

EXCEPTIONS FOR SPORT



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

In the ACT, it is against the law to discriminate against a person:

- > 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.

Should sport be covered by the Act?

At the moment, sport is not expressly listed as one of the situations where it is against the law to discriminate. However, organised sport is a type of service, so it may be covered through that rule. There are also exceptions dealing with sport (discussed later in this guide).

The Government is considering changes to the Discrimination Act to expressly include sport to provide greater clarity. This would be achieved by amending the Act to apply to all areas of public life, with an exception for private conduct. Different aspects of sport including participation, coaching, umpiring, and refereeing, as well as activities involved in the administration of sport would also potentially be covered.

For more information about the coverage of 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>.

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 exceptions for sport?

The Discrimination Act allows people to be excluded from participating in competitive sport for reasons of sex, age and disability:

- > **Sex:** People of a different sex may be excluded from a single-sex sport if the “strength, stamina or physique of competitors” is relevant in that sport.
- > **Disability:** a person can be excluded from sport if:
 - the person has a disability and the sport requires physical or intellectual abilities that the person does not have, or
 - the sport is being conducted for people with a particular disability and the person does not have that kind of disability.
- > **Age:** people can be excluded from sport if the sport is only for people of a particular age group.

What reforms are being considered?

Canberra is a healthy and active city and for many people sport is an important lifestyle activity that supports social connections and well-being. Our discrimination laws should promote participation in sport by everyone.

The main reasons where it might be fair and reasonable to discriminate in sport are to protect the **safety of the players** and the **integrity of the game** (its level of competitiveness).

Some of the problems with the way the sport exceptions currently operate include:

- > the sport exceptions assume that there is always a connection between a person’s biological sex and a person’s sporting performance.
- > people in our community who do not identify with binary categories of male and female, or whose gender identity is not the same as their sex assigned at birth, aren’t currently protected by the sports exceptions;

- > the exceptions assume that people with disability can't perform to the same level as able-bodied athletes, and don't properly deal with situations where a person with a disability may compete at the same (or better) level in a different way (such as people competing with prosthetic limbs);
- > the language in the disability-related sport exceptions doesn't properly reflect that a person's ability can be affected by barriers to their participation in society.

The Government is considering whether to change the exceptions for sport, focusing on the exceptions relating to sex and disability.

Should the exceptions focus on safety and competitiveness?

The Government is considering whether exceptions for sex and disability in sport should be changed so that discrimination would only be allowed where it is necessary to preserve safety and competitiveness.

This would recognise that physical attributes like strength are relevant, but it would remove the assumption that a person's sex is the main reason for a person's strength.

Should discrimination against people in sport be prohibited for children under 12?

The Government is considering whether any exceptions for discrimination in sport would not apply to children under 12.

This recognises that sport for younger children is primarily a social and health activity, where physical differences among the players are less likely to be critical for safety and competitiveness.

Should other groups be protected by the sport exceptions?

The Government is considering whether any exception for sport should cover any other grounds protected by the Discrimination Act. This would include protection from discrimination on the basis of gender identity or intersex status.

Making a submission

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

Submissions or questions about reform to the Discrimination Act 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 in this Quick Guide are intended to promote informed public debate. They are not the Government's final proposals. All submissions received will inform the final reform proposals.