

2004–2005

LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY

MINUTES OF PROCEEDINGS

No. 31

TUESDAY, 23 AUGUST 2005

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1 The Assembly met at 10.30 a.m., pursuant to adjournment. The Speaker (Mr Berry) took the Chair and asked Members to stand in silence and pray or reflect on their responsibilities to the people of the Australian Capital Territory.

2 **RESIDENTIAL TENANCIES AMENDMENT BILL 2005—AUTHORISATION OF MEMBER'S PARTICIPATION IN PROCEEDINGS**

Mr Corbell (Manager of Government Business), by leave, moved—That this Assembly:

- (1) notes that Dr Foskey, on 18 August 2005, after the Assembly had debated and passed the Residential Tenancies Amendment Bill 2005, declared an interest in that she had a residential tenancy agreement with the ACT Commissioner for Housing; and
- (2) under subsection 15(2) of the *Australian Capital Territory (Self-Government) Act 1988* (the Self-Government Act) decides that the participation of Dr Foskey in the debate on the Residential Tenancies Amendment Bill 2005 was a failure to comply with subsection 15(1) of the Self-Government Act, but notes her participation was in the public interest.

Debate ensued.

Question—That the motion be agreed to—put and passed.

3 **LEGAL AFFAIRS—STANDING COMMITTEE (PERFORMING THE DUTIES OF A SCRUTINY OF BILLS AND SUBORDINATE LEGISLATION COMMITTEE)—SCRUTINY REPORT 15—STATEMENT BY CHAIR**

Mr Stefaniak (Chair) presented the following report:

Legal Affairs—Standing Committee (performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee)—Scrutiny Report 15, dated 22 August 2005, together with the relevant minutes of proceedings—

and, by leave, made a statement in relation to the report.

4 **HUMAN RIGHTS COMMISSION BILL 2005**

The order of the day having been read for the resumption of the debate on the question—That this Bill be agreed to in principle—

Debate resumed.

Question—That this Bill be agreed to in principle—put and passed.

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*Detail Stage*

Clauses 1 to 5, by leave, taken together and agreed to.

Clause 6—

On the motion of Dr Foskey, her amendment No. 1 (*see* [Schedule 1](#)) was made, after debate.

*Paper:* Dr Foskey, by leave, presented an explanatory statement to her amendments to the following Bills:

Human Rights Commission Bill 2005.

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

Public Advocate Bill 2005.

Clause 6, as amended, agreed to.

Clause 7 agreed to.

Clause 8—

On the motion of Dr Foskey, her amendment No. 2 (*see* [Schedule 1](#)) was made, after debate.

Clause 8, as amended, agreed to.

Clauses 9 to 20, by leave, taken together and agreed to.

Clause 21—

Dr Foskey, by leave, moved her amendments Nos. 3 and 4 together (*see* [Schedule 1](#)).

Debate continued.

Amendments negatived.

Clause 21 agreed to.

Clause 22 agreed to.

Clause 23—

Dr Foskey moved her amendment No. 5 (*see* [Schedule 1](#)).

Amendment negatived.

Clause 23 agreed to.

Clause 24 agreed to.

Clause 25—

Dr Foskey, by leave, moved her amendments Nos. 6 and 7 together (*see* [Schedule 1](#)).

Debate continued.

Amendments negatived.

Clause 25 agreed to.

Clause 26—

On the motion of Dr Foskey, her amendment No. 8 (*see* [Schedule 1](#)) was made, after debate.

Clause 26, as amended, agreed to.

Clause 27—

Dr Foskey moved her amendment No. 9 (*see* [Schedule 1](#)).

Debate continued.

Amendment negatived.

Clause 27 agreed to.

Clauses 28 to 33, by leave, taken together and agreed to.

Clause 34—

On the motion of Dr Foskey, by leave, her amendments Nos. 10 and 11 were made together, after debate (*see* [Schedule 1](#)).

Clause 34, as amended, agreed to.

Clauses 35 to 44, by leave, taken together and agreed to.

Clause 45—

Dr Foskey moved her amendment No. 12 (*see* [Schedule 1](#)).

Debate continued.

Amendment negatived.

Clause 45 agreed to.

Clause 46 agreed to.

*New note—Division 4.2 heading*

On the motion of Mr Stefaniak, new note to Division 4.2 heading (his amendment No. 1—*see* [Schedule 2](#)) was inserted in the Bill, after debate.

Clauses 47 to 50, by leave, taken together and agreed to.

Clause 51—

Dr Foskey, by leave, moved her amendments Nos. 13 and 14 together (*see* [Schedule 1](#)).

Debate continued.

Amendments negatived.

Clause 51 agreed to.

Clauses 52 to 77, by leave, taken together and agreed to.

Clause 78—

Mr Stefaniak, by leave, moved his amendments Nos. 2 and 3 together (*see* [Schedule 2](#)).

Debate continued.

Amendments negatived.

Clause 78 agreed to.

Debate interrupted in accordance with standing order 74 and the resumption of the debate made an order of the day for a later hour this day.

**5 LEAVE OF ABSENCE**

Mrs Dunne moved—That leave of absence be given to Mr Mulcahy for this sitting week.

Question—put and passed.

**6 QUESTIONS**

Questions without notice were asked.

**7 BREAST SCREENING—PAPER AND STATEMENT BY MEMBER**

Mr Smyth (Leader of the Opposition) having made a personal explanation under standing order 46, by leave, presented the following paper:

Breast screening—Copy of media release by Mr Brendan Smyth MLA, dated Sunday, 17 April 2005.

Mr Corbell (Minister for Health), by leave, also made a statement in relation to the matter.

**8 PAPER**

Dr Foskey, by leave, presented the following paper:

Court Procedures (Protection of Public Participation) Amendment Bill 2005—Explanatory statement.

**9 PUBLIC SECTOR MANAGEMENT ACT—EXECUTIVE CONTRACTS—PAPERS AND STATEMENT BY MINISTER**

Mr Stanhope (Chief Minister) presented the following papers:

Public Sector Management Act, pursuant to sections 31A and 79—Copies of executive contracts or instruments—

Short-term contracts:

Bronwen Overton-Clarke, dated 9 August 2005.

Gerard Ryan, dated 4 August 2005.

Ian Hubbard, dated 9 August 2005.

Kirsten Thompson, dated June 2005.

Meredith Whitten, dated 5 August 2005.

Pauline Brown, dated 10 August 2005.

Schedule D variations:

Gerard John Ryan, dated 15 July 2005.

Marjorie Anne McGrath.

Michael Ockwell, dated 1 July 2005.

Pam Davoren, dated 20 and 22 July 2005—

and, by leave, made a statement in relation to the papers.

**10 PRESENTATION OF PAPER**

Mr Stanhope (Attorney-General) presented the following papers:

Electoral Act—Pursuant to subsection 10A(2)—ACT Legislative Assembly Election 2004—

Electronic Voting and Counting System—Review, dated 27 June 2005.

Review of the *Electoral Act 1992*, dated 22 July 2005.

**11 THE TERRITORY AS PARENT—SECOND SIX MONTH STATUS REPORTS—REVIEW OF THE SAFETY OF CHILDREN IN THE CARE OF THE A.C.T. AND OF A.C.T. CHILD PROTECTION MANAGEMENT AND THE TERRITORY'S CHILDREN—ENSURING SAFETY AND QUALITY CARE FOR CHILDREN AND YOUNG PEOPLE—REPORT ON THE AUDIT AND CASE REVIEW—PAPERS NOTED**

Ms Gallagher (Minister for Children, Youth and Family Support) presented the following papers:

The Territory as Parent—Second six month status reports—

Review of the safety of children in the care of the ACT and of ACT child protection management, dated August 2005.

The Territory's Children—Ensuring safety and quality care for children and young people—Report on the audit and case review, dated August 2005—

and moved—That the Assembly takes note of the papers.

Question—put and passed.

**12 DANGEROUS SUBSTANCES ACT—A.C.T. ASBESTOS TASKFORCE—ASBESTOS MANAGEMENT IN THE ACT—PAPERS AND STATEMENT BY MINISTER**

Ms Gallagher (Minister for Industrial Relations) presented the following papers:

Dangerous Substances Act, pursuant to section 47G—ACT Asbestos Task Force—Asbestos Management in the ACT—Report, dated August 2005, together with the following:

ACT Asbestos Issues—

Final report on a campaign monitoring study of awareness and attitudes to asbestos-related issues, dated 28 June 2005.

Final report on a pre-campaign benchmark study of awareness and attitudes to asbestos-related issues, dated 21 February 2005.

ACT Asbestos Surveys—Health Risk Assessment—Final report, dated 8 August 2005.

Asbestos Extent and Impact—Survey methodology.

Communications Strategy—Awareness of asbestos and associated issues in the Australian Capital Territory, dated February 2005.

Community Engagement Report—December 2004-May 2005, dated May 2005.

Compact Disk, dated August 2005.

Focus groups among the general public and tradespeople—Final report, dated 28 June 2005.

Government Response, dated 23 August 2005

Survey and recruitment exercise among commercial/industrial properties—Final report, dated 28 June 2005.

Survey of real estate agencies—Final report, dated 28 June 2005.

and, by leave, made a statement in relation to the papers.

### **13 WORKERS COMPENSATION AMENDMENT BILL 2005 (NO. 2)—EXPOSURE DRAFT—PAPERS AND STATEMENT BY MINISTER**

Ms Gallagher (Minister for Industrial Relations) presented the following papers:

Workers Compensation Amendment Bill 2005 (No. 2)—

Exposure draft.

Explanatory statement to the exposure draft—

and, by leave, made a statement in relation to the papers.

### **14 PRESENTATION OF PAPER**

Ms Gallagher (Minister for Industrial Relations) presented the following paper:

Occupational Health and Safety Act, pursuant to section 228—Operation of the *Occupational Health and Safety Act 1989* and its associated law—Fourth quarterly report for the period 1 April to 30 June 2005.

### **15 PRESENTATION OF PAPERS**

Mr Corbell (Minister for Health) presented the following papers:

Information Bulletins—Patient Activity Data—May 2005—

Calvary Public Hospital—External Distribution.

The Canberra Hospital.

### **16 PRESENTATION OF PAPERS**

Mr Corbell (Manager of Government Business) presented the following papers:

#### **Subordinate legislation (including explanatory statements unless otherwise stated)**

Legislation Act, pursuant to section 64—

Animal Diseases Act—Animal Diseases (Fees) Determination 2005 (No. 1)—Disallowable Instrument DI2005-186 (LR, 15 August 2005).

Animal Welfare Act—Animal Welfare (Fees) Determination 2005 (No. 1)—Disallowable Instrument DI2005-180 (LR, 11 August 2005).

Building Act—Building (ACT Appendix to the Building Code of Australia) Determination 2005—Disallowable Instrument DI2005-176 (LR, 11 August 2005).

Cultural Facilities Corporation Act—Cultural Facilities Corporation Appointment 2005 (No. 1)—Disallowable Instrument DI2005-174 (LR, 8 August 2005).

Environment Protection Act—Environment Protection (Fees) Determination 2005 (No. 1)—Disallowable Instrument DI2005-185 (LR, 15 August 2005).

Fisheries Act—Fisheries (Fees) Determination 2005 (No. 1)—Disallowable Instrument DI2005-182 (LR, 15 August 2005).

Gambling and Racing Control Act—Gambling and Racing Commission Appointment 2005 (No. 1)—Disallowable Instrument DI2005-181 (LR, 15 August 2005).

Nature Conservation Act—Nature Conservation (Fees) Determination 2005 (No. 1)—Disallowable Instrument DI2005-183 (LR, 15 August 2005).

Public Place Names Act—Public Place Names (Fyshwick) Determination 2005 (No. 1)—Disallowable Instrument DI2005-175 (LR, 8 August 2005).

Public Sector Management Act—Public Sector Management Amendment Standard 2005 (No. 7)—Disallowable Instrument DI2005-172 (LR, 4 August 2005).

Remuneration Tribunal Act—Remuneration Tribunal (Fees and Allowances) Determination 2005 (No. 1)—Disallowable Instrument DI2005-173 (LR, 4 August 2005).

Road Transport (Public Passenger Services) Act—Road Transport (Public Passenger Services) Maximum Fares Determination 2005 (No. 4)—Disallowable Instrument DI2005-187 (LR, 12 August 2005).

Stock Act—

Stock (Fees) Determination 2005 (No. 1)—Disallowable Instrument DI2005-179 (LR, 11 August 2005).

Stock (Levy) Determination 2005 (No. 1)—Disallowable Instrument DI2005-177 (LR, 11 August 2005).

Stock (Levy) Determination 2005 (No. 2)—Disallowable Instrument DI2005-178 (LR, 11 August 2005).

Water and Sewerage Act—Water and Sewerage Amendment Regulation 2005 (No. 1)—Subordinate Law SL2005-16 (LR, 29 July 2005).

Water Resources Act—Water Resources (Fees) Determination 2005 (No. 2)—Disallowable Instrument DI2005-184 (LR, 15 August 2005).

## **17 MATTER OF PUBLIC IMPORTANCE—DISCUSSION—ABORIGINAL AND TORRES STRAIT ISLANDER AFFAIRS**

The Assembly was informed that Mrs Burke, Ms Porter and Mr Pratt had proposed that matters of public importance be submitted to the Assembly for discussion. In accordance with the provisions of standing order 79, the Speaker had determined that the matter proposed by Mrs Burke be submitted to the Assembly, namely, “Aboriginal and Torres Strait Islander Affairs in the ACT.”.

Discussion ensued.

The time for discussion having expired—

Discussion concluded.

**18 HUMAN RIGHTS COMMISSION BILL 2005**

The Assembly, according to order, resumed consideration at the detail stage.

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*Detail Stage*

Clauses 79 to 86, by leave, taken together and agreed to.

Clause 87—

Dr Foskey, by leave, moved her amendments Nos. 15 and 16 together (*see* [Schedule 1](#)).

Debate continued.

Amendments negatived.

Clause 87 agreed to.

Remainder of Bill, by leave, taken as a whole and agreed to.

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Question—That this Bill, as amended, be agreed to—put

The Assembly voted—

AYES, 8		NOES, 5	
Mr Berry	Mr Gentleman	Mrs Burke	Mr Stefaniak
Mr Corbell	Ms MacDonald	Mr Pratt	
Dr Foskey	Ms Porter	Mr Seselja	
Ms Gallagher	Mr Stanhope	Mr Smyth	

And so it was resolved in the affirmative—Bill, as amended, agreed to.

**19 HUMAN RIGHTS COMMISSION LEGISLATION AMENDMENT BILL 2005**

The order of the day having been read for the resumption of the debate on the question—That this Bill be agreed to in principle—

Question—That this Bill be agreed to in principle—put and passed.

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*Detail Stage*

Bill, by leave, taken as a whole—

Mr Stefaniak moved his amendment No. 1 (*see* [Schedule 3](#)).

Debate continued.

Amendment negatived.

Bill, as a whole, agreed to.

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Question—That this Bill be agreed to—put and passed.



**20 HUMAN RIGHTS COMMISSION (CHILDREN AND YOUNG PEOPLE COMMISSIONER) AMENDMENT BILL 2005**

The order of the day having been read for the resumption of the debate on the question—That this Bill be agreed to in principle—

Debate resumed.

Question—That this Bill be agreed to in principle—put and passed.

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*Detail Stage*

Clauses 1 to 12, by leave, taken together and agreed to.

Clause 13—

Dr Foskey, by leave, moved her amendments Nos. 1 and 2 together (*see* [Schedule 4](#)).

Debate continued.

Amendments negatived.

Clause 13 agreed to.

Debate interrupted in accordance with standing order 34 and the resumption of the debate made an order of the day for the next sitting.

**21 ADJOURNMENT**

It being approximately 6 p.m.—The question was proposed—That the Assembly do now adjourn.

Debate ensued.

The time allotted for the debate having expired—The Speaker, at 6.29 p.m., adjourned the Assembly until tomorrow at 10.30 a.m.

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**MEMBERS' ATTENDANCE:** All Members were present at some time during the sitting, except Mr Mulcahy\*.

\*On leave

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**Tom Duncan**  
Clerk of the Legislative Assembly

## SCHEDULES OF AMENDMENTS

### Schedule 1

#### HUMAN RIGHTS COMMISSION BILL 2005

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Amendments circulated by Dr Foskey

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1

**Proposed new clause 6 (aa)**

**Page 4, line 3—**

*before clause 6 (a), insert*

- (aa) to promote the human rights and welfare of people living in the ACT by—
- (i) promoting the provision of community education, information and advice in relation to human rights; and
  - (ii) identifying and examining issues that affect the human rights and welfare of vulnerable groups in the community; and
  - (iii) making recommendations to government and non-government agencies on legislation, policies, practices and services that affect vulnerable groups in the community;
- 

2

**Clause 8 (2), proposed new note**

**Page 6, line 17—**

*insert*

*Note* **Disability** is defined differently for complaints about discrimination on the grounds of disability (see *Discrimination Act 1991*, s 5AA).

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3

**Proposed new clause 21 (1) (aa)**

**Page 13, line 6—**

*insert*

- (aa) to promote the human rights and welfare of people with a disability, older people, people who use community services, and their carers, (the **groups**) by—
- (i) promoting the provision of education, information and advice to the groups; and

- (ii) promoting and monitoring public awareness on issues that affect the groups; and
- (iii) conducting and monitoring research into issues that affect the groups; and
- (iv) making recommendations to government and non-government agencies on legislation, policies, practices and services that affect the groups; and
- (v) promoting the participation of people in the groups in making decisions that affect their lives;

4

**Clause 21 (2)****Page 13, line 9—***omit clause 21 (2), substitute*

- (2) The exercise of the function mentioned in subsection (1) (a) is subject to any decision of the commission about the management of the commission's administrative affairs.

5

**Clause 23 (3)****Page 15, line 3—***omit clause 23 (3), substitute*

- (3) The exercise of the function mentioned in subsection (1) (a) is subject to any decision of the commission about the management of the commission's administrative affairs.

6

**Proposed new clause 25 (1) (aa)****Page 16, line 4—***insert*

- (aa) to promote the human rights and welfare of people with a health or mental health issue, and their carers, (the **groups**) by—
  - (i) promoting the provision of education, information and advice to the groups; and
  - (ii) promoting and monitoring public awareness on issues that affect the groups; and
  - (iii) conducting and monitoring research into issues that affect the groups; and
  - (iv) making recommendations to government and non-government agencies on legislation, policies, practices and services that affect the groups; and
  - (v) promoting the participation of people in the groups in making decisions that affect their lives;

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**7****Clause 25 (2)****Page 16, line 7—**

*omit clause 25 (2), substitute*

- (2) The exercise of the function mentioned in subsection (1) (a) is subject to any decision of the commission about the management of the commission's administrative affairs.

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**8****Clause 26****Page 16, line 11—**

*omit clause 26, substitute*

**26 Human rights commissioner**

There is to be a Human Rights Commissioner.

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**9****Clause 27 (3)****Page 17, line 1—**

*omit clause 27 (3), substitute*

- (3) The exercise of the function mentioned in subsection (1) (a) is subject to any decision of the commission about the management of the commission's administrative affairs.

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**10****Clause 34 (1), example****Page 19, line 12—**

*omit the example, substitute*

**Example**

The discrimination commissioner may be appointed to be the human rights commissioner.

*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).

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**11****Clause 34 (3), example****Page 19, line 22—**

*omit the example, substitute*

**Example**

If the discrimination commissioner is also the human rights commissioner, the number of members is taken to be 4. Therefore, 2 members (rather than 3) would need to be present at a meeting to carry on business.

*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).

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**12****Clause 45 (2) (a)****Page 26, line 9—**

*omit clause 45 (2) (a), substitute*

- (a) within 90 days after the day the commission receives a complaint—
- (i) carry out an initial consideration of the complaint; and
  - (ii) decide to allocate, or not to allocate, the complaint for consideration; and

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**13****Clause 51 (1)****Page 31, line 4—**

*omit*

The commission may

*substitute*

A commissioner may

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**14****Clause 51 (2)****Page 31, line 10—**

*omit*

The commission may

*substitute*

A commissioner may

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**15****Clause 87 (1)****Page 52, line 5—**

*omit section 87 (1), substitute*

- (1) A commissioner may, on the commissioner's own initiative, give the Minister a written report about any matter of public importance related to the commission, the commission's functions or a matter that may be complained about under this Act.

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**16****Clause 87 (2)****Page 52, line 10—**

*omit*

If the commission gives

*substitute*

If a commissioner gives

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## **Schedule 2**

### **HUMAN RIGHTS COMMISSION BILL 2005**

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Amendments circulated by Mr Stefaniak

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**1**

**Division 4.2 heading, proposed new note**

**Page 28, line 1—**

*insert*

*Note to div 4.2*

The commission must close certain complaints. For example, the commission must close a complaint that is frivolous or vexatious, or a complaint that has been or is being dealt with by a court or tribunal (see s 78 (2), esp par (c) (ii) and (iii)).

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**2**

**Clause 78 (1) (e)**

**Page 44, line 24—**

*omit*

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**3**

**Proposed new clause 78 (2) (da)**

**Page 45, line 26—**

*insert*

(da) the complaint has been referred to a health profession board; or

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**Schedule 3**

**HUMAN RIGHTS COMMISSION LEGISLATION  
AMENDMENT BILL 2005**

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Amendment circulated by Mr Stefaniak

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**1**  
**Schedule 1**  
**Part 1.10**  
**Page 50, line 17—**

*omit*

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**Schedule 4****HUMAN RIGHTS COMMISSION (CHILDREN AND YOUNG PEOPLE COMMISSIONER) BILL 2005**

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Amendments circulated by Dr Foskey

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**1****Clause 13****Proposed new section 19B (1) (aa)****Page 7, line 5—***insert*

- (aa) to promote the human rights and welfare of children and young people by—
- (i) promoting the provision of education, information and advice to children and young people; and
  - (ii) promoting and monitoring public awareness on issues that affect children and young people; and
  - (iii) conducting and monitoring research into issues that affect children and young people; and
  - (iv) making recommendations to government and non-government agencies on legislation, policies, practices and services that affect children and young people; and
  - (v) promoting the participation of children and young people in making decisions that affect their lives, as appropriate to their age and maturity;

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**2****Clause 13****Proposed new section 19B (2)****Page 7, line 8—***omit clause 19B (2), substitute*

- (2) The exercise of the function mentioned in subsection (1) (a) is subject to any decision of the commission about the management of the commission's administrative affairs.
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**3****Clause 14****Proposed new section 21 (1) (aa)****Page 8, line 10—***insert*

- (aa) to promote the human rights and welfare of people with a disability, older people, people who use community services, and their carers, (the **groups**) by—
- (i) promoting the provision of education, information and advice to the groups; and
  - (ii) promoting and monitoring public awareness on issues that affect the groups; and
  - (iii) conducting and monitoring research into issues that affect the groups; and
  - (iv) making recommendations to government and non-government agencies on legislation, policies, practices and services that affect the groups; and
  - (v) promoting the participation of people in the groups in making decisions that affect their lives;

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**4****Clause 14****Proposed new section 21 (2)****Page 8, line 13—***omit proposed new section 21 (2), substitute*

- (2) The exercise of the function mentioned in subsection (1) (a) is subject to any decision of the commission about the management of the commission's administrative affairs.

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**5****Schedule 1****Amendment 1.2****Page 16, line 11—***omit amendment 1.2, substitute*

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**[1.2] Section 5 (2) (n)***omit*

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