

29 September 2023

NSW Law Reform Commission
6 Parramatta Square
10 Darcy Street
Parramatta NSW 2150

By email: nsw-lrc@dcj.nsw.gov.au

Preliminary submission on the review of the *Anti-Discrimination Act 1977 (NSW)*.

Dear NSW Law Reform Commission

Thank you for the opportunity to make a preliminary submission on the review of the *Anti-Discrimination Act 1977 (NSW) (Act)*.

Noting that there will be further opportunities to provide feedback on the review, we have limited our preliminary submission to one key issue – the inclusion of “status as a victim-survivor of domestic, family or sexual violence” as a new protected attribute in the Act. This goes to term of reference 2 to the review (“whether the range of attributes protected against discrimination requires reform”).

About Full Stop Australia

Full Stop Australia (**FSA**) is a nationally focused not-for-profit organisation which has been working in the field of sexual, domestic, and family violence since 1971. We perform the following functions:

- Provide expert and confidential telephone, online and face-to-face counselling to people of all genders who have experienced sexual, domestic, or family violence, and specialist help for their supporters and those experiencing vicarious trauma;
- Conduct best practice training and professional services to support frontline workers, government, the corporate and not-for-profit sector; and
- Advocate to governments and in the media, for laws and systems better equipped to respond to, and ultimately prevent, gender-based violence.

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We acknowledge the traditional owners of country throughout Australia, and their continuing connection to land, sea and community. We pay our respects to them and their cultures, and to elders both past and present.

Our advocacy is guided by the lived expertise of over 350 survivor-advocates in our [National Survivor Advocate Program](#), which gives survivors a platform to share their experiences in order to drive positive change. We are committed to centring the voices of victim-survivors in our work, and advocating for laws and systems that genuinely meet their needs.

The scale of domestic, family and sexual violence

The numbers showing the prevalence of sexual, domestic and family violence in Australia are disturbing.

On average, one Australian woman is murdered every week by a current or former intimate partner. According to the latest Personal Safety Survey released by the Australian Bureau of Statistics (ABS), one in five Australian women has experienced sexual violence since the age of 15, and one in four Australian women has experienced violence from an intimate partner or family member. ABS figures also show that sexual violence is on the rise in NSW – with figures on *Recorded Crime* released in June 2022 showing an 8% increase in sexual assault in NSW, a greater increase than any other state or territory.

Discrimination against victim-survivors of domestic, family and sexual violence

Domestic, family and sexual violence can have far-reaching impacts for victim-survivors, which affects their participation in various areas of public life. For example:

- Victim-survivors may need to be absent from work, school or university in connection with ongoing legal proceedings;
- Victim-survivors who face continuing safety risks from an abusive partner may need to take sudden and unplanned absences from work, school or university for safety reasons (for example, to report an instance of violence to police or move house unexpectedly);
- Victim-survivors may experience abuse and harassment in the workplace or at home – for example, an abuser may stalk a victim-survivor at work or home, or make threatening calls or emails to a victim-survivor at work; and
- Many victim-survivors experience long-term, complex trauma following experiences of sexual, domestic and family violence. This can make it more challenging for them to perform their usual role or complete their studies. It may also require them to take absences from work, school or university to attend counselling meetings to manage the effects of trauma.

Victim-survivors risk facing discrimination in public life due to ongoing challenges associated with sexual, domestic and family violence. For example:

- A victim-survivor's employer might decide to terminate their employment in connection with absences from work taken to attend legal proceedings, counselling appointments or respond to urgent safety concerns;

- A landlord may receive complaints from neighbours about disturbances at their tenant's home, caused by an abusive ex-partner (without the tenant's consent or engagement). The landlord may decide to terminate tenant's lease on that basis.
- An employer may decide to terminate an employee's employment due to their abusive ex-partner attending the workplace and causing a disturbance.

We acknowledge that recent federal reforms entitling all employees to 10 days' paid domestic and family violence leave provide some legal protection in connection with absences from work. However, these reforms do not provide comprehensive protection. They only apply in relation to absences (i.e. they would not protect a person who experiences discrimination as a result of being stalked at home or work), and only in relation to domestic and family violence (i.e. they do not offer protection to victim-survivors of sexual violence that occurred outside a domestic relationship).

Similarly, we acknowledge the Act contains the protected attribute of disability, which may offer protection from discrimination to some victim-survivors in some circumstances. For example, someone diagnosed with mental illness due to the trauma of domestic, sexual or family violence, who needed to be absent from work to attend counselling appointments, may be protected from discrimination in relation to those absences.¹ But again, this does not protect all victim-survivors. Trauma from sexual, domestic and family violence affects everyone differently – and will not always result in a recognised mental illness that meets the requirements in the Act.

A new protected attribute: status as a victim-survivor of sexual, domestic or family violence

The broad-reaching impacts of domestic, family and sexual violence in public life, and the scale of the issue in our society, justifies introducing "status as a victim-survivor of sexual, domestic or family violence" as a new protected attribute in the Act.

This would offer comprehensive protection from discrimination to victim-survivors of gender-based violence, addressing the gaps detailed above.

Ensuring victim-survivors are protected from discrimination, and able to participate fully in public life, is critical for breaking the cycle of violence and trauma. Discrimination can compound challenges victim-survivors face during recovery, making it more difficult for them to build independence and financial security – which in turn, can lead to victim-survivors returning to unsafe relationships. Anne Summers reported on this in 2022, based on the findings of the 2016 Personal Safety Survey:

"An estimated 275,000 Australian women suffered physical and/or sexual violence from their current partner. Of these women, 81,700 (30 per cent) had temporarily left the violent partner on at least one occasion but later returned... For around 15% of these women (12,000), the reason for returning was that they had no money or nowhere else to go. Returning to their

¹ As long as their condition falls within the definition of "disability" in the Act – "a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour."

violent partner seemed a better choice than being homeless or trying to subsist in poverty. The vast majority of these 275,000 women – 193,400 or 70 per cent of them – chose to remain. Not all of them did so happily. Almost 90,000 of them wanted to separate but were unable to do so, with 22,600 saying that lack of money and financial support was the main reason they were unable to leave their violent partner.”²

In addition to being devastating on an individual level for victim-survivors, this has a social and economic cost. As noted by the Australian Human Right Commission, “the costs of domestic and family violence to the Australian economy and to Australian business are exacerbated when victims and survivors are subjected to discrimination (for example where their employment is terminated and costs are incurred in recruiting and training a new employee).”³

Adding “status as a victim-survivor of sexual, domestic or family violence” as a protected attribute would also do the important work of raising awareness and shaping values in relation to gender-based violence. It would recognise that discriminatory attitudes towards victim-survivors can exacerbate harm and trauma victim-survivors have already experienced.

Other jurisdictions

We note that there is precedent for introducing this proposed protection from discrimination in other Australian jurisdictions:

- In the ACT, “subjection to domestic or family violence” is a protected attribute;⁴
- In SA, “discriminat[ion] on the ground of being, or having been, subjected to domestic abuse” is unlawful;⁵ and
- In the NT, having been “subjected to domestic violence” is a protected attribute.⁶

The Australian Human Rights Commission has also acknowledged the need to offer protection from discrimination to victim-survivors of domestic and family violence. Former Sex Discrimination Commissioner, Elizabeth Broderick, identified that:

“Domestic and family violence is a workplace issue. Having domestic/family violence as a new protected attribute in anti-discrimination legislation can provide another avenue of protection for victims and survivors who experience discrimination, as well as lead to improved measures for addressing domestic/family violence.”⁷

² Summers, A. (2022). *The Choice: Violence or Poverty*. University of Technology Sydney. <https://doi.org/10.26195/3s1r-4977>.

³ Australian Human Rights Commission. (2014). *Fact sheet: Domestic and family violence – a workplace issue, a discrimination issue*. <https://humanrights.gov.au/our-work/sex-discrimination/publications/fact-sheet-domestic-and-family-violence-workplace-issue>.

⁴ *Discrimination Act 1991* (ACT) s 7(1)(x).

⁵ *Equal Opportunity Act 1984* (SA) s 85T(g).

⁶ *Anti-Discrimination Act 1992* (NT) s 19(1)(jb).

⁷ Australian Human Rights Commission, above n 3.

Thank you in advance for considering this preliminary submission. Please feel free to contact Emily Dale, Head of Advocacy, on emilyd@fullstop.org.au or 0406 339 500, if you would like to discuss further.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Tara Hunter', written in a cursive style.

Tara Hunter
Acting Chief Executive Officer
Full Stop Australia