

# Question on Notice: Inquiry into Australia's Human Rights Framework.

Thank you again for giving Full Stop Australia the opportunity to be heard in the above Inquiry on 27 September 2023.

We are writing in response to the question we took on notice from Senator Thorpe, which asked what specific protections we would like to see included in a federal Human Rights Act for victims of gender-based crimes, and how we see these intersecting with cultural safety needs.

## Protections for victim-survivors of gender-based crimes

We have outlined below the protections for victim-survivors of gender-based crimes we think should be covered in Federal human rights legislation.

### Right to live free from gender-based violence

Federal human rights legislation should establish a standalone right to live free from gender-based violence.

The numbers showing the prevalence of gender-based 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 Australian Bureau of Statistics Personal Safety Survey, 1 in 5 Australian women has experienced sexual violence since the age of 15, and 1 in 4 Australian women has experienced violence from an intimate partner or family member since the age of 15.

While some of the rights proposed in the AHRC's model offer some protection against gender-based violence, we think standalone recognition of this right is critical. This would recognise the prevalence of this issue in our society. It would mark ending gender-based violence as a key priority for Australia. And it would perform an educative function for the community – by clarifying that this form of violence is not only criminal, and socially sanctioned, but in fact, a human rights violation.

Full Stop Australia is working to put a full stop to sexual, domestic, and family violence through support, education, and advocacy.

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## Equal access to justice for victim-survivors

Victim-survivors of gender-based violence should be included in the “equal access to justice duty” in the Australian Human Rights Commission’s proposed human rights framework.

This includes:

- access to legal representation to understand their rights;
- being given standing, and the right to be independently represented, in criminal proceedings for gender-based violence; and
- access to gender-based violence-informed, trauma informed, culturally safe support services while navigating the justice system.

In relation to accessing legal representation, a survey with victim-survivors in Full Stop’s National Survivor Advocate Program – which gives survivors of gender-based violence a platform to advocate for change – showed victim-survivors currently struggle to access legal representation in sexual violence proceedings, with clear impacts for their experience of the justice system. 84% of survey respondents reported they were unable to access legal services, with many reporting barriers such as cost, limited services in rural areas, long wait lists, discrimination in service provision, and the lack of a clear pathway to legal services. As a result, many reported feeling like they didn’t understand the justice system, being retraumatised and alone, and experiencing a general lack of control over outcomes. Clearly establishing a right to access legal representation, for victims as well as offenders, would make the justice system more responsive to victims’ justice needs.

Meanwhile, victim-survivors do not currently have legal standing in sexual violence proceedings. There is no allocated person with standing to advocate for the interests of victims in sexual violence proceedings – whereas the accused has defence counsel. It’s important to note, the prosecution’s interests may not align with a victim-survivor’s. In addition to causing feelings of disempowerment, this also means there isn’t a reliable mechanism for addressing inappropriate questioning – such that a 2021 study by Professors Julia Quilter and Luke McNamara found that, even in jurisdictions that have introduced affirmative consent laws, cross-examination still often runs contrary to legislation. Questioning on why victim-survivors “didn’t just say no,” and questioning victim-survivors’ credibility over their imperfect recall of (often trivial) events, remains common.<sup>1</sup>

This situation means victim-survivors are often not able to advocate on their own behalf on decisions that directly affect them. As noted by Women’s Legal Service NSW in their submission to this Inquiry:

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<sup>1</sup> Dr Luke McNamara and Dr Julia Quilter, Submission to the Senate Legal and Constitutional Affairs References Committee Inquiry on Current and proposed sexual consent laws in Australia, 2023, (Submission 17).

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*“A duty of equal access for victim-survivors should also include allowing the participation of victim survivors in the criminal legal process where decisions are being made that directly impact them, for instance bail decisions. This can occur through legal representatives or through the direct participation of the victim-survivor. Consulting with and listening to the concerns and wishes of victim-survivors in the legal process acknowledges that they have expertise in the issues that impact them, including the safety of their children and themselves.”*

Finally, we recommend protecting the right to access trauma-informed, culturally safe supports while navigating the justice system. Providing for cultural safety is necessary to ensure the justice system is accessible by all. Currently, this is often not the case. For example, Women’s Legal Service NSW noted in its submission to this Inquiry that its clients have reported having “a limited understanding of, and provision for cultural safety in [legal] processes, particularly in court-ordered processes.” Meanwhile, it’s necessary to specifically provide for a right to trauma-informed and gender-based violence-informed supports – to address the prevalence of retraumatisation through justice system processes.

### **Applying equal access to justice principles to civil proceedings**

We think the above rights should apply not only in criminal proceedings, but also in the range of civil proceedings in which victim-survivors of gender-based violence are commonly involved.

As noted in Women’s Legal Service NSW’s submission:

*“Women who have experienced gender-based violence in family law, immigration law, employment law, social security and other areas of civil law, (as well as in state/territory-based issues such as protection orders and tenancy) [experience] similar human rights implications [to those involved in criminal proceedings]... It is our experience that our clients and their children suffer when they do not have access to early and adequate legal assistance [in these areas]. We have clients who have felt forced by the police and judicial officers to agree to parenting plans with violent partners on the day of a final hearing for a protection order, and have been told those plans have the effect of parenting orders, without having access to family law [advice].”*

Extending rights to legal representation, standing in criminal proceedings (where relevant), and trauma-informed and culturally safe services, to civil as well as criminal proceedings, would increase victim-survivors’ agency and reduce retraumatisation.

### **Right to live free from discrimination**

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Federal human rights legislation should specify that victim-survivors of gender-based violence are protected from discrimination.

The broad-reaching impacts of domestic, family and sexual violence in public life, and the scale of the issue in our society, justifies explicitly protecting victim-survivors of gender-based violence from discrimination.

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 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.”<sup>2</sup>*

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).”<sup>3</sup>

Specifically protecting victim-survivors of gender-based violence from discrimination 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.

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

<sup>3</sup> 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>.

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## Embedding cultural safety

It is critical that the development of a human rights framework – including, but not only, our proposals above in relation to gender-based violence – be led and informed by First Nations people. This reflects the principle of self-determination, expressed in Article 1 of both the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights. Article 1 provides, “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

As an intersectional feminist organisation committed to centring lived expertise, Full Stop firmly believes it’s only possible to respond to critical issues impacting human rights, such as gender-based violence and systemic racism, when responses are genuinely and deeply informed the people impacted by them. We acknowledge the disproportionate impact of gender-based violence on Aboriginal women, as well as the (usually unmet) cultural safety needs of Aboriginal people and communities.

Above, we have submitted that victims of gender-based violence should have a right to access “culturally safe supports while navigating the justice system.”

In addition to this standalone right to cultural safety, embedding cultural safety is foundational to protecting and promoting the victim-survivors rights articulated above. Cultural safety would be the underlying feature of each of those rights. To truly meet the diverse needs of victim-survivors, the human rights framework must reflect and speak to diverse needs and experiences – including the need for cultural safety.

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