

# Explanatory Statement

## ANTI-DISCRIMINATION AMENDMENT BILL 2022 SERIAL NO. 64

LEGISLATIVE ASSEMBLY OF THE  
NORTHERN TERRITORY

ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

### EXPLANATORY STATEMENT

#### GENERAL OUTLINE

The purpose of the Bill is to amend the *Anti-Discrimination Act 1992* (Act) and the Anti-Discrimination Regulations 1994 to modernise the Act, to reflect contemporary standards of the Northern Territory community.

#### The Bill amends the Act to:

- include a range of new protected attributes, including 'language, including signed language', 'gender identity', 'sex characteristics', accommodation status', 'employment status', 'employment in sexual services or engaging in sexual services, including past employment in sexual services or engagement in sexual services, 'carer responsibilities', 'subjected to domestic violence', and 'infectious disease status';
- modernise references to and the definition of 'impairment';
- broaden protections relating to the use of assistance animals;
- introduce a positive duty to prevent and eliminate discrimination, sexual harassment and victimisation;
- prohibit vilification because of a protected attribute;
- broaden the prohibition of sexual harassment so that it applies in any context, and is not limited to conduct that occurs in an area of activity referred to in Part 4;
- insert a new area of activity for the administration of laws and government programs;
- narrow or remove a number of exemptions for religious bodies in the areas of education, work, and accommodation;
- ensure people who supply and receive goods, services and facilities are equally protected under the Act;
- allow an organisation or body to make a 'representative complaint' of systemic discrimination;
- amend a number of offences in the Act for consistency with current drafting standards.

## NOTES ON CLAUSES

### Part 1 Preliminary matters

#### Clause 1. Short title

This is a formal clause, which provides for the citation of the Bill. The Bill, when passed, may be cited as the *Anti-Discrimination Amendment Act 2022*.

#### Clause 2. Commencement

This is a formal clause that provides that the provisions of the Act commence on the date or dates fixed by the Administrator, or otherwise on 1 October 2024.

### Part 2 Amendment of Anti-Discrimination Act 1992

#### Clause 3. Act amended

This clause provides that Part 2 deals with amendments to the *Anti-Discrimination Act 1992*.

#### Clause 4. Section 3 amended (Objects)

This clause amends section 3(b) and (c) to simplify the section by succinctly stating that the objects of the Act include to 'prevent and eliminate discrimination, sexual harassment and victimisation to the greatest extent possible'; and ensuring the clause also provides for a new object of the Act.

The new object is to promote the identification and elimination of systemic discrimination. This new object reflects the new representative complaints model proposed for the Act, which is specifically designed to target systemic discrimination.

#### Clause 5. Section 4 amended (Interpretation)

This clause amends a number of definitions in section 4 of the Act, as follows:

(1) Omits the terms ***educational institution, guide dog, impairment, man, marital status, parenthood, sexuality, woman, and work***. These concepts are replaced with updated terminology (detailed below), except for the terms 'man' and 'woman' which are no longer needed, due to amendments made to ensure the Act uses gender neutral terms.

(2) The clause inserts a number of new definitions, as follows:

***accommodation status*** is inserted as this is a new protected attribute under the Act. Accommodation status is defined to include being a tenant, boarder, lodger, licensee; or transient or homeless; or a resident of an aged care facility, disability accommodation or supported care accommodation. 'Homeless' is broadly defined later in clause 5(2) to mean: without access to safe and secure housing.

***assistance animal***, as defined in section 4A (refer to clause 6).

***carer responsibilities*** is inserted in lieu of the former definition of 'parenthood'. 'Carer responsibilities' is defined to mean 'whether or not the person is a parent, or has responsibilities to care for a family member, or near relative or through kinship or otherwise'. This broader definition is designed to ensure people who have carer responsibilities other than as a parent or guardian for a child, for example, a person who is required to care for a spouse, parent or sibling, are also protected under the Act.

**disability** is inserted in lieu of the former definition of ‘impairment’, to reflect that ‘disability’ is the preferred term and for consistency with the *Disability Discrimination Act 1992* (Cth). The substance of the definition itself has also been slightly amended, to reflect modern terminology, for example, ‘learning more slowly’ has been replaced with ‘learning differently’. The terms ‘disability aid’ and ‘support person’ as they appear in this definition, are separately defined in clause 5(2). References to ‘impairment’ throughout the Act are also replaced with the term ‘disability’.

**disability aid** is inserted. The definition provides that a disability aid means equipment, including palliative or therapeutic devices, for alleviating the effect of a disability.

**domestic violence** is inserted as this will be a new protected attribute under the Act. The definition refers to section 5 of the *Domestic and Family Violence Act 2007*.

**educational institution** is inserted. The new definition of ‘educational institution’ clearly includes a ‘childcare centre’, ‘a place that provides educational programs to people in custody’ and ‘another place that provides an education and care service’, which would include after hours and vacation care for students. The reference to the ‘*Training Guarantee (Administration) Act 1990* of the Commonwealth’ which is no longer in force, is also removed. Although it is probable the existing definition would include ‘childcare centres’, this amendment makes it explicit. The effect of this change is to ensure childcare centres, like schools and universities, are subject to the Act, as are places that deliver education to people in custody, and places that deliver education and care for students after hours or during holiday periods.

**employment status** is inserted as this will be a new attribute under the Act. The definition is non-exhaustive but covers people who are unemployed, as well as people receiving a pension or who are part-time, casual or shift workers.

**enforceable undertaking** is inserted to reflect that the Commissioner may accept an enforceable undertaking following an investigation into compliance with the positive duty mentioned in Part 2A, or in the context of a representative complaint.

**enforcement order** is inserted to reflect that the Commissioner may apply to the Local Court for an enforcement order following non-compliance with an enforceable undertaking.

**gender identity** is inserted as this will be a new protected attribute under the Act. A person’s gender identity refers to the person’s personal sense of the body and expressions of gender such as dress and names. It may not align with the person’s assigned sex, or their sex characteristics.

**homeless** is inserted as a definition supporting the new attribute of accommodation status and is defined to recognise the ‘real’ definition of homelessness consistent with the Australian Bureau of Statistics definition in that a person without access to safe and secure housing is homeless.

**individual complaint** is inserted. This is due to the new representative complaints process and will help to ensure a distinction between the two processes.

**infectious disease status** is inserted as this will be a new protected attribute to ensure people with HIV and hepatitis are protected under the Act.

**relationship status** is inserted in lieu of the former definition of ‘marital status’. This change reflects preferred terminology. The substance of the definition itself remains unchanged. In addition, the term ‘widowed’ in this definition is replaced with the more modern reference ‘surviving spouse or de facto partner’.

**representative complaint** is inserted to reflect that the Bill establishes a process for representative complaints to be made to the Anti-Discrimination Commissioner. A representative complaint means a complaint mentioned in section 60(c).

**sex characteristics** is inserted as this is a new protected attribute under the Act, specifically designed to protect people with intersex variations. The definition of 'sex characteristics' is largely drawn from the Yogyakarta Principles as supplemented in 2017 (the Yogyakarta Principles Plus 10).

**sexual orientation** is inserted in lieu of the former definition of 'sexuality'. The modern term 'sexual orientation' is the term used in the *Sex Discrimination Act 1984* (Cth). The definition of 'sexual orientation' is based on the Yogyakarta Principles, which are a set of principles developed and agreed upon in 2006 by international human rights experts and supplemented in 2017.

**sexual services** is inserted as this is a new protected attribute under the Act. 'Sexual services' is defined by reference to section 4 of the *Sex Industry Act 2019* as sex work, and also includes sexual services involving the use or display of a person's body, so as to also protect other persons who work in the broader adult entertainment industry. The term 'sexual services' is used because the attribute applies not only to sex workers but also to others in the adult entertainment industry.

**support person** is inserted as a definition supporting the attribute of disability and means a person who provides assistance or other services to a person who has a disability requiring support to be provided. Examples of the definition include a person who provides assistance as a carer, an assistant or a reader.

**systemic discrimination** is inserted as this is the subject of representative complaints. 'Systemic discrimination' is defined to mean behaviour, practices, policies or programs of an organisation that have the effect of creating or perpetuating disadvantage for a group that shares a protected attribute.

**victimisation**, as defined in section 23(2).

**work** is inserted in lieu of the former definition of 'work'. The new definition is designed to be broader, and reflect modern work places where people with different employers may share the same workplace. The new definition of 'work' is intended to cover secondary students undertaking work experience, tertiary and vocational students undertaking a work placement which is part of their course of study, work undertaken on a voluntary or unpaid basis, people engaged in a work experience program organised by a business rather than an educational institution, unpaid workers seeking to gain experience and contacts in order to advance career prospects; and conduct that happens 'at' workplaces/work environments, irrespective of who the person is employed by and noting that the work environment is no longer limited to the physical work place provided by the employer.

- (3) **Advertisement** paragraphs (a) and (b) are amended to clarify the term includes electronic and digital forms of advertisements.
- (4) & (5) **Club** is amended to remove paragraph (c) which requires that a club sell or supply liquor for consumption on its premises in order to be subject to the Act. This amendment broadens the scope of this term, and will mean that clubs that do not sell or supply liquor for consumption on their premises will become subject to the Act, provided they meet the other criteria in the definition.
- (6) **Near relative** is amended to replace the terms 'brother or sister' with a gender neutral reference to 'sibling'.
- (7) **Proceeding** is amended to include 'an investigation'. This change reflects the Anti-Discrimination Commissioner's new investigative function under the Act, both in relation to the general duty to eliminate discrimination, sexual harassment and victimisation (Part 2A of the Bill), and in relation to representative complaints.

- (8) & (9) **Prohibited conduct** is amended to include ‘offensive behaviour’, to reflect the new ‘causing offence’ provision in section 20A. A slight amendment will also be made to subsection (f) to reflect that the Bill will recast the duty to accommodate a special need as a clear, positive duty (section 24).
- (10) & (11) **Respondent** is amended to clarify that the term includes a respondent that is an organisation alleged in the complaint to have engaged in systemic discrimination.
- (12) Amends subsection (3), (4) and (5) to omit ‘shall’ and replaces with ‘is to’ as technical amendments consistent with modern drafting practice.
- (13) Inserts new section 4(5A) to ensure that a-sexual and a-romantic people are also protected by the Act through reference to sexual orientation.
- (14) Amends section 4(6) to omit ‘shall be deemed’ and replaces with ‘is taken’ as a technical amendment consistent with modern drafting practice.
- (15) Inserts a note at the end of section 4 to refer to definitions and other provisions relevant to the Act may be found in the *Interpretation Act 1978*.

#### **Clause 6. Section 4A inserted**

This clause inserts a new definition of ‘assistance animal’ in lieu of the former definition of ‘guide dog’. The new definition is designed to be broader than the former definition, to cover all appropriately trained or accredited animals (not just dogs), and a broader range of disabilities. The definition requires the animal to be trained or accredited by a training organisation or State or Territory body prescribed by regulation, to assist, in a public place, a person with a disability in relation to the disability.

#### **Clause 7. Section 6 amended (Commissioner)**

This clause amends section 6(2) to allow the Administrator to appoint a person to be the Anti-Discrimination Commissioner for a term no longer than 5 years, instead of the current 3 years. This amendment is intended to more closely align the Northern Territory’s Act with other jurisdictions, which provide for terms between five and seven years as well as with other statutory officer holders in the Northern Territory.

#### **Clause 8. Section 13 amended (Functions of Commissioner)**

This clause inserts a new section 13(1)(ha), to provide the Commissioner with an additional investigative function in relation to compliance with the general duty in Part 2A or in relation to representative complaints under Part 6, Division 4B, and to take any required action arising out of those investigations.

#### **Clause 9. Part 2A inserted**

This clause inserts a new Part 2A into the Act to impose a general duty on people subject to the Act to take reasonable and proportionate measures to prevent and eliminate discrimination, sexual harassment or victimisation to the greatest extent possible.

In determining whether a measure is reasonable and proportionate, the clause provides that a number of factors must be considered including the size of the person’s business or operations, the nature and circumstances of the person’s business or operations, the person’s resources, the person’s business and operational priorities, and the practicability and the cost of the measure.

Compliance with the general duty may be the subject of an own motion investigation by the Commissioner, pursuant to the Commissioner’s new investigative function provided by clause 8.

Following the Commissioner's investigation into the compliance with the general duty, the clause provides that the Commissioner may take any action the Commissioner considers appropriate, including taking no further action, entering into an enforceable undertaking with a person about action required to comply with the Act, reporting to the Minister in relation to the matter, or publishing the report.

The provision ensures natural justice in relation to the Commissioner's report, and requires the Minister to publish certain reports in the Legislative Assembly.

### **Clause 10. Section 19 amended (Prohibition of discrimination)**

This clause inserts a number of new protected attributes into the Act, namely language, including signed language, gender identity, sexual orientation, sex characteristics, relationship status, accommodation status, employment status, employment in sexual services or engaging in sexual services, including past employment in sexual services or engagement in sexual services, carer responsibilities, disability, infectious disease status, and subjected to domestic violence. The inclusion of these additional attributes recognises the attributes as grounds where protection from discrimination are needed.

The clause also omits a number of existing attributes from this section, namely sexuality, marital status, parenthood and impairment.

### **Clause 11. Section 21 replaced**

This clause inserts a new prohibition on vilification called 'offensive behaviour because of an attribute'. The prohibition is modelled on section 18C of the *Racial Discrimination Act 1978* (Cth) but is broader in that it will cover all protected attributes under the Act (not just race).

The provision prohibits a public act that is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or group and is done because of a protected attribute of the person or group. A public act may be applied to the publication of online content that offends, insults, humiliates or intimidates because of a protected attribute.

The test is an objective one, which requires the effect of the act in question to be assessed from the perspective of an ordinary, reasonable member of the relevant group that was targeted.

The prohibition is intended to apply to serious incidents only, such that the conduct complained of must have 'profound and serious effects not to be likened to mere slights.' (Keifel J in *Creek v Cairns Post Pty Ltd* (2001) 112 FCR 352; French J in *Bropho v Human Rights and Equal Opportunity Commission* (2004) 135 FCR 105 in interpreting section 18C of the *Racial Discrimination Act 1978* (Cth)).

Clause 11 also contains an exemption, modelled on section 18D of the *Racial Discrimination Act 1978* (Cth), to the offensive behaviour prohibition, for 'anything said or done reasonably and in good faith' in specified circumstances. For example, in the performance of an artistic work, or in making a fair and accurate report of an event.

This clause also broadens the application of former section 21 through replacing the provision so that it applies to any assistance animal (not just a guide dog) used by a person with a disability (not just a visual, hearing or mobility impairment).

The clause also allows a person to request a person with a disability to produce evidence that an animal is an assistance animal, and the protection against discrimination will not apply if the person cannot produce evidence that the animal is an assistance animal.

'Assistance animal' is defined in section 4A and requires the animal to be trained or accredited by a training organisation or State or Territory body prescribed by regulation, to assist, in a public place, a person with a disability in relation to the disability.

**Clause 12. Section 22 amended (Prohibition of sexual harassment)**

The primary objective of this clause is to broaden the existing prohibition of sexual harassment so that the prohibition applies in all areas of life, not just an area of activity referred to in Part 4 of the Act. The clause also makes technical amendments to modernise drafting, remove gender specific language and replace definitions as consequential changes arising from changes to definitions in the Bill.

The clause also amends section 22(3)(a) to broaden the circumstances that are relevant in determining whether a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the relevant conduct. The broader set of circumstances more closely align with the equivalent circumstances in section 28A(1A) of the *Sex Discrimination Act 1984* (Cth).

**Clause 13. Section 24 amended (Failure to accommodate special need)**

This clause amends section 24 so that it is expressed in positive terms, as a clear obligation to accommodate a special need, rather than as a failure to accommodate a special need. The intention behind this change is to clarify the effect of section 24, and assist the Anti-Discrimination Commissioner to educate the community about this obligation.

**Clause 14. Section 28 amended (Areas of activities)**

This clause amends section 28 to insert a new area of activity being the administration of laws and government programs. The effect of this amendment is that discrimination will be prohibited in the in administration of laws and government programs. Related provisions appear in clause 23.

**Clause 15. Section 30 amended (Exemptions)**

This clause omits section 30(2) which currently allows an educational authority that operates, or proposes to operate, an educational institution in accordance with a particular religion, to exclude applicants who are not of that religion. The effect of removing this exemption is that educational authorities that operate or propose to operate, an educational institution in accordance with a religion will no longer be permitted to exclude applicants on the basis they are not of that religion.

**Clause 16. Section 35A inserted**

This clause inserts new section 35A (Exemption – employment status) to allow discrimination against a person on the basis of their employment status in the area of work, if the discrimination is reasonable, justifiable and proportionate in the circumstances. This will ensure different leave and other entitlements can be applied by an employer to employees on the basis of their employment status, for example, a permanent or casual employee.

**Clause 17. Section 37A repealed (Exemption – religious educational institutions)**

This clause omits section 37A which currently provides an exemption for religious educational institutions in the area of work on the grounds of religious belief or activity and sexuality if done in good faith to avoid offending the religious sensitivities of people of the particular religion. The effect of the exemption is that religious educational institutions are no longer permitted to discriminate when employing staff on the basis of sexuality or religious belief or activity, just as they cannot discriminate in the area of work based on other protected attributes.

### **Clause 18. Section 40 amended (Exemptions)**

This clause omits section 40(2A) which currently allows an educational authority that operates, or proposes to operate, an educational institution in accordance with the doctrine of a particular religion, to discriminate by providing accommodation wholly or mainly for students of that religion. The effect of removing this exemption is that educational authorities that operate, or propose to operate, an educational institution in accordance with a religion will no longer be able to discriminate in the provision of accommodation on the basis of a student's religion.

This clause also amends section 40(3)(a) which currently allows a person to discriminate in the provision of accommodation that is under the direction or control of a religious body if the discrimination is in accordance with the doctrine of the religion and is necessary to avoid offending the religious sensitivities of people of that religion. The amendment will narrow the exemption by adding an additional requirement that the accommodation concerned is wholly within or directly attached to religious premises. 'Religious premises' is defined and means a place of religious worship. The effect of this additional requirement is that the exemption will only be capable of being applied to accommodation where there is clear and close physical proximity between the accommodation concerned and a religious premises, for example, accommodation provided at a religious retreat centre. This means the exemption cannot be applied to accommodation that is clearly detached from a church or other place of worship, even if the accommodation is under the direction or control of a religious body, for example, a commercial or charitable hostel that is run by a religious organisation but does not share premises with a place of religious worship.

The clause also inserts new section 40(5) to ensure the exemption in section 40(3) cannot be applied to accommodation being used for a program funded by, or conducted on behalf of the Territory or the Commonwealth.

### **Clause 19. Section 41 replaced**

This clause replaces section 41 with a new, broader provision that prohibits discrimination not only by a person who supplies goods, services or facilities but also by a person who receives the goods, services or facilities. The intention behind this amendment is to ensure people who provide goods, services and facilities, for example, a waiter or taxi driver, are protected by the Act in the same way their customers or clients are currently protected.

The new provision also omits current section 41(2) which allows non-profit associations to discriminate when supplying goods, services or facilities. The effect of this change will mean that non-profit associations that supply goods, services or facilities will be subject to the same anti-discrimination requirements as other providers of goods, services and facilities.

### **Clause 20. Section 43 amended (Exemptions – cultural or religious sites)**

This clause amends section 43 to clarify that a place of cultural or religious significance may include a place that is not a sacred site as defined in the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth). The definition of sacred site in this Act is adopted by the *Northern Territory Aboriginal Sacred Sites Act 1989* (NT).

### **Clause 21. Section 47 amended (Exemptions)**

This clause amends section 47(1) to allow for discrimination by clubs in membership where the club is established to meet the special needs of a group with a particular attribute. It also omits section 47(3)(a) as the aforementioned amendment will allow for discrimination by clubs in membership on the basis of sex, on the condition the group has a special need.

The clause otherwise amends section 47 to adopt gender neutral terminology.



**Clause 22. Part 4, Division 8 inserted**

This clause inserts a new Division 8 into Part 4 of the Act, to deal with discrimination in the area of the administration of laws and government programs. Proposed new section 49A will apply to a person who performs any function or exercises any power under a law of the Territory or for the purposes of a Territory Government program or has any other responsibility for the administration of a law of the Territory or the conduct of a Territory government program. The section prohibits discrimination by such a person in the performance of their function, the exercise of their power, or the carrying out of their responsibility. This provision is modelled on section 101 of the *Anti-Discrimination Act 1991 (Old)*.

'Territory Government program' is defined to mean: a program conducted by or on behalf of the Territory Government.

**Clause 23. Section 51 amended (Religious bodies)**

This clause amends section 51 of the Act to insert a new subsection (ba) to include the training or education of people as leaders within a religious body. This amendment aligns with the purpose of section 51 as a whole which is about preserving the ability for religious bodies to maintain control over their internal affairs in respect of matters which are inherently religious in nature, including the appointments of certain positions and training of organisation leaders.

**Clause 24. Section 54 replaced**

This clause remodels section 54 so that it uses gender neutral language. The purpose of the provision has not been changed.

**Clause 25. Section 56 amended (Sport)**

This clause amends section 56 so that it uses gender neutral language and makes a consequential amendment to provide for a change in reference from impairment to disability. The purpose of the provision has not been changed.

**Clause 26. Section 60 replaced**

This clause replaces section 60 to enable insertion of section 60(c) allowing an organisation or body (whether or not incorporated) to make a representative complaint to the Commissioner in relation to systemic discrimination.

**Clause 27. Sections 62A and 62B inserted**

This clause inserts new sections 62A and 62B which sets out the requirements for the making of a representative complaint.

Section 62A(1) requires that a representative complaint allege systemic discrimination. Systemic discrimination is defined in section 4. The provision allows a representative complaint to be made in relation to the behaviour, practice, policy or program of one of more organisations.

Section 62A(2) provides that a representative complaint is not required to name any individuals who are affected by the systemic discrimination, or state the number of individuals affected. Section 62A(3) also allows a representative complaint to be made without the consent of any individuals alleged to be affected by the systemic discrimination.

Section 62A(4) ensures that any individual who may be affected by the systemic discrimination that is the subject of a representative complaint, is not precluded from making an individual complaint.

Section 62A(5) defines organisation for the purpose of the section to include an Agency, a body corporate and unincorporated body.

Section 62B provides that guidelines may be issued by the Commissioner in relation to representative complaints, including the factors that the Commissioner may consider when deciding whether to accept or decline a representative complaint.

**Clause 28. Section 64 amended (Form of complaint)**

This clause amends section 64 to clarify that complaints may be lodged with the Commissioner electronically and to allow for representative complaints in amendments to section 64(1).

At clause 29(4), section 64(1A) is inserted to require a representative complaint to establish it is suitably placed, for example because it specialises in a particular area of work, to bring a complaint representing the group affected by the systemic discrimination.

The clause also inserts section 64(3) which will allow the Commissioner to amend a complaint to ensure any alleged contravention of the Act is concisely identified, or to facilitate the efficient resolution of the complaint.

**Clause 29. Section 65 amended (Time limit for making complaint)**

This clause provides that the time frame for making a complaint is 12 months after alleged prohibited conduct took place. For a representative complaint, a complaint must be made within 24 months of an instance of the systemic discrimination alleged in the complaint occurred. Like with individual complaints (which have a shorter time frame of 12 months), the Commissioner retains discretion to accept a complaint outside of the time frame if it is appropriate.

**Clause 30. Sections 66 and 66A replaced**

This clause replaces sections 66 and 66A with a new section 66 to clarify the processes immediately following the making of a complaint. New section 66 will require the Commissioner to first assess a complaint and then decide whether to accept or decline it. For a representative complaint, the Commissioner's decision must be made no later than 90 days after receiving the complaint. For an individual complaint, the time frame is 60 days. Section 66(2) will require the Commissioner to notify the complainant of the decision as soon as practicable after making it.

**Clause 31. Section 66D amended (Complaint declined)**

This clause inserts new section 66D(2) to provide that where appropriate, the Commissioner may allow a representative complaint that has been declined, to be made again, notwithstanding that in the usual course, a complaint that has been declined cannot be made again.

**Clause 32. Section 66F amended (Complaint declined – similar complaints prohibited)**

This is technical amendment to reflect that the Commissioner may only evaluate individual complaints, and that the evaluation process in Part 6, Division 4 of the Act does not apply to representative complaints.

**Clause 33. Section 68 amended (Commissioner may decline or stay a complaint dealt with elsewhere)**

This clause amends section 68(1) to broaden the circumstances in which the Commissioner may decline or stay a complaint dealt with elsewhere. The existing section 68(1) only allows the Commissioner to decline or stay a complaint where there are relevant concurrent proceedings in a court or tribunal. The amendment will also allow the Commissioner to decline or stay a complaint where there has been a finding by a court, tribunal or other public complaints body in relation to the relevant conduct, or where the Commissioner reasonably considers the matter has been adequately dealt with by another entity. An individual complaint that relates to a representative complaint may also be stayed until the representative complaint is resolved.

**Clause 34. Section 71 amended (Withdrawal of complaint)**

This clause amends section 71(3) to allow the Commissioner to investigate a representative complaint even after it has been withdrawn, just as the Commissioner may evaluate an individual complaint after it has been withdrawn.

**Clause 35. Section 82A inserted**

This clause inserts a new section 82A at the start of Part 6, Division 4 to clarify that Division 4 (evaluations) does not apply to representative complaints.

**Clause 36. Section 83 amended (Commissioner must evaluate complaint)**

This clause amends section 83 by inserting section 83(3) to clarify that in the course of evaluating a complaint, the Commissioner may adopt any relevant finding or decisions of a court or tribunal.

**Clause 37. Section 84 amended (Documents or information required to be produced)**

This clause amends the heading of this provision to reflect that the section also allows the Commissioner to require documents to be retained.

The clause also inserts section 84(2A) which will allow the Commissioner, in evaluating a complaint, to order a person to retain a document or class of document for a period, not longer than 6 months. The order must be in writing and specify the document or class of document, and the period of retention.

This clause will also extend the existing offence in section 84 to cover failure to comply with an order of the Commissioner under section 84(2A).

The clause also clarifies that the offence in section 84(3) is an offence of strict liability, to align with the current standard for these offences.

**Clause 38. Section 85 amended (Witnesses)**

This clause amends the offence to specify that strict liability applies to the offence. This aligns with the current standard for these offences.

**Clause 39. Section 87B inserted**

This clause will insert a new section 87B to clarify that the Tribunal may add, substitute or remove a party to a complaint that has been referred to the Northern Territory Civil and Administrative Tribunal.

**Clause 40. Part 6, Division 4B inserted**

This clause inserts a new Division 4B (Investigation of representative complaints) into Part 6 of the Act, to set out the processes for the investigation of representative complaints.

New section 89A provides that the Commissioner must investigate a representative complaint if the Commissioner considers it appropriate to do so and allows the Commissioner discretion to conduct the investigation in any way the Commissioner considers appropriate. These provisions mirror equivalent provisions in section 83 applicable to individual complaints.

New section 89B provides the Commissioner may produce a report on the outcome of the investigation of a representative complaint. The report may include an opinion of the Commissioner as to whether systemic discrimination occurred or might occur and recommendations to address it. New section 89B also provides the Commissioner may publish the report but only after providing natural justice to a person or organisation adversely mentioned in the report through providing a reasonable opportunity to respond. A report about an Agency or other public sector body must be published by the Minister through tabling in the Legislative Assembly.

**Clause 41. Section 100 amended (Anonymity)**

This clause amends section 100 of the Act which provides that the Commissioner may preserve the anonymity of a person involved in proceedings under the Act to insert a new subsection (ab) which extends the meaning of involved in proceedings to individuals alleged to be affected by systemic discrimination in a representative complaint.

**Clause 42. Section 102 inserted**

This clause inserts new section 102 providing that the Commissioner may consider whether a duty under Part 2A, as inserted in clause 9 of this Bill providing a positive duty to eliminate discrimination, sexual harassment and victimisation, has been contravened as part of a conciliation or evaluation of a complaint.

**Clause 43. Sections 107A and 107B inserted**

This clause inserts new sections 107A and 107B into the Act, providing for production of documents and witnesses.

New section 107A provides the Commissioner with an equivalent power to that in existing section 84, regarding the documents or information required to be produced or retained in the course of an investigation of a representative complaint. Failure to comply with a written order of the Commissioner to produce or retain documents or information relevant to the proceedings is a strict liability offence punishable by 100 penalty units or imprisonment for 6 months. A defence of reasonable excuse applies.

New section 107B provides the Commissioner with an equivalent power to that in existing section 85, regarding witnesses in the investigation of a representative complaint. Failure to comply with an order of the Commissioner to take an oath before giving evidence before the Commissioner; and to answer any question asked by the Commissioner, is a strict liability offence punishable by 100 penalty units or imprisonment for 6 months. A defence of reasonable excuse applies.

**Clause 44. Sections 110 and 110A replaced**

This clause replaces the existing offence of obstruction in section 110 with the current standard obstruction offence. This means that intention has been specified as the fault element for the relevant conduct and the reasonable excuse defence has been removed.

This clause also replaces the existing offence of false or misleading information in section 110A with the current standard offence for misleading information. This means that intention has been specified as the fault element for the relevant conduct, rather than strict liability.

This clause inserts a new section 110B providing that the Commissioner may accept an enforceable undertaking. The enforceable undertaking requires a specified action to be taken to comply with the Act to be made by a respondent to a representative complaint or a person in relation to compliance with the positive duty imposed in Part 2A of the Act. New section 110B provides that the enforceable undertaking must be in writing.

This clause also inserts new section 110C providing that the Commissioner may apply to the court for an enforcement order if the enforceable undertaking is not complied with. The court may order compliance with the undertaking and may make other orders relating to the enforceable undertaking.

#### **Clause 45. Section 115 amended (Service of document)**

This clause amends section 115 to allow a notice or document to be served on or given to a person by sending it to the person's email address.

#### **Clause 46. Part 10 inserted**

This clause inserts a new Part 10 into the Act to provide for the transitional matters for the *Anti-Discrimination Amendment Act 2022*.

New section 121 defines, for the purposes of Part 10, the terms 'amending act', 'commencement' and 'offence provisions'. 'Amending act' means the *Anti-Discrimination Amendment Act 2022*. 'Commencement' means the commencement of section 3 of the amending Act. 'Offence provisions' means the provisions of the Act relating to offences.

The effect of new section 122 is to apply the Act as in force before the commencement of the amending act to any complaints made prior to the commencement of the amending act.

The effect of new section 123 is to provide that the amendments are prospective and do not apply to prohibited conduct or system discrimination which took place before the commencement, however may be used as evidence of conduct or practices for prohibited conduct or system discrimination occurring after commencement.

New section 124 provides, in relation to offence provisions before commencement, that the offence provisions amended by the amending Act do not apply so that the offence provisions in effect before amendment are applied to conduct that constitutes an offence occurring before commencement.

#### **Clause 47. Act further amended**

This clause is a formal clause that provides for the effect of the Schedule at the end of the Act. The schedule contains a number of small amendments to reflect modern terminology or drafting practices and are consequential to the amendments to the Act contained in the Bill.

### **Part 3. Amendment of Anti-Discrimination Regulations 1994**

#### **Clause 48. Regulations amended**

This clause provides that Part 3 deals with amendments to the Anti-Discrimination Regulations 1994.

#### **Clause 49. Regulation 1A inserted**

This clause inserts new regulation 1A to prescribe, for the purposes of section 4A(2) of the Act, the approved training organisations and accreditation bodies for assistance animals.

The approved training organisation and accreditation bodies are listed in the Regulation by name and registered ABN and include organisations and bodies across Australia:

- (a) The Royal Society for the Blind of SA Inc
- (b) Guide Dogs Association of SA, NT Inc
- (c) Lions Hearing Dogs Inc
- (d) Assistance Dogs Australia Ltd
- (e) Righteous Pups Australia Inc
- (f) Vision Australia Ltd
- (g) Guide Dogs WA
- (h) Guide Dogs Queensland
- (i) Guide Dogs NSW/ACT
- (j) Guide Dogs Victoria
- (k) Guide Dogs Tasmania
- (l) Dog and Cat Management Board.

#### **Part 4                      Repeal**

#### **Clause 50.      Repeal of Act**

This clause provides that the *Anti-Discrimination Amendment Act 2022* will be repealed on the day after it commences.