

20 December 2012

Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
Parliament House  
Canberra ACT 2600  
Australia

By email: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Dear Committee Secretary,

### **Exposure Draft Human Rights and Anti-Discrimination Bill**

Women's Legal Services Australia (WLSA) thanks the Senate Legal and Constitutional Affairs Committee for the opportunity to comment on the Exposure Draft Human Rights and Anti-Discrimination Bill (the Bill).

WLSA is a national network of community legal centres specialising in women's legal issues. WLSA provides legal advice, information, assistance and casework for women, particularly those experiencing multiple disadvantage and vulnerability in our legal system. We also undertake legal education to the community and to other professionals on violence against women and legal issues as well as law and policy reform work. The majority of our members have been providing essential legal services to their local communities for 15 years, whilst some of our members have been operating for 30 years.

We endorse the National Association of Community Legal Centre's submission to the inquiry and reiterate the importance of including the status of being a victim/survivor of domestic/family violence as a protected attribute.

Violence against women is a significant violation of human rights<sup>1</sup> that costs the nation \$13.6 billion each year.<sup>2</sup> It is also the biggest single cause of homelessness among women and children.<sup>3</sup>

*CEDAW General Recommendation No 19* makes explicit that gendered violence is a form of discrimination against women as outlined in Article 1 of the *Convention on the Elimination of All forms of Discrimination Against Women (CEDAW)*.<sup>4</sup> Article 2 of

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<sup>1</sup> *Convention on the Elimination of All forms of Discrimination against Women* ratified by Australia on 28 July 1983, CEDAW Committee, *General Recommendation No. 12: Violence against women 1989*, CEDAW Committee, *General Recommendation No. 19: Violence against Women*, 1992.

<sup>2</sup> KPMG, *The Cost of Violence against Women and their Children. Safety Taskforce*, Department of Families, Housing, Community Services and Indigenous Affairs, Australian Government, 2009.

<sup>3</sup> *Women, Domestic and Family Violence and Homelessness: A Synthesis Report*, Commonwealth of Australia accessed on 13 December 2012 at: <http://www.fahcsia.gov.au/our-responsibilities/women/publications-articles/reducing-violence/women-domestic-and-family-violence-and-homelessness-a-synthesis-report?HTML#sum>

<sup>4</sup> *General Recommendation No. 19: Violence against Women* at para 7.



*CEDAW* requires state parties to legislate to prohibit all discrimination against women. Protection from discrimination on the grounds of status of being a victim/survivor of domestic/family violence is therefore consistent with fulfilling Australia's human rights obligations.

The Commonwealth and State and Territory Governments have committed to addressing violence against women through the *National Plan to Reduce Violence against Women and their Children 2010-2022 (National Plan)*. Significantly, the *National Plan* emphasises the importance of a community wide response to violence against women.<sup>5</sup> It also emphasises the need to advance gender equality through improving women's economic participation and independence and developing workplaces measures to support women experiencing and escaping from domestic violence.<sup>6</sup> To include protection from discrimination on the grounds of status of being a victim/survivor of domestic/family violence is consistent with the *National Plan* and would demonstrate the Government's commitment to addressing violence against women.

The 2011 *National Domestic Violence and the Workplace Survey* found that domestic/family violence negatively impacts upon workers.<sup>7</sup> Through our work we also hear of women being denied accommodation as a result of being a victim/survivor of domestic/family violence. It can also impact on training and educational opportunities and access to good and services. We refer to the NACLC submission for case studies on the need for protection from discrimination on the basis of being a victim/survivor of domestic/family violence in all areas of public life.

We acknowledge the significant progress that has been made in including domestic/family violence leave clauses in enterprise agreements and industrial awards. To date 1 million Australian workers are covered by such clauses.<sup>8</sup> However, this does not negate the need for specific anti-discrimination protection as they do not comprehensively address adverse treatment and do not cover all workers.<sup>9</sup> Victims/survivors of domestic/family violence are more likely to work in casual employment, which generally does not include access to paid leave.<sup>10</sup> Further, domestic/family violence clauses only apply in employment and protection is required

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<sup>5</sup> *National Plan*, Strategy 1.1

<sup>6</sup> *National Plan*, Strategy 1.3

<sup>7</sup> Ludo McFerran, *National Domestic Violence and the Workplace Survey*, Australian Domestic and Family Violence Clearinghouse, December 2011 at 18.

<sup>8</sup> Domestic Violence Leave Comes of Age,' Media Release, 30 November 2012 accessed on 12 December 2012 at: <http://newsroom.unsw.edu.au/news/social-affairs/domestic-violence-leave-comes-age>

<sup>9</sup> See: Belinda Smith and Tashina Orchiston, 'Domestic Violence Victims at Work: A Role for Anti-Discrimination Law?' (2012) 25 *Australian Journal of Labour Law* 209 at 218-219.

<sup>10</sup> Suzanne Franzway, Carole Zufferey and Donna Chung, 'Domestic Violence and Women's Employment', Paper presented at *Our Work, Our Lives National Conference on Women and Industrial Relations*, Adelaide, 21 September 2007, citing earlier studies.

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in all areas of public life, including accommodation, education and access to goods and services.

We therefore strongly recommend that status of being a victim/survivor of domestic/family violence should be included as a protected attribute in the final act. If this is not included, in the alternative, including status of being a victim/survivor of domestic/family violence as a protected attribute should be included in the three-year review. We understand that clause 47 of the Bill provides for a review of exceptions within 3 years. We submit this review should also include consideration of additional protected attributes to be added to the legislation.

To discuss any aspect of this submission, please contact Angela Lynch National Law Reform Coordinator on

Yours sincerely,

~~Angela Lynch~~  
~~National Law Reform Co-ordinator~~  
~~Women's Legal Services Australia~~