



CENTRAL LAND COUNCIL

Submission to the Northern Territory Department of the Attorney-General and Justice on the proposed Modernisation of the Anti-Discrimination Act 2017 (NT)

5 February 2018

Introduction and Context	3
<i>About the CLC.....</i>	3
<i>Submission focus</i>	3
Comments on proposals.....	4
References.....	6

Introduction and Context

The Central Land Council (CLC) welcomes this opportunity to provide a submission regarding the modernisation of the *Anti-Discrimination Act 2017* (NT) (the Act).

About the CLC

The CLC is a Commonwealth statutory authority established under the *Aboriginal Land Rights (Northern Territory) Act 1976* ('ALRA'). It is led by a representative body of 90 Aboriginal people elected from communities in the southern half of the Northern Territory, which covers almost 777,000 square kilometres and has as an Aboriginal population of more than 24,000. Amongst other functions, the CLC has statutory responsibilities to protect the interests of Aboriginal people with an interest in Aboriginal land, including to assist Aboriginal people to protect sacred sites, make land claims, and utilise land and other financial resources for the benefit of their communities.

As one of the longest standing aboriginal organisations in the Central Australian region, the CLC has a unique understanding of the economic, social and cultural barriers faced by Aboriginal people in the region, and plays a key role in promoting the rights of its constituents, including equality and non-discrimination.

Submission focus

CLC's submission focuses on aspects of the proposed reforms which are most likely to impact CLC's constituents. The CLC also endorses the views expressed in submissions made by APO NT, AMSANT and NAAJA.

The CLC supports the broad objectives of the proposed reforms - to evolve with community standards and expectations; improve consistency with other jurisdictions; strengthen protections for vulnerable groups in the community; and implement Australia's obligations under the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination.

The CLC recognises that anti-discrimination laws play a crucial role in eliminating discriminatory beliefs, behaviours, and practices in the community. However, the CLC notes that legislative measures should be implemented in coordination with other measures aimed at addressing the entrenched inequality between Aboriginal and non-Aboriginal people.

Laws should support broader policy and programme responses which seek to address inherent disadvantages faced by Aboriginal people in the areas of education, housing, employment, income, health, and access to justice. Many of these disadvantages or barriers are particularly acute for Aboriginal people in the CLC region, who live predominantly in remote communities with particularly limited access to services.

The CLC also emphasises the importance of providing accessible legal education to ensure that individuals are aware of and able to enforce the rights and protections afforded by the Act. The barriers to Aboriginal people accessing legal redress, advocacy, and education are well-documented - low levels of literacy and numeracy, higher levels of disability, higher levels of psychological distress, and geographical isolation are all major inhibitors (Cuneen et al 2014; Senate Legal and Constitutional References Committee 2004).

The CLC encourages the Government to consider devoting additional resources towards legal education for Aboriginal people in remote communities, which is culturally appropriate and directed at the community level.

Comments on proposals

Proposal 6 - Should the Act protect people against discrimination on the basis of their accommodation status?

The CLC **supports** the inclusion of accommodation status as a protected attribute. As noted in the discussion paper, rates of homelessness in the NT are higher than any other Australian State or Territory and significantly higher amongst Aboriginal people. A 2014 report by the Australian Institute of Health and Welfare (AIHW) based on 2011 census data found that NT had the highest rate of Indigenous homelessness, being 1 in 4 Indigenous people, and that this was primarily due to severe overcrowding (AIHW 2014). The recent review of remote housing commissioned by the Commonwealth Government also found that housing shortages and overcrowding is predicted to worsen over the next ten years (PM&C 2017).

It is well recognised that homelessness, overcrowding and poor living conditions have a profound impact on economic, social and health indicators, and that discrimination can further entrench homelessness. Discrimination can act as a significant barrier to a person securing accommodation and accessing support services (Lynch, P. & Stagoll, B. 2002; PM&C 2017).

Including accommodation status as a protected attribute would provide additional protections for Aboriginal people, who are disproportionately affected by homelessness, and promote equal access to areas specified in the Act (including work, goods and services and accommodation).

If included as an attribute, the CLC strongly **recommends** that the term 'accommodation status' be broadly defined, to be inclusive of concepts of 'home' and 'homelessness' as understood by Indigenous people, which may not be captured by traditional definitions (AIHW 2014).

1001

Proposal 8 - Should “socioeconomic status” be included as a protected attribute?

The CLC **supports** the inclusion of ‘socioeconomic status’ as a protected attribute. As noted in the discussion paper, discrimination on the basis of a person’s apparent socioeconomic status can act as a significant barrier to accessing areas of public life, such as education, employment, accommodation and other vital public services.

The inclusion of this attribute is well supported by international jurisprudence and domestic human rights organisations such as the Human Rights Law Centre, as a means of eliminating discrimination against people who are unemployed and receiving sources of income support (Vic. Gov. 2008).

If the Government determines that it is not appropriate to include ‘socioeconomic status’ as an attribute due to concerns about the broadness of the term, the CLC recommends including ‘employment status’ as a protected attribute. This approach would also be consistent with recent reforms to the ACT Discrimination Act (ACT Advisory Council 2016), and provide similar protections for persons who are unemployed or receiving certain types of income support. In support of this approach, the CLC also notes that a recent report on access to justice in the NT noted that employment was one of the two most common areas of discrimination identified by research participants (Cuneen et al. 2014).

Proposal 10 –

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

The CLC **supports** the introduction of a representative complaint model process as a means of improving access to justice for Aboriginal people in the Northern Territory. As the discussion paper notes, individuals affected by discrimination may not have the resources available to advocate for themselves and this is particularly true for Aboriginal people, who face additional barriers, including social disadvantage, low English literacy and numeracy, and remote living (Cuneen, C. et al 2014).

While the CLC supports the proposed complaint model, it encourages the Government to consider whether additional funding is required in order for organisations to provide representative support, such as Indigenous legal services, given ongoing concerns regarding lack of funding for legal services nationally (Indigenous and non-Indigenous) (Joint Media Release 2017).

Proposal 14 - Should any exemptions for religious or cultural bodies be removed?

The CLC does **not have any particular concerns** with the proposed repeal of section 43 of the Act, on the basis that sufficient protection is provided for places of cultural significance for Aboriginal people under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) and *Sacred Sites Act 1989* (NT). It also notes that religious or cultural bodies would still be able to apply for an exemption with the ADC on a case-by-case basis.

Proposal 21 - Should the term "parenthood" be replaced with "carer responsibilities"?

The CLC **supports** the broadening of the definition of 'parent' and use of terms which recognise the variety of family, caring and kinship connections among Aboriginal and Torres Strait Islander communities in the NT.

While the CLC supports the inclusion of the term 'carer', CLC **recommends** that this term be extended to include 'kinship responsibilities'. This would provide stronger protection for people who have responsibilities which are not captured by conventional concepts of a parent or carer. This is particularly relevant to Aboriginal carers, who are more often kin to children rather than a parent or foster carer (AIFS 2017). This amendment would also align with the objectives of child protection legislation and Aboriginal Child Placement Principle, which preference kinship care over non-relative foster care. It would also be consistent with the approach taken by the ACT in its recent reforms to its anti-discrimination legislation (ACT Advisory Council 2016).

References

ACT Law Reform Advisory Council (ACT Advisory Council), 2015, *Review of the Discrimination Act 1991 (ACT) Final Report*, pp. 73, 78, 79, viewed 28 January 2018, <http://cdn.justice.act.gov.au/resources/uploads/JACS/PDF/LRAC_Review_of_Discrimination_Act_1991_Final_Report.pdf>

Australian Institute of Family Studies, 2007, *Kinship Care*, viewed 27 January 2018, <<https://aifs.gov.au/cfca/publications/kinship-care>>

Australian Institute of Health and Welfare, 2014, *Homelessness among Indigenous Australians*, viewed 27 January 2018, pp.4-6, 13, <<https://www.aihw.gov.au/getmedia/836e0f83-0fff-492f-8862-8ae43ceb6ab4/17595.pdf.aspx?inline=true>>

Joint Media Release, *Budget 2017: Pillars of Legal Assistance Sector welcome Budget lifeline but more work to do*, May 2017, viewed online 29 January 2018,

<<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F5270939%22>>

Commonwealth Department of Prime Minister and Cabinet (PM&C), 2017, *Remote Housing Review- A review of the National Partnership Agreement on Remote Indigenous Housing and the Remote Housing Strategy (2008-2018)*, pp.15-21, viewed 27 January 2018, <<https://pmc.gov.au/sites/default/files/publications/review-of-remote-housing.pdf>>

Cuneen, C., Allison, F. & Schwartz, M., 2014, *Access to Justice for Aboriginal People in the Northern Territory*, viewed 28 January 2018, <https://www.jcu.edu.au/__data/assets/pdf_file/0008/119942/jcu_141209.pdf>

Lynch, P. & Stagoll, B., 2002, *Promoting Equality: Homelessness and Discrimination*, Deakin Law Review, viewed 28 January 2018, <<http://www5.austlii.edu.au/au/journals/DeakinLawRw/2002/15.html>>

Senate Legal and Constitutional References Committee, 2004, *Legal aid and access to justice*, Canberra, Commonwealth of Australia, para 5.120, viewed on 29 January 2018, <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2002-04/legalaidjustice/report/contents>

Victorian Government Department of Justice (Vic. Gov.), 2008, *An Equality Act for a Fairer Victoria: Equal Opportunity Review Final Report*, pp.94-95, viewed 27 January 2018, <http://www.daru.org.au/wp/wp-content/uploads/2013/03/An-Equality-Act-for-a-Fairer-Victoria_20082.pdf>