



Australian Capital Territory

Discrimination Amendment Act 2016

A2016-49

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Australian Capital Territory

Discrimination Amendment Act 2016

A2016-49

An Act to amend the *Discrimination Act 1991*, and for other purposes

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

Part 1 Preliminary

1 Name of Act

This Act is the *Discrimination Amendment Act 2016*.

2 Commencement

- (1) Parts 1 and 2 and schedule 1 (other than the following amendments) commence on the day after this Act's notification day:
- amendment 1.2
 - amendment 1.3
 - amendment 1.6
 - amendment 1.14
 - amendment 1.17.

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

- (2) The remaining provisions commence on 3 April 2017.

3 Legislation amended

This Act amends the *Discrimination Act 1991*.

Note This Act also amends other legislation (see sch 1).

Part 2 Discrimination Act 1991—general amendments

4 Section 4

substitute

4 Objects of Act

The objects of this Act are—

- (a) to eliminate discrimination to the greatest extent possible; and
- (b) to promote and protect the right to equality before the law under the *Human Rights Act 2004*, including—
 - (i) the right to enjoy a person’s human rights without distinction or discrimination of any kind; and
 - (ii) the right to the equal protection of the law without discrimination; and
 - (iii) the right to equal and effective protection against discrimination on any ground; and
- (c) to encourage the identification and elimination of systemic causes of discrimination; and
- (d) to promote and facilitate the progressive realisation of equality, as far as reasonably practicable, by recognising that—
 - (i) discrimination can cause social and economic disadvantage and that access opportunities are not equitably distributed throughout society; and
 - (ii) equal application of a rule to different groups can have unequal results or outcomes; and
 - (iii) the achievement of substantive equality may require the making of reasonable adjustments, reasonable accommodation and the taking of special measures.

4AA Interpretation beneficial to people with protected attributes

This Act must be interpreted in a way that is beneficial to a person who has an attribute mentioned in section 7, to the extent it is possible to do so consistently with—

- (a) the objects of this Act; and
- (b) human rights under the *Human Rights Act 2004*.

Note The *Legislation Act*, s 139 (1) (which is about interpreting legislation to be consistent with its purpose) and the *Human Rights Act 2004*, s 30 (which is about interpreting legislation to be consistent with human rights) are also relevant to interpreting territory laws.

5 Section 5AA

substitute

5AA Meaning of *disability*

- (1) In this Act:

disability means—

- (a) total or partial loss of a bodily or mental function; or
- (b) total or partial loss of a part of the body; or
- (c) the presence in the body of organisms that cause disease or illness; or
- (d) the presence in the body of organisms that are capable of causing disease or illness; or
- (e) the malfunction, malformation or disfigurement of a part of the body; or
- (f) a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction; or

- (g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour; or
 - (h) any other condition prescribed by regulation.
- (2) For this Act, **disability** includes—
- (a) behaviour that is a symptom or manifestation of the disability; and
 - (b) a disability that a person may have in the future, including because of a genetic disposition to the disability; and
 - (c) a disability that it is thought a person may have in the future, whether or not—
 - (i) the person has a genetic disposition to the disability; or
 - (ii) there is anything else to indicate the person may have the disability in the future; and
- Note* **Disability** also includes a disability that the person has or is thought to have, and a disability that the person has had in the past, or is thought to have had in the past (see s 7 (2)).
- (d) reliance on—
 - (i) a support person; or
 - (ii) a disability aid; or
 - (iii) an assistance animal.

- (3) In this section:

assistance animal means an assistance animal trained to assist a person with disability to alleviate the effect of the disability, that satisfies any requirements prescribed by regulation.

disability aid—

- (a) means equipment (including a palliative or therapeutic device) that is generally recognised to alleviate an effect of a disability; and

(b) includes anything prescribed by regulation.

Note Power to make a statutory instrument (including a regulation) includes power to make different provision in relation to different matters or different classes of matters, and to make an instrument that applies differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).

support person means a person who provides assistance or services to another person because of a disability the other person has.

Examples

carer, assistant, interpreter, reader

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).

5AB Liability of person relying on assistance animal etc

- (1) This section applies to a person with disability who relies on an assistance animal or disability aid.
- (2) Nothing in this Act affects the liability of the person for any injury, loss or damage caused by the person's assistance animal or disability aid.
- (3) In this section:

assistance animal—see section 5AA (3).

disability aid—see section 5AA (3).

6 Section 8

substitute

8 Meaning of *discrimination*

- (1) For this Act, **discrimination** occurs when a person discriminates either directly or indirectly, or both, against someone else.

-
- (2) For this section, a person *directly* discriminates against someone else if the person treats, or proposes to treat, another person unfavourably because the other person has 1 or more attributes mentioned in section 7.
- (3) For this section, a person *indirectly* discriminates against someone else if the person imposes, or proposes to impose, a condition or requirement that has, or is likely to have, the effect of disadvantaging the other person because the other person has 1 or more attributes mentioned in section 7.
- (4) However, a condition or requirement does not give rise to indirect discrimination if it is reasonable in the circumstances.
- (5) In deciding whether a condition or requirement is reasonable in the circumstances, the matters to be taken into account include—
- (a) the nature and extent of any disadvantage that results from imposing the condition or requirement; and
 - (b) the feasibility of overcoming or mitigating the disadvantage; and
 - (c) whether the disadvantage is disproportionate to the result sought by the person who imposes, or proposes to impose, the condition or requirement.

7 Disability—guide-dogs etc
Section 9

omit

8 Racial, sexuality and HIV/AIDS vilification
Part 6

omit

9 New section 67A

in part 7, insert

67A Unlawful vilification

- (1) It is unlawful for a person to incite hatred toward, revulsion of, serious contempt for, or severe ridicule of a person or group of people on the ground of any of the following, other than in private:
- (a) disability;
 - (b) gender identity;
 - (c) HIV/AIDS status;
 - (d) race;
 - (e) religious conviction;
 - (f) sexuality.

Examples—other than in private

- 1 screening recorded material at an event that is open to the public, even if privately organised
- 2 writing a publically viewable post on social media
- 3 speaking in an interview intended to be broadcast or published
- 4 actions or gestures observable by the public
- 5 wearing or displaying clothes, signs or flags observable by the public

Note 1 Serious vilification is an offence under the [Criminal Code](#), s 750.

Note 2 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).

- (2) However, it is not unlawful to—
- (a) make a fair report about an act mentioned in subsection (1); or
 - (b) communicate, distribute or disseminate any matter consisting of a publication that is subject to a defence of absolute privilege in a proceeding for defamation; or

- (c) do an act mentioned in subsection (1) reasonably and honestly, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including discussion or debate about and presentations of any matter.
- (3) In this section:

HIV/AIDS status means status as a person who has the Human Immunodeficiency Virus or Acquired Immune Deficiency Syndrome.

10 Section 68

substitute

68 Victimisation

- (1) It is unlawful for a person (the ***first person***) to subject, or threaten to subject, another person (the ***other person***) to any detriment because—
- (a) the other person, or someone associated with the other person—
- (i) has taken discrimination action; or
 - (ii) proposes to take discrimination action; or
- (b) the first person believes the other person, or someone associated with the other person—
- (i) has taken discrimination action; or
 - (ii) proposes to take discrimination action.
- (2) In this section:

discrimination action means any of the following:

- (a) begin a proceeding in the ACAT or a court in relation to this Act;
- (b) make a discrimination complaint;

- (c) participate in or assist with, a criminal investigation in relation to an offence under the [Criminal Code](#), section 750 (Serious vilification);
- (d) give information or produce a document or other thing to a person exercising a function under the [HRC Act](#) in relation to a discrimination complaint;
- (e) give information, produce a document or other thing or answer a question when required under the [HRC Act](#) in relation to a discrimination complaint;
- (f) give evidence or produce a document or thing to the ACAT or a court in relation to this Act;
- (g) reasonably assert any rights that the other person, or someone else, has under this Act;
- (h) claim that a person has committed an act that is unlawful under this Act, or is an offence against the [Criminal Code](#), section 750, other than a claim that is false and not made honestly;
- (i) do anything else in accordance with this Act.

discrimination complaint means a complaint under the [HRC Act](#) about an unlawful act.

HRC Act means the [Human Rights Commission Act 2005](#).

11 Sections 70 to 73

omit

unlawful under part 3, part 5, section 66 or part 7

substitute

an unlawful act

12 Acts and omissions of representatives
Section 121A (1)

substitute

- (1) This section applies to the doing of an unlawful act (*conduct*).

Note 1 A complaint may be made about an unlawful act (see [Human Rights Commission Act 2005](#), s 42 (1) (c)).

Note 2 *Doing* an act—see s 4A.

13 New section 124

insert

124 Discrimination Regulation 2016—sch 1

- (1) The provisions set out in schedule 1 are taken, on the commencement of this section, to be a regulation made under section 123.
- (2) To remove any doubt and without limiting subsection (1), the regulation may be amended or repealed as if it had been made by the Executive under section 123.
- (3) Also to remove any doubt, the regulation is taken—
- (a) to have been notified under the [Legislation Act](#) on the day the *Discrimination Amendment Act 2016* is notified; and
 - (b) to have commenced on the commencement of the *Discrimination Amendment Act 2016*; and
 - (c) not to be required to be presented to the Legislative Assembly under the [Legislation Act](#), section 64 (1).
- (4) Subsections (1) to (3) are laws to which the [Legislation Act](#), section 88 (Repeal does not end effect of transitional laws etc) applies.
- (5) This section and schedule 1 expire on the day they commence.

14 New schedule 1

insert

Schedule 1 Discrimination Regulation 2016

(see s 124)



Australian Capital Territory

Discrimination Regulation 2016

Subordinate Law SL2016-

made under the

Discrimination Act 1991

1 Name of regulation

This regulation is the *Discrimination Regulation 2016*.

**2 Requirements for assistance animal—Act, s 5AA (3),
definition of *assistance animal***

An assistance animal must be—

- (a) accredited as an assistance animal under a law of a State or the Territory; or
- (b) trained—
 - (i) as an assistance animal by a training organisation recognised for that purpose; and
 - (ii) to meet standards of hygiene and behaviour that are appropriate for an animal in a public place.

15 Dictionary, definition of *discriminate*

omit

16 Dictionary, new definition of *discrimination*

insert

discrimination—see section 8.

17 Dictionary, definitions of *HIV/AIDS status* and *public act*

omit

18 Dictionary, new definition of *unlawful act*

insert

unlawful act means an act that is unlawful under—

- (a) part 3 (Unlawful discrimination); or
- (b) part 5 (Sexual harassment); or
- (c) part 7 (Other unlawful acts).

Part 3 Discrimination Act 1991— amendments about protected attributes and exceptions

19 Interpretation beneficial to people with protected attributes Section 4AA

omit

an attribute mentioned in section 7

substitute

a protected attribute

20 Section 7

substitute

7 Protected attributes

(1) This Act applies to discrimination on the ground of any of the following attributes (a *protected attribute*):

- (a) accommodation status;
- (b) age;

Examples—par (b)

because the person is a child or young person or an older person

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

- (c) association (whether as a relative or otherwise) with a person who is identified by reference to another protected attribute;
- (d) breastfeeding;
- (e) disability;

- (f) employment status;
 - (g) gender identity;
 - (h) genetic information;
 - (i) immigration status;
 - (j) industrial activity;
 - (k) intersex status;
 - (l) irrelevant criminal record;
 - (m) parent, family, carer or kinship responsibilities;
 - (n) physical features;
 - (o) political conviction;
 - (p) pregnancy;
 - (q) profession, trade, occupation or calling;
 - (r) race;
 - (s) record of a person's sex having been altered under the *Births, Deaths and Marriages Registration Act 1997* or a law of another jurisdiction that corresponds, or substantially, corresponds, to [the Act](#), section 26 (Alteration of register);
 - (t) relationship status;
 - (u) religious conviction;
 - (v) sex;
 - (w) sexuality;
 - (x) subjection to domestic or family violence.
- (2) For this Act, *protected attribute* includes—
- (a) a characteristic that people with the attribute generally have; and

- (b) a characteristic that people with the attribute are generally presumed to have; and
- (c) the attribute that a person has; and
- (d) the attribute that a person has had in the past, whether or not the person still has the attribute; and
- (e) the attribute that a person is thought to have, whether or not the person has the attribute; and
- (f) the attribute that a person is thought to have had in the past, whether or not the person has had the attribute in the past.

21 **Meaning of *discrimination***
Section 8

omit

attributes mentioned in section 7

substitute

protected attributes

22 **Domestic accommodation etc**
New section 26 (1A)

insert

- (1A) Also, section 21 does not make it unlawful for a person to discriminate on the ground of accommodation status in relation to the provision of accommodation if the discrimination is reasonable, having regard to any relevant factors.

Example—relevant factors

effect of the discrimination on the person discriminated against

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).

**23 Measures intended to achieve equality
Section 27, example for s (1) (a)**

omit

an attribute mentioned in s 7

substitute

a protected attribute

24 New section 33A

in division 4.1, insert

33A Discrimination relating to accommodation, goods or services etc

Part 3 does not make it unlawful to discriminate against a person in relation to accommodation, providing goods or services or making facilities available only because a person charges for the accommodation, goods, services or facilities.

**25 Work related discrimination
Section 49 (3)**

substitute

(3) In this section:

disability does not include anything mentioned in—

- (a) section 5AA (2) (b) or (c) (Meaning of *disability* etc); or
- (b) section 7 (2) (Protected attributes), other than a disability that the person has.

**26 Discrimination by qualifying bodies
Section 50 (2)**

substitute

(2) In this section:

disability does not include anything mentioned in—

- (a) section 5AA (2) (b) or (c) (Meaning of *disability* etc); or
- (b) section 7 (2) (Protected attributes), other than a disability that the person has.

27 New divisions 4.8 to 4.10

insert

Division 4.8 Exceptions relating to employment status

570 Discrimination relating to employment status

Part 3 does not make it unlawful to discriminate against a person on the ground of employment status in relation to something mentioned in section 10 (1) (Applicants and employees) if the discrimination is reasonable, having regard to any relevant factors.

Example—relevant factors

effect of the discrimination on the person discriminated against

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).

Division 4.9 Exceptions relating to immigration status

57P Discrimination relating to immigration status

Part 3 does not make it unlawful to discriminate against a person on the ground of immigration status if the discrimination is reasonable, having regard to any relevant factors.

Example—relevant factors

effect of the discrimination on the person discriminated against

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).

Division 4.10 Exceptions relating to physical features

57Q Genuine occupational requirements—physical features

Part 3 does not make it unlawful to discriminate against a person on the ground of physical features in relation to employment or work if the employment relates to a dramatic or artistic performance, photographic or modelling work or similar employment or work.

57R Health and safety—physical features

Part 3 does not make it unlawful to discriminate against a person on the ground of physical features if the discrimination is reasonably necessary to—

- (a) protect the health or safety of the person, anyone else or the public generally; or
- (b) protect the property of the person, anyone else or the public generally.

**28 Unlawful vilification
New section 67A (1) (ca)**

insert

(ca) intersex status;

29 Dictionary, note 2

insert

- intersex person (see s 169B)

30 Dictionary, new definitions

insert

accommodation status includes being—

- a tenant; and
- an occupant within the meaning of the *Residential Tenancies Act 1997*; and
- in receipt of, or waiting to receive, housing assistance within the meaning of the *Housing Assistance Act 2007*; and
- homeless.

employment status includes—

- being unemployed; and
- receiving a pension or another social security benefit; and
- receiving compensation; and
- being employed on a part-time, casual or temporary basis; and
- undertaking shift or contract work.

31 Dictionary, definition of *gender identity*

substitute

gender identity means the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person, with or without regard to the person's designated sex at birth.

Note ***Gender identity*** includes the gender identity that the person has or has had in the past, or is thought to have or have had in the past (see s 7 (2)).

32 Dictionary, new definitions

insert

immigration status includes being an immigrant, a refugee or an asylum seeker, or holding any kind of visa under the *Migration Act 1958* (Cwlth).

Note ***Immigration status*** includes the immigration status that the person has or has had in the past, or is thought to have or have had in the past (see s 7 (2)).

intersex status means status as an intersex person.

irrelevant criminal record, in relation to a person, means a record relating to an offence, or an alleged offence, if—

- (a) the person has been charged with the offence but—
 - (i) a proceeding for the alleged offence is not finalised; or
 - (ii) the charge has lapsed, been withdrawn or discharged, or struck out; or
- (b) the person has been acquitted of the alleged offence; or
- (c) the person has had a conviction for the alleged offence quashed or set aside; or
- (d) the person has been served with an infringement notice for the alleged offence; or

- (e) the person has a conviction for the offence, but the circumstances of the offence are not directly relevant to the situation in which discrimination arises; or
- (f) the person has a spent conviction or an extinguished conviction, within the meaning of the *Spent Convictions Act 2000*, for the offence.

Note The *Spent Convictions Act 2000* sets out which convictions can be spent (see [that Act](#), s 11) and when a conviction is spent (see [that Act](#), s 12).

physical features means a person's height, weight, size or other bodily features.

political conviction includes—

- (a) having a political conviction, belief, opinion or affiliation; and
- (b) engaging in political activity; and
- (c) not having a political conviction, belief, opinion or affiliation; and
- (d) not engaging in political activity.

protected attribute—see section 7.

33 Dictionary, definition of *relevant class of people*

omit

an attribute mentioned in section 7

substitute

a protected attribute

34 Dictionary, new definition of *religious conviction*

insert

religious conviction includes—

- (a) having a religious conviction, belief, opinion or affiliation; and
- (b) engaging in religious activity; and
- (c) the cultural heritage and distinctive spiritual practices, observances, beliefs and teachings of Aboriginal and Torres Strait Islander people; and
- (d) engaging in the cultural heritage and distinctive spiritual practices, observances, beliefs and teachings of Aboriginal and Torres Strait Islander peoples; and
- (e) not having a religious conviction, belief, opinion or affiliation; and
- (f) not engaging in religious activity.

Schedule 1 Consequential amendments

(see s 3)

Part 1.1 Criminal Code 2002

[1.1] New chapter 7A

insert

Chapter 7A Other offences

750 Serious vilification

- (1) A person commits an offence if—
 - (a) the person intentionally carries out an act; and
 - (b) the act is a threatening act; and
 - (c) the person is reckless about whether the act incites hatred toward, revulsion of, serious contempt for, or severe ridicule of, a person or group of people on the ground of any of the following:
 - (i) disability;
 - (ii) gender identity;
 - (iii) HIV/AIDS status;
 - (iv) race;
 - (v) religious conviction;
 - (vi) sexuality; and
 - (d) the act is done other than in private; and

- (e) the person is reckless about whether the act is done other than in private.

Examples—other than in private

- 1 screening recorded material at an event that is open to the public, even if privately organised
- 2 writing a publically viewable post on social media
- 3 speaking in an interview intended to be broadcast or published
- 4 actions or gestures observable by the public
- 5 wearing or displaying clothes, signs or flags observable by the public

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).

Maximum penalty: 50 penalty units.

- (2) In this section:

disability—see the [Discrimination Act 1991](#), section 5AA.

gender identity—see the [Discrimination Act 1991](#), dictionary.

HIV/AIDS status means status as a person who has the Human Immunodeficiency Virus or Acquired Immune Deficiency Syndrome.

race—see the [Discrimination Act 1991](#), dictionary.

religious conviction—see the [Discrimination Act 1991](#), dictionary.

sexuality—see the [Discrimination Act 1991](#), dictionary.

threatening act means an act carried out by a person only if the person—

- (a) by the act, intentionally threatens physical harm toward, or toward any property of, the person, or members of the group mentioned in subsection (1) (c) (i) to (vi); or
- (b) is reckless about whether the act incites others to threaten the harm.

[1.2] New section 750 (1) (c) (iiia)

insert

(iiia) intersex status;

[1.3] Section 750 (2), new definition of *intersex status*

insert

intersex status—see the [Discrimination Act 1991](#), dictionary.

Part 1.2 Human Rights Commission Act 2005

[1.4] Section 42 (1) (c)

substitute

(c) a complaint about an unlawful act under the [Discrimination Act 1991](#) (a *discrimination complaint*);

[1.5] New section 42 (1A)

insert

(1A) For a discrimination complaint, the complaint may be made in relation to unfavourable treatment—

(a) on the grounds of 2 or more attributes under the [Discrimination Act 1991](#), section 7; and

(b) occurring on 2 or more occasions.

[1.6] Section 42 (1A)

omit

attributes under the *Discrimination Act 1991*, section 7

substitute

protected attributes under the *Discrimination Act 1991*

[1.7] New section 43 (1) (ea)

insert

(ea) if the complaint is a discrimination complaint—a person who has a sufficient interest in the complaint; or

[1.8] New section 43 (1A)

insert

(1A) For subsection (1) (ea), a person has a *sufficient interest* in a complaint if the conduct complained about is a matter of a genuine concern to the person because of the way conduct of that kind adversely affects, or has the potential to adversely affect, the interests of the person or interests or welfare of anyone the person represents.

[1.9] New section 43 (4A)

insert

(4A) A person mentioned in subsection (1) (ea) may make a complaint only if the aggrieved person consents to the making of the complaint.

[1.10] New section 44 (1) (ba)

insert

(ba) if the complaint is made by a person under section 43 (1) (ea)—name the aggrieved person; and

[1.11] New section 44 (1A)

insert

- (1A) For a discrimination complaint, the complaint need not state whether the discrimination complained about is direct discrimination or indirect discrimination.

Note **Discrimination** occurs when a person directly or indirectly discriminates against someone (see *Discrimination Act 1991*, s 8).

[1.12] Section 53

substitute

53 Meaning of *unlawful act*—div 4.2A

In this division:

unlawful act means an unlawful act under the *Discrimination Act 1991*.

[1.13] New section 53CA

insert

53CA Onus of establishing complaint about discrimination etc

- (1) This section applies to a discrimination complaint, referred to the ACAT under this division, about discrimination by a person against another person by—
- (a) treating, or proposing to treat, the other person unfavourably because of a protected attribute of the other person (***direct discrimination***); or
 - (b) imposing, or proposing to impose, a condition or requirement that has, or is likely to have, the effect of disadvantaging the other person because of a protected attribute of the other person (other than a condition or requirement that is reasonable in the circumstances) (***indirect discrimination***).

- (2) It is a rebuttable presumption that discrimination has occurred if the complainant—
- (a) establishes that—
 - (i) for a complaint about direct discrimination—the treatment or proposed treatment is unfavourable; and
 - (ii) for a complaint about indirect discrimination—the condition or requirement has, or is likely to have, an effect of disadvantaging the other person; and
 - (b) presents evidence that would enable the ACAT to decide, in the absence of any other explanation—
 - (i) for a complaint about direct discrimination—that the treatment or proposed treatment is because of a protected attribute of the other person; or
 - (ii) for a complaint about indirect discrimination—that the effect of disadvantaging the other person is because of a protected attribute of the other person.
- (3) The presumption under subsection (2) is rebutted if the person complained about establishes that—
- (a) for a complaint about direct discrimination—the treatment is not because of a protected attribute of the other person; or
 - (b) for a complaint about indirect discrimination—the effect of disadvantaging a person is not because of a protected attribute of the other person.

Note The onus of establishing an exception or exemption to discrimination is on the person seeking to rely on it (see [Discrimination Act 1991](#), s 70).

- (4) In this section:

protected attribute means an attribute mentioned in the [Discrimination Act 1991](#), section 7.

[1.14] Section 53CA (4)

omit

an attribute mentioned in the *Discrimination Act 1991*, section 7

substitute

a protected attribute under the *Discrimination Act 1991*

[1.15] New section 53DA

insert

53DA Commission to give information etc to ACAT

The commission must give the ACAT (if asked by it) any information or copies of documents in relation to a complaint referred to the ACAT under this division, other than—

- (a) a communication or document to which section 66 (Admissibility of evidence) applies; or
- (b) information, a document or something else relevant to a consideration in relation to a complaint given to the commission under section 73 (Power to ask for information, documents and other things); or
- (c) information given to the commission under section 74 (Requiring attendance etc).

[1.16] New section 53E (2A) and (2B)

insert

(2A) In making an order under subsection (2) (c), the ACAT must consider—

- (a) the person's right to equality before the law and the impact of the discrimination on the enjoyment of that right; and

- (b) the inherent dignity of all people and the impact of the discrimination on the person's dignity; and
- (c) the public interest in ensuring an appropriate balance between the right to equal and effective protection against discrimination and equality before the law without distinction or discrimination and other human rights; and
- (d) the nature of the discrimination; and
- (e) any mitigating factors.

Examples—par (b)—impact of discrimination

distress, humiliation, loss of self-esteem, loss of enjoyment of life

Example—par (c)—other human rights

freedom of expression

Examples—par (d)

serious or repeated discrimination, intentional or malicious discrimination, discrimination on the grounds of 2 or more attributes mentioned in the [Discrimination Act 1991](#), s 7

Examples—par (e)

a public apology, systemic changes to protect against further discrimination

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).

- (2B) The commission may, with the ACAT's consent, intervene in a complaint to make submissions about an order under subsection (2) (c).

[1.17] Section 53E (2A), examples—par (d)

omit

attributes mentioned in the [Discrimination Act 1991](#), s 7

substitute

protected attributes under the [Discrimination Act 1991](#)

[1.18] Section 78 (2) (c) (iv), example

omit

unlawful under the *Discrimination Act 1991*, part 3, part 5, section 66 or part 7

substitute

an unlawful act under the *Discrimination Act 1991*

[1.19] New section 99 (6)

insert

- (6) A person to whom this section applies does not commit an offence under subsection (2) only because the person discloses information in relation to a discrimination complaint if—
- (a) the person discloses the information in exercising a function under this Act in relation to education or research; and
 - (b) all relevant parties consent to the information being disclosed.

Part 1.3 Legal Aid Act 1977

[1.20] Section 68A (9), definition of *unjustified discrimination*

omit

unlawful

substitute

an unlawful act

Part 1.4 **Protection of Public Participation Act 2008**

[1.21] Section 7 (2) (b)

after

Discrimination Act 1991

insert

, section 67A

[1.22] New section 7 (2) (ba)

insert

(ba) that constitutes an offence against the [Criminal Code](#), section 750 (Serious vilification); or

Part 1.5 **Road Transport (Public Passenger Services) Regulation 2002**

[1.23] Section 62 (2), note

omit

s 9

substitute

s 5AA

Part 1.6 Spent Convictions Act 2000

[1.24] Section 3 (2), note

omit

[1.25] Section 3 (3), new note

insert

Note See the [Discrimination Act 1991](#), s 7 (1) (l) for discrimination on the ground of spent conviction or extinguished conviction.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 8 June 2016.

2 Notification

Notified under the [Legislation Act](#) on 23 August 2016.

3 Republications of amended laws

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

I certify that the above is a true copy of the Discrimination Amendment Bill 2016, which was passed by the Legislative Assembly on 4 August 2016.

Clerk of the Legislative Assembly

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