

1 March 2022

Anti-Discrimination Act Review  
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Dear ADA Commission

**Re: Submissions to the Review of Queensland's Anti-Discrimination Act**

**About Women's Legal Service Qld**

Women's Legal Service Queensland (WLSQ) is a specialist community legal centre, established in 1984, that provides free legal and social work services and support to Queensland women. We assist women in the areas of family law, domestic violence, financial abuse, child protection and some aspects of sexual violence.

WLSQ provide state-wide assistance through our state-wide domestic violence legal helpline, and have a designated rural, regional and remote priority line to increase women's access to our service in non-metropolitan regions. We undertake outreach work at the Brisbane Women's Correctional Centre, Gatton Prison and at Family Relationship Centres in Brisbane. We also conduct domestic violence duty lawyer services at three Courts: Holland Park, Caboolture and Ipswich. Our specialist domestic violence units in Brisbane, the Gold Coast and Caboolture provide intensive case work and Court representation for our most vulnerable clients.

We thank you for the opportunity to engage with the review process.

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**General Comments**

Women's Legal Service Queensland (WLSQ) supports the review into the *Anti-Discrimination Act 1991 (Qld)* (*'the Act'*) to ensure that it is keeping up to date with the changing needs of the Queensland community. WLSQ is especially eager to contribute to strengthen protections and justice outcomes for our clients, 90% of whom have experienced or are experiencing domestic violence, in the context of seeking domestic violence orders, and/or legal advice and information in relation to Family law matters such as parenting after separation, and/or property settlement. WLSQ also has a specific sexual assault counselling privilege service,



providing legal representation and advice to victim-survivors when a party in a legal proceeding applies to access and other-wise use her protected counselling communications.

WLSQ does **not** provide advice or representation on discrimination issues however, women who experience domestic and sexual violence also experience disadvantage and discrimination in significant ways. Because WLSQ does not work specifically in the anti-discrimination space, this submission focussed on general observations and input based upon the struggles and experiences of women experiencing domestic, sexual and family violence who use our service. WLSQ also acknowledges and relies upon the comprehensive review of *the Act* done by the alliance of Queensland lawyers and advocates with expertise using the Anti-Discrimination Act, and their publicly available 10-point plan for a fairer Queensland published by Community Legal Centres Queensland.

Women experience discrimination as victims-survivors of domestic, family and sexual violence.

“The 2011 National Domestic Violence and the Workspace Survey found that nearly half (48%) of respondents who reported experiencing domestic and family violence said the violence had affected their ability to work. The main impact of the violence was on work performance – 16% of victims and survivors reported being distracted, tired or unwell and 10% needed to take time off work. Further, women who experience domestic and family violence are also more likely to have lower personal incomes, a disrupted work history, often have to change jobs at short notice and are very often employed in casual or part time work.”<sup>1</sup>

Our clients also experience discrimination as a consequence of the mental health issues caused by their experiences of domestic and sexual violence and then being discriminated against on the basis of those mental health issues. Gender based violence can also result in a chequered rental history, because the victim-survivor might need to leave premises suddenly and break tenancies, damage to property caused by the other party but the victim-survivor being unable to pay for the repairs, and the financial hardship that results from having to relocate, with only one income – especially if it is a single parent benefit.

Experiences of our clients include the following:

- Having other party (OP) turn up to the workplace of the victim-survivor which was a restaurant. This was a breach of the domestic violence order, and the Police were informed, however the woman’s employer told her that they did not want more drama occurring at the workplace as it was bad look for the business.
- Having OP put tracking and ‘stalking’ technology on client’s computer and telephone that was also used for working from home arrangements during COVID – when she told her employer, she was disciplined, and performance managed by her employer who interpreted the break as a lack of professional competence.

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<sup>1</sup> Fact sheet: Domestic and family violence – a workplace issue, a discrimination issue. Australian Human Rights Commission, [https://humanrights.gov.au/sites/default/files/13\\_10\\_31\\_DV\\_as\\_a\\_workplace\\_issue\\_factsheet\\_FINAL6.pdf](https://humanrights.gov.au/sites/default/files/13_10_31_DV_as_a_workplace_issue_factsheet_FINAL6.pdf), 2014.

- Having to leave work suddenly because the OP turned up to the school and was demanding to see the children. Because our client had to leave work, she was considered an unreliable employee and she stopped being offered as many shifts as a casual.
- Had one client where the OP kept calling the workplace. They were separated and she had no control over his calls but said that her employer was getting really angry at her that's why she had to apply for DVO so he would stop calling.
- Another client had to be moved positions in the workplace as the OP kept making complaints about her to her employer. OP did the complaints anonymously, but it was enough that the employer said she had to move positions in the company as it was affecting the workplace. Police stated it wasn't a breach as there was no proof it was him and he can complain about a business.
- Another client ended up consenting without admissions to a police protection order, and then had to have an interview with the school and defend her blue card to remain a teacher. The reason why the police attended and applied for the order was she finally retaliated and as she was the one on the day that used violence, she was named as the respondent.
- Many clients that are the aggrieved/ person in need of protection ask if they cannot come to court as they can't ask for more time off work.
- A representative from REAQ, which is the peak body for real-estate agents, told a staff member of WLSQ informally that if landlords accept tenants who have a history of domestic violence on their tenancy records, then the landlords insurance would be voided. Apparently, this only occurs in Queensland.
- A client who was trying to hide her address from school enrolment forms for safety from OP and school said they couldn't accept the enrolment of the child because she would not provide her address.

## **WLSQ Recommendations**

### ***Expand who is protected***

WLSQ recommends that the *Anti-Discrimination Act* should broaden the list of people protected by anti-discrimination law in Queensland. The list of individuals and groups who should be protected from unfair treatment, should include:

1. Victim-survivors of domestic, sexual and family violence.
2. People with irrelevant medical conditions for example: diagnosis of post-traumatic stress disorder.

The *Act* should allow people to combine attributes to protect people experiencing intersecting disadvantage. It should also remain only necessary to prove that the protected attribute was one of the reasons for the discrimination. The intersectionality of disadvantage is a common issue for WLSQ clients, where discrimination can occur as a consequence of being a survivor of domestic violence, and from a culturally and linguistically diverse background, or having another disability such as anxiety, depression or post-traumatic stress disorder. WLSQ had a client who was asked to disclose previous medical diagnosis when applying for a childcare traineeship. This young woman is a survivor of sexual assault and had been diagnosed with PTSD, and anxiety, which she was managing well with appropriate support and treatment. Understandably, she did not want to write PTSD on the traineeship application, but also did not want to lie on the paperwork. Consequently, she did not apply for the traineeship.

WLSQ supports the inclusion of ‘in the presence of a person’ being added to the legal meaning of sexual harassment in the Act, noting the vast majority of incidents of sexual harassment occur in the workplace. WLSQ understands that including the phrase ‘in the presence of a person’, covers situations where a workplace may have a culture of behaviour and practices that are offensive and degrading because of the sex or gender of the person who is being discriminated. An example of this was when a client was working in a predominately male workplace, and there were pictures of naked women on the wall calendar. She wanted to say something but was scared that she would be considered a bad cultural fit in the organisation if she did, and that she might be discriminated against because she felt uncomfortable with the pictures.

WLSQ also supports the additional attribute of “accommodation” being included in the category of ‘protected attributes’. Women will often experience periods of homelessness, in the context of escaping and experiencing domestic violence, and we are aware that some women are forced to live in their cars, or on the street. Furthermore, we have worked with women who have experienced domestic violence in the context of their relationships whilst they are homeless as a couple, and these women have found it very difficult to access and utilise police and legal responses to help keep them safe.

Furthermore, the Act should incorporate the capacity for the courts to identify and incorporate other protected attributes in the future. The Act could then evolve to incorporate any future systemic or historical disadvantage like the protected attributes on the existing list.

### ***Make it easier for people to access adjustments and flexibility***

WLSQ supports the law being adapted to reflect our modern understanding of the many ways diversity and inclusion elevate and improve all our lives and the places we share in the long term, rather than focusing on what it costs in the moment. Any refusal to accommodate or adjust for a person with a protected attribute should be unlawful unless it is strictly necessary to impose the standard, condition, or requirement without adjustments. For example, it should be unlawful for a body corporate to refuse to make adjustments to common property such as installing security cameras which might assist survivors of domestic violence to feel safe in their homes.

### ***Remove the requirement to compare how people are treated***

WLSQ supports the wording of the definition of ‘discrimination’ being changed to make it unlawful to treat someone **unfavourably** because of a protected attribute, rather than **less favourably**. It should still be necessary to prove mistreatment because of a protected attribute, but the need to compare that treatment to someone else should be removed. WLSQ supports the ‘unfavourable’ treatment approach to be adopted to ease the burden of identifying a hypothetical ‘comparator’ person. If the test was changed to ‘unfavourable treatment’ test, it would focus more on the treatment and experiences of that person who experienced the discrimination.

### ***Reverse the Onus of Proof***

WLSQ supports ‘reversing the onus of proof’ and making the person who engaged in the discrimination explain themselves and their reasons. WLSQ supports the requirement to show

only a prima facie case, if a person can prove they were negatively treated in particular ways and that they had a protected attribute (or other relevant protection) the 'onus of proof' should shift. The person who had responsibility for the treatment being complained about then has the responsibility of explaining why they did it and how their reasons are not discriminatory or otherwise unlawful.

WLSQ supports the shift in the 'onus of proof', because there is usually a significant power imbalance, in resources and expertise, between the person experiencing the discrimination and the discriminator, for instance employer/ employee, tenant/ homeowner, client/ service provider. Furthermore, the 'discriminator' has access to information and evidence that the person who is experiencing the discrimination does not, for example: statistics; internal policy documents; financial and administrative resources. The discriminator is in the best position to explain the reason for the requirement, and in practice the burden to explain the incident does fall on the discriminator, where the person who experiences the discrimination has no idea of the reasons for the event or incident.

This approach, sometimes called a rebuttable presumption, merely requires a person to establish that they possess the relevant attribute, and then it is assumed that the employer acted unlawfully, unless they can prove otherwise.

### ***Positive Duties and Special Measures***

There are a range of ways that positive obligations towards people who are experiencing domestic violence, or trauma can be included in law to encourage people to behave in particular ways. The best positive statements are written as duties, and there should be consequences for non-compliance with those duties – even where harm is not yet caused.

Positive duties in Queensland should include a duty to:

1. Make reasonable adjustments for people experiencing domestic violence and mental health impacts of domestic, sexual, and family violence
2. Maintain a policy and provide training to prevent and stop discrimination of people who have experienced domestic, sexual and family violence.

Furthermore, WLSQ supports collapsing the existing categories of "welfare measures" and "equal opportunity measures", to a single "special measures" provision, which would re-focus the community away from being "allowed to discriminate" to actively doing something to achieve equality.

The establishment and codification of 'positive duties' would also raise community awareness.

### ***Making a complainant easier***

The existing complaint system is not responsive and timely enough for the needs of domestic violence survivors who are often in crisis, where discrimination is impacting their, and their children's, immediate safety. Reporting the engagement and outcomes of complaints made through the Anti-Discrimination scheme needs to be accessible and publicly available, thereby providing all parties with guidance about realistic outcomes from the process when making a

complaint to the Anti-Discrimination commission. Having published outcomes of the conciliation or alternative dispute resolution process would enable survivors of domestic violence, and other people being discriminated against, to use other 'examples' from the ADR process to resolve disputes as opposed to having to bring and resolve issues in isolation of relevant similar circumstances. In this regard, WLSQ also supports the production and publication of an Anti-discrimination Bench Book, which would be a valuable tool for the community, legal practitioners, tribunal members and the judiciary.

The law should also encourage publication and sharing of settled outcomes unless the discriminated person wants certain information kept private.

WLSQ supports 'compulsory conciliation conferencing', but where the matter involves a risk of someone's safety, and the imbalance of resources and power is obviously a major obstacle for the complainant, then the option of referring the matters directly to the tribunal should be available. Furthermore, WLSQ supports any legislative amendment that would allow for a complaint with an issue of significant public interest being able to apply directly to the Supreme Court, or making an election of going directly to the Supreme Court easier. This needs to be introduced into the *Anti-Discrimination Act*, because as the *Act* currently stands there is no opportunity for class action in QCAT, where anti-discrimination matters are currently determined. There needs to be a way for one person to run a test or representative case and, if they win, other people who have experienced the same discrimination also get a remedy.

The time limits to make a complainant should be extended to at least three years, in line with other time limits for civil laws matters. The time limit should also not commence running until the complainant turns 18 years old.

WLSQ support the replacement of legalistic terms, such as "complaint", "complainant and respondent", "conciliation" being replaced with terms that are more accessible and understandable by members of the community. Furthermore, WLSQ supports the introduction of non-written requests being an acceptable way for a complaints process to be initiated and the Commission should be able to provide reasonable help to those who require assistance to formalise their complaint in writing. WLSQ submits that any amendments to existing barriers to access should be given priority, because it is usually the case that the person who is experiencing the discrimination is also the one who has the most limited resources. WLSQ also submits that an option should be available for a complaint to be made on someone else's behalf, in a similar way that the Qld Police Service can apply for a domestic and family violence protection order on behalf of an aggrieved.

WLSQ supports the adoption of dispute resolution approaches that are flexible, and informed by the needs of the person experiencing the discrimination, whether that is a supported, informal telephone conversation, shuttle negotiations, face to face meetings with support person, direct application to the Tribunal, or in the case of a public interest matter, an election option of it being listed in the Supreme Court. This level of flexibility should extend to a representative body or trade union being able to make a complainant on behalf of an affected person.

### ***Regulatory Model***

WLSQ supports a proactive, statutory body to conduct investigations, enforce breaches of the laws, make sure all parties comply with agreed obligations or decision, and make more rulings and reports. The Queensland Human Rights Commission should be given the additional powers and resources it needs to take a properly active role in the elimination of unlawful discrimination, sexual harassment and vilification.

If domestic violence was elevated to a “protected attribute”, then WLSQ would be advocating for proper training of gender-based drivers of domestic and family violence, noting the experiences found in the current policing procedure and the frequency of mis-identification of person most in need of protection.

### ***Experts making decisions about discrimination cases***

WLSQ agrees with an Anti-Discrimination Tribunal which only deals with anti-discrimination cases and anti-discrimination legal experts are the decision makers. Increase in funding for community legal centres, ATSILS and Legal Aid Queensland to make sure the cases that need to be run can make it to the court and tribunals. WLSQ again notes the importance of specialist, training in relation to domestic and family violence, and trauma informed practice, especially if experiencing domestic and family violence is recognised as a ‘protected attribute’.

The WLSQ supports the legislative amendments designed to support victims-survivors safety and empowerment.

Yours faithfully,



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