

# THE FAIR WORK COMMISSION

Matter No: AM2015/1

## FOUR YEARLY REVIEW OF MODERN AWARDS – FAMILY AND DOMESTIC VIOLENCE CLAUSE

### SUBMISSIONS OF THE AUSTRALIAN HUMAN RIGHTS COMMISSION

#### 1 Summary

1. The Australian Council of Trade Unions (ACTU) is seeking variations to all Modern Awards to insert specific provisions relating to family and domestic violence leave.
2. The ACTU's 'Revised Family & Domestic Violence Leave Clause' proposes to provide 10 days paid domestic violence leave to enable employees, including casual employees, who are experiencing family and domestic violence to attend legal proceedings, counselling, appointments with a medical or legal practitioner, or to make re-location or other safety arrangements and other related activities.
3. The Australian Human Rights Commission supports the introduction of paid family and domestic violence leave in all modern Awards because:
  - Unacceptably high levels of violence against women persist in Australia. Violence against women, including family and domestic violence, is a form of discrimination against women and a gross human rights violation.
  - States have an obligation to assist women escape and avoid situations of family and domestic violence. Research has shown that employment, and the financial security it brings, is a key pathway enabling women to leave situations of family and domestic violence and maintain an adequate standard of living for themselves and their children.
  - However, family and domestic violence can affect the attendance, performance and safety of employees. It can seriously impair equality in employment for women. It consequently reduces the productivity of Australian workplaces.
  - Paid family and domestic violence leave is designed to assist victims/survivors of family and domestic violence to remain in paid employment, support them through the process of escaping violence and to promote safe and secure workplaces for them and their work colleagues.
  - The provision of family and domestic violence leave also benefits employers through higher retention rates and higher staff morale. Many

employers in Australia and overseas are already providing this leave. The amount of days of leave provided tends to range from 2 to 20 days.

4. The Commission also submits that the provision of family and domestic violence leave is consistent with the modern awards objective set out in s 134 of the *Fair Work Act 2009* (Cth) (FWA), as it is highly likely to promote social inclusion through increased workforce participation. Further, research outlined below has shown that the employment cost and regulatory burden associated with the provision of family and domestic violence leave is minimal.
5. The current leave entitlements in the National Employment Standards (NES) are inadequate to meet the needs of domestic violence victims/survivors. Accordingly, the provision of family and domestic violence leave as a specific, additional entitlement in all modern Awards will ensure a fair and relevant minimum safety net of terms and conditions for employees.
6. The Commission submits that the provision of family and domestic violence leave is also consistent with the overall objects of the FWA, which include providing laws that are fair to working Australians, that promote productivity and take into account Australia's international labour obligations.

## **2 Violence against women is a violation of human rights**

### **2.1 Definitions**

7. Violence against women is defined in the United Nations Declaration on the Elimination of Violence against Women (1993) (Declaration) as:

Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.<sup>1</sup>

8. Gender-based violence is violence that is directed against a woman because she is a woman or that affects women disproportionately.<sup>2</sup>
9. In Article 2 of the Declaration, violence against women is stated to encompass physical, sexual and psychological violence occurring in the family. The Declaration also recalls that 'violence against women in the family and society is pervasive and cuts across all lines of income, class and culture'.

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<sup>1</sup> *United Nations Declaration on the Elimination of Violence against Women*, GA Res 48/104, UN GAOR, 48<sup>th</sup> sess, 85<sup>th</sup> plen mtg, Agenda Item 111, UN Doc A/RES/48/104 (20 December 1993, adopted 23 February 1994) Article 1. At <http://www.unhcr.org/refworld/docid/3b00f25d2c.html> (viewed 27 April 2016).

<sup>2</sup> CEDAW Committee, *General Recommendation No. 19: Violence against Women*, 11<sup>th</sup> sess, UN Doc A/47/38 (1992) [6]. At <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19> (viewed 27 April 2016).

10. The United Nations Committee on the Elimination of Discrimination against Women (the CEDAW Committee)<sup>3</sup> has stated that:

Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence, and coercion. These forms of violence put women's health at risk and impair their ability to participate in family life and public life on a basis of equality.<sup>4</sup>

11. In the ACTU's proposed Family and Domestic Violence Leave Clause, 'family and domestic violence' is defined as 'any violent, threatening or other abusive behaviour by a person against a member of the person's family or household (current or former).'

## **2.2 Prevalence of domestic violence in Australia**

12. A recent study has estimated that 27.5% of Australian women have experienced violence or emotional abuse by a current or previous partner.<sup>5</sup> Around 1.5% of females aged 15 years and over have experienced violence from a partner or ex-partner at least once in the last year.<sup>6</sup> Reports in the media have stated that 'Australian police are dealing with 5,000 domestic and family violence matters a week. That's one every two minutes.'<sup>7</sup>

13. In a 2011 survey on family and domestic violence, 30% of respondents reported that they had experienced violence, and 5% of those respondents

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<sup>3</sup> The CEDAW Committee is the body of independent experts that monitors implementation of the *Convention on the Elimination of All Forms of Discrimination against Women*. The CEDAW Committee consists of 23 experts on women's rights from around the world.

<sup>4</sup> CEDAW Committee, *General Recommendation No. 19: Violence against Women*, 11<sup>th</sup> sess, UN Doc A/47/38 (1992) [23]. At <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19> (viewed 27 April 2016).

<sup>5</sup> Price Waterhouse Coopers, 'A high price to pay: the economic case for prevention of violence against women' (Our Watch & Victorian Health Promotion Foundation, November 2015) 5. At <http://www.pwc.com.au/publications/economic-case-preventing-violence-against-women.html> (viewed 19 April 2016). Note the Australian Bureau of Statistics estimated in 2012 that 17% of women have experienced violence from a current or former partner since the age of 18 (compared to 5.3% of men), see: Australian Bureau of Statistics, '4906.0 – Personal Safety, Australia 2012' (Australian Bureau of Statistics, 11 December 2013). At <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4906.0Main%20Features12012?opendocument&tabname=Summary&prodno=4906.0&issue=2012&num=&view> (viewed 21 April 2016).

<sup>6</sup> See: Productivity Commission (Cth), 'Workplace Relations Framework: Productivity Commission Inquiry Report Volume 1' (Inquiry Report No.76, November 2015), 548, citing Australian Bureau of Statistics, 2013 *Personal Safety, Australia, 2012*, Cat. No. 4906.0, 11 December.

<sup>7</sup> Clare Blumer, 'Police handle 5,000 domestic violence matters a week, up 7 per cent', *ABC News* (online), 22 April 2016. At <http://www.abc.net.au/news/2016-04-22/domestic-violence-data/7342520> (viewed 27 April 2016).

had experienced violence in the last 12 months.<sup>8</sup> In 2010, the CEDAW Committee noted with concern ‘the unacceptably high levels of violence against women that persist in Australia, with one in three Australian women experiencing physical violence in their lifetime and one in five experiencing sexual violence’.<sup>9</sup>

14. Every week in Australia approximately one woman is killed by her current or former partner,<sup>10</sup> often after a history of domestic violence.<sup>11</sup> According to the Australian Institute of Criminology, of the 479 homicide incidents in Australia between 1 July 2010 and 30 June 2012, the largest proportion, 39%, were classified as domestic homicide.<sup>12</sup>
15. The research shows that it is overwhelmingly women that experience family and domestic violence.<sup>13</sup> In Australia, family and domestic violence is the leading contributor to death, disability and illness in women aged 15 to 44 years, and is responsible for more of the disease burden in women than many well-known risk factors, such as smoking and obesity.<sup>14</sup> Research has also demonstrated the enduring mental health problems that victims/survivors often experience as a result of such violence.<sup>15</sup>

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<sup>8</sup> Ludo McFerran, ‘National Domestic Violence and the Workplace Survey’, (ADFVC, UNSW, October 2011) 6. At [https://www.arts.unsw.edu.au/media/FASSFile/National\\_Domestic\\_Violence\\_and\\_the\\_Workplace\\_Survey\\_2011\\_Full\\_Report.pdf](https://www.arts.unsw.edu.au/media/FASSFile/National_Domestic_Violence_and_the_Workplace_Survey_2011_Full_Report.pdf) (viewed 20 April 2016).

<sup>9</sup> CEDAW Committee, *Concluding observations of the Committee on the Elimination of Discrimination against Women*, 46<sup>th</sup> sess, UN Doc CEDAW/C/AUS/CO/7 [28]. At <https://www.humanrights.gov.au/sites/default/files/CEDAW-C-AUS-CO-7.pdf> (viewed 27 April 2016).

<sup>10</sup> Jenny Mouzos and Catherine Rushforth, ‘Family Homicide in Australia’ (Trends & issues in crime and criminal justice No 255 Australian Institute of Criminology, June 2003) 2. At <http://aic.gov.au/publications/current%20series/tandi/241-260/tandi255.html> (viewed 27 April 2016).

<sup>11</sup> Jack Dearden and Warwick Jones, ‘Homicide in Australia: 2006 - 06 National Homicide Monitoring Program Annual Report’ (Monitoring Reports No 1, Australian Institute of Criminology, 2008) 2. At [http://aic.gov.au/media\\_library/publications/mr/mr01/mr01.pdf](http://aic.gov.au/media_library/publications/mr/mr01/mr01.pdf) (viewed 27 April 2016).

<sup>12</sup> Tracy Cussen and Willow Bryant, ‘Homicide in Australia: 2010-2011 to 2011-12 National Homicide Monitoring Program Report’ (Monitoring Reports No 23, Australian Institute of Criminology, 2015) 6. At [http://www.aic.gov.au/media\\_library/publications/mr/mr23/mr23.pdf](http://www.aic.gov.au/media_library/publications/mr/mr23/mr23.pdf) (viewed 28 April 2016).

<sup>13</sup> Our Watch – End Violence against Women and Children, ‘Key terms, definitions and statistics’, (Policy Brief No 1, September 2014). At [https://www.ourwatch.org.au/MediaLibraries/OurWatch/our-publications/Policy\\_Brief\\_1\\_Key\\_Definitions\\_and\\_Statistics.pdf](https://www.ourwatch.org.au/MediaLibraries/OurWatch/our-publications/Policy_Brief_1_Key_Definitions_and_Statistics.pdf) (viewed 10 May 2016).

<sup>14</sup> See: VicHealth, ‘The Health Costs of Violence: Measuring the Burden of Disease Caused by Intimate Partner Violence’ (6 January 2004) 8. At <https://www.vichealth.vic.gov.au/media-and-resources/publications/the-health-costs-of-violence> (viewed 28 April 2016).

<sup>15</sup> See: Susan Rees et al., ‘Lifetime Prevalence of Gender-Based Violence in Women and the Relationship with Mental Disorders and Psychological Function’ (2011) 306 (5) *The Journal of the American Medical Association* 513, 513.

16. The Commission notes that Indigenous women<sup>16</sup> and women with disabilities<sup>17</sup> are more likely to experience family and domestic violence and the violence is likely to be more severe. Cultural values and immigration status enhances the complexities faced by family and domestic violence victims/survivors from culturally and linguistically diverse backgrounds.<sup>18</sup>
17. Further, children are also victims of family and domestic violence.<sup>19</sup> In 2008, it was reported that 23% of all children had disclosed witnessing violence against their mother or stepmother.<sup>20</sup> Children who are exposed to family and domestic violence have higher levels of emotional and behavioural problems than children who have not. Children who are in violent homes are also at a greater risk of physical abuse or having their physical and emotional needs neglected.<sup>21</sup>

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<sup>16</sup> Half of ATSI people aged 15 years and over who had experienced physical violence in the last 12 months said that a family member was the perpetrator of the most recent incident, see: Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Social Survey, 2014-15* (2016), Key Findings. At: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/mf/4714.0/> (viewed 4 May 2016). Indigenous women are 34 times more likely to be hospitalized as a result of domestic violence. See: Gail Boserio, *Domestic abuse of Indigenous women a "national crisis"* (4 May 2015) ABC Radio National (online). At: <http://www.abc.net.au/radionational/programs/latenightlive/crisis-of-domestic-abuse-of-indigenous-women/6442954> (viewed 4 May 2016). ATSI women are five times more likely to be victims of homicide than other Australian women – 55% of those homicides are related to family violence. See: Andy Chan and Jason Payne, 'Homicide in Australia: 2008-09 to 2009-10 National Homicide Monitoring Program annual report' (Monitoring Report No 21, Australian Institute of Criminology, February 2013). At: [http://www.aic.gov.au/media\\_library/publications/mr/21/mr21.pdf](http://www.aic.gov.au/media_library/publications/mr/21/mr21.pdf) (viewed 4 May 2016). See also Australian National Research Organisation for Women's Safety, *Fast facts: Indigenous family violence*, (14 May 2014) ANROWS Publications. At: <http://anrows.org.au/publications/fast-facts/indigenous-family-violence> (viewed 4 May 2016).

<sup>17</sup> Women with disabilities are 40% more likely to be victims/survivors of family and domestic violence than women without disabilities. See: Douglas A. Brownridge, 'Partner violence against women with disabilities: Prevalence, risks and explanations' (2006) 12.9 *Violence Against Women*, 805–22. Violence perpetrated against women with disabilities is significantly more diverse in nature and more severe than for women in general. See: Carolyn Frohmader (WWDA), 'Fact Sheet: Violence Against Women With Disabilities' (2014), *PDW: People with Disability*. At: [http://www.pwd.org.au/documents/temp/FS\\_Violence\\_WWD's.pdf](http://www.pwd.org.au/documents/temp/FS_Violence_WWD's.pdf) (viewed 4 May 2016).

<sup>18</sup> Dr Lorana Bartels, 'Emerging issues in domestic/family violence research' (Research in Practice No 10, 2010). At: <http://www.aic.gov.au/publications/current%20series/rip/1-10/10.html> (viewed 4 May 2016).

<sup>19</sup> Megan Mitchell, National Children's Commissioner, 'Children's Rights Report, 2015', Ch 4. At <https://www.humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2015> (viewed 11 May 2016).

<sup>20</sup> Secretariat of National Aboriginal and Islander Child Care study cited in K Richards, 'Children's Exposure to Domestic Violence in Australia', Australian Institute of Criminology Trends and Issues in Crime and Criminal Justice, No 419 (2011), 2. At <http://aic.gov.au/publications/current%20series/tandi/401-420/tandi419.html> (viewed 11 May 2016).

<sup>21</sup> Family Court of Australia, 'Child Dispute Services Fact Sheet: Exposure to family violence and its effect on children'. At: [http://www.familycourt.gov.au/wps/wcm/connect/04ecefdc-dcd0-433c-9b9f-43ac3f67b63d/FS\\_Exposure+FV+effect+on+children\\_1113V3\\_web.pdf?MOD=AJPERES&CONVERT\\_TO=url&CACHEID=04ecefdc-dcd0-433c-9b9f-43ac3f67b63d](http://www.familycourt.gov.au/wps/wcm/connect/04ecefdc-dcd0-433c-9b9f-43ac3f67b63d/FS_Exposure+FV+effect+on+children_1113V3_web.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=04ecefdc-dcd0-433c-9b9f-43ac3f67b63d) (viewed 4 May 2016). See also: Megan Mitchell, National Children's Commissioner, 'Children's Rights Report, 2015', Ch 4. At <https://www.humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2015> (viewed 11 May 2016).

## 2.3 Australia's international law obligations

18. Violence against women (including family violence and sexual assault) is globally recognised as one of the most systemic, widespread and pervasive human rights violations experienced by women because they are women.<sup>22</sup>
19. Article 2 of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW)<sup>23</sup> imposes an obligation on States to prohibit discrimination against women, to establish legal protection of the rights of women on an equal basis with men and to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.<sup>24</sup>
20. Article 1 of the CEDAW defines the term 'discrimination against women' to mean:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.
21. The CEDAW Committee has stated that the definition of discrimination against women in Article 1 of the CEDAW includes gender-based violence and that 'gender-based violence may breach specific provisions of the CEDAW, regardless of whether those provisions expressly mention violence.'<sup>25</sup>

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<sup>22</sup> Rashida Manjoo, *Report of the Special Rapporteur on violence against women, its causes and consequences*, UN HRC 26<sup>th</sup> sess, UN Doc A/HRC/26/38 (28 May 2014) [61]. At [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/26/38](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/26/38) (viewed 28 April 2016).

<sup>23</sup> *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981). The CEDAW is scheduled to the *Sex Discrimination Act 1984* (Cth).

<sup>24</sup> *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981). At <http://www.unhcr.org/refworld/docid/3ae6b3970.html> (viewed 28 April 2016) art 2(b) and (e).

<sup>25</sup> CEDAW Committee, *General Recommendation No. 28 on the Core Obligations of States parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, 47<sup>th</sup> sess, UN Doc CEDAW/C/GC/28 (2010) [19]; CEDAW Committee, *General Recommendation No. 19: Violence against Women*, 11<sup>th</sup> sess, UN Doc A/47/38 (1992) [6]. This interpretation has been reinforced in later jurisprudence of the CEDAW Committee: the refusal of the Plovdiv courts to issue a permanent protection order as well as the unavailability of shelters violated the Article 2(c)(d)(e)(f) in conjunction with Article 1 and Article 5(a) and 16(1) of the CEDAW in *VK v Bulgaria* (CEDAW Committee, *Views: Communication No. 20/2008*, 49<sup>th</sup> sess, UN Doc CEDAW/C/49/D/20/2008 (17 August 2011) (*VK v Bulgaria*)); a violation of Article 2(b) and (c) in conjunction with Articles 1 and 3 of the CEDAW a violation of Articles 2(a),(b), (3), 5(a) and 16(1)(c)(d)(f) of the CEDAW was found in *Jallow v Bulgaria* (CEDAW Committee, *Views: Communication No. 32/2011*, 52<sup>nd</sup> sess, UN Doc CEDAW/C/52/D/32/2011 (28 August 2012), [8.5]-[8.6] (*Jallow v Bulgaria*)); a violation of Articles 2(a),(b) and (3) as well as Articles 5(a) and 16 of the CEDAW and the right to security of person were violated in a case of domestic violence in *A.T. v Hungary* (CEDAW Committee, *Views: Communication No.2/2003*, 32<sup>nd</sup> sess, UN Doc CEDAW/C/32/D/2/2003 (26 January 2005) [9.3] - [9.4] (*A.T. v Hungary*)); a violation under Articles 2(a) and (c) through (f) and Article 3 of the CEDAW was found in *Yildirim v Austria* (CEDAW Committee, *Views: Communication No. 6/2005*, 39<sup>th</sup> sess, UN Doc CEDAW/C/39/D/6/2005 (2007) (*Yildirim v Austria*)); *Sahide Goekce v Austria* (CEDAW Committee, *Views: Communication No.5/2005*, 39<sup>th</sup> sess, UN Doc CEDAW/C/39/D/5/2005 (6 August 2007) (*Sahide Goekce v Austria*)); and also international jurisprudence, see: *Opuz v Turkey* [2009] Eur Court HR 33401/02; Inter-American Commission on Human Rights (IACHR), Report on the Merits No. 80/11, Case 12. 626, Jessica Lenahan (Gonzales) and Others (United States), July 21, 2011.

22. Family and domestic violence is gender-based violence. As outlined above, while domestic violence can be perpetrated against men and women, women are overwhelmingly affected.<sup>26</sup> It is reported that violence against women is rooted in power imbalances and structural inequality between men and women.<sup>27</sup> Gender inequality is both a cause and consequence of family and domestic violence.<sup>28</sup>
23. The CEDAW Committee has recognised that gender-based violence, such as family and domestic violence, seriously inhibits women's ability to enjoy a wide range of human rights and fundamental freedoms on a basis of equality with men. These rights include:
- the right to life (Article 6 of the *International Covenant on Civil and Political Rights* (ICCPR));<sup>29</sup>
  - not to be subject to torture or to cruel, inhuman or degrading treatment or punishment (Article 7 of the ICCPR);<sup>30</sup>
  - liberty and security of the person (Article 9 of the ICCPR);
  - the rights to equality, equal protection under the law and to be free from all forms of discrimination (Article 26 and 2 of the ICCPR);
  - equality in the family (Article 16 of the CEDAW and article 17 of the ICCPR);
  - the highest standard attainable of physical and mental health (Article 12 of the CEDAW and Article 12 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR));<sup>31</sup>
  - The right to just and favourable conditions of work (Article 11 of the CEDAW and Articles 6 & 7 of the ICESCR).<sup>32</sup>

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<sup>26</sup> In Australia one in three women has experienced physical violence since the age of 15, of these women, over 40% experienced the violence at the hands of a current or former partner. See: Australia Bureau of Statistics ABS, *Personal Safety Survey* (2005), 7.

<sup>27</sup> United Nations, *In-depth study on all forms of violence against women*, Report of the Secretary-General, 6 July 2006, UN Doc A/61/122/Add.1, [30]. See also: Rashida Manjoo *Report of the Special Rapporteur on violence against women, its causes and consequences* UN Doc: A/HRC/26/38 (28 May 2014) [61]. At [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/26/38](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/26/38) (viewed 28 April 2016).

<sup>28</sup> Rashida Manjoo *Report of the Special Rapporteur on violence against women, its causes and consequences* UN Doc: A/HRC/26/38 (28 May 2014) [62]. At [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/26/38](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/26/38) (viewed 28 April 2016).

<sup>29</sup> *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976). See also: *Opuz v Turkey* [2009] Eur Court HR 33401/02; *Yildirim v Austria*, CEDAW Committee, *Views: Communication No. 6/2005*, 39th sess, UN Doc CEDAW/C/39/D/6/2005 (2007) (*Yildirim v Austria*); *Şahide Goekce v Austria*, CEDAW Committee, *Views: Communication No.5/2005*, 39th sess, UN Doc CEDAW/C/39/D/5/2005 (6 August 2007) (*Sahide Goekce v Austria*).

<sup>30</sup> The prohibition under Article 7 of the ICCPR has been further articulated under the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, to which Australia is also a party.

<sup>31</sup> *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, UNTS 3 (entered into force 3 January 1976).

<sup>32</sup> CEDAW Committee, *General Recommendation No. 19: Violence against Women*, 11<sup>th</sup> sess, UN Doc A/47/38 (1992) [1] - [7]. At <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19> (viewed 27 April 2016). The Commission on the Status of Women also recognises that violence against women is a

24. Article 19 of the *United Nations Convention on the Rights of the Child*<sup>33</sup> gives to every child the absolute right to live free from all forms of violence, and requires protection for children who are exposed to and witness family and domestic violence.<sup>34</sup>
25. Under general international law<sup>35</sup> and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence. States may also be responsible for providing compensation when a non-state actor violates human rights.<sup>36</sup> In this regard, the UN Human Rights Council has urged States to:
- adopt and implement policies and programmes that **enable women to avoid and escape situations of violence** and prevent its recurrence, and that provide, inter alia, financial support and affordable access to safe housing or shelters, childcare and other social supports.<sup>37</sup> (emphasis added)
26. Obligations of States to address gender-based violence against women have been reaffirmed in a number of other international instruments and documents, including:
- The UN Sustainable Development Goals, Goal 5's target is to eliminate all forms of violence against all women and girls in the public and private spheres;<sup>38</sup>
  - The annual reports of the UN Special Rapporteur on violence against women, its causes and consequences;<sup>39</sup>

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breach of women's human rights. See: United Nations Commission on the Status of Women, *Agreed Conclusions* (14 March 2011). At <http://www.un.org/womenwatch/daw/csw/55sess.htm#agreed> (viewed 21 April 2016).

<sup>33</sup> *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

<sup>34</sup> Further, Article 3 of the *Convention on the Rights of the Child* requires the best interests of the child to be a primary consideration in all actions concerning children. For further discussion of the rights of children in the context of family and domestic violence, see: Megan Mitchell, National Children's Commissioner, 'Children's Rights Report, 2015', Ch 4. At <https://www.humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2015> (viewed 11 May 2016).

<sup>35</sup> The CEDAW Committee has concluded that there is a rule of customary international law that obliges States to prevent and respond to acts of violence against women with due diligence. See Yakin Ertuk, *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women, its causes and consequences*, UN Doc E/CN.4/2006/61 (20 January 2006) [29]. But note that the Special Rapporteur on violence against women has noted 'that none of the soft law developments on violence against women has moved into the realm of customary international law as yet'. See: Rashida Manjoo *Report of the Special Rapporteur on violence against women, its causes and consequences* UN Doc: A/HRC/26/38 (28 May 2014) [67]. At [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/26/38](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/26/38) (viewed 28 April 2016).

<sup>36</sup> CEDAW Committee, *General Recommendation No. 19: Violence against Women*, 11<sup>th</sup> sess, UN Doc A/47/38 (1992) [9]. At <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19> (viewed 27 April 2016).

<sup>37</sup> United Nations Human Rights Council, *Accelerating Efforts to eliminate all forms of violence against women: ensuring due diligence in prevention*, UN Doc A/HRC/RES/14/12 (2010) [5].

<sup>38</sup> United Nations, *Millennium Development Goals*. At <http://www.un.org/millenniumgoals/gender.shtml> (viewed 21 April 2016).

<sup>39</sup> Special Rapporteur on violence against women, *Annual Reports* (1996- 2016) United Nations Human Rights Office of the High Commissioner. At

- Reports of the General Assembly and UN Secretary General;<sup>40</sup>
- ILO Conventions, including the recent standards that refer directly to gender-based violence including *Domestic Workers Convention 2011* (No. 189) and the HIV and AIDS Recommendation 2010 (No. 200); and
- Regional Conventions and declarations on eliminating violence against women.<sup>41</sup>

27. It is noted that the *Council of Europe Convention on preventing and combating violence against women and domestic violence* (2011) requires States to adopt comprehensive and coordinated policies that place the rights of victims at the centre of all measures, and to involve all relevant actors.<sup>42</sup>

28. Increasingly, it is becoming recognised that businesses should ‘support and respect’ the protection of internationally proclaimed human rights.<sup>43</sup>

## **2.4 Violence against women impairs equality of opportunity at work**

29. Access to decent paid employment is a human right recognised in Article 6 of the ICESCR and critical for achieving an ‘adequate standard of living’ as protected by Article 11 of the ICESCR. The Committee on Economic, Social and Cultural Rights has commented that:

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<http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/AnnualREports.aspx> (viewed 21 April 2016).

<sup>40</sup> The General Assembly issued two reports at its 66<sup>th</sup> and 67<sup>th</sup> sessions on ‘violence against women with disabilities’ and ‘effective redress for violence against women across the continuum from the home to the transnational sphere’. The UN Secretary-General issued reports in 2010 and 2012 on violence against women: *Report of the Secretary-General on the intensification of efforts to eliminate all forms of violence against women*, GA, 67<sup>th</sup> sess, Agenda Item 28, UN Doc A/67/220 (1 August 2012). At <http://www.un.org/en/ga/third/67/documentslist.shtml> (viewed 10 May 2016); *Report of the Secretary-General on the intensification of efforts to eliminate all forms of violence against women*, GA, 65<sup>th</sup> sess, Agenda Item 28, UN Doc A/65/208 (2 August 2010). At <http://www.un.org/womenwatch/daw/vaw/> (viewed 21 April 2016). The UN Secretary-General also did an in-depth study on all forms of violence against women in 2006. At <http://www.un.org/womenwatch/daw/vaw/SGstudyvaw.htm#more> (viewed 21 April 2016).

<sup>41</sup> See: *Council of Europe Convention on preventing and combating violence against women and domestic violence*, open for signature 11 May 2011, CETS No.210 (entered into force 1 August 2014); *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women*, open for signature 6 September 1994 (entered into force 3 May 1995) – note that Article 8(f) obliges States Parties to ‘provide women who are subjected to violence access to effective readjustment and training programs to enable them to fully participate in public, private and social life’; See also: *Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa* open for signature 11 July 2003 (entered into force 25 November 2005); and *ASEAN Declaration on the Elimination of Violence Against Women* adopted 30 June 2004.

<sup>42</sup> For a discussion see: R Manjoo, *Report of the Special Rapporteur on violence against women, its causes and consequences*, UN HRC, 29<sup>th</sup> sess, Agenda item 3, UN Doc: A/HRC/29/27 (10 June 2015) [28] – [47].

<sup>43</sup> See Principle One: Human Rights of ‘The Ten Principles of the UN Global Compact’. At <https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-1> (viewed 28 April 2016); See also: Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, *Guiding Principles for Business and Human Rights*, HRC Res 17/4, UN Doc HR/PUB/11/04 (16 June 2011). At [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf) (viewed 28 April 2016).

The right to work is essential for realizing other human rights and forms an inseparable and inherent part of human dignity. Every individual has the right to be able to work, allowing him/her to live in dignity. The right to work contributes at the same time to the survival of the individual and to that of his/her family, and insofar as work is freely chosen or accepted, to his/her development and recognition within the community.<sup>44</sup>

30. Article 3 of the ICESCR requires States to ensure the equal right of men and women to these rights. Article 2 of the *ILO Convention (No 111) concerning Discrimination in Employment and Occupation* obliges States to pursue a national policy designed to promote equality of opportunity in respect of employment, with a view to eliminating any discrimination in respect of sex.<sup>45</sup>
31. Further, Article 11 of the CEDAW requires States to take all appropriate measures to eliminate discrimination against women (which includes violence against women) in the field of employment and to ensure that women have access to safe and healthy working conditions.<sup>46</sup> It has been recognised that business enterprises, irrespective of size, ownership and structure, have a responsibility to respect the right to just and favourable conditions of work.<sup>47</sup>
32. The CEDAW Committee and the Commission on the Status of Women have both recognised that 'equality in employment can be seriously impaired when women are subjected to gender-specific violence.'<sup>48</sup>
33. The UN Special Rapporteur on Violence Against Women stated that in order to act with 'due diligence', governments must establish measures to provide 'immediate and material assistance' to survivors of domestic violence, including by providing adequate opportunities for employment.<sup>49</sup>
34. The UN has recommended that States enact legislation to protect the employment rights of victims/survivors of violence so that employers are

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<sup>44</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 18: The Right to Work (Art. 6 of the Covenant)*, 35<sup>th</sup> sess, UN Doc E/C.12/GC/18 (6 February 2006) [1]. At <http://www.refworld.org/docid/4415453b4.html> (viewed 28 April 2016).

<sup>45</sup> *Convention (No 111) concerning Discrimination in Respect of Employment and Occupation*, opened for signature 25 June, 1958, 362 UNTS 31 (entered into force 15 June 1960).

<sup>46</sup> The right to just and favourable working conditions is also protected by Article 7 of the ICESCR. The right to just and favourable conditions of work is also recognised in other regional human rights treaties as well as ILO Conventions and recommendations. For a full list of these, please see: Committee on Economic, Social and Cultural Rights, *General Comment No.23 on the Right to just and favourable conditions of work*, UN Doc: E/C.12/GC/23 (8 March 2016), [1] and [3]. At [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=9&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=9&DocTypeID=11) (viewed 21 April 2016).

<sup>47</sup> Guiding Principles on Business and Human Rights, Principle 14. See also: Committee on Economic, Social and Cultural Rights, *General Comment No.23 on the Right to just and favourable conditions of work*, UN Doc: E/C.12/GC/23 (8 March 2016), [74]-[75]. At [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=9&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=9&DocTypeID=11) (viewed 21 April 2016).

<sup>48</sup> CEDAW Committee, *General Recommendation No. 19: Violence against Women*, 11<sup>th</sup> sess, UN Doc A/47/38 (1992) [17]. At <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm> (viewed 21 April 2016); and UN Women, *55<sup>th</sup> Session on the Commission on the Status of Women* (22 February- 4 March 2011). At <http://www.un.org/womenwatch/daw/csw/55sess.htm> (viewed 21 April 2016).

<sup>49</sup> Yakin Ertuk, *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, UN Doc E/CN.4/2006/61 (20 January 2006) [19] and [83]. At <http://www.refworld.org/pdfid/45377afb0.pdf> (viewed 21 April 2016).

prohibited from discriminating against them or penalising them for the consequences of abuse.<sup>50</sup>

35. The 57th session of the UN Commission on the Status of Women also called on States to:

[T]ake measures to ensure that all workplaces are free from discrimination and exploitation, violence, and sexual harassment and bullying, and that they address discrimination and violence against women and girls, as appropriate, through measures such as regulatory and oversight frameworks and reforms, collective agreements, codes of conduct, including appropriate disciplinary measures, protocols and procedures, referral of cases of violence to health services for treatment and police for investigation; as well as through awareness-raising and capacity-building, in collaboration with employers, unions and workers, including workplace services and flexibility for victims and survivors.<sup>51</sup>

36. The Human Rights Council has stressed that the 'realisation of all human rights by women and girls, such as those regarding...economic participation, access to the labour market, conditions of work...is a key factor in preventing violence against women and girls'.<sup>52</sup> It called upon States to 'take all measures to empower women and strengthen their economic independence'.<sup>53</sup>

37. In an ILO report on gender-based violence in the world of work, the authors argued that 'economic growth, competitiveness, development and efficiency can only be achieved where barriers to productive and quality employment opportunities are eliminated for both men and women'.<sup>54</sup>

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<sup>50</sup> United Nations, Department of Economic and Social Affairs, 'Handbook for Legislation on Violence against Women', 32. At <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf> (viewed 10 May 2016).

<sup>51</sup> UN Women, *Elimination and Prevention of all Forms of Violence Against Women and Girls*, 2013 Commission on the Status of Women Agreed Conclusions (4 -15 March 2013) 12, available at: <http://www2.unwomen.org/~media/headquarters/attachments/sections/csw/57/csw57-agreedconclusions-a4-en.pdf?v=1&d=20140917T100700> (viewed 4 May 2016).

<sup>52</sup> United Nations Human Rights Council, *Accelerating Efforts to eliminate all forms of violence against women: ensuring due diligence in prevention*, GA Res 14/12, HRC 14<sup>th</sup> sess, Agenda Item 3, UN Doc A/HRC/RES/14/12 (30 June 2010) preamble. At <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/147/99/PDF/G1014799.pdf?OpenElement> (viewed 10 May 2016).

<sup>53</sup> United Nations Human Rights Council, *Accelerating Efforts to eliminate all forms of violence against women: ensuring due diligence in prevention*, 14<sup>th</sup> sess, Agenda Item 3, UN Doc A/HRC/RES/14/12 (30 June 2010) [4]. At: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/147/99/PDF/G1014799.pdf?OpenElement> (viewed 21 April 2016).

<sup>54</sup> Adrienne Cruz and Sabine Klinger, *Gender-Based Violence in the World of Work: Overview and Selected Annotated Bibliography*, (Working Paper No 3/2011, International Labour Office, 2011) 73. At [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms\\_155763.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_155763.pdf) (viewed 21 April 2016).

### **3 The importance of workplace support to address the needs of domestic violence victims/survivors**

#### **3.1 Family and domestic violence is a workplace issue**

38. Family and domestic violence is not simply a private or individual issue. Effective measures to address family and domestic violence must operate in both the public and private spheres.<sup>55</sup> Workplaces in particular are an important site for intervening to prevent and respond to family and domestic violence.
39. In 2006, the Australian Bureau of Statistics reported that two-thirds of Australian women who report violence by a current partner are in paid employment.<sup>56</sup> In 2011, it was reported that nearly a third of Australian workers report having experienced domestic violence.<sup>57</sup> The number of employees experiencing family and domestic violence is likely to be higher when the number of individuals who do not report such violence is taken into account.
40. As recently reported by the 2016 Victorian Royal Commission into Family Violence, ‘employment is a crucial “protective” factor in relation to family violence’:
- a. The financial security and independence provided by paid employment increases a victim’s ability to leave the relationship and recover from the effects of the violence.
  - b. The workplace can be the only place where the victim spends time physically away from the perpetrator, giving her the space to take steps to ensure her safety.
  - c. Employers and colleagues can play an important role in helping victims recognise that they are experiencing family violence and supporting them in seeking help.<sup>58</sup>
41. Further, family and domestic violence can ‘spill over’ into the workplace. In 2013, participants in a study described events where colleagues had attended work as a safe place after hours or when not rostered; had come to work

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<sup>55</sup> See: Australian Law Reform Commission, *Final Report: Family Violence and Commonwealth Laws—Improving Legal Frameworks* (Report No 117, 2012) 23. At [www.alrc.gov.au/inquiries/family-violence-and-commonwealth-laws](http://www.alrc.gov.au/inquiries/family-violence-and-commonwealth-laws) (viewed 21 April 2016), citing S Murray and A Powell, ‘Working it Out: Domestic Violence Issues in the Workplace’ (2008) 1.

<sup>56</sup> Australian Bureau of Statistics, *Personal Safety Survey, Australia 2005* (Cat No 4906.0 Reissue, AGPS, Canberra, 2006) 34.

<sup>57</sup> Ludo McFerran, ‘National Domestic Violence and the Workplace Survey’, (ADFVC, UNSW, October 2011) 2. At [https://www.arts.unsw.edu.au/media/FASSFile/National\\_Domestic\\_Violence\\_and\\_the\\_Workplace\\_Survey\\_2011\\_Full\\_Report.pdf](https://www.arts.unsw.edu.au/media/FASSFile/National_Domestic_Violence_and_the_Workplace_Survey_2011_Full_Report.pdf) (viewed 20 April 2016).

Note that these rates are higher than ABS results because of concentration of ages in working years and broader definition of violence used in the survey design.

<sup>58</sup> See: The Hon. Marcia Neave, Patricia Faulkner and Tony Nicholson, *Victorian Royal Commission into Family Violence Volume VI* (Report and Recommendations Volume VI, Victorian Government, March 2016) 74. At: [http://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Reports/RCFV\\_Full\\_Report\\_Interactive.pdf](http://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Reports/RCFV_Full_Report_Interactive.pdf) (viewed 19 April 2016).

visibly injured and upset; or the violent partner had attended the workplace generating a serious workplace safety issue, requiring police involvement.<sup>59</sup>

42. Accordingly, family and domestic violence is not just a social issue, it is a workplace issue. The National Action Plan to Reduce Violence against Women and Their Children (2011) acknowledges that family and domestic violence is a workplace issue and, to this end, requires the Australian Government to develop 'workplace measures to support women experiencing and escaping from domestic violence'.<sup>60</sup> The Australian Law Reform Commission and the 2016 Victorian Royal Commission into Family Violence have also recognised that family and domestic violence is a workplace issue.<sup>61</sup>
43. Further, there is widespread acknowledgment by employers that family and domestic violence has workplace impacts, and that employers can assist.<sup>62</sup> In 2015, 15 chief executive officers (members of the Male Champions of Change), who employ a collective 600,000 employees endorsed the provision of additional paid family and domestic violence leave, stating that 'paid leave is an effective intervention that provides a temporary safety net'.<sup>63</sup>
44. The Commission acknowledges that there are many social issues that impact employees and could conceivably be characterised as workplace issues. However, the prevalence of family and domestic violence and the critical protection that workplaces can provide to victims/survivors requires businesses to 'play their part' in a sophisticated family and domestic violence strategy. As the former Deputy Sex Discrimination Commissioner stated:

Domestic and family violence is, regrettably, fast becoming a crisis in this country. If we are to succeed in addressing this crisis, we need to tackle it from every angle and involve individuals and institutions from all sectors of

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<sup>59</sup> The 2013 Study 'Domestic and Family Violence Clauses in your workplace: Implementation and Good Practice' found that of the 55 people who were aware of a colleague experiencing domestic violence, 22 people (40%) reported that co-workers' violence had caused conflict and tension with co-workers. See: Ludo McFerran, Dr Natasha Cortis and Tahlia Trijbetz, 'Gendered Violence & Work Domestic and Family Violence Clauses in your Workplace: Implementation and good practice' (Draft Report, Social Policy Research Centre & Centre for Gender Related Violence Studies University of New South Wales, June 2013) 9. At [https://www.arts.unsw.edu.au/media/FASSFile/Domestic\\_and\\_Family\\_Violence\\_Clauses\\_in\\_your\\_Workplace\\_Implementation\\_and\\_good\\_practice.pdf](https://www.arts.unsw.edu.au/media/FASSFile/Domestic_and_Family_Violence_Clauses_in_your_Workplace_Implementation_and_good_practice.pdf) (viewed 27 April 2016).

<sup>60</sup> Council of Australian Governments, *National Plan to Reduce Violence against Women and Their Children 2010-2022* (National Plan, FaHCSIA, 2011) 16- 17. At [www.fahcsia.gov.au/sa/women/progserv/violence/nationalplan/Pages/default.aspx](http://www.fahcsia.gov.au/sa/women/progserv/violence/nationalplan/Pages/default.aspx) (viewed 21 April 2016).

<sup>61</sup> Australian Law Reform Commission, *Final Report: Family Violence and Commonwealth Laws—Improving Legal Frameworks*, (Report No 117, Australian Law Reform Commission, 2012) 23. At [www.alrc.gov.au/inquiries/family-violence-and-commonwealth-laws](http://www.alrc.gov.au/inquiries/family-violence-and-commonwealth-laws) (viewed 21 April 2016). The Hon. Marcia Neave, Patricia Faulkner and Tony Nicholson, *Victorian Royal Commission into Family Violence* (Report and Recommendations, Victorian Government, March 2016) Chp 37. At: [http://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Reports/RCFV\\_Full\\_Report\\_Interactive.pdf](http://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Reports/RCFV_Full_Report_Interactive.pdf) (viewed 4 May 2016).

<sup>62</sup> See: Productivity Commission (Cth), 'Workplace Relations Framework: Productivity Commission Inquiry Report Volume 1' (Inquiry Report No.76, November 2015) 549.

<sup>63</sup> Male Champions of Change, *Playing our Part: Workplace Responses to Domestic and Family Violence* (November 2015) 7, 10, 12, 16. At: <http://malechampionsofchange.com/wp-content/uploads/2015/11/Playing-Our-Part-Male-Champions-of-Change-Letter.pdf> (viewed 21 April 2016).

society in offering victims and survivors appropriate mechanisms of prevention and redress.<sup>64</sup>

### 3.2 *The importance of financial security*

45. Financial security through paid employment is of particular importance to victims/survivors of family and domestic violence – it both prevents women becoming “economically trapped” in a violent relationship<sup>65</sup> and is a key pathway to leaving a violent relationship.<sup>66</sup>

46. The 2016 Victorian Royal Commission into Family Violence recently commented:

While recognising the diversity in women’s experiences – in economic circumstances, age and life stage – it is clear that financial security and independence are significant factors in victims gaining freedom from violent relationships and also in their recovery.<sup>67</sup>

47. The financial security that employment affords women not only allows them to escape becoming trapped and isolated in violent and abusive relationships, but also allows them to maintain, as far as possible, their home and standard of living.<sup>68</sup> Victims/survivors of family and domestic violence are more likely than other women to experience financial difficulty and many women

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<sup>64</sup> Former Deputy Sex Discrimination Commissioner, Andrea Durbach, ‘Domestic violence discrimination and the consolidation of Commonwealth anti-discrimination laws’ (Speech delivered at Safe at Home, Safe at Work Conference, Melbourne, 5 December 2011). At: <https://www.humanrights.gov.au/news/speeches/domestic-violence-discrimination-and-consolidation-commonwealth-anti-discrimination> (viewed 4 May 2016).

<sup>65</sup> Women’s lack of economic independence and financial security contributes to them being at risk of being coerced or controlled by their male partners. See: Fiona MacDonald, ‘Spotlight on Economic Abuse: A Literature and Policy Review’ (Literature and Policy Review, Good Shepherd Youth & Family Service and Kildonan UnitingCare, September 2012) 15-16. See also: The Hon. Marcia Neave, Patricia Faulkner and Tony Nicholson, *Victorian Royal Commission into Family Violence* (Report and Recommendations, Victorian Government, March 2016) 94. At: [http://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Reports/RCFV\\_Full\\_Report\\_Interactive.pdf](http://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Reports/RCFV_Full_Report_Interactive.pdf) (viewed 19 April 2016).

<sup>66</sup> See: Rochelle Braaf and Isobelle Barrett Meyering, *Seeking Security: Promoting Women’s Economic Wellbeing Following Domestic Violence* (Electronic Resource, Australian Domestic and Family Violence Clearinghouse, 2011); See also: Shirley Patton, *Pathways: How Women Leave Violent Men* (Report, Government of Tasmania, 2003) 43, 71, 73. See also: Prue Cameron, *Relationship Problems and Money: Women talk about financial abuse* (978-0-9925517-1-1, WIRE Women’s Information, August 2014), 22. See also: Male Champions of Change, *Playing our Part: Workplace Responses to Domestic and Family Violence* (November 2015) 4. At: <http://malechampionsofchange.com/wp-content/uploads/2015/11/Playing-Our-Part-Male-Champions-of-Change-Letter.pdf> (viewed 21 April 2016).

<sup>66</sup> The Hon. Marcia Neave, Patricia Faulkner and Tony Nicholson, *Victorian Royal Commission into Family Violence* (Report and Recommendations, Victorian Government, March 2016) 117. At: [http://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Reports/RCFV\\_Full\\_Report\\_Interactive.pdf](http://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Reports/RCFV_Full_Report_Interactive.pdf) (viewed 19 April 2016).

<sup>67</sup> The Hon. Marcia Neave, Patricia Faulkner and Tony Nicholson, *Victorian Royal Commission into Family Violence* (Report and Recommendations, Victorian Government, March 2016) 117. At: [http://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Reports/RCFV\\_Full\\_Report\\_Interactive.pdf](http://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Reports/RCFV_Full_Report_Interactive.pdf) (viewed 19 April 2016).

<sup>68</sup> Ludo McFerran, ‘National Domestic Violence and the Workplace Survey’, (ADFVC, UNSW, October 2011) 2. At: [https://www.arts.unsw.edu.au/media/FASSFile/National\\_Domestic\\_Violence\\_and\\_the\\_Workplace\\_Survey\\_2011\\_Full\\_Report.pdf](https://www.arts.unsw.edu.au/media/FASSFile/National_Domestic_Violence_and_the_Workplace_Survey_2011_Full_Report.pdf) (viewed 20 April 2016).

experience poverty as a result of family and domestic violence, regardless of their prior economic circumstances.<sup>69</sup>

48. Financial security for victims/survivors of family and domestic violence also enables women to re-gain control over their lives and counteract the disempowerment they experienced as a result of relationship abuse.<sup>70</sup>
49. Beyond financial security, the Commission notes that there are many other benefits of employment for victims/survivors of family and domestic violence including: social reconnections, challenging isolation, development of self-esteem, confidence and self-worth, and a sense of efficacy in the world and acceptance by society.<sup>71</sup>

### **3.3 Impact of family and domestic violence on employment**

50. However, for significant numbers of women, family and domestic violence affects their ability to find work and to attend or stay at work, as well as their performance and productivity at work.<sup>72</sup> The reasons for this are varied but may include:
  - a. The physical and psychological harm of violence;
  - b. The need to attend medical or legal appointments, seek safer accommodation or care for themselves or affected children;
  - c. A disrupted history of work; and
  - d. Behaviour by the perpetrator that seeks to prevent a victim leaving their sphere of control.
51. A national survey of over 3600 Australian employees on the impacts of domestic violence at work in 2011 found that:
  - a. Nearly half of those who had experienced domestic violence reported that the violence affected their capacity to get to work primarily due to injury or being restrained, followed by hiding keys and failure to care for children.

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<sup>69</sup> National Council to Reduce Violence Against Women, *Background Paper to Time for Action: The National Council's Plan to Reduce Violence Against Women and Children, 2009 – 2021* (FaHCSIA, March 2009) 44, citing Women's Health Australia, *The Australian Longitudinal Study on Women's Health Partner Violence and the Health of Australian Women* (2005) 1; Rochelle Braaf and Isobelle Barrett Meyering, *Seeking Security: Promoting Women's Economic Wellbeing Following Domestic Violence* (Electronic Resource, Australian Domestic and Family Violence Clearinghouse, 2011) 18.

<sup>70</sup> Rochelle Braaf and Isobelle Barrett Meyering, *Seeking Security: Promoting Women's Economic Wellbeing Following Domestic Violence* (Electronic Resource, Australian Domestic and Family Violence Clearinghouse, 2011) 25.

<sup>71</sup> Note the Preamble to ILO Convention No. 168 (1988) which recognises the 'importance of work' because of the 'income which it brings to workers, the social role which it confers and the feeling of self-esteem which workers derive from it'. However, this can sometimes trigger a partner's violence. See: M Costello, D Chung and E Carson, 'Exploring alternative pathways out of poverty: making connections between domestic violence and employment practices' (2005) 40.2 *Australian Journal of Social Issues*, 253, 256. See also: Shirley Patton, *Pathways: How Women Leave Violent Men* (Report, Government of Tasmania, 2003) 73.

<sup>72</sup> Ludo McFerran, 'National Domestic Violence and the Workplace Survey', (ADFVC, UNSW, October 2011). At [https://www.arts.unsw.edu.au/media/FASSFile/National\\_Domestic\\_Violence\\_and\\_the\\_Workplace\\_Survey\\_2011\\_Full\\_Report.pdf](https://www.arts.unsw.edu.au/media/FASSFile/National_Domestic_Violence_and_the_Workplace_Survey_2011_Full_Report.pdf) (viewed 20 April 2016).

- b. Nearly one in five (19%) who experienced domestic violence in the previous 12 months reported that the violence continued in the workplace, including abusive phone calls, emails or texts and the abusive person coming to the workplace.<sup>73</sup>
  - c. Negative effect on work performance was the main reported result, with 16% reporting being distracted, tired or unwell, 10% needing to take time off, and 7% being late for work.<sup>74</sup>
52. Women experiencing family or domestic violence are often subjected to detriments in the workplace, for example they may be denied leave or flexible work arrangements to attend violence-related matters, such as moving into a shelter; they may have their employment terminated for violence-related reasons; or be transferred or demoted for reasons related to violence.<sup>75</sup> This can exacerbate the experience of violence.<sup>76</sup>
53. A case of unfair dismissal recently heard by the Fair Work Commission demonstrates this. In *Leyla Moghimi v Eliana Construction and Developing Group Pty Ltd*,<sup>77</sup> an employer was found to have unfairly dismissed a woman who had taken time away from work because of a domestic violence incident perpetrated by her partner and her subsequent court attendance to obtain an intervention order against him.
54. Women who are subjected to family and domestic violence have been found to have a more disrupted work history, are on lower personal incomes, have had to change jobs frequently and are more likely to be employed in casual

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<sup>73</sup> This can be part of an effort to increase control over the victim – that is, by increasing the victims economic dependency, undermining their self-confidence – or in order to punish them for attempting to leave the violent relationship. See: Ludo McFerran, ‘National Domestic Violence and the Workplace Survey’, (ADFVC, UNSW, October 2011) 18. At [https://www.arts.unsw.edu.au/media/FASSFile/National\\_Domestic\\_Violence\\_and\\_the\\_Workplace\\_Survey\\_2011\\_Full\\_Report.pdf](https://www.arts.unsw.edu.au/media/FASSFile/National_Domestic_Violence_and_the_Workplace_Survey_2011_Full_Report.pdf) (viewed 20 April 2016).

<sup>74</sup> Ludo McFerran, ‘National Domestic Violence and the Workplace Survey’, (ADFVC, UNSW, October 2011). At [https://www.arts.unsw.edu.au/media/FASSFile/National\\_Domestic\\_Violence\\_and\\_the\\_Workplace\\_Survey\\_2011\\_Full\\_Report.pdf](https://www.arts.unsw.edu.au/media/FASSFile/National_Domestic_Violence_and_the_Workplace_Survey_2011_Full_Report.pdf) (viewed 20 April 2016). See also: Ludo McFerran, Dr Natasha Cortis and Tahlia Trijbetz, ‘Gendered Violence & Work Domestic and Family Violence Clauses in your Workplace: Implementation and good practice’ (Draft Report, Social Policy Research Centre & Centre for Gender Related Violence Studies University of New South Wales, June 2013) 9. At [https://www.arts.unsw.edu.au/media/FASSFile/Domestic\\_and\\_Family\\_Violence\\_Clauses\\_in\\_your\\_Workplace\\_Implementation\\_and\\_good\\_practice.pdf](https://www.arts.unsw.edu.au/media/FASSFile/Domestic_and_Family_Violence_Clauses_in_your_Workplace_Implementation_and_good_practice.pdf) (viewed 27 April 2016).

<sup>75</sup> See: Australian Human Rights Commission, *Submission to the Australian Law Reform Commission Inquiry into Family Violence and Commonwealth Laws: Employment and Superannuation* (21 April 2011) [47]. At: [http://www.humanrights.gov.au/legal/submissions/2011/20110421\\_family\\_violence.html](http://www.humanrights.gov.au/legal/submissions/2011/20110421_family_violence.html) (viewed 21 April 2016); Donna Chung et al, *Home Safe Home: the Link Between Domestic and Family Violence and Women’s Homelessness* (2000). At [www.fahcsia.gov.au/our-responsibilities/housing-support/publications-articles/homelessness-women/home-safe-home-the-link-between-domestic-and-family-violence-and-womens-homelessness](http://www.fahcsia.gov.au/our-responsibilities/housing-support/publications-articles/homelessness-women/home-safe-home-the-link-between-domestic-and-family-violence-and-womens-homelessness) (viewed 27 July 2012).

<sup>76</sup> See: Australian Human Rights Commission, *Consolidation of Commonwealth Discrimination law - domestic and family violence* (Supplementary Submission to Attorney General’s Department, 23 January 2012) 23. At: <https://www.humanrights.gov.au/consolidation-commonwealth-discrimination-law-domestic-and-family-violence> (viewed 4 May 2016). See also: Australian Human Rights Commission, *Family Violence and Commonwealth Laws: Employment and Superannuation* (Submission to the Australian Law Reform Commission, 21 April 2011). At <https://www.humanrights.gov.au/legal-research-and-resources-1> (viewed 4 May 2016).

<sup>77</sup> [2015] FWC 4864. A subsequent application by the employer to appeal the decision was refused: *Eliana Construction and Developing Group Pty Ltd v Leyla Moghimi* [2015] FWC FB 7476.

and part-time work than women with no experience of family and domestic violence.<sup>78</sup>

### **3.4 The provision of family and domestic violence leave is consistent with Australia's international obligations**

55. Paid family and domestic violence leave is designed to assist victims/survivors of family and domestic violence to remain in paid employment, support them through the process of escaping violence and to promote safe and secure workplaces for them and their work colleagues.
56. The Commission submits that introducing paid family and domestic violence leave would reduce the detrimental impact of family and domestic violence on victims' and survivors' participation in the labour market and the economic security this brings. It might also assist victims/survivors to leave an abusive relationship.
57. In addition to the benefits this would bring to the victim/ survivor and any of her children, this would also be consistent with Australia's international obligations to prevent family and domestic violence and provide support to the victims/survivors of family and domestic violence. It would also be an effective way to eliminate one of the barriers to productive and quality employment opportunities for women.
58. The Commission also submits that the inclusion of family and domestic violence leave in all modern awards is likely to promote the modern awards objective, set out in s 134 of the FWA to promote social inclusion through increased workplace participation. It is also consistent with the overall objects of the FWA to provide laws that are fair to working Australians and take into account Australia's international labour obligations.
59. The Commission notes that in August 2015, the Senate Finance and Public Administration References Committee supported the notion of family and domestic violence leave.<sup>79</sup> The 2016 Victorian Royal Commission into Family Violence also supported dedicated family violence leave.<sup>80</sup>

### **3.5 Dedicated family and domestic violence leave**

60. The Commission submits that consistent with the modern awards objective in s 134 of the FWA, the inclusion of family and domestic violence leave in all

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<sup>78</sup> Suzanne Franzway, Carole Zufferey and Donna Chung, 'Domestic Violence and Women's Employment' (Speech delivered at the 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 (eds), *Sourcebook on Violence Against Women* (California, Sage Publications, 2001), 443- 457.

<sup>79</sup> Senate Finance and Public Administration References Committee, Parliament of Australia, *Domestic Violence in Australia* (2015), [2.31]. At: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Finance\\_and\\_Public\\_Administration/Domestic\\_Violence/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Domestic_Violence/Report) (viewed 10 May 2016).

<sup>80</sup> The Hon. Marcia Neave, Patricia Faulkner and Tony Nicholson, *Victorian Royal Commission into Family Violence* (Report and Recommendations, Victorian Government, March 2016) 91. At: [http://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Reports/RCFV\\_Full\\_Report\\_Interactive.pdf](http://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Reports/RCFV_Full_Report_Interactive.pdf) (viewed 19 April 2016).

modern awards will provide a fair and relevant minimum safety net of terms and conditions for employees.

61. The current entitlements in the FWA and the NES are inadequate to cater for the needs of family and domestic violence victims/survivors. This has been recently highlighted by the Australian Law Reform Commission.<sup>81</sup>
62. The FWA provides that employees experiencing family violence have the right to request flexible working arrangements, however, those requests can be refused on reasonable business grounds with no right of appeal.<sup>82</sup>
63. Further, employees affected by family and domestic violence are able to use various forms of leave to enable them to attend to matters arising from experiencing family and domestic violence.<sup>83</sup> However, victims/survivors often exhaust their leave entitlements in order to attend legal and medical appointments, organise accommodation, and care for their children.<sup>84</sup>
64. Further, employees may not have leave accrued or not accrue leave if they are employed casually. Employees affected by family and domestic violence may also be financially vulnerable, and not be in a position to take unpaid leave.
65. The Australian Law Reform Commission also pointed out that there is currently a discretionary element associated with the granting of the existing categories of leave in cases of family violence.<sup>85</sup>
66. A lack of dedicated family and domestic violence leave can make the situation worse for people who are experiencing family and domestic violence. As one victim/survivor explains:

I've had to take large amounts of sick leave and, when that ran out, annual leave to deal with the effects of an abusive partner...The fear of losing my job made dealing with the emotional and legal issues even more stressful...It would have been a huge help if I could have been upfront about what was going on...<sup>86</sup>
67. Dedicated paid family and domestic violence leave will ensure that an entitlement is available to all employees as a matter of law and removes the need for employees facing extremely difficult circumstances to negotiate with their employer in order to take time off work.

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<sup>81</sup> Australian Law Reform Commission, *Final Report: Family Violence and Commonwealth Laws—Improving Legal Frameworks* (Report No 117, 2012) 23. At [www.alrc.gov.au/inquiries/family-violence-and-commonwealth-laws](http://www.alrc.gov.au/inquiries/family-violence-and-commonwealth-laws) (viewed 21 April 2016).

<sup>82</sup> *Fair Work Act 2009* (Cth) s 65.

<sup>83</sup> See: Productivity Commission (Cth), 'Workplace Relations Framework: Productivity Commission Inquiry Report Volume 1' (Inquiry Report No.76, November 2015) 544.

<sup>84</sup> For more information about the types of interventions necessary to assist children to recover from family and domestic violence, see: Megan Mitchell, National Children's Commissioner, 'Children's Rights Report, 2015', Ch 4. At <https://www.humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2015> (viewed 11 May 2016).

<sup>85</sup> Australian Law Reform Commission, *Final Report: Family Violence and Commonwealth Laws—Improving Legal Frameworks* (Report No 117, 2012) 23. At [www.alrc.gov.au/inquiries/family-violence-and-commonwealth-laws](http://www.alrc.gov.au/inquiries/family-violence-and-commonwealth-laws) (viewed 21 April 2016).

<sup>86</sup> Anonymous survivor of family violence, cited in Australian Services Union, *Family Violence is a Workplace Issue* (2011) 13.

68. The availability of family and domestic violence leave also sends a signal to staff that the workplace takes family and domestic violence seriously<sup>87</sup> and does not condone violence against women.<sup>88</sup> This is important in building a community that confidently recognises and responds to disclosure of family and domestic violence.
69. With training and support, dedicated family and domestic violence leave may also assist changes to workplace culture and attitude, reducing the stigma associated with being a family and domestic violence victim/survivor, becoming more supportive of victims/survivors and fostering an environment in which victims/survivors can feel free to disclose their violent situations.<sup>89</sup>
70. When considering the option of ‘specific family violence leave’ in the NES, the Australian Law Reform Commission noted that stakeholders had indicated that it was necessary to articulate the entitlement as ‘an additional, but separate category of leave’ in order to:
- a. reflect the conceptual differences between leave for family violence and other purposes, and to validate the experiences of people experiencing family violence;
  - b. provide a requirement in relation to which employers must develop specific policies and procedures;
  - c. more clearly identify family violence as a possible work health and safety issue; and
  - d. allow for different evidentiary requirements from other forms of leave.<sup>90</sup>
71. When Telstra introduced 10 days paid domestic violence leave in 2014, it reported that it was important to have a category called ‘domestic violence

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<sup>87</sup> The Hon. Marcia Neave, Patricia Faulkner and Tony Nicholson, *Victorian Royal Commission into Family Violence* (Report and Recommendations, Victorian Government, March 2016) 82. At: [http://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Reports/RCFV\\_Full\\_Report\\_Interactive.pdf](http://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Reports/RCFV_Full_Report_Interactive.pdf) (viewed 19 April 2016).

<sup>88</sup> When societies, institutions, communities or individuals support or condone violence against women, levels of such violence are higher: Our Watch, Australia’s National Research Organisation for Women’s Safety (ANROWS) and VicHealth, *Change the story: A shared framework for the primary prevention of violence against women and their children in Australia* (2015) 23, 26, citing European Commission (2010) ‘Factors at play in the perpetration of violence against women, violence against children and sexual orientation violence: a multi-level interactive model’. Available at: <https://www.ourwatch.org.au/getmedia/0aa0109b-6b03-43f2-85fe-a9f5ec92ae4e/Change-the-story-framework-prevent-violence-women-children-AA-new.pdf.aspx> (viewed 28 April 2016).

<sup>89</sup> Although research suggests that many individuals do disclose their violent domestic or family situation in the workplace, many do not for fear of the repercussions, such as dismissal. Less than half (48%) of respondents to the *National Domestic Violence and the Workplace Survey* who had experienced violence disclosed it to a manager or supervisor. See: Ludo McFerran, ‘National Domestic Violence and the Workplace Survey’, (ADFVC, UNSW, October 2011) 13. At [https://www.arts.unsw.edu.au/media/FASSFile/National\\_Domestic\\_Violence\\_and\\_the\\_Workplace\\_Survey\\_2011\\_Full\\_Report.pdf](https://www.arts.unsw.edu.au/media/FASSFile/National_Domestic_Violence_and_the_Workplace_Survey_2011_Full_Report.pdf) (viewed 20 April 2016). In cases of non-disclosure, the implications of domestic and family violence remain largely hidden and may contribute to discriminatory treatment because of the employer’s lack of understanding about the causes of an apparent decline in an employee’s attendance or performance.

<sup>90</sup> Australian Law Reform Commission, *Final Report: Family Violence and Commonwealth Laws—Improving Legal Frameworks*, Report No 117 (2012) 423 [17.42]. At [www.alrc.gov.au/inquiries/family-violence-and-commonwealth-laws](http://www.alrc.gov.au/inquiries/family-violence-and-commonwealth-laws) (viewed 21 April 2016).

leave' to ensure a non-diluted message of support, and to bring a hidden topic into the open.<sup>91</sup>

72. The Commission supports the requirement for employers to keep an employee's personal information concerning their experience of family or domestic violence confidential. Research has shown that concerns about confidentiality appear to be key barriers in using family and domestic violence leave clauses.<sup>92</sup> To overcome this issue, training and support must be provided to all employees – in particular, those who are likely to have an employee disclose circumstances related to family and domestic violence to them.<sup>93</sup> The Commission also notes that in a 2015 study into the implementation of domestic violence clauses, none of the respondents reported ever having issues regarding breaches of confidentiality.<sup>94</sup>
73. The Commission notes that both men and women will be able to avail themselves of the ACTU's proposed family and domestic violence leave entitlement. It is unlikely that perpetrators will be able to avail themselves of the leave as employees must be 'experiencing' family and domestic violence in order to access the leave.

### **3.6 Impact on productivity and employment costs**

74. Under s 134(f) of the FWA, the Fair Work Commission must take into account the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and regulatory burden. The Commission submits that introducing family and domestic violence leave is likely to increase productivity and does not carry significant employment costs.
75. As noted above, family and domestic violence can affect the attendance, performance and safety of employees. It consequently reduces the productivity of Australian workplaces. The impacts of family and domestic

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<sup>91</sup> The separate category of 'domestic violence leave' also enables Telstra to easily track take-up.

<sup>92</sup> Ludo McFerran, Dr Natasha Cortis and Tahlia Trijbetz, 'Gendered Violence & Work Domestic and Family Violence Clauses in your Workplace: Implementation and good practice' (Draft Report, Social Policy Research Centre & Centre for Gender Related Violence Studies University of New South Wales, June 2013) 9. At

[https://www.arts.unsw.edu.au/media/FASSFile/Domestic\\_and\\_Family\\_Violence\\_Clauses\\_in\\_your\\_Workplace\\_Implementation\\_and\\_good\\_practice.pdf](https://www.arts.unsw.edu.au/media/FASSFile/Domestic_and_Family_Violence_Clauses_in_your_Workplace_Implementation_and_good_practice.pdf) (viewed 27 April 2016).

<sup>93</sup> The ACTU has developed a set of best-practice principles for guiding the implementation of paid family violence leave provisions in workplaces. One of these principles is training and support for employees. See: the Hon. Marcia Neave, Patricia Faulkner and Tony Nicholson, *Victorian Royal Commission into Family Violence* (Report and Recommendations, Victorian Government, March 2016) 85, citing the ACTU's submission. At:

[http://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Reports/RCFV\\_Full\\_Report\\_Interactive.pdf](http://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Reports/RCFV_Full_Report_Interactive.pdf) (viewed 10 May 2016). See also: Ludo McFerran, Dr Natasha Cortis and Tahlia Trijbetz, 'Gendered Violence & Work Domestic and Family Violence Clauses in your Workplace: Implementation and good practice' (Draft Report, Social Policy Research Centre & Centre for Gender Related Violence Studies University of New South Wales, June 2013), 3

<sup>94</sup> Dr Jan Breckenridge, Dr Jesse Cale, Shabnam Hameed, Luke McCaskie, Dr Stacy Tzoumakis, *Implementation of Domestic Violence Clauses – An Employer's perspective* (November 2015, ACTU and UNSW) 8. At: [http://www.professionalsaustralia.org.au/professional-women/wp-content/uploads/sites/48/2015/11/d152\\_Implementation-of-DV-Clauses-Negotiated-in-selected-industrial-agre....pdf](http://www.professionalsaustralia.org.au/professional-women/wp-content/uploads/sites/48/2015/11/d152_Implementation-of-DV-Clauses-Negotiated-in-selected-industrial-agre....pdf) (viewed 27 April 2016).

violence is reflected in the costs to Australian business, not only in productivity and absenteeism, but also in staff turnover, recruitment and training.<sup>95</sup>

76. Recently, Price Waterhouse Coopers has estimated that in 2014-15, the annual cost to the Australian economy of violence against women caused by a partner was \$12.6 billion.<sup>96</sup> The cost of lost productivity caused by violence against women in 2014-15 was anticipated to be \$2.1 billion.<sup>97</sup> Employers shouldered 6% of the total economic cost of violence against women in Australia.<sup>98</sup>
77. In 2015, the Productivity Commission noted that paid domestic violence leave provisions can impose additional costs on employers but can also offer productivity and other benefits.<sup>99</sup> For example, providing domestic violence leave can result in strong benefits for employers, including higher retention rates, higher staff morale, and higher health outcomes for their employees. Contributing to achieving workplace equality and wellbeing can also enhance workplace productivity.
78. In the 2015 Report from the UNSW and the ACTU, '*Implementation of Domestic Violence Clauses – an Employer's perspective*', respondents to the survey indicated that the positive effects of the clauses were: a demonstration of the organisation's commitment to their staff, raising awareness of family and domestic violence as a workplace and social issue, and enhancing the overall reputation and status of the organisation.<sup>100</sup> The study also found that 'the implementation of domestic violence clauses was not excessively disruptive to the workplace'. Further, survey participants did not report a prohibitive financial burden on the organisation.

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<sup>95</sup> Workplaces respond to domestic and sexual violence: A National Resource Centre, *Impacts of violence on the workplace*, Workplace respond. At <http://www.workplacesrespond.org/learn/the-facts/impact-of-workplace-violence> (viewed 21 April 2016); Adrienne Cruz and Sabine Klinger, *Gender-Based Violence in the World of Work: Overview and Selected Annotated Bibliography*, (Working Paper No 3/2011, International Labour Office, 2011) 13, 15. At [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms\\_155763.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_155763.pdf) (viewed 21 April 2016).

<sup>96</sup> Price Waterhouse Coopers 'A high price to pay: the economic case for prevention of violence against women' (Our Watch & Victorian Health Promotion Foundation, November 2015) 11. At <http://www.pwc.com.au/publications/economic-case-preventing-violence-against-women.html> (viewed 19 April 2016).

<sup>97</sup> Price Waterhouse Coopers 'A high price to pay: the economic case for prevention of violence against women' (Our Watch & Victorian Health Promotion Foundation, November 2015) 12. At <http://www.pwc.com.au/publications/economic-case-preventing-violence-against-women.html> (viewed 19 April 2016).

<sup>98</sup> Price Waterhouse Coopers 'A high price to pay: the economic case for prevention of violence against women' (Our Watch & Victorian Health Promotion Foundation, November 2015) 13. At <http://www.pwc.com.au/publications/economic-case-preventing-violence-against-women.html> (viewed 19 April 2016).

<sup>99</sup> Productivity Commission (Cth), 'Workplace Relations Framework: Productivity Commission Inquiry Report Volume 1' (Inquiry Report No.76, November 2015), 550.

<sup>100</sup> Dr Jan Breckenridge, Dr Jesse Cale, Shabnam Hameed, Luke McCaskie, Dr Stacy Tzoumakis, *Implementation of Domestic Violence Clauses – An Employer's perspective* (November 2015, ACTU and UNSW). At: [http://www.professionalsaustralia.org.au/professional-women/wp-content/uploads/sites/48/2015/11/d152\\_Implementation-of-DV-Clauses-Negotiated-in-selected-industrial-agre....pdf](http://www.professionalsaustralia.org.au/professional-women/wp-content/uploads/sites/48/2015/11/d152_Implementation-of-DV-Clauses-Negotiated-in-selected-industrial-agre....pdf) (viewed 27 April 2016).

## 4 The practice of employers providing this kind of leave in Australia and overseas

79. The ACTU's claim is for 10 days paid family and domestic violence leave per year and an additional 2 days unpaid leave on each occasion after an employee's entitlement to paid leave is exhausted.
80. An entitlement of 10 days recognises that for many victims/survivors, there will be an initial period where they need to access a variety of services quickly (usually during separation), such as housing, child custody or criminal proceedings. However, even after this period, there are many ongoing services that victims/survivors need to access in order for them and their children to recover.<sup>101</sup> All victim/survivor's circumstances will be different and the claim recognises this by allowing victims/survivors ongoing unpaid leave as needed.
81. The Commission submits that based on current practices in Australia and abroad, as outlined below, the period of 10 days paid leave is well within the range of existing leave provisions.

### 4.1 Australia

82. In 2013, the United Nations highlighted as good practice the Australian achievement of 'domestic violence entitlements in industrial awards and agreements, including access to paid family violence leave of up to 20 days a year'.<sup>102</sup>
83. It is estimated that now two million Australian employees are currently covered by a family and domestic violence leave clause.<sup>103</sup> The paid leave contained in these industrial instruments and policies range from five to twenty days.
84. All Australian Governments, except for Western Australia, have introduced domestic violence protections for their public servants, including paid leave.<sup>104</sup>

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<sup>101</sup> For more information about the types of interventions necessary to assist children to recover from family and domestic violence, see: Megan Mitchell, National Children's Commissioner, 'Children's Rights Report, 2015', Ch 4. At <https://www.humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2015> (viewed 11 May 2016).

<sup>102</sup> UN Economic and Social Council, *Report of the United Nations Secretary for the Commission on the Status of Women 57<sup>th</sup> Session on Multisectoral services and responses for women and girls subjected to violence*, 57<sup>th</sup> sess, Agenda Item 3, UN Doc E/CN.6/2013/3 (18 December 2012), 12 [32]. Available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=E/CN.6/2013/3](http://www.un.org/ga/search/view_doc.asp?symbol=E/CN.6/2013/3) (viewed 20 April 2016).

<sup>103</sup> See: Ludo McFerran, 'Has Collective Bargaining Domestic Violence Worked?' (Speech delivered at the University of Sydney Business School Women and Work Re-search Group seminar, Sydney, March 2016). In 2013, over one million Australian workers were able to avail themselves of leave and other protections made available through domestic and family violence clauses in their agreement or award conditions. See: Ludo McFerran, 'When domestic violence becomes a workplace problem', *ABC The Drum* (online), 13 February 2013. At <http://www.abc.net.au/unleashed/4516492.html> (viewed 21 April 2016).

<sup>104</sup> See: NSW Crown Employees (Public Service Conditions of Employment) Award 2009 and a further 60 State Government Awards linked to this provision; Queensland Government Special Leave Directive 02/2012; Northern Territory Government Commissioner's Guideline for Miscellaneous Leave (domestic, family and sexual violence) 08/2012; Australian Public Service Circular 2012/3: Supporting

The entitlement in the Australian Capital Territory's Enterprise Bargaining Agreements is for up to 20 additional paid days leave per calendar year for employees - excluding casuals, who are entitled to unpaid leave.

85. Many Australian businesses already provide for family and domestic violence leave within company policy.<sup>105</sup> For example, in 2014, Virgin Australia agreed to provide an additional five days of leave for workers experiencing family violence.<sup>106</sup> Telstra, with 33,000 employees, thought it highly likely that some of its staff would be experiencing family violence, and accordingly, in November 2014, introduced a policy providing for 10 days family violence leave – paid for permanent employees and unpaid for casuals.<sup>107</sup> Telstra has reported that the average leave taken by those who accessed family violence leave was 2.3 days.<sup>108</sup>

86. In the 2015 Report from the UNSW and the ACTU, '*Implementation of Domestic Violence Clauses – an Employer's perspective*', the researchers found that 'in terms of the typical amount of leave requested per incident, just under half of the respondents indicated that employees typically requested two-to-three days'.<sup>109</sup> However, the range of average time off under paid domestic violence leave entitlements varied from 8 to 202 hours.<sup>110</sup>

## 4.2 United States

87. In the US, Federal legislation allows employees leave to address domestic violence, sexual assault or stalking and their effects.<sup>111</sup> Further, 14 States in the US grant domestic violence leave. Entitlements range from three days to

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Employees Affected by Domestic or Family Violence 10/2012; Tasmanian Ministerial Direction No. 28 Family Violence – Workplace Arrangements and Requirements 11/12.

<sup>105</sup> It is reported that QBE and the National Australia Bank also provide additional leave for employees experiencing family violence. See: Joanna Mather and Jaclyn Keast, 'Telstra introduces domestic violence leave', *Financial Review* (online), 13 January 2015. At:

<http://www.afr.com/news/policy/industrial-relations/telstra-introduces-domestic-violence-leave-20150113-12na7h> (viewed 28 April 2016); See also: 'NAB leads the industry in domestic violence support', 2 June 2013. At: [www.nab.com.au](http://www.nab.com.au) (viewed 28 April 2016).

<sup>106</sup> Virgin Australia Ground Crew Agreement 2013 (approved 29 January 2014).

<sup>107</sup> The Hon. Marcia Neave, Patricia Faulkner and Tony Nicholson, *Victorian Royal Commission into Family Violence* (Report and Recommendations, Victorian Government, March 2016) 83. At: [http://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Reports/RCFV\\_Full\\_Report\\_Interactive.pdf](http://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Reports/RCFV_Full_Report_Interactive.pdf) (viewed 19 April 2016).

<sup>108</sup> Male Champions of Change, *Playing our Part: Workplace Responses to Domestic and Family Violence* (November 2015) 16- 17. At: <http://malechampionsofchange.com/wp-content/uploads/2015/11/Playing-Our-Part-Male-Champions-of-Change-Letter.pdf> (viewed 21 April 2016).

<sup>109</sup> Dr Jan Breckenridge, Dr Jesse Cale, Shabnam Hameed, Luke McCaskie, Dr Stacy Tzoumakis, *Implementation of Domestic Violence Clauses – An Employer's perspective* (November 2015, ACTU and UNSW) 8. At: [http://www.professionalsaustralia.org.au/professional-women/wp-content/uploads/sites/48/2015/11/d152\\_Implementation-of-DV-Clauses-Negotiated-in-selected-industrial-agre....pdf](http://www.professionalsaustralia.org.au/professional-women/wp-content/uploads/sites/48/2015/11/d152_Implementation-of-DV-Clauses-Negotiated-in-selected-industrial-agre....pdf) (viewed 27 April 2016).

<sup>110</sup> The range of time off for paid domestic violence leave was from 8 to 202 hours. See: Dr Jan Breckenridge, Dr Jesse Cale, Shabnam Hameed, Luke McCaskie, Dr Stacy Tzoumakis, *Implementation of Domestic Violence Clauses – An Employer's perspective* (November 2015, ACTU and UNSW) 7. At: [http://www.professionalsaustralia.org.au/professional-women/wp-content/uploads/sites/48/2015/11/d152\\_Implementation-of-DV-Clauses-Negotiated-in-selected-industrial-agre....pdf](http://www.professionalsaustralia.org.au/professional-women/wp-content/uploads/sites/48/2015/11/d152_Implementation-of-DV-Clauses-Negotiated-in-selected-industrial-agre....pdf) (viewed 27 April 2016).

<sup>111</sup> *Family and Medical Leave Act of 1993*, 29 U.S.C. §§ 2601-2653.

12 weeks, or ‘reasonable and necessary’ leave, although some of this leave is unpaid rather than paid. A table setting out the leave entitlements is provided at Appendix 1.

### **4.3 Canada**

88. In Canada, family and domestic violence protections for workers are primarily provided through Occupational Health and Safety legislation. The presence of family and domestic violence-specific legislation differs between each province and territory.
89. In March 2016, Manitoba passed the *Employment Standards Code Amendment Act (Leave for Victims of Domestic Violence, Leave for Serious Injury or Illness and Extension of Compassionate Care Leave)*, which offers victims/survivors of family and domestic violence 5 paid days (to be taken in one stretch or intermittently, when needed), five unpaid days and an additional 17-week unpaid period, if a victim/survivor needs to flee and find a new place to live.
90. A similar Bill has passed second reading in Ontario (*Bill 177, Domestic and Sexual Violence Workplace Leave, Accommodation and Training Act 2016*).<sup>112</sup> If passed, the Bill would offer 10 days of paid leave, as well as some unpaid leave and the opportunity for flexible work arrangements for victims/survivors of sexual or domestic violence.<sup>113</sup>

### **4.4 Philippines**

91. Under Article 43 of the Philippine’s *Anti-Violence against Women and their Children Act (2004)*, victims/survivors are entitled to take 10 days of paid leave in addition to other leave entitlements.

## **5 Conclusion**

92. For the reasons set out above, the Commission supports the introduction of Family and domestic violence leave in all modern Awards.

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<sup>112</sup> At: [http://ontla.on.ca/web/bills/bills\\_detail.do?locale=en&Intranet=&BillID=3795](http://ontla.on.ca/web/bills/bills_detail.do?locale=en&Intranet=&BillID=3795) (viewed 2 May 2016).

<sup>113</sup> Zosia Bielski, ‘Manitoba passes law to offer victims of domestic violence leave from work’, *The Globe and Mail* (online), 15 March 2016. At: <http://www.theglobeandmail.com/news/national/manitoba-approves-bill-to-offer-victims-of-domestic-violence-leave-from-work/article29255554/> (viewed 4 May 2016).

## Appendix 1 – Family and domestic violence leave entitlements in the US

<i>State</i>	<i>Entitlement</i>	<i>Source</i>
California	Workers in businesses with 25 or more, employees who are a survivor of domestic abuse or sexual assault may take an <b>unspecified amount</b> of time off work to address legal, medical, safety or relocation issues.	Statute/Code Cite: Cal. Labor Code §§ 230(c), 230.1(a)-(b)
Colorado	Employers who employ 50 or more employees must permit an employee of twelve months or more who is a victim of domestic abuse, sexual assault, stalking, or other domestic violence-related crimes to take <b>up to three days</b> of leave per calendar year. Prior to taking this leave, the employee must exhaust annual, vacation, personal leave, and sick leave, unless the employer waives this requirement.	Statute/Code Cite: Colo. Rev. Stat. § 24-34-402.7
Florida	Workers in businesses with 50 or more employees, who have worked for their employer for three or more months and who are victims of domestic violence, are entitled to <b>three days</b> of leave, with or without pay, in any 12-month period to address legal, medical, safety or relocation issues.	Statute/Code Cite: Fla. Stat. § 741.313
Kansas	Workers who are survivors of domestic violence or sexual assault are entitled to <b>at least eight days</b> per year of unpaid leave. Further, regardless of any collective bargaining agreement terms and conditions, a worker may use accrued paid leave for issues arising from domestic violence and sexual assault	Statute/Code Cite: K.S.A. Secs. 44-1132(a), 44-706(a)(12)(A)
Hawaii	Workers who are survivors of domestic or sexual violence, or whose child is the survivor of domestic or sexual violence, may take unpaid leave to obtain medical, legal, mental health, relocation or other necessary services. Employees of an employer with at least 50 employees may take <b>up to 30 days</b> of unpaid leave per calendar year. Employees of an employer who employs 49 or fewer employees may take <b>up to five days</b> of unpaid leave per calendar year	Statute/Code Cite: Hi. Rev. Stat. Sec. 378-72(a)
Illinois	Workers who are survivors of domestic or sexual violence may take unpaid leave from work to address medical, legal, mental health, safety and relocation issues. An employee of an employer with at least 50 employees is entitled to a total of <b>12 work weeks</b> of leave during any 12-month period. An employee of an employer with between 15 and 49 employees is entitled to a total of <b>eight work weeks</b> of leave during any 12-month period	Statute/Code Cite: 820 ILCS Secs. 180/20, 180/25

Maine	Guarantees workers " <b>reasonable and necessary leave</b> " from work, with or without pay, for legal, medical or other necessary services arising from violence, sexual assault or stalking. The leave may also be used to care for the worker's child, parent or spouse who is a victim of violence, assault or stalking	Statute/Code Cite: 26 MRSA Sec. 850(1)
Massachusetts	Sick leave for employees can be used to address "physical or legal effects of domestic violence"	G.L. c. 149, § 148C
Minnesota	Workers may take " <b>reasonable time off</b> " without retaliation, discharge or discrimination to obtain relief from domestic abuse committed against themselves or a family or household member by another family or household member.	Statute/Code Cite: Mn. Stat. Ann. Sec. 518B.01
New Mexico	Workers are entitled to domestic abuse leave, which is intermittent <b>paid or unpaid leave time for up to 14 days</b> in any calendar year, taken by a worker for up to eight hours in one day. Workers may also use accrued sick leave or other available paid time off, compensatory time or unpaid leave time consistent with their employer's policies	Statute/Code Cite: NM Stat. Ann. Secs. 50-4A-3, 50-4A-4, 50-4A-5
New Jersey	Requires employers to offer <b>unpaid leave not exceeding 20 days</b> in the course of a year in circumstances where either the employee or the employee's family or household member is a victim of domestic violence or a sexually violent offence	Statute/Code Cite: S.B. 2177, 215th Leg. (N.J. 2012).
North Carolina	Workers may take " <b>reasonable time off</b> " without discharge, demotion or discipline to obtain relief from domestic abuse.	Statute/Code Cite: N.C.G.S.A. Secs. 50B-5.5, 95-270
Oregon	A worker who is a survivor of domestic violence, sexual assault or stalking, or is the parent or guardian of a minor child or dependent who is a survivor, may take <b>reasonable, unpaid time off from work</b> .	Statute/Code Cite: O.R.S. Secs. 659A.270, 659A.272, 659A.277, 659A.280, 659A.290-
Washington	Workers may take " <b>reasonable leave</b> ," intermittent leave or leave on a reduced schedule, with or without pay, to obtain legal, medical, mental health, safety or relocation services arising from domestic violence or sexual assault. The worker must give their employer advance notice for such leave unless there is an emergency	Statute/Code Cite: RCWA Secs. 49.76.020, 49.76.030, 49.76.040