

Office for Multicultural Affairs Community Services Directorate

June 2022

Shaping the Multicultural Recognition Act for the ACT

Contents

Background 3

The Journey so far 3

Summary of feedback from phase one consultation 3

Why we need a Multicultural recognition Act 3

we want to hear from you 3

**Proposed Multicultural Charter** 4

Questions for consideration 5

**Proposed Multicultural Advisory Council** 5

Questions for consideration 6

**Proposed reporting requirements** 7

Questions for consideration 7

The Multicultural REcogniton ACT and existing legislation 8

**Human Rights Act 2004** 8

**Discrimination Act 1991** 8

Next steps 10

# Background

The ACT Government is developing a Multicultural Recognition Act to formalise in legislation our strong and ongoing support for a culturally and linguistically diverse ACT.

The new legislation will further the ACT Government’s commitment to an inclusive and welcoming Canberra where everyone can belong and participate in social, cultural, economic and civic life.

# The Journey so far

In April 2021 we released the first discussion paper, [*Towards a Multicultural Recognition Act for the Australian Capital Territory*](https://yoursayconversations.act.gov.au/multicultural-recognition-act)*.* This paper formed the basis for community consultation and enabled us to hear from you about the proposed legislation and what should be included.

We held conversations online, face-to-face and directly with stakeholders, and received several formal submissions.

# Summary of feedback from phase one consultation

We heard from you about:

* The need for a set of guiding principles in a Charter to define what our ACT community strives to be.
* Legislating the Multicultural Advisory Council to advocate on behalf of the multicultural community to the ACT Government.
* Embedding transparent accountability mechanisms into government practice with regular reporting back to the ACT community.

This feedback is summarised in a [Listening Report](https://yoursayconversations.act.gov.au/multicultural-recognition-act) and has been invaluable in formulating the draft Multicultural Recognition Bill.

# Why we need a Multicultural recognition Act

A Canberra where the cultural and linguistic diversity of all Canberrans is recognised, valued and embraced is a shared responsibility. The creation of a Multicultural Recognition Act formalises this commitment and shared responsibility for the benefit of all Canberrans.

We experience cultural richness every day in our workplaces, organisations and learning institutions, and through language, history, dress, food, music and celebrations. This connects Canberra to all parts of the world, shaping our identity as a diverse and dynamic community

The success of the Multicultural Recognition Act will be measured by the way we as a community recognise, value and embrace the growing diversity of cultures and languages to make Canberra a place where everyone feels included and belongs.

# we want to hear from you

In this second round of community consultation, we will be hosting workshops to hear from you. The workshops will focus on:

* the values and principles expressed in the Multicultural Charter
* how the Multicultural Advisory Council can best represent Canberra’s culturally and linguistically diverse community
* the public reporting and accountability you would like to see.

You can also make comments, provide detailed feedback or upload a submission through the [YourSay](https://yoursayconversations.act.gov.au/multicultural-recognition-act) webpage.

The purpose of the Multicultural Recognition Act is to define the Canberra we want to live in now and into the future and to complement existing reporting and enforcement mechanisms in the
*Human Rights Act 2004* and the *Discrimination Act 1991.*

The workshops will be supported by representatives from the Human Rights Commission and the Justice and Community Safety Directorate to discuss the intersection between the Acts and the practical application of the new Multicultural Recognition Act. The Multicultural Advisory Council will also support the workshops to explore the principles in the Multicultural Charter in more detail.

**Proposed Multicultural Charter**

The Multicultural Charter will provide a positive duty and a rights-based values statement for the Canberra we want to live in and the norms we want to live by.

In community consultations held in 2021 we heard what the Canberra community want from the Charter.

Feedback was supportive of the proposed scope of the principles and suggestions were made to ensure the use of language and terminology is strengths-based, inclusive and non-discriminatory.

In refining the Multicultural Charter, we further considered principles included in legislation and policy across Australia, the feedback provided by the Canberra community and alignment with ACT Government policies.

Specifically, the principles aim to provide:

* Clear definitions, and core values, for recognising, valuing celebrating and promoting cultural and linguistic diversity in the ACT.
* A commitment to actively responding to racism and discrimination.
* An acknowledgement that language is central to the preservation and recognition of cultural identity.

The proposed principles below intend to speak directly to every Canberran and place a clear and positive obligation on all Canberrans to understand biases and be open, respectful and embracing of diversity in all its forms.

The draft principles are:

The Legislative Assembly declares to each and every individual in the ACT that—
(1) you are entitled to live in a community where there is mutual respect, irrespective of your culture, language, religion or spiritual belief; and(2) you have a shared obligation to stop racism, discrimination and the negative effects they have on our community; and
(3) you are free and safe to express, practise, share and maintain your cultural and religious or spiritual identity; and
(4) your varied experiences and personal attributes, as an individual or as part of a community, contribute to the unique expression of your cultural identity, and is recognised and respected; and
(5) you belong to the ACT community, and are free to participate on equal terms in the social, cultural, economic, civic and political life of the ACT; and
(6) whether you are a refugee, migrant or otherwise, you are forever welcome and your contributions to the ACT are valued and recognised; and
(7) language is central to the preservation and appreciation of cultural identity, and you are free and are supported to use, preserve and promote your language; and
(8) you are an integral part of the ACT’s cultural, linguistic and religious or spiritual diversity, and are supported to enjoy and celebrate this diversity in all aspects of community life.

### Questions for consideration

1. **Do the principles reflect a clear and ambitious vision for the ACT you want to live in?**
2. **What do you like about the principles?**
3. **How can they be improved?**

**Proposed Multicultural Advisory Council**

The Multicultural Advisory Council (Council) advises the Minister on issues of interest or concern to the ACT culturally and linguistically diverse community and supports the exchange of information and ideas between the Minister and the members of the ACT community.

In community consultations held in 2021 we received feedback on the focus, direction and representation of the Council:

* The Council should be independent and have direct access to the Minister.
* The Terms of Reference should be flexible enough to allow social and political change.
* The Council should be a conduit between the community and the Minister/Government and provide advice to the Minister.
* There were differing community views about the composition of Council.
* Transparency is important. Meeting minutes and advice to Minister should be publicly available.
* The Council should be adequately resourced.

The Multicultural Recognition Act will detail the establishment, functions, membership and appointments, of the Multicultural Advisory Council.

To enable the Multicultural Advisory Council to remain responsive to the changes of a growing ACT community, a Terms of Reference will be developed after the Act is passed. The Terms of Reference will detail operational matters, including how the Council will conduct meetings, meeting quorum requirements, and the keeping and publishing of meeting minutes.

The proposed Multicultural Advisory Council will have the following functions:

1. Advising the Minister on ways to:
* continue to grow the cultural and linguistic diversity of the ACT
* encourage the adoption and application of the multicultural charter
* increase opportunities for active participation in social, cultural, economic and civic life in the ACT
* foster harmonious relations within the ACT community
* strengthen the ACT as a welcoming and inclusive community for all.
1. Facilitating the exchange of information and ideas between the Minister and the culturally or linguistically diverse community of the ACT.
2. Undertaking consultation to identify the evolving needs of the culturally or linguistically diverse community in the ACT.
3. Providing advice to, and consulting with, any group or entity as directed by the Minister.

The proposed Multicultural Advisory Council will have:

1. Eleven members to represent the diverse cultural, gender, age, residency and immigration status and generations of migrants who call Canberra home.
2. The following representation:
* people who represent cultural or linguistic diversity
* people who have demonstrated leadership or expertise in contemporary issues relevant to cultural or linguistic diversity.
1. Be made up of people of different:
* gender identities
* age groups
* residency or immigration status
* generations of migrants.

Multicultural Advisory Council members will be appointed by the Minister for a term of 2 years and able to serve a maximum of 2 terms to ensure membership reflects the changing issues and needs of the Canberra community.

### Questions for consideration

1. **Do you agree with the proposed functions of the Multicultural Advisory Council? If not, what changes do you suggest?**
2. **Does the proposed Multicultural Advisory Council represent the diversity of Canberra’s multicultural community?**

**If not, what changes do you suggest?**

**Proposed reporting requirements**

The draft Multicultural Recognition Act requires ACT Government directorates to report on how they are promoting and implementing the Multicultural Charter.

In community consultations held in 2021 we received feedback on how and what Canberrans want the ACT Government to report on including:

* Transparent accountability measures are key to ensure the Multicultural Recognition Act has practical application and tangible benefit for the community.
* The Multicultural Recognition Act should embed accountability mechanisms into government practice with regular reporting back to the ACT community.

To develop the proposed reporting approach, we also consulted across the ACT Government to identify the best way to ensure meaningful and impactful reporting on outcomes and progress achieved.

The proposed Multicultural Recognition Act commits the ACT Government to a whole-of-government approach to reporting focussed on how we are meeting and delivering on the Multicultural Charter to ensure the ACT continues to grow as an inclusive and welcoming jurisdiction that values and promotes cultural and linguistic diversity.

Proposed consultation and reporting obligations for ACT Government directorates:

1. ACT Government directorates must regularly consult the community on the measures taken, is taking or plans to take to promote and implement the multicultural charter.
2. ACT Government directorates must include in its annual report for a reporting year:
3. measures taken during the reporting year to promote and implement the Multicultural Charter
4. feedback received from the community as part of consultation carried out during the reporting year.

To ensure transparent and accountable reporting a two-tier reporting approach is proposed. The proposed two-tier reporting approach requires the ACT Government to:

1. Report against the Multicultural Charter in their Annual Reports; and
2. The Minister for Multicultural Affairs to deliver an annual Ministerial Statement in the ACT Legislative Assembly on the promotion and implementation of the Multicultural Charter.

Annual reporting enables public scrutiny of the outcomes-based actions each agency adopts and implements, and the Ministerial Statement is an opportunity for Canberrans to hear directly from the Minister on the progress of actions against the Multicultural Charter and to highlight key achievements.

### Questions for consideration

1. **Is reporting on measures to promote and implement the Multicultural Charter principles a good approach?**
2. **What do you like, or not like, about this approach?**

# The Multicultural REcogniton ACT and existing legislation

The Multicultural Recognition Act complements the *Human Rights Act 2004* and the
*Discrimination Act 1991* by providing a clearly stated vision for, and expectation of, an ACT where the cultural and linguistic diversity of all residents is valued, recognised and promoted.

The ACT has legislation to protect Canberrans from discrimination and to protect our human rights: the [*Discrimination Act 1991*](https://www.legislation.act.gov.au/a/1991-81)and the [*Human Rights Act 2004*](https://www.legislation.act.gov.au/a/2004-5)*.*

The *Human Rights Act 2004* and the *Discrimination Act 1991* enables complaints to be made against an individual, employer or organisation where a person’s rights – including their social, political, and cultural rights – are not protected or respected.

The Multicultural Recognition Act will not duplicate these protections but will strengthen respect for the rights of all Canberrans and promote the value of social inclusion and belonging.

**Human Rights Act 2004**

The human rights protected in the *Human Rights Act 2004* include, but are not limited to:

* recognition and equality before the law
* protection from torture and cruel, inhuman or degrading treatment etc
* freedom of thought, conscience, religion and belief
* peaceful assembly and freedom of association
* freedom of expression
* taking part in public life
* cultural and other rights of Aboriginal and Torres Strait Islander peoples
* rights of cultural, linguistic and religious groups.

Public authorities have obligations to take relevant human rights into account in decision-making and to act consistently with human rights. Human rights must also be considered in interpreting laws, and when the Government introduces a new law, it must include a statement setting out whether the law is compatible with human rights.

If you feel these obligations have been breached, a case can be brought in the Supreme Court, or raised as part of other court or tribunal proceedings.

**Discrimination Act 1991**

The key objects of the *Discrimination Act 1991* are:

* to eliminate discrimination to the greatest extent possible
* to promote and protect the right to equality before the law under the *Human Rights Act 2004*
* to encourage the identification and elimination of systemic causes of discrimination
* to promote and facilitate the progressive realisation of equality.

The ACT’s Discrimination Act currently prohibits discrimination in six areas of public life:

1. Work
2. Membership of clubs with liquor licences
3. Education
4. Access to premises
5. Provision of goods, services and facilities
6. Accommodation

These areas include workplaces, schools and other places of learning, commercial transactions, and visits to places open to the public (e.g. pools, libraries, shopping centres, nightclubs).

Complaints of alleged discrimination can be brought against anyone if their conduct occurred in one of these areas and is based on one of the protected attributes or grounds recognised in ACT law.

|  |
| --- |
| Grounds for complaints in the Discrimination Act 1991 |
| Accommodation status (e.g. homelessness) | Gender identity | Physical features | Relationship status |
| Age | Genetic information | Political conviction | Religious conviction |
| Association with a person who is identified by reference to another protected attribute | Immigration status | Pregnancy | Sex |
| Breastfeeding | Industrial activity | Profession, trade, occupation or calling | Sex characteristics |
| Disability | Irrelevant criminal record | Race | Sexuality |
| Employment status | Parent, family, carer, or kinship responsibilities | Record of a person’s sex having been altered on an official register | Subjection to domestic or family violence |

If you believe you have been treated unfavourably because of one or more protected attributes, including direct and indirect discrimination, you may make a complaint to the ACT Human Rights Commission. The Commission can help you to resolve the matter including through conciliation. If the matter is resolved, a binding conciliation agreement can be lodged with the ACT Civil and Administrative Tribunal (ACAT). If the matter is not able to be resolved by the ACT Human Rights Commission, you can request the matter be referred to ACAT for determination.

When considering discrimination complaints, ACAT must also consider whether any relevant exceptions apply. Exceptions to unlawful discrimination can apply to religious bodies, licensed clubs, voluntary bodies, sport, work, employment in private homes, and insurance and superannuation companies. Exceptions generally recognise that there may be situations where discrimination should be lawful such as to protect another right or where preventing discrimination may result in unjustifiable hardship.

The Discrimination Act also prohibits other types of conduct, in particular:

* **Sexual harassment:** making an unwelcome sexual advance, or other unwelcome sexual conduct, in circumstances where the person on the receiving end reasonably feels offended, humiliated or intimidated.
* **Vilification:** inciting hatred, revulsion, serious contempt, or severe ridicule of a person, in public, on one of the following grounds: disability, gender identity, HIV/AIDS status, race, religious conviction, sex characteristics or sexuality.
* **Victimisation:** causing (or threatening) detriment to someone because they have made a complaint under the Discrimination Act.

# Next steps

Following this community consultation process, we will update the draft Bill to reflect the feedback we have received.

The draft Bill will then be considered by Cabinet before being presented to the ACT Legislative Assembly in late 2022.

The Bill will be referred to a standing committee for inquiry before being debated by members of the Legislative Assembly. Once agreed it will be passed and become law.

