

Context

City of Darwin's Evolving Darwin Towards 2020 Strategic Plan provides a framework that aims to advance the needs and aspirations of the Darwin community. This Plan endeavours to foster a Collaborative, Inclusive and Connected Community by playing an active role in strategic and statutory planning processes (*Effective and Responsible Governance, 5.4.2 Advocate on behalf of the community*)¹.

Council has had in place for many years a disability advisory mechanism to support efforts in growing a just and accessible community. In more recent times, this Committee has broadened its remit to encompass Access and Inclusion in recognition of the changing needs of the community. Its Terms of Reference include the provision of education and information to improve community awareness of the needs and rights of people living with disability, as well as partnering with services and organisations to improve access and inclusion in community life. This response speaks to aspects of the *Discussion Paper on the Modernisation of the NT Anti-Discrimination Act*² in alignment with Council's Access and Inclusion Advisory Committee Terms of Reference established under section 54 of the *NT Local Government Act*³.

¹ City of Darwin, Evolving Darwin Towards 2020, Strategic Plan
https://www.darwin.nt.gov.au/sites/default/files/publications/attachments/city_darwin_strategic_plan_2012_web.pdf

² Discussion Paper, Modernisation of the *Anti-Discrimination Act*
https://justice.nt.gov.au/data/assets/pdf_file/0006/445281/anti-discrimination-act-discussion-paper-september-2017.pdf

³ *Local Government Act*, Northern Territory, Australia http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/nt/consol_act/lga182/

City of Darwin submission

Modernisation Reforms – Discussion paper questions

- (1) Is updating the term sexuality to sexual orientation without labels appropriate? Are there any alternative suggestions?*
- (2) Should the attribute of “gender identity” be included in the Act?*
- (3) Should intersex status be included as an attribute under the Act?*
- (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?*
- (5) Should the Act create rights for people experiencing domestic violence in relation to public areas of life such as employment, education and accommodation?*
- (6) Should the Act protect people against discrimination on the basis of their accommodation status?*
- (7) Should “lawful sex work” be included as an attribute under the Act?*
- (8) Should “socioeconomic status” be included as a protected attribute?*
- (9) Should the Act be broadened to include specifically trained assistance animals such as therapeutic and psychiatric seizure alert animals?*

CITY OF DARWIN RESPONSE

The current NT *Anti-Discrimination Act* refers to the term ‘sexuality’ with the restrictive labels of ‘homosexuality’ and ‘lesbian’. The change of term to ‘sexual orientation’ without labels allows for the changing landscape of sexual identity in the immediate future, because people identify sexual orientation beyond the terms ‘homosexuality’ and ‘lesbian’. This also will allow for future terms in alignment with social change and the Commonwealth *Sex Discrimination Act 1984*⁴.

⁴ *Sex Discrimination Act 1984*, Australia <https://www.legislation.gov.au/Details/C2014C00002>

Contemporising *the Act* to include gender identity, lawful sex work and socioeconomic status as a protected attribute is supported by City of Darwin, recognising the inclusion of these terms will align the Northern Territory with Commonwealth Legislation under the *Sex Discrimination Act 1984*.

The Northern Territory is currently the only jurisdiction in Australia without legislation to protect people against vilification, other than under the Commonwealth *Racial Discrimination Act 1975*⁵.

One catalyst for change is recognition of the growing crisis of family and domestic violence and violence against women in the Northern Territory and nationally.⁶ It is vital that these rights be included in modernisation of the *Act* so that protective measures are accountable under legislation.

Many workplaces are developing their own initiatives to support and better protect employees who are experiencing family and domestic violence, including City of Darwin. While this is a welcome advancement, population level change is better achieved through significant policy and legislative reform.

People who are experiencing homelessness or altered accommodation status are often vulnerable to many access barriers, including discrimination. The protection of people in these circumstances will provide the necessary means for equitable access to goods, services and fair treatment.

The *Anti-Discrimination Act* currently provides protection for guide dogs to assist people with vision or hearing impairments. Broadening of the term to include other assistance animals is necessary due to the increase of animal types trained to provide therapeutic assistance to people with a range of physical and psychosocial impairments. Given the increased scope of the term *assistance animal*, changes to *the Act* should include the prescribed definition of *assistance animal* so that it

⁵ *Racial Discrimination Act 1975*, Australia <https://www.legislation.gov.au/Details/C2014C00014>

⁶ Northern Territory Government Submission to the Senate Inquiry into Domestic Violence in Australia. Submission 158
<https://www.humanrights.gov.au/sites/default/files/57.2%20Northern%20Territory%20submission%20to%20the%20Inquiry%20into%20Domestic%20Violence.pdf>

pertains to the accreditation of an animal under local and Territory Governing bodies and aligns with the *Disability Discrimination Act*⁷. The inclusion of these attributes will clarify areas that are currently ambiguous or missing from *the Act* and offer greater protections for people experiencing discrimination.

Modernising Language – Discussion paper questions

(20) Should definitions of “man” and “woman” be repealed?

(21) Should the term “parenthood” be replaced with “carer responsibilities”?

(22) Should the term “marital status” be replaced with “relationship status”?

CITY OF DARWIN RESPONSE

The modernisation of language in the *Anti-Discrimination Act* is essential for the inclusion of all people. The effective use of modern language and terms provides clarity for all people seeking assistance or protection under the Act. There is universal support and recognition of the term *carer responsibilities* as opposed to *parenthood* and *relationship status* as opposed to *marital status*. Updating this language will align the Northern Territory with Commonwealth legislation and more broadly better reflect community change.

The historical use of the terms ‘man’ and ‘woman’ in the *Anti-Discrimination Act* are accompanied by definitions that dictate a ‘man’ or a ‘woman’ must belong to the male or female sex, a biological assignment that limits the inclusion of others, such as those whom identify as transgender or intersex. In offering protection from discrimination, the modernisation of *the Act* should include eliminating restrictive definitions and leave the terms ‘man’ and ‘woman’ without predefined parameters.

⁷ *Disability Discrimination Act 1992, Australia* http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/dda1992264/s8.html

New Reforms – Discussion paper questions

(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?

CITY OF DARWIN RESPONSE

The current *NT Anti-Discrimination Act* prevents people lodging complaints on behalf of another person, even if that person does not have capacity to complain. The inclusion of a representative complaint model is necessary to ensure protections of people who are unable to self-advocate. The process described in the Discussion Paper is an appropriate model that is supported by City of Darwin.⁸

Clarifying and Miscellaneous Reforms – Discussion paper questions

- (16) What are your views on expanding the definition of “work”?*
- (18) Is the name “Equal Opportunity Commissioner” preferred to the name “Anti-Discrimination Commissioner”? Would the benefits outweigh the financial cost that comes with re-naming an office?*
- (19) Is increasing the term of the commissioner to five years appropriate? Should the term of appointment be for another period, if so what?*

CITY OF DARWIN RESPONSE

The Act currently has limited definitions of *work*, that doesn’t provide for a person volunteering or on a student placement arrangement with an employer. The contribution that people in volunteer or similar capacities make to workplaces and the community are invaluable and as such should be afforded the same protections from discrimination as a paid employee. The broadening of the definition of *work* is

⁸ Discussion Paper, Modernisation of the *Anti-Discrimination Act*
https://justice.nt.gov.au/data/assets/pdf_file/0006/445281/anti-discrimination-act-discussion-paper-september-2017.pdf

necessary to keep pace with community expectations and to make contemporary the *Anti-Discrimination Act*.

In South Australia, Western Australia and Victoria the Commissioners that uphold the jurisdictional *Anti-Discrimination Acts* all have some delineation of the terms "Equal Opportunity" in their title. In aligning with a more contemporary approach, the change of the name from Anti-Discrimination Commissioner to Equal Opportunity Commissioner will create a more strength based approach. Whilst there will be administrative costs associated with such change of name, the evocative response to Equal Opportunity holds a clear positive obligation, rather than Anti-Discrimination.

A continuing theme in this submission is the alignment with other jurisdictions and their best practice models in terms of modern legislation to protect people from discrimination. In the case of extending the term of the Anti-Discrimination Commissioner there are examples within the Northern Territory jurisdiction. Other Commissioners, such as the Information Commissioner, Children's Commissioner and Commissioner for Public Interest Disclosure, hold a term for longer than the three years currently under legislation in the *Anti-Discrimination Act* NT. City of Darwin supports the change of term for the Anti-Discrimination Commissioner from three years to five years. The benefit of a longer term will ensure a more consistent approach and provide opportunity for adopting and reviewing policies and other in-office procedural approaches. The invitation for a longer term should be initially extended to the sitting Commissioner at the time of these amendments.