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President Gerardine (Ged) Kearney
Secretary Dave Oliver

Ms Ann Palmer
Principal Research Officer
Senate Legal and Constitutional Affairs Committee

Thursday 31 January 2013

Dear Ms Palmer,

At the Senate Legal and Constitutional Affairs Committee Hearing for the Exposure Draft of the Human Rights and Anti-Discrimination (HRAD) Bill conducted on Wednesday 23 January, ACTU took questions on notice of the Chair of the Senate Legal and Constitutional Affairs Committee, Senator Trish Crossin and Senator Furner.

Please find below our answers to those questions.

Please also note that we have not identified any corrections required to be made to the Hansard record of the appearances of Mr Tim Lyons or Ms Belinda Tkalcevic.

Q.1 Senator FURNER: Can you explain to the Committee the average or the contemporary leave entitlements associated with DV leave please?

There are 1,097,890^[1] employees currently covered by domestic and family violence entitlements ^[2]. Of these employees:

- 715, 355 employees have access to paid domestic and family violence leave
- 491 employees have access to unpaid domestic and family violence leave
- 382, 044 employees have no access to either paid or unpaid domestic and family violence leave.

The quantum of paid domestic and family violence leave varies from 3 days to an uncapped amount, with 20 days paid leave appearing in the most industrial instruments. Please see Appendix 1 for further detail.

Q.2. Senator FURNER: Is there any evidence for, or examples of, where your affiliates have associated and identified examples of discrimination as a result of taking (DV) leave at all? Have you got any feedback on that?

Over 1 million employees now have access to some form of domestic violence leave. By and large these leave provisions require employees to disclose, and in some instances to provide evidence of experiencing domestic violence.

^[1] Numbers of employees covered from data provided by DEEWR, employers, unions and annual reports

^[2] DEEWR provides information on enterprise agreements made under the Fair Work Act (2009) that contain domestic and family violence entitlements on a 6 to 12 monthly basis and as such not all organisations who currently have domestic and family violence entitlements are captured above.

There are currently no examples of employees formally lodging complaints of discrimination as a result of accessing domestic and family violence leave.

Should such an incidence arise, the employee could seek redress under the Fair Work Act 2009 (as long as the leave formed part of a workplace instrument) as the leave would be a workplace right.

Many employees however do not have access to domestic violence leave. The ACTU is of the opinion that these workers must be entitled to protection from discrimination on the grounds of experiencing domestic violence.

Including the status as a victim of domestic violence as a protected attribute in the HRAD encompasses instances where the employee is discriminated against, not for accessing or attempting to access a workplace right, but because they are a victim of domestic violence.

Q.3 Chair (Senator CROSSIN): We know that in the discussion paper there was a suggestion that discrimination against victims of family violence, particularly in the workplace, should be considered in this draft legislation and it is not. Does the ACTU have a view about the inclusion of it?

A significant number of the 3 million women (350,000 each year), who experience domestic violence are employed.¹ The right of victims of family and domestic violence to maintain paid employment is one which the ACTU regards as an important workplace issue and we have been working towards achieving provisions in workplace agreements which aim to facilitate this right.

Maintaining paid employment and financial independence is critical to women and their children successfully breaking the cycle of family and domestic violence.²

The ACTU supports the principle that family and domestic violence is a workplace issue and that there is a strong public policy ground for ensuring the HRAD must protect the rights of employees experiencing domestic violence to maintain their connection to employment free from discrimination.

Yours sincerely,

TIM LYONS

Assistant Secretary

¹ Two thirds of women who suffer domestic violence are working in the paid labour force. Almost half domestic violence victims suffered violence at the hands of their current or former partner, and sadly, in the majority of cases, the violence was witnessed by children. ABS, Personal Safety, Australia, Cat. 4906.0 (2006) p.35

² Refer S Franzway, Framing Domestic Violence: Its Impact on Women's Employment' (paper presented at Re-Imaging Sociology Conference, Melbourne 2008) and S Potton, Pathways: How Women Leave Violent Men (2003), 71

APPENDIX 1

FAMILY AND DOMESTIC VIOLENCE LEAVE PROVISIONS IN AUSTRALIAN WORKPLACES (as at January 2013)

Arts and Recreation Services

Organisation	Employees	No. of days leave
Thoroughbred Racing SA	18	2 (unpaid) on each occasion

Total Employees: 18

Banking finance and insurance industry

Organisation	Employees	No. of days leave
People's Choice Credit Union	616	20
Statewide Super Financial Management Services	89	0

Total Employees: 705

Education and Training

Organisation	Employees	No. of days leave
University of NSW	7,807	0

Total Employees: 7,807

Electricity, Gas, Water and Waste Services

Organisation	Employees	No. of days leave
Barwon Region Water Corporation	407	uncapped
Busselton Water	26	20
East Gippsland Water Corporation	81	unspecified
Northern Victoria Irrigation Renewal Project	67	at CEO discretion
State Water Corporation	3015	5
TransGrid	948	5
Western Water	148	unspecified

Total Employees: 4,692

Government

Organisation	Employees	No. of days leave
Australian Public Service	360,000	From existing leave entitlements
Fair Work Ombudsman	827	20
NSW Government	300,000	5
NT Government	19,000	Not specified
Queensland government	295,000	uncapped
Transport Accident Commission	850	0
Tasmanian Government	15000	uncapped

Total Employees: 990,677

Health and welfare services

Organisation	Employees	No. of days leave
ACOSS	7	20
Amnesty International	94	10
Catholic Healthcare Residential Aged Care	1809	0
Catholic Healthcare Residential Aged Care (Queensland)	125	0
Eastern Ranges GP Association	24	20 (unpaid)
HammondCare Health and Hospitals	349	5
Hawkesbury District Health Service Limited	194	0
Migrant Women's Support Service Inc.	7	3
MRC	56	From existing leave entitlements
PCYC	631	10
Presbyterian Aged Care	652	0
Public Health System	55,000	5
QCOSS	47	10
Relationships Australia Canberra & Region Inc	96	5
St Vincent's Hospital Limited, St Joseph's Hospital Limited, Sacred Heart Hospice, Karitane; Royal Rehabilitation Centre, Sydney; Royal Society for the Welfare of Mothers and Babies (known as Tresillian Family Care Centres, Belmore, Nepean, Willoughby, Wollstonecraft); Calvary Health Care Sydney Limited; and Calvary Mater Newcastle.	2357	5
St Vincents Private Hospital	627	0
St Vincent's Private Hospital	627	0
Sunnyfield Housing & Support Division Group Home	281	0
The NT Working Women's Centre Inc. Enterprise Agreement	9	20
Women's Health Grampians Inc	7	0
Women's Health West Incorporated	52	20

Total Employees: 63,051

Labour Hire

Organisation	Employees	No. of days leave
Chelgrave Contracting Australia Pty Ltd	63	10
MC Labour Hire Services Pty Ltd	637	10

Total Employees: 700

Local government administration

Organisation	Employees	No. of days leave
Ashfield Council	200	20
Banyule City Council	990	uncapped
Baw Baw Shire Council	273	uncapped
Brimbank City Council	1228	uncapped
Central Goldfields Shire Council	198	Unspecified leave on the recommendation of EAP
City of Greater Geelong	2526	20
City of Sydney	1700	uncapped
Darwin City Council	347	0
Greater Shepparton City Council	816	unspecific
Latrobe City Council	934	0
Loddon Shire Council	190	20
Manningham City Council	650	20
Mitchell Shire Council	362	unspecific
Mornington Peninsula Shire Council	1343	uncapped
Moyne Shire Council	259	20
Surf Coast Shire Council	374	20
Swan Hill Rural City Council	301	0
West Gippsland Regional Library Corporation	62	Unspecified leave on the recommendation of EAP
Whitehorse Manningham Regional Library Corporation	133	Unspecified leave on the recommendation of EAP
Whittlesea City Council	931	20
Wyndham City Council	1253	uncapped

Total Employees: 15,070

Other Services

Organisation	Employees	No. of days leave
Australian Education Union	73	0
CFMEU	16	5
Merri Creek Management Committee Inc	19	20
Unions Tasmania		20

Total Employees: 108

Public Administration and Safety

Organisation	Employees	No. of days leave
Australian Institute of Family Studies	86	0
DEEWR	4297	0
TAFE Commission of NSW	369	5

Total Employees: 4,752

Retail Trade

Organisation	Employees	No. of days leave
Coles Supermarkets (Australia) Pty Ltd & Bi-Lo Pty Ltd	744	0
Suzanne Grae	unknown	0

Total Employees: 744

Transport, Postal and Warehousing

Organisation	Employees	No. of days leave
DP World Adelaide	2,034	0
Geraldton Port Authority	23	5
Hodge Rail	643	10
Nash Rail	33	10
Online Rail	637	10
PACCAR Trucks Melbourne	12	0
Queensland Rail	6,157	uncapped
Safeworking Solutions	3	10
Vital Rail	24	10

Total Employees: 9,566