

INSURANCE AND SUPERANNUATION COMPANIES EXCEPTIONS



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 (these differences are 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 insurance companies?

Under the Discrimination Act, **insurance companies** can discriminate in relation to the terms on which an insurance policy is offered if the discrimination is **reasonable**, having regard to any **actuarial or statistical data**, and as long as it is reasonable for the insurer to rely on that data.

What are the exceptions for superannuation companies?

Superannuation companies may discriminate on any ground (except age) in the terms or conditions relating to a superannuation fund or scheme. Age discrimination is only allowed by superannuation companies if:

- > the discrimination is because of the application of a Commonwealth law, or
- > the discrimination is based on reasonable actuarial or statistical data and is reasonable having regard to the data and any other relevant factors, or
- > if there are no reasonable actuarial or statistical data, the discrimination is based on reasonable data and is reasonable having regard to the data and any other relevant factors, or
- > if there are no reasonable data at all, the discrimination is reasonable having regard to any other relevant factors

What are the reform options?

The commercial viability of their businesses requires insurance and superannuation companies to be able to differentiate between people based on their risk profile, which may depend on protected attributes such as sex, age or disability.

However, the denial of insurance can affect a person's ability to fully participate in society such as through employment, travel and home ownership.

The Government is considering whether these exceptions should be kept or changed.

Should the requirements about actuarial or statistical data be strengthened for insurance and superannuation?

There may not always be any relevant data to inform decisions about risk. But there is also a concern that decisions about risk are being made without foundation or based on discriminatory assumptions.

The government is considering whether the exceptions could be changed so that any discrimination must be supported by relevant actuarial or statistical data.

Should discrimination only be allowed where it is justified as reasonable?

The Government is considering whether any discrimination in insurance or superannuation would only be permissible where it is justified as reasonable (in accordance with the *Human Rights Act 2004*).

This would require decision makers, before refusing insurance or superannuation, to consider whether less restrictive options are available such as providing limited coverage.

Should consumers be provided access to data on which decision are based, upon written request?

Currently, consumers do not have access to the data on which decisions are made about superannuation.

The Government is considering whether consumers should be provided access to data on which decisions are based, upon written request. Providing the right of access to the data directly to the consumer may be useful to inform decisions on whether and how to challenge the provider's decision.

Should the exceptions be repealed?

The Government is considering whether the insurance and superannuation exceptions could be removed entirely and instead require those that rely on them to apply for exemptions.

Making a submission

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

Submissions or questions 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 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.