

The Government is aiming to modernise our *Discrimination Act 1991* (Discrimination Act) and put the ACT at the forefront of best practice in promoting equal opportunity, respect for diversity and social inclusion in our community.

You can find out more about the background to this project at the Pathway to Discrimination Law Reform website: <https://justice.act.gov.au/justice-programs-and-initiatives/canberra-inclusive-progressive-equal>

## Protection from discrimination

Discrimination occurs when a person is treated differently to other people because of something about them (called **protected attributes** in ACT law). The **protected attributes** in the ACT are:

- |                                                                                                    |                                                        |                                                                              |
|----------------------------------------------------------------------------------------------------|--------------------------------------------------------|------------------------------------------------------------------------------|
| > accommodation status<br>(e.g. homelessness)                                                      | > immigration status                                   | > race                                                                       |
| > age                                                                                              | > industrial activity                                  | > record of a person's sex<br>having been altered on an<br>official register |
| > association with a person<br>who is identified by<br>reference to another<br>protected attribute | > irrelevant criminal record                           | > relationship status                                                        |
| > breastfeeding                                                                                    | > parent, family, carer or<br>kinship responsibilities | > religious conviction                                                       |
| > disability                                                                                       | > physical features                                    | > sex                                                                        |
| > employment status                                                                                | > political conviction                                 | > sex characteristics                                                        |
| > gender identity                                                                                  | > pregnancy                                            | > sexuality                                                                  |
| > genetic information                                                                              | > profession, trade,<br>occupation or calling          | > subjection to domestic or<br>family violence.                              |

For more information about the Discrimination Act see the Discussion Paper on the Discrimination Law Reform Project website: <https://justice.act.gov.au/justice-programs-and-initiatives/discrimination-law-reform>.

## What is a positive duty?

A positive duty to eliminate discrimination requires an organisation to identify areas where discrimination may occur and to take steps to prevent this. A positive duty can be imposed on government agencies or may apply more broadly to include organisations and businesses.

A positive duty can make sure that organisations make improvements to systems and practices to address areas where discrimination might otherwise occur.

The positive duty is different to the current complaints-based system in the Discrimination Act where a person is required to make a complaint of discrimination before any action is taken to deal with discrimination. The requirement to make a complaint can be a barrier for vulnerable people.

A positive duty would not necessarily create a new basis for making a complaint. However, where organisations have taken positive steps to deal with discrimination, this can be considered when dealing with the complaint.

## What reforms are being considered?

**The Government is considering amending the Discrimination Act to include a positive duty to eliminate discrimination.**

A positive duty in the Discrimination Act to eliminate discrimination would be consistent with the Human Rights Act and could assist to create a culture of equality and non-discrimination. A positive duty would also reduce the burden on individual complainants and is another way to stop systemic discrimination.

Considerations for introducing a positive duty to eliminate discrimination include:

### Who would be required to comply with a positive duty?

A positive duty could apply to public bodies or to organisations in general. The duty could be introduced in stages starting with public bodies and extending later to private businesses.

### How would the duty be applied and enforced?

As there are differences across organisations in terms of size and available resources, the precise actions taken to reduce discrimination will look different for each individual organisation. The law could provide guidance as to what different organisations can be doing to meet their positive duty. Any failure to comply with the positive duty could be raised in the context about a specific complaint about unlawful discrimination but should not, itself, be the subject of a stand-alone complaint.

### What functions or powers should be given to the ACT Human Rights Commission?

The implementation of a positive duty could be supported by additional functions been conferred on the ACT Human Rights Commission. The Commission's existing functions could be enhanced to enable it to monitor, investigate and ensure compliance with the positive duty.

### What supports would be necessary to inform organisations of their obligations?

Organisations would likely need a range of resources and information to meet new obligations under a positive duty.

## Making a submission

Submissions on any of the issues raised here are invited by **midnight Sunday 9 January 2021**.

Questions you might want to make a submission about:

- Should there be a positive duty in the ACT to eliminate discrimination?
- Should this duty apply only to Government agencies or to other organisations and businesses?
- What powers should the ACT Human Rights Commission have to implement a positive duty?
- Is there anything else you would like to tell us about a positive duty?

Submissions or questions about the Quick Guide can be sent to [civilconsultation@act.gov.au](mailto:civilconsultation@act.gov.au).

If you require this document in an alternative, accessible format, or if you require assistance in making a submission, please contact us so we can help.

Submissions will be published on the ACT Government's Justice and Community Safety Directorate website unless you tell us that you would like your submission to be confidential. The options discussed here are

intended to promote informed public debate. They are not the Government's final proposals. All submissions received will inform the final reform proposals.