Aboriginal & Torres Strait Islander
Women's Legal Services NQ Inc

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Your Reference :
Our reference :

4 January 2013

Committee Secretary
Senate Legal and Constitutional Affairs Committee

legcon.sen@aph.gov.au

Dear Committee

RE: Human Rights and Anti-Discrimination Bill 2012 – Exposure draft legislation

The Aboriginal and Torres Strait Islander Women's Legal Services NQ Inc. (ATSIWLSNQ) is a community legal service funded under the community legal service program. ATSIWLSNQ provides legal services to Aboriginal and Torres Strait Islander women in North Queensland, including:

a) Community Legal Education
b) Legal Advice and Information
c) Casework
d) Law Reform and Policy
e) Client Support

ATSIWLSNQ's services are facilitated through:

- Face to Face Appointments
- Continuing representation of Aboriginal and Torres Strait Islander women in legal matters (including court appearances) in selected cases subject to strict guidelines
- Client support to assist Aboriginal and Torres Strait Islander women to access other services
- Advocacy on issues affecting Aboriginal and Torres Strait Islander women
- Law Reform submissions on legal issues affecting Aboriginal and Torres Strait Islander women

Among the casework and community legal education that ATSIWLSNQ engages in, we undertake advice and information on anti-discrimination issues. Our response is based on the experiences of our clients.

Response to Exposure Draft Legislation

ATISLWNSQ welcomes the proposed legislation. We support the objects of the legislation and acknowledge and welcome the greater clarity and consistency that it brings to human rights and anti-discrimination laws.

ATSIWLSNQ endorses the submission provided by QAILS, and by the organisations which QAILS has endorsed.

The following is a short response based on one area of need which we believe could be more clearly addressed by the legislation.

One of the areas of racism which we have found to be problematic is that of victimisation on racist grounds. We refer to victimisation where a person with a particular "protected attribute" is targeted and their livelihood or their housing or their children placed in jeopardy by false allegations which amount to a form of "victimisation". We are not referring to 'victimisation' within the meaning of s.54 of the Bill, which concerns victimisation of persons who have made a complaint of discrimination, but rather we refer to victimisation in the form of ongoing harassment.

For example, where a neighbour repeatedly makes unfounded allegations to a housing authority about an Aboriginal or Torres Strait Islander family, or a person makes false allegations to an employer against an Aboriginal or Torres Strait Islander employee and where the purpose of the allegations is the targeting of a person or persons who have a protected attribute, the legislation appears to be unclear, particularly where the victimisation does not clearly fall into an area of public life.

We would submit that it would be helpful to have clear provisions making conduct, involving victimisation of persons with a protected attribute (or who are perceived to have a protected attribute), protected from victimisation.

In Queensland it is difficult to protect a person from such victimisation and to prevent the conduct from being an ongoing nuisance. The *Peace and Good Behaviour Act 1982* (Qld) is limited to cases where there is a threat to injure or assault or to procure another person to do so. It depends on enforcement by the police where a person has been able to obtain an Order and there is a breach. The nature of the procedure is such that it offers little disincentive to a person wishing to harass another person with discriminatory intent.

Where a person's conduct is unlawful or an offence, but enforcement depends on making a complaint to police (of stalking, for example), victims typically have little confidence that the police will prosecute the complaint and fear that the complaint may result in an escalation of the victimisation if not prosecuted.

Racial vilification as proposed in the Bill may be an avenue of redress, but we would submit that it would be helpful to include as "racial vilification", or a separate category of "victimisation", cases of victimisation that can be shown to have an intent to discriminate against a person based on a protected attribute or the other person's belief that the person has the protected attribute.

We thank you for an opportunity to respond to the Bill. Should further clarification be required, please do not hesitate to contact our service (Ph 07 4721 6007).

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Cathy Pereira
Principal Solicitor/Co-ordinator
ATSIWLSNQ