

Vision Australia Submission

Response to the Review of the Anti-Discrimination Act 1993 (NT)

Submission to: Northern Territory Department of the Attorney-General and Justice
Director, Legal Policy

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About Vision Australia

Vision Australia is the largest national provider of services to people who are blind, deafblind, or have low vision in Australia. We are formed through the merger of several of Australia's most respected and experienced blindness and low vision agencies, celebrating our 150th year of operation in 2017.

Our vision is that people who are blind, deafblind, or have low vision will increasingly be able to choose to participate fully in every facet of community life. To help realise this goal, we provide high-quality services to the community of people who are blind, have low vision, are deafblind or have a print disability, and their families.

Vision Australia service delivery areas include:

- Registered provider of specialist supports for the NDIS and My Aged Care
- Aids and Equipment, and Assistive/Adaptive Technology training and support
- Seeing Eye Dogs
- National Library Services
- Early childhood and education services, and Felix Library for 0-7 year olds
- Services to blind and low vision children in schools to maximise educational outcomes

- Employment services, including national Disability Employment Services provider
- Accessible information, and Alternate Format Production
- Vision Australia Radio network, and national partnership with Radio for the Print Handicapped
- Spectacles Program for the NSW Government
- Advocacy and Engagement, working collaboratively with Government, business and the community to eliminate the barriers our clients face in making life choices and fully exercising rights as Australian citizens.

Vision Australia has unrivalled knowledge and experience through constant interaction with clients and their families, of whom we provide services to more than 26,000 people each year, and also through the direct involvement of people who are blind or have low vision at all levels of the Organisation. Vision Australia is well placed to advise governments, business and the community on challenges faced by people who are blind or have low vision fully participating in community life.

We have a vibrant Client Reference Group, with people who are blind or have low vision representing the voice and needs of clients of the Organisation to the Board and Management. Vision Australia is also a significant employer of people who are blind or have low vision, with 15% of total staff having vision impairment. Vision Australia also has a Memorandum of Understanding with, and provides funds to, Blind Citizens Australia (BCA), to strengthen the voice of the blind community.

Response

The following comments relate to the questions raised in the Discussion Paper. We comment only on questions of relevance to our clients and the blindness and low vision sector, who may use the Act to help eliminate the discrimination that they encounter in everyday life. We do not presume to be legal practitioners.

By way of general comment, we would like to make the point though that discrimination unfairly excludes people with disability and members of other specific groups and limits their capacity to fulfil their potential in society, it manifests in a range of ways, from blatant and intentional prejudicial conduct to the unintentional imposition of supposedly neutral conditions. For circumstances of discrimination to be appropriately and adequately addressed in its many manifestations, discrimination law needs to be broad in its coverage, but also sophisticated and nuanced to make it applicable to the great diversity of human experience, goals and needs. Any proposed reforms to anti-discrimination law should serve to enhance goals of efficiency and compliance.

Additionally, it is worth noting that anti-discrimination legislation, perhaps more than most other categories of legislation, is often read by individuals who do not have detailed legal expertise but who, for example, are seeking to find out what their rights are and whether they may have grounds for lodging a complaint. It is therefore important that new legislation and amendments to current legislation are constructed with the needs of the general community in mind, such that they include language that is accessible and comprehensible to the average person. There are, of course, limits to technical simplification and expression in everyday language, but we recommend that preference be given whenever possible to simple constructions over more complex ones in the drafting process.

Question 4

Should vilification provisions be included in the Act? Should vilification be prohibited for attributes other than on the basis of race, such as disability, sexual orientation, religious belief, gender identity or intersex status?

We support the inclusion of vilification provisions, and believe that vilification should be unlawful on the grounds of all protected attributes, including disability. We are aware of instances in the workplace where people have been trivialised in terms of their capacity to work, and insulted on the basis of their blindness or low vision. The inclusion of vilification provisions with disability as a protected attribute would serve to give people recourse for such conduct. We are aware of instances of people who are blind or have low vision being trivialised and insulted in social settings, and we therefore see no reason why this would not occur in all situations covered by the Act. Vilification provisions would, for example, serve to protect people who are blind or have low vision from being trivialised and insulted in the context of schools and universities.

We support extending coverage of the Act to include the additional attributes identified in the Discussion Paper. We address Questions 5, 6 and 8 conjointly below.

Question 5

Should the Act create rights for people experiencing domestic violence in relation to public areas of life such as employment, education and accommodation?

Question 6

Should the Act protect people against discrimination on the basis of their accommodation status?

Question 8

Should "socioeconomic status" be included as a protected attribute?

Domestic violence, homelessness and low socio-economic status are significant problems in Australian society. The greater the extent of protection from discrimination that can be afforded through legislation, the more benefits will flow to society as a whole, through inclusion and participation in all spheres of life. At the same time, care must be taken to ensure that the legislation maintains existing protections and is extended without loss of clarity and specificity.

There is an alarming amount of abuse of people with disabilities in both the institutional and family contexts, as well as in spousal situations. A recent position paper published by Women with Disabilities Australia indicates that violence against women and girls with disability in Australia is far more extensive than violence amongst the general population. Additionally, according to WWDA, women and girls with disabilities experience violence that is more diverse and severe in nature compared to women in general. Their experiences of violence are often prolonged, and they are subjected to violence by a greater number of perpetrators. Further research is needed, but there are indications that violence experienced by people with disability in the context of the workplace and education is widespread and under-reported. Therefore, we support the creation of rights for people experiencing domestic violence in relation to all areas of life covered by the Act.

Due to the low employment rates for people with disability, low income, and consequent low socio-economic status and even homelessness is common. Therefore, discrimination could be claimed on grounds of disability or socio-economic/accommodation status. This is particularly significant where it cannot be as easily identified as disability discrimination. A person may have more than one "protected attribute", and may experience discrimination on the basis of each single attribute or on any combination of them, and the impact of the discrimination is generally compounded by the presence of more than one attribute. For example, a gay blind person who is discriminated against in employment on the basis of being gay is much less likely to be able to get another job on account of being blind. A blind person who is subjected to domestic violence may find it more difficult to access information about their options because the information may only be available in print.

To this end, we support approaches that enable discrimination complaints to be lodged on the basis of more than one attribute in a single complaint. Often, it can be difficult for a complainant to quantify the extent to which alleged discrimination is based on each attribute. It may also be that some discrimination is based on a combination of attributes that cannot easily be separated. We therefore recommend that any amendments to the Act include prohibition of discrimination based on one or more attributes, and make explicit that a complainant is not required to assign proportions to the extent of discrimination based on each attribute.

Question 9

Should the Act be broadened to include specifically trained assistance animals such as therapeutic and psychiatric seizure alert animals?

We support expanding the definition of specifically trained assistance animals. Additionally, we recommend that the wording of section 21 of the Act include reference to Seeing Eye Dogs and similar, such as "guide dogs, seeing eye dogs, and other assistance animals trained accredited for use for people who are blind or have low vision".

Question 10

Should a representative complaint model process be introduced into the Act? Should there be any variations to the process of the complaint model as described above?

We support the proposed representative complaint model outlined in the Discussion Paper that would allow organisations such as ours to lodge discrimination complaints on behalf of the blindness and low vision community. We support the requirements for a valid complaint outlined, and strongly urge the proposed inclusion of a compulsory conciliation process once complaints are accepted and the investigation powers of the Commissioner should the conciliation process not bring about a resolution. We strongly disagree with the notion that only voluntary conciliation will produce satisfactory outcomes. There is a long history of compulsory conciliation in the industrial arena, and, in any case, the dynamics of the relationship between complainant and respondent can change once they actually talk to each other, especially in the presence of an experienced conciliator.

Discrimination is, by and large, only dealt with when an individual makes a complaint, and then only on an individual basis. Discrimination, direct or indirect, may continue for years before someone actually lodges a complaint. It is not uncommon for our clients to be told by a potential respondent, "well you're the first person who has mentioned this", the implication being that if discrimination were occurring, someone else would have complained about it before. Apart from the logical absurdity of this response, it does highlight the reality that the complaints-driven mechanism is often a blunt instrument in the face of systemic discrimination. Discrimination harms society as a whole and every member, not merely the identified aggrieved persons. Therefore, the obligation to address discrimination should be shared widely across society, and the identified aggrieved person should not bear an onerous burden in driving change.

Our concern with anti-discrimination legislation generally is that complaints-based mechanisms are largely ineffective in addressing entrenched or intransigent discrimination. Commissions and Boards lack wide-ranging enforcement power and demonstrate an unwillingness to use the enforcement powers that they do have in relation to the conciliation process. This combined with a cost-based court system acts as a deterrent to many people who are blind or have low vision (and to people with disability in general). The outcome we are seeking is a mechanism that would address these two factors. The precise nature of such a mechanism, and the way it is formulated in legislation, are best addressed by legal experts rather than an organisation such as ours.

Question 12

Should the restriction of areas of activity on sexual harassment be removed?

Harassment should be unlawful on the ground of any protected attribute in any area of activity covered by the Act, should not be subject to exceptions, and should extend to include volunteers. Due to the low employment rate of people with disability, they often engage in volunteer activities and could potentially be in the same workplaces where harassment is occurring.

Question 13

Should the definition of "service" be amended to extend coverage to include the workers?

We support this proposed change to the definition of "services" in the Act.

Question 16

What are your views on expanding the definition of "work"?

Protection against discrimination at work should extend to volunteers. Legislation in Queensland, South Australia, Tasmania and the ACT makes some provision for the coverage of volunteers. Given the increasing importance of the voluntary sector, combined with the high unemployment rate among people with disability (estimated at 58% for people who are blind or have low vision) there is an urgent need for the Act to extend coverage to volunteers for all protected attributes. As a matter of principle it is crucial for all employment relationships to be covered in anti-discrimination legislation. There is no policy rationale for leaving volunteers exposed to discrimination or harassment without remedy.

Question 17

Should section 24 be amended to clarify that it imposes a positive obligation?

We strongly support amending section 24 of the Act to clearly articulate that employers, service providers and educators have a positive duty to eliminate discrimination and harassment for all attributes covered by the Act. Proactive responses to equal opportunity are preferable to reactive responses. The proposed amendments would also provide a supplementary mechanism for achieving change through the legislation, especially at a systemic level which, at present, is much less susceptible to change by individual complaint.

Question 18

Is the name "Equal Opportunity Commissioner" preferred to the name "Anti-Discrimination Commissioner"? Would the benefits of a new name outweigh the financial cost that comes with re-naming an office?

As an organisation within the disability sector we support language that is positive and inclusive. By definition, the title 'equal opportunity Commissioner' could bestow on the Commissioner and the Commission entrusted to administer the legislation with more scope to undertake the positive promotion of human rights, rather than just simply policing discrimination.