

# Aboriginal Peak Organisations Northern Territory (APO NT)

An alliance of the Central and Northern Land Councils,  
Aboriginal Medical Services Alliance Northern Territory  
and North Australian Aboriginal Justice Agency

Director, Legal Policy  
Department of the Attorney-General and Justice  
GPO Box 1722  
DARWIN NT 0801  
Via e-mail to: [Policy.AGD@nt.gov.au](mailto:Policy.AGD@nt.gov.au)

Wednesday 14 February 2018

Dear Department Secretary,

**RE: Submission to the Department of the Attorney-General and Justice Discussion Paper on the  
Modernisation of the *Anti-Discrimination Act***

The Aboriginal Peak Organisations of the Northern Territory (APO NT) welcomes the review of *Anti-Discrimination Act* by the Department of the Attorney-General and Justice. Please find our submission attached below.

APO NT is an alliance comprising the Central Land Council (CLC), Northern Land Council (NLC), North Australian Aboriginal Justice Agency (NAAJA) and the Aboriginal Medical Services Alliance of the Northern Territory (AMSANT). Since its establishment in 2010, APO NT has been working to develop constructive policies on critical issues facing Aboriginal people in the Northern Territory and to influence the work of the Australian and Northern Territory Governments. As representatives from peak organisations in the Northern Territory, we share the aim of protecting and advancing the wellbeing and rights of Aboriginal people and communities.

If you wish to discuss our submission in further detail, please contact Brionee Noonan by phone on [REDACTED] or via email to [REDACTED]

Yours sincerely,

[REDACTED]  
John Paterson  
CEO, AMSANT

Joe Morrison CEO NLC	David Ross Director CLC	John Paterson CEO AMSANT	Priscilla Collins CEO NAAJA
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## BACKGROUND

APO NT supports the decision to review the *Anti-Discrimination Act* and update discrimination law with the changing standards and expectations of a contemporary society. Protecting people from discrimination and encouraging communities to speak out on all forms of discrimination they might encounter should be a core objective of the government, enabled through robust legislative processes. This submission aims to identify concerns and make recommendations based on the needs and expectations of Aboriginal people and communities, informed by our collective experiences as an alliance of Aboriginal organisations.

We note that the indication in the Discussion Paper, that submissions do not have to cover all aspects of the discussion paper. Due to the breadth of reforms, APO NT will only address questions that are directly related with the experience and expertise of our member organisations. We acknowledge the submissions made by Rainbow Territory, NAAJA, CLC and AMSANT, who all have particular expertise to share on certain aspects of the proposed reforms. We have had the benefit of viewing their submissions and endorse the voice they are giving to members of our community that face discrimination.

APO NT would like to stress the importance of the Northern Territory Government tackling discrimination in diverse and comprehensive ways beyond legislative reform. Broader systemic issues faced by Aboriginal people, including intergenerational poverty and trauma, must be practically addressed for the proposed outcomes of these legislative amendments to be achieved.

## MODERNISATION REFORMS

### *Gender and Sexuality Protections*

**Question 1 - Is updating the term sexuality to sexual orientation without labels appropriate? Are there any alternative suggestions?**

APO NT has the benefit of receiving the Rainbow Territory submission to this review, and endorse the recommendations therein concerning the rights of LGBTIQ+ peoples in the Northern Territory. As per Rainbow Territory's recommendation regarding the replacement of the term 'sexuality' with 'sexual orientation', APO NT supports a definition derived from the Yogyakarta principles, that defines sexual orientation as "each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender".

#### **Recommendation1:**

**APO NT supports changing the term 'sexuality' to 'sexual orientation' in the Act.**



**Question 2 – Should the attribute of “gender identity” be included in the Act?**

As per Rainbow Territory’s recommendation, APO NT supports the inclusion of “gender identity” as a protected attribute under the Act. It is recommended that this definition be derived from that provided by the Discrimination Act 1991 (ACT).

**Recommendation 2:**

**APO NT supports the inclusion of ‘gender identity’ as a protected attribute under the Act.**

**Question 3 - Should intersex status be included as an attribute under the Act?**

APO NT supports the inclusion of intersex status being a protected attribute under the Act, as defined by sex characteristics from the Yogyakarta principles - "each person’s physical features relating to sex, including genitalia and other sexual and reproductive anatomy, chromosomes, hormones, and secondary physical features emerging from puberty".

**Recommendation3:**

**APO NT supports the inclusion of ‘intersex status’ as a protected attribute under the Act.**

**Question 4 - Should vilification provisions be included in the Act?**

The Northern Territory is the only jurisdiction without legislative protection against vilification and the introduction of stringent measures to legislate against vilification is long overdue. APO NT recognises that the racial vilification suffered by Aboriginal and Torres Strait Islanders is significant, as well as vilification on the basis of a special need that may be associated with Aboriginality. The diversity of gender, sexual orientation and gender identity has also gained increasing awareness within the community and requires protection under anti-discrimination law.

APO NT agrees with the introduction of provisions which prohibit vilification against all the attributes outlined in the Discussion Paper, including race, disability, sexual orientation, religious belief, gender identity or intersex status. It is suggested that Part 6 of the *Anti-Discrimination Act 1991 (ACT)* be used as a model for these provisions.

**Recommendation 4:**

**APO NT recommends that vilification provisions that extend to all attributes be introduced into the Act.**



**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?**

Domestic and family violence is a particularly pertinent issue among Aboriginal communities and is also of particular concern to APO NT. Aboriginal women are 45 times more likely to experience domestic violence than their non-Aboriginal counterparts<sup>1</sup>. APO NT supports including domestic and family violence as a protected attribute, to ensure that those who have suffered its effects are not further victimised through discrimination.

The violence experienced is not confined to the traditional stereotype of a heterosexual couple and can occur within an extended family or through kinship circles. It can include physical and non-physical violence. As per AMSANT's recommendation, APO NT supports the rewording of 'domestic violence' to 'family violence' to better reflect the diverse forms that this may take within the Aboriginal and Torres Strait Islander community.

**Recommendation 5:**

**APO NT supports the inclusion of explicit rights to protect people who are experiencing or have experienced 'family violence' from discrimination.**

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

APO NT is committed to supporting Aboriginal people who are homeless, at risk of homelessness or are experiencing long-term housing instability. Homelessness is often a result of other forms of disadvantage, such as severe overcrowding, inadequate housing supply and housing neglect, lack of employment opportunities, and educational opportunities and low socioeconomic status.

The Northern Territory has the highest rates of homelessness, at 15 times the national average.<sup>2</sup> An estimated 85% of Aboriginal people in the NT live in severely overcrowded dwellings.<sup>3</sup> Overcrowding is not limited to regional and remote areas, but also occurs in Town Camps.<sup>4</sup> These statistic does not capture the 'hidden homeless' who are constantly on the move between houses of extended families without any permanent address.<sup>5</sup>

Therefore, we support the inclusion of an explicit protection against discrimination on the grounds of accommodation status. The broad definition of homelessness should include those who are sleeping rough, as well as people moving between residences and have no fixed address.

<sup>1</sup> Jane Mulrone, 2013 'Australian Statistics on Domestic Violence' (Australian Domestic and Family Violence Clearinghouse topic paper) pg 10.

<sup>2</sup> Northern Territory Shelter, 2015, *Homelessness*, Retrieved from: <https://ntshelter.org.au/housing-issues/>

<sup>3</sup> Ibid

<sup>4</sup> Ibid

<sup>5</sup> Office of the Northern Territory Co-ordinator General for Remote Services, 2012 'Office of the Northern Territory Co-ordinator General for Remote Services Report' pg 186.



**Recommendation 6**  
**APO NT supports the inclusion of ‘accommodation’ status as a protected attribute under the Act.**

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

Many Aboriginal people experience socioeconomic issues, which affect their ability to engage in public life in varied ways. Low socioeconomic status results from a wide range of factors of disadvantage including intergenerational trauma, poor health, unemployment or a lack of access to employment and educational opportunities, overcrowding and a lack of access to resources. Similarly, Aboriginal people may face discrimination on these grounds because of racial stereotypes associated with poverty and crime.

Aboriginal people living in the Northern Territory experience social determinants standards that are generally lower than that of Aboriginal people living in other jurisdictions. For example, food insecurity rates are at 34%, and the Territory’s Aboriginal labour participation is lower than other jurisdictions<sup>6</sup>.

**Recommendation 7**  
**APO NT supports the inclusion of ‘socioeconomic status’ as a protected attribute under the Act.**

*New reforms*

**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?**

Discrimination occurs beyond individual settings and be experienced in organisational and community settings, especially in Aboriginal communities. This kind of institutionalised and systematic discrimination is difficult to report under the current Act, and individuals may not report individual experiences of discrimination due to fear of stigma or because the discrimination has become so entrenched. Further, when these instances of discrimination are reported, the duplication of complaints occur.

NAAJA’s submission observed that individualised complaint mechanisms can be effective at this kind of systemic discrimination. APO NT support NAAJA’s recommendation that a representative complaints model be introduced.

NAAJA further recommended the establishment of own motion investigative powers for the Anti-Discrimination Commissioner, to conduct investigations that may have been brought forward informally. APO NT supports this

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<sup>6</sup> Australian Institute of Health and Welfare, 2015, ‘The health and welfare of Australia’s Aboriginal and Torres Strait Islander People’ p17.

[REDACTED]

recommendation, noting that consideration must be given to appropriate consent and privacy mechanisms for such a model.

In their submission, CLC encouraged the Government to consider providing additional funding to services that provide this representative support, such as Aboriginal legal services, to assist the establishment of this new complaints model. APO NT endorses this recommendation given the ongoing funding and resource issues experienced by legal services nationally.

**Recommendation 8**

**APO NT supports the introduction of a representative complaint model as outlined in the Discussion Paper.**

*Clarifying and Miscellaneous Reforms*

**Question 16 - What are your views on expanding the definition of "work"?**

APO NT members work with Aboriginal people who are participants of the government employment program CDP or perform other volunteer roles for their communities while unemployed or looking for work. Under the current CDP conditions, participants are unable to access the same entitlements such as compensation, paid sick leave as other workers do. We support the expansion of the definition of 'work' to include those working in the CDP program, volunteers, and those working in shared workplaces and anything akin to a work relationship, so that such individuals are protected against discrimination and access the same entitlements as workers.

**Recommendation 9**

**APO NT supports the expansion of the definition of 'work' to include volunteers, work undertaken under the CDEP and other roles akin to a work relationship.**

**Question 17 - Should section 24 be amended to clarify that it imposes a positive obligation?**

APO NT supports the amendment of s24 to explicitly express the positive obligation of employers and service providers to accommodate the special needs of individuals with protected attributes. APO NT agrees with NAAJA's comments that amending this section to express a positive duty would clarify expectations and obligations of employers, as well as improving access to justice for Aboriginal people who will be better placed to clearly identify the obligation that is owed to them. Further, that clearly expressing a positive obligation would improve the practices and accountability of service providers.

**Recommendation 10**

**APO NT supports the amendment to s24 to explicitly express the positive obligation of employers and service providers to accommodate the special needs of individuals with protected attributes.**

**Question 21 - Should the term “parenthood” be replaced with “carer responsibilities”?**

APO NT recognises the diverse carer responsibilities of Aboriginal and Torres Strait Islander people who are often involved in the ongoing care of a child or person who they did not parent. In line with NAAJA’s recommendation, we support the replacement of the term “parenthood” with “person with family, carer or kinship responsibilities” or equivalent as this explicitly acknowledges kinship relations. Further, as outlined in CLC’s submission, the acknowledgement of kinship responsibilities would align with the Aboriginal Child Placement Principles, which preferences kinship care over non-relative foster care. This is similar to the approach taken by the ACT government in the recent modernisation to its anti-discrimination legislation<sup>7</sup>.

**Recommendation 11**

**APO NT supports the replacement of the term ‘parenthood’ with ‘person with family, carer or kinship responsibilities’.**

**Question 22 - Should the term “marital status” be replaced with “relationship status”?**

APO NT supports this change, and further supports the recommendation from NAAJA to include an attribute of “membership to family group”. This is based on observations that their clients were discriminated against in the attainment of employment or accommodation on the basis of their membership to a particular family group.

**Recommendation 11**

**APO NT supports the replacement of the term ‘marital status’ as a protected attribute, with ‘relationship status’.  
APO NT recommends that additional attribute of ‘membership to family group’ also be protected.**

***Further Reforms***

**An Aboriginal co-commissioner**

APO NT supports the recommendation made by NAAJA to nominate an Aboriginal-identifying co-commissioner to focus on a broader set of tasks that concerns the institutionalised and systematic discrimination suffered by Aboriginal people and communities. This might include the auditing of organisations on their cultural frameworks,

<sup>7</sup> ACT Law Reform Advisory Council, 2015, *Review of the Discrimination Act 1991 (ACT) Final Report*, pp. 73, 78, 79.



for example. This co-commissioner should have specific expertise relating to the Northern-Territory context and it's Aboriginal and Torres Strait Islander peoples.

**Recommendation 12**

**APO NT supports the recommendation that an Aboriginal co-commissioner be elected to focus on key areas of Aboriginal and Torres Strait Islander discrimination.**

**Laws in contradiction of the Act**

APO NT also supports NAAJA's recommendation that the new Act should include a provision providing for other legislation that contradicts the *Anti-Discrimination Act* to be struck down.

**Recommendation 13**

**APO NT supports the recommendation that the *Anti-Discrimination Act* include a provision stating that legislation that contradicts provisions in the *Anti-Discrimination Act* should be struck down.**