

2005

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

**HUMAN RIGHTS COMMISSION LEGISLATION
AMENDMENT BILL 2005**

EXPLANATORY STATEMENT

Circulated by authority of
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HUMAN RIGHTS COMMISSION LEGISLATION AMENDMENT BILL 2005

BACKGROUND

In April 2003, the ACT Government commissioned the Foundation for Effective Markets and Governance (FEMAG) to conduct a Review of Statutory Oversight and Community Advocacy Agencies. The Review looked at a broad range of statutory oversight and community advocacy bodies, taking a holistic view of the system so that it could make recommendations on improvements in the system as a whole. The final report was released in December 2003.

In response to that report the Human Rights Commission Bill 2005 (HRC Bill) has been introduced to establish a new structure for statutory oversight in the ACT.

The HRC Bill establishes a new statutory authority called the Human Rights Commission (HRC), which will have the functions of dealing with complaints about discrimination, health services, disability services and services for older people, as well as facilitating service improvement and developing awareness in government and the community of human rights.

The HRC amalgamates the offices of the Community and Health Services Complaints Commissioner and the Human Rights Office.

The Human Rights Commission Legislation Amendment Bill 2005 (HRCLA Bill) contains consequential amendments to a number of pieces of legislation, which are necessary as a result of the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices.

SUMMARY

The HRCLA Bill contains the necessary consequential amendments to allow the HRC established by the HRC Bill to operate. It makes necessary changes to

- the *Discrimination Act 1991*;
- the *Health Professionals Act 2004*;
- the *Human Rights Act 2004*; and
- the *Health Records (Privacy and Access) Act 1997*.

The Bill also repeals the *Community and Health Services Complaints Act 1993* as the provisions of that Act are replaced by the HRC Bill.

Minor changes to other legislation are made in order to include references to the new Human Rights Commission and to change references to the Community and Health Services Complaints Commissioner to the Health Services Commissioner.

REVENUE/COST IMPLICATIONS

There are no cost implications.

SUMMARY OF CLAUSES

Formal Clauses

Clause 1 sets out the name of the Act.

Clause 2 provides for the Act to commence on the same day as the HRC Bill commences operation with the exceptions of the amendments to the *Remuneration Tribunal Act 1995* which will commence on the day after the Act is notified. The reason for the immediate commencement of the amendments to the *Remuneration Tribunal Act 1995* is because there are a number of other proposed amendments to that Act and subsequent amendments will rely on the redrafted provisions inserted by this Bill.

Clause 3 says that the Act amends the legislation as set out in schedule 1. The changes to the legislation are described in the schedule.

Clause 4 repeals the *Community and Health Services Complaints Act 1993*. The matters covered by this Act are dealt with in the HRC Bill.

Schedule 1 – Consequential amendments

Part 1.1 Civil Law (Wrongs) Regulation 2003

Amendments 1.1 and 1.2 substitute new definitions as a consequence of the repeal of the *Community and Health Services Complaints Act 1993* and the inclusion of equivalent definitions in the HRC Bill.

Part 1.2 Discrimination Act 1991

Amendment 1.3 omits the definitions of *complainant* and *respondent*. These terms are included in the Dictionary. This is a technical drafting amendment.

Amendment 1.4 is a technical drafting amendment made as a consequence of the redrafting of all offence provisions in the Act in accordance with the Criminal Code.

Amendment 1.5 substitutes a redrafted version of the victimisation provision as a result of the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices and the inclusion of victimisation provisions in relation to complaints in the HRC Bill.

Amendment 1.6 substitutes new parts 8 and 9 as a result of the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices. The substituted parts do not contain the provisions relating to complaints that are in existing part 8 because complaints procedures for the new commission are included in the HRC Bill. Other provisions that had a dual application to both the discrimination commissioner and the discrimination tribunal have been redrafted where necessary to remove references to the

commissioner. The opportunity has also been taken to set the provisions out in a more logical manner.

Amendment 1.7 is made as a consequence of the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices.

Amendments 1.8 to 1.11 are renumbering amendments.

Amendment 1.12 omits part 10 as a consequence of the inclusion of provisions relating to the appointment of the discrimination commissioner in the HRC Bill.

Amendment 1.13 substitutes new part 12 as a result of the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices. Provisions that had a dual application to both the discrimination commissioner and the discrimination tribunal have been redrafted where necessary to remove references to the commissioner. The opportunity has also been taken to set the provisions out in a more logical manner. Provisions relating to intergovernmental arrangements (existing sections 124 and 125) are included in the HRC Bill.

Amendments 1.14 to 1.23 make necessary consequential amendments to the dictionary.

Part 1.3 Freedom of Information Act 1989

Amendments 1.24 and 1.25 are made as a consequence of the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices.

Part 1.4 Health Professionals Act 2004

Amendments 1.26 and 1.27 are made as a consequence of the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices.

Amendment 1.28 is made as a consequence of the amendment to the definition of *report* by Amendment 1.90. That definition of report includes a complaint made under the HRC Bill that is referred to a health profession board by the commission.

Amendment 1.29 substitutes new section 12 which sets out the special relationship between the commission, particularly in relation to health service matters, and the health profession boards that are established under the *Health Professionals Act 2004* and are responsible for overseeing the registration of certain kinds of health professional. Each health profession board is responsible for a particular area of health service where registration is required before a practitioner can practise. Concerns about registered health professionals can be raised either by way of a complaint to the commission or by way of a report given to the relevant health profession board. This section of the *Health Professionals Act 2004* requires that complaints and reports about registered health professionals must be discussed between the health services commissioner and the relevant health profession board and they must jointly decide what should be done. The health

services commissioner (representing the commission) is well equipped to look into issues raised by a complaint or report while the health profession boards have the power under the *Health Professionals Act 2004* to establish special panels to examine personal or professional issues relating to registered health professionals. New section 12 is intended to work together with the provisions in the HRC Bill to ensure that issues relating the health service provision by registered health professionals can be dealt with in the most appropriate and effective manner.

Amendment 1.30 is made as a consequence of the repeal of the *Community and Health Services Complaints Act 1993* and the inclusion of the health code provisions in the HRC Bill.

Amendment 1.31 is made as a consequence of the amendment to the definition of *report* by Amendment 1.90.

Amendments 1.32 to 1.36 are made as a consequence of the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices.

Amendments 1.37 to 1.40 are made as a consequence of the amendment to the definition of *report* by Amendment 1.90.

Amendment 1.41 is made as a consequence of the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices.

Amendment 1.42 is made as a consequence of the amendment to the definition of *report* by Amendment 1.90.

Amendments 1.43 to 1.45 are made as a consequence of the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices.

Amendment 1.46 is made as a consequence of the amendment to the definition of *report* by Amendment 1.90.

Amendments 1.47 and 1.48 are made as a consequence of the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices.

Amendment 1.49 is a renumbering amendment.

Amendment 1.50 is made as a consequence of the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices.

Amendment 1.51 is made as a consequence of the amendment to the definition of *report* by Amendment 1.90.

Amendment 1.52 is made as a consequence of the amendment to the definition of *report* by Amendment 1.90 and also as a consequence of the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices.

Amendment 1.53 is made as a consequence of the amendment to the definition of *report* by Amendment 1.90.

Amendment 1.54 is made as a consequence of the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices.

Amendment 1.55 is made as a consequence of the amendment to the definition of *report* by Amendment 1.90.

Amendment 1.56 is made as a consequence of the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices.

Amendments 1.57 to 1.65 are made as a consequence of the amendment to the definition of *report* by Amendment 1.90. Amendment 1.61 also reflects the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices.

Amendment 1.66 is made as a consequence of the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices.

Amendment 1.67 omits section 100(4)(c) as the health profession board is already required to consider the matter jointly with the commission and the commission has the power to consider the matter under the HRC Bill.

Amendment 1.68 is a renumbering amendment.

Amendment 1.69 is made as a consequence of the amendment to the definition of *report* by Amendment 1.90.

Amendment 1.70 is made as a consequence of the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices.

Amendment 1.71 is made as a consequence of the amendment to the definition of *report* by Amendment 1.90.

Amendments 1.72 and 1.73 are made as a consequence of the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices.

Amendment 1.74 is made as a consequence of the amendment to the definition of *report* by Amendment 1.90.

Amendment 1.75 is made as a consequence of the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices.

Amendment 1.76 is made as a consequence of the amendment to the definition of *report* by Amendment 1.90.

Amendment 1.77 is made as a consequence of the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices.

Amendment 1.78 is made as a consequence of the amendment to the definition of *report* by Amendment 1.90.

Amendment 1.79 is made as a consequence of the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices.

Amendment 1.80 is made as a consequence of the amendment to the definition of *report* by Amendment 1.90.

Amendments 1.81 and 1.82 are made as a consequence of the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices.

Amendment 1.83 is made as a consequence of the amendment to the definition of *report* by Amendment 1.90.

Amendment 1.84 is made as a consequence of the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices.

Amendment 1.85 is made as a consequence of the amendment to the definition of *report* by Amendment 1.90.

Amendment 1.86 is made as a consequence of the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices.

Amendment 1.87 is made as a consequence of the amendment to the definition of *report* by Amendment 1.90.

Amendment 1.88 inserts a new transitional provision to ensure that complaints made before the commencement of the HRC Act (as it will then be) are treated in the same way as if they were made after commencement.

Amendments 1.89 and 1.90 insert new terms in the dictionary to reflect the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices. Amendment 1.90 also provides that a reference to a *report* in the Act includes a reference to a complaint that is referred to a health profession board by the commission so that the health profession board has power to deal with the complaint as a report.

Part 1.5 Health Professionals (Special Events Exemptions) Act 2000

Amendment 1.91 is made as a consequence of the repeal of the *Community and Health Services Complaints Act 1993* and the provision of complaints mechanisms in the HRC Bill.

Part 1.6 Health Records (Privacy and Access) Act 1997

Amendment 1.92 is a drafting amendment to restate the provision in current drafting style.

Amendments 1.93 to 1.95 are drafting amendments to relocate existing definitions to a dictionary in accordance with current drafting practice. These amendments should be read in conjunction with Amendment 1.100.

Amendment 1.96 substitutes a new part 4 as a consequence of the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices. The new part establishes the grounds for a complaint about health records, but the actual complaint is made and dealt with under the HRC Bill. The new provisions do not carry over the separate “request for review” process for refusal of access matters that is currently in the Act. These matters will instead be dealt with using the complaints process.

Amendment 1.97 makes amendments consequential on the changes made by Amendment 1.96 and restates the offence in accordance with the Criminal Code.

Amendments 1.98 and 1.99 make amendments as a consequence of the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices.

Amendment 1.100 inserts new dictionary terms for the Act. These definitions are updated versions of the defined terms omitted by Amendment 1.93.

Part 1.4 Human Rights Act 2004

Amendments 1.101 to 1.104 make amendments as a consequence of the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices.

Amendment 1.105 omits the provisions relating to the establishment of the human rights commissioner. These provisions are provided in the HRC Bill.

Amendments 1.106 and 1.109 are made as a consequence of the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices. The definition of human rights commissioner is included in the *Legislation Act 2001* as a universal definition.

Part 1.8 Legislation Act 2001

Amendments 1.110 to 1.113 provide updated universal definitions for the HRC and commissioners where these are referenced in other enactments.

Part 1.9 Limitation Act 1985

Amendment 1.114 is made as a consequence of the repeal of the *Community and Health Services Complaints Act 1993* and the inclusion of the definition of *health service* from that Act in the HRC Bill.

Part 1.10 Ombudsman Act 1989

Amendment 1.115 is a drafting amendment to restate the provision in current drafting style.

Amendment 1.116 amends the Act as a consequence of the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices.

Amendment 1.117 substitutes a new section 5(2)(i). Under current section 5(2)(i), the ombudsman is not authorised to investigate any actions of the community and health services complaints office. The new section 5(2)(i) only excludes action taken in exercising the deliberative functions of the commission from investigation by the ombudsman.

Amendments 1.118 to 1.120 amends the Act as a consequence of the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices and also to reflect new definitions in that Bill.

Part 1.11 Public Health Act 1997

Amendments 1.121 to 1.122 amend the Act as a consequence of the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices.

Part 1.12 Remuneration Tribunal Act 1995

Amendment 1.123 is a drafting amendment to restate the provision in current drafting style.

Amendments 1.24 and 1.125 amend the Act to add the position of the new disability and community services commissioner to the list of office holders for whom the remuneration tribunal may determine remuneration. Section 10 is redrafted in accordance with current drafting practice and the positions currently included in the section are listed in new schedule 1.

Part 1.13 Territory Records Act 2002

Amendment 1.126 is made as a consequence of the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices.

Part 1.14 Victims of Crime Regulation 2000

Amendments 1.127 to 1.130 are made as a consequence of the provisions in the HRC Bill establishing a new commission in place of existing statutory oversight offices.