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Attention: Ms Sarah Witham

Dear Ms Witham ^{Sarah}

Modernisation of the *Anti-Discrimination Act*

The Department of Housing and Community Development welcomes the opportunity to comment on potential future amendments to, and modernisation of, the *Anti-Discrimination Act*.

The department provides accommodation pathways, housing options and client support for some of the most vulnerable people in the community, including those who are homeless or at risk of homelessness, those impacted by domestic and family violence and those with physical and mental health needs.

In recent years, there has been an increasing level of discrimination associated accommodation status (including homelessness or current/former public housing tenant), socioeconomic status and domestic and family violence. Most recently this has come to the department's attention through a series of non-government sector workshops on developing a Northern Territory Homelessness Strategy. Such discrimination has a negative impact on people's rights to equity of access to accommodation. In this regard, the department has prepared a submission providing comment on the homelessness, socioeconomic status and the domestic and family violence aspects of the discussion paper.

It is noted that the proposed amendments will result in modernisation of the legislation and provide greater recognition and acceptance, within the community, of the principle of the right to equality of opportunity. In brief, amendments of the *Anti-Discrimination Act*, provide a greater legislative and regulatory basis to support the department's service delivery, which may assist in delivering improved housing outcomes for Territorians.

Should you wish to discuss the Department's comments further, please contact Tanya Hancock, Director Policy on [REDACTED]

Yours sincerely

[REDACTED]
JAMIE CHALKER
Chief Executive Officer
17 November 2017

Modernisation of the *Anti-Discrimination Act*

Comments on the Discussion Paper

Modernisation reforms

The Department of Housing and Community Development provides accommodation pathways, housing options and client support for some of the most vulnerable people in the community, including those who are homeless or at risk of homelessness, those impacted by domestic and family violence and those with physical and mental health needs.

In line with discrimination reforms interstate and to reflect current issues being faced in the Northern Territory, it is noted that the attributes of domestic violence, accommodation status and socioeconomic status are considered for inclusion as new attributes in the Act.

The proposed amendments to the *Anti-Discrimination Act*, particularly relating to these attributes, will provide greater recognition and acceptance, within the community and service system, of the principle of the right to equality of opportunity. The amendments offer a strengthened legislative and regulatory basis to support the rights of clients and provides guidance for the department in achieving our vision of delivering improved housing outcomes for Territorians through system and policy reform.

The department's comments on the discussion paper, specifically relate the three attributes proposed for inclusion in the Act (Questions 5, 6 and 8) as these directly relate to the Department's core business.

Discussion Paper Question No. 5

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

Department Comment:

The Discussion Paper notes that domestic violence discrimination only has limited protection under the attribute of marital status. The amendment to include domestic violence as an attribute under the *Anti-Discrimination Act* creates rights for people experiencing domestic or family violence in relation to public areas of life such as employment, education and accommodation.

The Department's approach to supporting victims of domestic and family violence is guided by the National Plan to Reduce Violence Against Women and their Children 2010-2022 and the Policy Framework for Northern Territory's Women 2015-2020.

The Department is investing in approaches that recognise the sensitive and complex nature of domestic violence, strengthen support for clients and guide respectful and responsive service delivery. This is achieved through the department's Domestic and Family Violence policy which recognises that as a provider of housing assistance, the department plays a role in supporting clients of domestic and family violence with priority access to appropriate and safe housing. Additionally, there are policies which directly assist domestic and family

violence clients, including in the areas of eligibility, priority assistance and transfers, tenant damage, responding to incidents of antisocial behaviour and the provision of properties with additional security features.

Domestic and family violence continues to be major factor of homelessness in the Northern Territory with domestic violence being the most common reason for Territorians seeking assistance from specialist homelessness services. Forty-three per cent (3533) of people who presented to Specialist Homelessness Services in the Northern Territory in 2015-16 reported they had experienced domestic violence. The Victorian Royal Commission into Domestic Violence reported that housing unavailability and the prospect of homelessness act as a 'dangerous deterrent' to leaving violent relationships¹. This can be understood in light of the research undertaken as part of the Safe at Home, Safe at Work² project that suggests women in or leaving violent relationships often experience discrimination in accessing housing services, particularly rental accommodation.

The Victorian Equal opportunity and Human Rights Commission provides further detail through its research into the private rental market which found that common characteristics of people who experienced discrimination when applying for private rental properties in Western Australia and in Victoria³ included single parents, particularly women with children and that parental status was the most commonly identified attribute leading to refusal of a rental property. It is recognised that prejudiced assumptions and stereotyped beliefs held about victims of domestic violence enable discrimination in Australian workplaces⁴. It is likely that commonly held community attitudes that blame victims for the violence they experience may also contribute to victims of domestic violence being locked out of the private rental market.

It is conceivable that a victim escaping domestic violence, who must navigate the various systems to provide for themselves or their children, experiences discrimination either by not being able to access services or through mandatory reporting laws where victims risk child removal. In the private housing market discrimination may arise in the context of application cases or termination cases, in which tenants receive unfair or discriminatory treatment because they are a victim of domestic violence⁵.

To build the local evidence base on what works to improve access to the private rental market for victims of domestic and family violence, the department is funding an innovative trial of two private rental access programs in Alice Springs that prioritises victims of domestic violence in an effort to understand and remove the barriers to the private rental market.

¹ State of Victoria, Royal Commission into Family Violence: Report and recommendations, Vol V, Parl Paper No 132 (2014-16), Pg 44.

² National Domestic Violence and the Workplace Survey (2011), Ludo McFerran, Australian Domestic and Family Violence Clearinghouse, A project of the Centre for Gender Related Violence Studies and Micromex Research.

³ Victorian Equal Opportunity and Human Rights Commission (2012), Locked Out: Discrimination in Victoria's private rental market

⁴ Smith & Orchiston (2011), Domestic Violence Victims at Work: The Role of Anti-discrimination Law. Sydney law School, University of Sydney.

⁵ Flinders Institute for Housing, Urban and Regional Research, *Women, Domestic and Family Violence and Homelessness: A synthesis report*
https://www.dss.gov.au/sites/default/files/documents/05_2012/synthesis_report2008.pdf



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To respond to the complex drivers of homelessness, the Department of Housing and Community Development is progressing a NT Homelessness Strategy and 5 Year Action Plan 2018 – 2022 that prioritises victims of domestic and family violence as a vulnerable group.

The Department considers the inclusion of domestic violence as an attribute under the Act would improve protections for victims from refusal of accommodation. Further to this, the majority of domestic violence victims are women and practices that discriminate against victims of domestic violence harm women at a higher rate than men and contravene the United Nations Convention on the Elimination of All Forms of Discrimination against Women and the Declaration to End Violence Against Women.

Another complex area for consideration in relation to domestic and family violence is the availability of accommodation for perpetrators of domestic violence. Historically, public policy responses to domestic and family violence have largely focused on addressing the needs of victims, through the establishment of ongoing provision of support services. This has included a move towards helping victims and children stay in their homes when it is safe to do so, with orders excluding perpetrators from the home and an expectation to seek alternative accommodation. The Victorian Royal Commission into Domestic Violence reported that 'providing accommodation to keep men who use violence "in sight" of the justice system and other service interventions is in the interest of both victims and the broader community'⁶.

The difficulty is that crisis accommodation and medium to long term housing options for perpetrators is limited. This usually results in the use of ad hoc accommodation such as rooming houses where outreach support and interventions, specifically designed for perpetrators of violence, are either limited or non-existent. The mix of people, with complex needs, usually living in rooming houses is not conducive to children visiting when parenting orders are in place, placing children at risk of harm. Equally, these environments are not well suited to facilitating perpetrator behaviour change.

More recently, perpetrator accountability and the importance of behaviour change has been recognised at a national level to support the overall objective of keeping victims safe and in recognition of the underlying complexities of domestic and family violence. Providing accommodation reduces the incentive of the perpetrator to attempt to return to the home or to re-partner as a means of securing accommodation. The Council to Homeless Persons Submission to the Family Violence Royal Commission notes that housing of perpetrators is necessary for assessing risks to a victim's safety, preventing or reducing the risk of further harm, and keeping perpetrator's in view and accountable⁷.

Suitable housing increases the ability of police to enforce intervention orders and can reduce the danger presented by the sense of entitlement of a perpetrator who has been removed. Linking perpetrators to appropriate support and intervention services at the earliest stage is also more likely if suitable accommodation is available. Access to suitable accommodation also reduces the risk of homelessness, where there is a greater risk of a perpetrator becoming invisible to police, corrections and the justice system, potentially increasing fear and risk of harm to victims.

⁶ State of Victoria, Royal Commission into Family Violence: Report and recommendations, Vol II, Parl Paper No 132 (2014–16), Pg 73

⁷ Council to Homeless Persons Submission to the Family Violence Royal Commission, May 2015, Pg 21

Secure and affordable accommodation is an essential foundation for addressing the underlying complexities of domestic and family violence. Refusal of accommodation based on being identified as perpetrator or victim of domestic and family violence can reduce ability to access suitable accommodation which impacts on human rights to shelter and an adequate standard of living.

There is a clear need to provide a strong legislative approach to support people experiencing family or domestic violence, this may be greater than what is achievable under the Modernisation of the *Anti-Discrimination Act*. Further review and discussion of broader legislative and policy levers in relation to domestic and family violence in the Northern Territory may be required to increase the safety of victims and their children, reduce rates of intergenerational trauma, increase accountability of perpetrators and establish integrated service systems.

The changes however, to the *Anti-Discrimination Act* provide a regulatory response to domestic and family violence by providing rights and promoting normative change with this vulnerable group. While anti-discrimination laws impose regulatory burdens they also carry an important message about equality and fairness in society and challenge the barriers faced by marginalised groups, including those experiencing domestic and family violence.

In this regard, the department supports the proposed amendment of the *Anti-Discrimination Act* to include domestic and family violence as an attribute, particularly to prevent the refusal of accommodation.

Discussion Paper Question No. 6

Should the Act protect people against discrimination on the basis of their accommodation status?

Department Comment:

The Discussion Paper notes that there is currently no protection under the Act for discrimination experienced as a result of a person's accommodation status. The rate of homelessness in the Northern Territory is the highest in Australia, with a rate nearly 15 times the national average. On Census night in 2011, there were 730.7 homeless people per 10,000 persons (or seven per cent of the NT population), a significant number in comparison to an average for Australia of 48.9 people per 10 000 persons (or less than one per cent of the national population).⁸

Access to safe, secure, appropriate and affordable housing provides a fundamental component of individual, family and community wellbeing and prosperity. Housing provides the basis for good physical and mental health, participation in education and employment, safety, security and comfort. People who are homeless or at risk of homelessness are often at their most vulnerable.

⁸ ABS 2049.0, 2011, *Census of Population and Housing: Estimating Homelessness*

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Research shows a significant number of people who are homeless or at risk of homelessness experience pervasive discrimination and unfavourable treatment in accessing accommodation and goods and services⁹. A person wishing to access government services is often required to produce a form of photo identification such as a driver's licence or a passport and proof of residence. It is often not possible for people who are homeless, at risk of homelessness or living without permanent shelter, to meet these requirements and they may suffer unfavourable treatment. It is likely that such discrimination can cause and further entrench homelessness when it prevents a person from securing accommodation and support services.

The Department is currently developing a NT Homelessness Strategy and Five Year Action Plan that will include a focus on addressing barriers experienced by people who are homeless or at risk of homelessness, in securing a tenancy in the private rental market. The proposed reforms to the *Anti-Discrimination Act* have the potential to complement measures implemented under the NT Homelessness Strategy with respect to facilitating access to private rental housing, preventing homelessness and promoting social inclusion more broadly.

The Victorian Equal Opportunity and Human Rights Commission report *Locked Out* found ex-public housing tenants were treated differently in applying for rental properties¹⁰. Refusing to rent to current or former public housing tenants undermines the principle of the right to equality of opportunity under the *Anti-Discrimination Act*. Refusing accommodation in the private market can have an impact on levels of homelessness and demand for public housing premises.

There is also evidence to suggest that people who have exited, or are exiting custodial settings, and make attempts to rebuild their life, face discrimination from accommodation providers due to their previous accommodation status (eg, correctional facility)¹¹. Further discrimination is experienced upon declaration of a criminal record, which in some cases may be irrelevant and/or historical in nature. People exiting correctional facilities are at increased risk of homelessness and some entering the prison system report being homeless at the time of their arrest. Discrimination against people who have been to prison can make it difficult for ex-prisoners to find a place to rent which impacts on their human right to shelter and an adequate standard of living.

The Department supports the inclusion of an attribute of accommodation status in the *Anti-Discrimination Act* to protect those Territorians who are not only homeless but living without permanent shelter, couch surfing or living in overcrowded accommodation. The inclusion of accommodation status as an attribute will also protect current and former public housing tenants who wish to gain access to the private rental market.

⁹ Lynch, P., and Stagoll, B. (2002). Promoting equality: homelessness and discrimination. *Deakin Law Rev.* 7, 295-321

¹⁰ Victorian Equal Opportunity and Human Rights Commission (2012), *Locked Out: Discrimination in Victoria's private rental market*, Pg. 8

¹¹ Schetzer, Louis and StreetCare (2013), *Beyond the prison gates - the experiences of people recently released from prison into homelessness and housing crisis*, Public Interest Advocacy Centre, Sydney, New South Wales



Discussion Paper Question No. 8

Should "socioeconomic status" be included as a protected attribute?

Department Comment:

Socio-economic status is influenced by social and economic factors and is often correlated with social class. The Discussion Paper notes that socio-economic status discrimination may cause social and economic disadvantage and result in further inequity. People living with a disadvantaged socio-economic attribute, such as living in poverty or social exclusion are some of society's most vulnerable¹². In the Northern Territory, socioeconomic status is a consistent and reliable predictor of many outcomes across the life span and affects education achievement, poverty, homelessness, poor health, poor education and inequality in health distribution. Discrimination on the ground of socio-economic status limits opportunity and compounds disadvantage as reciprocal interaction with other forms of discrimination is common, preventing an individual's right to full inclusion into society. Social discrimination and exclusion as well as a lack of participation in decision making are manifestations of poverty. Many people on government benefits or minimum wage are women, ethnic minorities, or members of other groups at risk of discrimination¹³.

This attribute can perform an important function in giving a statutory foundation to the values of equity and access by requiring public bodies to justify and explain their decisions openly. The inclusion of socioeconomic status leverages a shift in practice to ensure attention is given to the impact of strategic decisions on socio-economic inequalities; and to justify decisions that worsen those inequalities¹⁴.

The Department's Access and Equity policy aims to ensure services are provided based on the principles of non-discrimination, equality, participation and inclusion. The Access and Equity policy provides public housing services which are accessible to all people regardless of race, religion, language or cultural background, health status or other personal characteristics or circumstances, in a fair and equitable manner. The proposed inclusion of 'socio-economic status' to the *Anti-Discrimination Act* will complement the department's policies with respect to providing services in a fair and equitable manner to the people of the Northern Territory.

The Department recognises the term socio-economic status may be a useful generic term and consideration should be given to the definition to ensure it can be easily administered.

¹² AHURI, *Addressing concentrations of disadvantage in urban Australia*, Final Report No.247 https://www.ahuri.edu.au/_data/assets/pdf_file/0012/2163/AHURI_Final_Report_No247_Addressin-g-concentrations-of-disadvantage-in-urban-Australia.pdf

¹³ Committee on Economic, Social and Cultural Rights General Comment No. 20 Non-Discrimination in Economic, Social and Cultural Rights E/C.12/GC/20 (2009) para 35

¹⁴ Freedman (2010) *Positive Duties and Socio-Economic Disadvantage: Bringing Disadvantage into the Equality Agenda*, Legal Research Paper series, Paper No. 55, University of oxford