Discrimination

Why have discrimination law?
The purpose of the ACT Discrimination Act 1991 (the Act) is to ensure that everyone in the community can enjoy fair treatment and equality of opportunity. The ACT Human Rights Commission was established to promote the human rights and welfare of people living in the ACT.

What is discrimination?
Under the Act, discrimination means to treat someone unfavourably because of their:

- disability
- sex
- race
- sexuality
- age
- gender identity
- relationship status
- status as a parent or carer
- pregnancy
- breastfeeding
- religious or political conviction
- guide dog or other assistance animal
- industrial activity
- profession, trade, occupation or calling
- spent criminal conviction
- association with a person who has an attribute listed above.

These are called ‘protected attributes’ or ‘grounds’. Discrimination is unlawful when it happens because of one (or more) of these attributes in an area of public life.

Areas of public life include:

- employment
- education
- the provision of goods, services, facilities
- access to public buildings, parks and transport
- accommodation/housing.

Unlawful discrimination may be direct or indirect.

What’s the difference between direct and indirect discrimination?

Direct Discrimination
Direct discrimination occurs when somebody is treated unfavourably because of a protected attribute.

Indirect Discrimination
Indirect discrimination occurs when a requirement (or rule) that appears to be neutral and the same for everyone in fact has the effect of disadvantaging someone because they have an attribute covered by the Act. The effect has to be unreasonable.

Example of direct discrimination

“My family and I sat down outside a cafe and were not served for a long time. Finally I stood up and went inside to get a menu. When I tried to order, we were refused service and told we could go somewhere else ‘where they serve food from your country’.”

Example of indirect discrimination

“I am blind and wanted to buy tickets to a concert. The ticketing company’s website wasn’t accessible so I phoned to purchase the tickets. I was told that the tickets could only be purchased online. While that might seem fair to everyone, I am being being prevented from purchasing them because of my disability.”

What other protections are in the act?

Victimisation
It is unlawful to victimise anyone for making or supporting a discrimination complaint. This protects people’s right to make a complaint and also protects other people who might be involved, such as witnesses or advocates.

Sexual Harassment
The Act makes it unlawful to sexually harass someone in areas of public life. Sexual harassment is any unwelcome conduct of a sexual nature, which makes the other person feel offended, humiliated or intimidated. For example, sexual harassment could be unwanted physical contact, jokes or emails with a sexual content.

Vilification
It is unlawful to vilify someone on the grounds of their race, sexuality, gender identity or HIV/AIDS status. Vilification means to say or do anything publicly, that could encourage others to hatred or contempt of individuals because of those attributes. A public act could be making a comment on a radio show, giving a speech, handing out pamphlets or wearing an offensive T-shirt.
Have you been treated unfairly?
Under the Act a person who believes they have been discriminated against can make a formal written complaint to the Discrimination Commissioner. The Commissioner decides whether that person has grounds for making a complaint under the Act.

The Commissioner will also decide whether to attempt to resolve the complaint through a process called conciliation.

If a complaint is closed or cannot be resolved by conciliation, the person who made the complaint can ask the Commissioner to refer it to the ACT Civil and Administrative Tribunal (ACAT) for a public hearing.

Can there be a consideration process without a complaint?
Yes, the Commissioner may consider conduct that appears to be unlawful without a formal complaint being made. This is called a Commission-initiated consideration.

What is the role of the Human Rights and Discrimination Commissioner?
The Human Rights & Discrimination Commissioner is one of three Commissioners in the ACT Human Rights Commission. In addition to handling complaints of discrimination, the Commission also provides information and community education about rights and responsibilities under discrimination law and the Human Rights Act 2004.

Does the Discrimination Act cover Commonwealth agencies?
No. To make a complaint against a Commonwealth Department or agency and for further information about federal laws, contact the Australian Human Rights Commission in Sydney on 1300 656 419 or see www.humanrights.gov.au

What to do if you are not satisfied with our services
Please contact the Commission if you wish to discuss any complaints or concerns about any of our services.

Further information
If you have any questions about the information contained in this brochure or about the ACT Human Rights Commission in general please contact us via:

- Phone: (02) 6205 2222
- Fax: (02) 6207 1034
- TTY: (02) 6205 1666
- Tel Interpreter Service: 131 450
- SMS: 0466 169 997
- Postal Address: GPO Box 158, Canberra ACT 2601
- Street Address: Level 4, 12 Moore Street, Canberra City ACT 2600
- Email: human.rights@act.gov.au
- Website: www.hrc.act.gov.au