



12 January 2018

Director, Legal Policy  
Department of the Attorney-General and Justice  
Northern Territory Government  
GPO Box 1722  
DARWIN NT 0801

Dear Sir

**RE: REQUEST FOR COMMENTS ON MODERNISATION OF THE ANTI-DISCRIMINATION ACT**

NT Shelter is the Northern Territory's peak body for affordable housing and homelessness. We advocate for affordable and appropriate housing for all Territorians, especially in respect of low income households and those particularly vulnerable and disadvantaged in the housing market. NT Shelter strongly supports efforts to safeguard and protect the rights of those people for whom access to affordable and appropriate housing remains elusive.

We support the review of the Anti-Discrimination Act (1993) and its modernisation. It is an opportunity to introduce rights and obligations to remedy real life circumstances where people are treated less favourably on irrelevant and unreasonable grounds. We will confine our feedback to modernisation reforms that are within the remit of our role as an affordable housing and homelessness peak, namely, considerations relating to homelessness and the key drivers of homelessness (e.g. domestic violence).

In addressing the questions raised in the modernisation reforms relating to domestic violence and accommodation status (Q5 and Q6 respectively), our approach is as follows:

- (a) Is there evidence that people with these characteristics experience less favourable treatment than those without those characteristics?
- (b) Is the less favourable treatment reasonable or unreasonable?
- (c) Is there any reason the unfavourable treatment should not be made unlawful through inclusion as a prohibited ground under 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?**

The incidence of domestic and family violence related offences in the NT, at 1,730 victims per 100,000 people, is approximately three times higher than any other Australian jurisdiction<sup>1</sup>. The impacts of domestic violence are profound in physical, psychological, social and economic terms. The Northern Territory Government has already recognised this in its recently launched *Domestic, Family & Sexual*

*Violence Reduction Framework 2018-2018.* As noted in the Government's framework, victims of domestic violence can suffer isolation and alienation from family and social support, withdrawal from social and cultural activities, and separation from family and friends. In economic terms, they can be adversely impacted by loss of employment and/or livelihood, lack of access to family income, and risk of homelessness. On a broader economic level there can be costs of absenteeism and low productivity and increased costs of healthcare.<sup>i</sup>

Victims of domestic violence are disadvantaged by unlawful physical and emotional abuse and violence against them. Domestic violence has profound health impacts which can include anxiety and depression, a lack of self-esteem, PTSD, stress, substance abuse and higher risk of suicide<sup>iii</sup>. The physical and mental impacts impede the victim's capacity in respect of education, employment, productivity, and economic participation.

Research undertaken in 2011 by the Centre for Gender Related Violence Studies and Micromex Research indicated that 48% of respondents, who reported experiencing domestic or family violence, said that the violence had adversely affected their ability to get to work. The main reported impact was on work performance (distracted, tired or unwell) and absenteeism<sup>iv</sup>.

In 38.9% of instances where specialist homelessness services are engaged, domestic violence is reported as the main reason behind the homelessness<sup>v</sup>. Regrettably, the high rates of domestic violence are driving demand for crisis accommodation, transitional housing and longer-term accommodation requirements which are unable to be met in many instances. For example, long term accommodation needs can only be immediately met in 7% of instances across Australia and short-term crisis accommodation centres across the NT are frequently operating at capacity and unable to meet demand<sup>vi</sup>.

There is little doubt that those who are victims of domestic violence experience less favourable outcomes on account of the domestic violence, as outlined above. The domestic violence, in most cases, occurs privately (i.e. at home). However, discrimination in public life has also been well documented. As noted by the Australian Human Rights Commission<sup>vii</sup>, for example:

*"Discrimination takes many forms but may include: being denied leave or flexible work arrangements to attend to violence-related matters, such as moving into a shelter; termination of employment for violence-related reasons; and being transferred or demoted for reasons related to violence. Fear of such discriminatory treatment is one reason that victims and survivors do not disclose their violent situations to employers. "*

The Commission further notes that discrimination can occur when a person's employment is terminated because an abusive partner presents at the workplace, a victim is denied access to or evicted from public housing because they are known to be in an abusive relationship, or a university student's request to defer an exam is denied.

Research reveals that a fear of discriminatory treatment is a reason why domestic violence victims do not disclose their circumstances to employers<sup>viii</sup>.

Regardless of the extent to which domestic violence victims' personal and private circumstances are publicly known (i.e. by an employer, educational institution, accommodation provider or otherwise), it is clear that discrimination is encountered by victims (where the circumstances are known) and insufficient accommodation of victims' needs are made (where the circumstances are publicly known or otherwise).

As a consequence, there should be reasonable accommodation in employment, education, accommodation, the broader provision of goods and services etc. so that victims of domestic violence are not treated less favourably on account of the violence. This is akin to conferring rights for persons with a physical or mental disability under anti-discrimination legislation.

It is not unreasonable to expect an employer or educational institution, for example, to modify duties or grant reasonable leave of absence to an employee who is incapacitated due to domestic violence. At a time of great personal crisis, a victim of domestic violence needs support and assistance without the threat of a looming loss of employment or enrolment in education. By recognising that an employee or student is unable to attend reliably or contribute productively through no fault of their own, alternative duties or allowances can be made, at least on a temporary basis, to accommodate their needs. Staff who need time off work to tend to domestic violence related matters such as legal proceedings, should be afforded reasonable flexibility to do so.

Reasonable accommodation means that victims can continue to participate socially and economically and, as a result, not be discriminated against unreasonably on account of their physical and mental disposition.

The inclusion of domestic violence as a prescribed ground of discrimination under the Act will:

- (a) deter, prevent, and reduce current unfavourable treatment of victims, intentional or otherwise, by making discrimination unlawful;
- (b) provide an important educational function in ensuring reasonable and equitable treatment and accommodation of victims in public life; and
- (c) encourage the development of policies and practices at workplaces and in institutions to accommodate the needs of persons experiencing or recovering from domestic violence.

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

The inclusion of accommodation status as a form of unlawful discrimination under the Act requires consideration of its definition and reach. At page 13 of the Discussion Paper, references are made to a person's accommodation status yet the narrative that follows refers ostensibly to persons experiencing homelessness.

It is certainly the case that homelessness is a significant consideration, and perhaps the predominant consideration, in a discussion around accommodation status in the NT. As is well documented, the NT's rate of homelessness is 15 times the national average.

However, in our view, accommodation status could be interpreted to have a far wider meaning. For example, a person who is a renter, or a mortgagee, has a different accommodation status to a home owner. Similarly, a public housing tenant has a different accommodation status to a person living at home with their parents.

Indeed, accommodation status could potentially refer to people's shelter situation, short term or longer term, in aged care facilities, prisons, health facilities etc.

It is unclear to us the extent to which the broadest definition of accommodation status is proposed to apply. Given the terms accommodation status and homelessness are used somewhat interchangeably in the discussion paper, our feedback will refer predominantly to accommodation status as it relates to homelessness. However, if a far wider reach is contemplated, further consultation with stakeholders around the merits and potential implications should be considered.

#### **Accommodation Status as it Relates to Homelessness**

NT Shelter strongly supports the inclusion of accommodation status (homelessness) as an attribute under the Act.

A proper understanding and discussion of homelessness, and the extent of discrimination against homeless people, requires consideration of the housing and homelessness continuum and the many facets of homelessness. We refer to the definition of homelessness by the Australian Bureau of Statistics:

When a person does not have suitable accommodation alternatives they are considered homeless if their current living arrangement:

- is in a dwelling that is inadequate; or
- has no tenure, or if their initial tenure is short and not extendable; or
- does not allow them to have control of, and access to space for social relations.

"The ABS definition of homelessness is informed by an understanding of homelessness as 'home'lessness, not rooflessness. It emphasises the core elements of 'home' in Anglo American and European interpretations of the meaning of home as identified in research evidence (Mallett, 2004). These elements may include: a sense of security, stability, privacy, safety, and the ability to control living space. Homelessness is therefore a lack of one or more of the elements that represent 'home'.<sup>ix</sup>

As is the case for domestic violence, homelessness is a violation of human rights<sup>x</sup>. In this context, tackling the significant problem of homelessness in the NT involves not only providing affordable and appropriate shelter but ensuring that the rights of homeless people are protected. This includes the right to equitable access to goods and services, employment, education etc.

Equitable access implies and necessitates no-less favourable treatment or discrimination against homeless persons on account of their accommodation status.

#### **Discrimination against homeless persons**

People experiencing homelessness are highly vulnerable due to their unmet housing needs and the various disadvantages this leads to. These can be in the form of poverty, unemployment, family breakdown, mental illness, sexual assault, addiction, financial difficulty, gambling or social isolation.

Discrimination against homeless persons in the Northern Territory is a significant issue<sup>xi</sup>. Homeless people have difficulty accessing various goods and services due to their inability to present identification with a residential address. This can present impediments to accessing clubs, driver's license, Over-18's card, educational opportunities (library cards), real estate (lack of rental history), alcohol, and other goods and services where acceptable identification is required. NT Shelter member organisations in Alice Springs have referred to instances where victims of domestic violence have fled their homes in emergency situations without identification documents but have been denied hotel or motel accommodation.

In addition to less favourable access to goods and services, homeless people experience direct and indirect discrimination as a consequence of their homelessness. Not having appropriate housing (whether rough sleeping, couch surfing, or living in overcrowded accommodation with a lack of suitable amenities) provides practical challenges with health, hygiene and cleanliness, characteristics that continue to result in homeless persons being denied entry or service.

Stereotypes around homelessness are pervasive although generally ill-informed and generalized. There are many different reasons why people become homeless, whether it be older women fleeing violence, aboriginal communities with overcrowded housing due to a lack of suitable accommodation, young children fleeing a dysfunctional household or people with complex health needs running out of money and "getting stuck" in communities such as Darwin. While mental health, drug and alcohol use and financial difficulties are significant challenges for many homeless people, they are by no means issues faced by all.

What is clear, however, is that homeless people in the NT are amongst the most vulnerable persons in our society, frequently have welfare payments as their primary source of income and need community support as opposed to unfavourable discriminatory treatment.

People who are homeless experience higher rates of violent victimization than the general population<sup>xii</sup>. They are entitled to safeguards that ensure their right to life, liberty and security and protection from violations of their right to personal safety.

Regardless of why a person enters into homelessness, we see no situation where there would be a valid reason to treat a homeless person less favourably than others on the grounds of their accommodation status (homelessness). On that basis, there is no reason why this should not be included as an attribute under the Act and it is important that this occur.

**Question 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?**

The Act should include vilification provisions, similar to the operation and effect of provisions already existing in other jurisdictions across Australia.

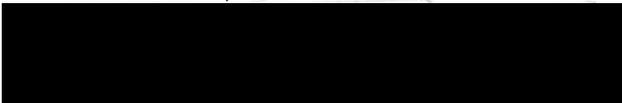
Any attribute under the Act should be covered by the Act's vilification provisions. This would mean that homeless persons would be protected under the Act from vilification. We have referred in our submission to the higher rates of violent victimization faced by homeless persons. Public discussion around the "itinerants" in Darwin and impacts on local business evoke strong viewpoints and it is important that this does not translate into abusive, threatening or retaliatory behaviour. We support the proposition in the Discussion Paper that it is important that legal safeguards be provided to maintain the right of homeless persons "to live their lives free from harassment, psychological distress, hurt, anger and anxiety that exists in society".

**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?**

NT Shelter sees merit in the introduction of a representative complaint model. In our consultations with sector stakeholders, housing and homelessness service providers have raised issues of alleged discrimination against low income households trying to access private rental and clients who have been turned down due to a perceived higher risk of defaulting payments and lack of references due to their previous homelessness or social housing history. A representative complaint model would provide a useful framework for complaints to be brought forward and to test the reasonableness or otherwise of commonly occurring practices in the public arena.

We thank you for the opportunity to provide our feedback and would be pleased to discuss any of the matters raised should that be of assistance.

Yours faithfully



Peter McMillan  
Executive Officer

## References

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- <sup>i</sup> NT Government (2017), *Domestic, Family & Sexual Violence Reduction Framework 2018-2028*, page 13
- <sup>ii</sup> Ibid, page 14
- <sup>iii</sup> Ibid, page 14
- <sup>iv</sup> Ludo McFerran, Centre for Gender Related Violence Studies and Micromex Research, *Safe at Home, Safe at Work? National Domestic Violence and the Workplace Survey*, 2011, page 17
- <sup>v</sup> Australian Institute of Health and Welfare, *Specialist Homelessness Services Annual Report 2016-17*, Dec 2017
- <sup>vi</sup> Ibid
- <sup>vii</sup> Australian Human Rights Commission, *Submission to the Australian Law Reform Commission Inquiry into Family Violence and Commonwealth Laws: Employment and Superannuation (21 April)*, para 47.
- <sup>viii</sup> McFerran, op cit.
- <sup>ix</sup> Australian Bureau of Statistics, *2049.0.55.001 Factsheet: Homelessness – in concept and in some measurement contexts*, September 2012
- <sup>x</sup> These human rights are protected by a number of international human rights treaties, in particular the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Rights of the Child (CRC). Australia is a party to these treaties.
- <sup>xi</sup> The situation is not uncommon with findings from research conducted across Australia. A similar conclusion was reached in Victoria. See for example Deakin Law Review 15, *Promoting Equality: Homelessness and Discrimination*, 2002
- <sup>xii</sup> S Larney, E Conroy, K Mills, L Burns, M Teesson, *Factors Associated with Violent Victimization among Homeless Adults in Sydney, Australia*, 2009 33 (4) *Australian and New Zealand Journal of Public Health*, p 347.