NT Working Women's Centre

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Submission – Senate Legal and Constitutional Affairs Committee
Domestic Violence as a Ground of Discrimination

The NT Working Women's Centre (NTWWC) supports the consolidation of federal anti-discrimination laws in the Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012 and the inclusion of protections for sexual orientation, gender identity and same sex relationship status. The NTWWC however is disappointed to learn that the Exposure Draft does not include domestic violence as a new protected attribute in section 17 of the Bill.

The NT Working Women's Centre has worked together with the Australian Family and Domestic Violence Clearinghouse, Safe at Work: Safe at Home project to encourage NT employers to introduce domestic violence entitlements into their Enterprise Agreements. We are very pleased that there are now approximately one million employees across the country with access to domestic violence leave entitlements. But the mere existence of domestic violence entitlements does not protect employees from discrimination on the grounds of domestic violence. For this reason we believe that domestic violence ought to be included in the legislation as an attribute. Further, often some of the most marginalised and disadvantaged workers in the Northern Territory are covered by the National Employment Standards and Awards only. An Enterprise Agreement is a dream for some and so, domestic violence entitlements in Enterprise Agreements alone are not adequate protection for women experiencing domestic violence at work.

Unfair Dismissal and General Protections provisions in the Fair Work Act do not provide

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adequate remedies for workers who are terminated because of their status as a domestic violence victim. Unfair dismissal exclusions such as the 6 or 12 month qualifying period prevent many women workers from lodging claims for unfair dismissal when they have been terminated because of domestic violence. General protections provisions may apply if a worker is treated adversely after accessing a domestic violence entitlement such as domestic violence leave but can not be used on the basis of being a victim of domestic violence.

The raising of the profile of domestic violence as an industrial issue has also led to some workplaces introducing domestic violence leave in workplace policies in place of embedding leave entitlements into an Enterprise Agreement. Workers who access this type of leave as provided for in policy and are therefore treated adversely are unlikely to be able to make any claim under the general protections provisions of the Fair Work Act. This is because Section 341 of the Fair Work Act limits adverse action claims to workers because of their 'workplace right'. An entitlement as per policy, generally does not meet the definition of 'workplace right'.

Women workers in the Northern Territory have special needs in relation to domestic violence discrimination due to the mandatory reporting obligations on all adults under the NT Domestic and Family Violence Act. Following an amendment to the Domestic and Family Violence Act in March 2009, all adults in the Northern Territory are required by law to report domestic and family violence to the police if they reasonably believe someone has or is likely to suffer serious physical harm from domestic/family violence and/or someone is under serious or imminent threat because domestic/family violence has, is, or is about to be committed. This law applies to workplaces in the same way that it applies to all public and private space.

To date no information is available regarding the number of workers who mandatorily report domestic and family violence against a colleague, the impact of mandatory police notifications on the victim of domestic violence at work, the impact of mandatory police notifications on the colleague who mandatorily reported or on their supervisors or managers.

The NTWWC is concerned that as a result of mandatory reporting of domestic and family violence more workers are left open to discrimination at work based on domestic violence. This may happen because;

- a greater number of colleagues become aware of the domestic violence due to the process of mandatory reporting,
- co-workers and supervisors may resent or become frustrated with victims of domestic violence because of the obligation it places on them to mandatorily report and the work that this involves,

- employees who mandatorily report domestic violence against a colleague are subsequently involved in police interviews and/or court processes which detracts from their core business at work

The NTWWC is of the view that little is known about unintended consequences of the obligation to mandatorily report domestic and family violence and the impact of this on the workplace. The NTWWC is unable to obtain statistical or anecdotal evidence of its impact to date. The NTWWC is of the view however, that should domestic violence be included as a new protected attribute in Commonwealth legislation, then employees who are treated adversely because of reasons associated with the obligation to mandatorily report domestic and family violence, would have some protection in place.

Please do not hesitate to contact the NTWWC if you would like any further information about this submission.

Yours sincerely

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