



# NT Women Lawyers Association Inc

GPO Box 3384  
DARWIN NT 0801

11 March 2020

Committee Secretary  
Legislation Scrutiny Committee  
GPO Box 3721  
DARWIN NT 0801

*Via email: LSC@nt.gov.au*

Dear Committee Secretary,

## **Submission to the Judicial Commission Bill 2020 - Northern Territory Women Lawyers Association**

The Northern Territory Women Lawyers Association (**NTWLA**) is a not for profit organisation representing the interests of women (and those identifying as women) who work within the law or are currently studying law.

The establishment of a Judicial Commission to investigate complaints about the capacity or conduct of judicial officers or ordinary members of the Northern Territory Civil and Administrative Tribunal is an issue of interest to our members. We commend the Northern Territory Government's progress in actioning this reform in such a timely manner and appreciate the opportunity to make further comment to the Judicial Commission Bill 2020 (**the Bill**).

We note that in 2019, the NTWLA made a submission to the then proposal of the Legal Policy Unit, Solicitor for the Northern Territory for a statutory judicial complaints system. By way of background to this submission, we **enclose** a copy of this correspondence dated 1 July 2019.

We have two comments we wish to make in relation to the Bill.

### 1. Model Proposed

An independent complaint model is the preferred model, given the small size of the Northern Territory legal profession. While we acknowledge the high calibre of the positions, and current people in those roles who would make up the proposed model of the Judicial Commission, we also acknowledge how daunting a decision it would be for a lawyer to bring a complaint to same. The proposed composition of the Judicial Commission in the Bill may require a lawyer to make a complaint about a judicial officer to other members of the judiciary before whom they regularly appear. Given the hierarchical nature of the legal profession, and the barriers female lawyers already experience, it is the NTWLA's view that the proposed model may limit female practitioners' willingness to complain.

Further, we note that the proposed model also requires judicial officers to make decisions against their peers, which is less than ideal, particularly in a small profession in a small jurisdiction.

## 2. Gender Composition of Judicial Commission

As noted in our comments to the Legal Policy Unit in 2019, an issue of critical import in respect of the Bill is gender composition, where the NTWLA recommends that the Judicial Commission comprise a fair representation of women. The proposed positions to make up the Judicial Commission include roles currently occupied by women, however, these positions can and will change over time. It is preferred that the Bill provides for fair representation of women as far as practicable, including at minimum, but preferably more, one female member in the make-up of the Judicial Commission where the complainant is female, if no roles at that time are occupied by women. This is achievable by legislating that the community member appointed must be female in the event a female occupies no other Judicial Commission position. The Bill however should provide for greater representation than one female where practicable, to avoid tokenism.

We appreciate the opportunity to make this submission to the Bill. Should the Committee require further information about this submission, we are contactable via email to [ntwomenlawyers@gmail.com](mailto:ntwomenlawyers@gmail.com).

Yours faithfully,

Caitlin Weatherby-Fell  
Vice-President (Darwin)  
NTWLA

**Enclosed**

NTWLA correspondence to Legal Policy Unit dated 1 July 2019



# NT Women Lawyers Association Inc

GPO Box 3384  
DARWIN NT 0801

1 July 2019  
Ms Fiona Hardy  
Legal Policy  
GPO Box 1722  
DARWIN 0801

Via email: [fiona.hardy@nt.gov.au](mailto:fiona.hardy@nt.gov.au)

Dear Ms Hardy

As the President of the NT Women Lawyers Association (NTWLA), I would like thank you for the opportunity to comment on the proposal for a statutory judicial complaints system.

We are very pleased to hear that work in this area is being undertaken by the Department of the Attorney- General and Minister for Justice together with the Courts. NTWLA shares the belief that reform to develop an appropriate, fair mechanism for dealing with complaints regarding judicial bullying is certainly required.

While in most circumstances we understand the conduct of judicial officers in the Northern Territory generally seen as appropriate and, over a period of time there have been a number of instances that have been reported to us that cause concern. The concern is both about the acute level of distress these issues caused some female members and that it is perceived, rightly or wrongly, there is no really viable method of complaint, other than in the most serious circumstances. Regardless of the outcome of matters to be determined by the Commission we consider that there is a clear process, that is perceived as fair and equitable to all parties is of the utmost importance.

The proposal was circulated to members of the NTWLA Committee in terms of feedback on the proposal:

## **1. Support for proposal**

We support both the general proposal and commend that work is being done in now being done this area.

## **2. Issue regarding composition of Commission**

One issue that was raised is in relation to membership of the Commission, outlined in (B) of the enclosed document. We are concerned that depending on the individuals that hold each of those positions at any given time that the Commission could, at a future point of time be

entirely male. That caused some concern over the possibility that a female member of the profession may make a complaint, that is statistically most likely to be against a male judicial officer, but that it may be adjudicated by an entirely male Commission. We therefore seek that the proposal be amended to ensure that there is at least one, female member of the quorum of 4 members. This could be done in number of ways either by adjusting the community member to be a female or just by adding a provision that a quorum must be constituted by at least one female member.

The basis for the view that it is important to include a guaranteed small proportion of women on the Commission, is the premise that in an area known to significantly affect women there should be at least some safeguard to ensure that there is some gender diversity on a Commission that determines these issues. There are a number of studies including the Law Council of Australia's National Attrition and Reengagement Study and the International Bar Association's Report that indicate female respondents were complaining of being bullied in connection with their workplace at significantly higher rates than male respondents (not only by judicial officers but also by others).

We understand the Northern Territory Government is currently working on the Gender Equality Framework which is being led by Territory Families and for which consultation is about to commence. Ensuring at least some guaranteed inclusion of women would be far more consistent with that work.

In the alternative and perhaps a more gender neutral way of curing this issue would be to have a requirement that Commission who was dealing with a complaint must be comprised of at least a person of each of the same genders as both the complainant and the judicial officer being complained about. This would guarantee that if you had a male complainant, at some time in the future you would also guarantee that men did not have entirely female Commissions to determine the complaint.

If you would like to discuss any of the please feel free to contact me at the address above, via email at [ntwomenlawyersassoc@gmail.com](mailto:ntwomenlawyersassoc@gmail.com) or by phone on 0420 317 678.

Yours faithfully



Bronwyn Haack  
President NTWLA