

EXCEPTIONS FOR LICENSED CLUBS

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:

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| > 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:

- > 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 the exceptions for licenced clubs?

Under section 22 of the Discrimination Act, clubs holding a liquor license are not allowed to discriminate against people in **membership decisions** or when **offering services or benefits to members**.

However, there are some exceptions where discrimination is allowed in membership decisions:

- > Clubs can favour people of a particular race, age, disability or sex for membership, if the club exists to provide benefits for people of that race, age, disability or sex. These clubs are **clubs for specific groups**. A German club, for example, could exist to provide a recreational and business networking space for people with German backgrounds. Or a Polish club could limit membership to Polish people or offer discounted membership to Polish people.
- > Offering different benefits to members of different sexes is allowed if it isn't practical for the members to receive the same benefits. However, the benefits must be equivalent or shared between them fairly and proportionately.
- > Discrimination on the ground of disability is also allowed where giving the person with a disability the same benefits as everyone else would cause unjustifiable hardship to the club.

These exceptions apply only to licenced clubs. Unlicensed clubs (like a chess club or ski club) may be covered by other exceptions for **voluntary bodies** which are discussed in a separate fact sheet available at <https://justice.act.gov.au/justice-programs-and-initiatives/discrimination-law-reform>.

What are the reform options?

The Government is considering whether the exceptions relating to membership decisions should be removed or limited to certain situations.¹ Considerations include:

Should the exceptions for clubs be removed?

If the exception is removed, clubs may need to apply for exemptions from the ACT Human Rights Commission to be certain that their activities do not breach the Discrimination Act.

Should discrimination by clubs on membership matters be changed?

If the exception is not removed, the Government is considering whether, and how, the licenced clubs exception should be changed.

¹ Many clubs provide services to non-members, for example renting out rooms or permitting non-members to dine in their facilities. The way clubs treat non-members is covered by the law on the provision of services and does not generally engage the clubs exception, except for s 57L of the Discrimination Act, which permits age discrimination and covers clubs both in membership decisions and the provision of goods, services and facilities.

One option would be to permit licenced clubs to discriminate in membership decisions 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 option would be to change the exception allowing clubs for specific groups to discriminate on membership matters so that it applies to all protected groups. This would create the same standard for everyone. If a licenced club existed to benefit a group of people who are protected by the Discrimination Act, then the licenced club could limit their membership or benefits to those people.

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.