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SUBMISSION TO THE NORTHERN TERRITORY  
REVIEW OF THE ANTI-DISCRIMINATION ACT

January 2018



**Jesuit**  
**Social Services**  
Building a Just Society

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Who we are

Jesuit Social Services works to build a just society by advocating for social change and promoting the health and wellbeing of disadvantaged people, families, and communities.

Jesuit Social Services works where the need is greatest and where it has the capacity, experience and skills to make the most difference. Jesuit Social Services values all persons and seeks to engage with them in a respectful way, that acknowledges their experiences and skills and gives them the opportunity to harness their full potential.

We do this by working directly to address disadvantage and by influencing hearts and minds for social change. We strengthen and build respectful, constructive relationships for:

- **Effective services** – by partnering with people most in need and those who support them to address disadvantage
- **Education** – by providing access to life-long learning and development
- **Capacity building** – by refining and evaluating our practice and sharing and partnering for greater impact
- **Advocacy** – by building awareness of injustice and advocating for social change based on grounded experience and research
- **Leadership development** – by partnering across sectors to build expertise and commitment for justice.

The promotion of **education, lifelong learning and capacity building** is fundamental to all our activity. We believe this is the most effective means of helping people to reach their potential and exercise their full citizenship. This, in turn, strengthens the broader community.

Our service delivery and advocacy focuses on the following key areas:

- **Justice and crime prevention** – people involved with the justice system
- **Mental health and wellbeing** – people with multiple and complex needs and those affected by suicide, trauma and complex bereavement
- **Settlement and community building** – recently arrived immigrants and refugees and disadvantaged communities
- **Education, training and employment** – people with barriers to sustainable employment.

For 10 years in the Northern Territory we have worked alongside the Eastern and Central Arrernte people in a number of ways to better their situation and have more control over their lives. As part of this work, we provide community capacity building support in the remote communities of Atitjere, Bonya, Engawala and Santa Teresa; are involved in a Men's Behaviour Change program in Alice Springs in partnership with Tangentyere Council and the Alice Springs Women's Shelter, and are a member the Northern Territory-wide Making Justice Work campaign to promote evidence-based approaches to community safety in order to respond more effectively to crime in the community. We also provide capacity building support in a number of other locations, including Wadeye, and work in a similar way in New South Wales (Mount Drutt).

In 2016, we established an office in Darwin. Our Darwin activities include policy and advocacy work, where we work alongside the Policy Unit in Victoria. We commenced piloting Youth Justice Group

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Conferencing in Darwin, Palmerston and Katherine in early 2017, which aims to help young people see the impact of their actions on victims of crime, and to support young people to restore relationships with those they have harmed. Youth Justice Group Conferencing provides the Children's Court with an alternative pre-sentencing option that aims to divert young people from further or more serious offending.

## Introduction

Jesuit Social Services welcomes the opportunity to contribute to the modernisation of the Anti-Discrimination Act. The review of this Act is welcome given the extensive time since a review of this kind has been undertaken and the societal change that has occurred in the Northern Territory since this Act came into existence in 1993.

In the Northern Territory, Jesuit Social Services works with a number of vulnerable people, many of whom are Aboriginal. We broadly support the proposed reforms in the *Discussion Paper* as we believe they will offer the people we work with and others in their situation protections from various forms of discrimination and vilification. In particular Jesuit Social Services welcomes the introduction of vilification laws, with the NT currently being the only jurisdiction in Australia not to have any in place, as well as the introduction of the representative complaints model.

There is a significant need for these reforms in the Northern Territory, where there are substantial and systemic discrimination issues, and where there are serious concerns about the under-reporting of discrimination by Aboriginal people to the Anti-Discrimination Commission. This is in part due to barriers some Aboriginal people face in making complaints, but also due to the widespread nature of discrimination experienced by Aboriginal people. For people who experience discrimination on a regular basis, the experience can become normalised, particularly when this discrimination exists on a systemic level. It is critical that these amendments challenge this culture of discrimination and vilification and ensure a more equal and tolerant society in the Northern Territory.

In introducing these important reforms, it is essential that adequate resources are also provided to the Anti-Discrimination Commission to cater for a potential increase in complaints. The Anti-Discrimination Commission currently runs on minimal staff and at present is not able to exercise a number of functions such as own motion inquiries to investigate systemic forms of discrimination due to the lack of resources.<sup>1</sup> It is critical that the Anti-Discrimination Commission's resources are increased so that the Commissioner can adequately execute all functions effectively as required. Without adequate resourcing, legislative amendments may not be effective in protecting vulnerable Territorians from discrimination.

## Responses to select questions

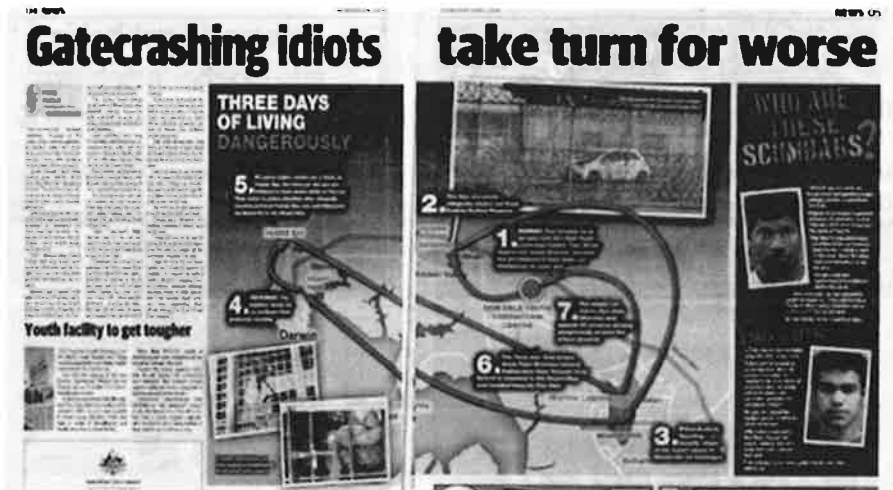
Jesuit Social Services is broadly supportive of the recommendations put forward in the *Discussion Paper*. In particular, there are a number of questions that we wish to provide particular comment on.

We also wish to add our support to Rainbow Territory's submission relating to their responses to questions 1, 2, 3 and 21.

**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?**

Jesuit Social Services supports the introduction of vilification laws. The Northern Territory is the only jurisdiction without anti-vilification provisions. We are out of step with the rest of Australia and this must be urgently remedied. Vilification laws provide important protections for all Territorians from hate speech which unjustly causes harm.

For Territorians, the sole mechanism for reporting racial vilification is the Australian Human Rights Commission (AHRC) in Sydney. In 2016-17, the AHRC only received 19 complaints from the Northern Territory.<sup>ii</sup> By contrast, experiences of racial vilification, particularly among Aboriginal people, are rife.<sup>iii</sup> For example, questionable reporting in the media, such as the article pictured below, has seen multiple instances of young people being described as 'idiots' and 'scumbags', with their names and photos published alongside:



Source: NT News, June 3 2015

This type of reporting fuels negative stereotypes of young people, particularly Aboriginal young males who are typically the target of this 'naming and shaming'. It has also contributed to sometimes venomous public comment. In social media forums, including the NT Police Facebook page, members of the public have made comments such as:

*Electrify the fences with high volt (sic) when they try to escape they get fried.*

The former Facebook page, "N.T. Fights" is a further example of the level of racism and racial hatred that exists in significant pockets of the Northern Territory.<sup>iv</sup> Before it was shut down, the site had 36,000 followers who followed brutal scenes of street fights and bashing, many involving Aboriginal people. Followers justified racial bigotry as simply 'having a laugh', without regard for the damaging effect of the hateful comments on the individuals they spoke of.

The absence of anti-vilification laws in the Northern Territory means that our community is failing to send a strong and clear message condemning public incitement of racial and other forms of hatred. It also means that racial vilification is significantly under-reported because of the substantial barriers to access the Commonwealth process. Moreover, vilification experienced by other minorities, such as the hate messages towards the LGBTIQ community that were written on public walls during the same-sex marriage debate, currently have no protections.<sup>v</sup>

Experiences of vilification have significantly negative impacts for individuals, including on their health and wellbeing.<sup>vi</sup> Experiences of vilification and hate speech make people feel sick, lowers their self-esteem, increased psychological distress and increased risk of mental illness.<sup>vii</sup>

The Northern Territory is the only jurisdiction in Australia not to have anti-vilification laws. It is critical that anti-vilification laws are introduced to protect Territorians from vilification on the basis of race, religious belief, disability, sexual orientation, gender identity or intersex status. This would ensure that the Northern Territory is brought in line with all other jurisdictions in Australia. Jesuit Social Services also supports Rainbow Territory's call to include HIV/AIDs as a protection against vilification.

To balance these protections with freedom of expression, Jesuit Social Services supports the Discussion Paper's proposal to include anti-vilification provisions in the Act. In our view, this provision should mirror the wording of section 18C of the Racial Discrimination Act, but be extended to the other minorities mentioned above. Section 18C is a tried and tested provision and despite frequent claims to the contrary, has proven to provide a sound balance between protections and freedom of expression. In this regard, we note that only a small number of complaints under section 18C actually proceed through the rigorous assessment process to be upheld by the courts<sup>viii</sup>

#### **5. Should the Act create rights for people experiencing domestic violence in relation to public areas of life such as employment, education and accommodation?**

Jesuit Social Services supports the introduction of domestic and family violence as an attribute. It is important that both family and domestic violence are included as attributes as to best cater for the diversity of instances of violence experienced by individuals from an intimate partner or family member as well as the preference for 'family violence' among many Aboriginal people as this better reflects their experience and understandings of violence.

The Northern Territory has a high rate of domestic and family violence. In 2017, there were 4155 incidents of domestic violence assault across the Northern Territory, averaging over 11 incidents of assault per day.<sup>ix</sup> The Northern Territory has a victimisation rate 3 times higher than other jurisdictions in Australia.<sup>x</sup> Aboriginal and Torres Strait Islanders are significantly more likely to experience domestic or family violence at a rate 18 times higher.<sup>xi</sup>

The introduction of this attribute would ensure important protections for people affected by domestic or family violence in relation to access to education, security of employment and access to accommodation. Introducing such protections would ensure flexibility in the workplace or education regarding leave, flexible time arrangements and the capacity to attend appointments as required

relating to the impact of the violence, accommodating particular needs of individuals affected by family or domestic violence in employment and educational settings, security of employment and access to education as well as access to accommodation.

Jesuit Social Services recommends the proposed legislation define domestic and family violence as behaviour towards a family member that is abusive, threatening, coercive or controlling, including where a child hears or is witness to this behaviour.<sup>xii</sup>

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

Jesuit Social Services supports the introduction of accommodation status as an additional attribute. The Northern Territory has a high rate of homelessness, 15 times the national average.<sup>xiii</sup> Homelessness is particularly experienced by the Aboriginal population, with 1 in 4 experiencing homelessness.<sup>xiv</sup> Ensuring Territorians experiencing homelessness are protected from any potential discrimination is critical.

Jesuit Social Services would like to emphasise the need for legislation in the Northern Territory to include a diversity of instances as part of the definition of accommodations status. We note that under the ACT Discrimination Act 1991, accommodation status includes current or previous periods of homelessness, occupancy or tenancy, not having a fixed address or secure accommodation, living in a caravan park or boarding house, or because you are a public housing tenant or on the waiting list for public housing.<sup>xv</sup> In addition to these instances, it is critical that protections also cover individuals who live in overcrowded dwellings. In the Northern Territory, overcrowding is common, due to housing shortages and with individuals taking in homeless family members particularly if there is a strong kinship obligation for Aboriginal people. There are also instances for individuals who are required to travel to urban areas to access some services and are not always able to return promptly to their remote communities, thus finding themselves temporarily without accommodation. It is critical that introduced legislation provides protections for all forms of homelessness in the Territory.

Introducing accommodation status as an attribute will protect individuals in circumstances such as access to services without a fixed address, ability to gain employment without a fixed address and ability to gain housing with an unstable rental history.

#### **8. Should "socioeconomic status" be included as a protected attribute?**

Jesuit Social Services is supportive of socioeconomic disadvantage being included as an attribute, to ensure that people living in poverty do not experience discrimination based on their living circumstances.

Introducing socioeconomic disadvantage as an attribute would require further investigation as to what would encompass disadvantage, particularly given that disadvantage is multifaceted, with individuals often experiencing different aspects of disadvantage. Furthermore, there is also the severity of disadvantage to consider, as some individuals experience more severe levels of poverty than others, and whether this should impact eligibility for socioeconomic disadvantage protections.

Jesuit Social Services envisages the potential for such an attribute to offer important protections for Territorians. For example, being denied access to shopping centres due to a lack of footwear and clothing, as is the case at this pictured shopping centre:



In the Northern Territory, there are a number of people who live in disadvantaged circumstances. In 2015, Jesuit Social Services along with Catholic Social Services Australia released the findings of its *Dropping off the Edge Report (DOTE)*<sup>xvi</sup>, which found that complex and entrenched disadvantage continues to be experienced by a persistent number of locations in each state and territory across Australia, including the Northern Territory.

Of particular concern for Jesuit Social Services is the distribution of significant disadvantage across the entire Northern Territory. The patterns of disadvantage vary greatly across the Territory, with some areas showing low levels of disadvantage on certain indicators and high levels of disadvantage on others. Our research found that different areas experience disadvantage in vastly different ways; for example:

- In the Tiwi Islands, disadvantage is felt in the lack of internet access, low family incomes and young adults not engaged in work or study - ranked first on all of these indicators. Economic indicators therefore showed disadvantage while social indicators (criminal convictions, prison admissions) were less prominent.
- East Arnhem ranked second on unemployment and long-term unemployment, young adults not engaged in work or study, unskilled workers, and the level of post-school qualifications. Again, the issue is around income and skills.
- In Katherine, disadvantage is reflected in the rankings for criminal convictions, domestic violence and prison admissions (ranked first on each of these). On the other hand, skills appear to be at a higher level than in many other locations.

While disadvantage is shown in different forms across the Northern Territory, certain localities account for a disproportionate level of disadvantage, with only one Statistical Local Area showing no extreme disadvantage on any indicator. Our research found that 25% of locations accounted for 47% of the

highest disadvantage rankings. These findings highlight both the complexity and persistence of locational disadvantage in the Northern Territory.

Jesuit Social Services recommends to the Review to undertake further investigation as to how socioeconomic disadvantage should be defined. For example, the Dropping Off the Edge 2015 report uses twenty measures of disadvantage including:

- Internet access
- Housing stress
- Low family income
- Overall education
- Post-Schooling qualifications
- Unskilled workers
- Young adults not engaged
- Disability Support
- Readiness for schooling
- Long-term unemployment
- Rent assistance
- Unemployment
- Yr3 reading and numeracy
- Yr 9 reading and numeracy
- Child maltreatment
- Criminal convictions
- Juvenile convictions
- Domestic violence
- Prison admissions
- Psychiatric admissions

Given the challenges around defining socioeconomic disadvantage, we recommend further investigation into the capacity for this to be an attribute.

**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?**

Jesuit Social Services supports the introduction of a representative complaint model process. A representative complaints mechanism would enable greater access to justice, particularly for vulnerable groups, by removing some of the barriers to making complaints and addressing systemic issues to prevent further harm.

Discrimination in the Northern Territory is significantly underreported, particularly among Aboriginal people who experience discrimination.<sup>xvii</sup> Discrimination towards Aboriginal people is widespread and systemic in the Northern Territory, with one study finding a quarter of Aboriginal people directly experiencing discrimination.<sup>xviii</sup> For many Aboriginal people, experiences of discrimination are accepted as 'part of life'. Many Aboriginal people are simply not be aware of their rights and therefore do not complain.<sup>xix</sup>



Commission undertake a review after 12 months to assess the effectiveness of the model and resolve any potential issues regarding transparency and consent.

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

Jesuit Social Services supports the move to amend section 24 as a positive obligation to add greater clarification and transparency to the obligation and ensure that special needs are proactively considered.

**19. Is increasing the term of appointment of the ACD to five years appropriate? Should the term of appointment be for another period, if so what?**

Jesuit Social Services is in favour of extending the Anti-Discrimination Commissioner's appointment to 5 years to bring it in line with other Northern Territory Commissioner as well as other jurisdictions across Australia.<sup>xxii</sup> This extension of appointment would enable to Commissioner to undertake more in-depth work on specific areas of discrimination and address systemic change.

## Endnotes

<sup>i</sup> Northern Territory Anti-Discrimination Commission, *Annual Report 2015-2016*, Darwin.  
[http://www.adc.nt.gov.au/docs/annual\\_reports/Annual%20Report%2015-16.pdf](http://www.adc.nt.gov.au/docs/annual_reports/Annual%20Report%2015-16.pdf)

<sup>ii</sup> Australian Human Rights Commission, *2016-2017 Complaints Statistics*, available at:  
[https://www.humanrights.gov.au/sites/default/files/Complaints\\_AR\\_Stats\\_Tables%202016-2017.pdf](https://www.humanrights.gov.au/sites/default/files/Complaints_AR_Stats_Tables%202016-2017.pdf)

<sup>iii</sup> Allison, F., Schwartz, M. and Cunneen, C. 2013, *'That's discrimination!': Indigenous peoples' experiences of discrimination in the Northern Territory*, Indigenous Legal Needs Project, James Cook University.

<sup>iv</sup> <http://www.adelaidenow.com.au/news/national/plug-pulled-on-nt-racist-fight-bashing-facebook-site/news-story/b46559a9e5e0f5b44d5095fc14cc324f>

<sup>v</sup> <http://www.ntnews.com.au/news/northern-territory/abc-darwin-offices-graffitied-with-antigay-message/news-story/4b0db75bc9bf39fb55e8f5cd854ac974>

<sup>vi</sup> Parliamentary Joint Committee on Human Rights 2017, *Inquiry report: Freedom of speech in Australia*, Commonwealth of Australia.

<sup>vii</sup> Ibid.

<sup>viii</sup> See, for example 'NITV, A History of Section 18C and the Racial Discrimination Act', 20 March 2017):  
<https://www.sbs.com.au/nitv/article/2016/08/16/history-section-18c-and-racial-discrimination-act>

<sup>ix</sup> Department of the Attorney-General and Justice 2018, Northern Territory Crime Statistics, Data through to November 2017, available at: <http://www.pfes.nt.gov.au/Police/Community-safety/Northern-Territory-crime-statistics/Statistical-publications.aspx>

<sup>x</sup> Northern Territory Government, *The Northern Territory's Domestic, Family and Sexual Violence Reduction Framework 2018-2028*, available at:

[https://territoryfamilies.nt.gov.au/data/assets/pdf\\_file/0006/464775/Domestic,-Family-and-Sexual-Violence-Reduction-Framework.pdf](https://territoryfamilies.nt.gov.au/data/assets/pdf_file/0006/464775/Domestic,-Family-and-Sexual-Violence-Reduction-Framework.pdf)

<sup>xi</sup> Ibid.

<sup>xii</sup> Drawn from the *Family Violence Protection Act 2008 (Victoria)*

<sup>xiii</sup> [ntshelter.org.au](http://ntshelter.org.au)

<sup>xiv</sup> Ibid.

<sup>xv</sup> <http://hrc.act.gov.au/>

<sup>xvi</sup> Vinson, T. & Rawsthorne, M. (2015), *Dropping off the Edge 2015*, Jesuit Social Services and Catholic Social Services Australia, <http://www.dote.org.au/findings/full-report/>

<sup>xvii</sup> Allison, F., Schwartz, M. and Cunneen, C. 2013.

Discrimination also exists on a systemic level, where systems do not ensure the cultural and language needs of Aboriginal people are always catered for. Examples of this are reported in the findings of the Royal Commission into Youth Detention and Child Protection in the Northern Territory which found a significant lack of cultural supports and engagement on a system-level in both the youth detention and child protection systems.<sup>xx</sup>

Establishing a representative complaints mechanism would overcome some of the barriers that people can face in placing a complaint when they have experienced discrimination. Some people, face a number of barriers to enjoying the protections under the Anti-Discrimination Act. In its current form, the Anti-Discrimination Commission largely offers protection to Territorians via individual complaints. Accessing this form of justice can be challenging for people who lack knowledge of the law and an awareness of their rights under the law. This is particularly exacerbated for people for whom English is not their first language. For people experiencing complex disadvantage, there are often more pressing immediate needs that are a higher priority than making a complaint about discrimination, therefore leaving the discrimination unaddressed. People may also fear negative ramifications for speaking up about discrimination, such as a risk of loss of employment. Further, complaints to both the Northern Territory Anti-Discrimination Commission and the Australian Human Rights Commission must be made in writing, requiring a certain level of literacy skills and access to the internet.

A representative complaints mechanism would work to alleviate some of these barriers and address systemic issues by enabling another person to act on behalf of a group of people experiencing the same form of discrimination by the same entity. Not only would this enable greater access to justice for vulnerable Territorians, but it would also prevent further harm by addressing systemic issues.

A representative complaints mechanism would also offer greater protection for whistleblowers, who place themselves at risk of public criticism when speaking out on issues of discrimination. Such a mechanism would provide a formal complaints process to address systemic discrimination, providing whistleblowers with a process to raise their concerns without unwelcomed media attention.

Jesuit Social Services is concerned about the lack of resourcing afforded to the Anti-Discrimination Commission preventing it from undertaking own motion enquiries. Such a capacity exists for the Anti-Discrimination under the Act, however, due to a lack of resources, the Commissioner is unable to do an own motion enquiry to address system issues.<sup>xxi</sup> Jesuit Social Services therefore recommends the Anti-Discrimination Commission be adequately resourced to undertake own motion enquiries and to respond to representative complaints.

While Jesuit Social Services supports the introduction of the representative complaints model, we also note that careful and thoughtful implementation of the model must take place with ongoing consultation from those most affected, including Aboriginal community-controlled organisations, community sector organisations and people with lived experience. In implementing this model, there is a need for robust safeguards and processes and practices around consent that do not hinder the ability to build and maintain trusting relationships with vulnerable people. Given that the representative complaints model is a new initiative that has not been trialled in other jurisdictions, we recommend the

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<sup>xviii</sup> Ibid.

<sup>xix</sup> Ibid.

<sup>xx</sup> Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory

<sup>xxi</sup> Northern Territory Anti-Discrimination Commission, *Annual Report 2015-2016*, Darwin.

[http://www.adc.nt.gov.au/docs/annual\\_reports/Annual%20Report%2015-16.pdf](http://www.adc.nt.gov.au/docs/annual_reports/Annual%20Report%2015-16.pdf)

<sup>xxii</sup> Department of the Attorney-General and Justice, *Discussion Paper: Modernisation of the Anti-Discrimination Act*, September 2017.