

EXCEPTIONS FOR VOLUNTARY ORGANISATIONS



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.

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>.

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 voluntary bodies?

Under the Discrimination Act, a “voluntary body” is an association or other organisation engaged in not-for-profit activities. It does not include licenced clubs, organisations established by laws (such as government agencies), and associations providing financial assistance to their members.

What are the exceptions for voluntary bodies?

Section 31 of the Discrimination Act currently permits discrimination by voluntary bodies on any ground when admitting members or providing services, benefits, or the use of their facilities, to any person.

What reforms are being considered?

Voluntary bodies in the ACT provide important services, including for groups of people protected under discrimination law (e.g. youth and aged care services, disability services, and services for Aboriginal and Torres Strait Islander people). Many such organisations receive public funding and interact frequently with members of the public.

The Government is considering whether this exception should be removed or limited to certain situations.

Should voluntary bodies exceptions be changed?

The Government considers that the current exception is very broad. It essentially means that voluntary organisations do not have to comply with discrimination law when interacting with their members or with the public. The government is considering limiting the exception for voluntary bodies to apply only in certain situations.

One option would be that a voluntary body could refuse (or put conditions on) membership or providing services, but only when the purpose is to ensure that people who are entitled to protection under the Discrimination Act have equal opportunities and/or to meet their special needs. Another way of making this change could be to allow for discrimination by voluntary bodies in membership or service provision where the organisation exists to promote the interests of that group of people.

Should the exception be removed?

Instead of changing the exception, the Government is also considering removing the exception. If the exception is removed, voluntary bodies may still be allowed to discriminate in certain situations. Voluntary bodies would also be able to apply for an exemption from the ACT Human Rights Commission if there is a good reason for treating people differently. If an exemption is granted this would make their activities lawful under the Discrimination Act.

Making a submission

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

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 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.