



Submission

Regarding

DRAFT ANTI-DISCRIMINATION AMENDMENT BILL 2022

Date: August 10th, 2022.

The Northern Territory Mental Health Coalition (NTMHC) is the peak body for community managed mental health services across the Northern Territory. We work in collaboration with a wide network of community mental health organisations, people with lived experience, and their families and supporters. We work at the local and national level to improve mental health and wellbeing for all Territorians. On behalf of our members, we welcome the opportunity to make this submission on the Draft NT Anti-Discrimination Amendment Bill, 2022. Please find answers below to the questions asked in the online public survey.

QUESTION ONE

The NT Anti-Discrimination Act 1992 prohibits discrimination on the basis of certain attributes such as age and race. To make the Act more contemporary it is proposed to add new attributes and redefine others. In the Exposure Draft Bill, clause 10 amends the Act to prohibit discrimination on the basis of a number of new attributes as follows:

- **Language, including non-verbal language**
- **Gender**
- **Sexual orientation (currently referred to in the Act as sexuality)**
- **Accommodation status**
- **Socio-economic status**
- **Employment as to sex work, including past sex work**
- **Carer responsibilities (currently referred to as parenthood)**
- **Subjected to domestic violence**

A number of these new attributes are defined in clause 5 of the Exposure Draft Bill.

QUESTION: Should any further protected attributes be added to the Act?

NTMCH welcomes the proposed changes to the NT Anti-Discrimination Act (the Act) and supports the intent of the amendments to bring the Act into line with contemporary standards and expectations. We know that discrimination is a strong contributing factor to poor mental health and negatively affects access to services and recovery pathways. Amending the Act will provide a mechanism to protect people from harm including harm to their mental health.

NTMHC notes the following:

Language, including non-verbal language

We welcome the proposal to prohibit discrimination in relation to language and believe it is vital to include non-verbal language into the Act as proposed. People with mental health issues across the spectrum must have the right to an interpreter in their own language from assessment through to planning to ensure that all processes, procedures, laws, and treatments are fully understood. This is particularly important for people with acute mental health who may be severely negatively impacted by the inability to communicate, thereby creating the risk of increased harm. The inclusion of language into the Act also has significant Implications in the context of seclusion and restraint of people with complex mental health issues – all people must have the right to not be discriminated against on the basis of language.

Gender

We welcome this inclusion and strongly put forward that any definition of gender include the full spectrum of gender identities to ensure inclusion for all including trans and non-binary people. We also support the stance outlined by Rainbow Territory in their *Submission to the Modernisation of the Anti-Discrimination Act 1992 (NT) Discussion Paper, January 2018, (Rainbow Territory, 2018)*, regarding the definition of **sex characteristics** to state that ‘intersex’ be removed from the definition and instead “each person’s” be inserted to standardize a universal attribute in line with the joint statement developed by and agreed upon by Australian and Aotearoa/New Zealand intersex community, organizations and independent advocates. This proposal is in the interests of supporting all genders to be free from discrimination and mitigate the potential risk of negative mental health impacts.

Sexual orientation (currently referred to in the Act as sexuality)

We welcome this change of terminology to reflect contemporary understandings and terminology.

Accommodation status

We welcome the inclusion of (a), (b), and (c) in Section 4(1) in relation to accommodation status and further suggest that ‘step-up, step-down’ and/or ‘recovery accommodation’ be considered for inclusion under (c). People suffering from mental ill health must have secure accommodation to provide the best possible chance for recovery. The impacts of mental health issues that coincide with difficulties in maintaining accommodation must be taken into account by the Act to ensure that inadvertent consequences of complex and/or deteriorating mental health are not utilized as a lever for disenfranchisement from housing and accommodation.

Socio-economic status

We welcome this inclusion. No one should be discriminated against on the basis of their socio-economic status. The link between discrimination, social determinants (including racism), and subsequent negative impact on mental health is greatly concerning. We refer to AMSANT’s *Submission on the Modernisation of the NT Anti-Discrimination Act, February 2018 (AMSANT, 2018)* in relation to Aboriginal and Torres Strait Islander people socio-economic status and its relationship to mental health. We further welcome this attribute in recognition of the relationship between social determinants and mental health for all Territorians.

Employment as to sex work, including past sex work

We welcome this inclusion. All people working in the sex industry should not be discriminated against in regard to their occupation. The negative impact of discrimination on the mental health and wellbeing of sex workers has been recently discussed in the Australian context in *McCausland K, Lobo R, Lazarou M, Hallett J, Bates J, Donovan B, Selvey LA. 'It is stigma that makes my work dangerous': experiences and consequences of disclosure, stigma and discrimination among sex workers in Western*

Australia. Cult Health Sex. 2022 Feb;24(2):180-195. In our vision for the best possible mental health and wellbeing for all Territorians, we welcome this inclusion.

Carer responsibilities (currently referred to as parenthood)

We welcome this change of terminology to accurately reflect all people caring for others. The role of carers is critical in supporting individuals and communities. Carers are often unpaid and under-recognized for the deeply important services they offer to loved ones and for the benefit of our communities. The complexities of caring are unique to each situation and carers must have the right not to be discriminated against on the basis of their role.

Subjected to domestic violence

We support the inclusion of domestic violence, however we recommend the use of ‘domestic and family violence’ as a more appropriate term (Refer to AMSANT, 2018). Domestic and family violence can have severe impact on mental health for individuals and families and we support that people who are subjected to domestic and family violence should not be discriminated against in any manner.

QUESTION TWO

Currently the Act provides protection against discrimination of guide dogs used by people with vision disabilities. Clause 12 of the Exposure Draft Bill proposed to amend the Act to provide protection against discrimination for all appropriately trained or accredited assistance animals (not just guide dogs) and a broad range of disabilities (not just vision disabilities). ‘Assistance animal’ is defined in clause 6 of the Exposure Draft Bill.

QUESTION: Do you support broadening the protections in the Act to cover all appropriately trained accredited assistance animals (not just guide dogs)?

NTMHC supports the use of broadening the Act to include assistance animals beyond guide dogs. Trained assistance animals and psychiatric seizure alert animals are vital to the mental health and wellbeing of people in our communities. Companion animals or assistance animals of various kinds also provide important psycho-social support in the lives of many people suffering from mental ill health.

QUESTION THREE

The Exposure Draft Bill proposes inserting a new general duty to prevent discrimination. This is known as a positive duty. Clause 9 sets out a new Part 2A in the Act which provides a positive duty to take reasonable and proportionate measures to eliminate discrimination, sexual harassment or victimization to the greatest extent possible. A contravention of this general duty may be the subject of an investigation by the Anti-Discrimination Commissioner, under the Commissioners new investigative function provided in clause 8 of the Exposure Draft Bill

QUESTION: Do you think the Act should include provisions that:

- (1) Allow any member of the public to lodge a complaint regarding a perceived failure of the proposed new general duty to prevent discrimination.**
- (2) allow the Anti-Discrimination Commissioner to investigate a perceived failure of the general duty without a complaint/report.**
- (3) Include both 1 and 2?**

The principle to prevent discrimination is an important signal to our community of the importance of eliminating discrimination in all spaces, and that we are all responsible in preventing harm from discrimination, including harm in relation to mental health.

- (1) We agree that any member of the public should be able to lodge a complaint regarding perceived failure of the duty to prevent discrimination
- (2) We agree that the anti-discrimination commissioner should investigate perceived failures of the general duty described, however we point out that the commission will require adequate resourcing to ensure that investigation by the commission is possible.

QUESTION FOUR

Clause 11 of the Exposure Draft Bill will insert a new anti-vilification provision into the Act, which will prohibit a public act that is reasonably likely, in all the circumstances, to offend, insult, humiliate, or intimate another person or group and is done because of a protected attribute of the person or group.

QUESTION:

- (1) Do you support including an anti-vilification provision in the Act?**
- (2) What other effective measures could be implemented to prohibit hate speech in our community?**

(1). NTMHC supports the inclusion of an anti-vilification provision that sends a strong positive signal, and acts as a deterrent to acts and language that incites discrimination, hostility, violence, and harm, including mental health harm. Enacting anti-vilification provides some protection measures that we should expect of a fair and inclusive society. We note that all other states and territories have legislated against anti-vilification, and the recognition of the importance of anti-vilification measures was recognized by Commonwealth legislation through the introduction of racial vilification provisions in the Commonwealth Racial Discrimination Act in 1991. People on the receiving end of vilification 'are likely to experience various mental and physical health impacts that affect [their] quality of life. These [impacts] can include psychological distress, depression, anxiety, post-traumatic stress disorder, psychosis and substance abuse disorders, as well as diseases and conditions such as cardiovascular disease, obesity, and poor self-reported health' (*Parliament of Victoria, Legislative Assembly Legal and Social Issues Committee, 'Inquiry into Anti-Vilification Protections' March 2021, p70.*) NTMHC strongly supports the anti-vilification provision in the Act.

(2). A harm-based approach which examines harm experienced by the vilified person rather than focusing on the intent of the perpetrator could be introduced. This approach highlights the multiple negative impacts that vilification has on victims including negative impacts regarding mental health and wellbeing.

QUESTION FIVE

Clause 13 of the Exposure Draft Bill proposed broadening the existing prohibition of sexual harassment so that the prohibition applies in all areas of public life, not just an area of activity referred to in Pat 4 of the Act (work). This means that sexual harassment is prohibited in all public spaces.

QUESTION: Do you agree that it is necessary to extend the prohibition of sexual harassment to all areas of public life, not just in work environments?

The elimination of sexual harassment in all forms of communal life is welcomed.

QUESTION SIX

Section 37A of the Act currently provides an exemption for religious educational institutions to discriminate against staff on the basis of sexuality and also on the basis of religious belief or activity. Clause 17 of the Exposure Draft Bill proposes amending section 37A to remove the ability to discriminate against staff on the basis of sexuality (the provision will still permit discrimination against staff on the basis of religious belief or activity)

QUESTION: Do you support removing the exemption in section 37A of the Act that allows discrimination on the basis of an individual's sexuality?

NTMHC supports the removal of religious exemptions on the basis of sexuality including the removal of Section 37(A) in relation to exemptions that allow religious institutions to discriminate on the basis of sexuality. We refer to Rainbow Territory submission, 2018 which points out that Tasmanian anti-discrimination legislation does not contain these exemptions, and Ireland (with 84% of its people identifying as Catholic) has also removed an equivalent exemption. Impact statements of discrimination outlined in the same submission by Rainbow Territory in 2018, talk about the 'huge impact' of remaining 'closeted', lack of access to bereavement leave, and concern for the mental health of gay and trans children. In the interests of mental health and wellbeing for all Territorians, NTMHC supports removal of this exemption.

QUESTION SEVEN

Currently only people who receive goods, services and facilities are protected from discrimination under the Act. Clause 41 of the Exposure Draft Bill proposes to extend protection from discrimination in the area of goods, services and facilities, to people who provide the goods, services and facilities.

QUESTION: Do you agree the Act should provide equal protection for people who supply and received goods, services and facilities?

NTMHC maintains that all people, including people who supply and receive goods, services and facilities should be equally protected from the negative impacts of discrimination in the interests of a fair society and equal opportunity for health (including mental health) and wellbeing for everyone. We support the extension of this protection in the Act.

QUESTION EIGHT

Currently an individual can make a complaint to the Anti-Discrimination Commissioner about discrimination they have been subject to. The Exposure Draft Bill proposes to add a new representative complaints process to the Act. This will allow an organisation to make a complaint to the Anti-Discrimination Commissioner on behalf of a group of individuals about 'systemic discrimination' as a result of practices, procedure or policies that allow discrimination to occur. Clauses 28-032, 35-38, 41 and 43 will shape the representative complaints process.

QUESTION: Do you support including a separate process in the Act to allow a complaint that specifically targets systemic discrimination occurring (rather than only complaints about discrimination against an individual)?

Systemic discrimination has considerable and long-lasting intergenerational impacts upon the health, mental health, and wellbeing of whole communities. We support a separate complaints process in

the Act that specifically targets systemic discrimination to support the efforts to eliminate discrimination in all its forms. NTMHC also supports the point made by AMSANT that insists '*consent should be obtained from the people on behalf of whom the complaint is made. It is essential that there are proper mechanisms in place to ensure the protection of information and suitable governance structures to ensure information is used appropriately*' (AMSANT. 2018, p11). To ensure that the inclusion of systemic discrimination complaints procedure into the Act is not tokenistic, the commission must be adequately resourced and advised to ensure that complaints receive a meaningful response with the capacity to drive positive change.

QUESTION NINE

QUESTION: Do you have any other comments or feedback in relation to the Exposure Draft Bill?

To ensure that the amendments to the Act produce the positive change that we all seek, the commission must be resourced to ensure that it can carry out the intent of the Act. NTMHC welcomes positive amendments to the Act that give all Territorians a greater opportunity to enjoy mental health and wellbeing free from discrimination.

Thank you for the opportunity to make this submission,

Kind Regards,



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