

2005

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Children, Youth and Family Support)

Human Rights Commission (Children and Young People Commissioner) Amendment Bill 2005

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(Minister for Children, Youth and Family Support)

Human Rights Commission (Children and Young People Commissioner) Amendment Bill 2005

A Bill for

An Act to establish a children and young people commissioner, and for other purposes

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

1 Name of Act

This Act is the *Human Rights Commission (Children and Young People Commissioner) Amendment Act 2005*.

2 Commencement

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

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

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

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

3 Legislation amended

This Act amends the *Human Rights Commission Act 2005*.

Note This Act also amends the following legislation (see sch 1):

- *Legislation Act 2001*
- *Ombudsman Act 1989*.

**4 Main objects of Act
Section 6 (b) and (c)**

substitute

(b) to promote improvements in the provision of disability services, health services, services for children and young people and services for older people;

- 1 (c) to promote the rights of users of disability services, health
 2 services, services for children and young people and services
 3 for older people;

4 **5 Section 6 (e)**

5 *substitute*

- 6 (e) to establish a commission to provide—
- 7 (i) an independent, fair and accessible process for the
 8 resolution of discrimination complaints and complaints
 9 between users and providers of disability services, health
 10 services, services for children and young people and
 11 services for older people; and
- 12 (ii) a process to encourage and assist users and providers of
 13 disability services, health services, services for children
 14 and young people, and services for older people, to make
 15 improvements in the provision of services, particularly by
 16 encouraging and assisting service users and providers to
 17 contribute to the review and improvement of service
 18 quality;

19 **6 Section 8**

20 *omit everything before subsection (2), substitute*

21 **8 What is a *disability service*?**

- 22 (1) A *disability service* is a service provided in the ACT specifically for
 23 people with a disability or their carers.

24 **Examples of services for people with a disability or their carers**

- 25 1 a service that provides home help, personal care, home maintenance or
 26 modification, food services, respite care, transport, assessment or referral of
 27 support needs, education, training and skill development, information
 28 services, coordination, case management and brokerage, recreation,

- 1 advocacy, community access, accommodation support, rehabilitation, or
2 employment services, specifically for people with a disability or their carers
3 2 a service provided in association with the use of premises for the care,
4 treatment or accommodation of people with a disability

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

8 **7 New section 8A**

9 *insert*

10 **8A What is a service for children and young people?**

11 A *service for children and young people* is a service provided in the
12 ACT specifically for children, young people, both children and
13 young people, or their carers.

14 **Examples of services for children and young people and their carers**

- 15 1 a service that provides care, respite care, transport, assessment or referral of
16 support needs, education, training and skill development, information
17 services, coordination, food services, case management and brokerage,
18 recreation, advocacy, community access, accommodation support,
19 rehabilitation or employment services specifically for children, young people,
20 or their carers
21 2 a service provided in relation to the use of premises for the care, treatment or
22 accommodation of children, young people, or their carers
23 3 a service provided in relation to an attendance centre, institution or shelter,
24 under the *Children and Young People Act 1999*

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

28 **8 Members of commission** 29 **New section 12 (1) (b)**

30 *insert*

31 (b) the children and young people commissioner;

9 Section 12 (1) (b) to (e)

renumber as section 12 (1) (c) to (f)

**10 Commission's functions
Section 14 (1) (b) and (c)**

substitute

(b) encouraging and assisting users and providers of disability services, health services, services for children and young people, and services for older people, to make improvements in the provision of services, particularly by encouraging and assisting service users and providers to contribute to the review and improvement of service quality;

(c) encouraging and assisting people providing disability services, health services, services for children and young people and services for older people, and people engaging in conduct that may be complained about under this Act, to develop and improve procedures for dealing with complaints;

11 New section 14 (1) (g)

insert

(g) referring to the public advocate under section 51A advocacy matters about individual children or young people for whom the chief executive under the *Children and Young People Act 1999* has parental responsibility;

12 Section 14 (1) (g) to (i)

renumber as section 14 (1) (h) to (j)

13 New division 3.3

insert

Division 3.3 Children and young people commissioner

19A Appointment of children and young people commissioner

- (1) The Executive must appoint a person to be the Children and Young People Commissioner.

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

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

- (2) However, the Executive must not appoint a person as children and young people commissioner unless satisfied that the person has the experience or expertise necessary to exercise the functions of the commissioner.

- (3) The children and young people commissioner must not be appointed for a term of longer than 5 years.

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

- (4) The conditions of appointment of the children and young people commissioner are the conditions agreed between the Executive and the commissioner, subject to any determination under the *Remuneration Tribunal Act 1995*.

Note The children and young people commissioner's appointment may be ended under s 29.

- 1 **19B Children and young people commissioner's functions**
- 2 (1) The children and young people commissioner has the following
- 3 functions:
- 4 (a) to exercise functions for the commission in relation to services
- 5 for children and young people;
- 6 (b) to exercise any other function given to the commissioner under
- 7 this Act or any other territory law.
- 8 (2) The exercise of the function mentioned in subsection (1) (a) is
- 9 subject to any decision of the commission about the exercise of its
- 10 functions in relation to services for children and young people.
- 11 (3) In exercising the children and young people commissioner's
- 12 functions, the commissioner must endeavour to—
- 13 (a) consult with children and young people in ways that promote
- 14 their participation in decision-making; and
- 15 (b) listen to and seriously consider the views of children and
- 16 young people; and
- 17 (c) ensure that the commission is accessible to children and young
- 18 people; and
- 19 (d) be sensitive to the linguistically and culturally diverse
- 20 backgrounds of children and young people.
- 21 **19C Advisory committees for services for children and young**
- 22 **people**
- 23 (1) The commission may establish advisory committees to assist the
- 24 commission to exercise its functions in relation to services for
- 25 children and young people.
- 26 (2) Without limiting the people who may be appointed to an advisory
- 27 committee, the commission may appoint children and young people,

1 and people with experience or expertise in relation to services for
2 children and young people, to the committee.

3 **14 Section 21**

4 *substitute*

5 **21 Disability and community services commissioner's**
6 **functions**

7 (1) The disability and community services commissioner has the
8 following functions:

9 (a) to exercise functions for the commission in relation to
10 disability services;

11 (b) to exercise any other function given to the commissioner under
12 this Act or any other territory law.

13 (2) The exercise of the function mentioned in subsection (1) (a) is
14 subject to any decision of the commission about the exercise of its
15 functions in relation to disability services.

16 **15 Divisions 3.3 to 3.6 (as amended)**

17 *renumber as divisions 3.4 to 3.7*

18 **16 Section 28 heading**

19 *substitute*

20 **28 Application of div 3.8**

21 **17 New section 28 (b)**

22 *insert*

23 (b) the children and young people commissioner;

- 1 **18 Section 28 (b) to (d)**
- 2 *renumber as section 28 (c) to (e)*
- 3 **19 Divisions 3.7 to 3.9 (as amended)**
- 4 *renumber as divisions 3.8 to 3.10*
- 5 **20 Section 40**
- 6 *omit everything before paragraph (a), substitute*
- 7 **40 When may someone complain about a disability service?**
- 8 A person may complain to the commission about a disability service
- 9 if—
- 10 **21 New section 40A**
- 11 *insert*
- 12 **40A When may someone complain about a service for**
- 13 **children and young people?**
- 14 A person may complain to the commission about a service for
- 15 children and young people if—
- 16 (a) the service is not being provided appropriately; or
- 17 (b) the provider of the service has acted inconsistently with any of
- 18 the following:
- 19 (i) the generally accepted standard of service delivery
- 20 expected of a provider of the kind of service to which the
- 21 complaint relates;
- 22 (ii) any other standard prescribed by regulation; or
- 23 (c) the service is not being provided.

22 Section 42

substitute

42 What complaints may be made under this Act?

(1) The following complaints may be made under this Act:

- (a) a children and young people service complaint;
- (b) a disability service complaint;
- (c) a complaint (a ***discrimination complaint***) about an unlawful act under the *Discrimination Act 1991*, part 3 (Unlawful discrimination), part 5 (Sexual harassment), section 66 (Unlawful vilification—race, sexuality etc) or part 7 (Other unlawful acts);
- (d) a health service complaint;
- (e) an older people service complaint;
- (f) a complaint on a ground mentioned in the *Health Records (Privacy and Access) Act 1997*, section 18.

Note 1 A health professional report is dealt with by way of commission-initiated consideration (see s 94 (2)).

Note 2 The commission may also consider matters that have not been raised by complaints under div 3.5 (see s 48).

(2) To remove any doubt, a complaint that may be made under this Act is made under this division.

23 Who may make a complaint under this Act?
Section 43 (1) (c)

substitute

- (c) if the aggrieved person is a child or young person—a parent or guardian of the aggrieved person; or

24 Section 43 (2) (b)*substitute*

- (b) an aggrieved person may make a complaint under subsection (1) (a) even though the person is under a legal disability (for example, if a child is aggrieved, the child may make a complaint); and

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

- (c) if a complaint is made under subsection (1) (f)—the complainant cannot require the complaint to be considered.

**25 Consideration without complaint or appropriate complainant
Section 48 (2)***substitute*

- (2) The commission may, on its own initiative, also consider (by a ***commission-initiated consideration***) a complaint that is a children and young people service complaint, disability service complaint, health service complaint or older people service complaint, if—

- (a) the person who made the complaint could not have made the complaint under section 43 (1) (a) to (d); and

- (b) the commission does not approve the person under section 43 (1) (e) to make the complaint for the aggrieved person.

Note Under s 43 (1) (a) to (e), complaints may be made by an aggrieved person, an agent of an aggrieved person, a parent or guardian of an aggrieved person who is a child or young person, a person with guardianship or control of an aggrieved person or a person approved by the commission to make the complaint on an aggrieved person's behalf.

26 New section 51A

insert

51A Referral of advocacy matters

- (1) This section applies to a children and young people complaint if—
- (a) the complaint relates to a child or young person; and
 - (b) the chief executive under the *Children and Young People Act 1999* has parental responsibility for the child or young person.
- (2) The commission may, at any time, refer the complaint, or a matter that forms part of the complaint, to the public advocate for advocacy if satisfied that—
- (a) it is in the best interests of the child or young person that the complaint or matter be referred for advocacy; and
 - (b) the complaint or matter is appropriate for advocacy by the public advocate.
- (2) The commission may continue to consider a complaint that has been referred, or part of which has been referred, for advocacy.

**27 Information about complaints
Section 95 (1)**

substitute

- (1) This section applies to the following services:
- (a) a disability service;
 - (b) a health service;
 - (c) a service for children and young people;
 - (d) a service for older people.

28 Secrecy
Section 99 (3) to (5)

substitute

(3) Subsection (2) does not apply if the record is made, or the information is divulged—

(a) under this Act or another territory law; or

(b) in relation to the exercise of a function, as a person to whom this section applies, under this Act or another territory law.

(4) Subsection (2) does not apply to the divulging of protected information about someone with the person's consent.

(5) A person to whom this section applies need not divulge 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.

29 Dictionary, note 2

omit

- child

30 Dictionary, note 2

insert

- public advocate

31 Dictionary, definition of *applicable standard*

substitute

applicable standard, in relation to a service provider, means anything mentioned in any of the following provisions that applies to the provider:

- 1 (a) section 39 (1) (b) (When may someone complain about a
2 health service?);
- 3 (b) section 40 (b) (When may someone complain about a disability
4 service?);
- 5 (c) section 40A (b) (When may someone complain about a service
6 for children and young people?);
- 7 (d) section 41 (b) (When may someone complain about a service
8 for older people?).

9 **32 Dictionary, new definitions**

10 *insert*

11 ***child*** means a person who is under 12 years old.

12 ***children and young people commissioner*** means the Children and
13 Young People Commissioner under section 19A.

14 ***children and young people service complaint*** means a complaint
15 about a service for children and young people that may be made, or
16 is made, under section 40A.

17 ***disability service***—see section 8.

18 ***discrimination commissioner*** means the Discrimination
19 Commissioner under section 22.

20 **33 Dictionary, definition of *discrimination complaint***

21 *substitute*

22 ***discrimination complaint***—see section 42 (1) (c).

34 Dictionary, definition of *incorporated document**substitute**incorporated document* means—

- (a) the standards mentioned in section 39 (1) (b) (v) (When may someone complain about a health service?); or
- (b) the standards mentioned in section 40 (b) (i) or (iv) (When may someone complain about a disability service?); or
- (c) an instrument applied, adopted or incorporated by a statutory instrument under this Act.

35 Dictionary, new definition of *service for children and young people**insert**service for children and young people*—see section 8A.**36 Dictionary, definition of *service for people with a disability****omit***37 Dictionary, new definition of *young person****insert**young person* means a person who is 12 years old or older, but not yet an adult.

Schedule 1 Consequential amendments

(see s 3)

Part 1.1 Legislation Act 2001

[1.1] Dictionary, part 1, new definition of *children and young people commissioner*

insert

children and young people commissioner means the Children and Young People Commissioner under the *Human Rights Commission Act 2005*.

Part 1.2 Ombudsman Act 1989

[1.2] Section 5 (2) (n)

substitute

(n) action taken by an agency—

(i) for the purpose or in the course of providing, or purporting to provide, a disability service, a health service, a service for children and young people or a service for older people; or

(ii) in refusing to provide a disability service, a health service, a service for children and young people or a service for older people; or

[1.3] Section 5 (6), new definitions

insert

disability service—see the *Human Rights Commission Act 2005*, section 8.

service for children and young people—see the *Human Rights Commission Act 2005*, section 8A.

[1.4] Section 5 (6), definition of *service for people with a disability*

omit

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.
