

Redfern Legal Centre



COMMONWEALTH SENATE FINANCE AND PUBLIC ADMINISTRATION
COMMITTEES

19 April 2016

Attention: Commonwealth Senate Finance and Public Administration Committees

Please find attached our policy submission: **'Domestic violence and gender inequality in the workplace'** in response to the inquiry into 'Domestic violence and gender inequality'.

We would welcome the opportunity to appear before the Committee/ meet with you to further discuss our submission.

Yours faithfully,

Redfern Legal Centre

Joanna Shulman
Chief Executive Officer

Redfern Legal Centre



SUBMISSION:

'DOMESTIC VIOLENCE AND GENDER INEQUALITY IN THE WORKPLACE'

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DATE: 19 APRIL 2016

1. Introduction: Redfern Legal Centre

Redfern Legal Centre (RLC) is an independent community legal centre providing access to justice for disadvantaged individuals in the Redfern area and across NSW. RLC has a particular focus on human rights and social justice, with specialised practices in domestic violence, tenancy, credit and debt, employment, discrimination and complaints about police and other governmental agencies.

Through our exposure to vulnerable clients across this range of legal practice areas, RLC has unique insight into common legal difficulties and the value of potential reform. We work collaboratively with key partners to promote awareness of legal issues and legal rights within the community.

2. RLC's work in domestic violence and gender inequality in the workplace

RLC has a long and proud history in combating domestic violence and is a leader in driving social change on this endemic issue. RLC runs the Sydney Women's Domestic Violence Court Advocacy Service which is the major provider of legal and welfare assistance to women and children experiencing domestic violence in the Sydney area. From July to December 2015, the service provided assistance to victims of domestic violence on over 4,500 occasions.

RLC also provides a Domestic Violence Workplace Training Program designed to share our experience and expertise with employers and employees on the dynamics of domestic violence. The training provides guidance on best-practice policy pathways for employers to support victims of domestic violence, enabling workplaces to drive the social change needed to address Australia's domestic violence endemic.

3. Executive summary

In addressing the terms of reference into the role of government initiatives in preventing the underlying causes of domestic violence, including the role of the *National Plan to Reduce Violence against Women and their Children 2010-2022* (the National Plan), RLC makes its submission to the Commonwealth Senate Finance and Public Administration Committee Inquiry, with a particular focus on gender inequality and domestic violence in the workplace.

RLC has extensive experience in domestic violence and related issues that occur in employment and the workplace setting. Structural inequality in employment limits women's participation in the workforce and reinforces gender stereotypes that entrench discrimination against women, this then enables a culture of domestic violence to manifest.

Too often RLC observes the gaps in a legal framework that fails to protect victims and their family from the reach of domestic violence, and the discrimination that often follows, in the workplace. The barriers that women face in the workplace directly impact on their financial independence and earning capacity, and can compound disadvantage regarding their ability to access accommodation and goods and services. The financial limitations that stem from gender inequality, and a lack of legal protections in employment, create a

harrowing reality for women, where victims of domestic violence are put at significant risk of serious harm and have a diminished capacity to leave abusive situations, as recognised in the State of Victoria's *Royal Commission into Family Violence*.¹

It is not possible to address domestic violence in this country without addressing the structural gender equality gaps that exist in Australian workplaces.

3.1 RLC's summary of recommendations

RLC welcomes the opportunity to make a submission to the Commonwealth Senate Finance and Public Administration Committees' inquiry into domestic violence and gender inequality.

Recommendation 1:

Commonwealth Government to legislate for a substantively fairer and gender neutral parental leave policy to address gender inequality in parental responsibilities.

Recommendation 2:

Commonwealth Government to investigate and report on models of equitably subsidised and accessible childcare.

Recommendation 3:

Commonwealth Government include "Victim of Family and/or Domestic Violence" as a protected attribute within the *Sex Discrimination Act 1984* (Cth), and any other relevant anti-discrimination laws. Additionally, RLC advocates the amendment of s351 and a paid domestic violence leave clause in the *Fair Work Act 2009* (Cth).

4. Introduction to domestic violence and gender inequality

While the precise catalyst for domestic violence in any particular case can be difficult to identify, it is internationally recognised that gender inequality and community attitudes towards women are both a root cause and consequence of it.²

¹ State of Victoria, *Royal Commission into Family Violence: Summary and recommendations*, Parl Paper No 132 (2014–16), pp. 30; 74. Accessed 30 March 2016 at <http://www.rcfv.com.au/Report-Recommendations>; Braaf & Meyering, 'Seeking Security: Promoting Women's Economic Well-Being Following Domestic Violence' *Australian Domestic and Family Violence Clearinghouse*, (2011), p. 5.

² United Nations, Declaration on the Elimination of violence against Women (1993), UN Doc.

Domestic violence, family violence, intimate partner violence, and violence against women, interchangeably refer to what is recognised as gendered violence.³ Men are the overwhelming perpetrators of gendered violence against women and children, and such violence often occurs in private rather than public spaces.⁴ Gendered violence is rooted in the systemic power imbalance men hold over women, the manifestations of which are wide reaching and can include “physical, sexual or psychological harm or suffering, including threats of harm or coercion, in public or in private life”.⁵ Factors that contribute to gendered violence can include financial pressures, substance abuse, and other forms of social and economic exclusion, which manifest from intersectional disadvantage, including race, disability, migration status, LGBTI status, language, and age.⁶

5. Glass ceilings and gaps in the workplace for women

Significant gaps remain for women in being able to enjoy substantive equality in the workplace. A range of gender equality gaps exist in the workplace which have immediate and long term effects on women, including:

- A national gender pay gap of 17.3% (based on full time, adult, Average Weekly Ordinary Time Earnings).⁷

A/RES/48/104; Our Watch, VicHealth, ANROWS, ‘Change the Story: A shared framework for the primary prevention of violence against women and their children in Australia’, (2015); Commonwealth Department of Social Services, ‘Second Action Plan 2013-2016 – Moving Ahead’ – of the ‘National Plan to Reduce Violence against Women and their Children 2010-2022’.

³ United Nations, Declaration on the Elimination of violence against Women (1993), UN Doc.

A/RES/48/104.

⁴ Commonwealth Department of Social Services, ‘National Plan to Reduce Violence against Women and their Children 2010-2022’, Introduction; VicHealth, Australians’ attitudes to violence against women: Findings from the 2013 National Community Attitudes towards Violence Against Women Survey (2014).

⁵ United Nations, Declaration on the Elimination of violence against Women (1993), UN Doc.

A/RES/48/104. See also State of Victoria, *Royal Commission into Family Violence: Summary and recommendations*, Parl Paper No 132 (2014–16), p. 3.

⁶ Commonwealth Department of Social Services, ‘National Plan to Reduce Violence against Women and their Children 2010-2022’, Introduction; Hameed, S., (UNSW Gendered Violence Research Network), ‘Good Practice Review - FSV and the Workplace Strategies’, (2014).

⁷ Workplace Gender Equality Agency, ‘Gender pay gap statistics’, (2016), p. 2. Accessed on 8 April 2016 at https://www.wgea.gov.au/sites/default/files/Gender_Pay_Gap_Factsheet.pdf.

- Women only constitute 35.7% of full-time employees, but are overrepresented when it comes to part-time and casual work, comprising 69.1% of all part-time employees and 54.7% of all casual employees.⁸
- The workforce participation rate for women is 59.5%, while for men it is 71%.⁹
- The gap in workforce participation widens for women who have children. Mothers who have a child aged 0-5 have a participation rate of 57.5% in the labour force, compared with 94% of fathers.
- Women continue to be poorly represented in key senior leadership positions, forming only 21.9% of directors in the ASX 200 in 2016, while 12.0% of ASX 200 companies do not have a woman on their board. Women hold 14.2% of chair positions, 23.6% of directorships, as well as represent 15.4% of CEOs and 27.4% of key management personnel in organisations that report to the Workplace Gender Equality Agency.¹⁰
- Average superannuation balances for women at retirement are 52.8% less than those for men.¹¹
- 453 discrimination complaints were made to the Australian Human Rights Commission under the *Sex Discrimination Act 1984* (Cth) (SDA) in 2014-15, 77% of which were in the area of employment. Women accounted for 79% of all complainants under the SDA, of which 46% of complaints were made on the ground of sex (gender) discrimination, 13% for pregnancy, and 19% for sexual harassment.¹²
- Discrimination in the workplace related to pregnancy, parental leave and return to

⁸ Workplace Gender Equality Agency, 'Gender workplace statistics at a glance' (2016), p. 1. Accessed on 8 April 2016 at https://www.wgea.gov.au/sites/default/files/Stats_at_a_Glance.pdf.

⁹ Workplace Gender Equality Agency, 'Gender workplace statistics at a glance' (2016), p. 1. Accessed on 8 April 2016 at https://www.wgea.gov.au/sites/default/files/Stats_at_a_Glance.pdf.

¹⁰ Workplace Gender Equality Agency, 'Gender workplace statistics at a glance' (2016), p. 1. Accessed on 8 April 2016 at https://www.wgea.gov.au/sites/default/files/Stats_at_a_Glance.pdf.

¹¹ Workplace Gender Equality Agency, 'Gender workplace statistics at a glance' (2016), p. 1. Accessed on 8 April 2016 at https://www.wgea.gov.au/sites/default/files/Stats_at_a_Glance.pdf.

¹² Australian Human Rights Commission, 'Annual Report 2014-15', (2015), Appendix 1. Accessed on 10 April 2016 at <https://www.humanrights.gov.au/our-work/commission-general/publications/annual-reports>.

work is pervasive, with one in two mothers experiencing discrimination.¹³

Gender equality gaps continue to reinforce stereotypes of women in the workplace and their role in society, which limits their participation in the workforce directly, reduces their financial capacity and security, and can exacerbate and contribute to incidents of domestic violence.

6. Primary prevention of domestic violence and gender inequality in the workplace – parental responsibilities

The deep-rooted gender norms that attach to the roles women and men play in raising children are a prevalent source of gender inequality, and they have a detrimental impact on women in the workplace.¹⁴ Gender norms assume that women are the primary carer and nurturer of children, and are responsible for related domestic duties, while men work and take care of family financial responsibilities.¹⁵ In the workplace, the conventional anecdote is that women must choose between having a child or a career. This reality is reflected in the data. Women are underrepresented in key leadership positions and are more likely than men to work part-time or flexibly because of their caring responsibilities that limit their participation in the workforce.¹⁶

The Commonwealth's paid parental leave scheme under the *Paid Parental Leave Act 2010* (Cth) (PPL) does little to combat the gender norms. The PPL provides 18 weeks of paid leave to the "primary carer" of a child. While the term conceivably applies neutrally across genders, women are overwhelmingly the recipients of paid leave as the

¹³ Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Review – Report*, (2014), p. 8. Accessed on 10 April 2016 at <https://www.humanrights.gov.au/our-work/sex-discrimination/projects/supporting-working-parents-pregnancy-and-return-work-national>

¹⁴ Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Review – Report*, (2014). Accessed on 12 April 2016 at <https://www.humanrights.gov.au/our-work/sex-discrimination/projects/supporting-working-parents-pregnancy-and-return-work-national>

¹⁵ Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Review – Report*, (2014). Accessed on 12 April 2016 at <https://www.humanrights.gov.au/our-work/sex-discrimination/projects/supporting-working-parents-pregnancy-and-return-work-national>; Workplace Gender Equality Agency, *Gender pay gap statistics*, (2016), p. 3. Accessed on 8 April 2016 at https://www.wgea.gov.au/sites/default/files/Gender_Pay_Gap_Factsheet.pdf.

¹⁶ Workplace Gender Equality Agency, *Gender pay gap statistics*, (2016), p. 3. Accessed on 8 April 2016 at https://www.wgea.gov.au/sites/default/files/Gender_Pay_Gap_Factsheet.pdf.

primary carer.¹⁷ This reality was acknowledged prior to the enactment of the legislation, in the explanatory memorandum to the Bill, frequently noting that the primary carer is “usually the mother”.¹⁸ In response, legislation provides a paid two-week leave scheme reserved for fathers and partners under the *Paid Parental Leave and Other Legislation Amendment (Dad and Partner Pay and Other Measures) Act 2012* (Cth) (DaPP). Sadly, the DaPP was not designed as a measure to address gender inequality in parental responsibilities, rather it was to enable dads and partners to “take time off work to support new mothers” to do the parenting.¹⁹ The DaPP in its current form is inadequate to address deep-rooted gender norms that hold it is women’s role to raise children, while men work and take care of family financial responsibilities.

This gender divide in the norms of parental roles is a significant cause of sex discrimination in the workplace and by extension, is another example of gender inequality as a driver of domestic violence. As the Australian Human Rights Commission’s *Supporting Working Parents: Pregnancy and Return to Work National Review* found discrimination in the workplace related to pregnancy, parental leave and return to work is pervasive with one in two mothers and one in four fathers or partners experiencing discrimination.²⁰

Recommendation 1

Commonwealth Government to legislate for a substantively fairer and gender neutral parental leave policy to address gender inequality in parental responsibilities.

This recommendation is designed as a primary prevention mechanism to address the inherent inequality in gender norms that prescribe it is the role of women to raise children, while men work and take care of family financial responsibilities. Primary prevention mechanisms are designed as whole-of-population initiatives to address gender inequality

¹⁷ Australian Human Rights Commission, ‘*Supporting Working Parents: Pregnancy and Return to Work National Review – Report*’, (2014). Accessed on 12 April 2016 at <https://www.humanrights.gov.au/our-work/sex-discrimination/projects/supporting-working-parents-pregnancy-and-return-work-national>

¹⁸ Explanatory memorandum to the *Paid Parental Leave Bill 2010* (Cth). Accessed on 12 April 2016 at http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4347_ems_e301683b-7b39-4fde-a5f5-f7935d163802/upload_pdf/342572.pdf;fileType=application%2Fpdf.

¹⁹ Department of Social Services, ‘Paid Parental Leave: Dad and Partner Pay Minister’s Foreword’. Accessed on 14 April 2016 at <https://www.dss.gov.au/our-responsibilities/families-and-children/programs-services/paid-parental-leave-scheme/paid-parental-leave-dad-and-partner-pay>.

²⁰ Australian Human Rights Commission, ‘*Supporting Working Parents: Pregnancy and Return to Work National Review – Report*’, (2014), p. 1. Accessed on 12 April 2016 at <https://www.humanrights.gov.au/our-work/sex-discrimination/projects/supporting-working-parents-pregnancy-and-return-work-national>.

as an underlying driver of domestic violence.²¹

A substantively fairer and gender neutral parental leave policy suite should include:

- A substantial non-transferable (take it or leave it) paid leave period for fathers, on top of an additional paid period of shared leave. As an example, the policy could provide for a total of 15 months paid leave, 12 of which can be shared by the mother and father. The remaining three months will only become active if the father elects to take the non-transferable leave period. The policy should provide a financial bonus to men, logically in the form of a higher percentage cap proportionate to their wage, as an incentive to elect to share the leave periods equally.
- Removal of the requirements in section 65(2)(a) and section 67 of the *Fair Work Act 2009* (Cth) (FWA) that requires 12 months continuous service from an employee before they qualify for flexible working requests and job security in regard to parental leave.

This paid parental leave policy is modeled off schemes in Iceland, Norway, Finland, and Sweden, each providing 50+ days of non-transferable leave for fathers,²² which have had positive results in fostering gender equality, with these countries comprising the top four in the World Economic Forum's *Global Gender Gap Index 2015*, respectively.²³ Research has also shown that father-specific incentive based parental leave policies have recast expectations of gender roles at work and at home.²⁴ Further, such changes are likely to alter employers' attitudes towards women of child-bearing age, if men are entitled and encouraged to take half of the parental leave offered.

Removal of the requirements in section 65(2)(a) and section 67 of the FWA will immediately provide more flexibility and financial security and job protection to women during childbirth, who are detrimentally affected by the current 12 month qualifying period. As previously canvassed, financial capacity and independence is crucial to a woman's

²¹ Our Watch, VicHealth, ANROWS, 'Change the Story: A shared framework for the primary prevention of violence against women and their children in Australia', (2015), p. 15.

²² International Labor Organisation, '*Maternity and paternity at work: Law and practice across the world*', (2014), Appendix IV. Accessed on 8 April 2016 at http://www.ilo.org/global/about-the-ilo/multimedia/maps-and-charts/WCMS_241699/lang--en/index.htm.

²³ World Economic Forum, '*Global Gender Gap Report 2015*', (2015). Accessed on 12 April 2016 at <https://www.weforum.org/reports/global-gender-gap-report-2015>.

²⁴ Ankita Patnaiky, 'Working paper Making Leave Easier: Better Compensation and Daddy-Only Entitlements', *Cornell University*, (2013).

capacity to leave abusive situations.²⁵ In the long term, its removal is symbolic that Australia accepts that raising a child is part of the usual course of life and work for parents in our society.

Recommendation 2

Commonwealth Government to investigate and report on models of equitably subsidised and accessible childcare.

The Commonwealth Government should strive to implement an equitable and accessible childcare system for Australian families. Such a system should be available to all children and be accessible at an equitably subsidised cost.

As it is envisaged that a cultural shift in relation to parental responsibilities will take time, the biggest impact of this policy reform will immediately benefit women in being able to return to work full-time rather than part-time, as recognised by the Australian Productivity Commission's report into *Childcare and Early Childhood Learning*.²⁶ Such a childcare system exists in Sweden, and has had tremendous results. According to OECD figures from 2013, about 80% of Swedish mothers work full-time, compared to just over 60% in Australia who work, and that doesn't take into account that 69.1% of those mothers work part-time.

7. Tertiary prevention of domestic violence and gender inequality – reform of the Sex Discrimination Act 1984 (Cth) (SDA), the Fair Work Act 2009 (Cth) (FWA), and any other relevant anti-discrimination laws

Redfern Legal Centre strongly supports the development of legislation to protect victims of family and domestic violence under anti-discrimination laws. Currently, without anti-discrimination protection, victims of family and domestic violence face significant barriers in the workplace, access to accommodation and access to goods and services as a result of discriminatory actions taken as a result of their situation. Such discrimination puts victims at significant risk of harm and reduces the capacity of individuals to leave abusive situations.

²⁵ State of Victoria, *Royal Commission into Family Violence: Summary and recommendations*, Parl Paper No 132 (2014–16), pp. 30; 74. Accessed 30 March 2016 at <http://www.rcfv.com.au/Report-Recommendations>; Braaf & Meyering, 'Seeking Security: Promoting Women's Economic Well-Being Following Domestic Violence' *Australian Domestic and Family Violence Clearinghouse*, (2011), p. 5.

²⁶ Productivity Commission, *Childcare and Early Childhood Learning: Overview*, Inquiry Report No. 73, (2014), Canberra.

7.1 Discrimination in employment

7.1.1 Importance of employment

The value of employment for victims of domestic violence is self-evident. Stable employment allows individuals to be financially independent of their partners, and can assist in securing and maintaining accommodation, thus providing avenues to leave situations of domestic violence where possible. Perhaps unsurprisingly, a recent study found that lack of financial independence was an obstacle to leaving an abusive situation for a number of women experiencing domestic violence,²⁷ while paid employment is a pathway to establishing a new life away from an abusive situation.²⁸ Ensuring victims of domestic violence have access to stable employment is therefore paramount in helping to reduce rates of domestic violence and assisting victims to leave abusive situations. In addition, the reduction in uncertainty or anxiety concerning employment or financial situations can have a positive impact on individuals' mental health.

7.1.2 How do victims of domestic violence experience discrimination in employment?

Unfortunately, the impacts of domestic violence on individuals frequently extend to the workplace. 19% of respondents in a recent study who reported experiencing domestic violence in the past 12 months declared that domestic violence continued in the workplace.²⁹ This could occur either through an abuser physically attending the workplace, making threatening calls or emails, or the negative impact of the abuse making it difficult to work effectively. Interestingly, when the colleagues of victims of domestic violence were surveyed, a much high number (36%) reported domestic violence as continuing in the workplace.³⁰

Further, situations of domestic violence can create a range of needs, including the need to take time off work for medical reasons or have flexible working arrangements to accommodate appointments with medical and legal professionals or for childcare reasons. A number of clients of the Women's Domestic Violence Court Assistance Scheme (WDVCAS) have reported that workplaces are not supportive of the needs created by

²⁷ Braaf & Meyering, 'Seeking Security: Promoting Women's Economic Well-Being Following Domestic Violence' *Australian Domestic and Family Violence Clearinghouse*, (2011), 5.

²⁸ Braaf & Meyering, 'Seeking Security: Promoting Women's Economic Well-Being Following Domestic Violence' *Australian Domestic and Family Violence Clearinghouse* (2011), 85.

²⁹ Ludo McFerran, ADFVC and Micromex 'Safe at Home, Safe at Work? National Domestic Violence and the Workplace Survey' (2011), 10

³⁰ Human Rights Law Centre, 2012, 'Realising the Right to Equality', HRLC, 26.

domestic violence.³¹

Without anti-discrimination legislation providing protection for victims of family and domestic violence, the cumulative effect of these impacts – both the continuation of domestic violence in the workplace and the additional needs created by the situation – can become grounds for termination of employment contracts, or can force an employee to leave a position where his or her concerns and arrangements cannot be adequately accommodated. Such decisions essentially punish victims for an abusers' wrongdoing, and can put a victim at further risk of abuse through limiting their capacity for financial independence.

Further, individuals who have experienced family and domestic violence often face difficulty in finding employment in the first place. The experience of violence can frequently lead to prolonged periods of unemployment or an irregular work history,³² either as a result of restrictions placed on them by an abusive partner or because they were physically or psychologically unable to engage in work. Similarly, women who have experienced violence are more likely to have erratic career paths or to accept part-time or casual work.³³ This work history may lead prospective employers to discount the qualifications or skills of a victim of domestic violence as a potential employee on their application to a position.

7.2 Discrimination in access to accommodation

7.2.1 Importance of secure accommodation

Secure and ongoing accommodation is a fundamental right for everyone, and for victims of domestic violence it represents a crucial element of ensuring a safe pathway to leave an abusive situation. According to information from Flinders University published by the Department of Social Services in 2008, "Domestic and family violence is overwhelmingly the major reason women seek assistance" from accommodation services, and is a major cause of homelessness among women and children.³⁴ It is therefore evident how crucial achieving secure and stable accommodation is to ensure victims of family and domestic violence do not fall into homelessness, and to provide opportunities to leave and remain

³¹ Redfern Legal Centre, 'Submission to the Australian Law Reform Commission on Family Violence- Commonwealth Laws' (2011)

³² A Dunkley & J Phillips, 2015, 'Domestic Violence in Australia: A Quick Guide to the Issues', *Parliamentary Library*, Parliament of Australia, Research Paper Series 2014-15

³³ Braaf & Meyering, 'Seeking Security: Promoting Women's Economic Well-Being Following Domestic Violence' *Australian Domestic and Family Violence Clearinghouse* (2011), 85.

³⁴ Tually, Faulkner & Slatter, 2008, 'Women, Domestic and Family Violence and Homelessness: A Synthesis Report', *Commonwealth of Australia*, 13.

away from abusive situations.

7.2.2 How do victims of domestic violence experience discrimination in accessing accommodation?

Research indicates that victims of family and domestic violence frequently experience discrimination in attempting to access housing. This can include landlords or housing providers who believe an individual may not be a reliable tenant as a result of their situation,³⁵ or as a result of behaviour by their partner or former partner, a form of discrimination which again punishes and endangers the victim on account of the perpetrator's wrongdoing. Additionally, the strong correlation between Domestic Violence and Homelessness means individuals attempting to access housing services are frequently doing so from a situation of homelessness. Gaps in housing records or difficulty identifying contact details can work against individuals seeking housing, meaning it can be difficult for victims of domestic violence to access accommodation once they have experienced homelessness.³⁶

RLC has observed this form of discrimination or disadvantage occurring for a number of clients of both our tenancy and WDVCS services. This included a client who faced eviction from NSW Housing premises due to the illegal use of her property by her partner, who had been using her property for the supply of a prohibited drug. This had been occurring against our client's wishes, but, due to the financial and emotional abuse her partner had previously inflicted, she did not feel in a position to deny him access to her property. Fortunately, through RLC's advocacy, the Tribunal determined the eviction would not proceed. This matter demonstrates the systemic obstacles victims of domestic violence can experience as a result of their partner's actions.

7.3 Discrimination in access to goods and services

While there has not been in depth research conducted into the extent of discrimination faced by victims of domestic and family violence in accessing services, multiple organisations have identified this as a significant issue.³⁷ In particular, discrimination faced in accessing childcare services can be detrimental, as a lack of sufficient childcare may

³⁵ Australian Human Rights Commission, 2015, 'Fact sheet: Domestic and family violence - a workplace issue, a discrimination issue' *AHRC*, 4. Available at <https://www.humanrights.gov.au/sites/default/files/document/publication/13%2010%2031%20DV%20as%20a%20workplace%20issue%20fact%20sheet%20FINAL%20-%20clean.pdf>)

³⁶ H Fabinyi, 2014, 'Domestic Violence and Homelessness in the Northern Territory', *Parity*, Oct 2014, 12, 13

³⁷ See, for example, Human Rights Law Centre, 2012, 'Realising the Right to Equality', *HRLC*, 26.

limit a victim's capacity to find stable employment, thus further reducing capacity to be financially independent and leave an abusive situation.

Recommendation 3

Commonwealth Government include "Victim of Family and/or Domestic Violence" as a protected attribute within the *SDA*, and any other relevant anti-discrimination laws. Additionally, RLC advocates the amendment of s351 and a paid domestic violence leave clause in the *Fair Work Act 2009*.

This recommendation is designed as a tertiary reform to support survivors of domestic violence and to hold perpetrators to account, as well as to act as a deterrent to its reoccurrence.³⁸ In order to rectify the impact of this discrimination and to ensure victims of domestic and family violence are not exposed to further risk as a result of this discrimination, RLC advocates the inclusion of "Victim of Family and/or Domestic Violence" as a protected attribute within the *Sex Discrimination Act 1984*, and any other relevant anti-discrimination laws. Additionally, RLC advocates the amendment of s351 the *Fair Work Act 2009* to include this term as a protected attribute and prevent discrimination against employees by employers on the basis of family or domestic violence, as well as a paid domestic violence leave clause as proposed in recommendation 191 of the State of Victoria's *Royal Commission into Family Violence*.³⁹

This position is one advocated by a number of organisations, including the Australian Human Rights Commission,⁴⁰ the Australian Law Reform Commission,⁴¹ and the Australian Domestic and Family Violence Clearinghouse,⁴² among others. Additionally, the Senate Standing Committee included these amendments as a key recommendation of the Senate

³⁸ Our Watch, VicHealth, ANROWS, 'Change the Story: A shared framework for the primary prevention of violence against women and their children in Australia', (2015), p. 15

³⁹ State of Victoria, *Royal Commission into Family Violence: Summary and recommendations*, Parl Paper No 132 (2014–16), recommendation 191. Accessed 30 March 2016 at <http://www.rcfv.com.au/Report-Recommendations>

⁴⁰ Australian Human Rights Commission, 2015, 'Fact sheet: Domestic and family violence - a workplace issue, a discrimination issue' AHRC, 4 (Available - <https://www.humanrights.gov.au/sites/default/files/document/publication/13%2010%2031%20DV%20as%20a%20workplace%20issue%20fact%20sheet%20FINAL%20-%20clean.pdf>)

⁴¹ Australian Law Reform Commission, *Family Violence and Commonwealth Laws - Improving Legal Frameworks Final Report* (2011), ALRC Report 117, Recommendation 16-8.

⁴² Australian Domestic and Family Violence Clearinghouse, Submission No 24 to Senate Standing Committee on Legal and Constitutional Affairs, *Exposure Draft of Human Rights and Anti-Discrimination Bill 2012*, 2012, 1

Majority Report following the consultation process on the *Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012*.⁴³ Despite this, there has been no indication of this recommendation being adopted and implemented.

These amendments would have a significant impact in protecting and assisting victims of family and domestic violence, reducing the risk of harm and increasing opportunities for individuals to permanently leave abusive situations.

8. Conclusion

It is internationally recognised that gender inequality and community attitudes towards women are both a root cause and consequence of domestic violence. Such attitudes include deep-rooted gender norms that attach to the roles women and men play in raising children, and the detrimental impact it has on women in the workplace. Such gender norms assume that women are the primary carer and nurturer of children, and are responsible for related domestic duties, while men work and take care of family financial responsibilities. As a result, women are underrepresented in key leadership positions and are more likely than men to work part-time or flexibly because of their caring responsibilities that limit their participation in the workforce.

The barriers that women face in the workplace directly impact on their financial independence and earning capacity, and can compound disadvantage regarding their ability to access accommodation and goods and services. Too often RLC observes the gaps in a legal framework that fails to protect victims and their family from the reach of domestic violence, and the discrimination that often follows, in the workplace. The financial limitations that stem from gender inequality, and a lack of legal protections in employment, create a harrowing reality for women, where victims of domestic violence are put at significant risk of serious harm and have a diminished capacity to leave abusive situations

RLC strongly advocates for its proposed recommendations to be implemented, as it is not possible to address domestic violence in this country without addressing the structural gender equality gaps that exist in Australian workplaces.

⁴³ Senate Standing Committee on Legal and Constitutional Affairs, Australian Senate, *Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012 (Majority Report)* (2013), Recommendation 3.