



20 December 2012

Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
PO Box 6100  
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**

1. Women's Legal Services NSW (WLS NSW) thanks the Senate Legal and Constitutional Affairs Committee for the opportunity to comment on the Exposure Draft Human Rights and Anti-Discrimination Bill.
2. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims compensation, care and protection, human rights and access to justice.
3. WLS NSW has contributed to and we endorse the National Association of Community Legal Centre's submission to the inquiry and make some additional comments regarding the importance of including the status of being a victim/survivor of domestic/family violence as a protected attribute.
4. We note the extensive period of consultations regarding the federal anti-discrimination legislation. This began with the Productivity Commission's Review of the *Disability Discrimination Act* in 2004 and includes the 2008 Inquiry into the effectiveness of the *Sex Discrimination Act 1984 (Cth) in eliminating discrimination and promoting gender equality*. Gaps in anti-discrimination laws were also identified during the National Human Rights Consultation in 2008-2009. It also includes the consultations undertaken by the federal Attorney-General's Department regarding the Consolidation of Anti-Discrimination Laws as well as responses to the Consolidation of Commonwealth Anti-discrimination Laws Discussion Paper.
5. We support the passage of the Human Rights and Anti-Discrimination Bill 2012 through



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parliament, but make the following comments in relation to enhancement.

**Protection from discrimination on the basis of status of being a victim/survivor of domestic/family violence**

*Australia's Human Rights Obligations*

6. Violence against women is one of the most widespread human rights abuses in Australia. Domestic/Family violence puts more women aged 15-44 years at risk of ill health and premature death than any other risk factor.<sup>1</sup> It is the biggest single cause of homelessness among women and children.<sup>2</sup> Violence against women also comes at an enormous economic cost. Research released by the Government shows that each year violence against women costs the nation \$13.6 billion.<sup>3</sup> This figure is expected to rise to \$15.6 billion by 2021.
7. Australia's human rights obligations to eliminate violence against women are outlined in the *Convention on the Elimination of All Forms of Discrimination Against Women 1979* (CEDAW) ratified by Australia on 28 July 1983 and *CEDAW Committee General Recommendation No 12 (General Comment No 12)* and *CEDAW Committee General Recommendation No 19 (General Comment No 19)*.
8. *General Comment No 19* makes clear that gender-based violence is a form of discrimination within Article 1 of CEDAW<sup>4</sup> and Article 2 of CEDAW obliges state parties to legislate to prohibit all discrimination against women. Such violence is a violation of the rights to life, to equality, to liberty and security of person, to the highest standard attainable of physical and mental health, to just and favourable conditions of work and not to be subjected to torture and other cruel, inhuman, or degrading treatment or punishment.<sup>5</sup>
9. Additionally, *CEDAW Concluding Observations* on Australia in 2010 recommended that Australia develop strategies to prevent homelessness resulting from domestic/family violence.<sup>6</sup>
10. The need to recognise domestic violence as a protected attribute in anti-discrimination legislation has also been raised by state and territory anti-discrimination commissions and the Australian Human Rights Commission.<sup>7</sup>
11. Including status of being a victim of domestic/family violence is therefore consistent with Australia's human rights obligations.

<sup>1</sup> VicHealth and Department of Human Services, *The Health Costs of Violence. Measuring the Burden of Disease Caused by Intimate Partner Violence – A Summary of Findings*, 2004 at 10.

<sup>2</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>3</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>4</sup> CEDAW Committee, *General Recommendation No. 19: Violence against Women*, UN Doc A/47/38 (1992), para 7.

<sup>5</sup> *CEDAW Committee General Comment No 19*, para 7. See also: *International Covenant on Civil and Political Rights (ICCPR)* ratified by Australia on 13 August 1980, Articles 2, 3, 7 and 26; *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, ratified by Australia on 10 December 1975, Articles 3 and 10.

<sup>6</sup> Committee on the Elimination of Discrimination Against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women – Australia*, 30 July 2010, CEDAW/C/AUL/CO/7 at paragraph 29 accessed on 12 December 2012 at: <http://www2.ohchr.org/english/bodies/cedaw/cedaws46.htm>

<sup>7</sup> Australian Council of Human Rights Agencies, *Australia's Universal Periodic Review: Progress Report prepared by the Australian Human Rights Commission on behalf of the Australian Council of Human Rights Agencies*, December 2012 at para 30 accessed on 17 December 2012 at: [http://www.humanrights.gov.au/upr/ACHRA\\_UPR\\_Progress\\_Report\\_2012.pdf](http://www.humanrights.gov.au/upr/ACHRA_UPR_Progress_Report_2012.pdf)

*Current protections through enterprise agreements and industrial awards*

12. The 2011 *National Domestic Violence and the Workplace Survey* undertaken through the Safe at Work, Safe at Home Project found that domestic/family violence impacts upon workers in a number of ways including: restricting workers' ability to get to work; the continuation of violence in the workplace through abusive phone calls and emails and the perpetrator attending the workplace. This may result in workers feeling tired, distracted or unwell, undermining performance.<sup>8</sup>
13. Important work has been undertaken to improve access to domestic violence leave through 'domestic/family violence clauses' in enterprise agreements and awards.<sup>9</sup> Significantly, 1 million Australian employees have access to domestic violence leave as a consequence of the inclusion of such clauses in their enterprise agreements and awards.<sup>10</sup> However, this does not replace or reduce the need for specific discrimination protection.<sup>11</sup>
14. Paid leave is an entitlement to take leave where required, for example, where time off is needed to go to court; it does not address negative treatment, attitudes and stereotyping that lead to unfair treatment. Anti-discrimination laws have traditionally been used to address stigma and challenge barriers posed to equal participation in public life.<sup>12</sup>
15. Leave entitlements are only available to employees with 'secure' jobs, contract and casual workers generally have no access to paid leave and research shows victims and survivors of domestic or family violence are more likely to be employed on a casual basis. This leaves the most marginalised workers without protection.<sup>13</sup>
16. This protection is limited to employment only and not to all areas of public life. We refer to the NACLC submission for several case studies highlighting the need for protection from discrimination on the grounds of status of being a victim/survivor of domestic/family violence in all areas of public life.

*Educative function*

17. We further submit that including status of being a victim/survivor of domestic/family violence as a protected attribute would also play an important role in educating and raising awareness within the wider community about domestic/family violence.<sup>14</sup> It would also serve an important normative function, acknowledging that the harm experienced by victims can be

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<sup>8</sup> Ludo McFerran, *National Domestic Violence and the Workplace Survey*, Australian Domestic and Family Violence Clearinghouse, December 2011 at 18.

<sup>9</sup> See Safe at Home, Safe at Work, Domestic and Family Violence Clauses, accessed on 14 December 2012 at: <http://www.dvandwork.unsw.edu.au/domestic-and-family-violence-clauses>

<sup>10</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>11</sup> See examples available on the Safe at Home, Safe at Work Project website: [www.dvandwork.unsw.edu.au/domestic-and-family-violence-clauses](http://www.dvandwork.unsw.edu.au/domestic-and-family-violence-clauses)

<sup>12</sup> Tashina Orchiston and Belinda Smith, 'Empowering Victims of Family Violence: Could Anti-Discrimination Laws Play a Role?' *Australian Review of Public Affairs*, March 2012.

<sup>13</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, 20-21 September 2007, citing earlier studies.

<sup>14</sup> See Andrea Durbach, 'Domestic violence discrimination and the consolidation of Commonwealth anti-discrimination laws,' *Safe at Home, Safe at Work Conference*, 5 December 2011, accessed on 12 December 2012 at: [http://humanrights.gov.au/about/media/speeches/sex\\_discrim/2011/20111205\\_domestic\\_violence.html](http://humanrights.gov.au/about/media/speeches/sex_discrim/2011/20111205_domestic_violence.html)

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exacerbated by negative attitudes and inflexible policies.<sup>15</sup>

18. It is consistent with the *National Plan to Reduce Violence Against Women and their Children, (National Plan)* which aims to engage all in the community to address violence against women<sup>16</sup> and advance gender equality including through developing workplace measures to support women experiencing and escaping from domestic violence.<sup>17</sup>
19. 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.
20. If being a victim/survivor of domestic/family violence is not included as a protected attribute in the final Act, in the alternative, at a minimum, it should be considered a priority issue for inclusion as an additional protected attribute in the three-year review of the legislation. The mandate for this review should be extended to include additional protected attributes to be included in the legislation.
21. To discuss any aspect of this submission, please contact Liz Snell Law Reform and Policy Coordinator or \_\_\_\_\_ on \_\_\_\_\_

Yours sincerely,

Women's Legal Services NSW

Liz Snell  
Law Reform and Policy Co-ordinator

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<sup>15</sup> Tashina Orchiston and Belinda Smith, 'Empowering Victims of Family Violence: Could Anti-Discrimination Laws Play a Role?' *Australian Review of Public Affairs*, March 2012.

<sup>16</sup> *National Plan*, Strategy 1.1.

<sup>17</sup> *National Plan*, Strategy 1.3