

EXPOSURE DRAFT

Minister for Human Rights

(Prepared by Parliamentary Counsel's Office)

Discrimination Amendment Bill 2022

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
4 Goods, services and facilities New section 20 (2)	2
5 New sections 23A to 23C	3
6 Domestic duties Section 24	4
7 Sections 28 and 29	4

Contents

	Page
8 Section 31	6
9 Section 32	6
10 New sections 33B to 33D	8
11 Genuine occupational qualifications—sex Section 34	9
12 Educational institutions for members of one sex Section 36	9
13 Section 37	10
14 Clubs for members of one sex etc Section 40 (1)	10
15 Sections 41 and 42	10
16 Section 44	10
17 Religious educational institutions Section 46 (1), (2) and (5)	11
18 Section 46 (3) (a) and (4) (a)	11
19 Section 46 (5), new definition of <i>religious educational institution</i>	12
20 Sections 48, 57, 57A and 57M	12
21 New part 9	12
22 Dictionary, definition of <i>club</i>	13
23 Dictionary, definition of <i>club licence</i>	13
24 Dictionary, definition of <i>committee of management</i>	13
25 Dictionary, new definitions	14
26 Human Rights Commission Act 2005 New section 52 (3)	14

EXPOSURE DRAFT

EXPOSURE DRAFT

Minister for Human Rights

(Prepared by Parliamentary Counsel's Office)

Discrimination Amendment Bill 2022

A Bill for

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

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

1 Name of Act

This Act is the *Discrimination Amendment Act 2022*.

2 Commencement

This Act commences on the day after its notification day.

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

3 Legislation amended

This Act amends the *Discrimination Act 1991*.

Note This Act also amends the *Human Rights Commission Act 2005* (see s 26).

**4 Goods, services and facilities
New section 20 (2)**

insert

- (2) It is unlawful for a consumer of goods or services, or a user of facilities, to discriminate against the provider of the goods, services or facilities—
- (a) by refusing to accept the goods or services or use the facilities;
or
 - (b) in the terms or conditions on which the goods or services are accepted or the facilities are used; or
 - (c) in the way in which the goods or services are accepted or the facilities are used.

5 New sections 23A to 23C

in division 3.2, insert

23A Organised sport

It is unlawful for a person to discriminate against another person in relation to participation in an organised sport, other than in privately organised sport.

23B Competitions

It is unlawful for a person to discriminate against another person in relation to participation in a competition, other than in a privately organised competition.

Examples—competition

- film festival
- talent contest
- chess tournament

23C Public functions

It is unlawful for a public authority to discriminate against another person when performing a function of a public nature.

**6 Domestic duties
Section 24**

omit

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

substitute

if—

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

7 Sections 28 and 29

substitute

28 Insurance

- (1) It is not unlawful for a person providing insurance services (the *insurance service provider*) to discriminate against another person (the *consumer*) in relation to the terms on which an annuity or insurance policy is offered to, or may be obtained by, the consumer if—
 - (a) the discrimination is based on actuarial or statistical data on which it is reasonable for the insurance service provider to rely; and
 - (b) the discrimination is reasonable, proportionate and justifiable in the circumstances.

- (2) If the consumer requests access to the data, the insurance service provider must—
 - (a) give the consumer a document containing the data or a meaningful explanation of the data; or
 - (b) make a document containing the data available for inspection at a reasonable time and place.

29 Superannuation

- (1) It is not unlawful for a person providing superannuation services (the *superannuation service provider*) to discriminate against another person (the *consumer*) in relation to the terms or conditions of a superannuation or provident fund or scheme if—
 - (a) the discrimination is based on actuarial or statistical data on which it is reasonable for the superannuation service provider to rely; and
 - (b) the discrimination is reasonable, proportionate and justifiable in the circumstances.
- (2) If the consumer requests access to the data, the superannuation service provider must—
 - (a) give the consumer a document containing the data or a meaningful explanation of the data; or
 - (b) make a document containing the data available for inspection at a reasonable time and place.

8 Section 31

substitute

31 Clubs and voluntary bodies

It is not unlawful for a club or voluntary body, or the committee of management or a member of the committee of management of the club or body, to discriminate against a person if—

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

9 Section 32

substitute

32 Religious bodies

- (1) Part 3 does not make it unlawful for a religious body to discriminate against a person in relation to the following if the discrimination conforms to the doctrines, tenets or beliefs of the body's religion:
 - (a) the ordination or appointment of priests, ministers of religion or members of any religious order;

- (b) the training or education of people seeking ordination or appointment as priests, ministers of religion or members of a religious order;
 - (c) the selection or appointment of people to exercise functions for the purposes of, or in relation to, any religious observance or practice;
 - (d) an act or practice—
 - (i) that is necessary to avoid injury to the religious susceptibilities of adherents of the religion; and
 - (ii) that is reasonable, proportionate and justifiable in the circumstances.
- (2) Subsection (1) does not apply to—
- (a) discrimination in relation to—
 - (i) the employment of a person in an educational institution; or
 - (ii) the admission, treatment or continued enrolment of a person as a student at an educational institution; or
 - (iii) if the discrimination is not on the ground of religious conviction—the provision of goods, services or facilities; or
 - (b) a religious body—
 - (i) when performing a function of a public nature; or
 - (ii) whose sole or main purpose is a commercial purpose.

10 New sections 33B to 33D

in division 4.1, insert

33B Organised sport

- (1) It is not unlawful for a person to discriminate against another person by excluding the other person from participating in organised sport on the ground of the other person's sex, disability or age if—
 - (a) the discrimination is necessary for fair, safe and effective competition; and
 - (b) the outcome of the discrimination is reasonable, justifiable and proportionate.
- (2) Subsection (1) does not apply to discrimination against a child under 12 years old on the ground of sex or disability.

33C Genuine occupational qualifications

- (1) It is not unlawful for a person to discriminate against another person in relation to a position as an employee, commission agent, contract worker or partner if—
 - (a) it is a genuine occupational qualification of the position that the position be filled by a person having a particular protected attribute; and
 - (b) the discrimination is reasonable, justifiable and proportionate in the circumstances.
- (2) Subsection (1) does not apply to discrimination on the ground of religious conviction.

33D Adjustments not reasonable

It is not unlawful for a person to discriminate against another person in relation to a position of employment if—

- (a) the other person is or would be unable to carry out the essential duties of the position because of their protected attribute; and
- (b) it is not possible for the other person to carry out the essential duties of the position if the first person made reasonable adjustments; and
- (c) the discrimination is reasonable, justifiable and proportionate.

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

omit

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

omit

the opposite

insert

a different

13 Section 37

substitute

37 Pregnancy, childbirth or breastfeeding

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

**14 Clubs for members of one sex etc
Section 40 (1)**

omit

the opposite

insert

a different

15 Sections 41 and 42

omit

16 Section 44

substitute

44 Religious workers

(1) Section 10 (1) (a) or (b), section 12 (1) (a) or (b), section 13 (b) or section 14 (1) (a) or (2) (a) do not make it unlawful to discriminate against a person in relation to employment of the person to a position if—

(a) the discrimination is on the ground of religious conviction; and

- (b) conformity with the doctrines, tenets or principles of the religion is a genuine occupational qualification for the position; and
 - (c) the discrimination is reasonable, proportionate and justifiable in the circumstances.
- (2) Subsection (1) does not apply to—
- (a) discrimination in relation to the employment of a person at an educational institution; or
 - (b) a religious body whose sole or main purpose is a commercial purpose.

**17 Religious educational institutions
Section 46 (1), (2) and (5)**

omit

an educational institution

substitute

a religious educational institution

18 Section 46 (3) (a) and (4) (a)

before

educational institution

insert

religious

19 Section 46 (5), new definition of *religious educational institution*

insert

religious educational institution means an educational institution associated with a religious body that does not have a commercial purpose as its sole or main purpose.

20 Sections 48, 57, 57A and 57M

omit

21 New part 9

insert

Part 9 Positive duties

74 Duty to make reasonable adjustments

- (1) A person required under part 3 not to engage in discrimination must make adjustments for people with a protected attribute that are reasonable, proportionate and justifiable in the circumstances.
- (2) Failure to make adjustments in accordance with subsection (1) is an unlawful act.

75 Duty to eliminate discrimination, sexual harassment and unlawful vilification

- (1) A person required under part 3, part 5 or section 67A not to engage in discrimination, sexual harassment or unlawful vilification must take steps to eliminate discrimination, sexual harassment and unlawful vilification that are reasonable, proportionate and justifiable in the circumstances.

- (2) However, this section does not apply to a person, other than a public authority, until 3 years after the commencement day.
- (3) This subsection and subsections (2) and (4) expire 3 years after the commencement day.
- (4) In this section:
commencement day means the day the *Discrimination Amendment Act 2022*, section 3 commences.

22 Dictionary, definition of *club*

substitute

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

23 Dictionary, definition of *club licence*

omit

24 Dictionary, definition of *committee of management*

substitute

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

25 Dictionary, new definitions

insert

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

public authority—see the [Human Rights Act 2004](#), section 40.

religious body means a body established for religious purposes.

**26 Human Rights Commission Act 2005
New section 52 (3)**

insert

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

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

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2022.

2 Notification

Notified under the [Legislation Act](#) on 2022.

3 Republications of amended laws

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