

2016

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Discrimination Amendment Bill 2016

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2016

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Discrimination Amendment Bill 2016

A Bill for

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

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Discrimination Amendment Act 2016*.

4 **2 Commencement**

5 (1) Parts 1 and 2 and schedule 1 (other than the following amendments)
6 commence on the day after this Act's notification day:

- 7 • amendment 1.2
8 • amendment 1.3
9 • amendment 1.6
10 • amendment 1.14
11 • amendment 1.17.

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

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

15 **3 Legislation amended**

16 This Act amends the *Discrimination Act 1991*.

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

1 **Part 2** **Discrimination Act 1991—general**
2 **amendments**

3 **4 Section 4**

4 *substitute*

5 **4 Objects of Act**

6 The objects of this Act are—

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

1 **4AA** **Interpretation beneficial to people with protected**
2 **attributes**

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

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

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

12 **5** **Section 5AA**

13 *substitute*

14 **5AA** **Meaning of *disability***

15 (1) In this Act:

16 ***disability*** means—

- 17 (a) total or partial loss of a bodily or mental function; or
18 (b) total or partial loss of a part of the body; or
19 (c) the presence in the body of organisms that cause disease or
20 illness; or
21 (d) the presence in the body of organisms that are capable of
22 causing disease or illness; or
23 (e) the malfunction, malformation or disfigurement of a part of the
24 body; or
25 (f) a disorder or malfunction that results in a person learning
26 differently from a person without the disorder or malfunction;
27 or

1 (g) a disorder, illness or disease that affects a person's thought
2 processes, perception of reality, emotions or judgment or that
3 results in disturbed behaviour; or

4 (h) any other condition prescribed by regulation.

5 (2) For this Act, *disability* includes—

6 (a) behaviour that is a symptom or manifestation of the disability;
7 and

8 (b) a disability that a person may have in the future, including
9 because of a genetic disposition to the disability; and

10 (c) a disability that it is thought a person may have in the future,
11 whether or not—

12 (i) the person has a genetic disposition to the disability; or

13 (ii) there is anything else to indicate the person may have the
14 disability in the future; and

15 *Note* *Disability* also includes a disability that the person has or is
16 thought to have, and a disability that the person has had in the
17 past, or is thought to have had in the past (see s 7 (2)).

18 (d) reliance on—

19 (i) a support person; or

20 (ii) a disability aid; or

21 (iii) an assistance animal.

22 (3) In this section:

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

26 *disability aid*—

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

1 (b) includes anything prescribed by regulation.

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

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

9 **Examples**

10 carer, assistant, interpreter, reader

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

14 **5AB Liability of person relying on assistance animal etc**

15 (1) This section applies to a person with disability who relies on an
16 assistance animal or disability aid.

17 (2) Nothing in this Act affects the liability of the person for any injury,
18 loss or damage caused by the person's assistance animal or
19 disability aid.

20 (3) In this section:

21 ***assistance animal***—see section 5AA (3).

22 ***disability aid***—see section 5AA (3).

23 **6 Section 8**

24 *substitute*

25 **8 Meaning of *discrimination***

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

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

21 **7 Disability—guide-dogs etc**
22 **Section 9**

23 *omit*

24 **8 Racial, sexuality and HIV/AIDS vilification**
25 **Part 6**

26 *omit*

1 **9 New section 67A**

2 *in part 7, insert*

3 **67A Unlawful vilification**

4 (1) It is unlawful for a person to incite hatred toward, revulsion of,
5 serious contempt for, or severe ridicule of a person or group of
6 people on the ground of any of the following, other than in private:

- 7 (a) disability;
8 (b) gender identity;
9 (c) HIV/AIDS status;
10 (d) race;
11 (e) sexuality.

12 **Examples—other than in private**

- 13 1 screening recorded material at an event that is open to the public, even if
14 privately organised
15 2 writing a publically viewable post on social media
16 3 speaking in an interview intended to be broadcast or published
17 4 actions or gestures observable by the public
18 5 wearing or displaying clothes, signs or flags observable by the public

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

20 *Note 2* An example is part of the Act, is not exhaustive and may extend, but
21 does not limit, the meaning of the provision in which it appears (see
22 [Legislation Act](#), s 126 and s 132).

23 (2) However, it is not unlawful to—

- 24 (a) make a fair report about an act mentioned in subsection (1); or
25 (b) communicate, distribute or disseminate any matter consisting
26 of a publication that is subject to a defence of absolute
27 privilege in a proceeding for defamation; or

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

5 (3) In this section:

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

9 **10 Section 68**

10 *substitute*

11 **68 Victimisation**

12 (1) It is unlawful for a person (the ***first person***) to subject, or threaten to
13 subject, another person (the ***other person***) to any detriment
14 because—

15 (a) the other person, or someone associated with the other
16 person—

17 (i) has taken discrimination action; or

18 (ii) proposes to take discrimination action; or

19 (b) the first person believes the other person, or someone
20 associated with the other person—

21 (i) has taken discrimination action; or

22 (ii) proposes to take discrimination action.

23 (2) In this section:

24 ***discrimination action*** means any of the following:

25 (a) begin a proceeding in the ACAT or a court in relation to this
26 Act;

27 (b) make a discrimination complaint;

Section 11

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

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

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

11 Sections 70 to 73

23 *omit*

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

25 *substitute*

26 an unlawful act

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

3 *substitute*

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

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

7 *Note 2* *Doing* an act—see s 4A.

8 **13 New section 124**

9 *insert*

10 **124 Discrimination Regulation 2016—sch 1**

- 11 (1) The provisions set out in schedule 1 are taken, on the
12 commencement of this section, to be a regulation made under
13 section 123.

- 14 (2) To remove any doubt and without limiting subsection (1), the
15 regulation may be amended or repealed as if it had been made by the
16 Executive under section 123.

- 17 (3) Also to remove any doubt, the regulation is taken—

18 (a) to have been notified under the *Legislation Act* on the day the
19 *Discrimination Amendment Act 2016* is notified; and

20 (b) to have commenced on the commencement of the
21 *Discrimination Amendment Act 2016*; and

22 (c) not to be required to be presented to the Legislative Assembly
23 under the *Legislation Act*, section 64 (1).

- 24 (4) Subsections (1) to (3) are laws to which the *Legislation Act*,
25 section 88 (Repeal does not end effect of transitional laws etc)
26 applies.

- 27 (5) This section and schedule 1 expire on the day they commence.

1 **14 New schedule 1**

2 *insert*

3 **Schedule 1 Discrimination Regulation 2016**

4 (see s 124)



Australian Capital Territory

5 **Discrimination Regulation 2016**

6 **Subordinate Law SL2016-**

7 made under the

8 **Discrimination Act 1991**

9 **1 Name of regulation**

10 This regulation is the *Discrimination Regulation 2016*.

-
- 1 **2** **Requirements for assistance animal—Act, s 5AA (3),**
2 **definition of *assistance animal***
- 3 An assistance animal must be—
- 4 (a) accredited as an assistance animal under a law of a State or the
5 Territory; or
- 6 (b) trained—
- 7 (i) as an assistance animal by a training organisation
8 recognised for that purpose; and
- 9 (ii) to meet standards of hygiene and behaviour that are
10 appropriate for an animal in a public place.
- 11 **15** **Dictionary, definition of *discriminate***
- 12 *omit*
- 13 **16** **Dictionary, new definition of *discrimination***
- 14 *insert*
- 15 *discrimination*—see section 8.
- 16 **17** **Dictionary, definitions of *HIV/AIDS status* and *public act***
- 17 *omit*
- 18 **18** **Dictionary, new definition of *unlawful act***
- 19 *insert*
- 20 *unlawful act* means an act that is unlawful under—
- 21 (a) part 3 (Unlawful discrimination); or
- 22 (b) part 5 (Sexual harassment); or
- 23 (c) part 7 (Other unlawful acts).

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

4 **19 Interpretation beneficial to people with protected**
5 **attributes**
6 **Section 4AA**

- 7 *omit*
8 an attribute mentioned in section 7
9 *substitute*
10 a protected attribute

11 **20 Section 7**

12 *substitute*

13 **7 Protected attributes**

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

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

18 **Examples—par (b)**

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

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

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

-
- 1 (f) employment status;
- 2 (g) gender identity;
- 3 (h) genetic information;
- 4 (i) immigration status;
- 5 (j) industrial activity;
- 6 (k) intersex status;
- 7 (l) irrelevant criminal record;
- 8 (m) parent, family, carer or kinship responsibilities;
- 9 (n) physical features;
- 10 (o) political conviction;
- 11 (p) pregnancy;
- 12 (q) profession, trade, occupation or calling;
- 13 (r) race;
- 14 (s) record of a person's sex having been altered under the *Births,*
15 *Deaths and Marriages Registration Act 1997* or a law of
16 another jurisdiction that corresponds, or substantially,
17 corresponds, to *the Act*, section 26 (Alteration of register);
- 18 (t) relationship status;
- 19 (u) religious conviction;
- 20 (v) sex;
- 21 (w) sexuality;
- 22 (x) subjection to domestic or family violence.
- 23 (2) For this Act, *protected attribute* includes—
- 24 (a) a characteristic that people with the attribute generally have;
- 25 and

Section 21

- 1 (b) a characteristic that people with the attribute are generally
2 presumed to have; and
- 3 (c) the attribute that a person has; and
- 4 (d) the attribute that a person has had in the past, whether or not
5 the person still has the attribute; and
- 6 (e) the attribute that a person is thought to have, whether or not the
7 person has the attribute; and
- 8 (f) the attribute that a person is thought to have had in the past,
9 whether or not the person has had the attribute in the past.

10 **21 Meaning of *discrimination***
11 **Section 8**

12 *omit*

13 attributes mentioned in section 7

14 *substitute*

15 protected attributes

16 **22 Domestic accommodation etc**
17 **New section 26 (1A)**

18 *insert*

19 (1A) Also, section 21 does not make it unlawful for a person to
20 discriminate on the ground of accommodation status in relation to
21 the provision of accommodation if the discrimination is reasonable,
22 having regard to any relevant factors.

23 **Example—relevant factors**
24 effect of the discrimination on the person discriminated against

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

- 1 **23 Measures intended to achieve equality**
2 **Section 27, example for s (1) (a)**
- 3 *omit*
4 an attribute mentioned in s 7
- 5 *substitute*
6 a protected attribute
- 7 **24 New section 33A**
- 8 *in division 4.1, insert*
- 9 **33A Discrimination relating to accommodation, goods or**
10 **services etc**
- 11 Part 3 does not make it unlawful to discriminate against a person in
12 relation to accommodation, providing goods or services or making
13 facilities available only because a person charges for the
14 accommodation, goods, services or facilities.
- 15 **25 Work related discrimination**
16 **Section 49 (3)**
- 17 *substitute*
- 18 (3) In this section:
- 19 *disability* does not include anything mentioned in—
- 20 (a) section 5AA (2) (b) or (c) (Meaning of *disability* etc); or
- 21 (b) section 7 (2) (Protected attributes), other than a disability that
22 the person has.

1 **26 Discrimination by qualifying bodies**
2 **Section 50 (2)**

3 *substitute*

4 (2) In this section:

5 *disability* does not include anything mentioned in—

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

9 **27 New divisions 4.8 to 4.10**

10 *insert*

11 **Division 4.8 Exceptions relating to employment**
12 **status**

13 **57O Discrimination relating to employment status**

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

18 **Example—relevant factors**

19 effect of the discrimination on the person discriminated against

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

1 **Division 4.9** **Exceptions relating to immigration**
2 **status**

3 **57P** **Discrimination relating to immigration status**

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

7 **Example—relevant factors**

8 effect of the discrimination on the person discriminated against

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

12 **Division 4.10** **Exceptions relating to physical**
13 **features**

14 **57Q** **Genuine occupational requirements—physical features**

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

19 **57R** **Health and safety—physical features**

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

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

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

3 *insert*

4 (ca) intersex status;

5 **29 Dictionary, note 2**

6 *insert*

- 7 • intersex person (see s 169B)

8 **30 Dictionary, new definitions**

9 *insert*

10 *accommodation status* includes being—

11 (a) a tenant; and

12 (b) an occupant within the meaning of the *Residential Tenancies*
13 *Act 1997*; and

14 (c) in receipt of, or waiting to receive, housing assistance within
15 the meaning of the *Housing Assistance Act 2007*; and

16 (d) homeless.

17 *employment status* includes—

18 (a) being unemployed; and

19 (b) receiving a pension or another social security benefit; and

20 (c) receiving compensation; and

21 (d) being employed on a part-time, casual or temporary basis; and

22 (e) undertaking shift or contract work.

1 **31 Dictionary, definition of *gender identity***

2 *substitute*

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

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

9 **32 Dictionary, new definitions**

10 *insert*

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

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

17 ***intersex status*** means status as an intersex person.

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

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

Section 33

1 (e) the person has a conviction for the offence, but the
2 circumstances of the offence are not directly relevant to the
3 situation in which discrimination arises; or

4 (f) the person has a spent conviction or an extinguished
5 conviction, within the meaning of the *Spent Convictions*
6 *Act 2000*, for the offence.

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

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

12 *political conviction* includes—

13 (a) having a political conviction, belief, opinion or affiliation; and

14 (b) engaging in political activity; and

15 (c) not having a political conviction, belief, opinion or affiliation;
16 and

17 (d) not engaging in political activity.

18 *protected attribute*—see section 7.

19 **33 Dictionary, definition of *relevant class of people***

20 *omit*

21 an attribute mentioned in section 7

22 *substitute*

23 a protected attribute

1 **34 Dictionary, new definition of *religious conviction***

2 *insert*

3 *religious conviction* includes—

- 4 (a) having a religious conviction, belief, opinion or affiliation; and
- 5 (b) engaging in religious activity; and
- 6 (c) the cultural heritage and distinctive spiritual practices,
7 observances, beliefs and teachings of Aboriginal and Torres
8 Strait Islander people; and
- 9 (d) engaging in the cultural heritage and distinctive spiritual
10 practices, observances, beliefs and teachings of Aboriginal and
11 Torres Strait Islander peoples; and
- 12 (e) not having a religious conviction, belief, opinion or affiliation;
13 and
- 14 (f) not engaging in religious activity.

1 **Schedule 1 Consequential amendments**

2 (see s 3)

3 **Part 1.1 Criminal Code 2002**

4 **[1.1] New chapter 7A**

5 *insert*

6 **Chapter 7A Other offences**

7 **750 Serious vilification**

8 (1) A person commits an offence if—

9 (a) the person intentionally carries out an act; and

10 (b) the act is a threatening act; and

11 (c) the person is reckless about whether the act incites hatred
12 toward, revulsion of, serious contempt for, or severe ridicule
13 of, a person or group of people on the ground of any of the
14 following:

15 (i) disability;

16 (ii) gender identity;

17 (iii) HIV/AIDS status;

18 (iv) race;

19 (v) sexuality; and

20 (d) the act is done other than in private; and

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

3 **Examples—other than in private**

4 1 screening recorded material at an event that is open to the public, even if
5 privately organised

6 2 writing a publically viewable post on social media

7 3 speaking in an interview intended to be broadcast or published

8 4 actions or gestures observable by the public

9 5 wearing or displaying clothes, signs or flags observable by the public

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

13 Maximum penalty: 50 penalty units.

14 (2) In this section:

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

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

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

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

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

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

24 (a) by the act, intentionally threatens physical harm toward, or
25 toward any property of, the person, or members of the group
26 mentioned in subsection (1) (c) (i) to (v); or

27 (b) is reckless about whether the act incites others to threaten the
28 harm.

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

2 *insert*

3 (iiia) intersex status;

4 **[1.3] Section 750 (2), new definition of *intersex status***

5 *insert*

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

7 **Part 1.2 Human Rights Commission**
8 **Act 2005**

9 **[1.4] Section 42 (1) (c)**

10 *substitute*

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

13 **[1.5] New section 42 (1A)**

14 *insert*

15 (1A) For a discrimination complaint, the complaint may be made in
16 relation to unfavourable treatment—

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

19 (b) occurring on 2 or more occasions.

1 **[1.6] Section 42 (1A)**

2 *omit*

3 attributes under the *Discrimination Act 1991*, section 7

4 *substitute*

5 protected attributes under the *Discrimination Act 1991*

6 **[1.7] New section 43 (1) (ea)**

7 *insert*

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

10 **[1.8] New section 43 (1A)**

11 *insert*

12 (1A) For subsection (1) (ea), a person has a *sufficient interest* in a
13 complaint if the conduct complained about is a matter of a genuine
14 concern to the person because of the way conduct of that kind
15 adversely affects, or has the potential to adversely affect, the
16 interests of the person or interests or welfare of anyone the person
17 represents.

18 **[1.9] New section 43 (4A)**

19 *insert*

20 (4A) A person mentioned in subsection (1) (ea) may make a complaint
21 only if the aggrieved person consents to the making of the
22 complaint.

23 **[1.10] New section 44 (1) (ba)**

24 *insert*

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

1 **[1.11] New section 44 (1A)**

2 *insert*

3 (1A) For a discrimination complaint, the complaint need not state
4 whether the discrimination complained about is direct
5 discrimination or indirect discrimination.

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

8 **[1.12] Section 53**

9 *substitute*

10 **53 Meaning of *unlawful act*—div 4.2A**

11 In this division:

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

14 **[1.13] New section 53CA**

15 *insert*

16 **53CA Onus of establishing complaint about discrimination etc**

17 (1) This section applies to a discrimination complaint, referred to the
18 ACAT under this division, about discrimination by a person against
19 another person by—

20 (a) treating, or proposing to treat, the other person unfavourably
21 because of a protected attribute of the other person (***direct***
22 ***discrimination***); or

23 (b) imposing, or proposing to impose, a condition or requirement
24 that has, or is likely to have, the effect of disadvantaging the
25 other person because of a protected attribute of the other
26 person (other than a condition or requirement that is reasonable
27 in the circumstances) (***indirect discrimination***).

- 1 (2) It is a rebuttable presumption that discrimination has occurred if the
2 complainant—
- 3 (a) establishes that—
- 4 (i) for a complaint about direct discrimination—the
5 treatment or proposed treatment is unfavourable; and
- 6 (ii) for a complaint about indirect discrimination—the
7 condition or requirement has, or is likely to have, an
8 effect of disadvantaging the other person; and
- 9 (b) presents evidence that would enable the ACAT to decide, in
10 the absence of any other explanation—
- 11 (i) for a complaint about direct discrimination—that the
12 treatment or proposed treatment is because of a protected
13 attribute of the other person; or
- 14 (ii) for a complaint about indirect discrimination—that the
15 effect of disadvantaging the other person is because of a
16 protected attribute of the other person.
- 17 (3) The presumption under subsection (2) is rebutted if the person
18 complained about establishes that—
- 19 (a) for a complaint about direct discrimination—the treatment is
20 not because of a protected attribute of the other person; or
- 21 (b) for a complaint about indirect discrimination—the effect of
22 disadvantaging a person is not because of a protected attribute
23 of the other person.
- 24 *Note* The onus of establishing an exception or exemption to discrimination is
25 on the person seeking to rely on it (see *Discrimination Act 1991*, s 70).
- 26 (4) In this section:
- 27 *protected attribute* means an attribute mentioned in the
28 *Discrimination Act 1991*, section 7.

1 **[1.14] Section 53CA (4)**

2 *omit*

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

4 *substitute*

5 a protected attribute under the *Discrimination Act 1991*

6 **[1.15] New section 53DA**

7 *insert*

8 **53DA Commission to give information etc to ACAT**

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

12 (a) a communication or document to which section 66
13 (Admissibility of evidence) applies; or

14 (b) information, a document or something else relevant to a
15 consideration in relation to a complaint given to the
16 commission under section 73 (Power to ask for information,
17 documents and other things); or

18 (c) information given to the commission under section 74
19 (Requiring attendance etc).

20 **[1.16] New section 53E (2A) and (2B)**

21 *insert*

22 (2A) In making an order under subsection (2) (c), the ACAT must
23 consider—

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

- 1 (b) the inherent dignity of all people and the impact of the
2 discrimination on the person's dignity; and
- 3 (c) the public interest in ensuring an appropriate balance between
4 the right to equal and effective protection against
5 discrimination and equality before the law without distinction
6 or discrimination and other human rights; and
- 7 (d) the nature of the discrimination; and
- 8 (e) any mitigating factors.
- 9 **Examples—par (b)—impact of discrimination**
10 distress, humiliation, loss of self-esteem, loss of enjoyment of life
- 11 **Example—par (c)—other human rights**
12 freedom of expression
- 13 **Examples—par (d)**
14 serious or repeated discrimination, intentional or malicious discrimination,
15 discrimination on the grounds of 2 or more attributes mentioned in the
16 *Discrimination Act 1991*, s 7
- 17 **Examples—par (e)**
18 a public apology, systemic changes to protect against further discrimination
- 19 *Note* An example is part of the Act, is not exhaustive and may extend,
20 but does not limit, the meaning of the provision in which it
21 appears (see *Legislation Act*, s 126 and s 132).
- 22 (2B) The commission may, with the ACAT's consent, intervene in a
23 complaint to make submissions about an order under
24 subsection (2) (c).

25 **[1.17] Section 53E (2A), examples—par (d)**

- 26 *omit*
27 attributes mentioned in the *Discrimination Act 1991*, s 7
- 28 *substitute*
29 protected attributes under the *Discrimination Act 1991*

1 **[1.18] Section 78 (2) (c) (iv), example**

2 *omit*

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

4 *substitute*

5 an unlawful act under the *Discrimination Act 1991*

6 **[1.19] New section 99 (6)**

7 *insert*

8 (6) A person to whom this section applies does not commit an offence
9 under subsection (2) only because the person discloses information
10 in relation to a discrimination complaint if—

11 (a) the person discloses the information in exercising a function
12 under this Act in relation to education or research; and

13 (b) all relevant parties consent to the information being disclosed.

14 **Part 1.3 Legal Aid Act 1977**

15 **[1.20] Section 68A (9), definition of *unjustified discrimination***

16 *omit*

17 unlawful

18 *substitute*

19 an unlawful act

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

3 **[1.21] Section 7 (2) (b)**

4 *after*

5 *Discrimination Act 1991*

6 *insert*

7 , section 67A

8 **[1.22] New section 7 (2) (ba)**

9 *insert*

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

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

15 **[1.23] Section 62 (2), note**

16 *omit*

17 s 9

18 *substitute*

19 s 5AA

1 **Part 1.6 Spent Convictions Act 2000**

2 **[1.24] Section 3 (2), note**

3 *omit*

4 **[1.25] Section 3 (3), new note**

5 *insert*

6 *Note* See the *Discrimination Act 1991*, s 7 (1) (I) for discrimination on the
7 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 2016.

3 Republications of amended laws

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