



Australian Capital Territory

Discrimination Amendment Act 2023

A2023-7

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
4 New section 5B	2
5 New sections 23A to 23C	3
6 Domestic duties Section 24	5
7 Domestic accommodation etc Section 26 (1) (b)	5
8 Sections 28 and 29	6
9 Sections 31 and 32	7

J2022-244

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Contents

	Page	
10	New sections 33B to 33D	9
11	Genuine occupational qualifications—sex Section 34	10
12	Educational institutions for members of one sex Section 36	11
13	Section 37	11
14	Clubs for members of one sex etc Section 40	11
15	Section 41	11
16	Exceptions relating to race Division 4.3	12
17	Religious workers Section 44	12
18	Sections 47 to 49 and 55	12
19	Section 57 heading	13
20	Section 57 (1)	13
21	Section 57 (2) (d)	13
22	Sections 57A and 57L	14
23	Section 57M heading	14
24	Section 57M (1)	14
25	Section 57M (2) (d)	14
26	Discrimination relating to employment status Section 57O	14
27	Division 4.10 heading	15
28	Genuine occupational requirements—physical features Section 57Q	15
29	New sections 65 to 67	15
30	New part 9	16
31	Dictionary, definition of <i>carer</i> , example	18
32	Dictionary, definition of <i>club</i>	18
33	Dictionary, definition of <i>club licence</i>	18
34	Dictionary, definition of <i>committee of management</i>	18

Contents

		Page
Schedule 1	Other amendments	19
Part 1.1	Children and Young People Act 2008	19
Part 1.2	Human Rights Commission Act 2005	20



Australian Capital Territory

Discrimination Amendment Act 2023

A2023-7

An Act to amend the *Discrimination Act 1991*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Discrimination Amendment Act 2023*.

2 Commencement

This Act commences 12 months after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

3 Legislation amended

This Act amends the *Discrimination Act 1991*.

Note This Act also amends the following legislation (see sch 1):

- [Children and Young People Act 2008](#)
- [Human Rights Commission Act 2005](#).

4 New section 5B

insert

5B Unjustifiable hardship

For this Act, in deciding whether unjustifiable hardship would be imposed on a person by having to accommodate another person's protected attribute, all relevant circumstances must be taken into account, including the following:

- (a) the benefit or detriment likely to be received or experienced by each person;
- (b) the protected attributes of the other person;
- (c) the estimated cost to, and financial circumstances of, the person claiming unjustifiable hardship.

5 New sections 23A to 23C

in division 3.2, insert

23A Sporting activities

It is unlawful for a person responsible for the organisation or administration of a formally organised sporting activity (including a coach or manager) to discriminate against another person in relation to participation in the activity.

Examples—formally organised sporting activity

- basketball competition organised by a private school
- dodgeball league match

Examples—informally organised sporting activity

- backyard cricket match between friends
- game at a child's birthday party

23B Competitions

It is unlawful for a person responsible for the organisation or administration of a formally organised competition to discriminate against another person in relation to participation in the competition.

Examples—formally organised competition

- singing competition organised by a commercial radio station
- weekend chess competition for individuals under 18 years old
- short film festival run by a not-for-profit organisation

23C Administration of territory laws etc

- (1) It is unlawful for a public authority to discriminate against a person when administering a territory law, or an ACT government program or policy.
- (2) Subsection (1) does not—
 - (a) affect the law relating to the privileges of the Legislative Assembly; or

(b) apply to—

- (i) for the Office of the Legislative Assembly—an act done, or a practice engaged in, by the Office when exercising a function in relation to a proceeding of the Legislative Assembly; or
- (ii) for an ACT court—an act done, or a practice engaged in, by the ACT court other than an act done, or a practice engaged in, by the ACT court in relation to a matter of an administrative nature; or
- (iii) the doing of an act mentioned in section 18 (whether or not the act is done by an educational authority).

(3) In this section:

ACT court—

- (a) means the Supreme Court, Magistrates Court, Coroner’s Court or a tribunal; and
- (b) includes a judge, magistrate, tribunal member or any other person exercising a function of the court or tribunal in relation to the hearing or determination of a proceeding before the court or tribunal.

administering, a territory law or ACT government program or policy, includes exercising a function under the law or carrying out the program or policy.

function of a public nature—see the [Human Rights Act 2004](#), section 40A.

public authority means any of the following:

- (a) an administrative unit;
- (b) a territory authority;
- (c) a territory instrumentality;

- (d) a Minister;
- (e) a public employee;
- (f) an entity whose functions are or include functions of a public nature, when it is exercising those functions for the Territory or an entity mentioned in paragraph (a) to (e) (whether or not under contract).

**6 Domestic duties
Section 24**

omit

if the duties of the position involve doing domestic duties on the premises where the first person lives.

substitute

if—

- (a) the duties of the position involve doing domestic duties on the premises where the first person lives; and
- (b) the discrimination is reasonable, proportionate and justifiable in the circumstances.

**7 Domestic accommodation etc
Section 26 (1) (b)**

omit

8 Sections 28 and 29

substitute

28 Insurance and superannuation

- (1) This section applies to a person providing insurance or superannuation services (the *insurance or superannuation services provider*) who discriminates against another person (the *consumer*) in relation to the terms on which—
 - (a) an annuity or insurance policy is offered or provided to the consumer; or
 - (b) membership of a superannuation or provident fund or scheme is offered or provided to the consumer.
- (2) Part 3 does not make it unlawful for the insurance or superannuation services provider to discriminate against the consumer if—
 - (a) the discrimination is based on—
 - (i) actuarial or statistical data; or
 - (ii) when actuarial and statistical data is unavailable—other relevant documents; and
 - (b) it is reasonable for the insurance or superannuation services provider to rely on the data or other documents; and
 - (c) the discrimination is reasonable, proportionate and justifiable in the circumstances.
- (3) If the consumer requests access to the data or other documents, the insurance or superannuation services provider must—
 - (a) give the consumer a copy of the data or other documents, or a meaningful explanation of the data or other documents in writing; or
 - (b) make the data or other documents available for inspection at a reasonable time and place.

9 Sections 31 and 32

substitute

31 Clubs and voluntary bodies

Part 3 does not make it unlawful for a club or voluntary body, or the committee of management or a member of the committee of management of the club or body, to discriminate against a person if—

- (a) the club or body is established to benefit a class of people sharing a protected attribute; and
- (b) the discrimination—
 - (i) is in relation to the provision of membership, benefits, facilities or services to the person; and
 - (ii) occurs because the person does not have the protected attribute; and
 - (iii) is reasonable, proportionate and justifiable in the circumstances.

32 Religious bodies

- (1) Part 3 does not make it unlawful for a religious body to discriminate against a person in relation to the following:
 - (a) the ordination or appointment, by the body, of priests, ministers of religion or members of an order;
 - (b) the training or education of people seeking ordination or appointment, by the body, as priests, ministers of religion or members of an order;
 - (c) the selection or appointment of people to exercise functions for, or in relation to, any religious observance or practice by the body;

- (d) the provision by the body of goods, services or facilities to the public if—
 - (i) the discrimination—
 - (A) is on the ground of religious conviction only; and
 - (B) conforms to the doctrines, tenets or beliefs of the body's religion; and
 - (C) is necessary to avoid injury to the religious susceptibilities of adherents of the religion; and
 - (ii) the body has published its policy in relation to the provision of goods, services or facilities; and
 - (iii) the policy is readily accessible to the public;
- (e) employment by the body if—
 - (i) the discrimination—
 - (A) is on the ground of religious conviction only; and
 - (B) conforms to the doctrines, tenets or beliefs of the body's religion; and
 - (C) is necessary to avoid injury to the religious susceptibilities of adherents of the religion; and
 - (ii) the body has published its policy in relation to employment with the body; and
 - (iii) the policy is readily accessible to the public;
- (f) any other act or practice of the body that—
 - (i) conforms to the doctrines, tenets or beliefs of the body's religion; and
 - (ii) is necessary to avoid injury to the religious susceptibilities of adherents of the religion.

- (2) Subsection (1) (d) to (f) does not apply to discrimination in relation to—
 - (a) employment of a person at an educational institution; or
 - (b) admission, treatment or continued enrolment of a person as a student at an educational institution.
- (3) Subsection (1) does not apply to a religious body whose sole or main purpose is a commercial purpose.
- (4) Section 21 (Accommodation) does not make it unlawful for a religious body to discriminate against a person in relation to the provision of accommodation for members of a relevant class of people.

10 New sections 33B to 33D

in division 4.1, insert

33B Genuine occupational qualifications

- (1) Part 3 does not make it unlawful to discriminate against a person in relation to a position as an employee, commission agent, contract worker or business partner if—
 - (a) it is a genuine occupational qualification of the position that the position be filled by a person having a particular protected attribute; and
 - (b) the discrimination is reasonable, proportionate and justifiable in the circumstances.

Examples—genuine occupational qualifications

- employing a female carer to provide personal care services for a woman on the basis of privacy or modesty
- selecting a person of a particular race for a role in a theatrical performance on the basis of authenticity, aesthetics or tradition

- preferencing people with lived experience of family and domestic violence for peer support positions in a women’s crisis centre
- (2) Subsection (1) does not apply to discrimination on the ground of religious conviction.

33C Inherent requirements of employment

Part 3 does not make it unlawful for an employer to discriminate against another person (a *prospective employee*) in relation to a position of employment if—

- (a) the prospective employee is, or would be, unable to carry out the inherent requirements of the position—
- (i) because of the prospective employee’s protected attribute; and
 - (ii) regardless of any reasonable adjustments able to be made by the employer in accordance with section 74; and
- (b) the discrimination is reasonable, proportionate and justifiable in the circumstances.

33D Competitions—age

Section 23B (Competitions) does not make it unlawful to discriminate on the ground of age by limiting participation in a competition to people belonging to a particular age group.

**11 Genuine occupational qualifications—sex
Section 34**

omit

**12 Educational institutions for members of one sex
Section 36**

omit

the opposite

substitute

a different

13 Section 37

substitute

37 Pregnancy, childbirth or breastfeeding

Part 3 does not make it unlawful for a person to discriminate against another person on the ground of the other person's sex only because the first person gives rights or privileges in relation to pregnancy, childbirth or breastfeeding to other people.

**14 Clubs for members of one sex etc
Section 40**

omit

15 Section 41

substitute

41 Sporting activities—sex

(1) Section 23A (Sporting activities) does not make it unlawful to discriminate on the ground of sex by excluding people of one sex from participation in any formally organised competitive sporting activity if—

(a) the strength, stamina or physique of competitors is relevant; and

- (b) the discrimination is reasonable, proportionate and justifiable in the circumstances.
- (2) Subsection (1) does not apply to the following kinds of discrimination:
 - (a) the exclusion of people from participation in—
 - (i) the coaching of people engaged in any sporting activity; or
 - (ii) the umpiring or refereeing of any sporting activity; or
 - (iii) the administration of any sporting activity; or
 - (iv) any other formally organised competitive sporting activity prescribed by regulation;
 - (b) discrimination against a child under 12 years old.

**16 Exceptions relating to race
Division 4.3**

omit

**17 Religious workers
Section 44**

omit

teaching, observance

substitute

teaching

18 Sections 47 to 49 and 55

omit

19 Section 57 heading

substitute

57 Sporting activities—disability

20 Section 57 (1)

substitute

- (1) Section 23A (Sporting activities) does not make it unlawful to discriminate on the ground of disability by excluding a person from participation in any formally organised competitive sporting activity if—
- (a) the discrimination is reasonable, proportionate and justifiable in the circumstances and—
 - (i) the person is not reasonably capable of performing the actions reasonably required in relation to the sporting activity; or
 - (ii) the people participating in the sporting activity are selected in a reasonable way on the basis of their skills and abilities relevant to the sporting activity and relative to each other; or
 - (b) the activity is conducted for, or mainly for, people who have a particular kind of disability and the person does not have a disability of that kind.

21 Section 57 (2) (d)

substitute

- (d) any other formally organised competitive sporting activity prescribed by regulation.

22 Sections 57A and 57L

omit

23 Section 57M heading

substitute

57M Sporting activities—age

24 Section 57M (1)

substitute

- (1) Section 23A (Sporting activities) does not make it unlawful to discriminate on the ground of age by limiting participation in a formally organised competitive sporting activity to people belonging to a particular age group.

25 Section 57M (2) (d)

substitute

- (d) any other formally organised competitive sporting activity prescribed by regulation.

**26 Discrimination relating to employment status
Section 57O**

after

section 10 (1)

insert

or (2)

27 Division 4.10 heading

substitute

Division 4.10 Exception relating to physical features**28 Genuine occupational requirements—physical features
Section 57Q**

omit

29 New sections 65 to 67

in part 5, insert

65 Sporting activities—sexual harassment

It is unlawful for a person organising, administering or participating in a sporting activity to subject another person organising, administering or participating in the sporting activity to sexual harassment.

66 Competitions—sexual harassment

It is unlawful for a person organising, administering or participating in a competition to subject another person organising, administering or participating in the competition to sexual harassment.

67 Administration of territory laws etc—sexual harassment

(1) It is unlawful for a person to subject another person to sexual harassment when administering a territory law, or ACT government program or policy.

(2) In this section:

administering, a territory law or ACT government program or policy, includes exercising a function under the law or carrying out the program or policy.

30 **New part 9**

insert

Part 9 **Positive duties**

74 **Positive duty to make reasonable adjustments**

- (1) A person must make reasonable adjustments to accommodate another person's particular needs arising from a protected attribute if discrimination on the ground of the attribute is unlawful under this Act.
- (2) For subsection (1), an adjustment is not reasonable if it would cause unjustifiable hardship to the person making the adjustment.
- (3) Failure to make reasonable adjustments in accordance with this section is an unlawful act.

75 **Positive duty to eliminate discrimination, sexual harassment and unlawful vilification**

- (1) This section applies to an organisation or business, and any individual with organisational management responsibility for an organisation or business, required under this Act not to engage in discrimination, sexual harassment or unlawful vilification in particular circumstances.

Examples—organisation

- educational authority
- sporting club
- church

Examples—individual with organisational management responsibility

- sole trader
- chancellor or vice-chancellor at a university
- owner of a small private business

- (2) The organisation, business or individual must take reasonable and proportionate steps to eliminate the discrimination, sexual harassment and unlawful vilification.
- (3) In deciding whether steps are reasonable and proportionate, all the circumstances must be considered, including the following:
 - (a) the nature and size of the organisation or business;
 - (b) the resources of the organisation, business or individual;
 - (c) the business or operational priorities of the organisation, business or individual;
 - (d) practicability and cost of the steps.
- (4) However, this section does not apply to—
 - (a) an administrative unit, territory authority or territory instrumentality until 12 months after the commencement day; or
 - (b) an individual with organisational management responsibility for an entity mentioned in paragraph (a) until 12 months after the commencement day; or
 - (c) any other person until 3 years after the commencement day.
- (5) This subsection, subsection (4) and subsection (6), definition of ***commencement day*** expire 3 years after the commencement day.
- (6) In this section:

commencement day means the day the *Discrimination Amendment Act 2023*, section 3 commences.

organisational management responsibility, in relation to an organisation or business, means responsibility for controlling or directing the organisation or business.

76 Exception or exemption for positive duties

A duty under section 74 or section 75 does not apply to a person to the extent that—

- (a) an exception under part 4 applies to make the discrimination lawful; or
- (b) the person is, under part 10, exempt from a provision of this Act that makes the discrimination unlawful.

31 Dictionary, definition of *carer*, example

substitute

Example—carer

Jesse has multiple sclerosis and requires constant care. Jesse's spouse and 3 children share care for Jesse and each is a carer.

32 Dictionary, definition of *club*

substitute

club means an association (whether incorporated or unincorporated) formed for social, literary, cultural, political, sporting, athletic or other lawful purposes that provides and maintains facilities, in whole or in part, from the funds of the association.

33 Dictionary, definition of *club licence*

omit

34 Dictionary, definition of *committee of management*

substitute

committee of management, in relation to a club, organisation or voluntary body, means the group or body of people (however described) that manages the affairs of the club, organisation or voluntary body.

Schedule 1 Other amendments

(see s 3)

Part 1.1 Children and Young People Act 2008

[1.1] New part 19.7

insert

Part 19.7 Proceedings related to discrimination complaints

727AA Declaration in relation to discrimination complaint

- (1) This section applies if—
 - (a) a proceeding before a court involves a matter arising under the care and protection chapters; and
 - (b) the matter is also the subject of a discrimination complaint made by a party to the proceeding in relation to the *Discrimination Act 1991*, section 23C.
- (2) The court may, on application by a party to the proceeding (the *applicant*) or its own initiative, by order make a declaration (a *conflict declaration*) if satisfied that dealing with the discrimination complaint may interfere with the proceeding.

Note A declaration suspends the complaint process under the *Human Rights Commission Act 2005* (see s 52C).

- (3) The applicant must serve notice of the application on each affected entity as soon as practicable before the application is made.

- (4) The court may order a party to the proceeding to notify an affected entity of the following:
- (a) the outcome of an application;
 - (b) the making or revocation of a conflict declaration.
- (5) In this section:

affected entity means—

- (a) the human rights commission; and
- (b) if the discrimination complaint has been referred to the ACAT—the ACAT.

discrimination complaint—see the [Human Rights Commission Act 2005](#), section 42 (1) (c).

727AB Discrimination commissioner may make submission

- (1) The discrimination commissioner may make a submission in an application made under section 727AA with the leave of the court.
- (2) The court may give leave subject to conditions.

Part 1.2 Human Rights Commission Act 2005

[1.2] New section 52 (3)

insert

- (3) In considering a discrimination complaint, the commissioner may also consider whether the duty under the [Discrimination Act 1991](#), section 75 has been met.

Note The commission may ask for information or documents relevant to a consideration under this subsection (see s 73).

[1.3] New section 52C

in division 4.2, insert

52C Effect of declaration made under Children and Young People Act 2008

If a court makes a conflict declaration under the *Children and Young People Act 2008*, section 727AA in relation to a discrimination complaint, the commission must suspend dealing with the complaint until either of the following happen:

- (a) the court revokes the declaration;
- (b) the court proceeding in relation to which the declaration is made is finalised.

[1.4] New section 53DB

insert

53DB Consideration of positive duty

In considering a discrimination complaint, the ACAT may also consider whether the duty under the *Discrimination Act 1991*, section 75 has been met.

[1.5] New section 53EA

in division 4.2A, insert

**53EA Effect of declaration made under Children and Young
People Act 2008**

If a court makes a conflict declaration under the *Children and Young People Act 2008*, section 727AA in relation to a discrimination complaint, the ACAT must suspend dealing with the complaint until either of the following happen:

- (a) the court revokes the declaration;
- (b) the court proceeding in relation to which the declaration is made is finalised.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 30 November 2022.

2 Notification

Notified under the [Legislation Act](#) on 11 April 2023.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Discrimination Amendment Bill 2023, which originated in the Legislative Assembly as the Discrimination Amendment Bill 2022 and was passed by the Assembly on 23 March 2023.

Clerk of the Legislative Assembly

© Australian Capital Territory 2023