

2015

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**PROTECTION OF RIGHTS (SERVICES)
LEGISLATION AMENDMENT BILL 2015**

EXPLANATORY STATEMENT

Presented by
Simon Corbell MLA
Attorney-General

PROTECTION OF RIGHTS (SERVICES) LEGISLATION AMENDMENT BILL 2015

This explanatory statement relates to the *Protection of Rights (Services) Legislation Amendment Bill 2015* as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the bill and to help inform debate on it. It does not form part of the bill and has not been endorsed by the Assembly.

The Statement must to be read in conjunction with the bill. It is not, and is not meant to be, a comprehensive description of the bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Purpose of the Bill

The *Protection of Rights (Services) Legislation Amendment Bill 2015* amends the *Human Rights Commission Act 2005*, the *Public Trustee Act 1985*, the *Domestic Violence Agencies Act 1986*, the *Guardianship and Management of Property Act 1991* and the *Victims Support Act 1994* to establish a restructured Human Rights Commission (HRC) and expanded Public Trustee and Guardian. It also repeals the *Public Advocate Act 2005*.

These changes aim to improve the protection of all Canberrans' human rights through streamlined governance arrangements and better coordination of processes for handling complaints, conducting investigations into systemic matters affecting rights and raising awareness of rights.

These amendments implement a new model for agencies involved in statutory rights protection following a review by the Justice and Community Safety (JACS) Directorate of the current structure of the statutory office holders (SOHOs) within the justice portfolio that are engaged in the protection of rights. The SOHOs involved in the review were the Commissioners from the HRC, the Public Advocate, the Victims of Crime Commissioner and the Public Trustee.

The objective of the new rights protection framework is to provide the following benefits:

- a) *more cohesive and unified agencies*- the creation of a presidential role, and a Public Trustee and Guardian with overall oversight, leadership and accountability for the commission and Public Trustee and Guardian will support a more cohesive vision, voice and mechanism for rights protection in the ACT;
- b) *improved accountability and governance* - the creation of a President and a Public Trustee and Guardian will improve accountability and governance of these agencies, including by increasing the transparency of strategic planning, allocation of functions and performance against output targets;
- c) *more efficient and effective service delivery* – it is anticipated that streamlining client access processes, handling of complaints and enquiries and co-location of staff will result in improved service efficiency; and
- d) *improved community interaction and public experience* –the benefits described above will result in improved services to clients of the rights protection services.

New structure of Human Rights Commission

The Bill amends section 12 of the *Human Rights Commission Act 2005* ('HRC Act') to provide the legislative framework for the new HRC structure.

The Bill creates the position of President of the HRC. The President has a wide range of functions to support them to lead the Commission, including primary responsibility for governance and administration of the commission, commission-wide statutory systems advocacy and oversight functions within the Commission. The President is also the Human Rights Commissioner.

The Public Advocate (performing advocacy functions only) and the Victims of Crime Commissioner are incorporated into the commission. They will perform substantially similar functions to those they perform currently, with some changes to reflect the responsibilities of the President who will take on strategic and leadership functions for the Commission. Complaints processes, including relating to the areas covered by the Victims of Crime, Public Advocate and Children and Young People Commissioner will be transferred to the Disability and Community Services Commissioner so that one office holder will manage the complaints handling processes for the Commission.

The functions of the Discrimination Commissioner, Health Services Commissioner and Children and Young People Commissioner will not substantially change, except where reporting and rights promotion functions are moved to the President.

The *Domestic Violence Agencies Amendment Act 1986* is amended to provide that the Victims of Crime Commissioner is the Domestic Violence Project Coordinator.

Human Rights Considerations

This proposal promotes protection of all rights in the Human Rights Act, as it is designed to facilitate a new rights protection framework that is the interface between the community and their rights under the Human Rights Act.

The proposal changes the responsibility for the performance of functions under various laws that protect human rights and the rights and interests of vulnerable groups in the community. These changes will improve the ability of rights protection office holders to promote the rights and interests of those groups. It does not remove existing protections in statute. Fundamentally the changes are about improving internal processes and structure of the offices so as to improve the capacity of the SOHOs and staff to promote human rights and the interests of their constituent groups.

Protection of Rights (Services) Legislation Amendment Bill 2015

Detail

Part 1 – Preliminary

Clause 1 — Name of Act

This is a technical clause that names the short title of the Act. The name of the Act will be the *Protection of Rights (Services) Legislation Amendment Act 2015*.

Clause 2 — Commencement

This clause provides that the Act commences on 1 April 2016.

Clause 3 — Legislation amended

This clause identifies the legislation amended by the Act.

Part 2 — Human Rights Commission Act 2005

Clause 4 – Main objects of Act, New section 6 (2) (da) and (db)

This clause inserts two new objects in section 6(2) to reflect the inclusion of two new Commissioner roles in the new HRC—the Public Advocate and the Victims of Crime Commissioner. The two new objects are to acknowledge, protect and promote the rights of victims; and promote the protection of children and young people and people with a disability from abuse and exploitation.

Clauses 5 and 6 – Section 6 (2) (e), (f), (h) and (i)

Clauses 5 and 6 make technical changes to replace references to ‘disability services, health services, services for children and young people and services for older people’ with the term ‘prescribed services’, which is defined in new section 6A. This simplifies the drafting and readability of the Bill.

Clause 7 – New section 6A

This clause inserts a definition of ‘prescribed service’ which includes health service, a disability service, a service for children and young people, a service for older people and a service for victims of crime.

Clause 8 – New section 9A

This clause inserts a new definition of a ‘service for victims of crime’. It defines a service for victims of crime as a service provided specifically for victims of crime.

Clause 9 - Members of commission - Section 12 (1) (aa)

This clause inserts a new section 12 (aa) to provide that the President is a member of the Commission.

Clause 10 - New section 12 (1) (f), (g) and (1A)

This clause amends section 12 to include the Public Advocate and Victims of Crime Commissioner as members of the HRC and provide that the President of the Commission is the Human Rights Commissioner.

A note draws attention to the section 11 of the *Domestic Violence Agencies Act 1986*, which is amended by the Bill to provide that the Victims of Crime Commissioner is also the Domestic Violence Project Coordinator.

Clause 11 – Commission’s functions - Section 14 (1) (b) and (c)

This clause is a technical amendment that substitutes the term ‘prescribed services’ as defined in new section 6A for ‘disability services, health services, services for children and young people and services for older people’.

Clause 12 - Section 14 (1) (d), (f), (g), (h), (i)

This clause omits from section 14, which sets out the Commission’s functions, functions relating to the promotion of community discussion about the rights protection framework and the role of the HRC, reporting to the minister, referring advocacy matters about children and young people, advising the minister; and collecting and publishing information about the operation of the HRC Act and related Acts.

These functions are included under the new section 18 as part of the President’s functions.

Clause 13 - New section 14 (1A)

This clause inserts a new section 14 (1A) to provide that the Commission must exercise its functions with regard to the principle of the indivisibility and universality of human rights and that every person is free and equal in dignity and rights. It also provides that the Commission must exercise its functions efficiently, with a view to providing the greatest possible benefit to the people of the ACT.

The new section is modelled section 10A of the *Australian Human Rights Commission Act 1986*. It is designed to emphasise the equal significance of all rights protected by the Commission.

Consistent with section 8 of the *Human Rights Act 2004* (‘HRA’), the Commission’s functions are to promote, protect and respect the right of everyone to enjoy his or her human rights without distinction or discrimination of any kind.

Clause 14 - Section 14 (2)

This clause omits a provision that the Minister may, but need not, present advice provided to him or her as a result of a review or inquiry by the Commission to the Legislative Assembly. This section is transferred to new section 18(4) by clause 15 below.

This reflects changes to the coordination of reporting by the Commission which will be the responsibility of the President.

Clause 15 - New divisions 3.2 and 3.2A

Division 3.2 - President

This clause inserts a new division into the HRC Act to provide for the functions, powers and responsibilities of the President of the Commission, who is also the Human Rights Commissioner.

Section 18 -- President’s functions

Section 18(1) lists the President’s functions, broadly covering responsibility for managing the effective and timely operation and administration of the Commission, reporting on behalf of the Commission, including to the Minister, and promoting and providing information about the Commission and the Act to the Community.

Section 18(2) provides more detail about the reporting powers of the president. Read with 18(1) (h) this provision clarifies that the President has responsibility for coordinating high-level, overarching reports about systemic matters identified by the Commission. This means that the president is responsible for delivering reports about inquiries or reviews (s 14(1) (e) HRC Act), reports undertaken on the direction of the minister (section 17 HRC Act), third party reports (section 83 HRC Act), Commission initiated reports (section 84 HRC Act) and reports to the Minister (section 87 HRC Act).

Section 18(3) provides that the President may exercise any function given to any other Commissioner under the Act or any other territory law, in order that the President is able to lead the Commission effectively.

Section 18(4) inserts a provision that the Minister may, but need not, present advice provided to him or her as a result of a review or inquiry by the Commission mentioned in section 18(2)(a) to the Legislative Assembly. This section has been transferred from existing section 14(2). A note that section 87 reports must be presented to the Legislative Assembly has also been transferred to this new section, from s 14(2).

This reflects changes to the coordination of reporting by the Commission which will be the responsibility of the President.

Section 18A – Governance and corporate support protocol

This provision sets out a requirement for the President to develop a governance and corporate support protocol between the responsible directorate and the HRC. A protocol must be developed for every 3-year period.

This protocol must be developed after consultation with the Director General of JACS and will provide a formal basis for a productive working relationship between the HRC and the JACS Directorate.

The protocol must include information about the strategic plan for the 3-year period, processes for allocating funding within the Commission, a budget for each Commissioner, performance criteria to be met by the Commission, financial and performance reporting and processes for requesting funding. The approved plan must be published on the Commission's website.

Section 18B – Client services charter

This provision requires the President to prepare a client services charter following consultation with the community for 8 weeks.

This charter must set out how the commission will provide services to the community and what the community can expect when dealing with the commission.

Section 18C - Operations protocol

Under this section, the President must prepare an operations protocol after consulting with the Commissioners. This protocol relates to the internal processes of the commission, in relation to the receipt and handling of complaints, client access to the Commission and 'intake' of complaints and

enquiries, the process by which the President coordinates systemic advocacy and provides written reports to the Minister, matters to be decided in Commission meetings and anything else decided by the Commission or prescribed in regulation. The protocol must be reviewed every three years, and published after it is made.

The aim of this provision is to provide a clear framework for the internal governance of the Commission while maintaining the flexibility of the Commission to determine ways of performing its functions that are best suited to its circumstances.

Division 3.2A Appointment of commission members

Section 18D - Appointment of commission members

This provision consolidates the appointment provisions for the Commission members as part of a new appointments division.

The appointments process requires the Executive to appoint a person with the necessary experience or expertise to perform the member's functions as the President or as a Commissioner.

The term of each appointment must be no longer than 5 years and is subject to conditions agreed between the Executive and the member, subject to any determination under the *Remuneration Tribunal Act 1995*.

Section 18E - Ending appointments

This provision consolidates the provisions for the ending appointments of the Commission members into a single section.

This is a standard appointment ending provision which sets out the range of circumstances in which an appointment may or must be ended by the Executive.

Section 18F - Delegation of member's functions

This provision consolidates the delegations function, allowing any Commission member to delegate the member's functions under the HRC Act or another territory law, to another member or a member of the Commission staff.

Clause 16 - Sections 19A, 19BA and 20

This clause omits the sections of the HRC Act providing for the appointment of the Children and Young People Commissioner and Disability and Community Services Commissioner and the delegation authority for the Children and Young People Commissioner. Provision for the appointment of these Commissioners and delegation of their functions has been consolidated in new sections 18D and 18F.

Clause 17 - Disability and community services commissioner's functions - New section 21 (1) (aa) and (ab)

Clause 17 amends section 21 dealing with the Disability and Community Services Commissioner's functions. This provision adds to the Commissioner's responsibilities the exercise of functions for

the Commission in relation to services for older people. This is effectively transferred from the Health Services Commissioner, who currently performs this function.

This clause also confers additional functions on the Disability and Community Services Commissioner who will be responsible for dealing with complaints, including complaints about matters in relation to which the Public Advocate and Victims of Crime Commissioner have functions; dealing with complaints about non-compliance with the governing principles under the *Victims of Crime Act 1994*; and the actions of a guardian of manager or person acting or purporting to act under an enduring power of attorney.

Clause 18 - Sections 21A, 22, 23A and 24

This clause omits the sections of the HRC Act providing the delegation authority for the Disability and Community Services Commissioner and the Discrimination Commissioner. It also omits the sections providing for the appointment of the Discrimination Commissioner and the Health Services Commissioner. These provisions have been consolidated in new sections 18D and 18F.

Clause 19 - Health services commissioner's functions Section - 25 (1) (a)

This provision omits 'services for older people' from the list of the Health Services Commissioner functions. This responsibility is moved to the Disability and Community Services Commissioner.

Clause 20 - Sections 25A, 26 and 27A

This clause omits the provisions of the HRC Act providing the delegation authority for the Health Services Commissioner and the Human Rights Commissioner. It also omits the provision for the appointment of the Human Rights Commissioner as these provisions have been consolidated in new sections 18D and 18F.

Clause 21 - New division 3.7A and 3.7B

This clause inserts new division 3.7A relating to the functions of the Public Advocate, and Division 3.7B relating to the functions of the Victims of Crime Commissioner.

Division 3.7A - Public advocate

27B - Public advocate's functions

This provision gives the Public Advocate a range of advocacy functions currently in sections 11 and 12 of the Public Advocate Act, which is repealed by the Bill. Advocacy functions of the Public Advocate relate to the advocacy of the rights of people with a disability and children and young people including by the promotion of the provision of support, facilities, programs and services.

Functions in the Public Advocate Act relating to guardianship are transferred to the Public Trustee and Guardian, as established by the Bill.

This provision includes a note that indicates that the Public Advocate also has functions under the *Children and Young People Act 2008*.

This new section also includes definitions of *disability*, *forensic patient*, *mental dysfunction* and *mental illness* which have been imported from the *Public Advocate Act 2005*, which is repealed by the Bill. These definitions are necessary for the advocacy functions of the Public Advocate for people with a disability.

Division 3.7B - Victims of crime commissioner

27C - Victims of crime commissioner's functions

This provision gives the Victims of Crime Commissioner functions in relation to services for victims of crime.

It includes provision for the Commissioner to exercise any other function given to the Commissioner under the HRC Act or any other territory law.

This provision includes a note that the Victims of Crime Commissioner has functions under the *Domestic Violence Agencies 1986* (as the domestic violence project coordinator), *Victims of Crime Act 1994* and *Victims of Crime (Financial Assistance) Act 1983*.

This provision also provides that the exercise of any function for the Commission for victims of crime under section 27C (1) (a) is subject to any decision of the Commission about the exercise of its functions in relation to services for victims of crime.

Clause 22 - Ending appointments - Division 3.8

This clause omits Division 3.8 relating to ending the appointment of the Commissioners. The ending of appointments is now dealt with in new Division 3.2A which sets out a consolidated process for appointments, ending appointments and delegations.

Clause 23 - New section 31

This clause inserts a new provision in Division 3.9, dealing with Commission procedures, that provides that the President presides at all meetings at which the President is present; if the President is absent, the member chosen by the members present presides.

Clause 24 - Quorum at meetings - Section 32

This clause amends section 32 to change the number of members of the Commission required to be present at a Commission meeting to make a quorum from half the members to three members to avoid the situation of a hung vote.

Clause 25 - Voting at meetings - New section 33 (2)

This clause includes a new provision in section 33 dealing with votes at meetings. It provides that a question is decided by a majority of the votes of the members present and voting but, if the votes are equal, the member presiding has the deciding vote.

Clause 26 - Individual with more than 1 role Section 34 (1), example

This clause makes an amendment to the example in section 34 to provide that the disability and community services commissioner may be appointed as the health services commissioner. The previous example could no longer be used due to new role of the President as Human Rights Commissioner.

Clause 27 - Section 34 (3)

Section 34 makes provision for working out the number of members of the Commission required to be present at Commission meetings to make a quorum. Clause 27 amends section 34 to reflect the amendment to the quorum requirements made by clause 24.

Clause 28 - New section 41A

This clause inserts a new section in Division 4.1 of the HRC Act which deals with making complaints under the Act. New section 41A sets out when a person may complain about a service for victims of crime. The structure of this section mirrors that for making complaints in relation to other services under Division 4.1.

A person may complain to the Commission about a service for victims of crime if the service is not being provided appropriately; or the provider of the service has acted inconsistently with the generally accepted standard of service delivery expected of a provider of the kind of service to which the complaint relates or the service is not being provided. A person may also complain about non-compliance with the governing principles under the Victims of Crime Act by an agency involved in the administration of justice.

Clause 29 - What complaints may be made under this Act? - New section 42 (1) (ea)

This clause amends the list of complaints that may be made under the HRC Act, to include victims of crime service complaints. The matters that can constitute victims of crime service complaint are set out in new section 41A.

Clause 30 - Who may make a complaint under this Act? - Section 43 (1) (f)

This clause amends section 43 about who can make a complaint under the Act. The amendment includes a victims of crime service complaint in the list of complaints which can be made by anyone. This amendment reflects the expanded jurisdiction of the Commission.

Clause 31 - Consideration without complaint or appropriate complainant - Section 48 (2)

This clause amends section 48 about complaints the Commission may consider by its own initiative to include a victims of crime service complaint, to reflect the expanded jurisdiction of the Commission.

Clause 32 - Allocating complaints - Section 50

This clause omits section 50 which requires the commission to allocate complaints to a commissioner. This process is redundant, as the Disability and Community Services Commissioner will deal with all complaints in accordance with the processes set out in Division 4.1 of the HRC Act

and in the operations protocol. Where conflict is identified or some other reason means that the Disability and Community Services Commissioner is unable to deal with the complaint, it will be referred to the President who can deal with it, or allocate it to another Commissioner in accordance with section 18(1) (m) (clause 15).

Clause 33 - Referral of advocacy matters - Section 51A (2) and (3)

This clause amends the existing section relating to referrals of matters to the Public Advocate to reflect that the Disability and community services commissioner, rather than the Commission, will be responsible for referring the complaint.

Clause 34 - Considering complaints - Section 52 (1), new notes

This clause adds notes relevant to the new division of responsibility for handling complaints which will primarily be the responsibility of the Disability and Community Services Commissioner, but which may be re-allocated in accordance with the operations protocol, or at the determination of the President if there is a real or perceived risk of conflict of interest.

Clause 35 - Protection of others from liability - Section 100A

This clause amends section 100A which provides for protection from civil liability for the making of a complaint or provision of a statement or giving of documents to the Commission done honestly and without recklessness. The changes extend the protection afforded to cover criminal liability where a person makes a disclosure to the Commission. This replicates protections previously in place under the Powers of Attorney Act.

Clauses 36 – 43 – Dictionary

These clauses make consequential and technical amendments to the dictionary of the Act to include definitions for new terms used in the Act and amend definitions of other terms, consequentially on the substantive amendments made to the Act. As a consequence of the role of the Public Advocate and Victims of Crime Commissioner being brought into the HRC Act by the Bill, definitions used in the Public Advocate Act have also been included in the dictionary, eg for forensic patient, disability, mental dysfunction and mental illness.

Part 3 - Public Trustee Act 1985

Clause 44 - Long title

This clause provides a new long title of the *Public Trustee Act 1985* to reflect that the Public Trustee Act is renamed the *Public Trustee and Guardian Act 1985* and that the role of the Public Trustee is expanded to include the functions of the public guardian.

Clause 45 - Section 1

This clause renames the Public Trustee Act to be the *Public Trustee and Guardian Act 1985* to reflect the guardianship functions that are brought into the Act.

Clause 46 - Sections 5 and 6

This clause substitutes new sections for sections 5 and 6 about the role and functions of the Public Trustee and Deputy Public Trustee. Substituted section 5 provides for the office of the Public Trustee and Guardian, who is the person exercising the functions of public trustee and guardian (however described) in the public service.

Substituted section 6 provides for the appointment of one or more public servants as deputy public trustee and guardian who may exercise a function of the public trustee and guardian, subject to any direction of the Public Trustee and Guardian.

Clause 47 - Public trustee a corporation sole - Section 8 (1) (a)

This clause is a technical amendment to reflect the new position of Public Trustee and Guardian.

Clause 48 - New section 9A

This clause inserts a new section to allow the Public Trustee and Guardian to delegate functions to a member of the public trustee and guardian's staff under the Public Trustee and Guardian Act or another territory law.

However, delegation of a function of acting as a guardian or manager for a person under appointment by the ACT Civil and Administrative Tribunal ('ACAT'), or applying to the ACAT for the appointment of a person under section 19C(b) (appointment of a suitable guardian or manager) can only be to a person exercising the functions of Deputy Public Trustee and Guardian.

This restriction on the delegation of guardianship functions is based on section 9 of the Public Advocate Act (which is repealed by this Bill). The restriction is in place because of the sensitive nature of the role of acting as guardian or manager, recognising the high level of authority and responsibility this gives a guardian or manager over the life of a person under a guardianship or management order. It also recognises that the person under the guardianship or management order is likely to be vulnerable, and highly reliant on the best interest decision making of the guardianship or manager.

Clause 49 - Capacities in which public trustee may act - New section 13 (1) (h)

This clause provides that the Public Trustee and Guardian can be appointed and act under that name in the capacity as a guardian or manager for a person if appointed by the ACAT.

Clause 50 - New division 3.3

Division 3.3 Appointment of public trustee and guardian as guardian or manager

19A - Application—div 3.3

New section 19A provides that the new Division 3.3 applies if the Public Trustee and Guardian is appointed by the ACAT as a guardian or manager under the *Guardianship and Management of Property Act 1991*.

19B - Other functions of public trustee and guardian as guardian or manager

New section 19B provides that in addition to any other function given to the Public Trustee and Guardian under the *Guardianship and Management of Property Act 1991* (which provides a range of functions for the Public Trustee and Guardian) or another territory law, the public trustee and guardian has the following functions:

- (a) representing people with a disability at hearings before the ACAT in relation to guardianship applications;
- (b) representing forensic patients before the ACAT or a court;
- (c) promoting community discussion, and providing community education and information, about the functions of the ACAT under the *Guardianship and Management of Property Act 1991*.

These representative and educative functions are currently performed by the guardianship unit of the office of the Public Advocate.

This new section also includes definitions of *disability*, *forensic patient*, *mental dysfunction* and *mental illness* which have been imported from the *Public Advocate Act 2005*, which is repealed by the Bill. These definitions are necessary for the guardianship functions of the Public Trustee and Guardian.

19C - Guardian or manager of last resort

This provision provides that, if appointed as guardian or manager by the ACAT, the Public Trustee and Guardian must -

- (a) endeavour to find a suitable person to be appointed as the guardian or manager; and
- (b) if a suitable person is found—apply to the ACAT for the appointment of the person as guardian or manager.

This provision mirrors the provision in the Public Advocate Act and continues the principle that an ACAT appointed guardian or manager is appointed to manage the personal or financial affairs of a person as a last resort - only if no other suitable person is found to act in that capacity.

19D - Engagement of lawyer

This section provides that the Public Trustee and Guardian may engage a lawyer to appear before a court or tribunal in relation to the exercise of the Public Trustee and Guardian's functions under division 3.3 relating to the guardianship functions. This mirrors the existing provision in the Powers of Attorney Act.

Clause 51 - Express powers of public trustee - Section 21 (1)

This clause amends section 21 to expand the powers of the public trustee to include when acting in a trust or protective capacity as an executor, administrator, trustee, a guardian or manager. This amendment, read with amendments to section 21 made by clauses 53 and 54, makes clear that the powers of the Public Trustee and Guardian are available throughout the duration of an ACAT order for the Public Trustee or Guardian to act in a protective capacity. The Public Trustee and Guardian will be acting in a 'protective capacity' where they act as an executor, administrator, trustee, guardian or manager for a person with impaired decision making capacity under order of ACAT.

Clause 52 - Section 21 (1) (a)

Current sections 21 (1) (a) and 21 (1) (p) only authorise the Public Trustee to deal with property or execute documents relating to the property that is in the possession of the person under the ACAT order at the time the order is made. This means that the Public Trustee is not able to deal with future interests in property, or manage property which is not in existence at the time an order is made. The practical effect of this is that there is no clear basis for which the Public Trustee can enter into contracts such as a residential care agreement.

This amendment to section 21 will allow the Public Trustee and Guardian to deal with future property when acting as a manager or guardian for a person under order of ACAT and facilitate the Public Trustee and Guardian acting more efficiently in the administration of a protected person's affairs.

Clause 53 - Section 21 (1) (p)

This clause amends section 21 to include an express power for the Public Trustee and Guardian to execute all documents, as are necessary or convenient for carrying out any of the powers conferred under s 21. The amendment will facilitate the Public Trustee and Guardian acting more efficiently in the administration of a protected person's affairs.

Clauses 54 - 59

These clauses are technical clauses that make changes to reflect the renamed and consolidated office of the Public Trustee and Guardian.

Clause 60 - New section 65A

This clause inserts a new section 65A which makes it an offence for an information holder to recklessly use or disclose protected information.

This new provision is a consolidation of the secrecy and information use and disclosure provisions in section 16 of the Public Advocate Act.

Protected information is defined as information about a person that is disclosed to, or obtained by, an information holder because of the exercise of a function under the Public Trustee and Guardian Act by the information holder or someone else.

An information holder is defined as the Public Trustee and Guardian, a deputy Public Trustee and Guardian or anyone else exercising function under the Public Trustee and Guardian Act.

The offences do not apply if the protected information is use or disclosed

- (a) under the Public Trustee and Guardian Act or another law applying in the ACT; or
- (b) in relation to the exercise of a function, as an information holder, under the Public Trustee and Guardian Act or another law applying in the ACT; or
- (c) in a court proceeding; or
- (d) with the protected person's consent.

This section also provides that an information holder need not disclose protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for the Public Trustee and Guardian Act or another law applying in the ACT.

Clauses 61 – 64 – Dictionary

These clauses make consequential and technical amendments to the dictionary of the Act to include new definitions of terms used and reflect the renaming of the office of the Public Trustee, the Public Trustee and Guardian.

Clause 65 - Further amendments, mentions of *public trustee*

This clause is a technical clause that makes changes to reflect the renamed and consolidated office of the Public Trustee and Guardian.

Part 4 - Repeal

Clause 66 – Repeal of the *Public Advocate Act 2005*

This Clause repeals the Public Advocate Act. This repeal is necessary to give effect to the splitting of the advocacy and guardianship units within the Public Advocate and transfer functions relating to advocacy for children and young people and for people with a disability to the HRC under the HRC Act. Functions relating to last resort guardianship are consolidated into the renamed Office of the Public Trustee and Guardian under the Public Trustee and Guardian Act, as amended by the Bill.

Schedule 1 - Other amendments

Schedule 1 of the Bill contains minor amendments to related Acts to give effect to the new structure of the HRC and the Public Trustee and Guardian office.

Part 1.1 - Domestic Violence Agencies Act 1986

Clause [1.1] - Section 11

This clause amends the *Domestic Violence Agencies Act 1986* to provide that the victim of crime commissioner is the domestic violence project coordinator. This amendment reflects the traditional administrative arrangement which has been that the Victims of Crime Commissioner performs the role of the domestic violence project coordinator.

Clause [1.2] - Dictionary, definition of *coordinator*

This clause defines ‘coordinator’ as the victim of crime commissioner for the purposes of the Domestic Violence Agencies Act.

Part 1.2 - Guardianship and Management of Property Act 1991

Clauses [1.3] - [1.13]

These clauses are technical clauses that make changes to reflect the renamed and consolidated office of the Public Trustee and Guardian.

Clauses [1.14] – [1.16]

Clauses 1.14 substitutes a new heading for section 64 - ‘Request for accounts—enduring powers of attorney’. Clauses 1.15 – 1.16 make technical changes to section 64 to enable both the Public Advocate in the Human Rights Commission and the Public Trustee and Guardian to request accounts relating to the administration of an enduring power of attorney. This will assist the Public Advocate to undertake oversight of enduring attorneys and guardians and to obtain information relevant to complaints about the actions of enduring attorneys and guardians.

Clause [1.17] - [1.20]

These clauses are technical clauses that make changes to reflect the renamed and consolidated office of the Public Trustee and Guardian.

Part 1.3 - Victims of Crime Act 1994

Clause [1.21] - Division 3.1

This clause omits the appointment, ending appointment, delegation and staffing provisions in Division 3.1 of the Victims of Crime Act, as these are consolidated in the general, delegation and ending appointments provisions in the HRC Act.

Clause [1.22] - Section 11 (d)

This clause omits section 11 (d) requiring the Victims of Crime Commissioner to ensure concerns and formal complaints about non-compliance with the governing principles are dealt with promptly and effectively as the complaints handling function for victims of crime will be transferred to the Disability and Community Services Commissioner.

Clause [1.23] - Section 11, new note

This clause inserts a new note that the Victims of Crime Commissioner is a member of the human rights commission appointed under the *Human Rights Commission Act 2005*, section 18D.

Clause [1.24] - Dictionary, definition of *commissioner*

This clause amends the definition of commissioner to reflect that the Victims of Crime Commissioner is a member of the human rights commission appointed under the *Human Rights Commission Act 2005*, section 18D.