Darwin Community LEGAL SERVICE

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12 August 2022

Director
Legal Policy
Department of Attorney-General and Justice
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By email only: Policy.AGD@nt.gov.au

Dear Director,

DCLS submission Exposure Draft Anti-Discrimination Amendment Bill 2022

Thank you for the opportunity to provide input and for the substantial and sustained efforts towards improving the NT Anti-Discrimination Act.

The NT context requires highly effective legislation, a strong continuing commitment to preventative education, accessible and adequately resourced complaint mechanisms and an overall approach which achieves quality and timely outcomes and impacts.

The DCLS submission relating to the Exposure Draft is attached.

Please contact us if you would like to discuss any of the issues raised.

Regards,

Judy Harrison
Principal Solicitor

12 August 2022

Darwin Community Legal Service submission in relation to the Exposure Draft Anti-Discrimination Amendment Bill 2022

Introduction

Darwin Community Legal Service

DCLS is a non-profit community-based effort committed to legal and social justice and the protection and expansion of rights, fairness and wellbeing in the NT. We especially work with people who are vulnerable or marginalised. DCLS provides legal help, advocacy and support services; collaborates to understand obstacles to justice and try to achieve reform; and promotes understanding and acceptance of rights, justice and inclusion. DCLS efforts include the:

- Seniors and Disability Rights Service (SDRS) advocates with and for older people and people with disabilities,
- Tenants' Advice Service which works with tenants, on access to housing and systemic issues relating to housing and homelessness,
- General Legal Service which focuses on civil law rights including discrimination, human rights, due process and fair treatment in areas such as social security, employment, consumer, credit and debt, National Disability Insurance Scheme and adult guardianship
- Veterans' Legal Service focusing on the wellbeing and inclusion of veterans using a broad definition which includes current and previous military personnel and their families

DCLS acknowledges the Larrakia people as the Traditional Owners of the Darwin region. We pay our respects to Larrakia elders past, present and emerging. We also acknowledge and pay our respects to the Traditional Owners of country throughout the NT and throughout Australia. We recognise their continuing connection to land, waters and culture.

DCLS supports Voice – Treaty – Truth.

Outline of the submission

In July 2022, the Department of the Attorney-General and Justice released the draft *Anti-Discrimination Bill 2022* (the Bill) for public consultation. The Bill proposes amendments to modernise the *Anti-Discrimination Act 1992* (NT) ('the Act').

We welcome the Bill as a further step towards promoting equality, social justice and wellbeing among individuals and communities in the NT.

We see the Bill, and the issues we raise, as a major opportunity to extend rights and protections.

The positions expressed are grounded in the assistance DCLS provides as a legal, advocacy and support service, in our involvement in community networks and collaborations and many efforts to help address systemic issues.

This submission addresses the proposed amendments by dividing these into five (5) topics:

1. Modernisation of protected attributes, areas of activity, and exemptions;
2. Positive duty to eliminate discrimination, sexual harassment, and victimisation;
3. Offensive behaviour provisions;
4. Representative complaints; and
5. Other recommendations.

1. Modernisation of protected attributes, areas of activity, and exemptions

1.1. Protected attributes

The protected grounds of discrimination under section 19 of the Act are currently:

- *Race*
- *Sex*
- *Sexuality*
- *Age*
- *Marital status*
- *Pregnancy*
- *Parenthood*
- *Breastfeeding*
- *Impairment*
- *Trade union or employer association activity*
- *Religious belief or activity*
- *Political opinion, affiliation or activity*
- *Irrelevant medical record*
- *Irrelevant criminal record*
- *The persons details being published under section 66M of the Fines and Penalties (Recovery) Act 2001*
- *Association with a person who has, or is believed to have, an attribute referred to in section 19*

We welcome the Bill expanding the protected attributes to include:

- *language, including non-verbal language*
- *gender*
- *sexual orientation*
- *sex characteristics*
- *relationship status*
- *accommodation status*
- *socio-economic disadvantage*
- *employment as to sex work, including past sex work*
- *carer responsibilities*
- *disability*, and
- *subjected to domestic violence*.

We recognise this is a significant step forward in the protection of rights under the Act.

However, we recommend inclusion of three further 'protected attributes' namely:

- *Location;*
- *immigration status;* and
- *any other ground.*

Recommendation 1 – 'location'

We recommend that the list of protected attributes include 'location' which is an issue which has deep relevance in the NT.

For example, those living in remote and very remote areas of the NT often face significant barriers and challenges in accessing services and support.

- 'Location' is often subject to discriminatory mainstream perspectives which treat locations which are remote and very remote (in particular) as *an excuse / justification* for substandard access to services and programs when far more can reasonably be done.
- 'Location' is also frequently advanced unreasonably to claim that equality in access to services and programs etc, is 'impossible' rather than as making equality in access the challenge to be addressed as far as is reasonably possible.

- This may be seen in the treatment of many tenants in remote and very remote areas of the NT. Distance, or the travel requirements in accessing these regions, is often used to justify delayed responses in landlord responsible urgent and non-urgent repairs resulting in tenants living in highly substandard conditions and tenants and communities bearing the resulting effects.
- *Substantive equality* acknowledges not only the intended outcomes but links to how different pathways may be required to achieve the intended substantive effect.
- 'Location' is not addressed by the proposed new protected attribute of 'socio-economic disadvantage' any more than the new 'socio-economic' attribute can replace any of the existing protected attributes or those the Bill will add, such as 'language', 'gender' and 'relationship status'.
- In the NT, 'location' is often:
    - a compounding and intersectional aspect in discrimination on prohibited grounds in section 19 of the Act such as (a) race (b) sex (d) age (j) impairment, and
    - correlated with areas of major disadvantage such as:
        - housing and homelessness
        - access to entitlements including social security, health, education, aged care, and National Disability Insurance Scheme

Accordingly, and also taking into account the intersectional nature of location in the NT, the addition of 'location' as a protected attribute would further promote the rights of vulnerable and marginalised people and further the Act's purpose of eliminating unlawful discrimination.

Examples include the further promotion of the rights, wellbeing, and self-determination of:

- First Nations people in access to basic and essential health services in communities and regions and on country, which in turn advance social, cultural, economic, civil and political rights, and
- People with disabilities to be recognised in receiving appropriate and required supports, which advance a similar range of rights. This is of particular importance where power and resource holders unreasonably delay or fail to address the needs of people with disabilities living in remote or very remote parts of the NT. The question of whether claims of cost and inconvenience (for example) reasonably balance against an individual's rights to inclusion, equality and fairness is clearly a question relating to discrimination.

For these reasons we recommend the inclusion of 'location' as a protected attribute so that there is jurisdiction under the Act to receive and deal with complaints by individuals as to whether what they have experienced relating to 'location', is *unlawful discrimination*.

Photo: Ramp designed for a wheelchair user in a remote area of the Northern Territory. The ramp was not fit for use and was inaccessible due to not being levelled properly, and the significant gap between ramp and ground. The issue required a DCLS SDRS advocate to continually follow up with the relevant authority to ensure the issue was rectified and the ramp was made accessible for the user. (Credit: DCLS, March 2022)

Further, we recommend that the approach to 'location' be flexible, to avoid simplistic and erroneous assumptions based on 'distance' or other anomalies. For example, in relation to the Wagait Beach and Belyuen areas. These areas are approximately 10 km from Darwin by ferry, but approximately 130km by road. The wharf at Wagait Beach is not accessible to people with mobility issues and neither is the ferry. There are also issues relating to access to the Patient Assisted Travel Scheme ('PATS') and access to health and support services.

Photo: Mandora wharf access to the ferry and boats is by the above steps, with no provision for disability access (Credit: DCLS February 2022)

Photo: Maningrida community is currently accessing the DCLS SDRS team to advocate for a wheelchair lift at the airport, so people can be lifted safety and with dignity into flights. So far more than 80 people in the community have signed a petition, and 6 lived experience stories have been recorded (Credit: DCLS SDRS Team, August 2022).

Recommendation 2 – 'immigration status'

DCLS also strongly recommends that '*immigration status*' be included as a prohibited ground of discrimination under the Act. Immigrants are a particularly vulnerable group who frequently face discrimination in the areas of employment and accommodation and are at increased risk of labour exploitation[1]. Examples of this discrimination are the granting of less favourable work conditions for those with immigrant status or those who hold visas, or the refusal to grant housing to a prospective tenant due to holding a temporary visa.

Immigration status is a protected attribute under section 7 the *Discrimination Act 1991* (ACT), and is defined in the Dictionary as:

> "immigration status" includes being an immigrant, a refugee or an asylum seeker, or holding any kind of visa under the Migration Act 1958 (Cth).

[1]Joint Standing Committee on Foreign Affairs, Defence and Trade. Parliament of Australia, *Inquiry into Establishing a Modern Slavery Act* (Final Report, Decmeber 2017) Ch. 9

Note ***Immigration status*** includes the immigration status that the person has or has had in the past, or is thought to have or have had in the past."

This formulation extends to a person who has had immigration in the past, or who is thought to have had immigration status in the past.

Immigration status is also recognised on a federal level under section 5 of the *Racial Discrimination Act 1975* (Cth), which makes discrimination on the basis of *immigration status* unlawful in the areas of access to places and facilities (s 11), land, housing and other accommodation (s 12(1)), provision of goods and services (s 13), right to join trade unions (s 14(1), s 14(2)) and employment (s 15(2), s 15(2)).

Extending prohibited grounds of discrimination to include immigration status would further provide protection to often vulnerable members of the NT community and bring the NT in line with other jurisdictions which have included this ground.

Photo: Community art work entry, DCLS Rights on Show, December 2021 (Credit: DCLS 2021)

Recommendation 3 – 'any other ground'

The Bill would amend the Objects of the Act, by preserving the existing object in section 3(a) by updating 3(b) and 3(c) with the overall effect that the Objects would then be:

"(a) to promote recognition and acceptance within the community of the principle of the right to equality of opportunity of persons regardless of an attribute; and

(b) to eliminate discrimination, sexual harassment and victimisation to the greatest extent possible; and

(c) to promote the identification and elimination of systemic discrimination."

Accordingly, we recommend that the protected attributes in the Act also remain flexible to better enable the Act to continue to achieve the Objects by reflecting community standards and recognising grounds of unlawful discrimination as they emerge.

We recommend that section 19 be amended to include a general protected attribute like the concept of *prohibited grounds* in section 1 Definitions of South Africa's *Promotion of Equality and Prevention of Unfair Discrimination Act* (2000), which stipulates:

> '**prohibited grounds**' are -
>
> (a) race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, birth and HIV/AIDS status; or
>
> (b) any other ground where discrimination based on that other ground –
>
> (i) causes or perpetuates systemic disadvantage;
>
> (ii) undermines human dignity; or
>
> (iii) adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on a [protected attribute]."[2]

1.2 Areas of activity

The areas of activities where discrimination is prohibited under section 28 of the Act are currently:

- *education;*
- *work;*
- *accommodation;*
- *goods, service and facilities;*
- *clubs; and*
- *insurance and superannuation.*

We welcome the Bill expanding the areas of activities where discrimination is prohibited to include:

- *work and the workplace; and*
- *the administration of laws and government programs.*

We also welcome the expansion of areas of work to include sex work and previous sex work.

[2] Act on the South African Legal Information Institute site: http://www.saflii.org/za/legis/consol_act/poeapouda2000637/

Recommendation 4 – expand definition of 'provision of services'

We recommend that section 4(8) of the Act be repealed to include the carrying out of an artificial fertilisation procedure as a service.

We note that discrimination in this area is proposed to be addressed under the *Surrogacy Bill 2022* (NT), however we believe discrimination in all forms would be better addressed under the Act. This would ensure discrimination in the provision of artificial fertilisation procedures is subject to the same prohibitions as other discrimination, improving uniformity and accessibility.

1.3 Exemptions

DCLS supports the principle that the right to freedom from discrimination should be unfettered and only subject to exceptions where there is a substantive case made out that an exception would overwhelmingly be in the public interest.

We welcome clauses 16-18 of the Bill, which will repeal exemptions within the Act that currently allow:

- religious educational authorities to excluding applicants who are not of their religion;
- religious educational institutions discriminating against a person in the area of work on the grounds of sexuality; and
- religious educational institutions excluding students who are not of their religion from accommodation.

Recommendation 5 – clarify accommodation under the direction or control of a body established for religious purposes

We seek clarification regarding clause 18(3) of the Bill which allows discrimination in relation to accommodation where the accommodation is under the direction and control of a body established for religious purposes and is wholly within or directly attached to a religious premises.

We are concerned that this may have the effect of allowing institutions to exclude certain members of society from activities such as school or church camps were the accommodation used is attached to religious premises.

There is the potential for this provision to allow for vulnerable members of the community to be further marginalised - for example the LGBTQI+ community.

DCLS seek clarification regarding the clause and how the effects indicated will be avoided.

Recommendation 6 – clarify differences between religious and cultural significance

Section 43 of the Act allows a person to restrict access to land, a building or place of cultural or religious significance by people who are not of a particular sex, age, race or religion if the restriction:

- is in accordance with the culture or the doctrine of the religion; and
- is necessary to avoid offending the cultural or religious sensitivities of people of the culture or religion

We request that the application and requirements of Section 43 of the Act be further clarified because the provision is ambiguous regarding the distinction between, and definition of religious and cultural significance, leaving potential for the two to be conflated.

A definition of each of the terms 'of cultural significance' and 'of religious significance' would make the distinction clearer.

Further, the Act is ambiguous as to what may constitute offending the cultural or religious sensitivities of people of a culture or religion.

We support a clearly defined test on how this will be considered.

2. Positive duty to eliminate discrimination, sexual harassment, and victimisation

We welcome the proposed amendment to insert Part 2A into the Act to introduce a positive duty to eliminate discrimination, sexual harassment, and victimisation ('the Positive Duty').

The Positive Duty is consistent with the recommendations (especially recommendations 17 and 18) of the *Respect@Work: Sexual Harassment National Inquiry Report* (2020) by the Australian Human Rights Commission (the Jenkins Report) which, in the context of work and at the workplace, noted:

> '[t]he Commission frequently heard that the lack of a positive duty… to prevent workplace sexual harassment means that employers place a higher priority on compliance with employment law and work health and safety laws than discrimination law. This also places a heavy onus on individuals to complain'. (p. 28)

The Positive Duty also recognises that sexual harassment is not confined to work and workplaces, and:

> 'the primary prevention of sexual harassment should also address other inequalities aside from gender inequality, that increase the risk of sexual harassment for some people, including First Nations people, people with a disability, people of CALD backgrounds and LGBTQI people'. (p. 352)

Recommendation 7 – improved clarity about the implementation of positive duty by the Commissioner

Currently, clause 9 of the Bill outlines neither how investigations of compliance with the Positive Duty are initiated nor the process for investigating compliance with the Positive Duty.

We understand that clause 9 of the Bill is modelled upon section 15 of the *Equal Opportunity Act 2010* (Vic), which stipulates that a person must take reasonable and proportionate measures to eliminate discrimination, sexual harassment or victimisation as far as possible ('the Victorian Positive Duty'). Part 9 of the *Equal Opportunity Act 2010* (Vic) outlines the investigation process for, *inter alia*, compliance with the Victorian Positive Duty, including section 127 which outlines when an investigation may be conducted:

> The Commission may conduct an investigation into any matter relating to the operation of this Act if-
>
> (a) the matter -
>
> (i) raises an issue that is serious in nature; and
>
> (ii) relates to a class or group of persons; and
>
> (iii) cannot reasonably be expected to be resolved by dispute resolution or by making an application to the [Victorian Civil and Administrative] Tribunal…; and
>
> (b) there are reasonable grounds to suspect that one or more contraventions of this Act have occurred; and
>
> (c) the investigation would advance the objectives of this Act.

Section 128 of the *Equal Opportunity Act 2010* (Vic) provides another process for initiating an investigation into compliance with the Victorian Duty by empowering the Victorian Civil and Administrative Tribunal to refer matters to the Victorian Equal Opportunity and Human Rights Commission.

For the reasons stated above, we recommend the Bill include a legislative process outlining:

- when the Commissioner shall investigate compliance with the Positive Duty; and
- how the Commissioner shall investigate compliance with the Positive Duty.

The legislative process may consist of expanding the application of clause 43 of the Bill (*investigation of representative complaints*) to the investigation of compliance with the Positive Duty.

Recommendation 8 – include criteria for Commissioner to investigate

Clause 9 of the Bill does not outline when the Commissioner shall investigate compliance with the Positive Duty. This may result in situations where decisions to investigate compliance with the Positive Duty are driven by extraneous factors (for example, resource constraints for the Anti-Discrimination Commission) rather than the seriousness and public importance of any non-compliance with the Positive Duty.

We recommend the inclusion of legislative criteria governing when the Commissioner shall investigate compliance with the Positive Duty. It is highly preferable for transparency and oversight that this be set out in the Act rather than in delegated legislation or guidelines under the Act.

Recommendation 9 – Commissioner to give and publish reasons resulting from positive duty investigations

The proposed section 18C empowers the Commissioner to 'take any action the Commissioner thinks fit' after conducting an investigation into compliance with the Positive Duty. Actions available to the Commissioner include:

- take no further action;
- enter into an agreement with a person about action required; and
- make a report in relation to the investigation to the Minister or the Legislative Assembly.

We believe the exercise of public functions should be transparent and, therefore, the reasons for any decision by the Commissioner should be available to ensure accountability in performing the role and for educative and preventative purposes.

We recommend the inclusion of legislative requirements for the Commissioner to publish de-identified information in a timely way, including:

- cases involving potential non-compliance with the Positive Duty that are referred to the Commissioner or that the Anti-Discrimination Commission is otherwise aware of;
- decisions by the Commissioner not to investigate cases involving compliance with the Positive Duty;
- action(s) taken by the Commissioner following investigations into compliance with the Positive Duty; and
- the reasons for the action(s) taken by the Commissioner following investigations into compliance with the Positive Duty.

3. Offensive behaviour provisions

We welcome the inclusion of the proposed new sections 20A and 20B into the Act which will prohibit offensive behaviour because of an attribute. The new section 20A would begin:

> "20A Offensive behaviour because of attribute
> (1) A person must not do an act that:
>
> (a) is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and
> (b) is done because of an attribute of the other person or of some or all of the people in the group."

We believe this will promote social justice, equality, inclusion and wellbeing and that the full provision effectively balances the right to free speech and the right to be free from vilification and hatred.

4. Representative complaints

We welcome the proposed amendment to include representative complaints in the Act. This is an important inclusion which will enhance the operation of the Act, the outcomes, and impacts.

Photo: DCLS TAS solicitor requests an orderly queue during Sports Week in Ramingining (Credit: DCLS TAS Team June 2021)

We welcome the proposed amendment to bring provisions into the Act to address 'systemic discrimination'.

This acknowledges that discrimination extends beyond instances of individual behaviour and can involve (as the proposed wording indicates):

> "... discrimination .. [by] more than one individual resulting from the behaviour, practice, policy or program of one or more organisations."

We note that the inclusion of 'systemic discrimination' in the Act will complement and align with other NT government initiatives including the NT Aboriginal Justice Agreement 2021-2027.[3] The latter aims, among other things, to 'Improve justice responses and services for Aboriginal Territorians', by addressing systemic racism, and notes that:

[3] https://justice.nt.gov.au/__data/assets/pdf_file/0005/1034546/nt-aboriginal-justice-agreement-2021-2027.pdf

"Evidence of systemic racism is sometimes met by denial, minimisation and deflection of responsibility. This Agreement embraces openness, honesty and ownership of systemic short-comings by government agencies and non-government organisations in service delivery to Aboriginal people."[4]

Photo: "...can I have someone who can speak Yolŋu Matha to make me understand..." video, DCLS SDRS Advocate, Ramnik, in East Arnhem Land sharing information about the Charter of Aged Care Rights (Credit DCLS SDRS Team August 2021)

Recommendation 10 – require a report on representative complaint outcomes

Clause 43 of the Bill would confer discretion upon the Commissioner to produce and publish a report of an investigation into a representative complaint.

For reasons given below, in relation to recommendation 17 relating to the benefits of transparent decision making, we recommend that the discretion be replaced by an obligation for the Commissioner to produce and publish a report where an opinion is formed about whether systemic discrimination has or has not occurred.

[4] ibid. P. 21

5. Other recommendations

Recommendation 11 - add criteria for accepting or declining a complaint

Neither the existing and proposed section 66 outline when the Commissioner shall accept either a complaint or a representative complaint.

This provides no public guidance in relation to this pivotal decision making, it lacks transparency and accountability. It also provides inadequate support for the Commissioner.

In the worst-case scenario, it increases the risk that decisions to accept or not accept complaints or representative complaints are driven by extraneous factors.

We recommend the inclusion of criteria to guide the Commissioner when considering whether to accept individual or representative complaints.

Recommendation 12 – right to external review where complaint declined

Both the individual and representative complaints processes under the Bill and the current Act do not provide any recourse for a complainant if the Commissioner declines to accept their complaint for consideration.

That is, in situations where a complaint is lodged but the Commissioner declines to allow the complaint to proceed to and through the complaints process, instead the complaint is in effect turned away.

In these situations, there is currently no pathway for external review about the merits of the decision by the Commissioner declining to accept the complaint for consideration.

We submit that there should be an external review, and this should be added to the Bill, to promote:

- access to justice for complainants who disagree with a decision by the Commissioner to decline their complaint; and
- public accountability by empowering the Northern Territory Civil and Administrative Tribunal to review the decision by the Commissioner to decline a complaint.

Recommendation 13 - complaint process to include determinative hearing

We recommend that the Bill be adjusted to amend the Act to include that the complaints resolution process include a determinative hearing before the Commissioner where a complaint is not resolved by conciliation. This is comparable to the unfair dismissal process under the *Fair Work Act 2009* (Cth).

This would include empowering the Commissioner to compel parties to attend the hearing and to subpoena witnesses and documents. Following a hearing, a party may then appeal to the Northern Territory Civil and Administrative Tribunal.

Photo: DCLS SDRS Advocate Hayley at a workshop for older people about how people can use services available through SDRS and DCLS generally (Photo: DCLS, July 2022)

Recommendation 14 – at the very least increase prescribed amount for compensation limit

Section 88 of the Act governs the orders the Northern Territory Civil and Administrative may make where prohibited conduct alleged in a complaint is substantiated. When awarding compensation for loss or damage caused by prohibited conduct, section 88(1)(b) limits the Tribunal to not exceed the prescribed amount in the *Anti-Discrimination Regulations 1994* (NT) ('the Regulations').

We note a prescribed amount of $60,000 was introduced from the commencement of the Regulations in March 1995. We also note the prescribed amount has remained at $60,000 despite:

- an opportunity to increase the prescribed amount via the *Justice Legislation Amendment Act 2015* (NT); and
- changes in the consumer price index whereby $60,000 in 1995 would equate to $110,238.46 in 2021.[5]

Recommendation 15 – remove the compensation limit

However, our primary recommendation and preferred position regarding section 88(1)(b) is that it be amended to confer discretion upon the Tribunal to award compensation for loss or damage caused by prohibited conduct as it sees fit.

[5] Using the Reserve Bank of Australia calculator, at https://www.rba.gov.au/calculator/

This would:

- enable the Tribunal to ensure compensation for loss or damage reflects the facts of the case in instances where a complainant has experienced significant loss or damage exceeding the prescribed amount, and
- ensure consistency with discrimination claims under Federal legislation whereby section 46PO(4)(d) of the *Australian Human Rights Commission Act 1984* (Cth) stipulates:

> (4) If the court concerned is satisfied that there has been unlawful discrimination by any respondent, the court may make such orders (including a declaration of right) as it thinks fit, including any of the following orders or any order to a similar effect:
>
> ...
>
> (d) an order requiring a respondent to pay an applicant damages by way of compensation for any loss or damage suffered because of the conduct of the respondent

This would also ensure that compensation for complaints reflect shifts in community standards. In *Richardson v Oracle Corporation Australia Pty Ltd* [2014] FCAFC 82 at [117], Kenny J noted the importance for compensation for loss and damage caused by discrimination reflecting community standards in the context of sex discrimination, stating:

> "...the general range of general damages in respect of pain and suffering and loss of enjoyment of life caused by sex discrimination has scarcely altered since 2000 and does not reflect the shift in the community's estimation of the value to be placed on these matters. The range has remained unchanged, notwithstanding that the community has generally gained a deeper appreciation of the experience of hurt and humiliation that victims of sexual harassment experience and the value of the loss of enjoyment of life occasioned by mental illness or distress caused by such conduct."

Removing limits on compensation for loss or damage caused by prohibited behaviour would also provide an alternative avenue for a complainant as current Territory and Federal legislative regimes create the following trade off:

- complain via the Australian Human Rights Commission where compensation is not capped, however, there is a risk of costs; or
- complain via the Northern Territory Anti-Discrimination Commission where the risk of costs is reduced, however, compensation is capped.

Photo below: ‘Our Rights’ entry in DCLS Rights on Show, December 2021