



Discrimination Law Reform
ACT Justice and Community Safety Directorate
By email: civilconsultation@act.gov.au

**Discrimination Law Reform – Supplementary Submission
following tabling of the Public Exposure Draft of the
Discrimination Amendment Bill 2022**

Submitted by:
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Introduction

The Alcohol, Tobacco and Other Drug Association ACT (ATODA) welcomes the tabling of Public Exposure Draft of the Discrimination Amendment Bill 2022 (Exposure Draft Bill) and the opportunity to provide feedback on the Exposure Draft Bill. ATODA also appreciates the clarifications provided by the ACT Justice and Community Safety Directorate ahead of this submission. This submission builds on ATODA's submission on 28 January 2022 (provided at [Appendix 1](#)) as part of the Discrimination Law Reform Project's earlier consultation.

Protected attributes and people who use or have used alcohol and/or drugs

ATODA's submission ([Appendix 1](#)) recommended that further consideration be given to the list of protected attributes under the *Discrimination Act 1991*, specifically as to whether they provide sufficient protection for particularly marginalised population groups such as people who use alcohol and/or drugs.

Noting that the Draft Bill does not progress any changes to the list of identified protected attributes, ATODA reiterates that future reform may be required to ensure that the identified protected attributes are fit-for-purpose in the ACT's specific emerging legislative context, for example the potential decriminalisation of identified drugs for personal possession.

ATODA also reiterates, as detailed in our original submission, that 'disability' as a protected attribute does not sufficiently provide protection for people who are discriminated against on the basis of alcohol and/or drug use. ATODA appreciates the clarification that legal precedent is yet to be established specifically in the ACT, and that the case law to date in other jurisdictions is restricted to a dependence on opioids. ATODA also reiterates that people who use alcohol and/or drugs do not necessarily identify as having a disability, and may use alcohol and/or drugs recreationally or lawfully but not meet the diagnostic thresholds for dependence.

People who use alcohol and/or drugs routinely experience discrimination as detailed at [Appendix 1](#), and ATODA urges consideration of updating the identified protected attributes as a priority for future reform.

Protections for employers to recruit peer workers with lived experience of alcohol and/or drug use

ATODA appreciates that the Exposure Draft Bill extends the genuine occupational qualification exceptions to all protected attributes. This will provide protections for employers in the recruitment of some peer workers, but not all. Peer workers are a growing workforce in a number of sectors, including the mental health sector, the alcohol and other drug sector, and other allied health and social service sectors. The proposed amendments in Section 33C of the Exposure Draft Bill relate only to protected attributes, and this covers only some peer workers (for example, those in the mental health sector or migrant support services). It does not cover employment of peer workers on the basis of non-protected attributes, for example lived experience of alcohol and/or other drug use.

Given this inconsistency and the growing peer workforce across a number of sectors, ATODA recommends that the ACT Human Rights Commission issue advice for employers on the recruitment of peer workers. As detailed in at [Appendix 1](#), peer workers play an important role reaching priority populations effectively and achieve a range of health and social goals. Ensuring that clear advice is available for employers is critical to ensure that this important workforce can be appropriately recruited in a manner consistent with the

Discrimination Act 1991 and the proposed amendments if passed. ATODA also notes that the growing peer workforce is another reason why revisiting the identified protected attributes is an appropriate priority for future reform.

Conclusion and Recommendations

ATODA recommends that the ACT Government:

- 1. Prioritise consideration of the use of alcohol and/or drugs being identified as a protected attribute under the *Discrimination Act 1991*.**
- 2. Issue advice for employers regarding the recruitment of peer workers across all sectors consistent with the *Discrimination Act 1991* and the proposed amendments if passed.**

ATODA is happy to provide any additional detail or clarification that may be required, and to work collaboratively with the ACT Government and the ACT Human Rights Commission to progress future reforms in consultation with the ACT's peer-based organisation, the Canberra Alliance for Harm Minimisation and Advocacy (CAHMA); the alcohol and other drug (AOD) sector; people who use alcohol and/or drugs; and other stakeholders.

APPENDIX 1 – ATODA Submission 28 January 2022



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28 January 2022

Introduction

The Alcohol, Tobacco and Other Drug Association ACT (ATODA) represents the Alcohol Tobacco and Other Drug (ATOD) sector in the ACT. Members include specialist alcohol and other drug treatment organisations; distinguished drug experts with deep knowledge of the criminal justice system and population health; the group representing families and friends who have lost loved ones to drugs; and the peer-based organisation for people with lived experience of drug use in the ACT.

ATODA welcomes the Discussion Paper regarding discrimination law reform in the ACT, particularly in light of the persistent discrimination faced by people who use drugs or who interact with ATOD specialist services. Given our sector's expertise and noting that many of the discussion paper questions are beyond ATODA's scope, this submission focuses on 1) protected attributes as defined under the *Discrimination Act 1991*, and 2) exceptions related to work, in particular exceptions for peer support workers.

Protected Attributes

ATODA notes that achieving the intended outcomes of the reforms identified in the discussion paper is dependent on the robust protection of appropriate protected attributes. People who use drugs or who may interact with ATOD specialist services experience persistent stigma and discrimination, which negatively impacts access to health care and other services, employment opportunities, and relationships within the community.¹ ATOD use often exists alongside experiences of broader socio-economic disadvantage and marginalisation. A 2018 survey found that of the 600-700 people accessing specialist ATOD services each day in the ACT, nearly one-third were homeless or at risk of homelessness; 70% were unemployed or not working; and half had year 10 or less as their highest level of education.² People who use drugs are a highly stigmatised group, and there is no evidence that stigma has discouraged the use of alcohol and other drugs.¹

The discrimination experienced by people who use drugs results in real harm to people's lives. Discrimination occurs in a range of settings including the justice system and at work or in seeking work, which limits opportunities for people who use drugs to participate in their community.¹ It is of particular concern that this discrimination is often experienced in healthcare settings, including the provision of substandard care.^{1,3} This has resulted in people who use drugs avoiding seeking medical care when required or withholding important information about their health status for fear of being discriminated against.³

Given this, ATODA suggests that further consideration be given to the list of protected attributes under the *Discrimination Act 1991* as to whether they provide sufficient protection for particularly marginalised population groups such as people who use drugs. The use or perceived use of drugs, whether legal or illegal, is not a protected attribute in the ACT currently. Disability is a protected attribute and there is some legal precedent that drug addiction would be considered a disability: the Federal Court found in 2000 that dependence on certain substances is a disability under the Disability Discrimination Act 1992 (Cth) following a complaint to the then Australian Human Rights and Equal Opportunity Commission.⁴ However, this is not well understood and people who are discriminated against on the basis of an actual or perceived addiction may not be aware they can pursue a complaint in relation to discrimination on the basis of disability, and secondly people who use drugs recreationally, lawfully and/or are receiving certain prescribed medications associated with drug use also experience discrimination, even when they do not experience dependence. Relying on protections for disability in discrimination law is problematic,⁵ and

consideration should be given to whether perceived or actual drug use should be an explicit protected attribute in the ACT.

ATODA also notes that irrelevant criminal record is a protected attribute. Anecdotally there are concerns that employers in the ACT continue to make discriminatory hiring decisions based on irrelevant criminal records. A criminal history regarding drug use can be a significant barrier to employment, which limits both employment opportunities and reconnection with the community.¹ It is critical that discrimination on the basis of an irrelevant criminal record is eliminated, and that employers are encouraged to reconsider whether particular criminal offences are materially relevant to the employment opportunity, and provide opportunities for individuals to account for their criminal history as part of any pre-employment screening that may be required.

Exceptions related to work (Discussion Paper Question 25: 25. Should the employment exceptions be extended to apply to a wider range of protected attributes?)

ATODA notes that currently the *Discrimination Act 1991* provides for exceptions for peer support workers to support protected groups, whereby employers may discriminate when hiring for jobs that involve providing services to people identified by a protected attribute and where the services can be most effectively provided by someone who shares that protected attribute.⁶ Currently, this exception is only available on the grounds of sex, race, age, disability, or physical features.

ATODA's view is that the 'genuine occupational qualification' should be expanded to a wider range of attributes to allow for peer workers where appropriate. Protection for peer workers in the ATOD sector is important. There is considerable anecdotal evidence of high levels of trust of people who use drugs in the peer-based organisation, Canberra Alliance for Harm Minimisation and Advocacy (CAHMA). This was highlighted in CAHMA's unique role supporting the ACT Government response to the second ACT lockdown in late 2021.⁷ Research has found that potential enablers for vaccination uptake amongst people who inject drugs include peer worker recommended vaccinations,⁸ and the ACT experience showed that having trusted health care providers who partnered with peer workers bringing the vaccine to where recipients live and congregate was critical to the high uptake of the vaccine by people who use drugs in the ACT, and by extension critical to the broader public health response.⁷ Peer workers broadly play an important role reaching priority populations effectively and achieve a range of health and social goals.

Conclusion and Recommendations

ATODA recommends that the ACT Government:

- 1. Considers the use or perceived use of drugs being identified as a protected attribute under the *Discrimination Act 1991*.**
- 2. Ensures there is sufficient protection of irrelevant criminal record as an existing protected attribute.**
- 3. Expands the exceptions related to work with regard to peer support workers to include a broader range of peer workers, e.g. an exception in relation to peer workers for people who use or have used drugs.**

About ATODA

ATODA is the peak body for the alcohol, tobacco and other drug (ATOD) sector in the ACT. Its purpose is to lead and influence positive outcomes in policy, practice and research by providing collaborative leadership for intersectoral action on the social determinants of harmful drug use, and on societal responses to drug use and to people who use drugs.

ATODA's vision is a healthy, well and safe ACT community with the lowest possible levels of alcohol, tobacco and other drug related harms. Underpinning ATODA's work is a commitment to health equity, the social and cultural determinants of health, and the values of collaboration, participation, diversity, respect for human rights, social justice and reconciliation between Aboriginal and Torres Strait Islander people and other Australians.

References

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