

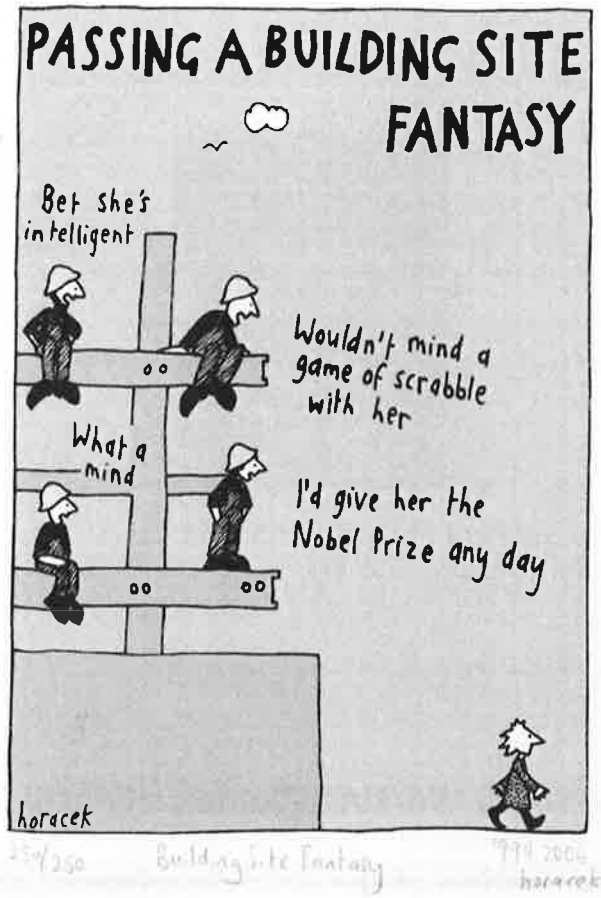


NT Working Women's Centre

Northern Territory Working Women's Centre Submission

Modernisation of the *Anti-Discrimination Act*

January 2018



The cartoon 'Passing a Building Site Fantasy' is reproduced with permission from Judy Horacek. It is inspiration behind the argument to remove the restriction of areas of activity on sexual harassment.

About the Northern Territory Working Women's Centre Incorporated

The Northern Territory Working Women's Centre Incorporated (NTWWC) is a community based, not for profit organisation that provides free and confidential advice and support services on work-related matters to women employees. Services commenced in 1994, there are offices in Darwin and Alice Springs.

The NTWWC works primarily with women who are not represented by a union, lawyer or other advocate. Women who contact our Centre are often economically disadvantaged and work in precarious areas of employment. Many women who contact our service experience domestic or family violence.

We also conduct research and project work on a range of issues that women experience in relation to work. These have included access to child care, family friendly practices, the needs of Aboriginal and Torres Strait Islander working women, pregnancy and parental status discrimination, work/life balance, pay equity and the impact of domestic violence on women workers and their workplaces.

For further or clarifying information contact



Question 1 - Is updating the term sexuality to sexual orientation without labels appropriate? Are there any alternative suggestions?

The NTWWC supports the proposal to update the term from sexuality to sexual orientation.

Question 2 – Should the attribute of ‘gender identity’ be included in the Act?

Whilst maintaining our status as a women’s organisation and recognising the importance of women’s services we recognise that feminist services understand gender-based violence and discrimination. Therefore, we have adopted a policy whereby all types of women, trans-people, intersex people, gender queer people, Brotherboys and Sistergirls are welcome to access the services of the NT Working Women’s Centre.

Our service understands the restrictions caused by using the term ‘sex’ that relates to the binary terminology of woman and man and their biological characteristics. In support of our policy of offering services that are inclusive to a more diverse range of identities, we support the proposal of including ‘gender identity’ in the Act.

Question 3 - Should intersex status be included as an attribute under the Act?

The NTWWC acknowledges that it is important to acknowledge that intersex status is not a gender identity issue and supports the inclusion of intersex status as a protected attribute.

Question 4 - Should vilification provisions be included in the Act? Should vilification be prohibited for attributes other than on the basis of race, such as disability, sexual orientation, religious belief, gender identity or intersex status?

The NTWWC supports a proposal to include vilification provisions for all attributes in the Act in principle.

Question 5 - Should the Act create rights for people experiencing domestic violence in relation to public areas of life such as employment, education and accommodation?

The NTWWC strongly supports the inclusion of domestic violence *and family violence* as a protected attribute in the Act.

The NTWWC is of the view that there is currently no clear remedy for women who are discriminated against on the grounds of domestic and family violence (DFV) in either NT or federal legislation. Whilst it is arguable that the current marital status provision of the Act is accessible in some cases, its usefulness is unclear and existence little known for women experiencing DFV.

The evidence of discrimination against women experiencing DFV is clear and the need for protection against discrimination is well established:

- 62.3% of women who report violence by a current partner are in employment¹.
- In 2012, The Senate Legal and Constitutional Affairs Committee in their review of the Exposure Draft of the Human Rights and Anti-Discrimination Bill recommended the inclusion of domestic violence into federal discrimination legislation².
- The Australian Domestic and Family Violence Clearinghouse argued in their submission to the Senate Committee that the inclusion of domestic violence into federal anti-discrimination legislation was necessary to meet Australia's international human rights treaty obligations, in particular the Convention on Elimination of all forms of Discrimination Against Women and ILO Discrimination (Employment and Occupation) Convention 1958 (ILO 111).³
- Women regularly seek assistance from the NTWWC in relation to discrimination in employment on the basis of DFV. See case studies below.

Marika - Depicting termination of employment on the grounds of DV status

Marika⁴ worked in an administrative position in a community outside of Darwin. She had recently separated from her partner due to DFV. One evening her former partner assaulted her. Her employer found out about the assault through informal means and terminated her with immediate effect for bringing harm to the reputation of the organisation.

Sophie - Depicting termination of employment on the grounds of DV status

Sophie and her boyfriend worked in the building industry and were employed by the same company. They did not work together directly, but they were often on the same work site. When he started to engage in violence Sophie took out a DVO against him. A DVO was also taken out against her.

Conditions of the DVOs required that they were not allowed to attend each other's workplaces. When the employer learned that there were DVOs in place and that they couldn't both be at work at the same time they said that one of them would have to go.

Sophie ended the relationship and attempted to negotiate with her now x-boyfriend to amend the DVO so that they could both be at work at the same time. He refused to agree to this. Shortly afterwards, her employer terminated her employment via a forced resignation.

Gillian - Depicting termination of employment on the grounds of DV status

Gillian worked in the hospitality industry. She was young and had been managing a relationship with her boyfriend that included domestic violence.

When Gillian ended the relationship the threats and abuse escalated. In particular, he threatened to come to her workplace and make things difficult for her.

¹ Ludo McFerran, (2016), Expert report of Ludo McFerran, Section 156 – 4 Yearly Review of Modern Awards, Family and Domestic Violence Leave (AM2015/1), Fair Work Commission.

² The Senate Legal and Constitutional Affairs Committee, (2012), Exposure Draft of the Human Rights and Anti-Discrimination Bill, p. 97.

³ Australian Domestic and Family Violence Clearinghouse, (2012), Submission to Consolidation of Commonwealth Anti-Discrimination Laws Discussion Paper, Submission number 24.

⁴ Identifying details have been changed or omitted to protect the identity of the person concerned.

Gillian asked him not to come to her workplace as it would make things at work hard but he chose to do so and to make a scene in front of colleagues and clientele.

Gillian was terminated from her employment the following day. Her manager told her that she was terminated as she was a too much of a risk to have around.

Eleni - Depicting termination of employment and the need for special accommodation on the grounds of DV status

Eleni was a long term employee in the finance industry with more than 10 years' service. She had separated from her former partner who was abusive towards her for many years. Eleni was required at court on numerous occasions to deal with the violence against her and associated family matters. Whilst she had required many periods of leave, the requests were not unreasonable and not outside her industrial rights.

After a period of time her employer told Eleni that she would be converted from permanency to casual employment because of the periods of leave that she had taken. A number of months later she was told that she would be terminated due to her leave requirements.

To date no federal legislation has been amended to provide adequate protection against DFV discrimination; South Australia and the Australian Capital Territory are the only jurisdictions to make such a move.

As Australian workplaces take positive and progressive steps towards introducing DFV related workplace entitlements such as paid domestic violence leave, specialised training for Human Resources Personnel and safety planning, the need for protection against discrimination increases. Employees who disclose their DFV experience to their workplace in order to access support and/or relevant entitlements such as paid DFV leave ought to have the protection of discrimination legislation to assist them. Whilst some instances of adverse action taken against an employee for reasons associated with DFV may result in a General Protections application to the Fair Work Commission, such remedy is very limited in scope (case studies Marika, Sophie and Gillian above do not qualify for General Protections by the Fair Work Commission).

The need for discrimination protection is likely to increase as the public conversation around the role of workplaces in relation to DFV grows and additional industrial reforms are introduced. A Fair Work Commission decision in July 2017 'accepted that family and domestic violence is a social and workplace issue with widespread impacts, and that workplace rights must keep pace with community expectations'.⁵ The decision formed the preliminary view that award based workers should have access to unpaid domestic and family violence leave.

The NTWWC submits that the introduction of a new attribute must not be limited to a narrow definition of domestic violence. As Aboriginal women in the NT are exposed to extremely high rates of domestic violence from a range of perpetrators more broad than an intimate partner or immediate family member, the attribute ought to include a broader range of familial relationships to ensure that coverage is culturally appropriate and relevant for Aboriginal Territorians.

The argument for including DFV as a protected attribute into the Act is not only to provide an essential and important remedy for those who have suffered from discrimination. The opportunity for including DFV into

⁵ Decision by Deputy President Gooley and Commission Spencer, Fair Work Commission (2017), 4 yearly review of modern awards – Family and Domestic Violence Leave Clause, FWCFB 3494.

the Act will provide an essential educative opportunity. It will be an opportunity for broad community based information dissemination about the functions of the Act and the new attributes included. Conversations that follow will include important information for employers, employees and the providers of other areas of activity regarding the accommodation of special need and protection from discrimination for women subjected to DFV.

For the advocates of the NTWWC, the inclusion of DFV as a protected attribute will provide the basis for direct negotiation with employers to accommodate the special needs of victim survivors. Currently no such inducement applies. In an environment where financial security is one of the single biggest contributing factors to a woman being able to leave an abusive relationship, the NTWWC seeks to work together with employees and their employers to negotiate solutions to problems and increase communication between parties so that employees' DFV related needs can be accommodated. The bottom line is that women whose employers can accommodate their special needs relating to DFV are more likely to retain their income and therefore, are better equipped to leave an abusive relationship when they choose.

Lyn - Depicting the need for special accommodation on the grounds of DV in employment

Lyn was a long term permanent part time employee in the retail industry, she was subjected to domestic violence by her partner and worked night shifts.

She took out a DVO and eventually separated from her partner due to the violence. Once she was separated Lyn became the sole carer of her children and could no longer work night shifts.

Lyn did not want to disclose DV to her employer but did explain that she had recently separated and required day shifts to care for her children. She was told that her request could not be accommodated and told to resign immediately. Unaware of her rights, Lyn resigned from her job.

Sheree - Depicting the need for special accommodation on the grounds of DV in education

Sheree is a final year student in a health related field and currently completing her final practicum in a hospital. Sheree was also separating from her husband, against whom she has an Application for a Domestic Violence Order, and seeking custody of her children.

The legal processes underway, and the difficulties associated with settling her children into a new family structure and routine had been making it difficult for Sheree to attend her placement on a full-time basis. Nevertheless, apart from court dates and the occasional day when either her children or she were too unwell, she had attended the workplace and fulfilled the requirements of her clinical practice assessments whilst present.

Despite the efforts Sheree had made to attend as much as possible, disclose the reason for her absences and provide a letter from a treating doctor, her university deemed that she had not fulfilled the requirements of her course. Sheree was advised she would have to retake the entire 3 month placement although she had demonstrated competence in all the clinical aspects during the time she was present.

If Domestic Violence was a protected attribute under the Act, this would provide a clear protection for Sheree and enable her to make a request for the accommodation of her special need.

Asafa - Depicting the need for special accommodation and protection against discrimination on the grounds of DV in employment

Asafa works in the hospitality industry with an unblemished employment record with her current employer. After experiencing domestic violence, Asafa separated from her husband. The period that followed involved many appointments with medical and legal professionals as she re-organised her life. On three occasions Asafa was late to commence her shift, on one of those occasions, she was late by 10 minutes. Asafa explained to her Team Leader on all three occasions that the reasons for her lateness were associated with domestic violence. A performance management process was commenced with Asafa for being late on three occasions.

The inclusion of DFV related entitlements into enterprise agreements across Australia without federal legislated minimum standards has resulted in an inconsistency of entitlements for workers that range from unlimited paid DFV leave (such as the case for NT public servants) to no entitlement for DFV leave (award based workers or award free workers). The lack of legislated minimum standards has resulted in not only an inconsistency regarding the type of entitlement but also regarding to whom the entitlement applies. In some instances, an entitlement to DFV leave applies to the victim/survivor only whilst for others the entitlement is also accessible to the perpetrator. In order to provide clarity and consistency, and ensure that attention and resources are funnelled to those with the greatest need and vulnerability, the NTWWC asserts that the inclusion of a DFV attribute into the Act be limited to protection for victim/survivors.

Question 6 - Should the Act protect people against discrimination on the basis of their accommodation status?

The NTWWC supports the introduction of accommodation status as a protected attribute.

Question 7 - Should "lawful sex work" be included as an attribute under the Act?

The NTWWC supports the inclusion of 'sex work' but not 'lawful sex work' as an attribute to the Act.

Existing arrangements for the regulation of sex work in the NT require that sex workers must work either alone from hotels, work alone from the homes of clientele or alternatively gain registration with an agency. For many sex workers there are significant discriminatory and workplace health and safety consequences of each. Working alone, that is without driver, security officer or from an appropriate location results in obvious serious safety risks to the sex worker. The alternative option, to register with an agency, requires such an invasive, detailed and intimidating process, that many sex workers seek to work outside of the system in order to protect their privacy. Consequently, the existing system of sex worker regulation in the NT is unsafe, discriminatory and outdated and results in workers opting to work outside the regulatory system. Such sex workers, who are already extremely vulnerable, will be further discriminated against and excluded from a safety net system should the terminology 'lawful sex work' be adopted.

Question 8 - Should "socioeconomic status" be included as a protected attribute?

The NTWWC supports the inclusion of socioeconomic status as a protected attribute in the Act.

Question 9 - Should the Act be broadened to include specifically trained assistance animals such as therapeutic and psychiatric seizure alert animals?

The NTWWC supports the inclusion of specially trained assistance animals in the Act.

Question 10 - Should a representative complaint model process be introduced into the Act? Should there be any variations to the process of the complaint model as described above?

The NTWWC strongly supports the introduction of a representative complaint model.

In 2016-2017 the NTWWC had almost 4,000 client contacts with NT women about their work related issues. Naturally, with this level of assistance to women, trends and patterns occur that include complaints from a number of workers from the same workplace or department. Due to the strictest adherence to client confidentiality and an individualised complaint model process, in most instances, the NTWWC can only respond to client complaints as individual complaints. It is frustrating to say the least, to know of workplaces where there are repeated incidences of discrimination and to not be able to address them at a more systemic and structural level. A representative complaint model process that allows complaints to be made without client consent and on the behalf of groups who might be limited to make their own application, may provide an additional option for the promotion of protection against discrimination.

The NTWWC submits that victimisation is carefully considered in relation to representative complaints. Individuals may be subjected to victimisation by their employer on the basis of an actual or perceived belief that they are whistle blowers to discriminatory practices or have 'tipped off' a relevant advocacy organisation such as the NTWWC. Such individuals ought to be protected from victimisation.

Question 11 - Should the requirement for clubs to hold a liquor licence be removed?

The NTWWC supports this proposal.

Question 12 - Should the restriction of areas of activity on sexual harassment be removed?

The NTWWC strongly supports the removal of the restriction of areas of activity on sexual harassment.

The NT is experiencing an epidemic of domestic and family violence. There are 61 incidences relating to domestic and family violence on average in the NT per day, the victimisation rate is three times higher than any other jurisdiction and sexual assault rates are almost 50% higher than the next highest jurisdiction in Australia.⁶ DFV, sexual harassment and gender inequity are inextricably linked.

⁶ Northern Territory Government, (2017), Domestic, Family & Sexual Violence Reduction Framework 2018-2028.

The Northern Territory government's Domestic, Family & Sexual Violence Reduction Framework 2018-2028 states that 'reducing domestic, family and sexual violence requires united action across all parts of society' and that 'achieving long term social and cultural change requires concerted and sustained effort through shared responsibility and partnerships'.⁷ The framework acknowledges that preventing domestic violence relies on 'addressing the factors that lead to or condone violence...respectful relationships and non-violent behaviours are embedded and normalised in our community, *wherever we live, learn, work and play*'.⁸

The NTWWC agrees with the Framework that in order to reduce domestic and family violence it is essential to address all forms of discriminatory and disrespectful behaviours against women, including sexual harassment. There is now consensus in international research regarding the nexus between domestic and family violence and gender inequality. 'Violence against women is inextricably bound to gender inequalities in public and private life.'⁹ In order to successfully reduce the rates of domestic and family violence in the NT the issue of gender inequity must be addressed.

Domestic and family violence is preventable¹⁰. Gendered violence, including sexual harassment, is driven and reinforced by a range of factors, one of which is the condoning of violence against women. The condoning of violence against women is enabled through legal, institutional and organisational structures.¹¹ Anti-discrimination legislation that is reformed to enable protection against sexual harassment in all areas, is legislation that embraces the international evidence base by challenging one of the gendered drivers of violence against women.

Of course reducing rates of domestic and family violence against women in the NT requires a coordinated and multi-pronged approach across the whole of government, private sectors and community and the protection against sexual harassment in all areas is admittedly only one element. However, now is the opportunity for government to demonstrate to the community that the pledge to reduce domestic and family violence will be enacted at all available opportunities and disrespectful attitudes and behaviours towards women are not tolerated or condoned in any area of public life. Currently, disrespectful attitudes and behaviours towards women are condoned and tolerated in some areas of public life namely those that fall outside of the areas of work, goods, services and facilities, accommodation, education, clubs, superannuation and insurance. We can change this. We can promote positive, equal and respectful relationships between women and men, girls and boys in all contexts and at all available opportunities.

Question 13 - Should the definition of "service" be amended to extend coverage to include the workers?

The NTWWC strongly supports an amendment to the definition of services as proposed.

A number of women have sought the assistance of the NTWWC in relation to sexual harassment by a customer. Their lack of access to remedy via the Act excludes them from being able to lodge a complaint

⁷Northern Territory Government, (2017), Domestic, Family & Sexual Violence Reduction Framework 2018-2028, p. 2.

⁸ Northern Territory Government, (2017), Domestic, Family & Sexual Violence Reduction Framework 2018-2028, p. 6.

⁹ Our Watch, (2015), Change the Story, A shared framework for the primary prevention of violence against women and their children in Australia, Melbourne.

¹⁰ Northern Territory Government, (2017), Domestic, Family & Sexual Violence Reduction Framework 2018-2028. Our Watch, (2015), Change the Story, A shared framework for the primary prevention of violence against women and their children in Australia, Melbourne.

¹¹ Our Watch, (2015), Change the Story, A shared framework for the primary prevention of violence against women and their children in Australia, Melbourne.

and further fails to protect women because of the lack of educational opportunity in direct negotiations with the employer that is afforded where the Act applies.

Question 14 - Should any exemptions for religious or cultural bodies be removed?

The NTWWC supports this proposal.

Question 15 - Should the exclusion of assisted reproductive treatment from services be removed?

The NTWWC supports this proposal.

Question 16 - What are your views on expanding the definition of "work"?

The NTWWC supports an expanding definition of work as the current definition is unclear. The NTWWC submits that a new definition must include CDP workers, students on placement, shared work, workers at the same work site who have different employers and volunteers.

Question 17 - Should section 24 be amended to clarify that it imposes a positive obligation?

The NTWWC supports this proposal in order to promote proactive responses as opposed to reactive responses and to support community education. The NTWWC also seeks clarification on how a wording change might influence possible actions taken by the complainant.

Question 18 - Is the name "Equal Opportunity Commissioner" preferred to the name "Anti-Discrimination Commissioner"?

No comment.

Question 19 - Is increasing the term of appointment of the ACD to five years appropriate? Should the term of appointment be for another period, if so what?

The NTWWC supports extending the term of the appointment of the Anti-Discrimination Commissioner to five to seven years.

Question 20 - Should definitions of "man" and "woman" be repealed?

The NTWWC supports this proposal.

Question 21 - Should the term "parenthood" be replaced with "carer responsibilities"?

The NTWWC supports this proposal.

Question 22 - Should the term "marital status" be replaced with "relationship status"?

The NTWWC supports this proposal.