaint on a ground mentioned in subsection (1) (a) in relation
6 to a dead consumer may be made whether or not the act or omission
7 happened in the lifetime or after the death of the consumer.

8 *Note* Complaints about unlawful discrimination are made under the HRC Act
9 (see s 42).

10 **[1.97] Section 23**

11 *substitute*

12 **23 People not to be unlawfully penalised**

13 (1) A person commits an offence if the person threatens or intimidates
14 someone else with the intention of causing the other person—

15 (a) not to make or pursue a request under part 3 for access; or

16 (b) to withdraw a request.

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

19 (2) A person commits an offence if—

20 (a) the person makes a representation to someone else; and

21 (b) the representation is false in a material particular; and

22 (c) the person is reckless about whether the representation is false;
23 and

24 (d) the person makes the representation with the intention of
25 causing the other person—

- 1 (i) not to make or pursue a request under part 3 for access;
2 or
3 (ii) to withdraw a request.
- 4 Maximum penalty: 50 penalty units, imprisonment for 6 months or
5 both.
- 6 (3) It is a defence to a prosecution for an offence against subsection (2)
7 if the defendant proves that—
- 8 (a) the defendant had another ground for engaging in the conduct
9 complained of; and
10 (b) the ground was a reasonable one.

11 **[1.98] Section 31 (2) (a)**

- 12 *omit*
13 commissioner
14 *substitute*
15 health services commissioner

16 **[1.99] Section 35**

- 17 *omit*
18 commissioner
19 *substitute*
20 commission

1 **[1.100] New dictionary**

2 *insert*

3 **Dictionary**

4 (see s 4)

5 *Note 1* The Legislation Act contains definitions and other provisions relevant to
6 this Act.

7 *Note 2* For example, the Legislation Act, dict, pt 1 defines the following terms:

- 8 • adult
- 9 • Commonwealth
- 10 • contravene
- 11 • entity
- 12 • individual.

13 ***commission*** means the human rights commission.

14 ***consumer*** means an individual who uses, or has used, a health
15 service, or in relation to whom a health record has been created, and
16 includes—

- 17 (a) a person authorised by the consumer under section 13 (7) to
18 have access to the health record; and
- 19 (b) if the consumer is a young person or a legally incompetent
20 person—a guardian of the consumer; and
- 21 (c) if the consumer has died—a legal representative of the
22 deceased consumer.

23 ***disability***—see the *Human Rights Commission Act 2005*, section 8
24 (2).

25 ***guardian*** means—

- 26 (a) of a young person—a parent or legally appointed guardian of
27 the young person; or

- 1 (b) of a legally incompetent person—a person who—
2 (i) is either—
3 (A) a legally appointed guardian of the legally
4 incompetent person; or
5 (B) an attorney, appointed under an enduring power of
6 attorney that has become operative, of the legally
7 incompetent person; and
8 (ii) has power to make decisions about the medical treatment
9 or health care of the legally incompetent person.
- 10 **health record** means any record, or any part of a record—
11 (a) held by a health service provider and containing personal
12 information; or
13 (b) containing personal health information.
- 14 **health service** means—
15 (a) any activity that is intended or claimed (expressly or by
16 implication), by the person providing it, to assess, record,
17 improve or maintain the physical, mental or emotional health
18 of a consumer or to diagnose or treat an illness or disability of
19 a consumer; or
20 (b) a disability, palliative care or aged care service that involves
21 the making or keeping of personal health information;
22 but does not include any service declared by regulation to be an
23 exempt service.
- 24 **health service provider** means an entity that provides a health
25 service in the ACT.
- 26 **immediate family member**, of a consumer, means a person who—
27 (a) is—

- 1 (i) a parent of the consumer; or
2 (ii) a domestic partner of the consumer; or
3 (iii) an adult child or sibling of the consumer; or
4 *Note* For the meaning of *domestic partner*, see the Legislation Act, s 169.
5 (b) is a member of the same household as the consumer and is—
6 (i) another relative of the consumer; or
7 (ii) a close friend of the consumer.
- 8 ***personal health information***, of a consumer, means any personal
9 information, whether or not recorded in a health record—
10 (a) relating to the health, an illness or a disability of the consumer;
11 or
12 (b) collected by a health provider in relation to the health, an
13 illness or a disability of the consumer.
- 14 ***record*** means a record in documentary or electronic form that
15 consists of or includes personal health information in relation to a
16 consumer (other than research material that does not disclose the
17 identity of the consumer), and includes—
18 (a) a photograph or other pictorial or digital representation of any
19 part of the consumer; and
20 (b) test results, medical imaging materials and reports, and clinical
21 notes, relating to the consumer; and
22 (c) any part of a record; and
23 (d) a copy of a record or any part of a record.
- 24 ***record keeper*** means an entity that has possession or control of a
25 health record.
- 26 ***registration board*** means a health profession board under the *Health*
27 *Professionals Act 2004*.

1 **Part 1.7** **Human Rights Act 2004**

2 **[1.101] Section 34 heading**

3 *substitute*

4 **34 Notice to Attorney-General and commission**

5 **[1.102] Section 34 (2) (a)**

6 *omit*

7 human rights commissioner

8 *substitute*

9 commission

10 **[1.103] Section 34 (2) (b)**

11 *omit*

12 commissioner

13 *substitute*

14 the commission

15 **[1.104] Section 34 (3)**

16 *omit*

17 human rights commissioner

18 *substitute*

19 the commission

20 **[1.105] Part 6**

21 *omit*

- 1 **[1.106] New section 41**
- 2 *in part 7, insert*
- 3 **41 Review of effect of territory laws on human rights**
- 4 (1) The commission has the following functions:
- 5 (a) review the effect of territory laws, including the common law,
6 on human rights;
- 7 (b) report in writing to the Attorney-General on the results of the
8 review.
- 9 (2) The Attorney-General must present a copy of a report mentioned in
10 subsection (1) to the Legislative Assembly within 6 sitting days
11 after the day the Attorney-General receives the report.
- 12 (3) However, the Attorney-General may amend the report (including by
13 omitting part of the report) before presenting it to the Legislative
14 Assembly to prevent the report—
- 15 (a) disclosing the identity of—
- 16 (i) a person whose human rights have, or may have been,
17 contravened; or
- 18 (ii) someone who may have contravened someone else's
19 rights; or
- 20 (b) allowing the identity of someone mentioned in paragraph (a) to
21 be worked out; or
- 22 (c) disclosing information if the disclosure of the information
23 could, in the Attorney-General's opinion, harm the public
24 interest.
- 25 (4) If the Attorney-General amends the report, the Attorney-General
26 must present a statement to the Legislative Assembly with the report
27 that tells the Assembly that the report has been amended.

1 **[1.107] Part 7**

2 *renumber as part 6*

3 **[1.108] Dictionary, new definition of *commission***

4 *insert*

5 *commission* means the human rights commission.

6 **[1.109] Dictionary, definition of *human rights commissioner***

7 *omit*

8 **Part 1.8 Legislation Act 2001**

9 **[1.110] Dictionary, part 1, definition of *commissioner for health***
10 ***complaints***

11 *omit*

12 **[1.111] Dictionary, part 1, new definition of *disability and***
13 ***community services commissioner***

14 *insert*

15 *disability and community services commissioner* means the
16 Disability and Community Services Commissioner under the
17 *Human Rights Commission Act 2005*.

18 **[1.112] Dictionary, part 1, definition of *discrimination***
19 ***commissioner***

20 *substitute*

21 *discrimination commissioner* means the Discrimination
22 Commissioner under the *Human Rights Commission Act 2005*.

- 1 **[1.113] Dictionary, part 1, new definitions of *health services***
2 ***commissioner, human rights commission and human***
3 ***rights commissioner***
- 4 *insert*
- 5 *health services commissioner* means the Health Services
6 Commissioner under the *Human Rights Commission Act 2005*.
- 7 *human rights commission* means the Human Rights Commission
8 established under the *Human Rights Commission Act 2005*.
- 9 *human rights commissioner* means the Human Rights
10 Commissioner under the *Human Rights Commission Act 2005*.

11 **Part 1.9 Limitation Act 1985**

- 12 **[1.114] Section 30B (5)**
- 13 *substitute*
- 14 (5) In this section:
- 15 *health service*—see the *Human Rights Commission Act 2005*,
16 section 7 (1) and (3) (a).

17 **Part 1.10 Ombudsman Act 1989**

- 18 **[1.115] Section 1**
- 19 *substitute*
- 20 **1 Name of Act**
- 21 This Act is the *Ombudsman Act 1989*.

- 1 **[1.116] Section 3, definition of *prescribed authority*,**
2 **paragraph (c)**
- 3 *omit*
- 4 or commissioner for health complaints
- 5 **[1.117] Section 5 (2) (i)**
- 6 *substitute*
- 7 (i) action taken by the human rights commission, a member of the
8 commission, or a member of the staff of the commission, in the
9 exercise of the commission's deliberative functions; or
- 10 **[1.118] Section 5 (2) (n)**
- 11 *substitute*
- 12 (n) action taken by an agency—
- 13 (i) for the purpose or in the course of providing, or
14 purporting to provide, a health service, a service for
15 people with a disability or a service for older people; or
- 16 (ii) in refusing to provide a health service, a service for
17 people with a disability or a service for older people; or
- 18 **[1.119] Section 5 (6)**
- 19 *substitute*
- 20 (6) In this section:
- 21 *health service*—see the *Human Rights Commission Act 2005*,
22 section 7.
- 23 *service for older people*—see the *Human Rights Commission*
24 *Act 2005*, section 9.
- 25 *service for people with a disability*—see the *Human Rights*
26 *Commission Act 2005*, section 8.

- 1 **[1.120] Section 6B (1) (b)**
2 *substitute*
3 (b) the human rights commission;

4 **Part 1.11 Public Health Act 1997**

- 5 **[1.121] Section 102 (4) (b)**
6 *substitute*
7 (b) is a ground for the patient to make a complaint to the human
8 rights commission under the *Human Rights Commission*
9 *Act 2005*.

- 10 **[1.122] Section 102 (5) (b)**
11 *substitute*
12 (b) is a ground for the patient to make a complaint to the human
13 rights commission under the *Human Rights Commission*
14 *Act 2005*.

15 **Part 1.12 Remuneration Tribunal Act 1995**

- 16 **[1.123] Section 1**
17 *substitute*

- 18 **1 Name of Act**
19 This Act is the *Remuneration Tribunal Act 1995*.

1 **[1.124] Section 10**

2 *substitute*

3 **10 Inquiries about holders of certain positions**

4 (1) The tribunal must inquire into, and determine, the remuneration,
5 allowances and other entitlements of—

6 (a) the holders of the positions mentioned in schedule 1; and

7 (b) the holders of any other position or appointment notified in
8 writing to the tribunal by the Chief Minister for this paragraph.

9 (2) The tribunal is authorised under subsection (1) to inquire into, and
10 determine, the remuneration, allowances and other entitlements of
11 the Chief Justice or the President of the Court of Appeal only in
12 relation to that position in addition to any remuneration, allowances
13 and entitlements of the Chief Justice or the President as a resident
14 judge or a judge of the Federal Court.

15 (3) This section does not apply to—

16 (a) a resident judge who is also a judge of the Federal Court; or

17 (b) a resident judge to whom the *Supreme Court Act 1933*,
18 section 37U applies; or

19 (c) an additional judge of the Supreme Court; or

20 (d) an acting judge of the Supreme Court.

21 (4) An instrument under subsection (1) (b) is a notifiable instrument.

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

23 (5) An instrument under subsection (1) (b) must be notified under the
24 Legislation Act within 14 days after the day the instrument is given
25 to the tribunal.

1 (6) The tribunal must inquire into, and determine, the remuneration,
2 allowances and other entitlements of the commissioner for health
3 complaints.

4 (7) Subsection (6) and this subsection expire on the day the *Human*
5 *Rights Commission Act 2005* commences.

6 **[1.125] New schedule 1**

7 *insert*

8 **Schedule 1 Positions to which Act applies**

9 (see s 10)

10 **Part 1.1 Judicial positions**

- 11 • Chief Justice
12 • President of the Court of Appeal
13 • judge
14 • master of the Supreme Court
15 • Chief Magistrate
16 • magistrate

17 **Part 1.2 Other positions**

- 18 • assistant executive officer of the legal aid commission
19 • auditor-general
20 • chief executive
21 • chief executive officer of the legal aid commission
22 • clerk of the Legislative Assembly
23 • community advocate
24 • director of public prosecutions
25 • director of the Canberra Institute of Technology
26 • disability and community services commissioner

- 1 • discrimination commissioner
2 • electoral commissioner
3 • executive within the meaning of the *Public Sector Management*
4 *Act 1994*
5 • health services commissioner
6 • human rights commissioner
7 • president of the human rights commission

8 **Part 1.13 Territory Records Act 2002**

9 **[1.126] Section 6 (2)**

10 *substitute*

- 11 (2) This Act does not apply to records of the human rights commission
12 in relation to—
13 (a) a complaint made to the commission under the Health Records
14 Act, section 18; or
15 (b) the exercise of a function under the *Human Rights Commission*
16 *Act 2005* in relation to a complaint mentioned in paragraph (a).

17 **Part 1.14 Victims of Crime Regulation 2000**

18 **[1.127] Section 42 (1) (c)**

19 *omit*

20 commissioner

21 *substitute*

22 commission

- 1 **[1.128] Section 42 (2)**
- 2 *substitute*
- 3 (2) In this section:
- 4 *commission* means the human rights commission.
- 5 **[1.129] Dictionary, note 2**
- 6 *omit*
- 7 • commissioner for health complaints
- 8 **[1.130] Dictionary, note 2**
- 9 *insert*
- 10 • human rights commission
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Endnotes

- 1 **Presentation speech**
Presentation speech made in the Legislative Assembly on 2005.
- 2 **Notification**
Notified under the Legislation Act on 2005.
- 3 **Republications of amended laws**
For the latest republication of amended laws, see www.legislation.act.gov.au.
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