Discrimination Act 1991

Republication No 49
Effective: 28 August 2020

Republication date: 28 August 2020

Last amendment made by A2020-42
About this republication

The republished law

This is a republication of the Discrimination Act 1991 (including any amendment made under the Legislation Act 2001, part 11.3 (Editorial changes)) as in force on 28 August 2020. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 28 August 2020.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel’s Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the Legislation Act 2001 applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The Legislation Act 2001, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see Legislation Act 2001, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol [U] appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register (www.legislation.act.gov.au). For more information, see the home page for this law on the register.

Modifications

If a provision of the republished law is affected by a current modification, the symbol [M] appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the Legislation Act 2001, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is $160 for an individual and $810 for a corporation (see Legislation Act 2001, s 133).
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Discrimination Act 1991

An Act to make certain kinds of discrimination unlawful and to provide for related matters
Part 1  Preliminary

1  Name of Act

This Act is the Discrimination Act 1991.

2  Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (signpost definitions) to other terms defined elsewhere in this Act.

For example, the signpost definition ‘discriminate—see section 8.’ means that the word ‘discriminate’ is defined in section 8.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

3  Notes

A note included in this Act is explanatory and is not part of this Act.

Note See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

4  Objects of Act

The objects of this Act are—

(a) to eliminate discrimination to the greatest extent possible; and

(b) to promote and protect the right to equality before the law under the Human Rights Act 2004, including—

(i) the right to enjoy a person’s human rights without distinction or discrimination of any kind; and
(ii) the right to the equal protection of the law without discrimination; and

(iii) the right to equal and effective protection against discrimination on any ground; and

(c) to encourage the identification and elimination of systemic causes of discrimination; and

(d) to promote and facilitate the progressive realisation of equality, as far as reasonably practicable, by recognising that—

(i) discrimination can cause social and economic disadvantage and that access opportunities are not equitably distributed throughout society; and

(ii) equal application of a rule to different groups can have unequal results or outcomes; and

(iii) the achievement of substantive equality may require the making of reasonable adjustments, reasonable accommodation and the taking of special measures.

4AA Interpretation beneficial to people with protected attributes

This Act must be interpreted in a way that is beneficial to a person who has a protected attribute, to the extent it is possible to do so consistently with—

(a) the objects of this Act; and

(b) human rights under the *Human Rights Act 2004*.

*Note* The *Legislation Act*, s 139 (1) (which is about interpreting legislation to be consistent with its purpose) and the *Human Rights Act 2004*, s 30 (which is about interpreting legislation to be consistent with human rights) are also relevant to interpreting territory laws.
4A  Meaning of doing an act

(1) In this Act:

*doing* an act includes failing to do the act.

*Note*  The *Legislation Act*, dict. pt 1 defines *fail* to include refuse.

(2) In this Act, a reference to doing an act because of a particular matter includes a reference to doing an act because of 2 or more matters that include the particular matter, whether or not the particular matter is the dominant or substantial reason for doing the act.

5AA  Meaning of disability

(1) In this Act:

*disability* means—

(a) total or partial loss of a bodily or mental function; or

(b) total or partial loss of a part of the body; or

(c) the presence in the body of organisms that cause disease or illness; or

(d) the presence in the body of organisms that are capable of causing disease or illness; or

(e) the malfunction, malformation or disfigurement of a part of the body; or

(f) a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction; or

(g) a disorder, illness or disease that affects a person’s thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour; or

(h) any other condition prescribed by regulation.
(2) For this Act, \textit{disability} includes—

(a) behaviour that is a symptom or manifestation of the disability; and

(b) a disability that a person may have in the future, including because of a genetic disposition to the disability; and

(c) a disability that it is thought a person may have in the future, whether or not—

(i) the person has a genetic disposition to the disability; or

(ii) there is anything else to indicate the person may have the disability in the future; and

\textit{Note} \textit{Disability} also includes a disability that the person has or is thought to have, and a disability that the person has had in the past, or is thought to have had in the past (see s 7 (2)).

(d) reliance on—

(i) a support person; or

(ii) a disability aid; or

(iii) an assistance animal.

(3) In this section:

\textit{assistance animal} means an assistance animal trained to assist a person with disability to alleviate the effect of the disability (including by guiding a person who is blind or vision impaired or alerting a person who is deaf or hearing impaired to sounds), that satisfies any requirements prescribed by regulation.

\textit{disability aid}—

(a) means equipment (including a palliative or therapeutic device) that is generally recognised to alleviate an effect of a disability; and
Part 1  Preliminary

Section 5AB

(b) includes anything prescribed by regulation.

Note  Power to make a statutory instrument (including a regulation) includes power to make different provision in relation to different matters or different classes of matters, and to make an instrument that applies differently by reference to stated exceptions or factors (see Legislation Act, s 48).

support person means a person who provides assistance or services to another person because of a disability the other person has.

Examples
carer, assistant, interpreter, reader

5AB  Liability of person relying on assistance animal etc

(1) This section applies to a person with disability who relies on an assistance animal or disability aid.

(2) Nothing in this Act affects the liability of the person for any injury, loss or damage caused by the person’s assistance animal or disability aid.

(3) In this section:

assistance animal—see section 5AA (3).

disability aid—see section 5AA (3).

5A  Meaning of potential pregnancy

In this Act:

potential pregnancy, of a woman, includes—

(a) the fact that the woman is or may be capable of bearing children; and

(b) the fact that the woman has expressed a desire to become pregnant; and

(c) the fact that the woman is likely, or is perceived as being likely, to become pregnant.
6 MLAs as employers

(1) For this Act, a member of the Legislative Assembly (in his or her capacity as an office-holder or otherwise) is taken to be an employer in relation to a person who is, or who is seeking to be, employed under the Legislative Assembly (Members’ Staff) Act 1989, section 5 or 10 as a member of the staff of the member.

(2) In this section:

office-holder—see the Legislative Assembly (Members’ Staff) Act 1989, dictionary.

6A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg conduct, intention, recklessness and strict liability).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.
Part 2

Discrimination to which Act applies

Section 7

Part 2

Discrimination to which Act applies

7 Protected attributes

(1) This Act applies to discrimination on the ground of any of the following attributes (a protected attribute):

(a) accommodation status;
(b) age;

Examples—par (b)
because the person is a child or young person or an older person

(c) association (whether as a relative or otherwise) with a person who is identified by reference to another protected attribute;

(d) breastfeeding;
(e) disability;

(f) employment status;
(g) gender identity;

(h) genetic information;

(i) immigration status;

(j) industrial activity;
(k) irrelevant criminal record;

(l) parent, family, carer or kinship responsibilities;

(m) physical features;

(n) political conviction;

(o) pregnancy;

(p) profession, trade, occupation or calling;
(q) race;
(r) record of a person’s sex having been altered under the Births, Deaths and Marriages Registration Act 1997 or a law of another jurisdiction that corresponds, or substantially, corresponds, to the Act, section 26 (Alteration of register);
(s) relationship status;
(t) religious conviction;
(u) sex;
(v) sex characteristics;
(w) sexuality;
(x) subjection to domestic or family violence.

(2) For this Act, **protected attribute** includes—

(a) a characteristic that people with the attribute generally have; and
(b) a characteristic that people with the attribute are generally presumed to have; and
(c) the attribute that a person has; and
(d) the attribute that a person has had in the past, whether or not the person still has the attribute; and
(e) the attribute that a person is thought to have, whether or not the person has the attribute; and
(f) the attribute that a person is thought to have had in the past, whether or not the person has had the attribute in the past.
8 Meaning of \textit{discrimination}

(1) For this Act, discriminates occurs when a person discriminates either directly or indirectly, or both, against someone else.

(2) For this section, a person \textit{directly} discriminates against someone else if the person treats, or proposes to treat, another person unfavourably because the other person has 1 or more protected attributes.

(3) For this section, a person \textit{indirectly} discriminates against someone else if the person imposes, or proposes to impose, a condition or requirement that has, or is likely to have, the effect of disadvantaging the other person because the other person has 1 or more protected attributes.

(4) However, a condition or requirement does not give rise to indirect discrimination if it is reasonable in the circumstances.

(5) In deciding whether a condition or requirement is reasonable in the circumstances, the matters to be taken into account include—

(a) the nature and extent of any disadvantage that results from imposing the condition or requirement; and

(b) the feasibility of overcoming or mitigating the disadvantage; and

(c) whether the disadvantage is disproportionate to the result sought by the person who imposes, or proposes to impose, the condition or requirement.
Part 3  Unlawful discrimination

Division 3.1  Discrimination in work

10  Applicants and employees

(1) It is unlawful for an employer to discriminate against a person—

(a) in the arrangements made for the purpose of deciding who should be offered employment; or

(b) in deciding who should be offered employment; or

(c) in the terms or conditions on which employment is offered.

(2) It is unlawful for an employer to discriminate against an employee—

(a) in the terms or conditions of employment that the employer affords the employee; or

(b) by denying the employee access, or limiting the employee’s access, to opportunities for promotion, transfer or training or to any other benefit associated with employment; or

(c) by dismissing the employee; or

(d) by subjecting the employee to any other detriment.

(3) To remove any doubt, an employer discriminates against an employee if the employer denies the employee access to a benefit associated with employment because the employee is in a same-sex relationship.

Example of discrimination

denying an employee who is in a same-sex relationship access to parental leave that is available to other parents

(4) Subsection (3) is in addition to, and does not limit, any other provision of this Act that provides what is, or is not, discrimination under this Act.
11 Employees—religious practice

It is unlawful for an employer to discriminate against an employee on the ground of religious conviction by refusing the employee permission to carry out a religious practice during working hours, being a practice—

(a) of a kind recognised as necessary or desirable by people of the same religious conviction as that of the employee; and

(b) the performance of which during working hours is reasonable having regard to the circumstances of the employment; and

(c) that does not subject the employer to unreasonable detriment.

12 Commission agents

(1) It is unlawful for a principal to discriminate against a person—

(a) in the arrangements made for the purpose of deciding who should be engaged as a commission agent; or

(b) in deciding who should be engaged as a commission agent; or

(c) in the terms or conditions on which engagement as a commission agent is offered.

(2) It is unlawful for a principal to discriminate against a commission agent—

(a) in the terms or conditions that the principal affords the agent; or

(b) by denying the agent access, or limiting the agent’s access, to opportunities for promotion, transfer or training or to any other benefit associated with the position as an agent; or

(c) by terminating the engagement; or

(d) by subjecting the agent to any other detriment.
13 **Contract workers**

It is unlawful for a principal to discriminate against a contract worker—

(a) in the terms or conditions on which the principal allows the contract worker to work; or

(b) by not allowing the contract worker to work or continue to work; or

(c) by denying the contract worker access, or limiting the contract worker’s access, to any benefit associated with the relevant work; or

(d) by subjecting the contract worker to any other detriment.

14 **Partnerships**

(1) It is unlawful for any people who are proposing to form themselves into a partnership to discriminate against a person—

(a) in deciding who should be invited to become a partner in the partnership; or

(b) in the terms or conditions on which the person is invited to become a partner in the partnership.

(2) It is unlawful for a partner in a partnership to discriminate against a person—

(a) in deciding who should be invited to become a partner in the partnership; or

(b) in the terms or conditions on which the person is invited to become a partner in the partnership.
(3) It is unlawful for a partner in a partnership to discriminate against another partner in the partnership—
   (a) by denying the partner access, or limiting the partner’s access, to any benefit arising from being a partner in the partnership; or
   (b) by expelling the partner from the partnership; or
   (c) by subjecting the partner to any other detriment.

15 Professional or trade organisations

(1) In this section:

   organisation means an association or organisation of employers or employees.

(2) It is unlawful for an organisation, the committee of management of an organisation or a member of the committee of management of an organisation to discriminate against a person who is not a member of the organisation—
   (a) by failing to accept the person’s application for membership; or
   (b) in the terms or conditions on which the organisation is prepared to admit the person to membership.

Note The Legislation Act, dict, pt 1 defines fail to include refuse.

(3) It is unlawful for an organisation, the committee of management of an organisation or a member of the committee of management of an organisation to discriminate against a member of the organisation—
   (a) by denying the member access, or limiting the member’s access, to any benefit provided by the organisation; or
   (b) by depriving the member of membership or varying the terms of membership; or
   (c) by subjecting the member to any other detriment.
16 Qualifying bodies

It is unlawful for an authority or body that is empowered to confer, renew, extend, revoke or withdraw an authorisation or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or the engaging in of an occupation to discriminate against a person—

(a) by failing to confer, renew or extend the authorisation or qualification; or

(b) in the terms or conditions on which it is prepared to confer, renew or extend the authorisation or qualification; or

(c) by revoking or withdrawing the authorisation or qualification or varying the terms or conditions on which it is held; or

(d) by subjecting the person to any other detriment.

Note The Legislation Act, dict, pt 1 defines fail to include refuse.

17 Employment agencies

It is unlawful for an employment agency to discriminate against a person—

(a) by refusing to provide the person with any of its services; or

(b) in the terms or conditions on which it offers to provide the person with any of its services; or

(c) in the way in which it provides the person with any of its services; or

(d) by subjecting the person to any other detriment.
Division 3.2  Discrimination in other areas

18  Education

(1) It is unlawful for an educational authority to discriminate against a person—

(a) by failing to accept the person’s application for admission as a student; or

(b) in the terms or conditions on which it is prepared to admit the person as a student.

Note  The Legislation Act, dict, pt 1 defines fail to include refuse.

(2) It is unlawful for an educational authority to discriminate against a student—

(a) by denying the student access, or limiting the student’s access, to any benefit provided by the authority; or

(b) by expelling the student; or

(c) by subjecting the student to any other detriment.

19  Access to premises

It is unlawful for a person to discriminate against another person—

(a) by refusing to allow the other person access to, or the use of, any premises (public premises) that the public or a section of the public is entitled or allowed to enter or use (whether for payment or not); or

(b) in the terms or conditions on which the discriminator is prepared to allow the other person access to, or the use of, public premises; or

(c) in relation to the provision of means of access to public premises; or
(d) by refusing to allow the other person the use of any facilities (public facilities) in public premises that the public or a section of the public is entitled or allowed to use (whether for payment or not); or

(e) in the terms or conditions on which the discriminator is prepared to allow the other person the use of public facilities; or

(f) by requiring the other person to leave public premises or cease to use such facilities.

20 **Goods, services and facilities**

It is unlawful for a person (the provider) who (whether for payment or not) provides goods or services, or makes facilities available, to discriminate against another person—

(a) by refusing to provide those goods or services or make those facilities available to the other person; or

(b) in the terms or conditions on which the provider provides those goods or services or makes those facilities available to the other person; or

(c) in the way in which the provider provides those goods or services or makes those facilities available to the other person.

21 **Accommodation**

(1) It is unlawful for a person (whether as principal or agent) to discriminate against another person—

(a) by refusing the other person’s application for accommodation; or

(b) in the terms or conditions on which accommodation is offered to the other person; or
(c) by deferring the other person’s application for accommodation or according to the other person a lower order of precedence in any list of applicants for that accommodation.

(2) It is unlawful for a person (whether as principal or agent) to discriminate against another person—

(a) by denying the other person access, or limiting the other person’s access, to any benefit associated with accommodation occupied by the other person; or

(b) by evicting the other person from accommodation occupied by the other person; or

(c) by subjecting the other person to any other detriment in relation to accommodation occupied by the other person.

22 Clubs

(1) It is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to discriminate against a person who is not a member of the club—

(a) by failing to accept the person’s application for membership; or

(b) in the terms or conditions on which the club is prepared to admit the person to membership.

Note The Legislation Act, dict, pt 1 defines fail to include refuse.

(2) It is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to discriminate against a member of the club—

(a) in the terms or conditions of membership that are afforded to the member; or

(b) by failing to accept the member’s application for a particular class or type of membership; or
(c) by denying the member access, or limiting the member’s access, to any benefit provided by the club; or

(d) by depriving the member of membership or varying the terms of membership; or

(e) by subjecting the member to any other detriment.

23 Requests etc for information

It is unlawful for a person to discriminate against another person by requesting or requiring information (whether by way of completing a form or otherwise) in connection with, or for the purpose of performing, an act that is or would be unlawful under any other provision of this part or under part 5, 6 or 7.
Part 4  Exceptions to unlawful discrimination

Division 4.1  General exceptions

Section 24

Domestic duties

Section 10 (1) (a) or (b) or section 13 (b) does not make it unlawful for a person (the first person) to discriminate against someone else in relation to a position as an employee or contract worker if the duties of the position involve doing domestic duties on the premises where the first person lives.

Residential care of children

Section 10 (1) (a) or (b) or section 13 (b) does not make it unlawful for a person to discriminate against someone else in relation to a position as an employee or contract worker if the duties of the position involve the care of a child where the child lives.

Adoption

This Act does not prevent the director-general responsible for administering the Adoption Act 1993 from discriminating against a person in making a decision—

(a) under the Adoption Act 1993, section 18 in relation to the approval of a person to be registered as suitable for the placement of a child or young person for adoption; or

(b) under the Adoption Act 1993, section 19 in relation to the removal of a person’s name from the register of suitable people; or
(c) under the *Adoption Act 1993*, section 35A in relation to the placement of a child or young person before adoption in the care of a person who is on the register of suitable people.

26 **Domestic accommodation etc**

(1) Section 21 does not make unlawful discrimination in relation to—

(a) the provision of accommodation if—

(i) the person who provides or proposes to provide the accommodation, or a near relative or carer of the person, lives and intends to continue to live on the premises; and

(ii) the accommodation provided in the premises is for not more than 6 people, not including the person mentioned in subparagraph (i) and any near relative or carer of the person; or

(b) the provision of accommodation by a religious body for members of a relevant class of people; or

(c) the provision of accommodation by a charitable or voluntary body for members of a relevant class of people.

(2) Also, section 21 does not make it unlawful for a person to discriminate on the ground of accommodation status in relation to the provision of accommodation if the discrimination is reasonable, having regard to any relevant factors.

**Example—relevant factors**

effect of the discrimination on the person discriminated against
(3) In this section:

*near relative*, of a person, means—

(a) a parent, child, grandparent, grandchild, brother or sister of the person; or

(b) a domestic partner of the person or of a person mentioned in paragraph (a).

*Note* For the meaning of *domestic partner*, see *Legislation Act*, s 169.

### 26A Preselection by employment agencies

Part 3 or part 4 does not make unlawful discrimination by an employment agency in the selection of people as suitable for a job vacancy if, had the proposed employer discriminated against the person in the same way, the discrimination would not have been unlawful.

### 27 Measures intended to achieve equality

(1) Part 3 does not make it unlawful to do an act if a purpose of the act is—

(a) to ensure that members of a relevant class of people have equal opportunities with other people; or

(b) to give members of a relevant class of people access to facilities, services or opportunities to meet the special needs they have as members of the relevant class.
(2) However, subsection (1) does not make it lawful to do an act for a purpose mentioned in that subsection if the act discriminates against a member of the relevant class in a way that is not reasonable for the achievement of that purpose.

Example for s (1) (a)
An employer runs a management skills development course for female employees only. Part 3 does not make this unlawful if a purpose is to ensure that women have equal opportunities (in this case, for career development) with men. Women are ‘members of a relevant class of people’ (relevant class of people is defined in the dict) because they are a class of people whose members are identified by reference to a protected attribute, in this case, sex in s 7 (1) (u).

Example for s (1) (b)
A health clinic provides speech therapy for autistic children only. Part 3 does not make this unlawful if a purpose is to give autistic children access to a service that meets their special needs as autistic children. Autistic children are ‘members of a relevant class of people’ because they are a class of people whose members are identified by reference to 2 attributes mentioned in s 7, in this case, disability in s 7 (1) (e) and age in s 7 (1) (b) (the Legislation Act, s 145 (b) provides that words in the singular include the plural ie ‘attribute’ in the def of relevant class of people can mean ‘attributes’).

28 Insurance
Part 3 does not make it unlawful for a person (the first person) to discriminate against someone else (the second person) in relation to the terms on which an annuity or policy of insurance is offered to, or may be obtained by, the second person, if the discrimination is reasonable in the circumstances, having regard to any actuarial or statistical data on which it is reasonable for the first person to rely.

29 Superannuation
(1) Part 3 does not make it unlawful for a person to discriminate against another person in the terms or conditions relating to a superannuation or provident fund or scheme.
(2) For discrimination on the ground of age, subsection (1) applies only if—

   (a) the discrimination is due to the application of a standard in force under the *Superannuation Industry (Supervision) Act 1993* (Cwlth); or

   (b) the discrimination is for the purpose of—

      (i) complying with; or

      (ii) avoiding a penalty under; or

      (iii) obtaining a benefit under;

   any other Act of the Commonwealth; or

   (c) the discrimination is—

      (i) based on actuarial or statistical data on which it is reasonable to rely; and

      (ii) reasonable having regard to the data and any other relevant factors; or

   (d) if there are no actuarial or statistical data on which it is reasonable to rely—the discrimination is—

      (i) based on other data on which it is reasonable to rely; and

      (ii) reasonable having regard to that data and any other relevant factors; or

   (e) if there are no data at all on which it is reasonable to rely—the discrimination is reasonable having regard to any other relevant factors.

(3) Subsection (2) applies in relation to a new superannuation fund condition irrespective of—

   (a) whether the fund was in existence immediately before 4 March 1994; and
(b) when the person to whom the discrimination relates became a member of the fund.

(4) Subsection (2) does not apply in relation to an existing superannuation fund condition if the person to whom the discrimination relates became a member of the fund before, or not later than 12 months after, 4 March 1994.

(5) In this section:

- **existing superannuation fund condition** means a superannuation fund condition in existence immediately before 4 March 1994.

- **new superannuation fund condition** means—
  (a) a superannuation fund condition that came into existence on or after 4 March 1994; or
  (b) an alteration made on or after 4 March 1994 to an existing superannuation fund condition.

### Acts done under statutory authority etc

(1) This Act does not make unlawful anything done necessarily for the purpose of complying with a requirement of—

  (a) a Territory law; or
  (b) a determination or direction made under a Territory law; or
  (c) an order of a court; or
  (d) an order of the ACAT.

(2) The Minister may declare that subsection (1) (a) and (b) expire on a day stated in the declaration.

(3) The declaration is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

(4) Subsection (1) (a) and (b) and this subsection expire on the day stated in the declaration.
Part 4 Exceptions to unlawful discrimination

Division 4.1 General exceptions

Section 31

31 Voluntary bodies

Part 3 does not make it unlawful for a voluntary body to discriminate against a person in relation to—

(a) the admission of people as members of the body; or

(b) the provision of benefits, facilities or services to people, whether the people are members of the body or otherwise.

32 Religious bodies

(1) Part 3 does not apply in relation to—

(a) the ordination or appointment of priests, ministers of religion or members of any religious order; or

(b) the training or education of people seeking ordination or appointment as priests, ministers of religion or members of a religious order; or

(c) the selection or appointment of people to exercise functions for the purposes of, or in connection with, any religious observance or practice; or

(d) any other act or practice (other than a defined act) of a body established for religious purposes, if the act or practice conforms to the doctrines, tenets or beliefs of that religion and is necessary to avoid injury to the religious susceptibilities of adherents of that religion.

(2) In this section:

defined act, by a religious body, means an act or practice in relation to—

(a) the employment or contracting of a person by the body to work in an educational institution; or

(b) the admission, treatment or continued enrolment of a person as a student at an educational institution.
33A Discrimination relating to accommodation, goods or services etc

Part 3 does not make it unlawful to discriminate against a person in relation to accommodation, providing goods or services or making facilities available only because a person charges for the accommodation, goods, services or facilities.

Division 4.2 Exceptions about sex, relationship status, pregnancy or breastfeeding

34 Genuine occupational qualifications—sex

(1) Section 10 (1) (a) or (b), section 12 (1) (a) or (b), section 13 (b) or section 14 (1) (a) or (2) (a) does not make it unlawful for a person to discriminate against someone else (the relevant person) on the ground of sex in relation to a position as an employee, commission agent, contract worker or partner if it is a genuine occupational qualification for the position that the position be filled by a person of the opposite sex to the relevant person.

(2) Without limiting subsection (1), it is a genuine occupational qualification, in relation to a particular position, to be a person of a particular sex (the relevant sex) if—

(a) the duties of the position can be performed only by a person having particular physical attributes (other than attributes of strength or stamina) that are not possessed by people not of the relevant sex; or

(b) the duties of the position involve performing in a dramatic performance or other entertainment in a role that, for reasons of authenticity, aesthetics or tradition is required to be performed by a person of the relevant sex; or
(c) the duties of the position involve participating as an artist’s or photographic model in the production of a work of art, visual image or sequence of visual images for which a person of the relevant sex is required for reasons of authenticity; or

(d) the duties of the position need to be performed by a person of the relevant sex to preserve decency or privacy because they involve the fitting of clothing for people of that sex; or

(e) the duties of the position include the conduct of searches of the clothing or bodies of people of the relevant sex; or

(f) the occupant of the position is required to enter a lavatory ordinarily used by people of the relevant sex while the lavatory is in use by people of that sex; or

(g) the occupant of the position is required to live on premises provided by the employer or principal and—

(i) the premises are not equipped with separate sleeping accommodation or sanitary facilities for people of each sex; and

(ii) the premises are already occupied by a person of the relevant sex and are not occupied by any person not of the relevant sex; and

(iii) it is not reasonable to expect the employer or principal to provide separate sleeping accommodation or sanitary facilities for people of each sex; or

(h) the occupant of the position is required to enter areas ordinarily used only by people of the relevant sex while those people are in a state of undress; or

(i) the duties of the position involve providing people of the relevant sex with services for the purpose of promoting their welfare if those services can most effectively be provided by a person of that sex; or
(j) the position is declared under the regulations to be a position in relation to which it is a genuine occupational qualification to be a person of a particular sex.

35 Employment of couple

Part 3 does not make unlawful discrimination against a person on the grounds of relationship status in relation to a job that is 1 of 2 jobs to be held by a couple in a domestic partnership.

Note For the meaning of domestic partnership, see Legislation Act, s 169.

36 Educational institutions for members of one sex

Section 18 does not make unlawful discrimination on the ground of sex in relation to a failure to accept a person’s application for admission as a student at an educational institution that is conducted solely for students of the opposite sex to that of the applicant.

Note The Legislation Act, dict, pt 1 defines fail to include refuse.

37 Pregnancy, childbirth or breastfeeding

Part 3 does not make it unlawful for a person to discriminate against a man on the ground of sex only because the person gives a woman rights or privileges in relation to pregnancy, childbirth or breastfeeding.

38 Services for members of one sex

Part 3 does not make unlawful discrimination on the ground of sex in relation to the provision of services the nature of which is such that they can only be provided to members of one sex.
39 **Accommodation provided for employees, contract workers or students**

(1) Part 3, in its application in relation to discrimination on the ground of sex, relationship status, pregnancy or breastfeeding, does not make it unlawful for an employer or principal who provides accommodation to employees or contract workers to provide accommodation of different standards to different employees or contract workers if—

(a) the standard of the accommodation provided is decided having regard to the number of people in the household of the employee or contract worker; and

(b) it is not reasonable to expect the employer or principal to provide accommodation of the same standard for all employees or contract workers.

(2) Part 3 does not make unlawful discrimination on the ground of sex in relation to the provision of accommodation if the accommodation is provided solely for people of one sex who are students at an educational institution.

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

(1) Section 22 does not make it unlawful to discriminate against a person on the ground of that person’s sex if membership of the relevant club is available only to people of the opposite sex.

(2) Section 22 (1) (b) or (2) does not make it unlawful to discriminate against a person on the ground of sex if the discrimination occurs in relation to the use or enjoyment of any benefit provided by the relevant club if—

(a) it is not practicable for the benefit to be used or enjoyed, either simultaneously or to the same extent, by both men and women; and
(b) either—

(i) the same, or an equivalent, benefit is provided for the use of men and women separately from each other; or

(ii) men and women are each entitled to a fair and reasonable proportion of the use and enjoyment of the benefit.

(3) In deciding any matter relating to the application of subsection (2), the following must be taken into account:

(a) the purposes for which the club is established;

(b) the membership of the club, including any class or type of membership;

(c) the nature of the benefits provided by the club;

(d) the opportunities for the use and enjoyment of those benefits by men and women;

(e) any other relevant circumstances.

41  **Sport**

(1) Part 3 does not make unlawful discrimination on the ground of sex in relation to the exclusion of people of one sex from participation in any competitive sporting activity in which the strength, stamina or physique of competitors is relevant.

(2) Subsection (1) does not apply in relation to the exclusion of people from participation in—

(a) the coaching of people engaged in any sporting activity; or

(b) the umpiring or refereeing of any sporting activity; or

(c) the administration of any sporting activity; or

(d) any prescribed sporting activity.
Division 4.3 Exceptions relating to race

42 Genuine occupational qualifications—race

(1) Section 10 (1) (a) or (b), section 12 (1) (a) or (b), section 13 (b) or section 14 (1) (a) or (2) (a) does not make it unlawful for a person to discriminate against someone else (the relevant person) on the ground of race in relation to a position as an employee, commission agent, contract worker or partner if it is a genuine occupational qualification for the position that the position be filled by a person of a different race to the relevant person.

(2) Without limiting subsection (1), it is a genuine occupational qualification, in relation to a particular position, to be a person of a particular race if—

(a) the duties of the position involve participating in a dramatic performance or other entertainment in a role that, for reasons of authenticity, aesthetics or tradition is required to be performed by a person of that race; or

(b) the duties of the position involve participating as an artist’s or photographic model in the production of a work of art, visual image or sequence of visual images for which a person of that race is required for reasons of authenticity; or

(c) the duties of the position involve working in a place where food or drink is (whether for payment or not) provided to and consumed by people in circumstances in which a person of that race is required for reasons of authenticity; or

(d) the duties of the position involve providing people of that race with services for the purpose of promoting their welfare, if those services can most effectively be provided by a person of that race; or
(e) the position is declared under the regulations to be a position in relation to which it is a genuine occupational qualification to be a person of a particular race.

43 Clubs for members of one race etc

(1) Section 22 does not make unlawful discrimination on the ground of race in relation to a club that has as its principal object providing benefits for people of a stated race if those people are described other than—

(a) by reference to colour; or

(b) in a way that has the effect of excluding some members of that race on the basis of colour.

(2) In deciding what the principal object of the club is for subsection (1), the following must be taken into account:

(a) the essential character of the club;

(b) if the people mainly enjoying the benefits of membership are of the race stated in the principal object;

(c) any other relevant circumstance.

Division 4.4 Exceptions relating to religious or political convictions

44 Religious workers

Section 10 (1) (a) or (b), section 12 (1) (a) or (b), section 13 (b) or section 14 (1) (a) or (2) (a) does not make unlawful—

(a) discrimination on the ground of religious conviction by an educational authority in relation to employment or work in an educational institution conducted by the authority; or
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Section 45

(b) discrimination on the ground of religious conviction by a religious body in relation to employment or work in a hospital or other place conducted by the body in which health services are provided;

if the duties of the employment or work involve, or would involve, the participation by the employee or worker in the teaching, observance or practice of the relevant religion.

45  Political workers etc

Section 10 (1) (a) or (b), section 12 (1) (a) or (b), section 13 (b) or section 14 (1) (a) or (2) (a) does not make unlawful discrimination on the ground of political conviction in relation to employment or work—

(a) as an adviser to, or a member of the staff of, a Minister, the Speaker of the Legislative Assembly or a member of the Legislative Assembly; or

(b) as an officer or employee of, or a worker for, a political party; or

(c) as a member of the electoral staff of a person; or

(d) in any other similar employment or work.

46  Religious educational institutions

(1) Section 18 does not make unlawful discrimination on the ground of religious conviction in relation to a failure to accept a person’s application for admission as a student at an educational institution that is conducted solely for students having a religious conviction other than that of the applicant.

Note  The Legislation Act, dict, pt 1 defines fail to include refuse.
(2) Section 10 or section 13 does not make unlawful discrimination on the ground of religious conviction in relation to staff matters at an educational institution if—

(a) the institution is conducted in accordance with the doctrines, tenets, beliefs or teaching of a particular religion or creed; and

(b) the discrimination is intended to enable, or better enable, the institution to be conducted in accordance with those doctrines, tenets, beliefs or teachings.

(3) Subsection (1) does not apply unless—

(a) the educational institution has published its policy in relation to student matters; and

(b) the policy is readily accessible by prospective and current students at the institution.

(4) Subsection (2) does not apply unless—

(a) the educational institution has published its policy in relation to staff matters; and

(b) the policy is readily accessible by prospective and current employees and contractors of the institution.

(5) In this section:

staff matters, in relation to an educational institution, means—

(a) the employment of a member of staff of the institution; or

(b) the engagement of a contractor to do work in the institution.

student matters, in relation to an educational institution, means the admission of a student at the institution.
Division 4.5 Exceptions relating to disability

47 Unjustifiable hardship

In deciding what is unjustifiable hardship for this division, all the relevant circumstances of the particular case must be taken into account, including the following:

(a) the nature of the benefit or detriment likely to accrue or be suffered by all people concerned;

(b) the nature of the disability of the person concerned;

(c) the financial circumstances of, and the estimated amount of expenditure by, the person claiming unjustifiable hardship.

48 Genuine occupational qualifications—disability

Section 10 (1) (a) or (b), section 12 (1) (a) or (b), section 13 (b) or section 14 (1) (a) or (2) (a) does not make it unlawful to discriminate against a person on the ground of disability in relation to employment or work that involves any of the following activities:

(a) participation in a dramatic performance or other entertainment in a role in which a person with a particular disability is required for reasons of authenticity;

(b) participation as an artist’s or photographic model in the production of a work of art, visual image or sequence of visual images for which a person with a particular disability is required for reasons of authenticity;

(c) providing people who have a particular disability with services for the purpose of promoting their welfare, if the services can most effectively be provided by a person with a similar disability;

(d) a prescribed activity.
49 Work related discrimination

(1) Section 10 (1) (b) or (2) (c), section 12 (1) (b) or (2) (c), section 13 (b) or section 14 (1) (a), (2) (a) or (3) (b) do not make unlawful discrimination by a person (the \textit{first person}) against someone else (the \textit{second person}) on the ground of disability if the first person believes on reasonable grounds that, because of a disability—

(a) the second person is, or would be, unable to carry out work that is essential to the position concerned; or

(b) the second person requires, or would require, to carry out the work, services or facilities that would not be required by a person who does not have the disability and providing the services or facilities would impose unjustifiable hardship on the first person.

(2) Section 10 (1) (c) or (2) (a) or (b), section 12 (1) (c) or (2) (a) or (b), section 13 (a) or (c) or section 14 (1) (b), (2) (b) or (3) (a) does not make it unlawful for a person (the \textit{first person}) to discriminate against someone else on the ground of disability in relation to any setting by the first person of terms or conditions for the performance of work that is essential to the position concerned, if the terms or conditions are reasonable having regard to either or both of the following:

(a) any limitation or restriction that the disability would or does impose on the other person’s ability to carry out that work;

(b) any services or facilities that would be or are required by the other person to carry out that work and that would not be or are not required by people who do not have such a disability.

(3) In this section:

\textit{disability} does not include anything mentioned in—

(a) section 5AA (2) (b) or (c) (Meaning of \textit{disability} etc); or

(b) section 7 (2) (Protected attributes), other than a disability that the person has.
50  Discrimination by qualifying bodies etc

(1) Section 16 does not make unlawful discrimination by an authority or body against a person on the ground of disability if the authority or body believes on reasonable grounds that, because of a disability, the person is, or would be, unable to carry out work that is essential to the position concerned.

(2) In this section:

*disability* does not include anything mentioned in—

(a) section 5AA (2) (b) or (c) (Meaning of disability etc); or

(b) section 7 (2) (Protected attributes), other than a disability that the person has.

51  Discrimination by educational institutions

(1) Section 18 does not make unlawful discrimination on the ground of disability in relation to a failure to accept a person’s application for admission as a student at an educational institution that is conducted solely for students with a disability that the applicant does not have.

*Note* The Legislation Act, dict, pt 1 defines *fail* to include refuse.

(2) Section 18 does not make unlawful discrimination on the ground of disability in relation to a failure to accept an application by a person with a disability for admission as a student at an educational institution if the person, if so admitted, would require services or facilities that are not required by students who do not have a disability, the provision of which would impose unjustifiable hardship on the relevant educational authority.

52  Discrimination relating to access to premises

(1) Section 19 does not make unlawful discrimination on the ground of disability in relation to the provision of access to premises if—

(a) the premises are so designed or constructed as to be inaccessible to a person with a disability; and
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(b) any alteration of the premises to provide such access would impose unjustifiable hardship on the person who would have to provide that access.

(2) The Minister may declare that subsection (1) does not apply to a building the construction of which begins on or after a day stated in the declaration.

(3) The declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act 2001.

(4) Subsection (1) does not apply to a building the construction of which begins on or after a day stated in the declaration.

(5) For this section, the construction of a building begins on the day when a building approval for the erection of the building is granted under the Building Act 2004.

53 Discrimination in the provision of goods and services

(1) Section 20 does not make unlawful discrimination on the ground of disability in relation to the provision of goods, services or facilities if—

(a) because of a person’s disability, the goods, services or facilities would have to be provided in a special way; and

(b) their provision in that way would impose unjustifiable hardship on the person providing, or proposing to provide, the goods, services or facilities.

(2) In this section:

services includes services provided by an employment agency.
54 **Discrimination relating to accommodation**

Section 21 does not make unlawful discrimination on the ground of disability in relation to the provision of accommodation to a person with a disability if special services or facilities are, or would be, required by the person and their provision would impose unjustifiable hardship on the person providing or proposing to provide the accommodation.

55 **Discrimination by clubs**

(1) Section 22 does not make unlawful discrimination on the ground of disability in relation to a club that has as its principal object the provision of benefits to people who have a particular disability.

(2) In deciding what the principal object of a club is for subsection (1), the following must be taken into account:

   (a) the essential character of the club;
   
   (b) if the people mainly enjoying the benefits of membership have the particular disability;
   
   (c) any other relevant circumstance.

(3) Section 22 does not make it unlawful to discriminate against a person on the ground of disability if the discrimination is in relation to the enjoyment of any benefit provided by a club if—

   (a) because of the person’s disability, the benefit would have to be provided to the person in a special way; and
   
   (b) the provision of the benefit in that way would impose unjustifiable hardship on the club.

56 **Public health**

Part 3 does not make unlawful discrimination against a person on the ground of disability if the discrimination is necessary and reasonable to protect public health.
57    **Sport**

(1) Part 3 does not make unlawful discrimination on the ground of disability in relation to the exclusion of a person from participation in any competitive sporting activity if—

(a) the person has a disability and the activity requires physical or intellectual attributes that the person does not possess; or

(b) if the activity is conducted for, or mainly for, people who have a particular kind of disability—the person does not have a disability of that kind.

(2) Subsection (1) does not apply in relation to the exclusion of people from participation in—

(a) the coaching of people engaged in any sporting activity; or

(b) the umpiring or refereeing of any sporting activity; or

(c) the administration of any sporting activity; or

(d) any prescribed sporting activity.

### Division 4.6    Exceptions relating to age

57A    **Genuine occupational qualifications—age**

Section 10 (1) (a) or (b), section 12 (1) (a) or (b), section 13 (b) or section 14 (1) (a) or (2) (a) does not make it unlawful to discriminate against a person on the ground of age in relation to employment or work that involves any of the following activities:

(a) participation in a dramatic performance or other entertainment in a role in which a person belonging to a particular age group is required for reasons of authenticity;

(b) participation as an artist’s or photographic model in the production of a work of art, visual image or sequence of visual images for which a person belonging to a particular age group is required for reasons of authenticity;
(c) providing people belonging to a particular age group with services for the purpose of promoting their welfare, if the services can most effectively be provided by a person belonging to a particular age group.

57B  **Youth wages**

(1) This section applies if an award provides for the payment of reduced wages to employees under 21 years old.

(2) If this section applies, section 10 (1) or (2) (a) or (b) does not make it unlawful for an employer to discriminate against a person on the ground of age—

(a) if the person is 21 years old or older—in relation to the offer of employment to a person under 21 years old; or

(b) if the person is under 21 years old—in relation to the payment of reduced wages to the person in accordance with the award.

(3) In this section:

*award* means a modern award made under the *Fair Work Act 2009* (Cwlth).

57C  **Employment and work—health and safety**

(1) Section 10 (1) (c) or (2) (a) or (b), section 12 (1) (c) or (2) (a) or (b), section 13 (a) or (c) or section 14 (1) (b), (2) (b) or (3) (a) does not make it unlawful to discriminate against a person on the ground of age in relation to employment or work, or qualifications for employment or work, if the discrimination is practised to comply with reasonable health and safety requirements relevant to the employment or work.

(2) In deciding what health and safety requirements are reasonable for subsection (1), all the relevant circumstances of the particular case must be taken into account, including the effects of the discrimination on the person discriminated against.
57E  Education—minimum-age admissions

(1) Section 18 does not make it unlawful to discriminate against a person on the ground of age in relation to the admission of the person to an educational institution if the level of education or training sought is provided only for students older than a particular age.

(2) Section 18 does not make it unlawful to fail to accept an application for admission as a student at an educational institution under a mature age admission scheme, if the application is made by a person whose age is below the minimum age fixed under that scheme for admission.

Note  The Legislation Act, dict, pt 1 defines fail to include refuse.

57G  Legal incapacity

Part 3 does not make it unlawful to discriminate against a person on the ground of age in relation to a transaction if the person is subject to a legal incapacity because of his or her age and the incapacity is relevant to the transaction.

57H  Benefits and concessions

Division 3.2 does not make it unlawful to discriminate against a person in relation to the provision of genuine benefits, including concessions, to someone else because of his or her age.

57J  Goods, services and facilities—health and safety

(1) Section 19 or section 20 does not make it unlawful to discriminate against a person on the ground of age in relation to the provision of goods, services or facilities if that discrimination is practised to comply with reasonable health and safety requirements relevant to such provision.

(2) In deciding what health and safety requirements are reasonable for subsection (1), all the relevant circumstances of the particular case must be taken into account, including the effects of the discrimination on the person discriminated against.
57K  **Recreational tours and accommodation**

Section 20 or section 21 does not make it unlawful to discriminate against a person on the ground of age in relation to the provision of a recreational tour or recreational accommodation.

57L  **Clubs**

(1) Section 20 or section 22 does not make it unlawful for a club to discriminate against a person on the ground of age if the club’s principal object is providing benefits for people belonging to a particular age group.

(2) In deciding what the principal object of a club is for subsection (1), the following must be taken into account:

   (a) the essential character of the club;
   
   (b) if the people mainly enjoying the benefits of membership belong to the particular age group stated in the club’s objects;
   
   (c) any other relevant circumstances.

57M  **Sport**

(1) Part 3 does not make it unlawful to discriminate against a person on the ground of age by his or her exclusion from participation in any competitive sport if competition is only allowed between people belonging to a particular age group.

(2) This section does not apply in relation to the exclusion of people from participation in—

   (a) coaching people doing any sporting activity; or
   
   (b) umpiring or refereeing any sporting activity; or
   
   (c) administering any sporting activity; or
   
   (d) any sporting activity prescribed under the regulations.
Division 4.7  Exceptions relating to profession, trade, occupation or calling

57N  Discrimination in profession, trade, occupation or calling

Part 3 does not make it unlawful to discriminate against a person on the ground of the profession, trade, occupation or calling of the person in relation to any transaction if profession, trade, occupation or calling is relevant to that transaction and the discrimination is reasonable in those circumstances.

Division 4.8  Exceptions relating to employment status

57O  Discrimination relating to employment status

Part 3 does not make it unlawful to discriminate against a person on the ground of employment status in relation to something mentioned in section 10 (1) (Applicants and employees) if the discrimination is reasonable, having regard to any relevant factors.

Example—relevant factors
effect of the discrimination on the person discriminated against

Division 4.9  Exceptions relating to immigration status

57P  Discrimination relating to immigration status

Part 3 does not make it unlawful to discriminate against a person on the ground of immigration status if the discrimination is reasonable, having regard to any relevant factors.

Example—relevant factors
effect of the discrimination on the person discriminated against
Division 4.10 Exceptions relating to physical features

57Q Genuine occupational requirements—physical features

Part 3 does not make it unlawful to discriminate against a person on the ground of physical features in relation to employment or work if the employment relates to a dramatic or artistic performance, photographic or modelling work or similar employment or work.

57R Health and safety—physical features

Part 3 does not make it unlawful to discriminate against a person on the ground of physical features if the discrimination is reasonably necessary to—

(a) protect the health or safety of the person, anyone else or the public generally; or

(b) protect the property of the person, anyone else or the public generally.
Part 5  Sexual harassment

58  Meaning of sexual harassment for pt 5

(1) In this part:

sexual harassment—a person subjects someone else to sexual harassment if the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person or engages in other unwelcome conduct of a sexual nature in circumstances in which the other person reasonably feels offended, humiliated or intimidated.

(2) In this section:

conduct, of a sexual nature, includes the making of a statement of a sexual nature to, or in the presence of, a person, whether the statement is made orally or in writing.

59  Employment etc

(1) It is unlawful for an employer to subject an employee, or a person seeking employment, to sexual harassment.

(2) It is unlawful for an employee to subject a fellow employee, or a person seeking employment with the same employer, to sexual harassment.

(3) It is unlawful for a principal to subject a commission agent or contract worker, or a person seeking to become his or her commission agent or contract worker, to sexual harassment.

(4) It is unlawful for a commission agent or contract worker to subject a fellow commission agent or contract worker to sexual harassment.

(5) It is unlawful for a partner in a partnership to subject another partner in the partnership, or a person seeking to become a partner in the partnership, to sexual harassment.
(6) It is unlawful for a workplace participant to subject another workplace participant, or a person seeking to become a workplace participant at that workplace, to sexual harassment at a place that is a workplace, or potential workplace, as the case requires, of both of those people.

(7) In this section:

place includes a ship, aircraft or vehicle.

workplace means a place at which a workplace participant works or otherwise carries out functions in connection with being a workplace participant.

workplace participant means any of the following:

(a) an employer or employee;
(b) a commission agent or contract worker;
(c) a partner in a partnership.

60 Educational institutions

(1) It is unlawful for a member of the staff of an educational institution to subject a student at that institution, or a person seeking admission to the institution as a student, to sexual harassment.

(2) It is unlawful for a student at an educational institution to subject—

(a) another student at the institution; or
(b) a member of the staff of the institution;

to sexual harassment.
61 **Access to premises**

It is unlawful for a person to subject another person to sexual harassment in the course of providing, or offering to provide, the other person with access to any premises to which the public or a section of the public are entitled to have access, whether for payment or not.

62 **Provision of goods, services and facilities**

It is unlawful for a person to subject another person to sexual harassment in the course of providing, or offering to provide, goods, services or facilities to the other person.

63 **Accommodation**

It is unlawful for a person to subject another person to sexual harassment in the course of providing, or offering to provide, accommodation to the other person.

64 **Clubs**

It is unlawful for a member of the committee of management of a club to subject a member of the club, or a person seeking to become a member of the club, to sexual harassment.
Part 7          Other unlawful acts

Section 67A

Part 7          Other unlawful acts

67A          Unlawful vilification

(1) It is unlawful for a person to incite hatred toward, revulsion of, serious contempt for, or severe ridicule of a person or group of people on the ground of any of the following, other than in private:

(a) disability;
(b) gender identity;
(c) HIV/AIDS status;
(d) race;
(e) religious conviction;
(f) sex characteristics;
(g) sexuality.

Examples—other than in private

1 screening recorded material at an event that is open to the public, even if privately organised
2 writing a publicly viewable post on social media
3 speaking in an interview intended to be broadcast or published
4 actions or gestures observable by the public
5 wearing or displaying clothes, signs or flags observable by the public

Note Serious vilification is an offence under the Criminal Code, s 750.

(2) However, it is not unlawful to—

(a) make a fair report about an act mentioned in subsection (1); or
(b) communicate, distribute or disseminate any matter consisting of a publication that is subject to a defence of absolute privilege in a proceeding for defamation; or
(c) do an act mentioned in subsection (1) reasonably and honestly, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including discussion or debate about and presentations of any matter.

(3) In this section:

HIV/AIDS status means status as a person who has the Human Immunodeficiency Virus or Acquired Immune Deficiency Syndrome.

68 Victimisation

(1) It is unlawful for a person (the first person) to subject, or threaten to subject, another person (the other person) to any detriment because—

(a) the other person, or someone associated with the other person—

(i) has taken discrimination action; or

(ii) proposes to take discrimination action; or

(b) the first person believes the other person, or someone associated with the other person—

(i) has taken discrimination action; or

(ii) proposes to take discrimination action.

(2) In this section:

discrimination action means any of the following:

(a) begin a proceeding in the ACAT or a court in relation to this Act;

(b) make a discrimination complaint;

(c) participate in or assist with, a criminal investigation in relation to an offence under the Criminal Code, section 750 (Serious vilification);
Part 7  Other unlawful acts

Section 69

(d) give information or produce a document or other thing to a person exercising a function under the HRC Act in relation to a discrimination complaint;

(e) give information, produce a document or other thing or answer a question when required under the HRC Act in relation to a discrimination complaint;

(f) give evidence or produce a document or thing to the ACAT or a court in relation to this Act;

(g) reasonably assert any rights that the other person, or someone else, has under this Act;

(h) claim that a person has committed an act that is unlawful under this Act, or is an offence against the Criminal Code, section 750, other than a claim that is false and not made honestly;

(i) do anything else in accordance with this Act.

discrimination complaint means a complaint under the HRC Act about an unlawful act.


69  Unlawful advertising

It is unlawful for a person to advertise any matter—

(a) that indicates an intention to do an act that is unlawful under part 3, part 5 or this part; or

(b) that could reasonably be understood as indicating such an intention.
Part 8  General principles about unlawful acts

70  Onus of establishing exception etc
If, apart from an exception, exemption, excuse, qualification or justification under this Act, conduct would be an unlawful act, the onus of establishing the exception, exemption, excuse, qualification or justification lies on the person seeking to rely on it.

71  Unlawful act not an offence
The doing of an act is not an offence only because it is an unlawful act.

72  Unlawful act no basis for civil action
This Act does not give a person any right of action in relation to the doing of an act that is an unlawful act.

73  Aiding etc unlawful acts
A person who aids, abets, counsels or procures someone else to do an act that is an unlawful act is taken, for this Act, also to have done the act.
Part 10 Exemptions

109 Grant of exemptions

(1) The HRC may, on written application, exempt the applicant from the operation of a specified provision of part 3, part 5 or part 7.

(2) The HRC may, on a written application made—
   (a) by a person to whom an exemption has been granted; and
   (b) before expiry of that exemption;

   further exempt the applicant from the operation of the provision concerned.

(3) In the exercise of a power under subsection (1) or subsection (2), the matters to which the HRC must have regard include the following matters:
   (a) the need to promote an acceptance of, and compliance with, this Act;
   (b) the desirability, if relevant, of certain discriminatory actions being permitted for the purpose of redressing the effects of past discrimination.

(4) An exemption or further exemption—
   (a) is a notifiable instrument; and
   (b) is subject to the conditions (if any) specified in the notice; and
   (c) has effect according to its terms for the period not longer than 3 years specified in the notice.

Note A notifiable instrument must be notified under the Legislation Act.
(5) If the HRC refuses to grant an exemption or a further exemption, the HRC must give the applicant or each applicant written notice of the refusal.

(6) A notice mentioned in subsection (4) or (5) is a reviewable decision notice.

110 **Review by ACAT**

An application may be made to the ACAT for review of a decision of the HRC under section 109.
Part 12  Miscellaneous

Section 121

121  Secrecy

(1) In this section:

- **court** includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

- **divulge** includes communicate.

- **person to whom this section applies** means a person who exercises, or has exercised, a function under this Act.

- **produce** includes allow access to.

- **protected information** means information about a person that is disclosed to, or obtained by, a person to whom this section applies because of the exercise of a function under this Act by the person or someone else.

(2) A person to whom this section applies commits an offence if—

(a) the person—

(i) makes a record of protected information about someone else; and

(ii) is reckless about whether the information is protected information about someone else; or

(b) the person—

(i) does something that divulges protected information about someone else; and

(ii) is reckless about whether—

(A) the information is protected information about someone else; and
(B) doing the thing would result in the information being divulged to someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

3 Subsection (2) does not apply if the record is made, or the information is divulged—

(a) under this or any other Act; or

(b) in relation to the exercise of a function, as a person to whom this section applies, under this Act or another territory law.

4 Subsection (2) does not apply to the divulging of protected information about someone with the person’s consent.

5 A person to whom this section applies need not divulge protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another territory law.

121A Acts and omissions of representatives

1 This section applies to the doing of an unlawful act (conduct).

Note 1 A complaint may be made about an unlawful act (see Human Rights Commission Act 2005, s 42 (1) (c)).

Note 2 Doing an act—see s 4A.

2 Conduct engaged in on behalf of a person by a representative of the person is taken to have been engaged in by the person if the conduct was within the scope of the representative’s actual or apparent authority.

3 However, subsection (2) does not apply if the person establishes that the person took all reasonable steps to prevent the representative from engaging in the conduct.
(4) In this section:

representative, of a person, means an employee or agent of the person.

122 Relationship to other laws

This Act is additional to any other territory law that provides for the protection of a person from conduct that is or would be unlawful under this Act.

123 Regulation-making power

(1) The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(2) The regulations may except people, activities or other things from the operation of particular provisions of part 3, part 5 or part 7.
**Dictionary**

(see s 2)

**Note 1** The *Legislation Act* contains definitions and other provisions relevant to this Act.

**Note 2** In particular, the *Legislation Act*, dict, pt 1, defines the following terms:

- ACAT
- body
- civil partner
- civil partnership
- civil union
- civil union partner
- corporation
- director-general (see s 163)
- domestic partner (see s 169)
- domestic partnership (see s 169)
- fail
- for
- in relation to
- intersex person (see s 169B)
- reviewable decision notice
- State
- Territory authority
- the Territory
- under.

*accommodation* includes residential and business accommodation.

*accommodation status* includes being—

(a) a tenant; and

(b) an occupant within the meaning of the *Residential Tenancies Act 1997*; and
(c) in receipt of, or waiting to receive, housing assistance within the meaning of the *Housing Assistance Act 2007*; and

(d) homeless.

carer—a person is a *carer* of someone else (the *dependant*) if—

(a) the dependant is dependent on the person for ongoing care and assistance; and

(b) the person cares for the dependant otherwise than because of—

(i) a commercial arrangement; or

(ii) an arrangement that is substantially commercial.

**Example of a carer**
Ms W suffers from multiple sclerosis and requires constant care. Her spouse and 3 children aged 21, 16 and 11 share her care and would each be a ‘carer’.

**club** means a club that holds a club licence.

**club licence**—see the *Liquor Act 2010*, section 20.

**commission agent** means a person who does work for another person as the agent of that other person and who is remunerated (whether wholly or partially) by commission.

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

**contract worker** means a person (the *worker*) who does work for someone else (the *third person*) under a contract between the worker’s employer and the third person.

**disability**—see section 5AA.

**discrimination**—see section 8.

**doing** an act—see section 4A.

**educational authority** means a body or person administering an educational institution.
**educational institution** means a school, college, university or other institution at which education or training is provided.

**employer,** in relation to an unpaid worker, means the person for whom the unpaid worker performs work.

**employment** includes—

(a) work under a contract for services; and

(b) work as a Territory employee; and

(c) work as an unpaid worker.

**employment agency** means any person who or body that (whether for payment or not) assists people to find employment or other work or assists employers to find employees or workers.

**employment status** includes—

(a) being unemployed; and

(b) receiving a pension or another social security benefit; and

(c) receiving compensation; and

(d) being employed on a part-time, casual or temporary basis; and

(e) undertaking shift or contract work.

**gender identity** means the gender expression or gender-related identity, appearance or mannerisms or other gender-related characteristics of a person, with or without regard to the person’s designated sex at birth.

*Note* Gender identity includes the gender identity that the person has or has had in the past, or is thought to have or have had in the past (see s 7 (2)).

**HRC** means the human rights commission.
immigration status includes being an immigrant, a refugee or an asylum seeker, or holding any kind of visa under the *Migration Act 1958* (Cwlth).

*Note*  Immigration status includes the immigration status that the person has or has had in the past, or is thought to have or have had in the past (see s 7 (2)).

**industrial activity** means any of the following:

(a) being or not being a member of, or joining, not joining or refusing to join, an industrial organisation or industrial association;

(b) establishing or being involved in establishing an industrial organisation or forming or being involved in forming an industrial association;

(c) organising or promoting or proposing to organise or promote a lawful activity on behalf of an industrial organisation or industrial association;

(d) encouraging, assisting, participating in or proposing to encourage, assist or participate in a lawful activity organised or promoted by an industrial organisation or industrial association;

(e) not participating in or refusing to participate in a lawful activity organised or promoted by an industrial organisation or industrial association;

(f) representing or advancing the views, claims or interests of members of an industrial organisation or industrial association.

**industrial association**—

(a) means a group of employees or employers formed formally or informally to represent or advance the views, claims or interests of the employees or employers in a particular industry, trade, profession, business or employment; but

(b) does not include an industrial organisation.
**industrial organisation** means any of the following that is registered or recognised under the law of the Commonwealth, a State or another Territory:

(a) an organisation of employees;

(b) an organisation of employers;

(c) any other organisation established for the purposes of people who carry on a particular industry, trade, profession, business or employment.

**irrelevant criminal record**, in relation to a person, means a record relating to an offence, or an alleged offence, if—

(a) the person has been charged with the offence but—

(i) a proceeding for the alleged offence is not finalised; or

(ii) the charge has lapsed, been withdrawn or discharged, or struck out; or

(b) the person has been acquitted of the alleged offence; or

(c) the person has had a conviction for the alleged offence quashed or set aside; or

(d) the person has been served with an infringement notice for the alleged offence; or

(e) the person has a conviction for the offence, but the circumstances of the offence are not directly relevant to the situation in which discrimination arises; or

(f) the person has a spent conviction or an extinguished conviction, within the meaning of the **Spent Convictions Act 2000**, for the offence.

*Note* The **Spent Convictions Act 2000** sets out which convictions can be spent (see that Act, s 11) and when a conviction is spent (see that Act, s 12).

**man** means a member of the male sex irrespective of age.
physical features means a person’s height, weight, size or other bodily features.

political conviction includes—
(a) having a political conviction, belief, opinion or affiliation; and
(b) engaging in political activity; and
(c) not having a political conviction, belief, opinion or affiliation; and
(d) not engaging in political activity.

potential pregnancy—see section 5A.

pregnancy includes potential pregnancy.

premises includes—
(a) a structure, building, aircraft, vehicle or vessel; and
(b) a place (whether enclosed or built on or not); and
(c) a part of premises (including premises of a kind referred to in paragraph (a) or paragraph (b)).

principal means—
(a) for a commission agent—a person for whom the commission agent does work as a commission agent; or
(b) for a contract worker—a person for whom the contract worker does work under a contract between the contract worker’s employer and the person.

protected attribute—see section 7.

race includes—
(a) colour, descent, ethnic and national origin and nationality; and
(b) any 2 or more distinct races that are collectively referred to or known as a race.
**relationship status** means the status or condition of being—

(a) single; or
(b) married; or
(c) married but living separately and apart from one’s spouse; or
(d) in a civil union; or
(e) in a civil union but living separately and apart from one’s civil union partner; or
(f) in a civil partnership; or
(g) in a civil partnership but living separately and apart from one’s civil partner; or
(h) divorced; or
(i) the surviving spouse; or
(j) the domestic partner (other than the spouse, civil union partner or civil partner) of someone else.

*Note* For the meaning of *domestic partner*, see *Legislation Act*, s 169.

**relative**, of a person, means—

(a) a person who is related to the person by blood, marriage, civil union, civil partnership or any other domestic partnership or adoption; or
(b) a domestic partner of the person or of a person mentioned in paragraph (a).

**relevant class of people** means a class of people whose members are identified by reference to a protected attribute.

**religious conviction** includes—

(a) having a religious conviction, belief, opinion or affiliation; and
(b) engaging in religious activity; and
(c) the cultural heritage and distinctive spiritual practices, observances, beliefs and teachings of Aboriginal and Torres Strait Islander people; and

(d) engaging in the cultural heritage and distinctive spiritual practices, observances, beliefs and teachings of Aboriginal and Torres Strait Islander peoples; and

(e) not having a religious conviction, belief, opinion or affiliation; and

(f) not engaging in religious activity.

services includes—

(a) services relating to banking, insurance or the provision of grants, loans, credit or finance; and

(b) services relating to entertainment, recreation or refreshment; and

(c) services relating to transport or travel; and

(d) services of any profession, trade or business; and

(e) services provided by a government, government authority, local government body or corporation in which a government has a controlling interest; and

(f) the provision of scholarships, prizes or awards.

sex characteristics—

(a) means a person’s physical features relating to sex; and

(b) includes—

(i) genitalia and other sexual and reproductive parts of the person’s anatomy; and

(ii) the person’s chromosomes, hormones and secondary physical features emerging as a result of puberty.

sexual harassment, for part 5 (Sexual harassment)—see section 58.
**sexuality** includes heterosexuality, homosexuality and bisexuality.

**Territory employee** means a person who is—

(a) a public servant; or

(b) employed by a Territory authority;

**unlawful act** means an act that is unlawful under—

(a) part 3 (Unlawful discrimination); or

(b) part 5 (Sexual harassment); or

(c) part 7 (Other unlawful acts).

**unpaid worker** means a person who performs work for an employer for no remuneration.

**voluntary body** means an association or other body (whether incorporated or unincorporated) the activities of which are not engaged in for the purpose of making a profit, but does not include—

(a) a club; or

(b) a body established by a law of the Territory, the Commonwealth, a State or another Territory; or

(c) an association that provides grants, loans, credit or finance to its members.

**woman** means a member of the female sex irrespective of age.
Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the Legislation Act 2001, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel’s Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

A = Act
AF = Approved form
am = amended
amdt = amendment
AR = Assembly resolution
ch = chapter
CN = Commencement notice
def = definition
DI = Disallowable instrument
dict = dictionary
disallowed = disallowed by the Legislative Assembly
exp = expires/expired
Gaz = gazette
hgd = heading
IA = Interpretation Act 1967
ins = inserted/added
LA = Legislation Act 2001
LR = legislation register
LRA = Legislation (Republication) Act 1996
mod = modified/modification

NI = Notifiable instrument
o = order
om = omitted/repealed
ord = ordinance
orig = original
par = paragraph/subparagraph
pres = present
prev = previous
(prev...) = previously
pl = part
r = rule/subrule
reloc = relocated
renum = renumbered
renum = renumbered
renum = renumbered
R[X] = Republication No
RI = reissue
s = section/subsection
sch = schedule
sdv = subdivision
SL = Subordinate law
sub = substituted
underlining = whole or part not commenced or to be expired
3 Legislation history

notified 13 December 1991 (Gaz 1991 No S143)
s 1, s 2 commenced 13 December 1991 (s 2 (1))
remainder commenced 20 January 1992 (s 2 (2) and Gaz 1992 No S6)

as amended by

Discrimination (Amendment) Act 1993 A1993-25
notified 21 May 1993 (Gaz 1993 No S83)
commenced 21 May 1993 (s 2)

notified 27 August 1993 (Gaz 1994 No S165)
commenced 27 August 1993 (s 2)

Discrimination (Amendment) Act 1994 A1994-1
notified 4 March 1994 (Gaz 1994 No S35)
commenced 4 March 1994 (s 2)

Discrimination (Amendment) Act (No 2) 1994 A1994-11
notified 14 March 1994 (Gaz 1994 No S44)
s 1, s 2 commenced 14 March 1994 (s 2 (1))
remainder commenced 14 May 1994 (s 2 (2))

notified 30 June 1994 (Gaz 1994 No S121)
s 1, s 2 commenced 30 June 1994 (s 2 (1))
sch 1 pt 28 commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S142)

Administrative Appeals (Consequential Amendments) Act 1994 A1994-60 sch 1
notified 11 October 1994 (Gaz 1994 No S197)
s 1, s 2 commenced 11 October 1994 (s 2 (1))
sch 1 commenced 14 November 1994 (s 2 (2) and Gaz 1994 No S250)

Discrimination (Amendment) Act (No 3) 1994 A1994-103
notified 22 December 1994 (Gaz 1994 No S289)
commenced 22 December 1994 (s 2)
Endnotes

3 Legislation history

notified 30 June 1995 (Gaz 1995 No S135)
commenced 30 June 1995 (s 2)

notified 5 September 1995 (Gaz 1995 No S212)
sch commenced 5 September 1995 (s 2)

notified 18 December 1995 (Gaz 1995 No S306)
sch commenced 18 December 1995 (s 2)

notified 20 December 1996 (Gaz 1996 No S328)
ss 1-3 commenced 20 December 1996 (s 2 (1))
ss 4-24 commenced 31 December 1996 (s 2 (2) and Gaz 1996 No S350)
remainder commenced 8 January 1997 (s 2 (2) and Gaz 1997 No S3)

Remuneration Tribunal (Consequential Amendments) Act 1997 A1997-41 sch 1 (as am by A2002-49 amdt 3.222)
notified 19 September 1997 (Gaz 1997 No S264)
commenced 24 September 1997 (s 2 as am by A2002-49 amdt 3.222)

Building (Amendment) Act (No 2) 1998 A1998-52 sch
notified 16 November 1998 (Gaz 1998 No S205)
ss 1-3 commenced 16 November 1998 (s 2 (1))
sch commenced 4 January 1999 (s 2 (2) and Gaz 1999 No S1)

Statute Law Revision (Penalties) Act 1998 A1998-54 sch
notified 27 November 1998 (Gaz 1998 No S207)
s 1, s 2 commenced 27 November 1998 (s 2 (1))
sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

notified 14 April 1999 (Gaz 1999 No S16)
s 1, s 2 commenced 14 April 1999 (s 2 (1))
s 12 commenced 1 September 1999 (s 2 (2) and Gaz 1999 No 35)
Discrimination Amendment Act 1999 A1999-60
notified 10 November 1999 (Gaz 1999 No 45)
commenced 10 November 1999 (s 2 (1))

Children and Young People (Consequential Amendments) Act 1999
A1999-64 sch 2
notified 10 November 1999 (Gaz 1999 No 45)
s 1, s 2 commenced 10 November 1999 (IA s 10B)
sch 2 commenced 10 May 2000 (s 2 (2))

notified 10 November 1999 (Gaz 1999 No 45)
sch 3 commenced 10 November 1999 (s 2)

Discrimination Amendment Act (No 2) 1999 A1999-83
notified 23 December 1999 (Gaz 1999 No S65)
commenced 23 December 1999 (s 2)

Justice and Community Safety Legislation Amendment Act 2000
(No 2) A2000-2 sch
notified 9 March 2000 (Gaz 2000 No 10)
commenced 9 March 2000 (s 2)

Justice and Community Safety Legislation Amendment Act 2000
(No 3) A2000-17 sch 1
notified 1 June 2000 (Gaz 2000 No 22)
commenced 1 June 2000 (s 2)

notified 28 September 2000 (Gaz 2000 No 39)
s 1, s 2 commenced 28 September 2000 (IA s 10B)
pt 5 (s 24) commenced 28 March 2001 (IA s 10E)

Legislation (Consequential Amendments) Act 2001 A2001-44 pt 105
notified 26 July 2001 (Gaz 2001 No 30)
s 1, s 2 commenced 26 July 2001 (IA s 10B)
pt 105 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)
Endnotes

3 Legislation history

Legislation Amendment Act 2002 A2002-11 pt 2.16
notified LR 27 May 2002
s 1, s 2 commenced 27 May 2002 (LA s 75)
pt 2.16 commenced 28 May 2002 (s 2 (1))

Discrimination Amendment Act 2002 A2002-19
notified LR 13 June 2002
s 1, s 2 commenced 13 June 2002 (LA s 75)
remainder commenced 14 June 2002 (s 2)

Criminal Code 2002 No 51 pt 1.7
notified LR 20 December 2002
s 1, s 2 commenced 20 December 2002 (LA s 75)
pt 1.7 commenced 1 January 2003 (s 2 (1))

Statute Law Amendment Act 2002 (No 2) A2002-49 amdt 3.222
notified LR 20 December 2002
s 1, s 2 taken to have commenced 7 October 1994 (LA s 75 (2))
amdt 3.222 commenced 24 September 1997 (s 2 (3))
Note This Act only amends the Remuneration Tribunal (Consequential Amendments) Act 1997 A1997-41.

Discrimination Amendment Act 2003 A2003-15
notified LR 27 March 2003
s 1, s 2 commenced 27 March 2003 (LA s 75 (1))
remainder commenced 28 March 2003 (s 2)

notified LR 19 August 2003
s 1, s 2 commenced 27 March 2003 (LA s 75 (1))
sch 3 pt 3.7 commenced 9 October 2003 (s 2 (1))

sch 2 pt 2.5
notified LR 31 October 2003
s 1, s 2 commenced 31 October 2003 (LA s 75 (1))
sch 2 pt 2.5 commenced 30 April 2004 (s 2 and LA s 79)
sch 2 pt 2.3
notified LR 18 February 2004
s 1, s 2 commenced 18 February 2004 (LA s 75 (1))
sch 2 pt 2.3 commenced 22 March 2004 (s 2 and CN2004-4)

Human Rights Act 2004 A2004-5 sch 2 pt 2.2
notified LR 10 March 2004
s 1, s 2 commenced 10 March 2004 (LA s 75 (1))
sch 2 pt 2.2 commenced 1 July 2004 (s 2)

Construction Occupations Legislation Amendment Act 2004
A2004-13 sch 2 pt 2.7
notified LR 26 March 2004
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))
sch 2 pt 2.7 commenced 1 September 2004 (s 2 and see Construction Occupations (Licensing) Act 2004 A2004-12, s 2 and CN2004-8)

notified LR 26 March 2004
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))
sch 1 pt 1.8, sch 2 pt 2.26 commenced 9 April 2004 (s 2)

Discrimination Amendment Act 2004 A2004-51
notified LR 11 August 2004
s 1, s 2 commenced 11 August 2004 (LA s 75 (1))
remainder commenced 12 August 2004 (s 2)

Court Procedures (Consequential Amendments) Act 2004 A2004-60
sch 1 pt 1.22
notified LR 2 September 2004
s 1, s 2 commenced 2 September 2004 (LA s 75 (1))
sch 1 pt 1.22 commenced 10 January 2005 (s 2 and see Court Procedures Act 2004 A2004-59, s 2 and CN2004-29)

Human Rights Commission Legislation Amendment Act 2005
A2005-41 sch 1 pt 1.2 (as am by A2006-3 amd 1.3)
notified LR 1 September 2005
s 1, s 2 commenced 1 September 2005 (LA s 75 (1))
sch 1 pt 1.2 commenced 1 November 2006 (s 2 (3) (as am by A2006-3 amd 1.3) and see Human Rights Commission Act 2005 A2005-40,
s 2 (as am by A2006-3 s 4) and CN2006-21)
Endnotes

3 Legislation history

 notified LR 26 October 2005
 s 1, s 2 commenced 26 October 2005 (LA s 75 (1))
 sch 1 pt 1.8 commenced 1 November 2006 (s 2 (2) (as am by A2005-60 amdt 1.54) and see Human Rights Commission Act 2005 A2005-40, s 2 (as am by A2006-3 s 4) and CN2006-21)

 notified LR 1 December 2005
 s 1, s 2 taken to have commenced 23 November 2005 (LA s 75 (2))
 sch 1 pt 1.13 commenced 22 December 2005 (s 2 (4))
 Note This Act only amends the Criminal Code (Administration of Justice Offences) Amendment Act 2005 A2005-53

Human Rights Commission Legislation Amendment Act 2006 A2006-3 amdt 1.3
 notified LR 22 February 2006
 s 1, s 2 commenced 22 February 2006 (LA s 75 (1))
 amdt 1.3 commenced 23 February 2006 (s 2)
 Note This Act only amends the Human Rights Commission Legislation Amendment Act 2005 A2005-41

Civil Unions Act 2006 A2006-22 sch 1 pt 1.9
 notified LR 19 May 2006
 s 1, s 2 commenced 19 May 2006 (LA s 75 (1))
 sch 1 pt 1.9 never commenced
 Note Act repealed by disallowance 14 June 2006 (see Cwlth Gaz 2006 No S93)

 notified LR 28 September 2006
 s 1, s 2 commenced 28 September 2006 (LA s 75 (1))
 sch 2 pt 2.14 commenced 29 September 2006 (s 2 (1))

Carers Recognition Legislation Amendment Act 2006 A2006-47 pt 2
 notified LR 28 November 2006
 s 1, s 2 commenced 28 November 2006 (LA s 75 (1))
 pt 2 commenced 28 May 2007 (s 2 and LA s 79)
Endnotes

Legislation history

Statute Law Amendment Act 2007 (No 2) A2007-16 sch 3 pt 3.11
notified LR 20 June 2007
s 1, s 2 taken to have commenced 12 April 2007 (LA s 75 (2))
sch 3 pt 3.11 commenced 11 July 2007 (s 2 (1))

Justice and Community Safety Legislation Amendment Act 2007
A2007-22 sch 1 pt 1.8
notified LR 5 September 2007
s 1, s 2 commenced 5 September 2007 (LA s 75 (1))
sch 1 pt 1.8 commenced 6 September 2007 (s 2)

notified LR 6 December 2007
s 1, s 2 commenced 6 December 2007 (LA s 75 (1))
sch 3 pt 3.9 commenced 27 December 2007 (s 2)

Civil Partnerships Act 2008 A2008-14 sch 1 pt 1.8
notified LR 15 May 2008
s 1, s 2 commenced 15 May 2008 (LA s 75 (1))
sch 1 pt 1.8 commenced 19 May 2008 (s 2 and CN2008-8)

Parental Leave Legislation Amendment Act 2008 A2008-27
notified LR 12 August 2008
s 1, s 2 commenced 12 August 2008 (LA s 75 (1))
remainder commenced 13 August 2008 (s 2)

Justice and Community Safety Legislation Amendment Act 2008 (No 3) A2008-29 sch 1 pt 1.7
notified LR 13 August 2008
s 1, s 2 commenced 13 August 2008 (LA s 75 (1))
sch 1 pt 1.7 commenced 27 August 2008 (s 2)

ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 A2008-36 sch 1 pt 1.20
notified LR 4 September 2008
s 1, s 2 commenced 4 September 2008 (LA s 75 (1))
sch 1 pt 1.20 commenced 2 February 2009 (s 2 (1) and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)
Endnotes

3 Legislation history

Adoption Amendment Act 2009 (No 2) A2009-36 sch 1 pt 1.3
notified LR 22 October 2009
s 1, s 2 commenced 22 October 2009 (LA s 75 (1))
sch 1 pt 1.3 commenced 22 April 2010 (s 2 and LA s 79)

Human Rights Commission Legislation Amendment Act 2010
A2010-5 pt 2
notified LR 2 March 2010
s 1, s 2 commenced 2 March 2010 (LA s 75 (1))
pt 2 commenced 9 March 2010 (s 2)

Liquor (Consequential Amendments) Act 2010 A2010-43 sch 1 pt 1.8
notified LR 8 November 2010
s 1, s 2 commenced 8 November 2010 (LA s 75 (1))
sch 1 pt 1.8 commenced 1 December 2010 (s 2 (4) and see Liquor
Act 2010 A2010-35, s 2 (3) (as am by A2010-43 amdt 1.19) and
CN2010-14)

Administrative (One ACT Public Service Miscellaneous Amendments)
Act 2011 A2011-22 sch 1 pt 1.54
notified LR 30 June 2011
s 1, s 2 commenced 30 June 2011 (LA s 75 (1))
sch 1 pt 1.54 commenced 1 July 2011 (s 2 (1))

Statute Law Amendment Act 2011 (No 2) A2011-28 sch 3 pt 3.8
notified LR 31 August 2011
s 1, s 2 commenced 31 August 2011 (LA s 75 (1))
sch 3 pt 3.8 commenced 21 September 2011 (s 2 (1))

notified LR 28 November 2011
s 1, s 2 commenced 28 November 2011 (LA s 75 (1))
sch 3 pt 3.19 commenced 12 December 2011 (s 2)

Civil Unions Act 2012 A2012-40 sch 3 pt 3.9
notified LR 4 September 2012
s 1, s 2 commenced 4 September 2012 (LA s 75 (1))
sch 3 pt 3.9 commenced 11 September 2012 (s 2)
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Marriage Equality (Same Sex) Act 2013 A2013-39 sch 2 pt 2.9
notified LR 4 November 2013
s 1, s 2 commenced 4 November 2013 (LA s 75 (1))
sch 2 pt 2.9 commenced 7 November 2013 (s 2 and CN2013-11)
Note The High Court held this Act to be of no effect (see
Commonwealth v Australian Capital Territory [2013] HCA 55)

Spent Convictions (Historical Homosexual Convictions Extinguishment) Amendment Act 2015 A2015-45 sch 1 pt 1.3
notified LR 6 November 2015
s 1, s 2 commenced 6 November 2015 (LA s 75 (1))
sch 1 pt 1.3 commenced 7 November 2015 (s 2)

Discrimination Amendment Act 2016 A2016-49 pt 2, pt 3
notified LR 23 August 2016
s 1, s 2 commenced 23 August 2016 (LA s 75 (1))
pt 2 commenced 24 August 2016 (s 2 (1))
pt 3 commenced 3 April 2017 (s 2 (2))

Discrimination Amendment Act 2018 A2018-48
notified LR 6 December 2018
s 1, s 2 commenced 6 December 2018 (LA s 75 (1))
remainder commenced 29 April 2019 (s 2 and CN2019-7)

Justice and Community Safety Legislation Amendment Act 2019
A2019-17 sch 1 pt 1.2
notified LR 14 June 2019
s 1, s 2 commenced 14 June 2019 (LA s 75 (1))
sch 1 pt 1.2 commenced 21 June 2019 (s 2)

notified LR 10 October 2019
s 1, s 2 commenced 10 October 2019 (LA s 75 (1))
pt 4 commenced 10 April 2020 (s 2 (2))

Justice Legislation Amendment Act 2020 A2020-42 pt 12
notified LR 27 August 2020
s 1, s 2 commenced 27 August 2020 (LA s 75 (1))
pt 12 commenced 28 August 2020 (s 2 (9))
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<td>Objects of Act</td>
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<td>def <em>de facto spouse</em></td>
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<td>def <em>marital status</em></td>
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<td>Interpretation beneficial to people with protected attributes</td>
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Discrimination Act 1991

Effective: 28/08/20

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au
MLAs as employers
s 6 om A1993-44 sch 2
ins A1995-9 s 4
sub A2003-41 amdts 3.41
am A2007-16 amdts 3.45

Offences against Act—application of Criminal Code etc
s 6A ins A2004-2 amdts 2.4
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Protected attributes
s 7 am A1993-25 s 4; A1994-1 s 4; A1994-11 s 4; A1996-67 s 5;
A1999-60 s 4; A2000-48 s 24; A2003-15 s 10; pars renum
R11 LA (see A2003-15 s 11); A2003-41 amdts 3.42,
amdts 3.43, amdts 3.206; A2010-5 s 4, s 5; A2015-45 amdts 1.3
sub A2016-49 s 20
am A2020-42 s 58, s 59; pars renum R49 LA

Meaning of discrimination
s 8 am A2003-41 amdts 3.44, amdts 3.206
sub A2016-49 s 6
am A2016-49 s 21

Disability—guide-dogs etc
s 9 hdg am A2003-41 amdts 3.207
s 9 am A1996-67 s 5; A2003-41 amdts 3.45-3.47, amdts 3.206,
amdts 3.207
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Applicants and employees
s 10 am A2003-41 amdts 3.48; A2008-27 s 4

Employees—religious practice
s 11 am A2003-41 amdts 3.206

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s 14 am A2003-41 amdts 3.50, amdts 3.206

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s 15 am A1993-25 s 5; A2003-41 amdts 3.51, amdts 3.52

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s 22 am A2003-41 amdt 3.65-3.67

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s 25 sub A2003-41 amdt 3.68

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A2009-36 amdt 1.5; A2011-22 amdt 1.168

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s 26 am A2003-15 s 12, s 13; A2003-41 amdt 3.206; A2006-47 s 4;
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s 28 sub A2003-41 amdt 3.72

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s 29 am A1994-1 s 6; A2003-41 amdts 3.73-3.77, amdt 3.209

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amdt 3.78; A2008-36 amdt 1.249; A2011-28 amdt 3.52
(1) (a), (b), (4) exp on day stated in declaration (s 30 (2), (4))

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s 31 am A1996-67 s 8
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s 32 am A2000-2 sch; A2003-41 amdt 3.80, amdt 3.206; A2018-48
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s 33 am A2003-41 amdt 3.81-3.85
om A2018-48 s 6
Discrimination relating to accommodation, goods or services etc
s 33A ins A2016-49 s 24

Exceptions about sex, relationship status, pregnancy or breastfeeding
div 4.2 hdg (prev pt 4 div 2 hdg) am A1999-60 s 5
renum R6 LA
sub A2003-15 s 14

Genuine occupational qualifications—sex
s 34 hdg sub A2003-15 amdt 3.86
s 34 am A2003-15 amdt 3.87, amdt 3.88, amdt 3.206, amdt 3.209

Employment of couple
s 35 sub A2003-15 s 15

Educational institutions for members of one sex
s 36 am A2003-41 amdts 3.89-3.91

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s 37 am A1999-60 s 6
sub A2003-41 amdt 3.92

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s 39 am A1999-60 s 7; A2003-15 s 16; A2003-41 amdt 3.94,
amdt 3.95, amdt 3.206

Clubs for members of one sex etc
s 40 am A2003-41 amdts 3.96-3.100, amdt 3.206, amdt 3.209

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s 41 am A2003-41 amdt 3.101, amdt 3.206

Genuine occupational qualifications—race
s 42 hdg sub A2003-41 amdt 3.102
s 42 am A2003-41 amdt 3.103, amdt 3.104, amdt 3.206,
amdt 3.209

Clubs for members of one race etc
s 43 am A2003-41 amdt 3.105

Religious workers
s 44 am A2003-41 amdt 3.106

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Religious educational institutions
s 46 am A2003-41 amdts 3.108-3.110; A2018-48 s 7
## Exceptions relating to disability

**Unjustifiable hardship**
- s 47 sub A2003-41 amdt 3.111

**Genuine occupational qualifications—disability**
- s 48 hdg sub A2003-41 amdt 3.112
- s 48 am A2003-41 amdt 3.112, amdt 3.113, amdt 3.207

**Work related discrimination**
- s 49 am A2003-15 s 17, s 18; A2003-41 amdt 3.114, amdt 3.115, amdt 3.206, amdt 3.207; A2016-49 s 26

**Discrimination by qualifying bodies etc**
- s 50 am A2003-15 s 19, s 20; A2003-41 amdt 3.116, amdt 3.207; A2016-49 s 26

**Discrimination by educational institutions**

**Discrimination relating to access to premises**
- s 52 am A1998-52 sch; A2001-44 amdt 1.1125; A2003-41 amdt 3.122, amdt 3.207; A2004-13 amdt 2.20; A2011-28 amdt 3.52; A2011-52 amdt 3.68

**Discrimination in the provision of goods and services**
- s 53 am A1996-67 s 9
- sub A2003-41 amdt 3.123

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- s 54 am A2003-41 amdt 3.124, amdt 3.207; A2011-52 amdt 3.69

**Discrimination by clubs**

**Public health**
- s 56 am A2003-41 amdt 3.128, amdt 3.207

**Sport**
- s 57 am A2003-41 amdt 3.128, amdt 3.129, amdt 3.206, amdt 3.207

**Exceptions relating to age**
- div 4.6 hdg (prev pt 4 div 6 hdg) ins A1994-1 s 7 renum R6 LA

**Genuine occupational qualifications—age**
- s 57A hdg sub A2003-41 amdt 3.130
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s 57B  ins A1994-1 s 7
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      (4), (5) exp 21 September 2012 (s 57B (5))

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s 57C  ins A1994-1 s 7
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Compulsory retirement—2-year exemption
s 57D  ins A1994-1 s 7
       (1) exp 4 March 1996 (s 57D (2))
       om R4 LRA

Education—minimum-age admissions
s 57E  ins A1994-1 s 7

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s 57F  ins A1994-1 s 7
       (1) exp 1 January 1996 (s 57F (2))
       om R4 LRA

Legal capacity
s 57G  ins A1994-1 s 7
       sub A2003-41 amdt 3.137

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s 57H  ins A1994-1 s 7
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Goods, services and facilities—health and safety
s 57J  ins A1994-1 s 7
       am A2003-41 amdt 3.139, amdt 3.140, amdt 3.209

Recreational tours and accommodation
s 57K  ins A1994-1 s 7
       am A2003-41 amdt 3.141

Clubs
s 57L  ins A1994-1 s 7
       sub A2003-41 amdt 3.142

Sport
s 57M  ins A1994-1 s 7
       sub A2003-41 amdt 3.143

Exceptions relating to profession, trade, occupation or calling
div 4.7 hdg (prev pt 4 div 6 hdg) ins A1994-11 s 5
      renum R6 LA
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Discrimination in profession, trade, occupation or calling
s 57N ins A1994-11 s 5
am A2003-41 amdt 3.144, amdt 3.209

Exceptions relating to employment status
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Discrimination relating to employment status
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def **employment status** ins A2016-49 s 30
def **gender identity** ins A2010-5 s 10 sub A2016-49 s 31
am A2020-42 s 62
def **HIV/AIDS status** ins A2004-2 amdt 2.8
om A2016-49 s 17
def **HRC** ins A2005-41 amdt 1.17
def **HRC Act** ins A2005-41 amdt 1.17
om A2008-36 amdt 1.257
def **immigration status** ins A2016-49 s 32
def **industrial activity** ins A2010-5 s 10

def **industrial association** ins A2010-5 s 10
def **industrial organisation** ins A2010-5 s 10
def **intersex status** ins A2016-49 s 32
om A2020-42 s 63
def **investigation** reloc from s 4 A2003-41 amdt 3.32
om A2005-41 amdt 1.18
def **irrelevant criminal record** ins A2016-49 s 32
def **man** reloc from s 4 A2003-41 amdt 3.32
def **member** ins A2000-2 sch reloc from s 4 A2003-41 amdt 3.32
om A2008-36 amdt 1.257
def **party** ins A2003-41 amdt 3.205 sub A2005-41 amdt 1.19
om A2008-36 amdt 1.257
def **physical features** ins A2016-49 s 32
def **political conviction** ins A2016-49 s 32
def **potential pregnancy** ins A2002-19 s 4 reloc from s 4 A2003-41 amdt 3.32
def **pregnancy** ins A2002-19 s 4 reloc from s 4 A2003-41 amdt 3.32
def **premises** reloc from s 4 A2003-41 amdt 3.32
def **president** ins A2000-2 sch reloc from s 4 A2003-41 amdt 3.32
om A2008-36 amdt 1.257
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def principal sub A2003-41 amdt 3.29
reloc from s 4 A2003-41 amdt 3.32

def protected attribute ins A2016-49 s 32

def public act ins A2003-41 amdt 3.205
sub A2004-2 amdt 2.9
om A2016-49 s 17

def race reloc from s 4 A2003-41 amdt 3.32

def relationship status ins A2003-15 s 7
reloc from s 4 A2003-41 amdt 3.32
am A2006-22 amdt 1.32, amdt 1.33 (A2006-22 rep before commenced by disallowance (see Cwlth Gaz 2006 No S93)); A2008-14 amdt 1.23, amdt 1.24; pars renum R29 LA; A2012-40 amdt 3.30, amdt 3.31;pars renum R39 LA; A2019-17 amdt 1.2

def relative sub A2003-15 s 8
reloc from s 4 A2003-41 amdt 3.32
am A2006-22 amdt 1.34 (A2006-22 rep before commenced by disallowance (see Cwlth Gaz 2006 No S93)); A2012-40 amdt 3.32

def relevant class of persons sub A2003-41 amdt 3.30
reloc from s 4 A2003-41 amdt 3.32
am A2016-49 s 33

def religious conviction ins A2016-49 s 34

def representative complaint am A1996-67 s 4
reloc from s 4 A2003-41 amdt 3.32
om A2005-41 amdt 1.20

def respondent ins A2003-41 amdt 3.205
sub A2005-41 amdt 1.21
om A2008-36 amdt 1.257

def services am A2003-41 amdt 3.31
reloc from s 4 A2003-41 amdt 3.32

def sex characteristics ins A2020-42 s 64

def sexual harassment ins A2003-41 amdt 3.205

def sexuality reloc from s 4 A2003-41 amdt 3.32
sub A2020-42 s 65

def staff reloc from s 4 A2003-41 amdt 3.32
om A2005-41 amdt 1.22

def Territory employee sub A1994-38 sch 1 pt 28
reloc from s 4 A2003-41 amdt 3.32
om A2010-5 s 11

def transsexual reloc from s 4 A2003-41 amdt 3.32
om A2010-5 s 11

def tribunal ins A1996-67 s 4
reloc from s 4 A2003-41 amdt 3.32
sub A2005-41 amdt 1.23
om A2008-36 amdt 1.257
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def **unlawful act** ins A2016-49 s 18

def **unpaid worker** reloc from s 4 A2003-41 amdt 3.32

def **voluntary body** reloc from s 4 A2003-41 amdt 3.32

def **woman** reloc from s 4 A2003-41 amdt 3.32
5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

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‡ includes retrospective amendments by A2002-49