



Australian
Human Rights
Commission

Consolidation of Commonwealth Discrimination Law

**AUSTRALIAN HUMAN RIGHTS COMMISSION
SUPPLEMENTARY SUBMISSION TO THE
ATTORNEY-GENERAL'S DEPARTMENT**

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ABN 47 996 232 602
Level 3, 175 Pitt Street, Sydney NSW 2000
GPO Box 5218, Sydney NSW 2001
General enquiries 1300 369 711
Complaints info line 1300 656 419
TTY 1800 620 241

Australian Human Rights Commission
www.humanrights.gov.au

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1 Introduction

1. The Australian Human Rights Commission makes this supplementary submission further to its submission on the Commonwealth discrimination laws, lodged in December 2011¹ (the principal submission).
2. This submission responds specifically to question 9 of the Consolidation of Commonwealth Anti-discrimination Laws Discussion Paper:² ‘Are the current protections against discrimination on the basis of these attributes appropriate?’ In answering question 9, the Commission provides supplementary information in support of its previous recommendation that the Government give favourable consideration to the introduction in a consolidated Commonwealth equality law of a new ground of discrimination on the basis of domestic and family violence.³

2 Recommendations

3. The Australian Human Rights Commission recommends that:
 - a. a consolidated Commonwealth equality law prohibit discrimination on the ground of domestic and family violence.
 - b. for the purposes of defining the ground of domestic and family violence, a consolidated Commonwealth equality law adopt a definition of domestic and family violence that is gender neutral and consistent across all Commonwealth legislation.
 - c. coverage of the ground of domestic and family violence extend to:
 - i. all areas of public life;
 - ii. direct and indirect discrimination;
 - iii. actual and imputed status as a victim or survivor of domestic and family violence;¹
 - iv. associates of victims and survivors of domestic and family violence;
 - v. discrimination based on past and current experiences of domestic and family violence.

¹ For the sake of brevity, the terms ‘victim’ and ‘survivor’ are used throughout the remainder of this submission to refer to persons who have experienced or are experiencing domestic and family violence and persons who are imputed to have experienced or be experiencing domestic and family violence.

3 Discrimination against victims and survivors of domestic and family violence

4. Domestic and family violence affects both women and men. However, it is violence perpetrated by men against women that makes up the overwhelming majority of domestic and family violence in Australia. In 2005, the Australian Bureau of Statistics estimated that one in three women over the age of 15 years had experienced violence. Over 40 per cent of these women – approximately 1.2 million women – have experienced that violence at the hands of a current or former partner.⁴
5. It is well established under international human rights law that domestic and family violence is a violation of human rights,⁵ with grave and far-reaching repercussions for victims and survivors and for their children. In Australia, domestic and family violence is the leading contributor to death, disability and illness in women aged 15 to 44 years, and is responsible for more of the disease burden in women than many well-known risk factors, such as smoking and obesity.⁶ Moreover, approximately one woman is killed by her current or former partner every week in Australia, often after a history of domestic violence.⁷ Recent research has also demonstrated the enduring mental health problems that survivors often experience as a result of such violence.⁸
6. One, often invisible, repercussion of domestic and family violence is discrimination; individual women and men may be discriminated against because they either have been, or are currently, in a violent domestic or family situation. Discrimination against victims and survivors of domestic and family violence may occur in any area of public life, including in employment, accommodation, education and the provision of goods and services. For example, discrimination may occur where a woman's employment is terminated because her abusive partner frequents her place of work; a victim or survivor is denied access to, or evicted from, public housing because she is known to be in an abusive relationship; or a university student whose request to defer an exam so she can attend legal proceedings related to family violence is denied.
7. The majority of research undertaken to date on discrimination against victims and survivors of domestic and family violence concerns the workplace. This focus is a likely consequence, at least in part, of the central role that employment (and the resultant access to income and financial security) can play in assisting victims and survivors to extricate themselves from violent situations.
8. Research into the workplace implications of domestic and family violence has demonstrated how such violence can undermine the working lives of both victims and survivors. For example, nearly half (48%) of respondents to the 2011 *National Domestic Violence and the Workplace Survey*, who reported experiencing domestic or family violence, said the violence had affected their ability to get to work.⁹ Of the respondents who had experienced violence, 19% said that the violence had continued in the workplace, including through abusive phone calls and emails and presenting at the workplace of the victim. The main reported impact of violence was on work performance, with 16% of victims and

survivors reporting being distracted, tired or unwell and 10% needing to take time off work.¹⁰

9. Although domestic and family violence affects the working lives of both parties, it is victims and survivors (primarily women), rather than perpetrators (primarily men), who are typically discriminated against in the workplace. Discrimination takes many forms, but may include: being denied leave or flexible work arrangements to attend to violence-related matters, such as moving into a shelter; termination of employment for violence-related reasons; and being transferred or demoted for reasons related to violence.¹¹ Fear of such discriminatory treatment is one reason that victims and survivors do not disclose their violent situations to employers.¹²
10. The number of employees vulnerable to discrimination on the basis of their experiences of domestic and family violence is significant. Almost two-thirds of women affected by domestic and family violence in Australia—approximately 800,000 women or around one in six female workers—are in some form of paid employment in Australia.¹³ This figure is likely to be significantly higher when the number of male victims and survivors and those individuals who do not report such violence are taken into account, as well as the number of victims and survivors vulnerable to discrimination in other areas of public life.
11. Discrimination against victims and survivors of domestic and family violence can have grave consequences for the individuals affected, including compounding the already significant harm of the original acts of violence and impeding the ability of victims and survivors to transition out of violent situations.

4 Rationale for a ground of discrimination related to domestic and family violence

12. The Commission submits that there are a number of cogent reasons for introducing a ground of discrimination concerning domestic and family violence in a consolidated equality law and notes early support for its inclusion.¹⁴

4.1 Clarify and strengthen existing discrimination protections

13. Introducing domestic and family violence as a separate ground of discrimination would help to clarify and strengthen existing discrimination laws, which already provide some, but limited, protection to victims and survivors.¹⁵

(a) Disability Discrimination Act 1992 (Cth)

14. The *Disability Discrimination Act 1992 (Cth)* (Disability Discrimination Act) provides that it is unlawful to discriminate, directly or indirectly, against a person with a disability in protected areas of public life, including employment, education, the provision of goods, services and facilities, and accommodation. It further provides that it is unlawful, in certain circumstances, to fail to make reasonable adjustments for a person with a disability. In addition, it is unlawful to discriminate against an associate of a person with a disability. A disability

need not be the only reason that a person is discriminated against, but it must be one of the reasons for the discrimination.¹⁶

15. The Disability Discrimination Act defines disability very broadly. The definition of disability includes ‘the malfunction, malformation or disfigurement of a part of the person’s body’ and ‘a disorder, illness or disease that affects a person’s thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour’.¹⁷ The Disability Discrimination Act covers a disability that presently exists, previously existed but no longer exists, may exist in the future, and is imputed to a person.¹⁸
16. If a person is discriminated against because of a disability that exists, previously existed, may exist in the future, or is imputed to him or her, however that disability was caused, that person may make a claim under the Disability Discrimination Act. Accordingly, if a victim or survivor has developed a disability as a result of domestic or family violence and is discriminated against because of this disability, she or he may make a claim of discrimination under the Act. However, the limitation of the Disability Discrimination Act for victims and survivors of domestic and family violence is that it requires that the person has a disability and that the disability was one of the reasons that the person was discriminated against. This would mean that the Act is of limited utility where the only reason that a person is discriminated against is because they are experiencing domestic violence.

(b) *Sex Discrimination Act 1984* (Cth)

17. The *Sex Discrimination Act 1984* (Cth) (Sex Discrimination Act) provides that it is unlawful to discriminate, directly or indirectly, on the grounds of sex, marital status, pregnancy or potential pregnancy and breastfeeding in protected areas of public life, including employment, education, the provision of goods, services and facilities, and accommodation. It further provides that it is unlawful to discriminate directly on the ground of family responsibilities in the area of employment. As with the Disability Discrimination Act, discrimination on the grounds protected by the Sex Discrimination Act need not be the sole or dominant reason for the discrimination.¹⁹
18. As noted at paragraph 4 above, domestic and family violence is predominantly experienced by women. However, this does not mean that female victims and survivors would necessarily be able to make a claim of discrimination related to domestic and family violence under the Sex Discrimination Act. A female victim or survivor will only be able to make a claim of direct discrimination if she is able to prove that her sex, pregnancy, potential pregnancy, breastfeeding or family responsibility was a factor in the discrimination. A female victim or survivor will not be able to make a claim of indirect discrimination unless she is able to prove that a condition, requirement or practice was imposed on her that had the effect or likely effect of disadvantaging persons of the same sex or who are pregnant, potentially pregnant or breastfeeding. The Sex Discrimination Act will, thus, be of limited utility where the sole or dominant reason for the discrimination is domestic or family violence.

19. The Sex Discrimination Act also provides that it is unlawful to discriminate against a person on the ground of sex by reason of a characteristic that appertains generally, or is generally imputed, to persons of the sex of the aggrieved person.²⁰ Rees, Lindsay and Rice state that

[w]hether a matter is a characteristic that generally appertains to, or is generally imputed to, people of a particular sex is a question of fact. There is little case law which assists a court or tribunal in actually determining whether a particular matter falls within the ‘characteristic extension’. A ‘characteristic’ is something which is a distinguishing feature, or is distinctive about the group of people.²¹

Whilst domestic and family violence is predominantly experienced by women, it cannot be said that most women experience domestic or family violence. Given this, it may be difficult for a female victim or survivor, who claims that she has been discriminated against for reasons related to domestic or family violence, to prove that such violence is a condition that appertains generally to women. Men who experience domestic violence would not be able to make a claim of sex discrimination using the ‘characteristic extension’ ground.

* * *

20. The existing grounds, while affording victims and survivors of domestic and family violence some level of protection against discrimination, are inadequate. While victims and survivors may be able to make a valid claim under existing discrimination laws, there is a gap in the law where the discrimination experienced by persons who have been subject to domestic or family violence cannot be linked to a protected ground. Introducing domestic and family violence as a separate ground of discrimination would allow for a more comprehensive form of protection and greater consistency of approach.²²

4.2 Cost benefits

21. As noted in the principal submission, the Commission reiterates its earlier recommendation that any regulatory impacts and resourcing issues arising in the context of measures for improved effectiveness of discrimination law should be assessed having regard to their potential for large scale economic and social benefits.²³ The Commission is of the view that the introduction of domestic and family violence as a separate ground of discrimination has the potential to result in substantial productivity and participation gains for the Australian economy.
22. In addition to the considerable health costs, described in paragraph 5 above, there are significant costs associated with domestic and family violence that impact on the Australian economy and Australian business. It is estimated that violence against women and children will cost the Australian economy \$15.6 billion by 2021-2022, unless effective action is taken to prevent this violence.²⁴ The cost of productivity losses is expected to rise to \$609 million by 2021-2022.²⁵ These losses or financial costs can result from ‘absenteeism and turnover, illness and accidents, disability or even death ... [and] decreased functionality and performance, quality of work and timely production’²⁶. In the United Kingdom, for example, domestic violence has been estimated to cost the economy £2.7 billion a year in decreased productivity, lost wages and sick pay, over half of which is borne by employers.²⁷

23. The costs of domestic and family violence to the Australian economy and Australian business are exacerbated when victims and survivors are subjected to discrimination, for example where their employment is terminated and costs are incurred in recruiting and training a new employee or where a long-term, highly productive employee resigns as a result of employer discrimination arising from her need to address the consequences of domestic and family violence.
24. The mental and physical consequences of abuse undoubtedly affect the performance and effective workplace participation of productive employees.²⁸ Their performance is potentially further undermined when they face discriminatory treatment from employers. In an ILO report on *Gender-based Violence in the World of Work*, the authors argue that ‘economic growth, competitiveness, development and efficiency can only be achieved where barriers to productive and quality employment opportunities are eliminated for both men and women’²⁹. Making discrimination related to domestic and family violence unlawful in the workplace (and in other areas of public life) will be a critical and positive contributor to achieving workplace equality and wellbeing and, accordingly, enhancing workplace productivity.
25. A further socio-economic benefit is that eliminating discrimination against victims and survivors will improve their access to, and ability to remain in, employment, which plays a critical role in assisting victims and survivors to transition out of domestic and family violence.³⁰ Access to income and financial security can be important preconditions that enable survivors to leave violent and abusive relationships and family situations. Conversely, impoverishment or fear of impoverishment is one of the reasons that victims and survivors of domestic violence often stay in violent and abusive relationships and family situations.

4.3 Educative function

26. Prohibiting discrimination on the ground of domestic and family violence would serve an important educative function.
27. Introducing a separate ground of discrimination related to domestic and family violence will enable this form of discrimination to be identified and acknowledged as a legal wrong in need of redress and prevention. The introduction of a legal prohibition can serve an important function for revealing an insidious and harmful form of discrimination and human rights violation,³¹ and explaining its individual and systemic implications in education, housing, employment and other areas. In addition, the naming of this form of discrimination may facilitate the adoption of measures to eliminate existing and prevent future acts of discrimination.
28. Additionally, recognising domestic and family violence as a separate ground of discrimination in a consolidated Commonwealth equality law will increase community awareness about the broader impact of such violence and the link between domestic and family violence and discrimination. It will reinforce a message from the Australian Government that such violence and discrimination is not tolerated.

29. Increased community awareness may, in turn,
 - a. facilitate the adoption of policies and procedures to support victims and survivors of domestic and family violence and aid the establishment of environments in workplace, educational, housing and other sectors that are supportive of victims and survivors;
 - b. foster an environment in which victims and survivors can feel free to disclose their violent situations and its impact with a view to developing effective means of resolution and redress.

30. Although research suggests that many individuals do disclose their violent domestic or family situation in the workplace, many do not for fear of the repercussions, such as dismissal. Less than half (48%) of respondents to the *National Domestic Violence and the Workplace Survey* who had experienced violence disclosed it to a manager or supervisor.³² In cases of non-disclosure, the implications of domestic and family violence remain largely hidden and may contribute to discriminatory treatment because of the employer's lack of understanding about the causes of an apparent decline in an employee's attendance or performance.

31. Without naming the experience and its impact on the lives of victims and survivors (for example, in relation to their working lives), and having a protective framework for doing so, victims and survivors are unable to take the necessary steps for both the effective prevention of the violence and redress for any subsequent discriminatory treatment.

4.4 Complement other strategies

32. Introducing domestic and family violence as a separate ground of discrimination in a consolidated Commonwealth equality law would complement emerging workplace-based strategies for addressing domestic and family violence, notably inclusion of domestic and family violence clauses in enterprise agreements, especially in situations where workplace entitlements have been exhausted.³³

33. Important progress has been made in the employment sphere in supporting victims and survivors through the introduction, by some employers, of policies and clauses in enterprise agreements on domestic and family violence.

34. However, discrimination against victims and survivors is not limited to the employment sphere. Accordingly, the extent and impact of domestic and family violence needs to be addressed comprehensively, with individuals and institutions from all sectors of society offering victims and survivors appropriate mechanisms of prevention and redress.³⁴ As the *National Plan to Reduce Violence against Women and Their Children* acknowledges,

involving *all* governments *and* the wider community is necessary to reducing violence in the short and longer terms. No government or group can tackle this problem alone. While living free from violence is everyone's right, reducing violence is everyone's responsibility.³⁵

35. A new ground of discrimination potentially provides another rung on the ladder of protection that will further enable the wider Australian community to address domestic and family violence effectively. It will also help to ensure that victims and survivors who experience discrimination both inside and outside the employment context receive adequate protection.

Recommendation 1: The Commission recommends that a consolidated Commonwealth equality law prohibit discrimination on the ground of domestic and family violence.

5 Constitutional power for enacting new ground of discrimination

36. An issue for consideration is the source of the Commonwealth Government's power to enact a new ground of discrimination related to domestic and family violence. The Commission notes that current anti-discrimination laws rely on the external affairs power in section 51(xxix) of the Constitution, amongst other powers, including those to make laws with respect to trading and financial corporations, banking, insurance and interstate trade and commerce, for constitutionality validity.

6 Scope and content of ground of discrimination

6.1 Definition of domestic and family violence

37. The Commission notes that the Australian Law Reform Commission and New South Wales Law Reform Commission proposed a definition of 'family violence' in their 2010 report, *Family Violence – A National Legal Response*, for use in state and territory family violence legislation.³⁶

State and territory family violence legislation should provide that family violence is violent or threatening behaviour, or any other form of behaviour, that coerces or controls a family member or causes that family member to be fearful. Such behaviour may include but is not limited to:

- (a) physical violence;
- (b) sexual assault and other sexually abusive behaviour;
- (c) economic abuse;
- (d) emotional or psychological abuse;
- (e) stalking;
- (f) kidnapping or deprivation of liberty;
- (g) damage to property, irrespective of whether the victim owns the property;
- (h) causing injury or death to an animal irrespective of whether the victim owns the animal; and
- (i) behaviour by the person using violence that causes a child to be exposed to the effects of behaviour referred to in (a)–(h) above.

The Australian Law Reform Commission proposed in its 2011 Discussion Paper on *Family Violence – Commonwealth Laws* that such a definition be applied across federal laws.³⁷

38. In November 2011, the Australian Parliament enacted the *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth). The Act inserted a new definition of 'family violence' in section 4AB of the

Family Law Act 1975 (Cth),³⁸ substantially implementing the recommendation by the Australian Law Reform Commission and NSW Law Reform Commission.

39. The Commission notes the importance of adopting a definition of domestic and family violence for the ground of discrimination that is consistent across all Commonwealth legislation. However, the definition proposed by the Australian Law Reform Commission may need to be expanded to include non-familial relationships, such as dating and carer relationships.
40. Other definitions of domestic and/or family violence can be found in the *National Plan to Reduce Violence against Women and Their Children*,³⁹ state and territory legislation,⁴⁰ comparative domestic violence legislation,⁴¹ and comparative laws that proscribe discrimination against victims and survivors of domestic violence.⁴²

(a) *Consistent definition*

41. The Commission urges the Government to take appropriate measures to ensure a consistent definition of domestic and family violence across all relevant Commonwealth legislation, to maximise simplicity in addressing this critical issue. It further urges the Government to work with its state and territory counterparts to develop a consistent definition nationally.

(b) *Gender neutral*

42. The Commission recommends that any definition of domestic and family violence be gender neutral. Domestic and family violence are not limited to any one type or types of domestic or family relationships. They can, and do, occur in all relationships and family situations, regardless of the sex, sexual orientation or sex or gender identity of the persons involved. Research suggests, for example, that domestic violence occurs at a similar rate in same sex relationships as in opposite sex relationships.⁴³
43. The Commission believes that this factor should be taken into account when defining domestic and family violence, in order to ensure consistent protection for all victims and survivors of domestic and family violence, and not just those individuals in heterosexual relationships or family situations. A gender neutral definition would also ensure consistency with the new protections against discrimination on the grounds of sexual orientation and gender identity.

Recommendation 2: The Commission recommends that for the purposes of defining the ground of domestic and family violence, a consolidated Commonwealth equality law adopt a definition of domestic and family violence that is gender neutral and consistent across all Commonwealth legislation.

6.2 Coverage

44. The Commission suggests that favourable consideration be given to providing broad protection against discrimination on the grounds of domestic and family violence.

(a) *All areas of public life*

45. In its primary submission, the Commission suggested that the Government give favourable consideration to coverage by a consolidated Commonwealth equality law of discrimination in any area of public life covered by the law.
46. If protection against discrimination in public life is extended, as the Commission contends it should, the proposed ground of domestic or family violence should be protected consistently with other protected grounds. Extending coverage in this way would provide comprehensive coverage to victims and survivors who would be protected against discrimination in all areas of public life and not just in enumerated areas.

(b) *Direct and indirect discrimination*

47. The Commission submits that a consolidated Commonwealth equality law should provide that both direct and indirect discrimination on the ground of domestic and family violence are unlawful. Extending coverage in this way would ensure victims and survivors comprehensive protection against discrimination. Such coverage is also consistent with discrimination laws, as they are currently framed.⁴⁴

(c) *Actual and perceived (imputed) status*

48. The Commission suggests that coverage of the proposed domestic and family violence ground extend to actual and imputed victims and survivors of domestic and family violence.
49. This approach has already been recognised in several jurisdictions that prohibit discrimination against victims and survivors of domestic and family violence, including the state of New York, which makes it unlawful to discriminate ‘on the basis of actual or perceived status as a victim of domestic violence’⁴⁵. Such an approach is also consistent with existing protections in a number of Commonwealth anti-discrimination laws, which protect against discrimination on the basis of attributes or characteristics that are ‘imputed’ to individuals.⁴⁶
50. The Commission suggests that the consolidated equality law should recognise the status of victim and survivor of domestic or family violence that is imputed by a discriminator, regardless of whether or not that status is ‘generally’ imputed, consistent with recommendation 9 in its primary submission and its submission to the review of the Sex Discrimination Act.

(d) *Associates*

51. The Commission suggests that coverage of the proposed domestic and family violence ground include associates of victims and survivors, consistent with recommendation 23 in its primary submission, which recommends that a consolidated Commonwealth equality law apply to discrimination on the basis of association with a person with a protected attribute or attributes.

52. Because of the insidious nature of domestic and family violence, victims and survivors often require support from family members and friends, including attendance at legal proceedings as a support person, help relocating, emotional support and assuming caring responsibilities. Such support is integral to the safety and general health and wellbeing of victims and survivors and their children. For this reason, individuals who support victims and survivors of domestic and family violence also require protection against discrimination.

(e) *Past and current experiences of domestic and family violence*

53. The Commission suggests that coverage of the proposed ground should extend to individuals who are discriminated against on the basis of past and current experiences of domestic and family violence. This should include discrimination based on the ongoing consequences of domestic and family violence, such as the enduring mental health problems that survivors often experience as a result of such violence.⁴⁷ Such an approach is consistent with the way disability discrimination is currently protected.⁴⁸

Recommendation 3: The Commission recommends that coverage of the ground of domestic and family violence extend to:

- ***all areas of public life;***
- ***direct and indirect discrimination;***
- ***actual and imputed status as a victim or survivor of domestic and family violence;***
- ***associates of victims and survivors of domestic and family violence;***
- ***discrimination based on past and current experiences of domestic and family violence.***

¹ See Australian Human Rights Commission, *Submission to the Attorney-General's Department on Consolidation of Commonwealth Discrimination Law* (6 December 2011), 24. At http://humanrights.gov.au/legal/submissions/2011/20111206_consolidation.html.

² See Attorney-General's Department, *Consolidation of Commonwealth Anti-Discrimination Laws: Discussion Paper* (2011).

³ Australian Human Rights Commission, *Submission to the Attorney-General's Department on Consolidation of Commonwealth Discrimination Law*, note 1.

⁴ See Australian Bureau of Statistics, *Personal Safety, Australia, 2005* (Reissue), Catalogue No. 4906.0 (2006).

⁵ It has been recognised that domestic and family violence violates a wide range of human rights and fundamental freedoms, including the rights to life, not to be subject to torture or to cruel, inhuman or degrading treatment or punishment, equal protection according to humanitarian norms in time of international or internal armed conflict, liberty and security of person, equal protection under the law, equality in the family, the highest standard attainable of physical and mental health, and right to just and favourable conditions of work. See CEDAW Committee, *General Recommendation No. 19: Violence against Women*, UN Doc. A/47/38 (1992), [7].

⁶ See VicHealth, *The Health Costs of Violence: Measuring the Burden of Disease Caused by Intimate Partner Violence* (2004), 8.

⁷ See Jack Dearden & Warwick Jones, *Homicide in Australia: 2006 – 07 National Homicide Monitoring Program Annual Report*, Australian Institute of Criminology (2008), 2.

⁸ See Susan Rees *et al.*, 'Lifetime Prevalence of Gender-Based Violence in Women and the Relationship with Mental Disorders and Psychological Function' (2011) 306(5) *JAMA* 513, at 513.

⁹ Ludo McFerran, *Safe at Home, Safe at Work? National Domestic Violence and the Workplace Survey* (Centre for Gender Related Violence Studies and Micromex Research, 2011), 17. At http://www.adfvc.unsw.edu.au/PDF%20files/Domestic_violence_and_work_survey_report_2011.pdf. Reasons included physical injury or restraint (67%), hiding or stealing car keys or transportation money (28%), and refusal or failure to care for children (22%): see above at 8-9.

¹⁰ Above, 10.

¹¹ See, e.g., Australian Human Rights Commission, *Submission to the Australian Law Reform Commission Inquiry into Family Violence and Commonwealth Laws: Employment and Superannuation* (21 April 2011), para. 47. At: http://www.humanrights.gov.au/legal/submissions/2011/20110421_family_violence.html

¹² McFerran, note 10.

¹³ See Australian Bureau of Statistics, note 4.

¹⁴ See Attorney-General's Department, *Consolidation of Commonwealth Anti-Discrimination Laws: Discussion Paper* (2011), [85], citing Equality Rights Alliance, *Gender Equality Roundtable Submission to the Consolidation Project* (2011), 5. At: http://www.equalitylaw.org.au/literature_48131/Gender_Equality_Roundtable_Submission_to_the_Consolidation_Project; National Association of Community Legal Centres, *Areas for Increased Protection in Discrimination Law: Consolidation of Federal Discrimination Legislation* (2011), 11. At: <http://www.rlc.org.au/admin/spaw2/uploads/files/Paper2.pdf>.

¹⁵ Australian Human Rights Commission, *Domestic Violence as a Ground of Discrimination: Roundtable*, Sydney, 3 November 2011.

¹⁶ Disability Discrimination Act, s 10.

¹⁷ Above, s 4.

¹⁸ Above.

¹⁹ Sex Discrimination Act, s 8.

²⁰ Above, ss 5(1)(b) and (c).

²¹ Neil Rees, Katherine Lindsay & Simon Rice, *Australian Anti-Discrimination Law: Text, Cases and Materials* (2008), [5.2.5.7].

²² Australian Human Rights Commission, *Domestic Violence as a Ground of Discrimination: Roundtable*, Sydney, 3 November 2011.

²³ See Australian Human Rights Commission, *Submission to the Attorney-General's Department on Consolidation of Commonwealth Discrimination Law*, note 1, [15].

²⁴ National Council to Reduce Violence against Women and their Children, *The Cost of Violence Against Women and Their Children* (March 2009), 4.

²⁵ Above, at 45.

²⁶ Adrienne Cruz & Sabine Klinger, *Gender-Based Violence in the World of Work: Overview and Selected Bibliography*, International Labour Office, Working Paper 3/2011 (2011), 13.

²⁷ Sylvia Walby, *The Cost of Domestic Violence* (UK Women & Equality Unit, 2004), 8, 11, 96-97.

²⁸ Cruz & Klinger, note 27, 15.

²⁹ Above, at 73.

³⁰ See generally Rochelle Braaf & Isobelle Barrett Meyering, *Seeking Security: Promoting Women's Economic Wellbeing Following Domestic Violence* (Australian Domestic and Family Violence Clearinghouse, 2011).

³¹ Andrea Durbach, 'Domestic Violence Discrimination and the Consolidation of Commonwealth Anti-Discrimination Laws' Paper delivered at Safe at Home, Safe at Work Conference, 5 December 2011 (Melbourne), citing Rebecca J. Cook and Simone Cusack, *Gender Stereotyping: Transnational Legal Perspectives* (2011), 39. At: http://humanrights.gov.au/about/media/speeches/sex_discrim/2011/20111205_domestic_violence.html.

³² See McFerran, note 10, 13.

³³ See, e.g., *University of New South Wales (Academic Staff) Enterprise Agreement 2011*, cl 33.4. At: http://www.hr.unsw.edu.au/services/indrel/UNSW_Academic_Staff_Enterprise_Agreement_2011.pdf. For other examples, see Australian Domestic & Family Violence Clearinghouse, 'Domestic Violence Workplace Rights and Entitlements Project: 'Safe at Home, Safe at Work''. At http://www.adfvc.unsw.edu.au/dv_workplace_rights_entitlements_project.htm. See generally Australian Law Reform Commission, *Family Violence – Commonwealth Laws: Discussion Paper* (2011), 542-556. At: <http://www.alrc.gov.au/publications/17-employment%E2%80%94fair-work-act-2009-cth-continued/enterprise-agreements>.

³⁴ Betty Taylor cited in Ben Pennings, 'Domestic Violence: A Workplace Issue', in Australian Domestic & Family Violence Clearinghouse (2008) 31 *Newsletter* 1, at 14.

³⁵ *National Plan to Reduce Violence against Women and Their Children* (2011), i.

³⁶ Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence – A National Legal Response*, Final Report, ALRC Report 114 (2010), 246.

³⁷ See Australian Law Reform Commission, *Family Violence – Commonwealth Laws*, Discussion Paper 76 Summary (2011), 10.

³⁸ See *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth), s 8. The new section 4AB of the *Family Law Act 1975* (Cth) states:

- (1) For the purposes of this Act, family violence means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member), or causes the family member to be fearful.
- (2) Examples of behaviour that may constitute family violence include (but are not limited to):
 - (a) an assault; or
 - (b) a sexual assault or other sexually abusive behaviour; or

- (c) stalking; or
- (d) repeated derogatory taunts; or
- (e) intentionally damaging or destroying property; or
- (f) intentionally causing death or injury to an animal; or
- (g) unreasonably denying the family member the financial autonomy that he or she would otherwise have had; or
- (h) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependent on the person for financial support; or
- (i) preventing the family member from making or keeping connections with his or her family, friends or culture; or
- (j) unlawfully depriving the family member, or any member of the family member's family, of his or her liberty.

The Australian Law Reform Commission's report on its inquiry into Commonwealth laws and family violence will shortly be tabled in the Australian Parliament.

³⁹ *National Plan to Reduce Violence against Women and Their Children* (2011), 3.

⁴⁰ See, e.g., *Family Violence Prevent Act 2008* (Vic), s 5.

⁴¹ See, e.g., *Law against Domestic Violence* of 2010 (Timor Leste), art 2 (defining 'domestic violence'); *Magna Carta of Women* of 2008 (Phil.), s 4(k) (defining 'violence against women').

⁴² See, e.g., *Administrative Code of the City of New York*, Title 8 (U.S.), ss 8-107.1(1)(b) (defining 'victim of domestic violence').

⁴³ See generally William Leonard *et al.*, *Coming Forward: The Underreporting of Heterosexual Violence and Same Sex Partner Abuse in Victoria* (2008); Janine Farrell & Somali Cerise, *Fair's Fair: A Snapshot of Violence and Abuse in Sydney LGBT Relationships 2006* (2006); Marian Pitts *et al.*, *Private Lives: A Report on Health and Wellbeing of GLBTI Australians* (2006), 51-52.

⁴⁴ See, e.g., *Sex Discrimination Act*, ss 5(2), 6(2), 7(2), 7AA(2), 7B.

⁴⁵ *Administrative Code of the City of New York*, Title 8 (U.S), ss 8-107.1, 8-107.3(a).

⁴⁶ See, e.g., *Sex Discrimination Act*, s 5(1)(c); *Disability Discrimination Act*, s 4.

⁴⁷ See Rees, note 9, at 513.

⁴⁸ *Disability Discrimination Act*, s 4.