



Exposure Draft of the Discrimination Amendment Bill 2022

REPORT ON WHAT WE HEARD:

The ACT Government is committed to modernising discrimination law to support best practice in promoting equal opportunity, respect for diversity and social inclusion.

Discrimination law reform is a commitment under the Parliamentary and Governing Agreement of the 10th ACT Legislative Assembly, and as a key part of the ACT Government's Capital of Equality Strategy 2019 - 2023. Our discrimination law is a cornerstone of our human rights framework and it's essential that this law is modern, best-practice and aligns with our *Human Rights Act 2004*.

The ACT Government first consulted on the discrimination law reforms in October 2021 to January 2022 through both online and face-to-face conversations. Canberrans were invited to share their views on options for reform from the ACT Law Reform Advisory Council's (LRAC) 2015 Final Report into the *Review of the Discrimination Act 1991 (ACT)*.

An Exposure Draft of the Discrimination Amendment Bill 2022 (Exposure Draft Bill) was prepared based on the feedback, ideas and perspective received during the first round of public consultation.

The Exposure Draft Bill proposed to:

- expand the coverage of the *Discrimination Act 1991* to include competitions, sport and functions of a public nature.
- refine exceptions concerning employment, workers providing domestic duties, insurance and superannuation, religious bodies, clubs and voluntary bodies and sport.
- introduce a positive duty to make reasonable adjustments.
- introduce a positive duty to take reasonable, proportionate and justifiable steps to eliminate discrimination, sexual harassment and unlawful vilification.

THE CONVERSATION:

Consultation on the Exposure Draft Bill took place from 1 June 2022 to 1 July 2022.

To support the community's consideration of the Exposure Draft Bill, the ACT Government released a fact sheet, providing high level information on the proposed reforms and examples on how they might apply.

Canberrans were invited to make submissions by leaving a short voice message or providing a written submission via email or through the YourSay website.

The Justice and Community Directorate also provided eight tailored briefings to government and non-government stakeholders.



WHO WE ENGAGED:

There was consultation with religious organisations, peak bodies, government advisory groups, community legal centres, advocacy groups and members of the community.

We received 1,148 submissions, the majority being from religious organisations and people of faith.

Category of Respondent		Number of Submissions
Organisations		33
Individuals		29
Voicemails		3
One Click Politics Email Campaign	ACT residents	544
	Non-ACT residents	488
ValuEd Voices Email Campaign		51
TOTAL		1148

The One Click Politics email campaign was organised by the Australian Christian Lobby. The campaign allowed individuals to send a standardised email from Australian Christian Lobby. Individuals also had the choice to adjust the wording in the email or include additional comments. 1,032 emails were received through this campaign, however, nearly half of the respondents were located outside of the ACT.

Key insights from the consultation

Some participants chose to comment on all provisions in the Exposure Draft Bill, however most participants took the opportunity to provide feedback on specific areas. This feedback included suggestions for strengthening the drafting of the Bill, expressions of opposition to some reforms and general observations on discrimination law in the ACT.

Feedback themes:

- There is strong support for strengthening our discrimination laws, but we heard differing views on how this might be achieved.
- We heard that the inclusion of examples and clear definitions would assist the ACT community in interpreting the boundaries of the proposed reforms.
- We also heard strong concern that the extension of protections to discrimination towards service providers by consumers may have unintended consequences for freedom of choice and personal autonomy.
- Religious bodies and people of faith expressed concerns about the amendments to exceptions for religious bodies, religious workers, sport and workers in private homes.
- We heard there was a need for guidance to be provided on how the 'reasonable, proportionate and justifiable' test would apply in practice.
- There was support on both ends of the spectrum for the inclusion of a positive duty to eliminate discrimination, sexual harassment, and vilification. On one end of the spectrum there was strong support



for its inclusion subject to the recommendation that the boundaries of the duty be clarified. On the other end there was concern that the duty may impose a significant resourcing burden on smaller organisations and force entities to act contrary to their beliefs.

Coverage of the Act

Several submissions from both religious groups and community organisations recommended including definitions or examples on what activities might constitute ‘privately organised’ sports or competitions.

Two submissions from community advocacy groups supported extending coverage of the Act to public authorities exercising functions of a public nature and two submissions from religious organisations suggested that religious health care providers should be excluded from the Act.

There was minimal support for extending coverage of the Act to cover discrimination towards service providers by consumers. While some submissions acknowledged that there are benefits in providing greater protection for service providers, there was almost universal concern that the extension may have unintended consequences for freedom of choice and personal autonomy.

Religious bodies exception and balancing competing rights

Of the submissions that commented on the amendments to the exceptions for religious bodies, most of the submissions were from religious organisations and people of faith.

Generally, feedback from religious bodies and people of faith:

- considered that the arrangement of religious observances were inherently private church matters that represent the heart of religious freedom.
- suggested that the reforms did not strike the appropriate balance between the right to religious freedom and the right to equality and non-discrimination.
- highlighted that the interpretation of religious doctrine is complex and there can be a wide variety of views within each church.
- submitted that the inclusion of a ‘reasonable, proportionate and justifiable’ test may result in the secular bodies adjudicating on matters of theology which are outside their competence and expertise.
- noted that a clear definition of ‘functions of a private nature’ is needed.
- suggested that reforms may force religious bodies to use their property in ways which conflict with their religious conscience.

Two submissions from secular community organisations supported the proposals in their current form. One submission from a community organisation supported the reforms but noted that it is important that there are increased protections for the LGBTIQ+ community and other vulnerable groups who engage with faith-based organisations but also noted that there are certain practices related to religious observance and worship where international human rights law has accorded greater latitude to religious bodies to manage their own internal affairs.

A participant who identified as a person of faith indicated support for the reforms but noted that conformity based on doctrine can be difficult. One submission suggested that religious bodies seeking to rely on the exceptions should be required to provide a publicly accessible written policy. Another participant opposed the



reforms to the exceptions concerning the arrangement of religious observances but considered that exceptions relating to the provision of goods and services should be strengthened if there is a clear need to do so.

No submissions expressly opposed the proposal to restrict religious bodies with a sole or commercial purpose from accessing these exceptions.

Sport exception

Most submissions which addressed the proposal to only allow discrimination on the basis of age, sex or disability where the discrimination is necessary for fair, safe and effective competition and the outcome of the discrimination is reasonable, proportionate and justifiable were from religious organisations and people of faith who did not support the proposal.

Three school advocacy groups did not support the amendments with one submission suggesting that the amendment should be redrafting to align with Commonwealth legislation.

Three submissions from secular community organisations supported the reforms. These submissions also emphasised the importance of supporting the inclusion of transgender women in sport. This view was echoed by a community member.

Submissions from both community advocacy organisations and religious bodies and people of faith considered that 'fair, safe and effective competition' requirement needs to be clearly defined to ensure that organisations can adequately apply the test.

Multiple submissions were received on the proposal to not allow discrimination on the grounds of sex or disability for children under 12 years old. Of the submissions that commented on the proposal only one was from a secular advocacy group who supported the amendment. The remaining submissions were from religious organisations and people of faith who opposed the proposal on the grounds that it may undermine the rights of parents and discourage young girls from participating in sport.

Insurance and superannuation exceptions

Seven submissions from advocacy organisations addressed this amendment and strongly agreed with the proposed reforms to only allow discrimination based on statistical or actuarial data and where the discrimination is reasonable, proportionate and justifiable in the circumstances. One submission highlighted that the inclusion of the 'reasonable, proportionate and justifiable' test will help ensure that the particular circumstances of each applicant are taken into account by the provider.

Five submissions addressed and supported the proposal to require a service provider to give a consumer access to either the data itself or a meaningful explanation of the data it relied on. Some submissions argued that when a consumer requests to view the data a provider has based its decision on, providers should not be permitted to provide a meaningful explanation of the data as an alternative to providing the data itself, conversely some submissions suggested that a providers should always be required to provide a meaningful explanation of the data.

Domestic duties exception

All submissions which commented on this proposal were from religious organisations or people of faith. Most submissions suggested that the reforms may interfere with a person's ability to employ individuals according to



their religious convictions and beliefs. However, one submission supported the amendment and welcomed the additional protection.

Clubs and voluntary bodies exception

Only one submission commented on and supported the expanded definition of clubs.

Several submissions from religious bodies and people of faith suggested that the proposal may have negative impacts on freedom of association.

Employment exceptions

Genuine occupational requirements

Three submissions broadly supported the amendment. Two participants cautioned that the proposed provision lacked the detail and guidance provided for in the existing genuine occupational requirement exceptions. Two submissions opposed the exclusion of a religious conviction as a protected attribute under the exception.

Adjustments not reasonable

Only two submissions commented on this amendment. Both submissions suggested drafting changes to better align the provision with its intent as an 'inherent requirements' exception. One submission raised concerns about expanding the exception to all protected attributes.

Religious workers

Most feedback received on this amendment was from religious bodies and people of faith who submitted that religious bodies should be permitted to employ staff in accordance with their beliefs and that proposal may significantly impact the right to religious freedom.

New definition of *religious educational institution*

Eight submissions comment on this proposal. One submission was neutral, and seven submissions did not support the amendment. One participant highlighted that the proposed definition may exclude some schools who are not associated with a particular church or religious body. Two submissions argued that the new definition would add a further layer of complexity and uncertainty for schools.

Positive duty to make reasonable adjustments

Thirteen submissions commented on the proposal to introduce a positive duty to make reasonable adjustments for all protected attributes. One submission did not support the amendment. Four submissions were neutral noting that further clarification on the scope of the provision was needed. Suggestions for improving clarity about the scope of the provision included providing guidance and examples of how the duty may work in practice, inserting a list of factors specifying when a duty has been met and outlining how the duty interacts with exceptions under the Act.

Positive duty to take steps to eliminate discrimination, sexual harassment and unlawful vilification

Eight submissions supported the introduction of a positive duty. Six submissions were neutral but recommended amendments to provide greater clarity around the extent of an entity's duty under the Act. Some submissions suggested adopting the consideration factors used in the positive duty contained in section 15 of the Victorian



Equal Opportunity Act 2010 and proposed in Recommendation 17 of the Respect@Work Report for determining the size and scope of an entity's duty.

Ten submissions from religious bodies or people of faith did not support the proposed amendment. These submissions were concerned that the duty may force religious organisations to compromise or act contrary to their religious convictions or place a significant resourcing burden on smaller organisations.

Gender neutral language

Four submissions supported the inclusion of gender-neutral language and four submissions opposed the amendments.

Support for implementation

Several submissions noted that it was important that the reforms are accompanied by guidance materials and public education.

Other suggestions

The community also proposed lots of additional ideas about how discrimination law can be improved in ways outside the scope of the proposals being consulted on:

- There were several suggestions for increasing and expanding protected attributes under the Act, including introducing computer literacy, socio-economic status and the use of drugs and alcohol as protected attributes and amending accommodation status to capture places of detention and institutions.
- Several participants called for ACT Policing to be covered by the scope of the Act.
- One submission recommended amending the definition of discrimination.
- A participant suggested introducing a process to allow for systemic complaints, including complaints initiated by representative organisations, to be lodged with the ACT Human Rights Commission without the need for an individual complaint.
- Submissions from religious bodies or people of faith suggested provisions should be amended to strengthen protections for the right to religious freedom.



WHAT'S NEXT?

The ACT Government will consider all feedback received to further refine the proposed reforms to ensure the Discrimination Amendment Bill 2022 meets the needs of the Canberra community.

To keep up to date on Discrimination Law Reform, please visit the project page on the [Justice website here](#).

To find out about other initiatives, policies and projects in Canberra, please visit www.yoursay.act.gov.au.

You can also connect with us on [Facebook](#), [LinkedIn](#), and [Twitter](#) .

Key Timings

Community Consultation on Discussion Paper Opened – October 2021

Virtual Roundtables Held – November and December 2021

Community Consultation on Discussion Paper Closed – January 2022

Listening Report Published – April 2022

Consultation on Exposure Draft Bill – June 2022 to July 2022

Listening Report Published – We are here

THANK YOU FOR YOUR FEEDBACK

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The number of people and organisations who shared their views on the Exposure Draft Bill and their own experiences engaging with discrimination law in the ACT.

The ACT Government extends a warm thank you to everyone who shared their views during community consultation.

The ACT Government is committed to modernising our discrimination laws and your experiences are an important contribution to shaping this.