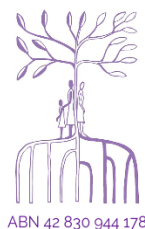


**The Northern Territory Women's
Legal Services submission on the
Exposure Draft of the *Anti-
Discrimination Act Amendment Bill*
2022**



**TOP END WOMEN'S
LEGAL SERVICE INC.**

FREE LEGAL ADVICE FOR WOMEN

Advice | Information | Referral | Advocacy

11 August 2022

Director
Legal Policy
Department of Attorney-General and Justice
GPO Box 1722
Darwin NT 0801

By email to: Policy.AGD@nt.gov.au

Dear Director,

Submission to the Exposure Draft of the *Anti-Discrimination Amendment Bill 2022* – Northern Territory Women’s Legal Services

Thank you for inviting comments on the exposure draft of the *Anti-Discrimination Amendment Bill 2022* (NT) (“the Bill”), being amendments to the *Anti-Discrimination Act 1992* (NT) (“the Act”). The Central Australian Women’s Legal Service (“CAWLS”), Katherine Women’s Information & Legal Service (“KWILS”), and Top End Women’s Legal Service (“TEWLS”) (collectively, the Northern Territory Women’s Legal Services, hereafter referred to as the “NTWLS”) welcome the opportunity to make a submission in response to the exposure draft and to participate in the consultation that was held on 2 August 2022.

About NTWLS

Women’s legal services are specialist, women-led, and accredited community legal centres specifically developed to improve women’s lives through specialist legal representation, support, and advocacy. Across Australia, we provide high-quality and free legal services, including representation and law reform activities, to support women’s safety, access to rights and entitlements, and gender equality. In the NT, the three women’s legal services cover a geographic region more than 4.5 times the size of Victoria; with TEWLS in the Top End, KWILS in Katherine and Big Rivers regions and CAWLS in the Central Australia and Barky regions.

Women’s legal services prioritise women’s safety, access to rights and entitlements and gender equality. We have specialist expertise in safety, risk assessment and management, maintaining a holistic and trauma-informed legal practice. The holistic socio-legal operating models adopted by specialist women’s legal services are not replicated in mainstream, generalist legal services, with result that our practices are able to provide “one stop shop” services across multiple areas of law, including family law and civil law [e.g. domestic, family and sexual violence (“DFSV”), discrimination, sexual assault, child protection, tenancy, credit and debt, and restraining orders).

In the NT, women’s legal services occupy space as specialist DFSV legal services, working collaboratively with the broader DFSV and legal sectors, as well as the NT Government, to provide the best possible services to presenting clients, while using service experience and expertise to advocate for systemic change. Our services are entrenched within the DFSV system, providing community legal education services at the “front-end”, and triage and response services in times of crisis, including significant levels of court representation and alternative dispute resolution services.

Our submission to the Bill

NTWLS broadly supports the amendments to the Act proposed in the Bill, such that the Act's objectives are supported, and the legislation provides contemporary and relevant protection from discrimination for all Territorians.

We are particularly concerned with the protections available under the Act for women in the NT, especially those who identify as Aboriginal and Torres Strait Islander, women who are culturally and linguistically diverse, those who experience DFSV, as well as persons who gender and/or sexually diverse, and provide this submission accordingly.

A. The Act to be amended to include domestic and family violence as a protected attribute

NTWLS strongly supports the proposed amendments in the Bill to insert domestic and family violence ("DFV") as a protected attribute.

Recently released figures by the Australian Bureau of Statistics reveal that in 2021, almost two-thirds (63%) of assaults in the NT were DFV related and that most victims of assault were female (also 63%).¹ Notably, a high proportion of our clients have had or are experiencing DFV, with far reaching consequences for their engagement in the workplace, impacts on accommodation, and flow-on effects for family and community life. In our submission, it is therefore appropriate that there be legislative protections in place which assist in reducing the impact of DFV in the NT.

It is our view that including DFV as a protected attribute will alleviate the pressure on victims, encourage acknowledgement and support from the community, and provide greater recourse for those affected. NTWLS agrees with the comments of the then National Association of Community Legal Centre's that, "creating a separate protected attribute for DFV would act as an educative function. In raising the awareness of DFV impacts to the community and businesses, those who have experienced or are experiencing DFV may feel more supported without fear of repercussions in other areas of their lives".²

NTWLS supports the wording of the proposed amendment being "*subject to domestic violence*" per the proposed section 19(1)(j) of the Act on the basis that the term is defined broadly by reference to section 5 of the *Domestic and Family Violence Act 2007* (NT). We submit that this approach will support consistency of legislation over time (and particularly noting the current work being undertaken in respect of DFSV system change), as well as

¹Australian Bureau of Statistics, *Recorded Crime – Victims, 2021: Northern Territory*, Released 28 July 2022
<<https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-victims/2021#northern-territory>>.

² National Association of Community Legal Centre, Submission to the Attorney-General's Department, *National Association of Community Legal Centres' Response to the Consolidation of Commonwealth Anti-Discrimination Laws Discussion Paper*, 1 February 2012, 39
<<https://www.ag.gov.au/Consultations/Documents/ConsolidationofCommonwealthanti-discriminationlaws/Consolidation%20-%20Discussion%20Paper%20-%20Submissions%20-%20National%20Association%20of%20Community%20Legal%20Service%20-%201%20Feb%202012.PDF>>.

provide clear guidance for practitioners working with victim-survivors and the larger community.

We support the inclusion of those with “*carer responsibilities*” as a protected attribute per the proposed section 19(1)(g) of the Act being broadly defined, as this permits the inclusion of those supporting a family member who is experiencing DFV.

B. A representative complaint model to be introduced into the Act

NTWLS strongly supports the inclusion of a representative complaint model as proposed in the Bill. We regularly see clients presenting with similar issues, often in relation to housing or complaints about government agencies. We find that re-occurring issues are not normally identified and addressed until they become prominent and systemic.

It is our submission that including a representative complaints process will allow NTWLS and other community representative organisations to better advocate for clients. We believe issues such as systematic errors will be identified faster and more simply through a representative complaint process rather than via individual complaints.

NTWLS supports the proposed amendments at section 62A of the Act to establish a representative complaint system which will allow clients to remain anonymous, particularly clients suffering DFSV or with sensitive matters, who may be reluctant to pursue a complaint individually. Further, we support the proposed model to not preclude an individual complaint being made concurrently or in addition to a representative complaint. We are of the view that providing protection of identity may encourage more clients to become engaged without fear of causing further damage to the client’s situation.

It is our submission that clear guidelines in respect of the representative complaint are needed, whether external to legislation or within the Bill, to clarify the basis on which representative complaints will be accepted or declined by the Commission. We understand, from the consultation held on 2 August 2022, that it is not envisaged that more than a handful of representative complaints will be accepted per annum. In these circumstances, clarity on the basis on which complaints are accepted is vital. Some would provide transparency for complainants and community representative organisations and assist pragmatically when selecting complaints that have merit to proceed. Further, we submit that a rationale should be provided when a representative complaint is declined for similar reasons.

C. The Act to be amended to include accommodation status as a protected attribute

NTWLS supports the introduction of accommodation status as a protected attribute under the Act.

Whilst the 2021 census data regarding homelessness has not yet been released, the Australian Institute of Health and Welfare reports that one (1) in 24 Territorians accessed

homelessness services between 2020-2021.³ This is substantially higher than the national rate of one (1) in 92 people. Notably, and in line with our clients' experience, the leading cause for accessing services was DFSV, accounting for 53% of those seeking assistance (compared to 39% nationally).⁴

In our experience, many NTWLS clients are either currently in or resort to some form of unstable accommodation, resulting in unreasonable barriers to accessing goods and services; for example, clients without a fixed residential address may have trouble accessing a service that requires this information. These issues can often intersect with other areas within which discrimination may occur, including access to services or dealings with Government agencies/departments.

We are of the view that including accommodation as a protected attribute under the Act will create equal opportunity for the community, as well as instigate greater impetus for change in industry. For example, service providers may be encouraged to provide support and alternatives to those affected, such as accepting the details of temporary accommodation or allowing a forwarding/alternative address to be provided.

We note that the current Division 4 of the Act provides protection in areas of accommodation. To avoid any confusion, we concur that a clear distinction between the protections should be provided. This distinction is provided by amending the definition of 'accommodation status' at section 4(1) of the Bill and we support this proposal.

D. The Act's definition of systemic discrimination to be amended to include "behaviour organisations, institutions and government bodies"

It is our submission that the proposed definition of "systemic discrimination" be further amended as follows; "behaviour, practices, policies or programs of an organisation, **institution or government body** that have the effect of creating or perpetuating disadvantage for a group that shares a protected attribute".

NTWLS views policy makers as being equally responsible for working to dismantle systemic discrimination and therefore equally bound by the Act. These principles should be considered when developing internal departmental policy and in the exercise of legislative powers. We seek that current and future governments take proactive steps to address the disproportionate ways in which marginalised communities across the NT face discrimination.

It is an unchallenged fact that First Nations communities (and particularly, women and gender diverse people) are disproportionately affected by DFSV, rates of incarceration, participation in the child protection system, and poor health and education outcomes. To address the structural bias that exists within our policy making and criminal justice system that perpetuates these harms, it is incumbent on government bodies, in addition to organisations, to adopt policies and practices that proactively address this disparity.

³ Australian Institute of Health and Welfare (2021) *Specialist homelessness services annual report 2020-21*, AIHW, Australian Government, accessed 20 May 2022 <https://www.aihw.gov.au/getmedia/0615901b-f561-46ac-93de-d3c43abe444d/NT_factsheet.pdf.aspx>.

⁴ Ibid.

It is our submission that creating substantive and generational change requires Government institutions to enact and enforce the same legislative requirement that the proposed amendment imposes on organisations.

E. Socioeconomic status as a protected attribute

In our submission, including socioeconomic disadvantage as a protected attribute may overlap with other protected attributes, especially the proposal to include accommodation status as an attribute. Whilst NTWLS does not take issue with the definition of socioeconomic disadvantage in the Bill, we note that the definition remains broad; for example, holding a “*low level of education*” is a wide category that is not specifically defined. However, as we understand that any overlap in the categories of protected attributes is unlikely to create practical impediments to the legislation’s functioning, we do not consider the inclusion of socioeconomic disadvantage as a protected attribute to be inherently problematic.

F. The Act to be updated to protect Territorians from discrimination on the grounds of sexual orientation, gender identity and intersex status

NTWLS supports the introduction of gender, sexual orientation and sex characteristics as protected attributes. Further, the inclusive definitions of these terms modernises the Act to include a more comprehensive understanding of these categories and compels their recognition in the community.

G. The Positive Duty should not be reliant on a complaint

NTWLS supports the creation of a positive duty to eliminate discrimination, sexual harassment and victimisation as proposed by the Bill. We would support the provisions proposed under Part 2A being actionable both as a result of a complaint, and from the Commissioner’s own volition. We submit that during community engagement, such as for educative purposes, it is likely that instances where the positive duty is not being enacted will be observed. It would be unreasonable in such circumstances to require a complaint to instigate further action, and we therefore support a hybrid model that would allow for ‘own volition’ as well as complaint-based investigations.

Conclusion

NTWLS strongly supports and recommends amendments to the Act to bring the NT in line with other Australian jurisdictions. We support amendments that will serve to protect Territorians who may suffer discrimination because they have experienced or are experiencing DFSV (reiterating that within same group, the affected persons are predominantly women), because of their accommodation or socioeconomic status, because of their diverse gender and/or sexuality, or otherwise. Further, we support the introduction of a representative model process and a positive duty to eliminate discrimination to the Act.

We thank you for your consideration of the above. Should you wish to discuss this submission further, please do not hesitate to contact Ms Caitlin Weatherby-Fell, Chief Executive Officer, TEWLS by telephone on (08) 8982 3000 or email to admin@tewls.org.au.

Yours faithfully,

NORTHERN TERRITORY WOMEN'S LEGAL SERVICES



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Chief Executive Officer
Central Australian Women's
Legal Service



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