

NTCOSS' position on the Anti-Discrimination Amendment Bill 2025

Briefing note

August 2025

A brief history

Following extensive community consultation and expert advice over many years, the NT's anti-discrimination legislation was amended in 2023. Among the key changes were the introduction of vilification provisions (Section 20A) and the removal of an exemption that allowed religious educational institutions to discriminate based on sexual orientation (the previous Section 37A). These changes improved protections for many and were important steps towards the goal of every Territorian being able to live with dignity and safety – free from abuse, intimidation and hate.

In early 2025, the Government publicly stated their intent to amend the act to reverse some of these changes.¹ Despite attempts by NTCOSS, along with other member organisations and stakeholders, to seek clarity on these changes and engage with the Government, there has not been wide consultation on these changes in the social and community sector. This is particularly concerning given the impact these changes would have on the people, organisations and communities we work with. The first time NTCOSS has seen the detail of the proposed changes was when the Amendment bill was introduced in parliament on Wednesday 30 July 2025.²

This briefing provides NTCOSS' position on the proposed amendments.

Current proposed changes

Section 35B

According to the Explanatory Statement, the new section 35B will allow religious educational institutions to discriminate on the ground of religious belief or activity. The exemption can be used if there is a written policy that outlines their religious beliefs and how this relates to giving preference to employment of a person of the religion and setting rules for conduct at the workplace.

It is positive that this is not a repeat of the previous 37A that allowed discrimination based on sexuality. The requirement for written policy may mean there is safeguards to

¹ See Mrs Finocchiaro (Chief Minister)'s Ministerial Report 2025 Year of Action. In: *Debates and Questions - Day 1 - 11 February 2025*. Legislative Assembly of the Northern Territory, Darwin [p.742]. Available at: <https://hdl.handle.net/10070/992670>

² Anti-Discrimination Bill 2025, Serial 28. Available at: <https://legislation.nt.gov.au/LegislationPorta/Bills/~/link.aspx?id=AF92C56CA0444E02854B67F968762F60&z=z>

this exemption. However, we adamantly maintain that religious educational institutions do not need additional ways to discriminate.

The existing Section 35 adequately provides for “genuine occupational qualification” for a job and there has been no evidence provided by religious educational institutions to demonstrate the need for the exemption. It is a legally redundant provision. However, the message this sends will have a profound impact on staff of religious educational institutions and students across the Territory.

Section 20A

The current section 20A prohibits conduct in a public space that is reasonably likely to offend, insult, humiliate or intimidate another people or group of people that is done because of an attribute of a person or group of people. The proposed amendments replace this model with an ‘incite hatred’ model. This means that for hateful conduct to be considered under the Act, it must involve rousing or spurring on others and does not cover direct contact between two people.

It sets the bar so high that even severe experiences of vilification may no longer be covered and will not be effective in addressing the serious, everyday vilification experienced by people in our community. Slurs shouted at a young person with disability on a bus, verbal abuse of an elderly person, or hateful graffiti on public infrastructure – these acts, which the current law addressed, will not be covered under these amendments.

While this ‘incite hatred’ model is used interstate, as these sections of equivalent Acts are rarely used, the caselaw is not settled or agreed and it has not been proven to be an effective model.

Administrative changes

As well as the changes discussed above, the Amendment Bill also sets out various changes to the processes of progressing a complaint through the Anti-Discrimination Commission. NTCOSS is particularly concerned with the removing of evaluations from the Commissioner’s complaints process (repeal of Part 6, Division 4).

Currently, the process requires that if a conciliation is not successful, the Commissioner must evaluate a complaint for referral to the Tribunal. While recognising there are significant resourcing barriers that currently impact this process being completed in a timely manner, the evaluation is a key part of ensuring both complainant and respondent have their case in order before fronting the Tribunal. Without this key step being performed, the Tribunal will likely receive many more cases and cases that are less prepared – significantly increasing their workload and decreasing the ability for people to receive a fair hearing.

Legislative changes - that reduce the support people are entitled to when progressing a complaint under the Act - should not be to address a resourcing and operational issue. We urge the NT Government to instead increase resourcing to the Anti-Discrimination Commission so evaluations can be completed as per the current legislatively required process.

Summary

NTCOSS is deeply concerned that the proposed amendments will make Territorians less safe and urges the NT Government to retain all the current protections in the Anti-Discrimination Act.