

2023

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Human Rights)

Human Rights (Complaints) Legislation Amendment Bill 2023

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(Minister for Human Rights)

Human Rights (Complaints) Legislation Amendment Bill 2023

A Bill for

An Act to amend the *Human Rights Act 2004* and the *Human Rights Commission Act 2005*

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Human Rights (Complaints) Legislation Amendment*
4 *Act 2023*.

5 **2 Commencement**

- 6 (1) The following provisions commence on the day after this Act's
7 notification day:
- 8 • sections 3 to 7
 - 9 • section 9
 - 10 • schedule 1.

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

- 13 (2) The remaining provisions of this Act commence on a day fixed by the
14 Minister by written notice.

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

18 *Note 2* If a provision has not commenced within 6 months beginning on the
19 notification day, it automatically commences on the first day after that
20 period (see [Legislation Act](#), s 79).

21 **3 Legislation amended**

22 This Act amends the *Human Rights Act 2004* and the *Human Rights*
23 *Commission Act 2005*.

Part 2 Human Rights Act 2004

4 Notice to Attorney-General and commission Section 34 (1) and (2)

substitute

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

5 Section 34 (3) (a)

substitute

- (a) direct a party to give notice of the proceeding to the commission and, if required, the Attorney-General; and

1 **6 Section 38 heading**

2 *substitute*

3 **38 Consideration of legislation by relevant Assembly**
4 **committee**

5 **7 Section 38 (1)**

6 *after*

7 bills

8 *insert*

9 and subordinate laws

10 **8 Public authorities must act consistently with human**
11 **rights**
12 **Section 40B (1), new note**

13 *insert*

14 *Note* A person who is or would be aggrieved by an act by a public
15 authority they believe to be in contravention of this section may
16 make a human rights complaint about the public authority to the
17 commission under the *Human Rights Commission Act 2005*,
18 section 41D.

19 **9 Legal proceedings in relation to public authority actions**
20 **New section 40C (3A)**

21 *insert*

22 (3A) The respondent to a proceeding started under subsection (2) (a) is—

23 (a) if the public authority is a public authority mentioned in
24 section 40 (1) (a) to (e) or (g)—the public authority; or

25 (b) if the public authority is a public employee who is a statutory
26 office-holder—the statutory office-holder; or

1 (c) if the public authority is any other public employee—the
2 Territory; or

3 (d) if the public authority is an entity for whom a declaration is in
4 force under section 40D—the entity.

5 **10 New section 40C (3A)**

6 *insert*

7 (3A) Without limiting subsection (3), the court may order that a proceeding
8 under subsection (2) (a) be started after the period stated in subsection
9 (3) if—

10 (a) the person making the claim has made a human rights complaint
11 to the commission under the *Human Rights Commission*
12 *Act 2005*, section 41D about the act within the period stated in
13 subsection (3); and

14 (b) it is unreasonable in the circumstances for the period to apply to
15 the proceeding.

1 **Part 3** **Human Rights Commission**
2 **Act 2005**

3 **11 Main objects of Act**
4 **Section 6 (2) (j)**

5 *after*

6 discrimination complaints

7 *insert*

8 , human rights complaints

9 **12 Disability and community services commissioner's**
10 **functions**
11 **New section 21 (1) (c) (vii)**

12 *insert*

13 (vii) a human rights complaint;

14 **13 New section 41D**

15 *insert*

16 **41D Human rights complaints**

17 (1) A person may complain to the commission about a public authority
18 (a *human rights complaint*) if the person believes the public
19 authority has acted in contravention of the *Human Rights Act 2004*,
20 section 40B (Public authorities must act consistently with human
21 rights).

22 (2) However, the person must not make a human rights complaint unless
23 the person—

24 (a) has made a complaint to the relevant person about the
25 contravention claimed; and

- 1 (b) either—
- 2 (i) has not received a response to the complaint within 45 days
- 3 after making the complaint; or
- 4 (ii) has received a response they consider to be inadequate.
- 5 (3) The commission may accept a person's human rights complaint
- 6 without requiring the person to comply with subsection (2) if—
- 7 (a) the person makes another complaint under this Act in relation
- 8 to—
- 9 (i) the same act that constitutes the contravention claimed; or
- 10 (ii) substantially the same circumstances or subject matter of
- 11 the contravention claimed; or
- 12 (b) the commission is satisfied on reasonable grounds that
- 13 exceptional circumstances justify accepting the person's human
- 14 rights complaint.
- 15 (4) In this section:
- 16 *relevant person*, for a complaint under subsection (2) (a), means the
- 17 person complained about as if the complaint is a human rights
- 18 complaint.

19 **14 What complaints may be made under this Act?**

20 **New section 42 (1) (da)**

- 21 *insert*
- 22 (da) a human rights complaint;

1 **15 Who may make a complaint under this Act?**
2 **New section 43 (1A)**

3 *insert*

4 (1A) For subsection (1) (a), if the complaint is a human rights complaint—
5 an aggrieved person includes a person who would be aggrieved by
6 the act.

7 **16 Final report**
8 **Section 81, new note**

9 *insert*

10 *Note* For final reports in relation to human rights complaints that are closed
11 because the commission considers that conciliation is unlikely to succeed
12 in resolving the complaint—see s 82D.

13 **17 New section 82D**

14 *insert*

15 **82D Closing human rights complaints if conciliation unlikely**
16 **to succeed**

17 (1) This section applies if the commission closes a human rights
18 complaint because section 78 (1) (f) applies.

19 (2) The final report in relation to the human rights complaint may—

20 (a) include the substance of the complaint; and

21 (b) include the actions taken to try to resolve the complaint; and

22 (c) recommend any action the commission considers the person
23 complained about should take to ensure their acts and decisions
24 are compatible with human rights.

25 (3) A recommendation need not be limited to matters raised by the
26 complaint being closed.

- 1 (4) If a recommendation recommends that action be taken, it must state
2 the reasonable time within which the action should be taken.
- 3 (5) The final report is not admissible in a proceeding under the *Human*
4 *Rights Act 2004*, section 40C (Legal proceedings in relation to public
5 authority actions) unless the complainant and the person complained
6 about agree.
- 7 (6) This section is additional to the other requirements of this Act for a
8 final report.

9 **18 Third-party reports**
10 **New section 83 (2A)**

11 *insert*

- 12 (2A) A third-party report given by the commission in considering a human
13 rights complaint may recommend any action the commission
14 considers the third party should take to ensure their acts and decisions
15 are compatible with human rights.

16 **19 New section 86A**

17 *insert*

18 **86A Publication of information in relation to human rights**
19 **complaints**

- 20 (1) The commission may publish information about a human rights
21 complaint that the commission has closed.
- 22 (2) The publication—
- 23 (a) may include the substance of the complaint; and
- 24 (b) may draw on information about the complaint contained in a
25 final report; and

- 1 (c) must not include personal information about an individual
2 unless the information has been previously published or the
3 individual consents to the information being published.

4 **20 New part 8**

5 *insert*

6 **Part 8 Transitional—Human Rights**
7 **(Complaints) Legislation**
8 **Amendment Act 2023**

9 **125 Contravention of Human Rights Act 2004 before**
10 **commencement day**

- 11 (1) This section applies if—
12 (a) a person believes that a public authority has acted in
13 contravention of the *Human Rights Act 2004*, section 40B
14 (Public authorities must act consistently with human rights)
15 before the commencement day; and
16 (b) the person is or would be aggrieved by the act.
17 (2) The person may make a human rights complaint about the public
18 authority on or after the commencement day.
19 (3) In this section:
20 *act* includes a proposal to act.

21 *commencement day* means the day the *Human Rights (Complaints)*
22 *Legislation Amendment Act 2023*, section 13 commences.

1 **126** **Expiry—pt 8**

2 This part expires 2 years after the day the *Human Rights (Complaints)*
3 *Legislation Amendment Act 2023*, section 13 commences.

4 *Note* A transitional provision is repealed on its expiry but continues to have
5 effect after its repeal (see [Legislation Act](#), s 88).

6 **21** **Dictionary, definition of *act***

7 *substitute*

8 *act*—

9 (a) includes omission; and

10 (b) for a human rights complaint—includes a proposal to act.

11 **22** **Dictionary, new definition of *human rights complaint***

12 *insert*

13 *human rights complaint*—see section 41D (1).

14 **23** **Dictionary, definition of *person complained about*, new**
15 **paragraph (d)**

16 *insert*

17 (d) in relation to a human rights complaint—

18 (i) if the public authority complained about is a public
19 authority mentioned in the *Human Rights Act 2004*,
20 section 40 (1) (a) to (c)—the director-general of—

21 (A) the administrative unit; or

22 (B) the administrative unit responsible for the provision
23 of the Act that establishes the territory authority or
24 territory instrumentality; or

Section 24

- 1 (ii) if the public authority complained about is a public
2 authority mentioned in the *Human Rights Act 2004*,
3 section 40 (1) (d), (e) or (g)—the public authority; or
- 4 (iii) if the public authority complained about is a public
5 employee who is a statutory office-holder—the statutory
6 office-holder; or
- 7 (iv) if the public authority complained about is any other public
8 employee—the director-general of the administrative unit
9 in which the public employee is employed; or
- 10 (v) if the public authority complained about is an entity for
11 whom a declaration is in force under the *Human Rights*
12 *Act 2004*, section 40D (Other entities may choose to be
13 subject to obligations of public authorities)—the entity.

24 Dictionary, new definition of *public authority*

15 *insert*

16 ***public authority***—

- 17 (a) see the *Human Rights Act 2004*, section 40; and
- 18 (b) includes an entity for whom a declaration is in force under the
19 *Human Rights Act 2004*, section 40D (Other entities may choose
20 to be subject to obligations of public authorities).

1 **Schedule 1 Human Rights Act 2004—**
2 **Technical amendments**

3 (see s 3)

4 **[1.1] Sections 8 and 10 to 14**

5 *omit*

6 his or her

7 *substitute*

8 their

9 **Explanatory note**

10 This amendment updates language in line with current legislative drafting practice.

11 **[1.2] Sections 16 (2) and 18 (3)**

12 *omit*

13 him or her

14 *substitute*

15 them

16 **Explanatory note**

17 This amendment updates language in line with current legislative drafting practice.

[1.3] Section 18 (5)

1 *omit*
2
3 his or her
4 *substitute*
5 their

Explanatory note

6
7 This amendment updates language in line with current legislative drafting practice.

[1.4] Section 22 (2) (a) to (i)

- 8 *substitute*
9
10 (a) to be told promptly and in detail, in a language that they
11 understand, about the nature and reason for the charge;
12 (b) to have adequate time and facilities to prepare their defence and
13 to communicate with lawyers or advisors chosen by them;
14 (c) to be tried without delay;
15 (d) to be tried in person, and to defend themselves personally, or
16 through legal assistance chosen by them;
17 (e) to be told, if they do not have legal assistance, about the right to
18 legal assistance chosen by them;
19 (f) to have legal assistance provided to them, if the interests of
20 justice require that the assistance be provided, and to have the
21 legal assistance provided without payment if they cannot afford
22 to pay for the assistance;
23 (g) to examine prosecution witnesses, or have them examined, and
24 to obtain the attendance and examination of witnesses on their
25 behalf under the same conditions as prosecution witnesses;

1 (h) to have the free assistance of an interpreter if they cannot
2 understand or speak the language used in court;

3 (i) not to be compelled to testify against themselves or to confess
4 guilt.

5 **Explanatory note**

6 This amendment updates language, for example, ‘his or her’, in line with current legislative
7 drafting practice.

8 **[1.5] Section 23 (1) (c)**

9 *omit*

10 he or she is

11 *substitute*

12 they are

13 **Explanatory note**

14 This amendment updates language in line with current legislative drafting practice.

15 **[1.6] Section 24**

16 *omit*

17 he or she has

18 *substitute*

19 they have

20 **Explanatory note**

21 This amendment updates language in line with current legislative drafting practice.

1 **[1.7] Section 25 (2)**

2 *omit*

3 he or she benefits

4 *substitute*

5 they benefit

6 **Explanatory note**

7 This amendment updates language in line with current legislative drafting practice.

8 **[1.8] Sections 27 (1) and 27A (1)**

9 *omit*

10 his or her

11 *substitute*

12 their

13 **Explanatory note**

14 This amendment updates language in line with current legislative drafting practice.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 20 September 2023.

2 Notification

Notified under the [Legislation Act](#) on 2023.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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