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**Vision Australia Submission**

**Review of Northern Territory’s Anti-Discrimination Act 1992**

Submission to: Department of Attorney General and Justice (By email to: Policy.AGD@nt.gov.au)

Date: 10 August 2022

Submission approved by: Chris Edwards, Manager Government Relations and Advocacy, NDIS and Aged Care, Vision Australia

# Summary of Submission

Vision Australia welcomes the opportunity to provide a submission to the Department of Attorney General and Justice regarding the review of the *Anti-Discrimination Act 1992 (NT)*. This submission provides our response to the Exposure Draft Bill. In making this submission, we have answered the Survey questions found on the ‘Have Your Say NT’ website.

# Question One

The Northern Territory’s Anti-Discrimination Act 1992 (the Act) 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’);
* sex characteristics;
* accommodation status;
* socio-economic disadvantage;
* 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?**

We do not believe that any protected attributes additional to those listed above should be added to the Act. We note that non-verbal language is an attribute that would also fall under the broader scope of disability. In our view, its specific inclusion in the Act is unnecessary, or at the least does not provide any particular advantage, and may create undue complexity.

# 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 proposes 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 or accredited assistance animals (not just guide dogs)?**

We support the broadening of the protections in the Act to cover assistance animals other than guide dogs. We stress though that this should only include animals that are specially trained by an accredited assistance animal provider, and can meet public access tests. It should not include animals that may be classified, for example, as companion animals, emotional support animals, therapy animals or visitation and facility animals. These animals are not generally required to meet the same standard of training as accredited assistance animals.

# 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 Commissioner’s new investigative function provide in clause 8 of the Exposure Draft Bill.

**Question: Do you think the Act should include provisions that:**

1. **Allow any member of 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.**

We support the introduction of a positive duty in the Act. We have advocated for many years that a purely complaint driven process does not achieve the best outcomes in the area of disability discrimination. Individuals and organisations are not motivated to adopt inclusive practices merely by the possibility of a complaint against them. It is necessary to balance this with positive obligations so as to encourage changed behaviours, and to address areas of systemic discrimination. We would support the Act including provisions that allow both a member of the public to lodge a complaint regarding the proposed new general duty, as well as the Anti-Discrimination Commissioner to investigate without a complaint or a report.

# 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 intimidate another person or group and is done because of a protected attribute of the person or group.

**Questions:**

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?**

We support the inclusion of an anti-vilification provision in the Act. We would also support a provision allowing the Anti-Discrimination Commissioner to take action against vilification without the need for a complaint or report.

# Question Five

Clause 13 of the Exposure Draft Bill proposes 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 Part 4 of the Act (work). The 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?**

We make no comment in relation to this question.

# 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?**

We make no comment in relation to this question.

# 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 protections 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 receive goods, services and facilities?**

We support this proposal on the basis that protection against discrimination should operate as broadly as possible to safeguard the rights of all.

# 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, procedures or policies that allow discrimination to occur. Clauses 28-32, 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)?**

We recognize the importance of representative complaints, and submit that this form of complaint should be included in the Act. We believe that representative organisations should be able to take on matters of genuine concern that an individual or individuals may not otherwise be able to pursue because they lack the resources, capacity or financial ability to do so.

# Question Nine

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

We make no further comments in relation to the Exposure Draft Bill.

# About Vision Australia

Vision Australia is the largest national provider of services to people who are blind 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 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 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;
* Assistive/Adaptive Technology training and support;
* Seeing Eye Dogs;
* National library services, early childhood and education services and Feelix Library for 0-7 year olds;
* Employment services;
* Production of alternate formats;
* Vision Australia Radio network including a national partnership with Radio for the Print Handicapped;
* NSW Spectacles Program; and
* Government advocacy and engagement.

We work collaboratively with governments, businesses and the community to eliminate the barriers our clients face in making life choices and including fully exercising their 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 our 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 as well as they support they require to fully participating in community life.

We have a vibrant Client Reference Group, comprising of people with lived experience who are representing the voice and needs of clients of our 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, to strengthen the voice of the blind community.