



Community and Public Sector Union

Michael Tull ♦ Assistant National Secretary

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Committee Secretary
Senate Education and Employment Committees
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary

CPSU Submission to the Fair Work Amendment (Family and Domestic Violence Leave) Bill 2018

The CPSU supports the Australian Council of Trade Union's position that the National Employment Standards (NES) should contain at least 10 days of paid family and domestic violence leave.

The CPSU Member Service Centre is the first point of contact for CPSU members seeking assistance or advice on their workplace entitlements. The Member Service Centre has seen a significant increase in contact from members asking for advice after experiencing family and domestic violence situations.

Each member's needs are different. They may require leave from their work to ensure their physical safety in the immediate aftermath of a violent incident, by seeking medical attention, organising accommodation, or attending police interviews. Long term needs such as counselling for both themselves and any children, attending court, seeking legal advice, and notification to all relevant agencies are also activities that require leave from the workplace, as they can only be completed during business hours.

Having the ability to take time off guaranteed by the NES is positive first step, however the provision of this leave as unpaid, further penalises those who have experienced family and domestic violence, and will further exacerbate the significant financial cost already suffered by workers in this situation.

Australian Law Reform Commission Report

In 2011–2012¹ the Australian Law Reform Commission (**ALRC**) conducted an Inquiry into the treatment of family violence in Commonwealth laws, including employment law. In the course of the Inquiry, the ALRC examined the intersections between family violence and Commonwealth employment law. In addition to consulting widely with stakeholders and raising awareness of this issue throughout the Inquiry, the ALRC also ultimately recommended reforms to employment-related legislative, regulatory and administrative frameworks to improve the safety of people experiencing family violence.

The ALRC highlighted the connection between employment and family violence and recommended a coordinated whole-of-government national education and awareness campaign. The ALRC recommended that the Australian Government support the inclusion of family violence clauses in enterprise agreements. At a minimum, the ALRC recommended such clauses should contain several basic requirements and provisions in relation to:

- when verification of family violence is required and the type of verification;
- confidentiality;
- reporting, roles and responsibilities;
- flexible work arrangements; and
- access to paid leave.

The ALRC also recommended the development of associated guidance material; consideration of family violence in the course of modern award reviews; and review of the NES with a view to making family violence-related amendments to the right to request flexible working arrangements and the inclusion of an entitlement to additional paid family violence leave.

The right to request flexible working arrangements under the NES was subsequently extended on the basis recommended by the ALRC.

Commonwealth as an Employer

The CPSU has been advocating for the inclusion of family and domestic violence leave in Commonwealth employment enterprise agreements, seeking that the Commonwealth lead the way in providing paid family and domestic violence leave for its employees.

The CPSU has put the following claim in enterprise bargaining:

Additional paid leave for employees affected by family or domestic violence of 20 days per year with the ability to access flexible work arrangements as needed and appropriate support networks.

¹ Family Violence and Commonwealth Laws – Improving Legal Frameworks (ALRC Report 117) 8 Feb 2012
<http://www.alrc.gov.au/publications/17-national-employment-standards/family-violence-related-leave>

Purpose of the claim

This claim is being pursued by the CPSU to ensure that persons affected by family violence have adequate paid leave entitlements and flexible working arrangements to allow them to continue paid employment.

In the majority of APS agencies, employees affected by domestic violence would only have access to personal/carers leave entitlements, for limited purposes. It is important that a discrete category of paid leave is established in this enterprise agreement.

Firstly, personal/carers leave may not cover all circumstances that a person affected by domestic violence would need to access leave (for example, attending court proceedings, attending a police appointment or making arrangements for alternative accommodation or childcare and schooling).

Secondly, an employee affected by family violence may very quickly exhaust all of their paid personal/carers leave entitlements. This may result in an employee having to access unpaid leave to attend to matters related to the family violence or for sickness or caring responsibilities.

Flexible working arrangements are important to employees affected by family violence as it may be necessary to vary their working pattern to address potential dangers to themselves or others, where for example there is an ongoing threat of violence and/or the employee is being followed. Flexible working arrangements may offer an employee a way of managing other matters arising from circumstances of family violence without reducing their hours or taking leave. For example, this may include varied hours while alternative child care arrangements are established.

Arguments in support of the claim

Family and domestic violence affects citizens in the workplace in many ways, including their financial stability and ability to maintain work (e.g. in terms of their ability to get to work, punctuality, leave requirements, being unwell and finding it hard to get work done, and quality of time at work). Family and domestic violence and its repercussions can cause 'financial poverty for women through disruption to work, absenteeism and likelihood of resigning or being terminated' (Access Economics 2004; ADFVC 2012).

The workplace is also a place where those experiencing family and domestic violence can be targeted by the perpetrator. Research in 2011 found that 19% of Australian employees experiencing domestic violence reported harassment at their place of work.²

As part of the National Plan to Reduce Violence Against Women and their Children, there has been some progress in providing additional support and entitlements to employees affected by family or domestic violence. This is evidenced by:

- amendments to the National Employment Standards (NES) under the *Fair Work Act 2009* (Cth);
- inclusion of specific leave provisions and other entitlements in enterprise agreements; and a decision by the Fair Work Commission to include unpaid family and domestic violence leave in all industry Awards.

² UNSW Gendered Violence Unit <https://www.arts.unsw.edu.au/research/gendered-violence-research-network/gendered-violence-work/>

However, these changes have been slow, and do not go far enough, and the provision of 5 days' unpaid leave in the *Fair Work Amendment (Family and Domestic Violence Leave) Bill 2018 (Cth) (Bill)* falls well short of what is needed.

Enterprise agreement provisions

As at March 2016 there were 1,234 enterprise agreements, covering over 1 million Australian employees, with domestic violence clauses in their agreement or award conditions. Domestic violence clauses have been included in enterprise agreements in a broad range of industries such as government, retail, public transport, banking, education, manufacturing, airline and maritime³.

The Commonwealth is the only government in Australia that does not provide a clear, separate category of paid leave for family and domestic violence to its employees. Most State and Territory Governments provide this entitlement in enterprise agreements or equivalent level of protection (such as Award or Legislation):

- ACT – 20 days paid leave in enterprise agreements
- VIC – 20 days paid leave in enterprise agreements
- WA – 10 days paid leave – 2017 policy to be inserted into Enterprise Agreements as they expire
- QLD – 10 days paid leave in legislation
- NSW – 5 days paid leave in Award when personal leave and family and community services leave is exhausted
- NT – unspecified/uncapped amount of paid leave in enterprise agreement.
- TAS – 10 days paid leave
- SA – 15 days paid leave

The CPSU's claim to include family and domestic violence leave as a discrete category of leave in enterprise agreements was largely rejected by the Commonwealth in the 2014 bargaining round. This was a disappointing approach to an issue that the Commonwealth as an employer should have been playing a leadership role on.

There appears to be some relaxation of the Commonwealth's approach to the small number of APS agencies in bargaining in 2018, with the Commonwealth now allowing agencies to include clauses in enterprise agreements that provide employees with access to Personal and Carer's Leave or Miscellaneous Leave in certain circumstances where they have experienced or are experiencing family and domestic violence.

Although this approach is a step forward, there are limitations in this approach. It falls short of the 20 days' paid leave that is appropriate where an employee experiences family and domestic violence, which is the CPSU's current claim. In some cases, it is not clear that the leave will be paid. Where the clause allows an employee to access Personal and Carer's Leave, accessing the leave may result in employee exhausting their credits, adding to the hardship already being experienced.

³ <http://www.dvandwork.unsw.edu.au/>

The Commonwealth needs to go further in enterprise bargaining to set an example as an employer. Beyond this, all national system employees require greater protection and support when experiencing family and domestic violence. The Bill should incorporate 10 days' paid leave into the NES.

For further information please contact our Parliamentary Liaison Officer, Elizabeth Hay

Yours sincerely

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ASSISTANT NATIONAL SECRETARY