

18 December 2012

The Senate Legal and Constitutional Affairs  
Committee  
Parliament House  
CANBERRA ACT 2600



Dear Sirs

## Domestic Violence as Grounds for Discrimination

The Women's Law Centre of WA Incorporated (WLCWA) is grateful to the Commonwealth Government for the significant advances made to consolidate federal anti-discrimination laws in the exposure draft of the Human Rights and Antidiscrimination Bill 2012. In addition, we are grateful for the opportunity to put forward our views on this matter.

WLCWA is a not-for-profit community legal centre funded by the Commonwealth Attorney General's Department to provide quality legal services to women of WA. WLCWA operates through a human rights framework and aims to achieve improved access to justice for women in WA.

WLCWA provides free legal advice and casework specifically to women facing disadvantage but can provide information about legal issues and referrals to support services to any women. WLCWA assists women facing disadvantage with family law, family and domestic violence, care and protection proceedings, criminal injuries compensation and victims of sexual assault. In addition, WLCWA also provides law reform and policy advocacy, community legal education and professional development training.

WLCWA is aware of the submission to the Senate Legal and Constitutional Affairs by the Equality Rights Alliance (ERA). WLCWA strongly supports the ERA submission and commends it to the Senate Legal and Constitutional Affairs Committee. We therefore endorse and put forward the following recommendations (as per the ERA submission):

### Recommendation 1

The requirement in clauses 23(6), 24 and 25 that employers make reasonable adjustments should be extended to all of the protected attributes in clause 17. Alternatively, at a minimum, reasonable adjustments should be extended to employees with family or caring responsibilities.

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### Recommendation 2

The protection of unlawful behaviour on the ground of 'family responsibilities' should be extended beyond employment to cover all areas of public life.

### Recommendation 3

The term 'family responsibilities' should be changed to 'family and caring responsibilities' throughout the Bill so that it is consistent with the terminology used throughout the Workplace Gender Equality Act 2012 (Cth) and s 351(1) of the Fair Work Act 2009 (Cth).

### Recommendation 4

The definition of 'family responsibilities' in clause 6 should be defined to include domestic relationships and cultural understandings of family, including kinship groups, and members of the carer's household.

### Recommendation 5

'Survivor of domestic or family violence status' should be included in the list of protected attributes in clause 17 and the protection should extend to all areas of public life.

### Recommendation 6

The reference to 'formal equality' should be deleted from clause 3(1)(d)(i) so that it states that the Act's objects are 'the principle of substantive equality'. The objects should be re-ordered to show that the concept of substantive equality is fundamental to the Bill.

### Recommendation 7

Clause 105 should contain a requirement that decisions made by the Australian Human Rights Commission under clause 105(1) and any procedures or guidelines developed by the Commission in order to implement clause 105(1) must be consistent with the Bill's objects as stated in clause 3.

### Recommendation 8

Clause 60 should be extended to comprise a general provision requiring equality before the law which applies to all of the protected attributes.

### Recommendation 9

The attributes 'pregnancy', 'potential pregnancy', 'breastfeeding', 'gender identity' and 'family responsibilities' should be removed from clause 32(1).

### Recommendation 10

The attributes 'pregnancy', 'potential pregnancy', 'sexual orientation' and 'gender identity' should be removed from clause 33(1).

### Recommendation 11

The phrase 'or is necessary to avoid injury to the religious sensitivities of adherents of that religion' should be removed from clause 33(2)(b)(ii).



#### Recommendation 12

Clause 33(3) should be extended to cover all Commonwealth-funded services across all of their activities.

#### Recommendation 13

A guide to damages should be adopted which can be used by judicial officers in discrimination cases. The guide should ensure that the award of compensation properly values the loss suffered by including future loss of pay and career advancement.

#### Recommendation 14

The available remedies in clause 125(2) should be amended so that damages are not limited to compensating the complainant, so courts have the capacity to award punitive damages which will deter future unlawful behavior, and so courts can make wider orders which will bring about the systemic change required to avoid future discrimination.

#### Recommendation 15

Clauses 120 and 122 of the Bill should be amended to include a capacity for organisations to engage in strategic litigation by lodging complaints on behalf of affected persons in court. An organisation should be granted standing in similar terms to clause 89 once the court has granted leave following the application of a public interest test.

#### Recommendation 16

The terms of clause 124 should remain as currently drafted in the Bill.

#### Recommendation 17

The terms of clause 133 should remain as currently drafted in the Bill.

#### Recommendation 18

We request the Committee make a recommendation that the funding to working women's centres, community legal centres, specialist low cost legal services and Legal Aid should be increased so they have the resources to provide legal advice about discrimination, harassment and other matters in the Bill.

#### Recommendation 19

We request the Committee make a recommendation that the Australian Human Rights Commission is provided with additional funding to permit the Commission to intervene in matters before the Federal Court relating to the Bill and to human rights.

Once again we thank you for the opportunity to provide our views on this matter.

Yours sincerely

Lesley Kirkwood  
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WOMEN'S LAW CENTRE OF WA INC