



Domestic Violence Workplace Rights
and Entitlements Project

Safe at Home, Safe at Work

*a project of the Australian Domestic and Family Violence Clearinghouse (ADFVC), funded by
the Commonwealth Department of Education, Employment and Workplace Relations*

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Fair Work Amendment Bill- extend protection to workers experiencing Domestic Violence

Aim: Two complementary amendments to the Fair Work Amendment Bill 2013 which will prevent workplace discrimination and adverse action against workers experiencing domestic violence. The amendments will add domestic violence to section 351(1) attributes protected against adverse actions, and to the list in section 772(1) which stops termination on various grounds.

Why: The Fair Work Amendment Bill of 2013 has included the right to request flexible working arrangements on the grounds of being a victim of domestic violence.

However without specific protection against discrimination, employees face considerable risks in raising the issue of domestic violence at work. This is against the Government's clear intention to establish clear protective domestic violence standards and strategies for employers and employees.

The Fair Work Amendment Bill 2013 is the only avenue for protection - the opportunity to include domestic violence in the Human Rights and Anti-Discrimination Bill was lost with the decision to postpone its consideration.

Urgency: The current Bill is the only opportunity to move to set a clear standard for workplace treatment of domestic violence situations. Without the amendments to extend protection against termination and adverse actions, the Bill is incomplete.

Evidence base for action: Productivity, safety and income loss due to domestic violence has been extensively documented – the link to the workplace is clear. Last month at the United Nations Sex Discrimination Commissioner Elizabeth Broderick [summarised the costs to the Australian economy](#) noting that



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800,000 Australian women in the workplace have experienced domestic or family violence.

The Commissioner noted the steady progress in the right to request leave inclusion in EBAs, tied to the need to educate and equip workplaces to deal with the impact of domestic violence, and called for legislative action, as has the Australian Law Reform Commission.

In March 2012 Australia was a leader in the adoption of a strong position on domestic violence in the workplace at the U.N.'s fifty-seventh session for the Commission on the Status of Women on the elimination and prevention of all forms of violence against women and girls: see Section B (yy) p.13 in link http://www.un.org/ga/search/view_doc.asp?symbol=E/CN.6/2013/L.5

DEEWR funded Safe at Home, Safe at Work at the Australian Domestic and Family Violence Clearinghouse to research the impact of domestic violence at work and develop strategies to assist and educate workplaces in introducing domestic violence protections: <http://www.dvandwork.unsw.edu.au>

The anti-discrimination provisions are a vital part of the strategy. Anti-discrimination provisions have helped employers to bring women and disabled workers into the workplace and make them more productive.

Current Situation: Inquiries by both Senate and House of Representatives committees into the legislation will report shortly before debate for passage before the end of June. The Clearing House is briefing committee members. Employer groups accept the need for workplace strategies on domestic violence, but would prefer no legislation.

Next step: Safe at Home, Safe at Work seeks a meetings to brief the HoR Committee and Minister for Workplace Relations office on how the amendments (suggested drafts attached) can be incorporated into the current Bill.

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May 2013

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Proposed Amendments

SECTION 351

Section 351(1) An employer must not take adverse action against a person who is an employee, or prospective employee, of the employer because of the person's race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction, social origin, **or experience of family violence.**

SECTION 772

S 772(1) An employer must not terminate an employee's employment for one or more of the following reasons, or for reasons including one or more of the following reasons:

- (a) temporary absence from work because of illness or injury of a kind prescribed by the regulations;
- (b) trade union membership or participation in trade union activities outside working hours or, with the employer's consent, during working hours;
- (c) non-membership of a trade union;
- (d) seeking office as, or acting or having acted in the capacity of, a representative of employees;
- (e) the filing of a complaint, or the participation in proceedings, against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;
- (f) race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
- (g) absence from work during maternity leave or other parental leave;
- (h) temporary absence from work for the purpose of engaging in a voluntary emergency management activity, where the absence is reasonable having regard to all the circumstances;
- (i) experience of family violence.**

PROPOSED DEFINITIONS

Section 12:

Experience of family violence includes where a person is currently being subjected to family violence, has been subjected to family violence in the past, or is providing care or support to a member of the person's immediate family or household who requires care or support because the member is experiencing family violence. This also includes persons to whom this experience has been imputed.

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.