



Safe at Home, Safe at Work submission: Equal Opportunity for Women in the Workplace  
Amendment Bill 2012

Including specific benchmarks on domestic violence workplace rights and entitlements.

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**14 March 2012**

## Executive Summary

Safe at Home, Safe at Work project at the Australian Domestic and Family Violence Clearinghouse submits that the Minister should include specific benchmarks on domestic violence workplace rights and entitlements, as part of the set of minimum standards in relation to gender equality indicators, consistent with the objects of the Equal Opportunity for Women in the Workplace Amendment Act 2012 (“the Act”).

This submission will:

1. Define domestic violence and its impact on the workplace
2. Outline current domestic violence workplace rights and entitlements
3. Address the impacts of domestic violence in the workplace in relation to the objects set out in the Act
4. Recommend principles to be considered in setting minimum standards

### Domestic violence and its impact on the workplace

A significant number of Australian workers experience domestic or family violence (herein referred to as ‘domestic violence’<sup>1</sup>). Evidence shows that such abuse impacts on both their personal and working lives.

Domestic violence involves physical injury and a wide range of abusive behaviours designed to control the victim, including psychological, financial and spiritual abuse, and social isolation<sup>2</sup>. Domestic violence can be cyclical in nature and financial and social push/pull factors constrain victims’ ability to leave violent relationships<sup>3</sup>. Ultimately, for many victims it takes several attempts to finally leave a violent relationship<sup>4</sup>. Domestic violence is the leading preventable cause of death, injury and illness for Australian women under 45 years, a higher health risk for women in this age group than smoking and obesity, and can have long-term impacts on victims’ health and wellbeing<sup>5</sup>.

Domestic violence is pervasive in all Australian communities, extending across cultural, ethnic and socioeconomic groups. The most recent ABS *Personal Safety Survey* in 2005 found that 15 percent of Australian women had experienced physical or sexual violence from a previous partner. The same survey found that nearly two thirds of women who have experienced domestic violence with their current partner are in paid employment.<sup>6</sup>

The Safe at Home, Safe at Work national domestic violence impact at work survey<sup>7</sup> found that domestic violence did impact on the capacity of workers to get to work and on their productivity and safety while at work:

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<sup>1</sup> This submission uses the term ‘domestic violence’ interchangeably with ‘family violence’.

<sup>2</sup> ALRC, *Family Violence - A National Legal Response: Final Report* (ALRC Report No 114, October 2010) at para [5.9].

<sup>3</sup> For further discussion see Braaf and Barrett Meyering, above n 1. See also Sascha Griffing et al, ‘Domestic Violence Survivors’ Self-Identified Reasons for Returning to Abusive Relationships’ (2002) 17 *Journal of Interpersonal Violence* 306 at 307-8.

<sup>4</sup> See eg, Michael Strube, ‘The Decision to Leave an Abusive Relationship: Empirical and Theoretical Issues’ (1988) 104 *Psychological Bulletin* 236.

<sup>5</sup> VicHealth, *The Health Costs of Violence: Measuring the Burden of Disease Caused by Intimate Partner Violence* (Melbourne, January 2004) at 10.

<sup>6</sup> ABS, *Personal Safety Survey* (2006) at 11. Additionally, Mouzos and Makkai found that 34 percent of Australian women had experienced physical or sexual partner violence, and up to 40 percent had experienced at least one form of controlling behaviour, see Jenny Mouzos and Toni Makkai, *Women’s experiences of male violence: findings from the Australian component of the International Violence Against Women Survey (IVAWS)* (Canberra, Australian Institute of Criminology, Research and Public Policy Series 56, 2004) at 44, 48.

<sup>7</sup> Ludo McFerran (2011), *Safe at Home, Safe at Work? National Domestic Violence and the Workplace Survey*. Safe at Home, Safe at Work, UNSW. This study is the first of its kind conducted in Australia, providing specific data on the impact of

1. 30 % of 3,611 respondent workers had experienced some form of domestic violence over the course of their lifetime.
2. Of the workers who had experienced domestic violence, nearly half reported that it had affected their capacity to get to work, through either physical restraint, hiding/stealing keys or transportation money or refusal/failure to show up to care for children.
3. 19% of the workers who had experienced domestic violence reported that the violence had impacted on them in the workplace; abusive calls and emails and the abusive person attending the workplace were the most common form of abuse experienced.
4. The impacts of domestic violence on workers who experienced it included: feeling distracted, tired or unwell, having to take time off and being late to work.

In a 1998 review, the United States Government cited evidence that up to 52% of victims reported losing a job, at least in part, due to domestic violence<sup>8</sup>. Other studies demonstrate that women who are victims of domestic violence have more disrupted work histories, on average have lower personal incomes, have had to change jobs frequently and are more likely to be employed in casual and part time work than women with no experience of violence<sup>9</sup>.

Employment is identified as a key structural support to women leaving violent relationships<sup>10</sup>. As noted by the Australian Human Rights Commission:

*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<sup>11</sup>.*

### **Current domestic violence workplace rights and entitlements**

The Safe at Home, Safe at Work Project is a project of the Centre for Gender Related Violence Studies, located at the Australian Domestic and Family Violence Clearinghouse, UNSW. The project is funded by the Department of Education, Employment and Workplace Relations to address the impact of domestic violence in the workplace and promote domestic violence entitlements through enterprise bargaining. The Project commenced in July 2010.

The project emerged from the need to create widespread and sustainable change to support the vast majority of domestic violence victims: working women.<sup>12</sup> The project was seeking standard, non-discretionary and enforceable guarantees of support at the workplace to protect vulnerable

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domestic violence on working Australians. Also note that the rates of reported domestic violence are higher than ABS results most likely due to the concentration of ages in working years and broader definition of violence used in the survey design.

<sup>8</sup> United States General Accounting Office, *Domestic Violence: Prevalence and Implications for Employment Among Welfare Recipients* (Washington DC, GAO Publication No B-280099, 24 November 1998) at 8 (citing the results of three earlier studies). Available at: [www.gao.gov/products/HEHS-99-12](http://www.gao.gov/products/HEHS-99-12).

<sup>9</sup> Suzanne Franzway, Carole Zufferey and Donna Chung, *Domestic Violence and Women's Employment*, (Paper presented at Our Work, Our Lives 2007: National Conference on Women and Industrial Relations, 20 – 21 September, 2007) citing Jody Raphael, 'Domestic Violence as a Welfare-to-Work Barrier: Research and Theoretical Issues' in Renzetti et al, *Sourcebook on Violence Against Women* (California, Sage Publications, 2001) at 443-457.

<sup>10</sup> Shirley Patton, *Pathways: How Women Leave Violent Men* (Government of Tasmania, 2003) at xviii. Available at: [www.dpac.tas.gov.au/\\_\\_data/assets/pdf\\_file/0014/47012/pathways\\_how\\_women\\_leave\\_violent\\_men.pdf](http://www.dpac.tas.gov.au/__data/assets/pdf_file/0014/47012/pathways_how_women_leave_violent_men.pdf).

<sup>11</sup> Australian Human Rights Commission, *Consolidation of Commonwealth Discrimination Law, Supplementary Submission*, January 2012 [Paragraph 25]

<sup>12</sup> Murray, S & Powell, A 2008, *Working it out: domestic violence issues and the workplace*, Issue Paper, Australian Domestic and Family Violence Clearinghouse, Sydney

workers from losing their jobs as a result of the impacts of domestic violence. These entitlements are also designed to address perceived barriers to disclosure at work.<sup>13</sup>

To achieve this goal the Clearinghouse began discussions with the PSA in 2009 to develop a set of model domestic violence clauses. The first clauses were logged at UNSW in April 2010, but it was in Victoria in September of that year that the first Australian family violence clauses were incorporated into the enterprise agreement between the Surf Coast Shire Council and the Australian Services Union Victorian Authorities and Services Branch. These provided world's best practice with up to twenty day extra paid leave for reasons of family violence. These Australian initiatives have been recognised and supported at an international level. International Labour Conference 2009 Conclusions on gender equality at the heart of decent work instructed ILO to research and assist in the collection of data and use collective bargaining to address gender-based violence.<sup>14</sup>

These Awards and Agreements contain the following key protections:

- Dedicated, additional, and paid family and domestic violence leave
- Confidentiality of employee details must be assured and respected
- Workplace safety planning strategies to ensure protection of employees should be developed and clearly understood by the parties concerned
- The agreement should provide for referral of employees to appropriate domestic violence support services
- Nominated / contact person(s), including union delegates or occupational health and safety representatives if appropriate, must be provided with appropriate training and paid time off work to facilitate their role
- Employees entitled to family and domestic violence leave should also be able to access flexible work arrangements where appropriate
- Employees must be protected against adverse action or discrimination on the basis of their disclosure of, or experience of, or perceived experience of, family and domestic violence.

Currently, over 600,000 Australian workers, concentrated in the NSW and Queensland public sectors and the Victorian local government sectors, have access to domestic violence leave and other supports such as safety planning.

We estimate that the coverage of domestic violence workplace entitlements will grow exponentially particularly given that:

1. The Australian Law Reform Commission has recommended that the Commonwealth Government considers amending the Fair Work Act to include domestic violence protections as a National Employment Standard<sup>15</sup>.

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<sup>13</sup> The domestic violence and work survey found that 45 % of respondents with recent experience of domestic violence discussed the violence with someone at work, primarily co-workers or friends rather than supervisors, HR staff or union representative. Of those who had discussed the domestic violence with someone at work, almost half (48%) had disclosed the violence to their manager/supervisor, though only 10% found them helpful.

<sup>14</sup> Ms Jane Hodges, GENDERS Director speaking at "Domestic violence - workplace response: In the interest of safety, productivity and employment sustainability in Australia" 4 July 2011 ILO, Geneva  
[http://www.ilo.org/gender/Events/WCMS\\_158484/lang--en/index.htm](http://www.ilo.org/gender/Events/WCMS_158484/lang--en/index.htm)

<sup>15</sup> Australian Law Reform Commission, *Family Violence and Commonwealth Laws-Improving Legal Frameworks Final Report*, (ALRC Report 117, 2011), (Published February 2012).

2. The Australian Human Rights Commission has recommended that a consolidated Commonwealth equality law prohibit discrimination on the ground of domestic and family violence<sup>16</sup>.
3. The ADFVC submission to the Fair Work Act Review February 2012 emphasised the need to amend the Fair Work legislation to provide a balanced framework that will assist employers and employees to cooperatively address the impact of domestic violence in the workplace.

### **The impacts of domestic violence in the workplace in relation to the objects set out in the Act**

Whilst domestic violence affects both men and women the ABS *Personal Safety Survey* cited above shows that domestic violence predominantly affects women.

Supporting both men and women who are victims of domestic violence to stay safely in their jobs through domestic violence entitlements would assist all genders to participate in the workforce but will predominately assist women as women are more likely to be victims of domestic violence.

As such introducing specific benchmarks on domestic violence workplace rights and entitlements, as part of the set of minimum standards in relation to gender equality indicators, would be consistent with the objects of the Equal Opportunity for Women in the Workplace Amendment Act 2012 particularly Section 2(a) subsection (b):

*to support employers to remove barriers to the full and equal participation of women in the workforce, in recognition of the disadvantaged position of women in relation to employment matters*

Furthermore Section 2(a) subsection (e) states the object of the act is:

*to improve the productivity and competitiveness of Australian business through the advancement of gender equality in employment and in the workplace.*

Providing support to victims of domestic violence would mitigate the productivity costs of domestic violence which Access economics estimates to be \$484 million in 2002/3, set to rise to \$609 million by 2021/2<sup>17</sup> including costs associated with victim and perpetrator absenteeism, misuse of work resources by perpetrators and retraining and rehiring costs due to staff turnover.

### **International obligations**

Introducing minimum standards about domestic violence entitlements would also be consistent with Australia's international obligations as the entitlements would assist victims and their children to leave abusive relationships.

The International Covenant on Economic, Social and Cultural Rights, done at New York on 16 December 1966 ([1976] ATS 5); Right to family life, Article 10 which states "the Covenant recognises the family as "the natural and fundamental group unit of society", and requires parties to accord it "the widest possible protection and assistance."

The Convention on the Rights of the Child, done at New York on 20 November 1989 ([1991] ATS 4), Article 19 states:

1. Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or

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<sup>16</sup> Australian Human Rights Commission, *Consolidation of Commonwealth Discrimination Law, Supplementary Submission*, January 2012 [Paragraph 2]

<sup>17</sup> Access Economics, *The Cost of Domestic Violence to the Australian Economy: Part I* (Commonwealth of Australia, Canberra, 2004) at 43.

negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.”

The United Nations Declaration on the Elimination of Violence against Women (1993) defines violence against women as ‘ means any act of gender-based violence...whether occurring in public or in private life’ (Article 1) .

### **Recommend principles to be considered in setting minimum standards**

The Act at Section 2B Simplified Outline states that the functions of the Workplace Gender Equality Agency include advising and assisting employers in promoting and improving gender equality in the workplace and undertaking research and programs for the purpose of promoting and improving gender equality in the workplace.

As such the Safe at Home, Safe at Work submits that the Workplace Gender Equality Agency should develop benchmarks in relation to domestic violence entitlements and incorporate them into the new reporting framework in which relevant employers are required to report against gender equality indicators.

The Safe at Home, Safe at Work Project submits that these minimum standards should measure:

1. If the relevant employer has enforceable domestic violence rights and entitlements for their workers including:
  - The number of dedicated, additional, and paid family and domestic violence leave
  - Confidentiality provisions for employees
  - Workplace safety planning strategies which are clearly understood by the parties concerned
  - Referral of employees to appropriate domestic violence support services
  - Nominated / contact person(s), including union delegates or occupational health and safety representatives if appropriate, who have been provided with appropriate training and paid time off work to facilitate their role
  - The right to request flexible work arrangements
  - Protections against adverse action or discrimination on the basis of their disclosure of, or experience of, or perceived experience of, family and domestic violence.
2. The take up of domestic violence rights and entitlements
3. Any breaches of employer obligations regarding domestic violence rights and entitlements.

The Safe at Home, Safe at Work project further submits that Employer of Choice criteria be amended to include minimum standards about domestic violence entitlements.

The Workplace Gender Equality Agency (WGEA) will be ideally placed to advise to monitor the implementation of domestic violence entitlements as the application of the Act:

1. Has been expanded to include men and all employers and employees in the workplace
2. Requires certain employers to prepare public reports relating to gender equality indicators
3. Provides for WGEA to monitor employer compliance; and making consequential amendments.

The Safe at Home, Safe at Work project has developed a monitoring process; training modules to assist with the informed implementation of domestic violence clauses; and a range of resources on safety planning and information for individuals, unions and employers. These could inform the work of the WGEA.