

Policy Position Paper – Discrimination against victims of family or domestic violence

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 services, 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. This policy position paper identifies how victims of family and domestic violence experience discrimination and outlines proposed legislative changes to address this.

1. DISCRIMINATION IN EMPLOYMENT

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,¹ while paid employment is a pathway to establishing a new life away from an abusive situation.² 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.

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.³ 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.⁴

¹ Braaf & Meyering, 2011, 'Seeking Security: Promoting Women's Economic Well-Being Following Domestic Violence' *Australian Domestic and Family Violence Clearinghouse*, 5

² *Ibid.*, 85

³ Ludo McFerran, ADFVC and Micromex 'Safe at Home, Safe at Work? National Domestic Violence and the Workplace Survey' (2011), 10

⁴ *Ibid.*, 11

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 domestic violence.⁵

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,⁶ 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.⁷ 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.

2. DISCRIMINATION IN ACCESS TO ACCOMODATION

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.⁸ It is therefore evident how crucial

⁵ Redfern Legal Centre, 'Submission to the Australian Law Reform Commission on Family Violence- Commonwealth Laws' (2011)

⁶ 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

⁷ Above n 2, 85

⁸ Tully, Faulkner & Slatter, 2008, 'Women, Domestic and Family Violence and Homelessness: A Synthesis Report', *Commonwealth of Australia*, 13

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 away from abusive situations.

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,⁹ 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.¹⁰

RLC has observed this form of discrimination or disadvantage occurring for a number of clients of both our tenancy and WDV CAS 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, however, this matter demonstrates the systemic obstacles victims of domestic violence can experience as a result of their partner's actions.

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.¹¹ In particular, discrimination faced in accessing childcare services can be detrimental, as a lack of sufficient child care

⁹ 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>)

¹⁰ H Fabinyi, 2014, 'Domestic Violence and Homelessness in the Northern Territory', *Parity*, Oct 2014, 12, 13

¹¹ See, for example, Human Rights Law Centre, 2012, 'Realising the Right to Equality', *HRLC*, 26

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

4. PROPOSED LEGISLATIVE CHANGES

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.

This position is one advocated by a number of organisations including the Australian Human Rights Commission,¹² the Australian Law Reform Commission,¹³ and the Australian Domestic and Family Violence Clearinghouse,¹⁴ among others. Additionally, the Senate Standing Committee including these amendments as a key recommendation of the Senate Majority Report following the consultation process on the *Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012*.¹⁵ 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.

¹² Above n 9

¹³ Australian Law Reform Commission, *Family Violence and Commonwealth Laws - Improving Legal Frameworks Final Report* (2011), ALRC Report 117, Recommendation 16-8.

¹⁴ 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

¹⁵ 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.