Domestic violence is a workplace issue; Australian developments 2009-2016

The statistics on violence against women in Australia are shocking. The 2012 Personal Safety Survey (PSS), conducted by the Australian Bureau of Statistics (ABS) shows that, since the age of 15, around one in three women in Australia has experienced physical violence, and almost one in five has experienced sexual violence. It also shows that an estimated 17 per cent of women in Australia have experienced violence by a partner. A 2013 Australian Institute of Criminology report shows that one woman is killed in Australia every week by a current or former partner. 1

Introduction

The announcement of the first domestic2 violence clause in an enterprise agreement in 2010 marked a shift in what was expected of an Australian workplace: from an optional policy by supportive employers to a standardised right to be supported at work for all Australian employees. This shift was part of a broader movement to a community wide strategy condemning the violence, holding the perpetrators accountable and supporting those affected to stay safely in their homes, in their jobs and in their communities.

By March 2016 there were 1,234 current agreements with a domestic violence clause covering 1,004,720 employees3; all but one Australian government has extended paid leave and other provisions to their public servants,4 and the right to request flexible work arrangements due to domestic violence has been included in the Fair Work Amendment Act 2013. The case for dedicated and paid domestic violence leave in modern awards is before the Fair Work Commission, and Australia has been recognised as the world leader in the provision of domestic violence support in the workplace. 5

Engaging the Australian workplace with the national strategy against domestic violence grew out of an increasingly sophisticated national response to domestic violence, specifically the introduction of what is known as ‘integrated’ models. These were designed as planned, accountable and coordinated responses between the criminal justice and community interagency systems. According to Australia’s


2 Both terms ‘domestic’ and ‘family’ violence are used in Australia. Domestic violence is a generic term but may be understood to mean violence between intimate partners (as can intimate partner violence, IPV). Family violence is also used as a generic term in some States/Territories but can be understood to mean violence committed by family members on other member/s of their family.

3 Commonwealth Department of Employment, Workplace Agreement Database (WAD).

4 See Appendix 1, list of public service provisions.

5 United Nations Secretary for the Commission on the Status of Women 57th Session CSW 57 2013, General Multi-Sectoral services and responses for women and girls subjected to violence. p.12, point 32
first national plan to reduce violence against women and their children (2012-2013), an effective national strategy requires, ‘integrated governance arrangements that cut across traditional government boundaries and engage the community and private sectors. No government or group can tackle this problem alone’.  

Engaging the Australian workplace

In the Australian context there had been a series of domestic violence programs to engage employers, such as the Howard Government period ‘Businesses against domestic violence’. However, a 2008 paper for the Australian Domestic and Family Violence Clearinghouse (ADFVC) found that an employer led, voluntary, policy-based response had not produced widespread or sustainable results. The engagement of the Australian workplace in the wider community response to domestic violence was still seen as optional.

Contributing to the problem may have been a perception that domestic violence affects those in lower socio-economic groups or from particular cultural groups rather than employed people. Yet national personal safety surveys conducted by the Australian Bureau of Statistics find that that nearly two-thirds of Australian women who report violence by a current partner are in paid employment. This reality was reflected in emerging Safe at Home Programs designed to support women affected by domestic violence to stay safely in their homes, where three quarters of the clients could be in employment. For many of these women, the support of their workplace had been critical, though many attributed this to the luck of having a good boss. Their experiences led to the idea for a domestic violence clause, a standardised right for all employees affected by domestic violence. A model domestic violence clause was developed in 2009 by the ADFVC and the NSW Public Service Association (PSA). For the ADFVC the purpose of the domestic violence clause was to protect the jobs of those affected by the violence, and

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7 The ADFVC was a Commonwealth funded project of the Centre for Gender Related Violence Studies at the University of New South Wales from 1999-2014. It was effectively the national domestic and family violence center for research, information collection and dissemination, and good practice monitoring.
10 Ludo McFerran, 2007, Taking back the castle: How Australia is making the home safer for women and children, Issues Paper 14 ADFVC p.13
provide clarity and consistency in the workplace.\textsuperscript{12} By doing so the ‘workplace is then understood as a crucial part of any integrated community and government response to domestic violence’\textsuperscript{13}

**Domestic violence clauses in enterprise agreements**

The model domestic violence clause included dedicated paid leave, confidentiality of employee details, workplace safety planning, referral processes to domestic violence support services, the provision of training to key personnel, protection from discrimination or adverse action, and the right to flexible work arrangements. Dedicated paid leave was included for two reasons. The first was for employees to attend to matters such as court appearances, legal appointments, and accommodation requirements, matters not covered by other leave entitlements. The importance of legal protection for the individual, their family and their workplace was considered essential because of the evidence that the risk factors are accelerating dangerously when abuse in the home becomes stalking in the workplace.\textsuperscript{14} The second reason was that requesting domestic violence leave should trigger a conversation at work about any safety measures or plans required.

To assist the development of domestic violence clauses the then Department of Education, Employment and Workplace Relations (DEEWR) funded a national project ‘Safe at Home, Safe at Work’ (SAHSAW) at the ADFVC from 2010-2013. SAHSAW was acknowledged as an expert third party, playing a key role in the successful introduction and implementation of domestic violence clauses in the world of work.\textsuperscript{15} The first Australian domestic violence clause incorporated into an enterprise agreement was between the Victorian Surf Coast Shire Council and the Australian Services Union Victorian Authorities and Services Branch (Surf Coast Shire Council Enterprise Agreement 2010-2013). The clause made headline news as the parties negotiated up to twenty days paid domestic violence leave. The domestic violence clause was adopted by the ACTU Conference in 2012 and all affiliates were urged to include the clause in their standard log of claims. There are now over one thousand clauses in agreements, predominantly in the private sector, across a broad range of industries such as retail, public transport, banking, education, manufacturing, airline and maritime, and including some of the country’s largest employers.\textsuperscript{16}

**Evidence of the impacts of domestic violence on employment and the workplace**

\textsuperscript{12} ADFVC, 2011, Submission to ALRC Issues Paper on Family Violence and Commonwealth Laws – Employment and Superannuation, p.16
\textsuperscript{15} Ibid, 13
\textsuperscript{16} Commonwealth Department of Employment in the Workplace Agreement Database (WAD)
The acceptance of the domestic violence clause relied on good evidence of the impacts of domestic violence in the workplace and the associated costs. Australian research had shown that employment is critical to prevent a woman becoming economically trapped in a violent relationship and a key pathway to leaving a violent relationship. Yet research has linked the experience of domestic violence with more disrupted work histories, lower personal incomes, and higher levels of casual and part-time employment.

Longitudinal American studies, for example, have found that intimate personal violence (IPV) has both immediate and longer term detrimental effects impacts ‘on women’s job stability not only while the abuse is occurring, but for up to three years after the IPV ends.’ These longer term effects were reflected in a study on absenteeism due to domestic violence, which found that employees with past experience of domestic violence were more likely to be absent than current victims or non-victims. The authors suggested that in the short term, ‘Attendance at work may be a coping mechanism that helps victims deal with the abuse, or perhaps attendance reflects the strong need of victims to keep their jobs and maintain their economic power as a way out of the abusive situation’. However, the research findings then linked current victims attending work and negative work performance, suggesting that any short term benefits of poorly performing employees attending work with unaddressed issues with partner violence may not outweigh the long term interests of the workplace.

Recent Australian research (2015) examined the longer-term effects on employment following separation from a violent partner. Over half the sample of 658 Australian women were in full-time employment, 25% were ‘professional’, 16.7% ‘clerical/administration’ and 11.2% ‘managers’. The preliminary findings were that the majority (75%) did not continue in the same workplace and that full-time employment decreased to 29.6% after separation from the violent partner. Part-time employment increased and those who were in the category ‘not working and not seeking work’ rose to 16.3% (from 6.1%) after leaving the violence.

To identify the specific impacts of domestic violence on Australian workers and their co-workers, SAHSAW conducted a national survey in 2011. Nearly a third of the 3,611 online survey respondents,

members of the National Tertiary Education Union, the NSW Nurses Association and the Victorian branch of the Australian Services Union, had experienced domestic violence over their lifetime. The key survey findings were that domestic violence affected attendance, performance and safety at work:

- Nearly half those who had experienced domestic violence reported that the violence affected their capacity to get to work primarily due to injury or being restrained. Nearly one in five (19%) who had experienced domestic violence in the previous 12 months reported that the violence continued at the workplace. The major forms of violence at work reported in the survey were abusive phone calls, emails or texts and the abusive person coming to the workplace.

- The majority of workers who had experienced domestic violence (59%) reported a negative effect on their work performance - feeling distracted, anxious, and/or unwell.

- Nearly half (45%) of workers with recent experience of domestic violence disclosed at work, more to co-workers than management or HR. Fear of dismissal was a major reason given for not disclosing. Though nearly half did disclose to a manager or supervisor, only 10% found their response helpful.

- Co-workers were affected more than anticipated. Co-workers are more likely to disclose their experience of violence to each other or to be aware of what is occurring; co-workers can be directly affected by the abuse by having to support and protect their colleagues; co-workers can be directly threatened or assaulted.

**Costs to Australian employers**

The cost of introducing a new leave provision for reasons of domestic violence has been a concern expressed by employer groups and, at times, government. Recent research has been able to quantify the costs. The cost of lost productivity to the Australian economy due to violence against women (which includes non-domestic, familial or intimate violence) has been estimated as $2.1b in 2014-2015. This includes the lost productivity of both victims and perpetrators due to death, illness or imprisonment; and leave payments. However, this estimate may be high as it includes higher leave rates (7-10 days) than

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22 This finding was not surprising. At the time, many employers, managers or supervisors had no resources to respond appropriately.


25 Michele Cranwell Schmidt and Autumn Barnett, 2012, *Effects of domestic violence on the workplace: A Vermont Survey of male offenders enrolled in batterer intervention programs*, Vermont Council on Domestic Violence. American research has found that the employed perpetrator created a parallel cost to the employer due to absence, poor performance, the misuse of work time and resources, and occupational health and safety risks.
have been found in practice. A 2015 survey of 102 employers with a domestic violence clause in their enterprise agreement found that the average paid domestic violence leave actually taken in the past 12 months was 43 hours, with a range of between 8 and 202 hours.\textsuperscript{26} Per incident, where time off was requested, most employees took two-three days or less off work. Telstra recorded in the Male Champions of Change report on workplace responses to domestic violence that the inclusion of 10 days paid domestic violence leave in their Enterprise Agreement 2015-2018 has not ‘opened the floodgates’.\textsuperscript{27} Twenty-two employees out of a workforce of 32,000 had accessed the leave in six months, taking an average leave of 2.3 days.

**Employer responses to domestic violence clauses**

Discussing the factors which contributed to the successful negotiation of the first Australian domestic violence clause, Baird et al. identified the search for ‘positive public images and internal reputations’ and the demonstration of community leadership on this issue.\textsuperscript{28} Many employers have shown leadership in their industries and communities, adopting the domestic violence clause and quickly developing an understanding of the impacts of domestic violence at work. One of Australia's largest businesses, National Australia Bank, offered unlimited paid domestic violence leave if needed (June 2013) to its 43,000 employees, incorporating this into their enterprise agreement in July 2014. At that time NAB was the biggest private sector employer to offer the entitlement.\textsuperscript{29} The leadership was not limited to bigger businesses. In 2015, the Tasmanian maker of the iconic Australian boot, Blundstone, adopted in its enterprise agreement a clause providing for 10 days paid domestic violence leave for its 90 workers. According to Blundstone’s CEO ‘We put an enormous amount of investment in people, and it disrupts small to medium size businesses a lot if they lose their good people... There is a straight out business imperative to get involved here’.\textsuperscript{30}

The survey of employers who had adopted the domestic violence clause reported positive effects in the workplace and very few challenges implementing the domestic violence clause, ‘the most common comment from respondents was that having domestic/family violence clauses demonstrated support for staff and resulted in a more positive, supportive work environment’.\textsuperscript{31} Other positive effects noted by employers were that the clause raised awareness of domestic violence within the workplace, reduced stigma, enhanced the overall employer reputation and status, staff were able to take leave without stress,

\textsuperscript{26} Gendered Violence Research Network, 2015, *Implementation of Domestic Violence Clauses – an employers’ perspective.* ACTU and UNSW.p.7. ‘just under half of the respondents indicated that employees usually requested two-to-three days (40%; n=14), about one-fifth reported there was no clear pattern (22.9%; n=8), and a similar proportion of respondents reported that employees typically requested less than one day of leave (17.1%; n=6)”.

\textsuperscript{27} Male Champions of Change, 2015, *Playing our part: Workplace responses to domestic and family violence.* NSW.

\textsuperscript{28} Ibid, 13


\textsuperscript{31} Ibid, 26
improved cooperation with unions which helped with bargaining, employees felt more comfortable and confident speaking to management about requesting support, and contributed to morale-building within their organisation.

Employer acknowledgement of the workplace impacts of domestic violence has become widespread, according to the Productivity Commission. Chief Executive Officers from many of Australia’s leading companies including Telstra, Deloitte, Network Ten, Woolworths, and Qantas, the Vice-Chancellor of the University of Sydney, and the Chief of Army have endorsed the provision of paid domestic violence leave. Conversely, a number of landmark cases have now been brought before the Fair Work Commission where employers have failed to protect their employees affected by domestic violence. The Commission has been very clear about the current expectations:

A policy in relation to paid domestic and family violence leave...would have sent a very clear message to the respondent’s employees that it attaches no stigma to the victims of domestic and family violence ...Increasingly, employers are turning their mind to policies in relation to paid domestic and family violence leave or the inclusion of such an entitlement in enterprise agreements. This is to be encouraged.

International developments

Women need to have a workplace where they need to feel safe. One country that leads the way in this respect is Australia.

Australia has been recognized internationally for its leadership in addressing the impact of domestic violence at work. The 2013 fifty-seventh session of the United Nations Commission on the Status of Women (CSW57) highlighted as good practice the Australian domestic violence entitlements in industrial awards and agreements. The CSW57 agreed conclusions named the role of both employers and trade unions, and recommended collective agreements as a method of addressing violence against women and girls in the workplace. Australia is a founding member of an international domestic violence at work network (www.dvatworknet.org) of domestic violence researchers, experts, social, labour organisations, and employers. The network received funding from the Social Science and

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33 Ibid, 27
36 United Nations Secretary for the Commission on the Status of Women 57th Session CSW 57 2013, General Multi-Sectoral services and responses for women and girls subjected to violence. p.12, point 32
Humanities Council of Canada to develop knowledge of international developments. The network has created a set of core domestic violence at work survey questions based on the Australian model (2011). Surveys have been conducted in New Zealand, UK, Canada, Turkey and the Philippines. Findings across the surveys have consistently found similar impacts of domestic violence on attendance, performance and safety.\(^{38}\)

The network has identified a number of international strategies to address domestic violence in the workplace besides collective bargaining or employment law reform. These include anti-discrimination law reform in the United States that protects employees from dismissal or adverse action; occupational health and safety law reform in Ontario, Canada that stresses the responsibility of the employer to provide a safe workplace for employees affected by domestic violence; and Violence Against Women legislation that provides paid domestic violence leave and protection from discrimination at work in Spain and the Philippines. The network recommends that a best practice national response to domestic violence would incorporate all these strategies.

The International Labour Organisation (ILO) is a member of the international domestic violence at work network. In November 2015, the ILO’s governing body placed an international labour standard on gender-based violence, including domestic violence, on their Conference agenda for 2018 and has convened a tripartite meeting of experts to provide guidance for the governing body.

**Conclusion**

Australia has reached an advanced and sophisticated level of understanding of domestic violence. The nation’s second action plan to reduce violence against women and their children articulates the need for gender equality to remove the conditions that allow violence against women.\(^{39}\) Because domestic violence is part of the larger problem of gender inequality, it cannot be addressed in isolation. The rates of violence have not declined in the forty years since the 1970s when the first refuges opened, because of enduring gender inequality, but we are now able to reduce some of the worst impacts such as the homelessness and unemployment. Financial independence and security at work are critical steps.

In the past five years collective bargaining has firmly engaged the Australian workplace in the whole of community response by providing concrete, guaranteed and standardised support to working people. The Australian Council of Trade Unions has championed this issue, now taking the case for domestic violence leave in modern awards to the Fair Work Commission. Many other agencies have also contributed to improving workplace knowledge and responses such as the work of WGEA on gender equality, the bystander programs targeting men to stand up against sexism at work, the Australian Law Reform Commission inquiry into domestic violence and employment, the Australian Human Rights

\(^{38}\) See surveys at [http://dvatworknet.org/research/national-surveys](http://dvatworknet.org/research/national-surveys)

\(^{39}\) Department of Social Services *Second Action Plan 2013-2016 – Moving Ahead – of the National Plan to Reduce Violence against Women and their Children 2010-2022*
Commission submission to the Attorney General’s Department on domestic violence discrimination in the workplace, and the CEOs in Male Champions of Change stand on paid leave.

It is, therefore, unfortunate that Australia lacks an infrastructure to implement the new workplace rights: a national training program and resources to assist workplaces support their employees, a system to monitor and improve these ground breaking protections, and a research program to better understand emerging issues. Without effective monitoring the evidence is that collective bargaining has produced a level of variability of domestic violence entitlements that undermines a standard approach and the provision of clear and consistent provisions for employees. Without a national training program many workplaces are not able to access appropriate training that understands the challenges of implementing this new workplace provision. Resources developed in the past to assist workplaces have been lost and not replaced. Emerging issues such as responding to employees who have been sexually assaulted or employees who are domestic violence perpetrators are not being studied in order to understand what employees need and how the workplace should respond.

If the ACTU case for domestic violence leave in modern awards is successful then the issues of training, resources, monitoring and research must be addressed. There is growing support for clear and unambiguous access to paid domestic violence leave as a minimum statutory entitlement, first voiced by the Australian Law Reform Commission, ‘it would ensure a universal entitlement to leave for employees experiencing family violence. ..The ALRC considers that access to family violence leave through bargaining and enterprise agreements may not be sufficient to protect the safety of employees experiencing family violence’

Earlier this year the Victorian Royal Commission into Family Violence found that ‘lack of dedicated family violence leave can make the situation worse for people who are experiencing family violence’ and recommended the inclusion of paid family violence leave in the National Employment Standards (NES). Later this year the ILO will discuss an international labour standard that will include domestic violence, and will again look to Australia for expertise and leadership on this matter.

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Appendix 1

- The NSW Crown Employees (Public Service Conditions of Employment) Award 2009 (and a further 60 State Government Awards linked to this provision) provides access to family and community services leave, sick leave, and an additional five days leave per calendar year (if the above leave entitlements have been exhausted).

- The Northern Territory Government Commissioner’s Guideline for Miscellaneous Leave (domestic, family and sexual violence) 08/2012 provides a ‘reasonable period’ of paid leave available from accrued ‘miscellaneous’ leave. It was the first government to consider the impacts of sexual violence committed by non-family or domestic partners on work attendance and performance.

- The Tasmanian Ministerial Direction No. 28 Family Violence- Workplace Arrangements and Requirements 11/12 provides access to personal leave and further ‘special’ leave when exhausted.

- The ACT Public Service Agreements 2013-2017, clause F22 provide dedicated paid domestic violence leave of 20 days.

- The Victorian Public Service Agreement 2016, clause 48 provides 20 days of additional family violence leave.


- South Australian Public Sector Wages Parity Enterprise Agreement: Salaried 2014, clause 9.9 provides access to existing leave, but the South Australia government announced that effective early 2016 an additional 15 days paid domestic violence leave would be provided.

- The Australian Public Service Circular 2012/3: Supporting Employees Affected by Domestic or Family Violence 10/2012 provided access to personal leave, and where exhausted ‘understanding should be shown and reasonable allowance made for employees affected by domestic or family violence’

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