

Submission to the Department of Attorney-General and Justice
Discussion Paper re Modernisation of the Anti-Discrimination Act (NT)

Introduction

The Northern Territory (NT) Office of the Public Guardian (OPG) welcomes the opportunity to provide a submission to the NT Department of the Attorney-General and Justice on the modernisation of the *Anti-Discrimination Act*.

The *Guardianship of Adults Act* (the Act) came into effect on 28 July 2016. It seeks to recognise the overall wellbeing, human rights and fundamental freedoms of persons with impaired decision-making capacity and align with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). The UNCRPD's purpose is to "promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity". Article 5 of the UNCRPD directs equal recognition of all persons and prohibits discrimination on the basis of disability.

The OPG was established under the Act which also provided for the statutory appointment of an independent Public Guardian, aligning the NT with other Australian jurisdictions. The Act provides a legal decision-making framework for adults with impaired decision-making capacity in relation to their personal or financial matters. The definition of impaired decision-making capacity under the Act is broad and captures adults with cognitive impairment from any cause including mental illness, dementia, intellectual disability or acquired brain injury.

Compared to other jurisdictions, the NT has the lowest number of adults under guardianship orders, however has the highest percentage of the population under guardianship. Adults with impaired decision-making capacity are likely to be caught within the attribute of 'impairment' as defined in the *Anti-Discrimination Act*. However, they are also likely to be characterised by at least one other attribute. The intersection of multiple attributes, for example age and race, sex and impairment or race and impairment, compound the likelihood of inequality and discrimination in society for adults with impaired decision-making capacity.

A function of the Public Guardian is to advocate for adults with impaired decision-making capacity by promoting understanding and awareness of relevant issues. The *Anti-Discrimination Act* provides fundamental equality of opportunity and protection against discrimination for Territorians with 'impairments', including adults with impaired decision-making capacity. OPG welcomes initiatives that strengthen equality of opportunity and provide an avenue of redress where equality is not evidenced or practiced. This submission addresses issues of discrimination and equality of opportunity specific to adults with impaired decision-making capacity.

Question 3

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?

Vilification on the basis of disability contravenes the UNCRPD that persons with disabilities should not be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Vilification provisions, with appropriate exemptions, should be included in the *Anti-Discrimination Act* to prohibit public actions that are likely to increase discrimination and diminish equal opportunity within the community.

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?

Evidence suggests that there is a high representation of violence against women with disabilities. Further adults with intellectual disability, dementia or other cognitive impairment are more likely to experience violence, abuse, neglect and exploitation than the general population. OPG supports amendments to the *Anti-Discrimination Act* that will create rights for people experiencing domestic violence in relation to public areas of life such as employment, education and accommodation. This may help to alleviate the multifaceted discrimination and lack of equality experienced by adults with impaired decision-making capacity who are also subject to domestic violence.

Questions 6 and 8

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

Affordability and availability of appropriate housing is limited in the NT with overcrowded housing an ongoing problem in most remote communities. The high cost of living in the NT is an additional challenge for those in low socio-economic circumstances. This factor together with gaps in the service system often mean an adult with impaired decision-making capacity live in inadequate or inappropriate accommodation and is another area where multifaceted discrimination may be experienced. OPG supports the *Anti-Discrimination Act* protecting people against discrimination on the basis of their accommodation status and socioeconomic status.

Question 9

Should the Act be broadened to include specifically trained assistance animals such as therapeutic and psychiatric seizure alert animals?

Assistance animals can play a significant role in increasing the independence of people with a range of disabilities. OPG supports the broadening of the *Anti-Discrimination Act* to include specifically trained assistance animals so that the people they assist can enjoy a full and active public and personal life. The equality of opportunity to participate in public life that the inclusion of assistance animals establishes aligns with the UNCRPD's purpose to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

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?

As guardian for a represented adult, the Public Guardian's function includes advocating for the represented adult in relation to the personal or financial matters for which the guardian has authority. Accordingly, it is within the Public Guardian's authority to make a complaint under the *Anti-Discrimination Act* on behalf of a represented adult. The Public Guardian's wider functions to promote access to support services for adults with impaired decision-making capacity and to advocate for adults with impaired decision-making capacity may warrant a complaint such as that proposed under the representative complaint model in relation to adults with impaired decision-making capacity as a group.

OPG supports the introduction of a representative complaint model that will allow the investigation and resolution of discrimination that occurs against people susceptible to inequality on the basis of an identified attribute, including impaired decision-making capacity.

Question 11

Should the requirement for clubs to hold a liquor licence be removed?

The articles of the UNCRPD prescribe the right of people with disabilities, including those with impaired decision-making capacity to participate in recreation, leisure, sport, cultural, political and public life. The requirement in the definition of 'club' in the *Anti-Discrimination Act* that liquor is sold or supplied for consumption on its premises significantly limits the scope of this definition to allow equal opportunity of participation for all members of society in the social, literary, cultural, political, sporting, recreational or community purpose for which a club may have been established.

OPG supports the removal of the requirement for clubs to hold a liquor licence so that the definition has a wider scope to promote equality of participation and prohibit discrimination.

Question 13

Should the definition of "service" be amended to extend coverage to include the workers?

Equality of opportunity in the workplace necessarily includes the right to a safe working environment free of discrimination and harassment. Again, this right is within the articles of the UNCRPD and OPG supports the definition of "service" being amended to ensure that workers are not discriminated or harassed in the workplace.

Question 16

What are your views on expanding the definition of "work"?

The definition of 'work' should be amended to cover all modern forms of working arrangements to ensure that the *Anti-Discrimination Act* is able to achieve its object to eliminate discrimination on the basis of an attribute. The rights of people with impaired decision-making capacity to enjoy equality of opportunity in the workplace should not be limited by a definition of 'work' that does not reflect modern working arrangements. The definition of 'work' should explicitly include volunteering so that this equality also extends to voluntary arrangements.

Question 17

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

The obligation to accommodate a special need should be clearly articulated to provide certainty to all parties.

Question 21

Should the term “parenthood” be replaced with “carer responsibilities”?

Carers of adults with impaired decision-making capacity provide a fundamental and often unrecognised service to the community. Caring responsibilities are not limited to traditional parent-child relationships, it is vital cultural family structures are recognised. OPG supports the recognition of all carers in the *Anti-Discrimination Act* to ensure that their right to equality of opportunity is legislated and protected.

Conclusion

People with disabilities, including impaired decision-making capacity continue to experience discrimination and inequality of opportunity in society. The *Anti-Discrimination Act* provides fundamental protections to ensure that incidences of inequality and discrimination are minimised and addressed when they do occur. OPG supports amendments to the *Anti-Discrimination Act* to reflect the changing landscape of society and ensure that equality of opportunity exists for adults with impaired decision-making capacity across all areas of public life.

Yours sincerely,



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Office of the Public Guardian

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