

EXCEPTIONS FOR RELIGIOUS BODIES

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

In the ACT, it is against the law to discriminate against a person because of one of these protected attributes:

- > at work;
- > in education;
- > when allowing access to premises;
- > when providing goods, services and facilities;
- > when providing accommodation; and
- > when clubs make membership decisions or offer benefits to members.

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/canberra-inclusive-progressive-equal>.

Under the *Human Rights Act 2004*, all individuals are entitled to **freedom of religion**. This reflects that religion is:

- > a key aspect within the lives of many people; and
- > respect for religious belief and practice is a basic feature of a diverse and accepting society.

The right to express religion is not unlimited. For example, sometimes it is necessary to limit a person's ability to express their religion in order to protect other people. More information about this can be found in the **Discussion Paper** on the Discrimination Law Reform Project website:

<https://justice.act.gov.au/justice-programs-and-initiatives/canberra-inclusive-progressive-equal>.

What are exceptions?

There are some situations where it is not against the law to discriminate. In the Discrimination Act, these are called **exceptions**.

There are over 50 exceptions in the Discrimination Act. The Government is looking at whether these exceptions need to be updated to make sure the ACT continues to protect people who are vulnerable and promote diversity and inclusion.

What are the current exceptions for religious bodies?

The Discrimination Act contains some exceptions for religious bodies.

The Government is interested in hearing your views on current exceptions relating to 'religious bodies':

- > When **dealing with members of the public**, religious bodies (except religious schools) may discriminate if their actions follow their religion's teachings and are necessary to avoid harm to the "religious susceptibilities" of their followers;
- > There is a more limited exception for **religious schools**, which only permits discrimination against staff or prospective students on the grounds of religion in certain situations, and only on the condition that the school has made its public policy on these matters clear. These protections were introduced into ACT law in 2018;
- > Religious bodies can discriminate on any ground when **arranging religious observances** (such as ordaining priests).

What reforms are being considered?

Religious bodies dealing with members of the public

The exception for religious bodies dealing with members of the public covers a range of areas, including where religious organisations provide services, accommodation and employment.

The Government is seeking your views on whether this exception should be kept, changed or removed. The questions asked below are designed to start the conversation.

What is a religious body? Should it include commercial organisations?

It isn't clear at the moment what falls within the definition of 'religious body', including whether organisations that have mostly commercial purposes are covered. The Government is considering whether commercial organisations should be included within the meaning of 'religious bodies'.

Should religious bodies be permitted to discriminate when providing goods or services to the public?

Religious bodies may provide a wide range of goods or services to the community on a not-for-profit or charitable basis, such as services for people at risk of homelessness or healthcare. The Government is considering whether discrimination law should require religious bodies to offer their services **equally to all groups of people** (for example, by not refusing services to people based on their marital status or sexuality).

Should religious bodies be permitted to discriminate in employment?

At the moment, ACT law allows discrimination of staff in religious schools where the staff member's religion would conflict with the ability of the school to operate consistently with its religion. Policies about the school's approach have to be available for everyone to see. Religious healthcare providers are also allowed to discriminate in employment decisions where the role is of a religious nature and the employee's religion would conflict with this.

The Government is looking at ways to protect all staff members employed by religious bodies, not just people employed in schools or by healthcare providers. One option would be to only allow discrimination in employment by religious bodies when the duties are of a religious nature. This would mean, for example, that a chaplaincy role could be limited to a person of the relevant religion.

Another option would be to change and expand the law that forbid discrimination against staff in religious schools so that it applies for all types of employment (not just schools). This would mean discrimination against staff (present or future) by religious bodies would not be allowed, except in a small set of circumstances (such as where it is on the grounds of the staff member's religion and it is a religious role).

Should the exception only apply in certain sectors?

The Government is considering whether religious bodies in some sectors should be allowed to continue to rely on the exception. For example, the exception could be limited so that it does not apply to bodies that receive public funding (like hospitals or faith-based aged care providers). This would be a **sector-based approach**.

Should the exception only apply on the basis of certain grounds?

The Government is considering whether to limit the religious bodies exception so that it only allows discrimination on the basis of some protected attributes or grounds (like religious belief), rather than permitting discrimination on any ground.

This could include permitting religious bodies to discriminate on the grounds of religious belief only. This would allow, for example, the Anglican Church to only hire people who share Anglican beliefs for certain roles, but not allowing discrimination on other grounds such as race. This would be an **attribute-based approach**.

Religious observances

It is a core part of the right to freedom of religion to be able to worship without government interference. This extends to religious institutions organising their worship.

ACT Law currently allows religious bodies to discriminate on any ground when arranging religious observances. Religious observances include **ordaining or appointing** priests, ministers of religion or members of a religious order, **training or educating** people to assume these roles, or **selecting lay people to exercise functions connected with religious observances or practices**.¹

Should the exception for religious observances be reformed and limited to certain circumstances?

The Government is considering refining and limiting this exception so that it permits religious bodies to discriminate when arranging their religious observances **only when their religion requires this different treatment**.

For example, some Christian denominations interpret their religious doctrines not to permit women to be priests. The exceptions could protect these interpretations, but **not allow discriminatory conduct for reasons unconnected with doctrine**. Refusing to ordain or appoint a person with a disability as a priest, for example, would not be protected by the exception

Making a submission

Submissions on any of the issues raised here are invited by **midnight Sunday 9 January 2022**.

Submissions or questions about the Quick Guide can be sent to 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 presented 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.

¹ Section 32(1)(a)-(c) of the Discrimination Act. Arranging religious observances means ordaining or appointing priests, ministers of religion or members of a religious order; training or educating people to assume these roles, or selecting lay people to exercise functions connected with religious observances or practices.