

## Media Release – 21 December 2023

### Anti-Discrimination Law Reforms: A Commitment to Strengthen Community Safety, Inclusiveness, Respect and Social Value in Organisations and Businesses in the NT

On 2 January 2024 the second phase of legislative reforms to the *Northern Territory Anti-Discrimination Act 1992* (the 'NT law') becomes effective. These reforms enliven substantive amendments to the NT law that were passed by the Legislative Assembly of the NT in November 2022. Importantly, the reforms future-proof the NT legislation with societal expectations that are consistent with similar developments at a Federal level as well as other states such as Victoria.

The first phase of legislative reforms became effective on 3 July 2023. It was socialised through the Anti-Discrimination Commission (the 'ADC') website and various info-sessions. Please refer to the ADC website at [Phase 1 reforms start | NT Anti-Discrimination Commission](#) for more information on phase one. ADC will be updating the website to reflect changes in the NT law for phase two within the first quarter of 2024.

The second phase introduces a new legal duty called *Positive Duty* and a new complaints mechanism called the *Representative Complaints* process. The reforms confer new functions and powers to the ADC.

	Commencement date	Activation date (of enforcement by ADC)
<b>Positive Duty</b>	<p><b>2 January 2024</b></p> <p>Due to organisational development needs ADC will not carry out any investigations in 2024 to enable readiness of businesses and organisation to be positive duty holders.</p>	<p><b>6 January 2025</b></p>
<b>Representative Complaints</b>	<p><b>2 January 2024</b></p>	<p><b>2 January 2024</b></p> <p>Due to organisational development needs ADC may only accept up to 2 representative complaints in 2024.</p> <p>ADC will build the complaints process and mechanisms together with guidelines in the first quarter of 2024.</p>

## 1. Positive Duty

Positive duty is a new legal duty for organisations and businesses to take positive action to prevent and eliminate discrimination, sexual harassment and victimisation to the greatest extent possible.

Positive duty is compliance-focused, aimed at strengthening organisational value with potential change-behaviour and change-culture outcomes for organisations and businesses. An example of a positive duty model in relation to sexual harassment is Respect@Work developed by former Sex Discrimination Commissioner at the Australian Human Rights Commission, Kate Jenkins AO ([www.respectatwork.gov.au](http://www.respectatwork.gov.au)). At a Federal level, positive duty was introduced in December 2022 but became enforceable on 12 December 2023 under the *Sex Discrimination Act 1982* (Cth) ('Federal law') [Resources on Positive Duty \(humanrights.gov.au\)](http://humanrights.gov.au). In the NT, positive duty will be introduced on 2 January 2024 under NT law but will be activated on 6 January 2025.

### **Difference between positive duty under the Federal law and the NT law**

It is important to note that the scope of positive duty under NT law is broader than Federal law.

Under the Federal law positive duty applies to:

- discrimination on the ground of sex in a work context,
- sexual harassment in connection with work,
- sex-based harassment in connection with work
- conduct creating workplace environment that is hostile on the ground of sex
- related acts of victimisation

Under the NT law, positive duty applies to:

- all twenty-four 'protected attributes' in relation to discrimination
- all seven 'areas' where discrimination can occur, including the workplace
- sexual harassment
- related acts of victimisation

Positive Duty applies to organisations, businesses including 'a person conducting a business or undertaking' and as an 'employer' including:

- Public and private companies
- Unincorporated bodies or associations
- Government departments and authorities
- Local government councils
- Franchisors and franchisees
- Owners and operators of businesses
- Principal contractors and head contractors
- Not-for-profit organisations that engage and pay administrative staff
- Sole traders and self-employed people

### **Investigation Function and Powers**

The Anti-Discrimination Commissioner (the 'Commissioner') may investigate compliance with the duty. The Commissioner may conduct the investigation in any way that the Commissioner considers appropriate.

The Commissioner may take any action the Commissioner considers appropriate including:

- take no further action
- enter into an enforceable undertaking with the person
- prepare a report and publish it or provide to the Minister. A report may include an opinion of the Commissioner about whether compliance with the duty imposed has occurred and recommendations to address compliance.

A report may be referred to by people making individual complaints, or taken into account by NT Civil and Administrative Tribunal (the 'NTCAT') in relation to an individual complaint referred to the NTCAT.

### **Next steps by ADC**

In 2024 the ADC will focus on readiness of organisations and businesses to become positive duty holders. This means taking steps to develop guidelines in consultation with targeted stakeholder groups to enable organisations and businesses become compliant with positive duty obligations from January 2025.

The ADC will need to seek investment in organisational development for capability uplifts and capacity building to in order to undertake any investigations in 2025.

## 2. Representative Complaints

Representative complaints is a new complaints process for representative bodies to make complaints about systemic discrimination. Systemic discrimination means behaviour, practices, policies or programs of an organisation or Government Agency that have the effect of creating or perpetuating disadvantage for a group that shares a protected attribute under the NT legislation.

### **When and how can a representative complaint be made?**

Representative Complaints must be made no later than two years after an instance of systemic discrimination alleged in the complaint, by an organisation or body which has credentials in representing the group affected.

### **Investigation Function and Powers**

The Commissioner must investigate a representative complaint if the Commissioner considers it appropriate to do so. The Commissioner may conduct the investigation in any way the Commissioner considers appropriate.

The Commissioner may make a report on the outcome of the investigation, and the Minister must table a published report in which an Agency or another public body is a respondent, within six sitting days.

A report may include an opinion on whether systemic discrimination has occurred or may occur, and make recommendations to address the systemic discrimination. An example of a recommendation the Commissioner may make is that the organisation review a policy or program; implement specific policies or programs to eliminate discrimination; conduct specific anti-discrimination training; or make a public announcement to explain actions the organisation proposes to take.

The Commissioner can give permission for a representative complaint to be made again if it is initially declined.

### **Next steps by ADC**

The ADC will develop guidelines outlining the process to initiate representative complaints to the ADC by March 2024. After the guidelines are issued the Commissioner may consider up to two representative complaints in the first year of implementation in 2024. This is proportionate to the resourcing available at ADC. The ADC will review the capacity to accept more representative complaints based on future resourcing available.

For more information or to arrange an interview contact: Anti-Discrimination Commissioner Jeswynn Yogaratnam (08) 8999 1444 or [antidiscrimination@nt.gov.au](mailto:antidiscrimination@nt.gov.au)