

‘That’s discrimination!’ Indigenous peoples’ experiences of discrimination in the Northern Territory

By Fiona Allison, Melanie Schwartz and Chris Cunneen

Introduction

The Indigenous Legal Needs Project (the ‘ILNP’) is a national research project currently mapping priority non-criminal legal needs in 32 Indigenous communities across four Australian jurisdictions, including the Northern Territory (‘NT’).¹ The ILNP research is aimed at enhancing Indigenous access to civil and family law justice.

In 2011, the authors travelled through the NT conducting fieldwork for the ILNP in eight focus communities.² Information on legal needs and current legal service delivery was gathered

including discrimination on grounds such as race, marital status, and/or disability.⁶
The questionnaire also asked where any discrimination identified had occurred (in clubs and pubs or in employment

at which the participant said ‘In other words, you don’t rent things to people of my colour... and she just said ‘Yes’ to me, straight out.’

Racial vilification also arose as an issue for participants. Many of the Katherine focus group participants, for example, agreed that whilst various forms of racism in the town were common, verbal expression of racism was especially bad, with one participant stating ‘Some white people see black people on the street ... and they yell out ‘black bastard’.’

The significance of the NT’s legislative and policy context

The police, the courts, the whole lot, the Liquor Act, just across the board— it’s just

With the NTER in place, discrimination appears to have become not just more widespread, but also more blatant. One organisation indicated that because of the NTER:

people think they can say what they like to Aboriginal people without having any recourse. I have been away a short period and I have come back and it's [like it is] peoples' god forsaken right to do what they feel like to Aboriginal people.

Telling only part of the story

It's that really insidious stuff. You can walk down the street and see it every single day, every single minute. But to be able to point at particular things and say 'that's racial discrimination', that's quite difficult (Indigenous legal service staff)

Discrimination was commonly identified as a problem in the NT. We suggest, however, that the ILNP statistical and other data may not be a wholly accurate reflection of the actual incidence of discrimination occurring in the communities visited. It is highly probable, in fact, that it provides only *part* of the story, and that the level of discrimination (and hence of legal need) within the surveyed communities is actually greater than indicated. This provides another basis for identifying discrimination as a priority area in this jurisdiction.

There appears to be some difficulty, for a start, in identifying an incident as 'discrimination'. Indigenous people may view discrimination not as an actionable legal event, but rather as an intolerable but entrenched part of life, about which there is little one can do, for reasons discussed below.¹¹ This leads to underreporting of the issue to legal practitioners and agencies such as the Northern Territory Anti-Discrim

used to it, it's just rife in the Territory'. Further, according to a female focus group participant in Katherine:

Most Aboriginal people, the homeless ones ... they just put up with it ... They just think there's nothing they can do. They don't know that you can go to the law and take 'em up for discrimination and whatever. They don't know about them things.

The NT ADC also states that Indigenous people 'don't even know that they have any rights' and are getting 'treated pretty badly' but 'won't complain'. There may also be gaps in knowledge about relevant agencies to which complaints can be made, as was apparent during ILNP focus groups. In Wadeye, for instance, when participants were asked if they were aware of the NT ADC, only one person knew what it was.

It is not only lack of knowledge about the law or lack of access to information or assistance that hinders redress for discrimination. There are also important gaps in anti-discrimination law in the NT. Neither racial vilification nor indirect discrimination are directly prohibited by the *Anti-Discrimination Act 1992* (NT), although relevant provisions under Federal anti-discrimination law apply in this jurisdiction. Whether this has any impact on the identification and reporting of such

available for achieving meaningful redress, the more likely it is that this type of escalation will occur. Such an escalation gives rise to a raft of further legal and other problems.

Fiona Allison is a Senior Research Officer at the Cairns Institute, James Cook University.

Chris Cunneen is a Professor of Criminology at the Cairns Institute, James Cook University.

Melanie Schwartz is a Lecturer, UNSW Law.