

2022

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Minister for Human Rights)

## Discrimination Amendment Bill 2022

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## Discrimination Amendment Bill 2022

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### A Bill for

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

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

1 **1 Name of Act**

2 This Act is the *Discrimination Amendment Act 2022*.

3 **2 Commencement**

4 This Act commences 6 months after its notification day.

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

7 **3 Legislation amended**

8 This Act amends the *Discrimination Act 1991*.

9 *Note* This Act also amends the following legislation (see sch 1):

- 10 • [Children and Young People Act 2008](#)  
11 • [Human Rights Commission Act 2005](#).

12 **4 New section 5B**

13 *insert*

14 **5B Unjustifiable hardship**

15 For this Act, in deciding whether unjustifiable hardship would be  
16 imposed on a person by having to accommodate another person's  
17 protected attribute, all relevant circumstances must be taken into  
18 account, including the following:

- 19 (a) the benefit or detriment likely to be received or experienced by  
20 each person;
- 21 (b) the protected attributes of the other person;
- 22 (c) the estimated cost to, and financial circumstances of, the person  
23 claiming unjustifiable hardship.

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**5** **New sections 23A to 23C**

*in division 3.2, insert*

**23A** **Sporting activities**

It is unlawful for a person responsible for the organisation or administration of a formally organised sporting activity (including a coach or manager) to discriminate against another person in relation to participation in the activity.

**Examples—formally organised sporting activity**

- basketball competition organised by a private school
- dodgeball league match

**Examples—informally organised sporting activity**

- backyard cricket match between friends
- game at a child's birthday party

**23B** **Competitions**

It is unlawful for a person responsible for the organisation or administration of a formally organised competition to discriminate against another person in relation to participation in the competition.

**Examples—formally organised competition**

- singing competition organised by a commercial radio station
- weekend chess competition for individuals under 18 years old
- short film festival run by a not-for-profit organisation

**23C** **Administration of territory laws etc**

(1) It is unlawful for a public authority to discriminate against a person when administering a territory law, or an ACT government program or policy.

(2) Subsection (1) does not—

(a) affect the law relating to the privileges of the Legislative Assembly; or

- 1 (b) apply to—
- 2 (i) for the Office of the Legislative Assembly—an act done,  
3 or a practice engaged in, by the Office when exercising a  
4 function in relation to a proceeding of the Legislative  
5 Assembly; or
- 6 (ii) for an ACT court—an act done, or a practice engaged in,  
7 by the ACT court other than an act done, or a practice  
8 engaged in, by the ACT court in relation to a matter of an  
9 administrative nature; or
- 10 (iii) the doing of an act mentioned in section 18 (whether or not  
11 the act is done by an educational authority).
- 12 (3) In this section:
- 13 ***ACT court***—
- 14 (a) means the Supreme Court, Magistrates Court, Coroner’s Court  
15 or a tribunal; and
- 16 (b) includes a judge, magistrate, tribunal member or any other  
17 person exercising a function of the court or tribunal in relation  
18 to the hearing or determination of a proceeding before the court  
19 or tribunal.
- 20 ***administering***, a territory law or ACT government program or policy,  
21 includes exercising a function under the law or carrying out the  
22 program or policy.
- 23 ***function of a public nature***—see the [Human Rights Act 2004](#),  
24 section 40A.
- 25 ***public authority*** means any of the following:
- 26 (a) an administrative unit;
- 27 (b) a territory authority;
- 28 (c) a territory instrumentality;



- 1 (d) a Minister;
- 2 (e) a public employee;
- 3 (f) an entity whose functions are or include functions of a public  
4 nature, when it is exercising those functions for the Territory or  
5 an entity mentioned in paragraph (a) to (e) (whether or not under  
6 contract).

7 **6 Domestic duties**  
8 **Section 24**

9 *omit*

10 if the duties of the position involve doing domestic duties on the  
11 premises where the first person lives.

12 *substitute*

13 if—

- 14 (a) the duties of the position involve doing domestic duties on the  
15 premises where the first person lives; and
- 16 (b) the discrimination is reasonable, proportionate and justifiable in  
17 the circumstances.

18 **7 Domestic accommodation etc**  
19 **Section 26 (1) (b)**

20 *omit*

1 **8 Sections 28 and 29**

2 *substitute*

3 **28 Insurance and superannuation**

4 (1) This section applies to a person providing insurance or  
5 superannuation services (the *insurance or superannuation services*  
6 *provider*) who discriminates against another person (the *consumer*)  
7 in relation to the terms on which—

8 (a) an annuity or insurance policy is offered or provided to the  
9 consumer; or

10 (b) membership of a superannuation or provident fund or scheme is  
11 offered or provided to the consumer.

12 (2) Part 3 does not make it unlawful for the insurance or superannuation  
13 services provider to discriminate against the consumer if—

14 (a) the discrimination is based on—

15 (i) actuarial or statistical data; or

16 (ii) when actuarial and statistical data is unavailable—other  
17 relevant documents; and

18 (b) it is reasonable for the insurance or superannuation services  
19 provider to rely on the data or other documents; and

20 (c) the discrimination is reasonable, proportionate and justifiable in  
21 the circumstances.

22 (3) If the consumer requests access to the data or other documents, the  
23 insurance or superannuation services provider must—

24 (a) give the consumer a copy of the data or other documents, or a  
25 meaningful explanation of the data or other documents in  
26 writing; or

27 (b) make the data or other documents available for inspection at a  
28 reasonable time and place.

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**9 Sections 31 and 32**

*substitute*

**31 Clubs and voluntary bodies**

Part 3 does not make it unlawful for a club or voluntary body, or the committee of management or a member of the committee of management of the club or body, to discriminate against a person if—

- (a) the club or body is established to benefit a class of people sharing a protected attribute; and
- (b) the discrimination—
  - (i) is in relation to the provision of membership, benefits, facilities or services to the person; and
  - (ii) occurs because the person does not have the protected attribute; and
  - (iii) is reasonable, proportionate and justifiable in the circumstances.

**32 Religious bodies**

(1) Part 3 does not make it unlawful for a religious body to discriminate against a person in relation to the following:

- (a) the ordination or appointment, by the body, of priests, ministers of religion or members of an order;
- (b) the training or education of people seeking ordination or appointment, by the body, as priests, ministers of religion or members of an order;
- (c) the selection or appointment of people to exercise functions for, or in relation to, any religious observance or practice by the body;

- 1 (d) the provision by the body of goods, services or facilities to the  
2 public if—
- 3 (i) the discrimination—
- 4 (A) is on the ground of religious conviction only; and
- 5 (B) conforms to the doctrines, tenets or beliefs of the  
6 body's religion; and
- 7 (C) is necessary to avoid injury to the religious  
8 susceptibilities of adherents of the religion; and
- 9 (ii) the body has published its policy in relation to the  
10 provision of goods, services or facilities; and
- 11 (iii) the policy is readily accessible to the public;
- 12 (e) employment by the body if—
- 13 (i) the discrimination—
- 14 (A) is on the ground of religious conviction only; and
- 15 (B) conforms to the doctrines, tenets or beliefs of the  
16 body's religion; and
- 17 (C) is necessary to avoid injury to the religious  
18 susceptibilities of adherents of the religion; and
- 19 (ii) the body has published its policy in relation to employment  
20 with the body; and
- 21 (iii) the policy is readily accessible to the public;
- 22 (f) any other act or practice of the body that—
- 23 (i) conforms to the doctrines, tenets or beliefs of the body's  
24 religion; and
- 25 (ii) is necessary to avoid injury to the religious susceptibilities  
26 of adherents of the religion.

- 1 (2) Subsection (1) does not apply to the following:
- 2 (a) discrimination in relation to the employment of a person in an
- 3 educational institution;
- 4 (b) discrimination in relation to the admission, treatment or
- 5 continued enrolment of a person as a student at an educational
- 6 institution;
- 7 (c) a religious body whose sole or main purpose is a commercial
- 8 purpose.
- 9 (3) Section 21 (Accommodation) does not make it unlawful for a
- 10 religious body to discriminate against a person in relation to the
- 11 provision of accommodation for members of a relevant class of
- 12 people.

## 13 **10 New sections 33B to 33D**

14 *in division 4.1, insert*

### 15 **33B Genuine occupational qualifications**

- 16 (1) Part 3 does not make it unlawful to discriminate against a person in
- 17 relation to a position as an employee, commission agent, contract
- 18 worker or business partner if—
- 19 (a) it is a genuine occupational qualification of the position that the
- 20 position be filled by a person having a particular protected
- 21 attribute; and
- 22 (b) the discrimination is reasonable, proportionate and justifiable in
- 23 the circumstances.

#### 24 **Examples—genuine occupational qualifications**

- 25 • employing a female carer to provide personal care services for a woman on
- 26 the basis of privacy or modesty
- 27 • selecting a person of a particular race for a role in a theatrical performance on
- 28 the basis of authenticity, aesthetics or tradition

- 1                   •    preferencing people with lived experience of family and domestic violence for  
2                                    peer support positions in a women’s crisis centre

3           (2) Subsection (1) does not apply to discrimination on the ground of  
4           religious conviction.

5   **33C        Inherent requirements of employment**

6           Part 3 does not make it unlawful for an employer to discriminate  
7           against another person (a *prospective employee*) in relation to a  
8           position of employment if—

- 9           (a) the prospective employee is, or would be, unable to carry out the  
10           inherent requirements of the position—  
11                   (i) because of the prospective employee’s protected attribute;  
12                                    and  
13                   (ii) regardless of any reasonable adjustments able to be made  
14                                    by the employer in accordance with section 74; and  
15           (b) the discrimination is reasonable, proportionate and justifiable in  
16           the circumstances.

17   **33D        Competitions—age**

18           Section 23B (Competitions) does not make it unlawful to discriminate  
19           on the ground of age by limiting participation in a competition to  
20           people belonging to a particular age group.

21   **11         Genuine occupational qualifications—sex**  
22   **Section 34**

23           *omit*

1 **12 Educational institutions for members of one sex**  
2 **Section 36**

3 *omit*  
4 the opposite  
5 *substitute*  
6 a different

7 **13 Section 37**

8 *substitute*

9 **37 Pregnancy, childbirth or breastfeeding**

10 Part 3 does not make it unlawful for a person to discriminate against  
11 another person on the ground of the other person's sex only because  
12 the first person gives rights or privileges in relation to pregnancy,  
13 childbirth or breastfeeding to other people.

14 **14 Clubs for members of one sex etc**  
15 **Section 40**

16 *omit*

17 **15 Section 41**

18 *substitute*

19 **41 Sporting activities—sex**

20 (1) Section 23A (Sporting activities) does not make it unlawful to  
21 discriminate on the ground of sex by excluding people of one sex  
22 from participation in any formally organised competitive sporting  
23 activity if—

24 (a) the strength, stamina or physique of competitors is relevant; and

- 1 (b) the discrimination is reasonable, proportionate and justifiable in  
2 the circumstances.
- 3 (2) Subsection (1) does not apply to the following kinds of  
4 discrimination:
- 5 (a) the exclusion of people from participation in—
- 6 (i) the coaching of people engaged in any sporting activity; or  
7 (ii) the umpiring or refereeing of any sporting activity; or  
8 (iii) the administration of any sporting activity; or  
9 (iv) any other formally organised competitive sporting activity  
10 prescribed by regulation;
- 11 (b) discrimination against a child under 12 years old.

12 **16 Exceptions relating to race**  
13 **Division 4.3**

14 *omit*

15 **17 Religious workers**  
16 **Section 44**

17 *omit*

18 teaching, observance

19 *substitute*

20 teaching

21 **18 Sections 47 to 49 and 55**

22 *omit*



1 **19 Section 57 heading**

2 *substitute*

3 **57 Sporting activities—disability**

4 **20 Section 57 (1)**

5 *substitute*

6 (1) Section 23A (Sporting activities) does not make it unlawful to  
7 discriminate on the ground of disability by excluding a person from  
8 participation in any formally organised competitive sporting activity  
9 if—

10 (a) the discrimination is reasonable, proportionate and justifiable in  
11 the circumstances and—

12 (i) the person is not reasonably capable of performing the  
13 actions reasonably required in relation to the sporting  
14 activity; or

15 (ii) the people participating in the sporting activity are selected  
16 in a reasonable way on the basis of their skills and abilities  
17 relevant to the sporting activity and relative to each other;  
18 or

19 (b) the activity is conducted for, or mainly for, people who have a  
20 particular kind of disability and the person does not have a  
21 disability of that kind.

22 **21 Section 57 (2) (d)**

23 *substitute*

24 (d) any other formally organised competitive sporting activity  
25 prescribed by regulation.

- 1 **22 Sections 57A and 57L**
- 2 *omit*
- 3 **23 Section 57M heading**
- 4 *substitute*
- 5 **57M Sporting activities—age**
- 6 **24 Section 57M (1)**
- 7 *substitute*
- 8 (1) Section 23A (Sporting activities) does not make it unlawful to
- 9 discriminate on the ground of age by limiting participation in a
- 10 formally organised competitive sporting activity to people belonging
- 11 to a particular age group.
- 12 **25 Section 57M (2) (d)**
- 13 *substitute*
- 14 (d) any other formally organised competitive sporting activity
- 15 prescribed by regulation.
- 16 **26 Discrimination relating to employment status**
- 17 **Section 57O**
- 18 *after*
- 19 section 10 (1)
- 20 *insert*
- 21 or (2)

- 1 **27** **Division 4.10 heading**
- 2 *substitute*
- 3 **Division 4.10** **Exception relating to physical**
- 4 **features**
- 5 **28** **Genuine occupational requirements—physical features**
- 6 **Section 57Q**
- 7 *omit*
- 8 **29** **New sections 65 to 67**
- 9 *in part 5, insert*
- 10 **65** **Sporting activities—sexual harassment**
- 11 It is unlawful for a person organising, administering or participating
- 12 in a sporting activity to subject another person organising,
- 13 administering or participating in the sporting activity to sexual
- 14 harassment.
- 15 **66** **Competitions—sexual harassment**
- 16 It is unlawful for a person organising, administering or participating
- 17 in a competition to subject another person organising, administering
- 18 or participating in the competition to sexual harassment.
- 19 **67** **Administration of territory laws etc—sexual harassment**
- 20 (1) It is unlawful for a person to subject another person to sexual
- 21 harassment when administering a territory law, or ACT government
- 22 program or policy.
- 23 (2) In this section:
- 24 *administering*, a territory law or ACT government program or policy,
- 25 includes exercising a function under the law or carrying out the
- 26 program or policy.

1 **30 New part 9**

2 *insert*

3 **Part 9 Positive duties**

4 **74 Positive duty to make reasonable adjustments**

- 5 (1) A person must make reasonable adjustments to accommodate another  
6 person's particular needs arising from a protected attribute if  
7 discrimination on the ground of the attribute is unlawful under this  
8 Act.
- 9 (2) For subsection (1), an adjustment is not reasonable if it would cause  
10 unjustifiable hardship to the person making the adjustment.
- 11 (3) Failure to make reasonable adjustments in accordance with this  
12 section is an unlawful act.

13 **75 Positive duty to eliminate discrimination, sexual**  
14 **harassment and unlawful vilification**

- 15 (1) This section applies to an organisation or business, and any individual  
16 with organisational management responsibility for an organisation or  
17 business, required under this Act not to engage in discrimination,  
18 sexual harassment or unlawful vilification in particular  
19 circumstances.

20 **Examples—organisation**

- 21 • educational authority  
22 • sporting club  
23 • church

24 **Examples—individual with organisational management responsibility**

- 25 • sole trader  
26 • chancellor or vice-chancellor at a university  
27 • owner of a small private business

- 
- 1           (2) The organisation, business or individual must take reasonable and  
2           proportionate steps to eliminate the discrimination, sexual harassment  
3           and unlawful vilification.
- 4           (3) In deciding whether steps are reasonable and proportionate, all the  
5           circumstances must be considered, including the following:
- 6               (a) the nature and size of the organisation or business;
- 7               (b) the resources of the organisation, business or individual;
- 8               (c) the business or operational priorities of the organisation,  
9               business or individual;
- 10           (d) practicability and cost of the steps.
- 11          (4) However, this section does not apply to—
- 12               (a) an administrative unit, territory authority or territory  
13               instrumentality until 12 months after the commencement day; or
- 14               (b) an individual with organisational management responsibility for  
15               an entity mentioned in paragraph (a) until 12 months after the  
16               commencement day; or
- 17               (c) any other person until 3 years after the commencement day.
- 18          (5) This subsection, subsection (4) and subsection (6), definition of  
19          ***commencement day*** expire 3 years after the commencement day.
- 20          (6) In this section:
- 21               ***commencement day*** means the day the *Discrimination Amendment*  
22               *Act 2022*, section 3 commences.
- 23               ***organisational management responsibility***, in relation to an  
24               organisation or business, means responsibility for controlling or  
25               directing the organisation or business.

1    **76           Exception or exemption for positive duties**

2           A duty under section 74 or section 75 does not apply to a person to  
3           the extent that—

4           (a) an exception under part 4 applies to make the discrimination  
5           lawful; or

6           (b) the person is, under part 10, exempt from a provision of this Act  
7           that makes the discrimination unlawful.

8    **31           Dictionary, definition of *carer*, example**

9           *substitute*

10          **Example—carer**

11          Jesse has multiple sclerosis and requires constant care. Jesse’s spouse and 3  
12          children share care for Jesse and each is a carer.

13    **32           Dictionary, definition of *club***

14          *substitute*

15          ***club*** means an association (whether incorporated or unincorporated)  
16          formed for social, literary, cultural, political, sporting, athletic or  
17          other lawful purposes that provides and maintains facilities, in whole  
18          or in part, from the funds of the association.

19    **33           Dictionary, definition of *club licence***

20          *omit*

21    **34           Dictionary, definition of *committee of management***

22          *substitute*

23          ***committee of management***, in relation to a club, organisation or  
24          voluntary body, means the group or body of people (however  
25          described) that manages the affairs of the club, organisation or  
26          voluntary body.

1 **Schedule 1**            **Other amendments**

2 (see s 3)

3 **Part 1.1**                    **Children and Young People**  
4 **Act 2008**

5 **[1.1]**            **New part 19.7**

6 *insert*

7 **Part 19.7**                    **Proceedings related to**  
8 **discrimination complaints**

9 **727AA**    **Declaration in relation to discrimination complaint**

- 10            (1) This section applies if—
- 11                    (a) a proceeding before a court involves a matter arising under the  
12                                care and protection chapters; and
- 13                    (b) the matter is also the subject of a discrimination complaint made  
14                                by a party to the proceeding in relation to the *Discrimination*  
15                                *Act 1991*, section 23C.
- 16            (2) The court may, on application by a party to the proceeding  
17                                (the *applicant*) or its own initiative, by order make a declaration  
18                                (a *conflict declaration*) if satisfied that dealing with the  
19                                discrimination complaint may interfere with the proceeding.

20            *Note*            A declaration suspends the complaint process under the *Human Rights*  
21                                *Commission Act 2005* (see s 52C).

- 22            (3) The applicant must serve notice of the application on each affected  
23                                entity as soon as practicable before the application is made.

- 1 (4) The court may order a party to the proceeding to notify an affected  
2 entity of the following:
- 3 (a) the outcome of an application;
- 4 (b) the making or revocation of a conflict declaration.
- 5 (5) In this section:
- 6 *affected entity* means—
- 7 (a) the human rights commission; and
- 8 (b) if the discrimination complaint has been referred to the ACAT—  
9 the ACAT.
- 10 *discrimination complaint*—see the *Human Rights Commission*  
11 *Act 2005*, section 42 (1) (c).

12 **727AB Discrimination commissioner may make submission**

- 13 (1) The discrimination commissioner may make a submission in an  
14 application made under section 727AA with the leave of the court.
- 15 (2) The court may give leave subject to conditions.

16 **Part 1.2 Human Rights Commission**  
17 **Act 2005**

18 **[1.2] New section 52 (3)**

19 *insert*

- 20 (3) In considering a discrimination complaint, the commissioner may  
21 also consider whether the duty under the *Discrimination Act 1991*,  
22 section 75 has been met.

23 *Note* The commission may ask for information or documents relevant to a  
24 consideration under this subsection (see s 73).



1 **[1.3] New section 52C**

2 *in division 4.2, insert*

3 **52C Effect of declaration made under Children and Young**  
4 **People Act 2008**

5 If a court makes a conflict declaration under the *Children and Young*  
6 *People Act 2008*, section 727AA in relation to a discrimination  
7 complaint, the commission must suspend dealing with the complaint  
8 until either of the following happen:

- 9 (a) the court revokes the declaration;
- 10 (b) the court proceeding in relation to which the declaration is made  
11 is finalised.

12 **[1.4] New section 53DB**

13 *insert*

14 **53DB Consideration of positive duty**

15 In considering a discrimination complaint, the ACAT may also  
16 consider whether the duty under the *Discrimination Act 1991*,  
17 section 75 has been met.

- 1 **[1.5] New section 53EA**
- 2 *in division 4.2A, insert*
- 3 **53EA Effect of declaration made under Children and Young**  
4 **People Act 2008**
- 5 If a court makes a conflict declaration under the *Children and Young*  
6 *People Act 2008*, section 727AA in relation to a discrimination  
7 complaint, the ACAT must suspend dealing with the complaint until  
8 either of the following happen:
- 9 (a) the court revokes the declaration;
- 10 (b) the court proceeding in relation to which the declaration is made  
11 is finalised.
- 

## Endnotes

- 1 **Presentation speech**  
Presentation speech made in the Legislative Assembly on 30 November 2022.
- 2 **Notification**  
Notified under the [Legislation Act](#) on 2022.
- 3 **Republications of amended laws**  
For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).
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