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Discrimination Law Reform Team
Justice and Community Safety Directorate
ACT Government

Via email: civicconsultation@act.gov.au

Discrimination Law Reform in the ACT

The ACT Council of Social Service (ACTCOSS) is pleased to make a submission in relation to Discrimination Law Reform. As advocates for social justice, we are invested in ensuring Canberra is a safe and equitable place for all people. ACTCOSS also represents community organisations in the ACT, many of whom serve vulnerable people that are more likely to experience discrimination on a day-to-day basis.

ACTCOSS strongly supports the move to bring discrimination law in line with the Human Rights Act and strengthen mechanisms to respond to discrimination when it occurs.

Noting the short time frame for this consultation, this submission will be brief. We expect to give more detailed feedback when an exposure draft of the legislation is released.

ACTCOSS also wants to note the importance of consultation with vulnerable or disadvantaged groups in drafting this legislation. Aboriginal and/or Torres Strait Islander people, people from migrant and refugee backgrounds, LGBTIQ+ people and people with disabilities are more likely to experience discrimination and need to have their views on the legislation seriously considered.

Beyond the drafting of legislation, these communities must continue to be consulted about what constitutes discrimination. The subjective nature of discrimination means that it can be hard to prove. An independent body made up of vulnerable community members could use lived experience to recognise and define discrimination in these situations.

When the legislation is passed, the ACT Government must commit to investing in education, enforcement, and monitoring mechanisms, to ensure that there are appropriate accountability measures where necessary.

Coverage of the Act

ACTCOSS agrees that the Act should be expanded to include coverage across all areas of public life, rather than just the six areas currently covered.

In particular, we feel strongly that government functions should be covered under the Act beyond the provision of services or employment. It is important that there is strong oversight in public housing processes, child protection decisions and the experiences of detainees within the Alexander Maconochie Centre (AMC). The conduct of ACT Policing should also be covered under the Act, with accessible mechanisms put in place for raising complaints, preferably through an independent police complaints mechanism.

ACTCOSS also believes that 'accommodation status' as one of the protected attributes should clearly include people with experience of detention, either in prison or in secure mental health facilities.

Exceptions to discrimination law

Currently, the Discrimination Act contains over 50 different exceptions that excuse conduct that would otherwise be discriminatory. This law reform process is considering replacing the 50 exceptions with a 'single justification' defence.

The single justification defence would allow a person to show that their conduct (discrimination, harassment, vilification, and/or offensive conduct) was reasonable or justifiable and would provide a single, principled test for excusing discriminatory conduct consistent with the Human Rights Act.

In practice, we do not know how this single justification defence would operate and may make the law less clear or lessen protections against discrimination.

If a single justification defence is enacted, careful work is needed to ensure loopholes are not inadvertently opened and new defences for direct discrimination are not created. This will require significant consultation with the community.

Whether a single justification is enacted, or the current exceptions are refined, we need to ensure there are clear examples included in the explanatory statement for the Bill to avoid unintended consequences or a loosening of anti-discrimination obligations.

Positive Duty

ACTCOSS strongly supports the idea of enshrining a positive duty to eliminate discrimination in legislation. This positive duty should apply to public authorities and

private organisations and should be coupled with investment in education programs and monitoring measures.

A transition period for the community sector will be appropriate and necessary, and a range of tools, supports, and resources will be required to enable community organisations to meet these new obligations. For example, many community organisations currently work from inaccessible infrastructure because of a lack of investment in the maintenance and provision of adequate community facilities.

In conclusion, we would like to flag for your attention that changes must be made with the most vulnerable Canberrans in mind, and in consultation with those most exposed to discrimination in the public arena.

We look forward to providing further feedback when a draft of the legislation is released.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Adam Poulter', with a stylized flourish extending to the right.

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