

Queensland



Council of Unions

Honorary President: **Rohan Webb** General Secretary: **Ros McLennan** Assistant General Secretary: **Michael Clifford**

24 September 2018

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

By email eec.sen@aph.gov.au

Dear Mr. Palethorpe

Re: Fair Work Amendment (Family and Domestic Violence Leave) Bill 2018

The Queensland Council of Unions (QCU) is the peak union council in Queensland and has a long history of supporting workers' rights, particularly in emerging areas such as family and domestic violence leave.

The QCU supports the submission of the Australian Council of Trade Unions (ACTU) in relation to the *Fair Work Amendment (Family and Domestic Violence Leave) Bill 2018* (the Bill). We share the ACTU view that the introduction of paid family and domestic violence leave has been proved to be both affordable and necessary to protect the financial security of survivors.

In addition, we note the technical difficulties with the Bill that have been identified by ACTU submission as follows:

- The definition of close relative and the exclusion of people experiencing violence at the hands of current, non-resident partners;
- The exclusion of the explanatory note from the confidentiality obligation; and
- The 'resolving uncertainties and difficulties' power.

The union movement has had a significant role to play in relation to combatting family and domestic violence. Family and domestic violence has become an industrial issue over recent years by virtue of a recognition of the need to protect survivors and ensure their ongoing financial security. It is also union members who will be professionally required to implement policy to combat family and domestic violence.

In addition, it is recognised that family and domestic violence is largely a gendered issue and the union movement has been at the forefront of promoting respectful treatment of women for decades. The union movement has been advocating the community taking family and domestic violence seriously and ensuring that it is everybody's concern.

The QCU supports the inclusion of family and domestic violence leave in the National Employment Standards. However, we are opposed to the substandard version of five days unpaid leave that is being contemplated by this Bill.

This issue was dealt with in Queensland by the adoption of 10 days paid leave. In Queensland the introduction of paid domestic and family violence leave was introduced as a part of a review into the industrial relations framework in Queensland¹. Substantial consultation occurred in the review of this framework and the report that formed the basis for new industrial relations legislation in Queensland reflected this consultation. The lack of financial independence for workers who have suffered family and/or domestic violence was recognised as a key issue that was able to be addressed by industrial relations legislation. It was also noted that perpetrators were prone to engage in behaviour intended to sabotage employment prospects for survivors.

The review that introduced paid domestic and family violence leave into Queensland closely followed the report *Not Now Not Ever: Putting an End to Domestic and Family Violence* in February 2015². This Taskforce Report was a seminal moment in the ongoing campaign against family and domestic violence. The Report recommendations included three key themes: increasing awareness of family and domestic violence; preventing family and domestic violence through building respectful relationships, and; supporting survivors of Family and Domestic Violence.

It was this last point that was addressed by the review and into the industrial relations framework in Queensland and arrived at the standard of 10 days per annum. Despite some employer opposition to the introduction of 10 days paid leave in Queensland, the operation of those provisions in the *Industrial Relations Act 2016* (Qld) has not presented any problems of which we are aware. There have been no cases of abuse of this entitlement as was predicted by some organisations opposed to its introduction. There is also no evidence of the entitlement causing financial difficulties for any employer within the Queensland jurisdiction.

¹ *A review of the industrial relations framework in Queensland: A report of the Industrial Relations Legislative Reform* December 2015

² Special Taskforce on Domestic and Family Violence in Queensland *Not Now Not Ever – Putting an End to Domestic and Family Violence in Queensland* February 2015

There is also the matter of a test case before the Fair Work Commission in relation to family and domestic violence leave³. In the Test Case, the majority (Gooley DP & Spencer C) decision that granted unpaid rather than paid family and domestic violence leave the following was stated:

"In making our decision we are not free to decide on the merits what would be desirable to include in modern awards...

"We are required to determine what is necessary to achieve the modern award objective."

Section 138 of the *Fair Work Act 2009* reads as follows:

A modern award may include terms that it is permitted to include, and must include terms that it is required to include, **only to the extent necessary** to achieve the modern awards objective and (to the extent applicable) the minimum wages objective. (emphasis added)

In our submission this decision highlights deficiencies in the operation of the *Fair Work Act 2009*, rather than a lack of merit for paid family and domestic violence leave. Nonetheless the Parliament is not so restrained, and we would urge the adoption of the 10 days paid leave that was introduced in Queensland.

Please contact Policy and Research Officer
this matter further.

to discuss

Yours sincerely

Ros McLennan
General Secretary

³ Fair Work Commission 4 yearly review of modern awards—Family & Domestic Violence Leave Clause (AM2015/1) 3 July 2017

