



**Northern Territory AIDS and Hepatitis Council submission to the
Department of Attorney-General and Justice on the
modernisation of the *Anti-Discrimination Act*.**

January 2018

Kerrie Jordan
Executive Director

GPO Box 2826, Darwin NT 0801
46 Woods Street, Darwin NT 0800
Ph: 8944 7777 Fax 8944 7700
Email: 
Website: www.ntahc.org.au
ABN: 58 945 364 262



Introduction

The Northern Territory AIDS & Hepatitis Council Inc. (NTAHC) welcomes the opportunity to provide input to the modernisation of the *Anti-Discrimination Act*.

NTAHC is the key non-Government organisation working in the area of blood-borne viruses, education and support in the Northern Territory. Our vision is for a world that strengthens and sustains people living with BBV's, so they can live their lives to their full potential, in good health and free from discrimination. Our mission is to value the unique lived experiences of people living with, and at risk of, BBV's and provide a range of services, leadership and representation to meet the diverse needs of Territorians.

NTAHC is the lead agency in the delivery of Needle and Syringe Program (NSP) in the NT, delivers the NT's Sex Worker Outreach Project and provides case management and support for people living with blood borne viruses.

NTAHC work with the most stigmatised, marginalised and discriminated against groups in our community such as:

- People living with blood borne viruses
- People who use drugs
- Sex workers
- Gay men and other men who have sex with men
- Aboriginal people
- Culturally and linguistically diverse communities.

Our interest in human rights

NTAHC is a community based organisation that seeks to improve the health of the communities listed above. We believe that good health can only be achieved when human rights are realised.

For many people who are a part of these communities discrimination is a fact of daily life. Our communities often find that their rights are not being upheld and experience high rates of discrimination, particularly in accessing health care, the provision of goods and service and in the educational setting.

Scope of the submission

NTAHC has limited capacity to provide a detailed submission across all areas of anti-discrimination law. Our submission therefore focusses on issues that relate directly to our communities.

The Sex Work Outreach Project NT, an NTAHC Program is also submitting a separate submission. This submission has been developed by SWOP coordinators, the Sex Worker Reference Group and broader sex work community. This submission provides numerous case studies of stigma and discrimination faced by sex workers, some of whom intersect with other marginalised communities such as people living with blood borne viruses, particularly HIV, people who use drugs, Aboriginal and Torres Strait Islander people and people from LGBTIQ+ communities.

[REDACTED]

This intersectionality results in compounding stigma and discrimination and creates a negative cycle in the absence of appropriate, wide ranging protections.

Please refer to SWOP submission for detailed case studies of discrimination against people who experience multiple and intersecting stigma and discrimination.

NTAHC looks forward to commenting on the exposure draft of the revised Anti-discrimination Bill.

Amending and inserting additional attributes

NTAHC agrees with the Northern Territory Legal Aid Commission that “a clear list of protected attributes is necessary to demarcate merely unfair treatment from that which constitutes unlawful discrimination... the attributes protected in the current Act do not reflect the breath of discrimination which occurs in the Northern Territory” (NT Legal Aid Submission to the Department of Attorney-General and Justice on the Modernisation of the *Anti-discrimination Act*).

Sex work/sex worker

Recommendation: The Act should be amended to include “sex work”, and “sex worker” in addition to “profession, occupation, trade or calling” as protected attributes.

The Sex Worker Outreach Project (SWOP) is a Program of NTAHC and this submission fully supports its content and recommendations as summarised below:

Gaps in legislation and their definitions of coverage for sex workers:

‘profession, trade, occupation or calling’

This terminology is used in the Australian Capital Territory only and we know from the Hansard that the intention of this clause was to protect sex workers. Otherwise what constitutes ‘profession, trade, occupation or calling’ is not defined in the Act. In the Northern Territory, where sex work is not decriminalised, this type of protection alone as a main attribute is limiting due to legally sanctioned criminalisation of sex workers

‘lawful sexual activity’

This is the more commonly used terminology though it is extremely restrictive. None of the jurisdictions that use this clause are decriminalised, meaning that for a sex worker to use this protection, they must be working lawfully within the restrictive licensing or registration schemes that are in place in the Northern Territory. This excludes the large amount of sex workers who are currently unable to comply with these schemes.

“Both options depend heavily on the current regulatory and legal environment surrounding sex work in that particular jurisdiction. In a political or judicial climate that doesn’t consider

[REDACTED]

sex work to be work, profession, trade occupation or calling wouldn't be considered to cover sex workers. Both options have gaps, and are at the mercy of their environments"¹.

Therefore the term "lawful sex work" should not be included in an attempt to protect sex workers nor to define the work of sex workers or others working in working in the sex industry, the term is not reflective of the working conditions of Sex Industry workers.

Past and present drug use/people who use drugs

Recommendation: The Act should be amended to include "past or present drug use/person who uses drugs" as protected attributes.

"United Nations Secretary General Ban Ki-Moon states that 'In most countries, discrimination remains legal against women, men who have sex with men, sex workers, drug users, and ethnic minorities. This must change.'²

For people who use drugs stigma and discrimination is a fact of daily life. Stigma has the potential to negatively affect a person's self-esteem, damage relationships with loved ones, and prevent people from accessing health services. The stress caused by stigma and discrimination can be a central driver of morbidity and mortality, on par with some other social determinants of health including socio-economic status, education and social relationships.

Stigma is a public health issue that contributes to high rates of death, incarceration, and mental health concerns among people who use drugs. The stigma associated with drug use can prevent people from seeking treatment, testing, and other important health services. People who use drugs are also very likely to experience discrimination and stigma within health services.⁵ This exclusion often results in people being less likely to engage in broader society, causing further health and social inequities and greater harms to the person.

The possibility of discrimination is often the reason why drug use is not spoken about. For example, in the case of a genuine pain patient who was involved in a serious car accident demonstrates the impact of discrimination against a person who uses drugs. He was left without the ability to walk without pain and went to his usual GP clinic to see the new doctor about receiving some form of pain medication. The new doctor welcomed his request for pain relief and wrote a script for a small amount of Oxycodone, saying that as soon as he discovered what dose helped with his pain she would draw up a contract and he would receive monthly scripts to assist in pain management. In the days that followed the doctor read his file and discovered that he had been to an alcohol and drug service to address dependence. The same drugs the other clinic doctor had prescribed to him for 12 years. Next he received a phone call from the clinic secretary to inform him that his appointment had been cancelled and that the new doctor refused to see him ever again.

² UNAIDS, Joint United Nations Program on HIV/AIDS, UNAIDS Guidance Note on HIV and Sex Work, Geneva, 2009, 2.

[REDACTED]

This type of discrimination in a health setting impacts on the trust people place in the health system and access to health services.

Sex characteristics

NTAHC advocates for the use of inclusive language and supports language consistent with the Yogyakarta principles. The principles use the attribute of “sex characteristics” and define this as “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” (Yogyakarta Principles).

NTAHC supports Rainbow Territory and NT Legal Aid submissions on this attribute.

Sexual orientation/sexuality

Recommendations: The Act should use the term “sexual orientation” as an attribute under the Act. Sexual orientation should be defined according to the Yogyakarta Principles as “a person’s capacity for emotional, affectional and/or sexual attraction to individuals of a difference gender identity, the same gender identity or more than one gender identity”.

The Act should retain also “sexuality” as a protected attribute with the intent of protecting a person from discrimination based on their sexual behavior, sexual practice or sexual labour.

Discrimination on the basis of sexual orientation continues to be an issue for people in the workplace, accommodation and other areas of everyday life. People with emotional, affectional and/or sexual attraction to other people of a different gender identity, the same gender identity or more than one gender identity have a right to anti-discrimination protections.

This change in language is more inclusive and avoids potentially offensive language.

However, it is crucial that any provisions include protection on the basis of sexual behavior, attraction, identity and practice rather than solely orientation. For example, in South Australia, sex work is covered in the Equal Opportunity Act under sexuality. This has a number of benefits such as covering people who do not identify as sex workers, or a person who is perceived to be a sex worker or “dressed like a sex worker”.

Sexual services, labour and work related sexual expression is not included under the proposed definition of sexual orientation, therefore we propose to separately retain “sexuality” with redefined definitions of protections that do not encroach on the value of definitions for sexual orientation as an alternative.

Gender identity

Recommendation: The protected attribute of “sex” should be removed and replaced by “gender identity” and defined as “the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person, with or

[REDACTED]

without regard to the person's designated sex at birth" with a note that "gender identity includes the gender identity that the person has or has had in the past, or is thought to have had in the past".

"Gender non-conforming people face injustice and discrimination at every turn: in childhood homes, in school systems that promise to shelter and educate, in harsh and exclusionary workplaces, at the grocery store, the hotel front desk, in doctors' offices and emergency rooms, before judges and at the hands of landlords, police officers, health care workers and other service providers" (Injustice at Every Turn: A Report of the National Transgender Discrimination Survey). Transgender and gender diverse people currently experience a high degree of discrimination and it is critical to provide anti-discrimination protections.

The current Act offers narrow protections on the basis of sexuality, which includes transsexuality. Transsexuality is an outdated and potentially offensive term that does not recognise the distinction between gender identity and sexual orientation.

NTAHC supports Rainbow Territory and NT Legal Aid submissions on this attribute.

Exemptions

Religious exemptions

Recommendation: That exemptions for religious institutions for all protected attributes be removed.

Should any exemptions for religious or cultural bodies be removed?

The right to freedom from discrimination is established under the Universal Declaration of Human Rights. Aspects of this right are expanded upon through the thematic human rights conventions such as the Convention on the Elimination of all Forms of Discrimination Against Women. The Yogyakarta Principles outlines how human rights apply explicitly to LGBTIQ+ people.

Exemptions in discrimination law amount to state sanctioned discrimination. Exemptions deny human rights for those affected and should be removed from legislation.

While NTAHC supports the freedom of religious belief guaranteed under the International Covenant on Civil and Political Rights as well as the Australian Constitution, this right is not interpreted to confer an unlimited prerogative to discriminate. Many instances of discrimination against LGBTIQ+ people in particular, occur in institutions controlled by religious organisations that operate in the secular public sphere. For example, in hospitals, private schools, aged care facilities, disability and community support services. With receipt of public funding and the authority of the state to perform government functions, these organisations should be subject to the same obligations as governments, including the obligation not to discriminate.

NTAHC believes all exemption for religious bodies be removed. Maintaining exemptions further entrenches discrimination and is contrary to the objects of the Act. These exemptions provide supremacy of the right to religious freedoms over the right to freedom from discrimination.

The protections flagged in the discussion paper should, at a minimum, be adopted.



Assisted reproductive treatment

Recommendation: That exclusions for assisted reproductive treatment be removed from the Act.

Should the exclusion of assisted reproductive treatment from services be removed?

NTAHC supports the Rainbow Territory submission in relation to assisted reproductive treatment.

Other

Vilification

Recommendation: That vilification provisions be included in the Act and apply to all of the protected attributes under the Act.

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

Harassment and vilification against members of NTAHC’s communities are widespread. NTAHC argues that vilification should be prohibited under Northern Territory Anti-discrimination legislation for the range of attributes set out in the Discussion Paper, plus the additional attributes suggested in this and the SWOP submission. It also supports the Rainbow Territory position on vilification subject to the additional attributes called for in this submission.

Many of the populations of people who NTAHC represents may be subject to vilification arising from social stigma and NTAHC argues that it is critical to provide protections.

This submission, alongside SWOP, is also advocating for “sex work” and “sex worker” and “drug use” and “person who uses drugs” to be included as protected attributes.

Vilification legislation should reflect social values of respect and inclusion and provides a mechanism through which a person can seek redress and hold accountable the minority of people who engage in vilifying acts.

Representative complaint model

Recommendation: That a representative complaint model be included in the Act.

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?

NTAHC argues that a representative complaint model would be a useful addition to Northern Territory Anti-discrimination legislation. A representative complaint model better reflects the systemic nature of discrimination and allows complaints to be brought on behalf of multiple people at once. This has the potential to reduce the burden on individuals to pursue a complaint.



Definition of "irrelevant medical record"

There is currently no definition of "irrelevant medical record" in the Act. NTAHC knows of a number of people who report having been discriminated in the medical and other settings on the basis of their blood borne virus status, sex work status and drug use status.