



Domestic and Family Violence A Real Workplace Issue for Women

Discussion Paper

Promoting workplace protection and support for workers experiencing domestic and family violence

This discussion paper has been produced as part of the JobWatch Family Violence and the Workplace Project which is supported by the Victorian Government.



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JobWatch acknowledges the Wurundjeri people as the traditional custodians of the land on which we live and work, and pay our respects to elders both past and present.

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Abbreviations

ABS	Australian Bureau Statistics
ACCI	Australian Chamber of Commerce and Industry
ACTU	Australian Council of Trade Unions
AFEI	Australian Federation of Employers and Industries
AHRC	Australian Human Rights Commission
AIHW	Australian Institute of Health and Welfare
ALRC	Australian Law Reform Commission
ANROWS	Australian National Research Organisation for Women's Safety
COAG	Council of Australian Governments
CSU	Charles Sturt University
Fair Work Act	<i>Fair Work Act 2009 (Cth)</i>
FWC	Fair Work Commission
NATIONAL PLAN	National Plan to Reduce Violence Against Women and their Children (2010-2022)
NES	National Employment Standards
TIS	JobWatch Telephone Information Service
UNSW	University of New South Wales
VCCAV	Victorian Community Council Against Violence

Executive Summary

JobWatch is an employment rights community legal centre, committed to improving the lives of Victorian workers, particularly those most vulnerable and disadvantaged.

The workplace rights of employees who are affected by domestic and family violence have emerged as a significant and pressing concern.

Australian workplaces have a history of tackling issues with pragmatism and common sense, acknowledging that employee experiences outside the workplace have implications within it and that supporting employees has considerable reciprocal benefit. Australian workplaces have taken action on important issues from sexual harassment to mental health, racism and beyond, demonstrating insight and leadership. Domestic and family violence is another contemporary issue in need of immediate and concerted action for the benefit of employees and employers alike.

JobWatch's experience with employees living with domestic and family violence is that too often affected employees, already dealing with the debilitating impact of domestic and family violence on their safety and wellbeing, are subjected to compounded adversity in the form of unfavourable workplace treatment. JobWatch hears devastating stories from affected employees who are unfairly dismissed, refused flexible working arrangements imperative to their safety, threatened and given ultimatums.

For these employees, inappropriate and ineffective workplace responses leave them unsupported in turbulent and deeply challenging circumstances. Inadequate responses also leave employers open to significant cost consequences.

A growing body of evidence demonstrates the significant impact of domestic and family violence on employment. The majority of

victims have paid employment and their experiences can carry over into the workplace in the form of absenteeism and impaired performance, which may result in termination of employment. Employees may also experience violence directed at the workplace. While it can undermine the economic independence of victims and increase their vulnerability to abuse, domestic and family violence can also have direct cost consequences for employers.

Current data demonstrates the considerable workplace implications of employee experiences of domestic and family violence and forms a convincing argument for the expansion of workplace responses. Addressing domestic and family violence appropriately and effectively in the workplace is critical to ensuring the safety, security and wellbeing of victims of domestic and family violence, as well as mitigating the negative repercussions that can arise for employers. To properly address these issues legislative, social and cultural change is required.

This discussion paper aims to assist policy makers, employers and other stakeholders to understand the significant impact of domestic and family violence on employment. The paper also examines pertinent legislative as well as social and cultural gaps that impede appropriate and effective workplace responses to domestic and family violence. JobWatch presents a number of recommendations to enhance the protection and support of victims of domestic and family violence in the workplace.

Identified Gaps & Recommendations Summary

JobWatch contends that Australian workplace laws as they stand do not go far enough to protect and address the needs of employees experiencing domestic and family violence and require reform in the following areas-:

1) Existing leave entitlements are not sufficient to meet the needs of employees affected by domestic and family violence

Recommendation 1: *Paid* domestic and family violence leave to be

introduced into the National Employment Standards in the *Fair Work Act 2009* (Cth)

Recommendation 2: Alternatively, *paid* domestic and family violence leave to be introduced into all 122 modern awards

Recommendation 3: *Paid* domestic and family violence leave entitlements to be replicated in enterprise agreements as a mandatory term

2) Protection against unfair dismissal is not accessible to many vulnerable workers

Recommendation 4: Unfair dismissal protection to be extended to contractors, all casual employees and those with less than 6 or 12 months continuous service in cases involving domestic and family violence

3) Flexible working arrangements are not accessible to many vulnerable workers

Recommendation 5: The right to request flexible working arrangements to be extended to all casual employees, labour hire workers and workers with less than 12 months continuous service in cases involving domestic and family violence

4) Grounds to refuse flexible working arrangements are not sufficient where employee safety is at risk

Recommendation 6: Raise the standard to refuse requests for flexible working arrangements from '*reasonable business grounds*' to '*genuine and significant hardship*' in cases involving domestic and family violence

5) Employer response period regarding requests for flexible working arrangements is too long in cases of domestic and family violence

Recommendation 7: Reduce employer response period regarding requests for flexible working arrangements

6) Employer right to refuse requests for flexible working arrangements needs associated accountability measures

Recommendation 8: Any refusal by an employer to grant the requested flexible working arrangements should be reviewable by either the Fair Work Commission or a Federal Court

7) Workplace safety and health measures are not adequate in cases involving domestic and family violence

Recommendation 9: Mandatory Workplace and Personal Safety Plans to be implemented when a disclosure of domestic and family violence is made

8) Employees affected by domestic and family violence are not protected against workplace discrimination in the *Fair Work Act*

Recommendation 10: Addition of domestic and family violence as a protected attribute in the *Fair Work Act's* general protections provisions

9) Employees affected by domestic and family violence are not protected against discrimination in state and federal anti-discrimination law

Recommendation 11: Addition of domestic and family violence as a protected attribute in state and federal anti-discrimination law, that is, the *Equal Opportunity Act 2010* (Vic) and the *Sex Discrimination Act 1984* (Cth)

10) The protections available to affected employees are not clearly articulated

Recommendation 12: The *Fair Work Act* to require employees to be provided with an Employee Safety Statement upon commencement of their employment or as soon as practicable after the commencement of their employment

JobWatch identifies the following social and cultural gaps and makes associated recommendations below-:

1) Limited understanding and appreciation of the relationship between domestic and family violence and employment

Recommendation 13: Collection of more robust data and evidence regarding responses to domestic and family violence in an employment context

Recommendation 14: Improve community awareness of domestic and family violence as a workplace concern via a government-helmed national campaign

2) Organisational cultures are barriers to disclosure

Recommendation 15: Employers to take action to create safe, open workplace cultures that support employees to disclose violence and receive appropriate and effective responses

3) Challenges to change in organisational cultures

Recommendation 16: Collection of more robust data and evidence regarding organisational cultural changes to better protect and support employees affected by domestic and family violence

4) Adverse employment outcomes for affected employees

Recommendation 17: A nationally consistent outreach education and training service

Recommendation 18: Widespread workplace implementation of clear and robust domestic and family violence policies and procedures

Recommendation 19: Enhance frameworks for the facilitation of partnerships between workplaces and specialist domestic and family violence services

5) Limitations in the National Plan to Reduce Violence Against Women and their Children

Recommendation 20: Incorporate explicit measures to address the employment implications of domestic and family violence into the Fourth Action Plan of the National Plan to Reduce Violence Against Women and their Children (2019-2022) under the new National

Priority of Improving Employment Outcomes for Women
Experiencing Violence

Introduction

The workplace is emerging as an important environment for addressing domestic and family violence. Workplace measures to address domestic and family violence are imperative in protecting and supporting affected employees and in mitigating the negative repercussions that can arise for employers.

Neglecting the significance of the employment context to domestic and family violence is remiss and can contribute to devastating and lasting consequences for affected employees. Despite the connection between employment and domestic and family violence, the workplace is yet to be widely recognised as a key setting for the protection and support of victims. There are significant gaps in the workplace protection and support available to affected employees. In progressing the genuine safety, security and wellbeing of those experiencing domestic and family violence, these gaps must be addressed and robust, effective workplace responses widely implemented.

The scope of this discussion paper does not allow for an exploration of the full spectrum of issues that are implicated in workplace responses to domestic and family violence. This discussion paper and its recommendations constitute an overview of key introductory issues only.

Purpose

This discussion paper has been developed by JobWatch to inform, encourage and support policy makers, employers and other stakeholders to enhance their responses to the rights and needs of employees who are experiencing domestic and family violence. JobWatch has produced this discussion paper to influence legislative reform to better protect victims in an employment context and to promote changes in workplace cultures, policies and practices to ensure that affected employees receive appropriate and supportive workplace responses to their experiences.

About JobWatch

JobWatch is a specialist employment rights community legal centre committed to improving the lives of workers, particularly those most vulnerable and disadvantaged. JobWatch is an independent, not-for-profit organisation.

Since its establishment in 1980, JobWatch remains the only service of its kind in Victoria. The centre is funded by the state and federal governments to provide the following services-:

1. A free and confidential telephone information and referral service for workers
2. Representation and assistance for disadvantaged workers through a legal casework practice
3. Community legal education, including training, seminars and the production of a variety of publications on employment law and workers' rights
4. Campaign and law reform activity with a view to promoting workplace justice and equity for all workers

Since 1999 JobWatch has maintained a comprehensive database of callers who contact the Telephone Information Service (TIS). To date, approximately 300,000 caller records have been collected, with each record usually canvassing multiple workplace issues, including, for example, discrimination, bullying and unfair dismissal. This database allows for the tracking of trends and reporting of callers' experiences. JobWatch currently responds to approximately 11,000 calls per year.

Background

Project Origins

JobWatch is deeply concerned for the rights and needs of employees who are affected by domestic and family violence. Since

2001, JobWatch has received approximately 40 calls to the TIS regarding employment problems related to employees' experiences of domestic and family violence. Domestic and family violence has been identified as significantly under-reported¹ and many victims of domestic and family violence find discussing their experiences difficult. With this in mind, JobWatch understands these TIS calls to be the tip of the iceberg. Those affected who do contact JobWatch share stories of employer frustration, suspension of shifts, threats, rejection of requests for time off to tend to issues arising from violence, calls to resign and ultimatums. A high proportion of these calls have involved the dismissal of employees for reasons directly related to their experience of domestic and family violence.

These TIS calls paint a stark picture of employers failing to meet the needs of employees affected by domestic and family violence to be protected and supported. Another example of employer failure is found in a recent case where the JobWatch legal practice represented a woman who was dismissed by her employer while her alleged abusive partner retained his position in the same company. The details of this case are below²-:

Our client was employed full time as an architectural draftsman in the same workplace as her husband, although the couple did not work directly with one another. Our client suffered an incident of domestic violence by her husband and as a result, an Intervention Order was pursued and obtained by the police.

Despite the Intervention Order making explicit allowances for our client and her husband to continue employment in the same workplace, she was dismissed while her husband retained his position.

The Commissioner's final decision found that there was no valid reason for our client's dismissal as to her capacity or conduct at work and that the dismissal was harsh, unjust

¹ Marcus & Braaf 2007, p. 6

² [2015] FWC 4864

and unreasonable. The decision also recognised our client's considerable vulnerability as a recent migrant experiencing domestic violence and the employer was ordered to pay our client compensation.

While this particular case provided some redress for our client, there are many victims who find no recourse for the adverse employment outcomes they suffer as a result of their experiences. Further, that such adverse outcomes occur at all is a serious indictment on current workplace practices that are falling short of the shared social duty to uphold the rights and meet the needs of those subjected to domestic and family violence.

With federal, state and territory governments continuing to roll out the second phase of the National Plan to Reduce Violence Against Women and their Children 2010-2022 (National Plan),³ and the federal government committing \$100 million worth of measures toward a safety net for women and children experiencing violence,⁴ the future of support mechanisms for domestic and family violence victims appears more promising.

JobWatch is strengthening its commitment to improve workplace conditions and outcomes for employees affected by domestic and family violence. This discussion paper represents a contribution to that end.

Domestic & Family Violence in Australia

A Note on Terminology

In producing this discussion paper, JobWatch has selected particular terms to refer to the systematic use of violence to exert power and control within intimate and family relationships. JobWatch appreciates that using specific terminology has social and political implications. Many terms exist referring to this form of violence including domestic violence, family violence, gendered violence,

³ Department of Social Services 2014

⁴ Turnbull et al, Media Release 2015

intimate partner violence, spousal abuse and violence against women. Stakeholders select their chosen terms based on certain assumptions and their own understanding about the causes and prevalence of this type of violence, as well as their unique interest in addressing it.

For the purposes of this discussion paper, JobWatch will refer to the use of violence and abuse as a means of achieving power and control over a significant other as 'domestic and family violence'. Herein, domestic and family violence refers to the misuse of power and control by a partner, ex-partner, family member, carer or kinship relation. A range of behaviours are used in this misuse of power, and may include physical, emotional, sexual, social or financial abuse.

In selecting this terminology, JobWatch aims to be inclusive of the experiences of a range of victims whose circumstances may not be taken into account by a less encompassing term. Special consideration has been given to ensure the inclusion of the experiences of Aboriginal and Torres Strait Islander people, whose concept of family is broader than dominant Anglo models and also those with disabilities who may experience violence by a carer.

In some circumstances, terms other than 'domestic and family violence' will be used to maintain consistency with a separate resource being referenced. The term 'domestic violence' will also be used on occasion to refer specifically to explicit cases of the use of violence in an intimate partner relationship, such as in the case study above.

Domestic & Family Violence as a Gendered Issue

In selecting a broad term for general use, JobWatch is aware that domestic and family violence is overwhelmingly experienced by women by way of a current or previous male partner.⁵ Efforts to include a diversity of experiences in our conceptualisation of

⁵ Morgan & Chadwick 2009, p.1

domestic and family violence (domestic violence being a subcategory of family violence, involving a current or former partner) do not intend to detract from this.

Available statistics and other evidence demonstrates that domestic and family violence is a gendered issue.⁶ While the full scope of experiences of this form of violence includes a range of victim-perpetrator configurations, the overwhelming majority of domestic and family violence is perpetrated by a male against a current or former female partner.⁷ While men certainly experience violence by intimate partners or relations, current research suggests that male and female experiences of violence differ markedly in a number of ways.⁸ For example, the Australian Bureau of Statistics (ABS) *2012 Personal Safety Survey* found that women are significantly more likely than men to experience anxiety and fear as a result of violence by their partner and are more likely to report being constantly insulted by a partner to make them feel ashamed, belittled or humiliated.⁹ Further, of those who had experienced emotional abuse by a partner, women were more likely than men to experience controlling behaviours and to have received threats of harm to friends or loved ones.¹⁰ This was confirmed in the ABS *2016 Personal Safety Survey*.¹¹

The ABS Personal Safety Survey of 2016 collected information about men's and women's experiences of emotional abuse by a current and/or previous partner since the age of 15 and found that one in four women (23% or 2.2 million) and one in six men (16% or 1.4 million) reported experiencing emotional abuse by a current and/or previous partner since the age of 15.¹²

⁶ Murray & Powell 2008, p.2

⁷ Morgan & Chadwick 2009, p.1

⁸ Mulrone & Chan 2005, p.5

⁹ ABS 2012 Personal Safety Survey, *'Experience of Emotional Abuse by a Partner'*

¹⁰ Ibid.

¹¹ ABS 2016 Personal Safety Survey, *'Experience of Partner Emotional Abuse'*

¹² Ibid.

In-depth information about men's and women's experiences of violence by a partner since the age of 15 was also collected in the survey which found that an estimated 17% of women (1.6 million) had experienced violence by a partner compared to 6.1% of men (547,600).¹³

On 28 February 2018, the Australian Institute of Health and Welfare (AIHW) released its first comprehensive report on family, domestic and sexual violence in Australia. The report found that 1 in 6 women aged 15 or above, (1.6 million), have experienced physical or sexual violence by a current or former partner compared with 1 in 16 men. Of the respondents, 3 out of 4 (75%) reported the perpetrator as male.¹⁴

It is acknowledged that the gender dimension of domestic and family violence is complex and contested. However available evidence suggests that overall women typically do not make use of systematic controlling behaviours and men tend not to experience the fear and helplessness to the same extent as women.¹⁵

This discussion paper is based on the understanding of domestic and family violence as a gendered issue and therefore tailors its approach to the overrepresentation of women as victims and men as perpetrators. Despite this, it remains imperative that employers hold a non-discriminatory and inclusive stance on employee experiences of domestic and family violence.

Prevalence of Domestic & Family Violence in Australia

Available data provides a disturbing picture of the prevalence of domestic and family violence in Australia. It is important to note that a high level of under-reporting of domestic and family violence

¹³ ABS 2016 Personal Safety Survey, *'Prevalence of Partner Violence'*

¹⁴ AIHW 2018, pp ix & 31

¹⁵ AVERT Family Law 2010, p.7. See also Domestic Violence and Incest Resource Centre 2001, *Men as Victims of Domestic Violence*, for a summary and critical analysis of research methodologies and results around gender and perpetration/victimisation of domestic violence.

has been identified¹⁶ and as such statistics represent only a base indication of actual prevalence.¹⁷ Nevertheless, available data indicates alarming rates of domestic and family violence amongst the Australian population.

- The Australian Institute of Health and Welfare, '*Family, domestic and sexual violence in Australia*' report found that the equivalent of 1.6 million women and half a million men (aged 15 or above) had experienced physical or sexual violence by a current or former partner.¹⁸
- The Australian Longitudinal Study of Women's Health found that, when asked about specific forms of intimate partner violence, 45% of women aged 18-23 reported some form of current or past abuse.¹⁹
- Between April 2016 and March 2017 Victoria Police recorded 77,721 family violence incidents, a 1.6% increase from the previous year and a 22.7% increase from the year ending in March 2013.²⁰
- Of the 77,721 people who reported family violence incidents during 2016-2017, 58,120 (74.8%) were female and 19,601 (25.2%) were male.²¹

Some groups are more vulnerable to domestic and family violence and have less capacity to exit violent relationships. Factors such as geographical location, age, socio-economic status, ethnicity, English language capability and Indigenous status all impact a person's vulnerability to domestic and family violence.²² Following on, Aboriginal and Torres Strait Islander people, those with disabilities,

¹⁶ Marcus & Braaf 2007, p.6

¹⁷ Mulroney 2003, p.4

¹⁸ AIHW 2018, p.ix

¹⁹ Mishra et al 2014, p.121

²⁰ Crime Statistics Agency 2017

²¹ Crime Statistics Agency 2017

²² Morgan & Chadwick 2009, p.4

those from culturally and linguistically diverse (CALD) backgrounds and older persons have all been found to experience greater vulnerability.²³ Lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) people have been found to experience domestic and family violence at similar rates to heterosexual people.²⁴ The experiences of all of these groups are vital to understanding the prevalence and complexity of this form of violence.

Domestic & Family Violence as a Workplace Concern

A growing body of evidence is confirming that the workplace is a key context where domestic and family violence is influential, and can be influenced. Current data makes evident the considerable implications of domestic and family violence on employment and forms a convincing argument for the expansion of workplace responses.

Existing knowledge of domestic and family violence concerns its prevalence as it impacts the workplace, the range of ways that it spills over into the workplace and the costs to employers of leaving employee experiences of violence unaddressed. Employment is emerging as a key context for intervention in supporting affected employees to deal with the consequences of abuse and to break free of violent relationships.

The financial costs of violence against women and their children to employers, employees and the economy as a whole is significant with the estimated cost being at least \$22 billion in direct (healthcare, counselling, child and welfare support) and indirect (lost wages, productivity and potential earnings) costs in 2015-16.²⁵

²³ Ibid, pp.4-5

²⁴ Howse 2013, p.6

²⁵ AIHW 2018, pp xi & 79

Prevalence of Domestic & Family Violence as it Impacts the Workplace

Evidence is emerging regarding the prevalence of domestic and family violence among Australian workers. The ABS *2005 Personal Safety Survey* found that 68% of people subjected to domestic and family violence by a current partner are employed in an Australian workplace.²⁶ Additionally, 63% of those subjected to domestic and family violence by a previous partner are in paid employment.²⁷ Of the employed respondents to McFerran's '*National Domestic Violence and the Workplace Survey*', 3 out of 10 had personally experienced domestic violence.²⁸

Considering the national prevalence of domestic and family violence, these statistics demonstrate that a significant percentage of the labour force is affected by it. Further, the debilitating nature of most experiences of domestic and family violence strongly suggest that these experiences will, in some way, be carried over into the workplace in serious and significant ways.

Domestic & Family Violence Spilling Over Into the Workplace

Experiences of domestic and family violence have a tangible impact on employment. Violence often cannot be left at home and 19% of respondents to McFerran's survey reported that their experiences of domestic violence continued in the workplace.²⁹

Interfering with the employment of victims is a widely identified tactic of perpetrators of domestic and family violence.³⁰ In efforts to exert power and control, a range of manoeuvres can be used by a perpetrator to sabotage a victim's attempt to obtain or maintain employment.³¹ For example by physically preventing victims from

²⁶ ABS 2005 Personal Safety Survey, p.34

²⁷ Ibid, p.35

²⁸ McFerran, 2011, p.6

²⁹ Ibid, p.10

³⁰ Swanberg, Logan & Macke 2005, p.289

³¹ Costello, Chung & Carson 2005, p.257

leaving the house to go to work, promising to mind children and then refusing to do so, stalking or harassing victims at work and inflicting injuries on victims that interfere with work.³² Further, Swanberg & Logan's study in the U.S. identified sabotaging behaviours including physical restraint, inflicting physical injuries severe enough that an employee could not, or did not want to go to work, disrupting sleep, not bringing the car home and cutting up work clothes.³³

The various tactics utilised by perpetrators of domestic and family violence have direct ramifications on victims' employment. Experiences of domestic and family violence can result in increased absenteeism, as affected employees are either directly prevented from going to work by the perpetrator or otherwise impacted by actions such as those outlined above.³⁴ Victims may also be impacted by various time pressures associated with dealing with the abuse and its consequences.³⁵ Affected employees may need to attend an array of health, legal, housing or childcare appointments relating to the violence with these important appointments sometimes taking precedence over attendance at work.³⁶ Nearly half of the respondents to McFerran's survey reported that domestic violence affected their capacity attend work.³⁷

The Australian Institute of Health and Welfare reported that of female respondents to the *2016 ABS Personal Safety Survey* who have experienced violence from a current partner, 9.6% (26,500) took time off work as a result, while 20% (270,000) of those who experienced violence from a former partner did the same.³⁸

³² Swanberg, Logan & Macke 2005, p.290

³³ Braaf & Barrett Meyering 2011, p. 86; Swanberg, Logan & Macke 2005, p.290

³⁴ McFerran 2011, pp.8-9; Swanberg, Logan & Macke 2005, pp.292-293

³⁵ Braaf & Barrett Meyering 2011, p.87

³⁶ Ibid, p.24

³⁷ McFerran, 2011, p.8

³⁸ AIHW 2018, p.70

JobWatch TIS Case Studies

Domestic and Family Violence and Absenteeism

Silvana was unable to attend work on a Monday because of a domestic violence incident. She could not inform her employer of her absence because her husband had removed all the telephones from their home. Despite explaining her situation to her employer, she was suspended for 2 shifts. Silvana was dismissed without notice shortly afterwards, her employer citing lateness, for which she had never received a warning.

In her efforts to exit a domestic violence situation, Carly needed time off work to organise new accommodation and meet with her solicitor. Carly's request for time off was denied, but her circumstances required her to attend a number of appointments that were integral to her safety. Carly attended her appointments and did not make it to work. Shortly afterwards, Carly received a letter from HR stating that if she did not report to them by a date almost one month before, she would be considered to have abandoned her employment.

When affected employees do make it to work, the effects of abuse have a negative impact on work performance and productivity. McFerran's survey found that the major ways that domestic violence impacted work performance was resultant distraction, tiredness or ill health.³⁹ As a result of their experiences, affected employees may be distressed, depressed or fearful at work, impacting their capacity to work to their usual standard⁴⁰ and affecting overall workplace productivity.

³⁹ McFerran 2011, p.10

⁴⁰ Murray & Powell 2008, p.5. See also Swanberg, Logan & Macke 2005, pp. 294-295

Unsupported victims may also be forced to leave their jobs, or may be dismissed as a result of their reduced performance or attendance and workplaces bear the cost of this in the form of recruitment and training costs.⁴¹ Swanberg and Logan's 2005 U.S. study found that in the preceding 2 years, 91% of employed respondents who had experienced domestic violence had been terminated as a result of the abuse.⁴²

JobWatch TIS Case Study

Domestic and Family Violence and Resignation

Greta had been in a relationship with a colleague. After he assaulted her, attempted to kill her dog and made threats to find and kill her daughter, Greta took out an Intervention Order. Greta informed her employer about the Intervention Order and requested that she not work with her former partner anymore. Following this meeting with her employer, Greta was informed that she needed to either resign, or revoke the Intervention Order. Her fear for her own and her daughter's safety made revoking the Intervention Order impossible and Greta felt she had no choice but to resign.

Reduced employee productivity has also been associated with *perpetrators* of domestic and family violence. A limited number of U.S. studies have identified a positive relationship between domestic violence perpetration and reduced productivity at work.⁴³ Perpetrators may make use of work time or resources to harass a victim, or may also be absent from the workplace to attend court hearings or other legal proceedings.⁴⁴

⁴¹ ALRC 2011, para 15.15

⁴² Swanberg & Logan 2005, p.9

⁴³ Rothman & Perry 2004; Rothman & Corso 2008; Maine Department of Labor 2004

⁴⁴ VCCAV 2004, p.11.

Domestic and family violence may present at the workplace itself, in the form of abuse, harassment or stalking directed at the victim during work hours. 12% of respondents in McFerran's 2011 survey experienced abusive phone calls and emails while at work and 11% experienced a partner physically attending their workplace.⁴⁵ Respondents in Swanberg and Logan's study reported perpetrators attending their workplace, making harassing phone calls to them and/or their supervisors and stalking them while at work.⁴⁶ The workplace can be a site of heightened risk, particularly for those who have recently exited a violent relationship, as work is often a place where a perpetrator knows they can be found.⁴⁷

JobWatch TIS Case Study Abuse at Work

Rutu had exited a violent relationship and was seeking shelter in a refuge. Her former partner found her at work, damaged her car and threatened her with violence. She feels she cannot go to work anymore.

The effects of domestic and family violence directed at the workplace are compounded where victims and perpetrators share a place of work. 12% of respondents in McFerran's 2011 survey who had experienced domestic violence reported working in the same place as their partner.⁴⁸

JobWatch TIS Case Studies Sharing a Workplace with an Abuser

Manisha worked in the same cinema as her husband, who was a manager. After obtaining an Intervention Order against her husband following domestic

⁴⁵ McFerran 2011, p.10

⁴⁶ Swanberg & Logan 2005, p.7

⁴⁷ Murray & Powell 2008, p.4

⁴⁸ McFerran 2011, p.11

violence, he was moved to another site. Afterwards, Manisha began to notice her colleagues treating her differently. She was forced to work hours that were not possible for her due to childcare responsibilities and she was asked to work late despite her colleagues' knowing that she had no car. Manisha was also provided with a new contract and felt pressured to sign it despite disagreeing with its terms. Manisha felt her husband was responsible for these events.

Mary's boss was also her partner. He physically dragged her around the workplace, bruising her. He also called her many times a day and would not desist despite police intervening in the situation.

Oxana worked for the same employer as her ex-husband. She required an Intervention Order to keep herself safe from her ex-husband, but her employer did not take the Intervention Order seriously. Oxana's employer told her, "we would prefer to continue employing your ex-husband rather than you", before telling her to "shove it".

Cost of Domestic & Family Violence for Employers

There are cost implications related to employees' decreased attendance and/or productivity at work caused by domestic and family violence. Employers who fail to address employee experiences bear the monetary consequences. In a business sense, it would benefit employers to protect and support any employees who have been victimised.

A number of comprehensive reports have been produced that document the current and projected economic cost of domestic and

family violence in Australia.⁴⁹ While relevant figures presented in these documents represent work-related costs to Australia's economy as a whole, discerning employers will be able to recognise their own stake in the significant economic loss produced by unattended employee experiences of domestic and family violence. The total economic cost of domestic and family violence in 2002-03 was estimated to be \$8.1 billion.⁵⁰ According to KPMG's estimates, in 2015-2016 the economic cost of violence against women and children was between \$22 billion and \$26 billion.⁵¹ PricewaterhouseCoopers have estimated that without any further action to prevent violence against women, estimated costs will accumulate to \$323.4 billion over the next 30 years.⁵²

In 2002-03, the overall economic cost of temporary absenteeism from paid and unpaid work due to domestic violence was estimated to be \$283.3 million.⁵³ This overall cost results from lost management time processing absentees, replacement hire, lost profit and other costs.⁵⁴ The cost of lost productivity as a result of absenteeism was calculated to be \$1,969 per victim in 2014-15.⁵⁵

Lost productivity as a result of domestic violence (including that caused by homicide and premature death) was estimated to cost \$483.9 million in 2002-03.⁵⁶ This is projected to increase to approximately \$609 million in 2021-22 if no intervention is undertaken.⁵⁷ Thirty-nine percent (\$235 million) of this total cost is expected to be borne by employers.⁵⁸

⁴⁹ Access Economics Parts 1 & 2 2004; National Council to Reduce Violence Against Women and their Children (National Council) 2009; PricewaterhouseCoopers 2015

⁵⁰ Access Economics Part 1 2004, p.iiv

⁵¹ Commonwealth of Australia 2016, p.7

⁵² PricewaterhouseCoopers 2015 (a), p.4

⁵³ Access Economics Part 1 2004, p.39

⁵⁴ *Id.*

⁵⁵ PricewaterhouseCoopers 2015 (a), p.15

⁵⁶ Access Economics Part 1 2004, p.43

⁵⁷ The National Council 2009, p.45

⁵⁸ *Ibid*, p.46

In situations where a domestic violence victim is no longer able to, or is excluded from returning to work, employers are faced with costs of rehiring, retraining or paying workers' compensation.⁵⁹ The total cost of searching, hiring and training replacement employees was estimated by Access Economics to be \$36.6 million in 2002-03.⁶⁰

Additionally, a 2015 media release by PricewaterhouseCoopers estimated that violence against women in Australia, in one year, costs \$10.4 billion for "pain, suffering and premature mortality," \$7.8 billion for state and federal governments, and \$3.4 billion "lost due to victims or other members of society funding for their own services or due to lost opportunity costs".⁶¹

While employers do bear costs as a result of employee experiences of domestic and family violence, these costs do not represent the 'inevitable burden' of victims in the workplace. Employers who wish to improve the cost efficiency of their businesses and maximise their profits should implement measures that address domestic and family violence to reduce its adverse impacts on employee attendance, productivity and staff retention.

Domestic & Family Violence & Women's Employment

Domestic and family violence is a workplace concern by way of its repercussions on victims' employment. Workplaces have a critical role to play in addressing domestic and family violence by virtue of the impact that workplace measures can have on the capacity of affected employees to deal with the effects of abuse.

Employment has been identified as a crucial resource for women dealing with the effects of domestic and family violence. Braaf & Barrett Meyering's 2011 study found that women who have experienced domestic and family violence viewed paid work as

⁵⁹ Access Economics Part 1 2004, p.6

⁶⁰ Ibid, p.40

⁶¹ PricewaterhouseCoopers 2015(b)

providing 'security', 'independence', 'self-sufficiency', 'freedom', 'space' and 'normality'.⁶² Employment has been identified as a critical factor in enabling victims to leave an abusive relationship,⁶³ providing economic stability and financial independence.⁶⁴

Unfortunately, affected women's access to the benefits of employment is often thwarted by the very nature of their experiences. Women's employment trajectories have been found to be at risk of interruption or compromise as a result of the impact that their experience has on their performance at work.⁶⁵ Women who have been affected by domestic and family violence, when compared with those who have not, generally have lower incomes, disrupted work histories and less job stability overall.⁶⁶ Further, these women often receive fewer promotions and are more likely to do part-time or casual work, or to be underemployed.⁶⁷ Considering the various ways that abuse undermines employees' work efforts, it is of little surprise that affected women face challenges in gaining and maintaining consistent and rewarding employment.

There are reciprocal benefits to supporting women affected by domestic and family violence to maintain or expand their employment. Employers that implement supportive workplace measures for affected employees can enjoy the rewards of safer, more productive workplaces and reduced costs. Affected employees, while also enjoying the benefits of increased workplace safety and productivity, are also supported while establishing safety and security for themselves and for their children. When employers do not respond to employee experiences of violence, victims are left more vulnerable to abuse.

JobWatch TIS Case Study

⁶² Braaf & Barrett Meyering, 2011, p.85

⁶³ ALRC 2011, para. 15.11

⁶⁴ McFerran 2011, p.2

⁶⁵ Swanberg & Logan 2005, p.12

⁶⁶ Costello, Chung & Carson 2005, p.256

⁶⁷ Id.

Unsupportive Employer Compounding Hardship

Larissa's employer dismissed her, causing significant emotional distress and financial loss. Larissa, without any real assets of her own, struggled to pay rent whilst relying entirely on Centrelink payments. Larissa was denied access to the professional portfolio she had been developing while working for her employer, making it very difficult to find new work. While Larissa struggled to deal with these problems, her husband, who was violent towards her, enjoyed continued employment at their previously shared workplace.

Domestic & Family Violence: A Contemporary Workplace Reality

Despite increasing evidence of the considerable implications of domestic and family violence on employment, there is still some resistance against calls to better address the needs of affected employees in a workplace context. Arguments presented by employer peak bodies such as the Australian Federation of Employers and Industries (AFEI) and the Australian Chamber of Commerce and Industry (ACCI) exemplify this resistance:-

"AFEI does not consider generating awareness about family violence in the 'employment context' to be in employers' interests. Individuals, not employees are subject to family violence. There is not and should not be a connection between workplace obligations and violence within the home."⁶⁸

"Whilst business will continue to provide assistance to employees in various ways as best as they can, they will not appreciate feeling that they are directly or indirectly part of the problem when the act of violence

⁶⁸ AFEI 2011, p.4

*occurs in the personal and private life of an individual worker away from the workplace.*⁶⁹

Strong positions have been taken against the conceptualisation of domestic and family violence as a workplace concern. These positions purport to represent the interests of employers who are already overburdened with regulatory obligations and for whom domestic and family violence remains a private matter, outside the domain of reasonable employer responsibility for ensuring workplace health, safety and wellbeing.⁷⁰

However, efforts to highlight the nature and implications of the relationship between domestic and family violence and the workplace are not exercises in blame or cost shifting. They are not carried out in attempts to strip employers of rights and freedoms or to stifle their capacity to run a successful business. Rather, such efforts recognise that the nature, needs and commitments of Australia's labour force are shifting.

The mainstream vision of an ideal worker and successful workplace was developed at a time when men's paid employment was considered the norm and the task of taking care of the home and family was generally considered to be the domain of women.⁷¹ Dominant organisational policies, practices and cultures were developed on the foundation of unencumbered workers who had little or no obligations at home and who could commit themselves almost in whole to their work.⁷² Assumptions that employees' lives at home would not and should not 'encroach' on their lives at work have become engrained in organisational cultures.⁷³

⁶⁹ ACCI 2011, p.3

⁷⁰ Ibid, p.20

⁷¹ Swanberg 2004, p.6

⁷² Ibid, p.7

⁷³ Id

These traditional expectations and assumptions about the boundaries between work and home life are vastly outdated.⁷⁴ Over the past forty years, the landscape of Australia's labour force has shifted dramatically and employees' responsibilities and needs are increasingly complex. The reality is that a considerable number of people in Australia's labour force have some experience of domestic and family violence, with a significant portion having suffered adverse impacts on their employment as a result.

It is no longer feasible to disregard employees' home lives as a present and influential part of their employment and organisations that fail to recognise the connection between employment and domestic and family violence risk falling behind. To adequately respond to the needs of affected workers, employers must evolve and look beyond traditional assumptions, appreciate that domestic and family violence is a serious social issue with tangible workplace implications and also recognise that the workplace is rich with potential for prevention and intervention.

While some employers might perceive this call as an undue and unreasonable burden, others are able to discern the considerable reciprocal benefits of workplace-based responses to the issue of domestic and family violence. Employers who acknowledge domestic and family violence as a legitimate workplace concern and who take action accordingly, are likely to reap the considerable rewards consequent upon safe, supported and productive employees.

Workplace Measures to Address Domestic & Family Violence: A Social Imperative

Notwithstanding the direct workplace implications of domestic and family violence, we as a society share a common duty to protect and support the vulnerable members of our communities. Regardless of context, when we become aware of a person's

⁷⁴ Id

experience of violence and abuse, it is up to each of us to address their needs in order to uphold and promote the human rights and social justice of the victim. Workplaces and employers are not immune from social responsibility and employment based initiatives for addressing employee experiences of domestic and family violence aside, there is a pressing *human* imperative to ensure that affected employees' needs are acknowledged and met at work.

Domestic & Family Violence & International Law

Australia is a founding member of the United Nations and was involved in the drafting of '*The Universal Declaration of Human Rights*'.⁷⁵ This document sets out human rights which are inherent to all, regardless of context and which must be protected and promoted.⁷⁶ As a Member State, Australia has clear obligations to promote the respect and observance of the human rights of its citizens by ensuring that, for instance, everyone has access to life, liberty and security of the person,⁷⁷ no one is subjected to torture or to cruel, inhuman or degrading treatment or punishment⁷⁸ and everyone is provided with a standard of living adequate for their health and wellbeing and that of their family.⁷⁹

Australia has committed to upholding and protecting the human rights of its citizens in both private and public spheres. The traditions, customs and beliefs held by a country are the responsibility of that country⁸⁰ and therefore changing a culture of violence against women is the responsibility of all Australians.

Domestic and family violence is widely understood as a violation of a number of human rights within the Universal Declaration of Human Rights. Libal and Parekh argue that domestic and family violence "*violates the basic human rights to liberty, security,*

⁷⁵ AHRC, '*Australia and the Declaration of Human Rights*,'

⁷⁶ AHRC, '*What is the Universal Declaration of Human Rights*,'

⁷⁷ United Nations, '*Universal Declaration of Human Rights*,' Article 3

⁷⁸ United Nations, '*Universal Declaration of Human Rights*,' Article 5

⁷⁹ United Nations, '*Universal Declaration of Human Rights*,' Article 25

⁸⁰ Libal & Parekh 2009, p.1482

freedom from torture, and freedoms of thought, conscience, and religion” and as such requires immediate state and community intervention.⁸¹

Further, Australia has also ratified both the ‘*International Covenant on Civil and Political Rights*’ and the ‘*International Covenant on Economic, Social and Cultural Rights*’,⁸² which have also enunciated key rights which States are obliged to protect.⁸³ Australia is also a signatory to the ‘*Convention on the Elimination of Discrimination Against Women*’.⁸⁴

Domestic and family violence poses a considerable threat to a victim’s right to a standard of living adequate for health and wellbeing, with those subjected to violence often suffering a range of short and long term health effects. VicHealth identifies intimate partner violence as the leading preventable contributor to death, disability and illness in Victorian women aged between 15 and 44, being responsible for many well-known risk factors such as high blood pressure, smoking and obesity.⁸⁵

The Australian Institute of Health and Welfare’s Report, ‘*Family, Domestic and Sexual Violence in Australia*,’ documents the results of their Australian Burden of Disease Study, which found that seven diseases were causally linked to intimate partner violence. The seven diseases are as follows-:

- Depressive disorders
- Anxiety disorders
- Early pregnancy loss
- Homicide and violence (injuries due to violence)
- Suicide and self-inflicted injuries

81 Ibid, p.1483

82 United Nations Human Rights Office of the High Commissioner

83 AHRC, 2012

84 AHRC, ‘The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW): Sex Discrimination – International Activities’

85 VicHealth 2004, p.10

- Alcohol use disorders
- Children born prematurely or with low birthweight⁸⁶

The U.S. Department of Health and Human Services lists the short-term physical effects of violence against women as including:-

- Arthritis
- Asthma
- Chronic pain
- Digestive problems such as stomach ulcers
- Heart problems
- Irritable bowel syndrome
- Nightmares and problems sleeping
- Migraine headaches
- Sexual problems such as pain during sex
- Stress
- Problems with the immune system⁸⁷

Domestic and family violence can also interfere with the human right to an adequate standard of living by placing victims at particular risk of homelessness. Women living in domestic violence situations often live in inadequate housing due to the constant threat to their personal security and this disadvantage is compounded when there is an absence of shelters for them to escape to.⁸⁸

Further, the adverse impact of domestic and family violence on victims' capacity to gain and maintain employment is a violation of everyone's right to gain a living by work in just and favourable conditions.⁸⁹

While domestic and family violence is now understood as a great violator of human rights, the widespread recognition of domestic

⁸⁶ AIHW 2018, p.77

⁸⁷ U.S Department of Health and Human Services , *'Effects of Violence Against Women,'*

⁸⁸ Braaf & Barrett Meyering, 2011, pp 5, 45-46

⁸⁹ United Nations General Assembly 2014, p.11

and family violence as a human rights issue has only emerged since the 1980s.⁹⁰ The United Nations Special Rapporteur on violence against women argues that failing to recognise domestic violence as a human rights violation is flawed because it *“ignores the reality that violence crosses the public and private domains and ranges from intimate and interpersonal violence to structural, systematic and institutional forms of violence”*.⁹¹

Australian Action Which Complies With International Law in Relation to Domestic & Family Violence

The past few decades have seen Australia recognise and begin to act upon its responsibility to identify and address domestic and family violence as a public, human rights issue. Australian governments have established the National Plan with the vision of *“Australian women and their children living free from violence in safe communities”*.⁹² The development of this Plan and its associated actions are important steps toward meeting Australia’s obligations under international law.

Through the National Plan, Australia is beginning to meet the minimum requirements described by the United Nations as necessary in successfully reducing violence against women.⁹³ Measures such as the establishment of OurWatch, the Australian National Research Organisation for Women’s Safety (ANROWS) and 1800Respect all align with the United Nations best practice guidelines.⁹⁴ ANROWS’ Three Year Strategic Plan (2016-2019) supports the National Plan by producing *“relevant and translatable research evidence”*⁹⁵ about violence against women and their children. This research will help governments to create policies that mandate workplace practices which support employees who experience domestic and family violence.

⁹⁰ Craven 2003, p.1

⁹¹ United Nations General Assembly 2014, p.6

⁹² Council of Australian Governments, 2011, p.10

⁹³ United Nations Division for the Advancement of Women 2005, p.26

⁹⁴ Ibid, p.31

⁹⁵ Australia’s National Research Organisation for Women’s Safety 2016, p.2

Effective Engagement of Employees: A Gap in Meeting Social Obligations and International Law to Protect Domestic & Family Violence Victims

There is still room for improvement in meeting our social obligation to protect and promote the human rights of victims of domestic and family violence. One clear area in need of development is the engagement of employers in efforts to address domestic and family violence. This was acknowledged by the Australian Human Rights Commission (AHRC) on behalf of the United Nations Special Rapporteur on violence against women, who in identifying gaps in Australia's commitment to eliminating violence against women and their children, articulated the growing need to identify domestic violence as a workplace issue.⁹⁶

The Third Action Plan 2016-2019 is part of the National Plan. The foundation of the Third Action Plan rests on the concept that "*gender inequality is a root cause of violence against women*".⁹⁷

There are six areas of focus for the Third Action Plan-:

- 1) prevention and early intervention;
- 2) Aboriginal and Torres Strait Islander women and their children;
- 3) greater support and choice;
- 4) sexual violence;
- 5) responding to children living with violence; and
- 6) keeping perpetrators accountable across all systems.⁹⁸

As part of the National Plan, the Third Action Plan seeks to improve gender equality within workplace cultures, improve economic security for female workers and provide nationally consistent

⁹⁶ AHRC 2012, p.15

⁹⁷ Commonwealth of Australia 2016, p.3

⁹⁸ Ibid, p.8

resources for employees and employers regarding domestic and family violence.⁹⁹

In May 2015, the Queensland Government, in collaboration with Australia's CEO Challenge, created an online learning program called '*Recognise, Respond, Refer: Domestic Violence in the Workplace*'.¹⁰⁰ This program assists employers to understand how to support victims of domestic violence by teaching them how to recognise domestic violence and take action when an employee has been victimised.¹⁰¹

Employers are uniquely placed to contribute to Australia's best practice efforts to eliminate violence against women. A number of the best practice guidelines presented by the United Nations towards the effective elimination of violence against women have particular relevance in a workplace context. As such, the workplace is established as a key setting in societal efforts to protect and promote the human rights of victims of domestic and family violence.

The United Nations guideline regarding greater recognition of the severity of crimes committed against women¹⁰² implicates the workplace where responses to employee experiences need to acknowledge the severity of domestic and family violence. Workplace responses that dismiss employee experiences of domestic and family violence impede efforts to reduce violence against women. Conversely, workplace responses that recognise the severity of the violence and address its consequences contribute to societal actions toward eliminating violence against women.

Another United Nations guideline considers the provision of training for people in a position to assist victims of violence.¹⁰³ Employers

⁹⁹ Ibid, p.10

¹⁰⁰ Ibid, p.11

¹⁰¹ Ibid, p.13

¹⁰² United Nations Division for the Advancement of Women 2005, p.11

¹⁰³ Ibid, p.8

and other staff have been established as having a unique capacity to assist victims of domestic and family violence.¹⁰⁴ Work can be a 'safe haven' where affected employees feel able to disclose and receive support away from the abuse of the perpetrator.¹⁰⁵

Providing training and support to employers, managers and other staff is another step toward the promotion of victims' human rights and the elimination of violence against women.¹⁰⁶

The United Nations also advise that best practice in the elimination of violence against women requires the provision of services that will empower women and improve their overall wellbeing and physical and economic security.¹⁰⁷ Supporting women to enter and remain in safe, stable and supportive employment are imperative to facilitating this wellbeing and security.¹⁰⁸

The workplace is of great importance in Australia's efforts to eliminate violence against women. Employers have a social responsibility to protect and support vulnerable employees and are not immune from the common duty to promote human rights. Experiences of domestic and family violence must be addressed in the employment context if the human rights of affected employees are to be protected.

Existing Legislative Provisions

Existing Australian legislation provides certain rights and entitlements to Australian workers. Some of these provisions can be accessed by employees affected by domestic and family violence to support them in managing the impact of their experience upon their employment.

Current legislation also establishes particular employer responsibilities that can be applied to employees experiencing domestic and family violence.

¹⁰⁴ Braaf & Barrett Meyering, 2011, p.92

¹⁰⁵ McFerran L and Walden I, April 2014, p.3

¹⁰⁶ AHRC 2014, p.8

¹⁰⁷ United Nations Division for the Advancement of Women 2005, p.23

¹⁰⁸ Braaf & Barrett Meyering 2011, p.92

While current legislation does not go far enough to adequately respond to the needs of affected employees, existing provisions represent a solid foundation on which to expand legislative protection.

Provisions under current legislation that are relevant to the employment context of domestic and family violence are presented below.

Recent Decision-Family & Domestic Violence Leave

On 26 March 2018, the Fair Work Commission (FWC) decided to provide 5 days unpaid leave per year to almost all modern award covered employees (including casuals) experiencing domestic and family violence¹⁰⁹ The leave will be available in the event an employee needs to do something to deal with the impact of the domestic and family violence and it is impractical for them to do it outside their ordinary hours of work.¹¹⁰

It is proposed that the unpaid leave entitlement-:

- will be available in full at the commencement of each 12 month period (rather than accruing progressively during a year of service);
- will not accumulate from year to year; and
- will be available in full to part-time and casual employees (i.e. not pro-rated).¹¹¹

The commencement date of the unpaid domestic and family violence leave is yet to be determined as the FWC has decided to

¹⁰⁹ [2018] FWCFB 1691

¹¹⁰ SBS News, 26 March 2018

¹¹¹ Fair Work Commission, Summary of Decision, [2018] FWCFB 1691, para 15

take further submissions regarding the wording of the actual clause to be inserted in all but three modern awards.¹¹²

The three modern awards that will not have the unpaid domestic and family violence leave clause inserted, being the Australian Government Industry Award 2016, the Road Transport and Distribution Award 2010 and the Road Transport (Long Distance Operations) Award 2010, will be the subject of a separate decision.¹¹³

Fair Work Act 2009 (Cth)

The *Fair Work Act* is the major piece of Commonwealth legislation regulating employment and workplace relations. This Act enunciates the terms and conditions of lawful employment in Australia and articulates the rights and responsibilities of employees, employers and organisations. The object of the Act is-:

*"to provide for a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians."*¹¹⁴

Certain *Fair Work Act* provisions offer some scope for employees affected by domestic and family violence to access protection and support. These provisions are outlined below.

The following explanations do not include eligibility criteria or time limits. Individuals should obtain specific legal advice regarding relevant rights and entitlements as soon as possible if required.

Flexible Working Arrangements

Under the National Employment Standards (NES) established by the *Fair Work Act*, employees have a right to request flexible working arrangements if they are experiencing violence from a member of

¹¹² Workplace Express, 27 March 2018

¹¹³ Id.

¹¹⁴ *Fair Work Act 2009 (Cth)* s.3

their family, or if they are providing care or support to a member of their immediate family or household who is experiencing violence from a family member.¹¹⁵

Affected employees might make requests for arrangements such as changes in their shifts or working hours, changes to work contact details and/or changes of work location.¹¹⁶ Once approved, flexible working arrangements can have a significant impact on an affected employee's safety, attendance, performance, and productivity.¹¹⁷

This right also allows employees to request flexible working arrangements if they have responsibility for the care of a child who is of school age or younger,¹¹⁸ a right that may be of use to an affected employee who does not feel safe to disclose their experience of domestic and family violence but still requires flexible working arrangements to attend to the safety and care of their children.

An employer is not obliged to agree to a request for flexible working arrangements. The *Fair Work Act* only allows for the FWC or another dealing with the dispute to consider whether the employer had reasonable business grounds to refuse the request.¹¹⁹

Personal/Carer's Leave and Compassionate Leave

The NES provides employees (other than casuals) with 10 days of paid personal/carers' leave for each year of service with an employer.¹²⁰

This leave may be taken if an employee is not fit for work because of a personal injury or illness, or to provide care and support to a member of their immediate family or household who is ill, injured or

¹¹⁵ *Fair Work Act* 2009 (Cth) s.65

¹¹⁶ ALRC, para 17.16

¹¹⁷ *Id.*

¹¹⁸ *Fair Work Act* 2009 (Cth) s.65

¹¹⁹ Office of the Fair Work Ombudsman, '*Requests for Flexible Working Arrangements*'

¹²⁰ *Fair Work Act* 2009 (Cth) s.96

affected by an unexpected emergency.¹²¹ Further, an employee is entitled to 2 days of unpaid carer's leave for each occasion when a member of their immediate family or household requires care or support because of personal injury or illness, or an unexpected emergency¹²² as well as 2 days of compassionate leave for each occasion when a family or household member contracts a serious illness, sustains a serious injury or dies.¹²³

When an employee's experience results in injury or illness to themselves or members of their family, this leave entitlement provides an opportunity to access medical care, support affected family members and make necessary arrangements. The entitlement to 10 days of paid personal/carer's leave provides for the opportunity to attend to these issues without monetary loss or resultant economic insecurity for these 10 days.

Other Protections

The *Fair Work Act* protects employees against adverse action, discrimination and unfair dismissal. These protections can assist in preventing or redressing some of the adverse employment outcomes experienced by employees affected by domestic and family violence.

Under this Act it is unlawful for an employer to take adverse action against an employee because that employee has a workplace right, has or has not exercised that right or has proposed or proposed not to exercise that right.¹²⁴ For example, in the case of employees affected by domestic and family violence, it is unlawful for an employer to dismiss an employee, demote them, or otherwise discriminate against them because that employee exercised their workplace right to request flexible working arrangements due to their experience of domestic and family violence.

¹²¹ *Fair Work Act* 2009 (Cth) s.97

¹²² *Fair Work Act* 2009 (Cth) s.102

¹²³ *Fair Work Act* 2009 (Cth) s.104

¹²⁴ *Fair Work Act* 2009 (Cth) s.340

Additionally employers must not take adverse action against an employee or prospective employee on the basis of a range of discriminatory attributes including sex, sexual orientation, physical or mental disability, marital status, family or carer's responsibilities and pregnancy.¹²⁵ For employees affected by domestic and family violence, this protection might afford some recourse if an employer treats them unfavourably due to assumptions about their experience of domestic and family violence associated with one of these attributes.

Employers also must not dismiss an employee because that employee is temporarily absent from work because of an illness or injury.¹²⁶ Victims of domestic and family violence who sustain injuries or contract illnesses as a result of their experience and are temporarily unable to attend work as a result are protected against dismissal under this section.

Unfair Dismissal

Employees who meet the eligibility criteria are protected from unfair dismissal, defined as a dismissal that is harsh, unjust or unreasonable and is not a case of genuine redundancy.¹²⁷ An employee is considered dismissed if their employment was terminated at the initiative of the employer, or if the employee resigned but had been forced to do so because of conduct engaged in by their employer (a constructive dismissal).¹²⁸

Stop Bullying Orders

Workers who are affected by domestic and family violence and who experience workplace bullying in a constitutionally covered corporation can apply to the FWC for a stop bullying order.¹²⁹

¹²⁵ *Fair Work Act 2009* (Cth) s.351

¹²⁶ *Fair Work Act 2009* (Cth) s.352

¹²⁷ *Fair Work Act 2009* (Cth) s.385

¹²⁸ *Fair Work Act 2009* (Cth) s.386

¹²⁹ *Fair Work Act 2009* (Cth) s.789FC

A person is bullied at work if, while they are at work, an individual or a group of individuals repeatedly acts unreasonably towards that person, or a group of workers of which the person is a member and the behaviour causes a risk to health and safety.¹³⁰ It does not apply to 'reasonable management action' (such as performance reviews) carried out in a reasonable manner.¹³¹

It is important for victims of domestic and family violence that the definition of 'at work' extends to any time a worker performs work, regardless of their physical location¹³² and could potentially cover visitors to the workplace that engage in bullying conduct.

Work Health and Safety Act 2011 (Cth)

The federal *Work Health and Safety Act* outlines the health and safety duties of persons conducting a business or undertaking (herein referred to as the 'employer' for consistency), and those of workers. In this Act, the term 'workers' allows for a broader scope than 'employees' and includes contractors, subcontractors, temporary labour-hire hands, apprentices and trainees.¹³³ The object of the *Work Health and Safety Act* is 'to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces'.¹³⁴

Under this Act, employers must reasonably ensure the health and safety of workers while they are at work in the business or undertaking and are required to provide and maintain a work environment that is without risks to health and safety.¹³⁵ When domestic and family violence begins to pose a risk to workplace health and safety, these duties are activated. Workplace health and safety might be placed at risk by such circumstances as a perpetrator entering the workplace and engaging in threatening or

¹³⁰ *Fair Work Act 2009 (Cth)* s.789FD (1)

¹³¹ *Fair Work Act 2009 (Cth)* s.789FD (2)

¹³² [2014] FWCFB 9227

¹³³ *Work Health and Safety Act 2011 (Cth)* s.7

¹³⁴ *Work Health and Safety Act 2011 (Cth)* s.3

¹³⁵ *Work Health and Safety Act 2011 (Cth)* s.19

violent behaviour, abusing or harassing a victim or their colleagues during work hours, or an affected employee engaging in unsafe work practices as a result of their experience which has, for example, resulted in reduced concentration or confidence.

Further, as part of their duty of care, employers must provide any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business.¹³⁶ This duty is of particular relevance where the normal work practices of workers in an organisation place them at increased risk of harm due to the presence of an employee experiencing domestic and family violence.

Workers also have a right to cease, or refuse to carry out work if that worker has a reasonable concern that carrying out that work would expose them to serious risks to their health and safety.¹³⁷ Some work may place affected employees in particular danger, especially at identified times of heightened risk such as just after a separation, or during pregnancy. In response to a worker's cessation of work in accordance with this right, an employer may direct that worker to carry out suitable alternative work in the same or another workplace, until the worker can resume normal duties.¹³⁸

Occupational Health and Safety Act 2004 (Vic)

The Victorian *Occupational Health and Safety Act* outlines the occupational health and safety obligations of employers, employees, self-employed persons and other persons including persons who manage a workplace in Victoria. This Act operates concurrently with the federal *Work Health and Safety Act*.

Under the *Occupational Health and Safety Act*, employers must provide employees with a working environment that is safe and

¹³⁶ *Work Health and Safety Act 2011 (Cth)* s.19

¹³⁷ *Work Health and Safety Act 2011 (Cth)* s.84

¹³⁸ *Work Health and Safety Act 2011 (Cth)* s.87

without risks to health.¹³⁹ Further, employers have duties to monitor the health of employees, working conditions under the employer's management and control and to provide employees with information concerning health and safety.¹⁴⁰

Workers Injury Compensation

Workers' injury compensation is a form of insurance paid by employers to the local state or territory compensation regulator. Workers in Victoria who experience a work related accident or injury should contact Worksafe Victoria, or ComCare if they are a commonwealth government employee.

Workers who suffer a work related injury may be compensated for lost wages, medical expenses and the cost of counselling and rehabilitation.¹⁴¹ Workers' compensation is a 'no fault' scheme¹⁴² meaning that, if a worker is a victim of domestic and family violence at work or is injured at work as a result of, for example, being tired or losing concentration as a result of domestic and family violence, then workers' injury compensation may be accessible.

When a worker's compensation claim is made and accepted, an employer must also provide modified duties (if any) to allow the worker to return to work.¹⁴³

Federal and Victorian Anti-Discrimination Legislation

Federal and Victorian anti-discrimination law provides limited protection for victims of domestic and family violence.

Anti-discrimination legislation establishes attributes that are protected against discriminatory treatment by employers (either directly or indirectly) on account of those attributes. At the federal

¹³⁹ *Occupational Health and Safety Act 2004 (Vic) s.21*

¹⁴⁰ *Occupational Health and Safety Act 2004 (Vic) ss.21 & 22*

¹⁴¹ WorkSafe Victoria, '*Compensation Claims Available to Injured Workers*',

¹⁴² Maurice Blackburn Lawyers, '*Seven Factors to Consider Before Making a Claim for Workers' Compensation*',

¹⁴³ WorkSafe Victoria, '*Claims process and what to expect*'

level, protected attributes include sex, age, disability and race and federal legislation prohibits discrimination against employees on the grounds of their status (or not) in any protected category.

In Victorian legislation there are more attributes protected than under federal legislation however being a victim of domestic and family violence is not a protected attribute.

Sex Discrimination Act 1984 (Cth)

Under this federal Act, it is unlawful to discriminate against an employee on the grounds of their sex, sexual orientation, gender identity, intersex status, marital status, pregnancy, potential pregnancy, breastfeeding and to some extent family responsibilities.¹⁴⁴ Sexual harassment is also unlawful.¹⁴⁵

Discrimination on the grounds of a protected attribute is prohibited in relation to the terms and conditions of employment, denying the employee access to opportunities for promotion, transfer or training, dismissing the employee or subjecting them to any detriment.¹⁴⁶ While the protection that this Act offers employees affected by domestic and family violence is limited, in some circumstances it may afford some redress for discriminatory treatment in the workplace. Affected employees sometimes make use of the provision relating to discrimination on the basis of family responsibilities.¹⁴⁷

Disability Discrimination Act 1992 (Cth)

Employees with a disability who are affected by domestic and family violence, or those who develop a disability as a result of their experience, are protected against discrimination on the grounds of their disability by the federal *Disability Discrimination Act*.

¹⁴⁴ *Sex Discrimination Act 1984 (Cth) s.5, 5A,5B, 5C, 6, 7, 7AA, 7A.*

¹⁴⁵ *Sex Discrimination Act 1984 (Cth) s.28B(1).*

¹⁴⁶ *Sex Discrimination Act 1984 (Cth) s.14*

¹⁴⁷ Heffernan & Matahaere 2010, p.7

This Act makes it unlawful to treat a person with a disability less favourably than someone without. It is also unlawful to fail to make reasonable adjustments to accommodate a worker with a disability.¹⁴⁸ The *Disability Discrimination Act* also prohibits indirect discrimination, which involves requiring a person with a disability to comply with a condition that, due to their disability, they are not able to comply with and that is likely to disadvantage them.¹⁴⁹ It is also unlawful for employers to discriminate against an employee with a disability in the terms or conditions of employment, by denying or restricting access to a promotion, dismissing the employee or subjecting them to any other detriment.¹⁵⁰

Employees who experience domestic and family violence and are injured or develop impairments such as depression or anxiety and experience workplace discrimination as a result, are afforded some protection under this Act. The duty on employers to make reasonable adjustments to accommodate workers with a disability allows scope for the provision of workplace support for employees whose experience of domestic and family violence has caused them an injury or impairment.

Equal Opportunity Act 2010 (Vic)

Under the Victorian *Equal Opportunity Act*, it is unlawful to discriminate (either directly or indirectly) in various areas of public life of which employment is one. The Act prescribes a list of attributes and makes it unlawful to treat a person unfavourably because they have one or more of the attributes.¹⁵¹ Further, it is unlawful to create a condition, requirement or practice which has the effect of disadvantaging someone with that attribute.¹⁵²

The Act protects a person from being discriminated against on the basis of age, breastfeeding, gender identity, disability, industrial

¹⁴⁸ *Disability Discrimination Act 1992 (Cth)* s.5

¹⁴⁹ *Disability Discrimination Act 1992 (Cth)* s.6

¹⁵⁰ *Disability Discrimination Act 1992 (Cth)* s.15

¹⁵¹ *Equal Opportunity Act 2010 (Vic)* s.8

¹⁵² *Equal Opportunity Act 2010 (Vic)* s.9

activity, lawful sexual activity, marital status, parental status or status as a carer, physical features, political belief or activity, pregnancy, race, religious belief or activity, sex, sexual orientation, an expunged homosexual conviction or personal association.¹⁵³ Currently under state legislation, domestic violence is not a protected attribute.

It is also specifically unlawful for an employer to unreasonably refuse to provide flexible working arrangements requested due to a worker's family responsibilities.¹⁵⁴

The *Equal Opportunity Act* also prohibits sexual harassment at a common workplace¹⁵⁵ by an employer or employee.¹⁵⁶

Existing Workplace Measures

Some Australian workplaces have begun to implement measures that support employees who are affected by domestic and family violence. While the implementation of such measures is not widespread, the existing efforts of a number of Australian workplaces act as models of good practice in workplace responses to domestic and family violence.

A number of discrete models of workplace based domestic and family violence initiatives have been identified in literature.¹⁵⁷ For the purposes of this discussion paper, the key aims and strategies of these identified models have been synthesised into four broad categories: activities focused on community; activities focused on employees; partnerships and union-led initiatives.

¹⁵³ *Equal Opportunity Act* 2010 (Vic) s.6

¹⁵⁴ *Equal Opportunity Act* 2010 (Vic) s.19

¹⁵⁵ *Equal Opportunity Act* 2010 (Vic) s.94

¹⁵⁶ *Equal Opportunity Act* 2010 (Vic) s.93

¹⁵⁷ Murray & Powell 2008, p. 8; VCCAV 2004, p.7

Activities Focused on Community

Activities focused on community fall largely under the purview of employer philanthropy and corporate responsibility. These types of activities recognise the influential role of workplaces in contributing to positive cultural change through efforts to raise awareness, prevent domestic and family violence and implementing resource effective responses. Organisations may develop their own awareness and anti-violence campaigns and may also contribute to existing initiatives. Employers and businesses can make contributions to external prevention and support efforts through fundraising, financial donations and media releases.¹⁵⁸

Organisations' community-focused efforts may take the form of financial or material resourcing for community agencies that provide support and protection for victims of domestic and family violence.¹⁵⁹

Good Practice Example: In a community-focused initiative, Telstra has partnered with the Women's Services Network (WESNET) in the Telstra Safe Connections Project, with the purpose of "*helping women impacted by domestic violence to stay safely connected*".¹⁶⁰ Telstra will provide WESNET with smart phones, prepaid credit and information on the safe use of technology and WESNET will distribute these resources to community agencies who work directly with women affected by domestic and family violence. Telstra has also made information available on their website for affected women regarding keeping themselves and their mobile phones safe.¹⁶¹

¹⁵⁸ VCCA V 2004, p.16

¹⁵⁹ Id.

¹⁶⁰ See <https://www.telstra.com.au/aboutus/community-environment/community-programs/access-for-everyone/community-agencies>

¹⁶¹ See <https://www.telstra.com.au/content/dam/tcom/about-us/community-environment/pdf/telstra-safe-connections.pdf>

Activities Focused on Employees

Activities that focus on employees generally work toward the establishment of workplace attitudes, practices and structures that support employees and keep them safe. This is facilitated by the implementation of policies and procedures that address the particular health and safety needs of employees who are affected by domestic and family violence, such as leave provisions, increased security measures, flexible shifts and access to employee assistance programs.¹⁶² Other activities include distribution of information about domestic and family violence and available services, displaying anti-violence posters or including anti-violence messages on payslips and workplace newsletters, training for staff and counselling.¹⁶³ These types of activities are instigated by large organisations with pre-existing anti-discrimination, harassment and occupational health and safety frameworks within which domestic and family violence initiatives can be integrated.¹⁶⁴ Smaller workplaces can adapt the efforts of larger organisations to their own circumstances and may make use of other forms of workplace based measures such as partnerships (see below) to consolidate their capacity to adequately support their employees.¹⁶⁵

Good Practice Example: In 2014, Charles Sturt University (CSU) implemented a domestic violence policy¹⁶⁶ and an associated domestic violence procedure.¹⁶⁷ This policy outlines CSU's commitments that all affected staff will be supported while dealing with their circumstances and that a supportive work environment will be created in which staff feel comfortable requesting assistance.¹⁶⁸ The policy provides

¹⁶² Ibid, p.15

¹⁶³ Ibid, p.12

¹⁶⁴ Ibid, p.15

¹⁶⁵ Ibid, pp 12-13

¹⁶⁶ Sarah McCormick, 'Domestic Violence Policy – Addressing Impacts on Work or Study' (2014), s.3

¹⁶⁷ Sarah McCormick, 'Domestic Violence Procedure – Addressing Impacts in the Workplace' (2014), s.4

¹⁶⁸ Sarah McCormick, *Domestic Violence Policy – Addressing Impacts on work or study* (2014), s.3(7)

for support by way of safety and security measures, flexible working arrangements, leave, referral, protection from discrimination and training for HR personnel. CSU's domestic violence procedure clearly sets out the responsibilities of managers, supervisors and HR in actioning the policy.¹⁶⁹ The procedure establishes clear lines of accountability, entitlements available to employees, and measures to be implemented around disclosure, confidentiality, safety, leave and flexibility, performance issues and referral.¹⁷⁰

Partnerships

Partnerships between businesses and local domestic and family violence support services are another form of existing workplace based initiative in this area. Partnerships of this type are generally mutually beneficial. By partnering with local services, employers can receive information and referrals regarding affected employees' experiences.¹⁷¹ Services can offer expert assistance with the development of policies and procedures, formal training sessions and ongoing informal visits to the workplace by an outreach worker, creating a normalised point of contact for staff to discuss issues of domestic and family violence with a professional.¹⁷² In exchange, a business might support a local service through financial donations, sponsorship, fundraising and food and clothing drives.¹⁷³ The partnership model may be of particular use to smaller organisations which lack the infrastructure to address the issue of domestic and family violence in more systematic, integrated ways.¹⁷⁴

Good Practice Example: Australia's CEO Challenge is a charity that brokers partnerships between businesses

¹⁶⁹ Sarah McCormick, *Domestic Violence Procedure – Addressing Impacts in the Workplace* (2014), s.4(8)

¹⁷⁰ Sarah McCormick, *Domestic Violence Procedure – Addressing Impacts in the Workplace* (2014), s.4

¹⁷¹ VCCAV 2004, p.18

¹⁷² *Id*

¹⁷³ Murray & Powell 2008, p.10

¹⁷⁴ *Ibid*, p.12

and community agencies to promote the prevention of domestic and family violence. The program works towards the development of partnerships that benefit each party. Community services receive support through donations, drives and training for staff, while businesses receive awareness training, support, and assistance with the development of workplace specific domestic violence policies.¹⁷⁵

Union Initiatives

Union initiatives fall within the scope of unions' long-standing advocacy for all workers' rights to a safe home, community and workplace.¹⁷⁶ Employer awareness and sensitivity to domestic and family violence as an important employment issue is vital to the success of any workplace based initiative in this area and unions play an important role in encouraging this awareness and sensitivity. Union awareness-raising and advocacy efforts in this area have included informing employers about domestic and family violence and its impact on the workplace, encouraging employers to adopt domestic and family violence related policies¹⁷⁷ and the tabling of domestic and family violence clauses in enterprise agreement negotiations. The increasing number of domestic and family violence clauses in enterprise agreements is in large part attributable to the efforts of Australian unions.

The Australian Council of Trade Unions (ACTU) also submitted an application for the inclusion of a domestic and family violence clause into all 122 modern awards, initiating a process which led to the FWC's recent introduction of 5 days unpaid domestic and family violence leave into the majority of modern awards.

Good Practice Example: In 2010, the first domestic and family clause to be included in an Australian enterprise agreement was

¹⁷⁵ Ibid, p.7

¹⁷⁶ ACTU 2014, p.1

¹⁷⁷ VCCAV 2004, p.24

negotiated between the Australian Services Union and the Surf Coast Shire. The clause recognises the impact that experiences of domestic and family violence can have on attendance and performance at work and articulates the Council's commitment to supporting staff that experience domestic and family violence. The clause provides employees experiencing domestic and family violence with access to 20 days per year of paid special leave. Other general measures are also established, including that no adverse action be taken against the employee if their experience of domestic and family violence affects their attendance or performance at work and the identification and training of a HR contact to liaise with affected employees and their supervisors. Since the negotiation of this clause, the inclusion of similar domestic and family violence clauses in enterprise agreements has been on the rise.¹⁷⁸

Gaps and Recommendations

The importance of existing provisions and measures notwithstanding, many employees affected by domestic and family violence are not being supported and are being subjected to adverse employment outcomes. Legislative, social and cultural gaps are evident that impede affected employees' access to necessary measures to enable them to continue employment in safe and supportive environments are evident. These gaps also fail to promote the security and wellbeing of affected employees at home.

Legislative Gaps

JobWatch submits that in promoting the rights of workers affected by domestic and family violence legislative reform is required in the following areas-:

¹⁷⁸ ASU-Victorian Authorities & Services Branch 2010, p.1

1. Existing Leave Entitlements are Not Sufficient to Meet Needs of Employees Affected by Domestic & Family Violence

JobWatch supports the Australian Law Reform Commission's (ALRC) contention that existing leave provisions established by the NES are not adequate for meeting the needs of employees experiencing domestic and family violence.¹⁷⁹ Domestic and family violence is often persistent and prolonged and employees dealing with its effects can quickly exhaust existing leave entitlements.¹⁸⁰ Domestic and family violence and its consequences do not cease once an employee's leave has been exhausted and affected employees require nationally consistent, enforceable access to paid special domestic and family violence leave in addition to other entitlements.

JobWatch promotes ALRC's position that domestic and family violence leave entitlements should be:

1. Paid, to account for the financial hardship often faced by domestic and family violence victims;
2. Accessible for a range of reasons (for example, court attendance and medical appointments). JobWatch submits that the list of available reasons should remain open to address the individual circumstances of the person seeking the leave;
3. Available for a range of lengths including half days and consecutive days;
4. Available to primary and secondary victims; and
5. Subject to flexible verification options.¹⁸¹

¹⁷⁹ ALRC 2011, para. 17.31

¹⁸⁰ ALRC 2011, para 17.30

¹⁸¹ ALRC, 2011, para 17.45

The NES represents the most appropriate vehicle for providing paid special domestic and family violence leave entitlements. Victims of domestic and family violence may have considerably less bargaining power than other stakeholders and the likelihood of widespread inclusion of this entitlement in enterprise agreements is limited.¹⁸² Further, the NES enshrines basic standards for a much broader range of employees than modern awards (which are industry specific) and enterprise agreements (which are enterprise specific). The introduction of leave entitlements at a national level will ensure consistency for all industries, creating efficiency for business and certainty for affected employees.

In March 2018 the FWC announced the introduction of a domestic violence leave clause into a majority of modern awards. (See below). Workplace Minister Craig Laundy stated that draft laws would be introduced to extend the entitlement to unpaid domestic violence leave to all employees covered by the national workplace system, an additional six million employees.¹⁸³ JobWatch notes that this announcement related to unpaid leave and not paid leave.

In 2016, Queensland became the first jurisdiction to legislate domestic and family violence leave. Under the *Industrial Relations Act 2016 (Qld)*, a permanent employee is entitled to 10 days of paid domestic and family violence leave in a year.¹⁸⁴ Long term casuals are entitled to 10 days of unpaid domestic and violence leave in a year while short term casual employees are entitled to 2 days of unpaid domestic and violence leave in a year.¹⁸⁵ This leave can be taken for part of a day.¹⁸⁶

This leave can be used for the employee to recover from an injury caused by the violence, or attend appointments related to the violence, for example to attend counselling, obtain legal advice,

¹⁸² ACTU 2014, p.7

¹⁸³ SBS News, 'Workers get Unpaid Family Violence Leave',

¹⁸⁴ *Industrial Relations Act 2016 (QLD)* s.52

¹⁸⁵ *Industrial Relations Act 2016 (QLD)* s.52

¹⁸⁶ *Industrial Relations Act 2016 (QLD)* s.52

medical treatment or to speak with police officers.¹⁸⁷ This leave can also be used to prepare for a court appearance or attend court proceedings.¹⁸⁸ In addition, an employee can use this leave to find accommodation or organise child care or education.¹⁸⁹

The employer must not fail to re-engage a long term or a short term casual employee because the employee has taken domestic and family violence leave.¹⁹⁰

Recommendation 1: *Paid domestic and family violence leave to be introduced into the National Employment Standards in the Fair Work Act 2009 (Cth)*

The ALRC states that the majority of Australian employees are not covered by an enterprise agreement¹⁹¹ and further, that women are more likely than men to be reliant on awards.¹⁹² The inclusion of a *paid* domestic and family violence leave entitlement in all modern awards would make a significant and important entitlement available to a considerable portion of affected employees.

While the NES are the ideal provisions for the inclusion of paid domestic and family violence leave provisions, if Parliament is unwilling to expand the NES, JobWatch then recommends the inclusion of a domestic and family violence clause into all 122 modern awards.

In October 2015, as part of the FWC's 4 year review of modern awards, the ACTU made an application for a Family and Domestic Violence clause to be added to all 122 modern awards. The draft clause included a provision for 10 days per year of paid domestic and family violence leave and upon exhaustion of paid leave, to up

¹⁸⁷ *Industrial Relations Act 2016 (QLD)* s.52

¹⁸⁸ *Industrial Relations Act 2016 (QLD)* s.52

¹⁸⁹ *Industrial Relations Act 2016 (QLD)* s.52

¹⁹⁰ *Industrial Relations Act 2016 (QLD)* s.52

¹⁹¹ ALRC 2011, para 16.32

¹⁹² *Ibid*, 16.62

to 2 days unpaid leave for each occasion of violence requiring leave.¹⁹³

On 3 July 2017, the FWC found that it is empowered to introduce family and domestic violence leave into modern awards however it declined to rule on the form or amount of that leave preferring instead to hear further submissions and evidence.¹⁹⁴

On 26 March 2018, the FWC decided to provide 5 days' *unpaid* leave per year to almost all modern award covered employees (including casuals) experiencing domestic and family violence.¹⁹⁵

Whilst this decision is a step in the right direction, JobWatch believes it does not go far enough as the provision of unpaid leave does not recognise the importance of financial stability for women who are attempting to leave an abusive relationship. Nevertheless, the decision is not surprising as the FWC previously stated that a cautious approach was necessary, meaning that the inclusion of paid domestic and family violence leave in modern awards was unlikely at this stage.

Recommendation 2: *Alternatively, paid domestic and family violence leave to be introduced into all 122 modern awards*

JobWatch further recommends that paid domestic and family violence leave entitlements be included in all enterprise agreements as a mandatory term, like flexibility, dispute resolution and consultation clauses. Enterprise agreements prevail over the relevant award for those employees covered by it and should provide the same entitlements for employees experiencing domestic and family violence. There are currently over 1.6 million Australian employees who have access to paid domestic and family violence leave in union negotiated enterprise agreements¹⁹⁶ and JobWatch

¹⁹³ [2015] FWCFB 5585 (22 October 2015)

¹⁹⁴ [2017] FWCFB 3494 (3 July 2017)

¹⁹⁵ [2018] FWCFB 1691. (26 March 2018)

¹⁹⁶ ACTU 2015, p.5

supports the expansion of employees with access to such entitlements.

Recommendation 3: *Paid domestic and family violence leave entitlements to be replicated in enterprise agreements as a mandatory term*

2. Protection Against Unfair Dismissal is Not Accessible to Many Vulnerable Workers

The *Fair Work Act* protects certain employees against unfair dismissal, defined as dismissals that are harsh, unjust or unreasonable.¹⁹⁷

Unfair Dismissal protection is only available to employees with over 6 months service for a large employer (15 or more employees) and 12 months service for a small employer (14 or less employees).¹⁹⁸ Under the current system, those with less than 6 or 12 months service, genuine contractors¹⁹⁹ and casual employees who do not work regular and systematic hours and do not have a reasonable expectation of ongoing employment,²⁰⁰ are not protected against unfair dismissal and are vulnerable to dismissal as they have no avenue for redress.

Victims of domestic and family violence are more likely to have disrupted work histories, work part-time or casually and/or be underemployed.²⁰¹ JobWatch's experience has shown that employees who are unfairly dismissed as a result of their experience

¹⁹⁷ *Fair Work Act 2009 (Cth)* s.385

¹⁹⁸ *Fair Work Act 2009 (Cth)* s.383

¹⁹⁹ *Fair Work Act 2009 (Cth)* s.386

²⁰⁰ *Fair Work Act 2009 (Cth)* s.384

²⁰¹ Costello, Chung & Carson 2005, p.256

of domestic and family violence can face considerable difficulty challenging their unfair treatment as many do not meet the eligibility criteria for unfair dismissal.

JobWatch recommends that unfair dismissal protection be extended to contractors, all casual employees and other workers with less than 6 or 12 months continuous service in cases involving domestic and family violence to address the needs of vulnerable victims of domestic and family violence.

Recommendation 4: Unfair dismissal protection to be extended to contractors, all casual employees and those with less than 6 or 12 months continuous service in cases involving domestic and family violence

3. The Right to Request Flexible Working Arrangements is Not Accessible to Many Vulnerable Workers

The *Fair Work Act* affords employees the right to request flexible working arrangements if they are affected by domestic and family violence.²⁰²

Under the current system, the right to request flexible working arrangements is only available to permanent employees with over 12 months of continuous service, or those considered to be 'long term casuals' with a reasonable expectation of continuing employment.²⁰³ This provision excludes from protection certain casual employees, contractors, labour hire workers (in relation to their host employer) and all workers with less than 12 months of continuous service.

Women who have experienced domestic and family violence are more likely to have disrupted work histories and less job stability²⁰⁴

²⁰² *Fair Work Act* 2009 (Cth) s.65

²⁰³ *Fair Work Act* 2009 (Cth) s.65

²⁰⁴ Costello, Chung & Carson 2005, p.256

and are therefore more likely to perform the kind of work that falls outside the eligibility requirements of this provision.

As it stands, the right to request flexible working arrangements provision is unlikely to afford protection or support to a significant number of workers affected by domestic and family violence. The provision fails to protect the most vulnerable workers and must be extended to include casual employees, labour hire workers (in relation to their host employer) and those with less than 12 months of continuous service.

Recommendation 5: The right to request flexible working arrangements to be extended to all casual employees, labour hire workers and workers with less than 12 months continuous service in cases involving domestic and family violence

4. Grounds to Refuse Requests for Flexible Working Arrangements are Not Sufficient Where Employee Safety is at Risk

The right to request flexible working arrangements provision requires an employer to consider requests from affected employees.²⁰⁵ However, employers have the right to refuse requests on '*reasonable business grounds*'. Such grounds include: that the new arrangements would be too costly; that there is no capacity or that it would be impractical to change the working arrangements; that the new arrangements would result in significant loss in efficiency or productivity or are likely to negatively impact on customer service.²⁰⁶

²⁰⁵ *Fair Work Act 2009* (Cth) s.65

²⁰⁶ *Fair Work Act 2009* (Cth) s.65 (5), (5A) & (6)

JobWatch submits that 'reasonable business grounds' such as impracticality and limited capacity are insufficient grounds on which to refuse arrangements that are imperative to the safety of a vulnerable employee.

In circumstances where an employee has experienced domestic and family violence, applying the concept of 'reasonable business grounds' is complicated. Many employees affected by domestic and family violence face a great deal of danger. The workplace can be a place of heightened risk, as abusers know where, when and how a victim can be located.²⁰⁷ Flexible working arrangements can help to ensure an affected employee's safety at work and at home. The right of an employer to refuse these arrangements *must* take full account of the safety of the employee making the request, including the consequences for the employee if flexible working arrangements are not granted, as well as the workplace implications. '*Reasonable business grounds*' is too ambiguous a term and diverts attention away from the consideration of imperative safety concerns.

JobWatch recommends that the right of an employer to refuse requests for flexible working arrangements on the grounds of domestic and family violence should be limited to cases of '*genuine and significant hardship*' to the business. In addition, JobWatch suggests that more specific guidelines are developed to explain the meaning of the term '*genuine and significant hardship*.'

Recommendation 6: Raise the standard to refuse requests for flexible working arrangements from '*reasonable business grounds*' to '*genuine and significant hardship*' in cases involving domestic and family violence

²⁰⁷ Murray & Powell 2008, p.4

5. Employer Response Period Regarding Requests for Flexible Working Arrangements Too Long in Cases of Domestic & Family Violence

Under the current system, employers have 21 days to respond in writing to requests for flexible working arrangements. For employees making requests in order to ensure their safety in a domestic and family violence situation, 21 days is an unacceptably long period to wait for a response.

Domestic and family violence can present an immediate threat to the safety and wellbeing of victims and their children, particularly during periods of high risk, such as after a separation²⁰⁸ or during pregnancy.²⁰⁹ Many requests for flexible working arrangements are likely to arise at times of particularly high risk, as affected employees take action to ensure their own safety. Affected employees may be exposed to considerable danger while waiting 21 days for a response.

JobWatch submits that the employer response period should be reduced to take into account the urgency of the employee's request.

Recommendation 7: Reduce employer response period regarding requests for flexible working arrangements

6. Employer Right to Refuse Requests for Flexible Working Arrangements Needs Associated Accountability Measures

Taking into account the potential consequences of decisions regarding requests for flexible working arrangements on the ground of domestic and family violence, any refusal by an employer to grant the requested flexible working arrangements should be

²⁰⁸ Morgan & Chadwick 2009, p.2

²⁰⁹ Ibid, p.5

reviewable at either the FWC or a Federal Court to ensure employer accountability for their decisions.

Recommendation 8: Any refusal by an employer to grant the requested flexible working arrangements should be reviewable by the employee to either the Fair Work Commission or a Federal Court

7. On Receiving a Request for Flexible Working Arrangements in Relation to Domestic & Family Violence Employers Must Take Further Steps to Provide Employees With a Safe and Healthy Workplace

Employees who require flexible working arrangements as a result of their experience of domestic and family violence may also require other measures to address the impact of the violence on their employment.

In order to ensure that the entitlement to flexible working arrangements on the ground of domestic and family violence is not ineffectual, regardless of whether or not an employer decides to grant a request for flexible working arrangements, they should still be required to respond to employee disclosures of violence by initiating, with the consent of the employee, the process of creating a safety plan.²¹⁰

Upon receiving a disclosure, before any other action, an employer should be required to organise and implement, with the employee's consent, a personal safety plan. These plans are necessary to ensure that any immediate workplace threats or dangers arising from an employee's experience with domestic and family violence are comprehensively assessed and that measures are taken to protect the employee and the workplace.²¹¹

²¹⁰ Broderick 2012

²¹¹ Id

JobWatch recommends that the following provision be added to the *Fair Work Act* as a new section under Division 4 - Requests for Flexible Working Arrangements-:

Mandatory Workplace and Personal Safety Plans for Employees Experiencing Violence from a Member of the Employee's Family

When an employee discloses that she or he is experiencing violence from a member of the employee's family, either by way of requesting flexible working arrangements under Section 65 (1A) (f), or by way of any other form of disclosure, an employer must organise and implement a Workplace and Personal Safety Plan with the consent of the employee.

A Workplace and Personal Safety Plan should consider-:

- a) Workplace safety and security measures;*
- b) Measures to protect the affected person from any immediate threat or danger arising from their performance of normal work duties;*
- c) Measures to protect the person from unwanted or abusive contact;*
- d) Training for staff members to prevent disclosing the person's whereabouts or contact details;*
- e) Disciplinary action to address cases where information is disclosed which endangers the vulnerable person;*
- f) Preparedness for a crisis situation, including discussing intervention orders, alerting colleagues, emergency evacuation plan and ability to contact help;*
- g) Flexible working arrangements including but not limited to working at a different location or different hours; and*

h) Leave entitlements to support the affected person to attend to issues related to their safety and wellbeing

Recommendation 9: **Mandatory Workplace and Personal Safety Plans to be implemented when a disclosure of domestic and family violence is made**

8. Employees Affected by Domestic & Family Violence are Not Protected Against Workplace Discrimination in the *Fair Work Act*

The *Fair Work Act* prohibits employers from taking adverse action against an employee because the employee has a protected attribute.²¹² Adverse action might include dismissal, a change in hours or demotion.²¹³ Domestic and family violence is not included as a protected attribute in this Act and this raises a number of implications for affected employees.

An employee's experience of domestic and family violence may influence an employer's decision to dismiss, demote or otherwise act adversely towards that employee. Being subjected to adverse action on the grounds of being a domestic and family violence victim is an experience that has been shared with JobWatch numerous times. Victims are suspended, dismissed, threatened, forced to work hours they cannot work and given ultimatums. Such adverse action generally follows immediately after a disclosure of domestic and family violence, or a tangible workplace impact resulting from violence.

Without domestic and family violence included as a protected attribute under the *Fair Work Act's* general protections, many of these victims have no recourse as their adverse treatment cannot be directly attributed to their status in any protected category.

²¹² *Fair Work Act 2009* (Cth) s.351

²¹³ *Fair Work Act 2009* (Cth) s.342

In order to ensure that employees affected by domestic and family violence are not subjected to compounded adversity and disadvantage, the *Fair Work Act's* general protections should be amended to include domestic and family violence as a protected attribute.

Recommendation 10: Addition of domestic and family violence as a protected attribute in the *Fair Work Act's* general protections provisions

9. Affected Employees Not Protected Against Workplace Discrimination in Relevant Anti-Discrimination Law

The inclusion of domestic and family violence as a protected attribute in the *Fair Work Act*, while an important step toward promoting the rights and protection of affected employees, is of little consequence without changes to state and federal anti-discrimination legislation. The *Fair Work Act* stipulates that its provisions against adverse action do not apply to any action that is not unlawful under the anti-discrimination laws in effect in the place in which the action occurs.²¹⁴ While there is some debate around the interpretation of 'not unlawful', the rights of employees affected by domestic and family violence to be protected against adverse action are likely best provided for in state and federal anti-discrimination legislation.

Employees affected by domestic and family violence face barriers that require similar protections as other workers who are currently provided for by anti-discrimination legislation,²¹⁵ such as reasonable adjustments and flexible working arrangements. Affected employees face discrimination in the workplace and this discrimination can exacerbate the vulnerability caused by violence. Smith and Orchiston present some of the forms of discrimination that an affected employee may face, including hostility, derision,

²¹⁴ *Fair Work Act 2009* (Cth) s.351

²¹⁵ Heffernan & Matahaere 2010, p.4

stereotyping based on negative assumptions about victims of domestic and family violence and inflexibility in policies and practices that impact disproportionately or especially harshly, on affected employees.²¹⁶

In the current legislative environment, there is no statutory redress for employees who experience adverse workplace treatment on the basis that they are experiencing or have experienced domestic and family violence. Affected employees can attempt to make use of other attributes found in anti-discrimination legislation such as sex or family responsibilities. However, seeking redress for discrimination on the basis of domestic and family violence by making use of grounds that are not specifically designed to capture domestic and family violence is considerably difficult. The Queensland Women's Working Service found that cases which attempt this course of action are inherently weak.²¹⁷ Smith and Orchiston similarly assert that the apparent promise of anti-discrimination provisions relating to family responsibilities to assist employees affected by domestic and family violence proves to be elusive.²¹⁸

This was confirmed in a recent decision of the Queensland Industrial Relations Commission which rejected a female employee's claim that the domestic violence she experienced amounted to sex discrimination under that state's anti-discrimination legislation.²¹⁹ In this case, the employee claimed she had been dismissed when she failed to attend work after calling in sick due to a domestic violence incident and that this was sex discrimination because women are more prone to being victims of domestic violence.

The employer said it dismissed her because she had too many personal problems and that being a victim of domestic violence is not a feature or quality of being a woman that serves to identify a

²¹⁶ Smith & Orchiston 2011, p.2

²¹⁷ Heffernan & Matahaere 2010, p.7.

²¹⁸ Smith & Orchiston 2011, p.11

²¹⁹ Wright v Callvm Vacheron Wallace Bishop and Anor [2018] QIRC 007 (23 January 2018)

person as being a woman even though more women experience domestic violence than men.

Deputy President Deirdre Swan accepted the employer's arguments, finding that women "are not the only victims of domestic violence or that the majority of women are victims of domestic violence". She also rejected the notion that "being a victim of domestic violence is a characteristic that women generally have".

Therefore, without domestic and family violence as a protected attribute in state and federal anti-discrimination law, it is considerably difficult for affected employees to access redress for workplace discrimination on the basis of their experience. Many adverse outcomes for employees affected by domestic and family violence cannot be attributed to their belonging to an existing protected category and attempts to make this link are strained. Domestic and family violence must be included as a protected attribute in Victorian and federal anti-discrimination legislation to provide meaningful remedies for unfavourable workplace treatment.

Recommendation 11: *Addition of domestic and family violence as a protected attribute in state and federal anti-discrimination law, that is, the [Equal Opportunity Act 2010 \(Vic\)](#) and the [Sex Discrimination Act 1984 \(Cth\)](#)*

10. The Protections Available to Affected Employees Require Clear Articulation

If employees affected by domestic and family violence are to access the protections and entitlements currently available to them, they need to be aware of the existence of these protections and entitlements.

The legislative provisions for the rights and protections of affected employees are ad hoc and many employees are not aware of what is available to support them in circumstances where domestic and family violence interacts with their employment.

A clearly articulated and universally distributed resource that sets out the existing rights, entitlements and remedies available to employees experiencing domestic and family violence is necessary to maximise the usefulness of existing legislation.

Currently, under the NES, employers must give their employees a 'Fair Work Information Statement' upon commencement of employment or 'as soon as practicable'.²²⁰ The Statement is available online and can be easily downloaded.

JobWatch recommends that a new section be added to the *Fair Work Act* requiring employers to provide all new employees with a safety statement which identifies legal rights and remedies in cases where domestic and family violence impacts upon employees' employment.

To ensure the widespread distribution of the new safety statement, JobWatch makes the following recommendations-:

1. Releasing the statement in easily downloadable PDF format to ensure consistency and to make it easy for employers to comply
2. Imposing a pecuniary penalty for employers who do not distribute the safety statement

The *Fair Work Act* provision which mandates an Employee Safety Statement may be drafted as follows:

"An employer must give each employee the Employee Safety Statement at the commencement of employment or as soon as practicable after the commencement of employment."

²²⁰ *Fair Work Act 2009 (Cth) s.125*

Recommendation 12: *The Fair Work Act* to require employees to be provided with an Employee Safety Statement upon commencement of their employment or as soon as practicable after the commencement of their employment

Social and Cultural Gaps

Legislative reform to protect and support victims of domestic and family violence in an employment context is imperative. However, legislative provisions alone cannot make immediate changes to people's behaviour or experiences. Legislative approaches must be consolidated with measures to address the social and cultural factors that influence the adverse workplace experiences of affected employees. Certain social and cultural factors must be changed to ensure that individual employees receive appropriate workplace responses to their experiences of domestic and family violence. JobWatch's analysis of relevant social and cultural factors follows.

1. Limited Understanding and Appreciation of the Relationship Between Domestic & Family Violence and Employment

Despite a growing body of evidence that confirms that domestic and family violence is a significant workplace concern, there are still limitations in the understanding and appreciation of this connection. The ALRC has identified awareness and recognition of the possible impacts of domestic and family violence in an employment context as an area in need of improvement.²²¹

Employer sensitivity to and appreciation of, the workplace implications of domestic and family violence have been described as important components of effective responses to domestic and family violence.²²² However, there have been difficulties persuading employers that domestic and family violence is a workplace issue

²²¹ ALRC 2011, para. 15.31

²²² McFerran, 2011, p.6.

and that businesses would benefit from addressing it.²²³ It remains a considerable challenge to convince employers that taking action in relation to employees' experiences of violence in the home falls within their existing obligations and that it is important to mitigate adverse outcomes in their own economic and social interests.²²⁴

A robust evidence base would assist in persuading employers that domestic and family violence is a significant workplace concern. Greater insight into the motivations and barriers to employer engagement with this issue would inform effective interventions. Increased evaluation of the gaps and benefits of existing workplace policies and procedures is necessary, both for extending appropriate and effective responses and for confidently communicating benefits to employers. If employers could be presented with clear, robust data regarding the pertinence, efficacy and return on investment of workplace responses to domestic and family violence, they would be significantly more likely to develop and implement appropriate workplace responses.

Jobwatch acknowledges the impact of ANROWS, which was set up under the first stage of the National Plan. In order to support the National Plan, ANROWS' Three Year Strategic Plan (2016-2019) aims to deliver high quality research on violence toward women and children.²²⁵ Projects that contribute to amassing an evidence base regarding responses to domestic and family violence in an employment context should be pursued. The inclusion of domestic and family violence in an employment context as a strategic research theme in an upcoming ANROWS research program would help ensure that evidence and knowledge about this pivotal area is enhanced. Other projects which can contribute to evidence and knowledge in this area should be conducted by bodies with relevant expertise.

²²³ VCCAV 2004, p.28

²²⁴ AFEI (2011) p.4; ACCI (2011) pp.3 & 20

²²⁵ ANROW, 'Three Year Strategic Plan' [2016], p.2

Recommendation 13: Collection of more robust data and evidence regarding responses to domestic and family violence in an employment context

Employer awareness of and engagement with domestic and family violence as a workplace concern would also be improved via a national community awareness campaign. JobWatch supports the ALRC's 2011 call for a government helmed national education and awareness campaign to be developed in consultation with key stakeholders.²²⁶ Such a campaign would necessarily promote education and awareness of domestic and family violence in an employment context and contribute to enhanced skills in responding to employee experiences.²²⁷

The ALRC outlines a range of initiatives that could usefully contribute to a national education and awareness campaign, including education and training in workplaces, development of guidelines and resources to complement entitlements, posters, newsletters, factsheets, online information and advertisements and materials regarding risk assessment and safety planning.²²⁸ JobWatch endorses these suggestions.

As part of the National Plan, the Third Action Plan (2016-2019) seeks to provide a *"one-stop-shop' for resources on effective workplace responses to violence against women and their children"*.²²⁹ Similar to suggestions made by the ALRC, the Third Action Plan highlights the importance of a national set of resources available to both public and private sectors so that all workplaces have plans in place for supporting victims of domestic and family violence.²³⁰

²²⁶ ALRC 2011, p.24

²²⁷ Ibid, p.366

²²⁸ Ibid, para. 15.66

²²⁹ Commonwealth of Australia 2016, p.10

²³⁰ Third Action Plan 2016-2019, p.13

Recommendation 14: Improve community awareness of domestic and family violence as a workplace concern via a government helmed national campaign

2. Organisational Cultures as Barriers to Disclosure

Making use of the workplace as a setting for protection and support depends in many cases on an individual's capacity to disclose their experiences to someone at work.²³¹ In order for an employee to access support and entitlements, another person in the workplace must be made aware of an employee's experience and its implications.²³² Mitigating the negative impact of violence and abuse on productivity and workplace health and safety also depends on someone else being aware of an employee's personal situation. Braaf & Barrett Meyering's study identified disclosure as one strategy to reduce the impact of violence on employment.²³³ If an individual does not feel they can disclose violence, or does not believe disclosure will be of benefit, they cannot access whatever supportive measures might be available and an employer is unable to appropriately address health and safety issues and productivity. Organisational culture plays an influential role in the likelihood that individuals will disclose violence,²³⁴ as well as in the nature and efficacy of the support provided following disclosure.

Respondents in McFerran's survey related organisational cultural factors that acted as barriers to disclosure. These included fear of gossip, reprisal and damage to career advancement.²³⁵ The ALRC also summarised a range of barriers to disclosure, including fears that career will be jeopardised, that the employer will not be responsive, that the employer will lose confidence in the victim's

²³¹ ALRC 2011, para. 15.21 & 15.23

²³² Braaf & Barrett 2011, p.90

²³³ Id

²³⁴ ALRC 2011, para. 15.21

²³⁵ McFerran 2011, p. 13

ability and concerns around privacy.²³⁶ While some of these fears can certainly arise from an individual's estimation, organisational culture has much to contribute to an affected employee's concerns about the ramifications of disclosure.²³⁷ For instance, in a workplace where managers routinely deny employees' requests for flexible work arrangements due to family or home circumstances, or where the personal circumstances of staff are treated insensitively, disclosure will not appear safe or useful.²³⁸ Indeed, in such environments disclosure may not emerge as an option, the assumption that private experiences must not enter the workplace is so entrenched.

McFerran asserts that workers are prepared to disclose violence but require an informed, supportive environment in which to do so. McFerran draws the conclusion that barriers to disclosure will continue until workplaces implement measures to ensure that domestic and family violence is treated as a workplace issue and that support is guaranteed.²³⁹ Affected employees must also understand that disclosure need not lead to adverse outcomes. Increasing the recognition of domestic and family violence as a workplace concern and encouraging dialogue about this issue can promote the integration of employees' domestic and family violence experiences into a broader understanding of what constitutes legitimate workplace issues.

Workplaces can increase the recognition of domestic and family violence as a workplace concern by displaying anti-domestic and family violence posters,²⁴⁰ stocking domestic and family violence brochures and messages²⁴¹ or including them in payslip envelopes,²⁴² providing resources in employee induction packs²⁴³ or

²³⁶ ALRC 2011, para. 15.21

²³⁷ ALRC 2011, para. 15.21 & McFerran 2011, p.13

²³⁸ McFerran 2011, p.14

²³⁹ Ibid, p.13

²⁴⁰ Johnson & Gardner 1999, p.595

²⁴¹ Ibid, p.202

²⁴² Ibid, p.595

²⁴³ Partnerships for Prevention 2002, p.6

dedicating sections of the workplace newsletter to the issue.²⁴⁴ Encouraging dialogue about domestic and family violence and its workplace implications can be facilitated by such activities as lunchtime seminars²⁴⁵ or compulsory information sessions,²⁴⁶ e-learning modules and domestic and family violence modules in routine staff induction and development activities. Workplace violence programs would do well to include domestic and family violence specific components and should cover topics such as intersections with the workplace, recognising symptoms among colleagues, employee confidentiality, OHS requirements and available support services.²⁴⁷

Recommendation 15: Employers to take action to create safe, open workplace cultures that support employees to disclose violence and receive appropriate and effective responses

3. Challenges Affecting Relevant Change in Organisational Cultures

Some organisational cultures will have more ingrained beliefs, and assumptions regarding domestic and family violence and its workplace implications.²⁴⁸ Increasing recognition and encouraging dialogue may be insufficient to affect change where underlying assumptions are deeply entrenched and taken for granted.²⁴⁹

The task of renegotiating shared underlying assumptions can be difficult as people respond to challenges with significant anxiety and resistance.²⁵⁰ Further, each organisational culture will develop its own unique assumptions based on specific contextual factors and

²⁴⁴ Johnson & Gardner 1999, p.595; Murray & Powell 2008, p.14

²⁴⁵ Johnson & Gardner 1999, p.595

²⁴⁶ Swanberg, Logan & Macke 2005, p.307

²⁴⁷ Ibid, p.307

²⁴⁸ Schein 2004, p.16

²⁴⁹ Id

²⁵⁰ Ibid, p.26

experiences.²⁵¹ Shifting organisational cultures can require contextually based programs founded on analysis of the unique assumptions of an individual workplace and its associated impact on employees.²⁵²

To promote the development of programs that are equipped to overcome such complexity, JobWatch recommends enhancing the evidentiary base used to found programs. This would necessarily involve the accumulation of knowledge/evidence regarding; assumptions, values, beliefs and practices within an organisation that impede or support employees to disclose their experiences of violence and receive appropriate responses; the kinds of interventions that work best in affecting change within organisational cultures that deter employees from disclosing violence and receiving appropriate responses; and the kinds of interventions that work best in fostering organisational cultures that support employees in disclosing violence and receiving adequate support.

ANROWS would also be well placed to facilitate research in this area and JobWatch recommends that specific projects be developed for this purpose. ANROWS' Three Year Strategic Plan (2016-2019) coordinates research across jurisdictions to focus on prevention of domestic and family violence. However this plan fails to specify which research projects will focus on violence against women in relation to the workplace.

JobWatch recommends that ANROWS and other research organisations develop research projects to increase corporate awareness of how domestic and family violence can affect employment and of actions which can be taken to support employees and avoid economic costs.

²⁵¹ Ibid, p.16

²⁵² Id

Recommendation 16: Collection of more robust data and evidence regarding organisational cultural changes to better protect and support employees affected by domestic and family violence

4. Adverse Employment Outcomes for Affected Employees

Disclosure at work is just one important facet of an effective workplace response to domestic and family violence. Supportive outcomes for victims ultimately depend upon appropriate employer responses to disclosures.²⁵³ Encouraging disclosure is only beneficial if those who receive disclosures have an understanding of appropriate and helpful ways to respond.²⁵⁴

McFerran's 2011 survey found that 48% of respondents who have experienced domestic violence disclosed this fact to their manager, although only 10% of these respondents found their manager's response to be helpful.²⁵⁵ This statistic reveals a significant lack of employer understanding of appropriate and constructive ways to respond to employee disclosures of domestic and family violence. Murray & Powell argue that in workplaces that have not received suitable education and training on how to 'recognise, respond and refer' disclosures, affected employees might receive an inappropriate response.²⁵⁶

Relevant evidence supports JobWatch's experience that affected employees are subjected to a range of unjust workplace outcomes. The AHRC cites a growing body of evidence that demonstrates that victims are often subjected to workplace discrimination, either in the form of a denial of flexible working arrangements, being transferred, demoted or dismissed.²⁵⁷ An employee who has disclosed domestic and family violence might experience further victimisation in the workplace and in organisations where both

²⁵³ Murray & Powell 2008, p.14

²⁵⁴ Ibid, p.15

²⁵⁵ McFerran 2011, p.13

²⁵⁶ Murray & Powell 2008, p.14

²⁵⁷ AHRC 2014, p.4

partners are employed, the perpetrator may be told about the disclosure,²⁵⁸ putting the victim's safety at risk.

Swanberg, Logan and Macke's review of available research reported that employers sometimes respond to intimate partner violence by terminating the primary victim,²⁵⁹ a finding supported by JobWatch's experience. The victim may be dismissed on the asserted grounds that their victimisation puts the organisation's clients at risk,²⁶⁰ or simply because an employer feels ill-equipped to deal with the situation, particularly if an Intervention Order is in place.

Education, training and advice for employers and other key staff is essential. Employers, managers, supervisors, security and human resources staff all require some specialised knowledge and training to ensure appropriate responses to domestic and family violence disclosures.²⁶¹ Employers and key staff need to understand the nature and implications of domestic and family violence in an employment context and to develop the skills to respond appropriately.²⁶²

JobWatch submits that a nationally consistent outreach service which effectively engages employers and successfully provides for the needs of employees would be the best way to facilitate workplace education and training. Such a service would actively engage employers and provide on-site advice and training within workplaces.

As part of a number of research activities in the area of gendered violence, the University of New South Wales (UNSW) Gendered Violence Research Network provides a comprehensive advisory and training service for employers who wish to address the effects of

²⁵⁸ Murray & Powell 2008, p.14

²⁵⁹ Swanberg, Logan & Macke 2005, p.301

²⁶⁰ ACTU 2014, p.4

²⁶¹ Murray & Powell 2008, p.14

²⁶² Id

domestic and family violence in their organisations.²⁶³ UNSW's expertise and experience in the field of domestic violence and its workplace implications is considerable, therefore JobWatch recommends the expansion of the UNSW's capacity to provide outreach advisory and training services nationally. JobWatch also recommends a comprehensive awareness campaign strategically advertising the UNSW's Gendered Violence and Work program to a broader pool of employers.

Recommendation 17: A nationally consistent outreach education and training service

Further, to protect affected employees against adverse employment outcomes, workplaces need clearly articulated and accessible policies and procedures.²⁶⁴ Well defined policies and procedures should be developed that enunciate the obligations, responsibilities and required actions of those who receive a disclosure from an affected employee.²⁶⁵ Policies should also include provision for leave and flexible working arrangements.²⁶⁶

JobWatch recommends that employers develop and implement robust domestic and family violence policies and procedures according to best practice standards. In addition, JobWatch recommends that the UNSW's Gendered Violence and Work Program, alongside other relevant agencies, is supported in expanding its scope to provide and advertise outreach advisory and support services to employers developing workplace domestic and family violence policies and procedures.

²⁶³ see <https://www.arts.unsw.edu.au/research/gendered-violence-research-network/gendered-violence-work/advisory-training-services/>

²⁶⁴ Swanberg, Logan & Macke 2005, p.306

²⁶⁵ ALRC 2011, para. 15.26

²⁶⁶ AHRC 2014, p.8

Recommendation 18: Widespread workplace implementation of clear and robust domestic and family violence policies and procedures

Another way to ameliorate the adverse employment outcomes of employees affected by domestic and family violence is to develop strong, active partnerships between workplaces and local specialist domestic and family violence services. The expertise of specialist domestic and family violence workers is an invaluable resource for workplaces as they take measures to improve their responses to employee's experiences of violence.

Active partnerships with specialist services create opportunities for workplaces to enhance their understanding of domestic and family violence. In exchange for donations, resources or other forms of support, a domestic and family violence service can offer workplaces onsite education and training, regular visits to encourage and normalise employee discussions with specialist workers and support in the creation of tailored workplace and personal safety plans.²⁶⁷ Such partnerships also establish referral pathways, ensuring that a disclosing employee's needs outside of the employment context can be adequately addressed.²⁶⁸ Partnerships can provide employers, managers or other key staff receiving disclosures with a clear and established source of advice, guidance and support to ensure their response to employee disclosures are sensitive and effective.²⁶⁹

Employers and specialist domestic and family violence services can establish their own partnerships for the benefit of affected employees. JobWatch submits that there is scope for the expansion of existing brokerage initiatives to enhance the frameworks for facilitating partnerships. The Australia's CEO Challenge²⁷⁰ is a model

²⁶⁷ VCACC 2004, p.18

²⁶⁸ Id

²⁶⁹ Id

²⁷⁰ see <http://ceochallengeaustralia.org/>

brokering service, facilitating partnerships between businesses and domestic violence services. JobWatch recommends the expansion of this initiative, as well as the establishment of new services with similar functions.

Recommendation 19: Enhance frameworks for the facilitation of partnerships between workplaces and specialist domestic and family violence services

5. Limitations in the National Plan to Reduce Violence Against Women and their Children

The National Plan has been developed by federal, state and territory governments so *'Australian women and their children live free from violence in safe communities'*.²⁷¹ The National Plan aims to bring about attitudinal and behavioural change at cultural, institutional and individual levels by focusing on prevention efforts.²⁷² The Plan also states that it will *'allow women who have experienced violence to rebuild their lives as quickly as possible as part of a community-wide response'*, enabling women to *'return to full social and economic participation as soon as possible'*.²⁷³

The aims and measures outlined in the National Plan are critical to realising safe, violence free communities. However, a community wide response to preventing violence and supporting affected women to rebuild their lives requires measures to explicitly tackle the impact of domestic and family violence on employment.

Employment is established as a crucial resource for women dealing with the effects of domestic and family violence. Addressing the employment context of domestic and family violence ensures that women are protected at work and supports them to maintain the employment that is often integral to their security. Employment has

²⁷¹ Department of Social Services 2014, p.10

²⁷² Ibid, p.10

²⁷³ Ibid, p.10

been identified as a critical factor in enabling victims to leave an abusive relationship,²⁷⁴ and provides the economic stability and financial independence²⁷⁵ that is essential to *'rebuilding their lives as quickly as possible'*.²⁷⁶

The Shared Framework for Primary Prevention of Violence against Women and their Children in Australia cites *'promoting women's independence and decision-making'* as one of four actions that can prevent violence against women.²⁷⁷ The implementation of workplace related measures that enable women affected by domestic and family violence to maintain employment in safe and supportive workplaces is an important component of promoting independence and decision-making. Conversely, neglecting to address the employment context of domestic and family violence threatens to erode efforts promoting the Plan's aims of violence free communities and secure, independent women.

The Third Action Plan, as part of the National Plan, lays out six National Priority Areas for 2016 to 2019.²⁷⁸ National Priority Area 1, "Prevention and early intervention," includes a section (1.5) which deals with increasing gender equality in the workplace, increasing women's participation in the workplace and improving economic security for female workers.²⁷⁹ The Plan aims to achieve this national priority by *"support[ing] employers and employees when domestic and family violence impacts on workplaces by providing a 'one-stop-shop' for resources on effective workplace responses to violence against women and their children"*.²⁸⁰

It is currently unclear how the Australian government intends to create this "one-stop-shop" for resources concerning domestic and family violence and the workplace. If the Fourth Action Plan is to

²⁷⁴ ALRC 2011, para. 15.11

²⁷⁵ McFerran 2011, p.2

²⁷⁶ Department of Social Services 2014, p.10

²⁷⁷ ANROWS 2015, p. 35

²⁷⁸ Commonwealth of Australia 2016, p.8

²⁷⁹ Ibid, p.10

²⁸⁰ Id

achieve its objective of delivering tangible results in terms of 'an increased proportion of women who feel safe in their communities',²⁸¹ then the Fourth Action Plan must incorporate measures to address the considerable adverse impacts that domestic and family violence can have on women's employment, as well as inadequate workplace responses to its impacts. Even if a "one-stop-shop" for resources is created, there will be a need for corresponding legislation that compels employers to utilise the resources available.

JobWatch recommends that the Fourth Action Plan, to be actioned between 2019 and 2022, incorporate the explicit National Priority of *Improving Employment Outcomes for Women Experiencing Violence*. Recommendations articulated above are designed to support this National Priority and are summarised below-:

1. Implement stronger legislative responses to the rights and needs of workers affected by domestic and family violence
 - Review and reform *Fair Work Act* provisions and protections
 - Review and reform modern awards/enterprise agreements
 - Review and reform anti-discrimination legislation
2. Enhance the evidence base regarding the impact of domestic and family violence in the employment context as well as best practice responses
 - Continued operation of ANROWS
 - Employment specific research projects
3. Improve community awareness of domestic and family violence as a workplace concern
 - A national, multi-platform awareness and education campaign

²⁸¹ Ibid p.13

- Production of educational materials and resources for employers
4. Enable employers to better support affected employees
 - Workplace education and training regarding responses to domestic and family violence
 - Facilitation of partnerships between workplaces and local domestic and family violence services
 5. Hold employers accountable for failures to adequately protect and support affected employees
 - Reinforce strong legislative responses
 - Community awareness campaign regarding employer duties and responsibilities

Recommendation 20: Incorporate explicit measures to address the employment implications of domestic and family violence into the Fourth Action Plan of the National Plan to Reduce Violence Against Women and their Children (2019–2022) under the new National Priority of Improving Employment Outcomes for Women Experiencing Violence

Future Directions

Domestic and family violence is complex and challenging, as is its intersection with employment. All relevant issues must be addressed to create effective, widespread and sustainable change. Some of the issues that have not been explored in this discussion paper are indicated below. These issues must also be addressed to ensure the protection and support of all victims of domestic and family violence.

1. *Prevention and Early Intervention with Perpetrators:* The first priority for efforts to protect and support victims of domestic and family violence in any context must necessarily be the prevention of violence. Prevention and early intervention work with perpetrators/potential

perpetrators must occur alongside any measures to meet the protection and support needs of victims.

2. *Responding to Perpetrators in the Workplace:* Effective workplace responses to domestic and family violence must incorporate measures that ensure perpetrator accountability and address the impact of violence on the workplace.
3. *Aboriginal and Torres Strait Islander Needs:* Targeted action is necessary to address the unique protection and support needs of Aboriginal and Torres Strait Islander people, who experience vastly disproportionate levels of domestic and family violence and face distinct barriers to social and legal justice.
4. *Cultural/Religious Barriers to Disclosure:* Targeted action is necessary to address the protection and support needs of people from particular cultures or religions who face additional barriers in disclosing home circumstances at work and accessing appropriate support.
5. *People with Disabilities:* Tailored intervention is required to address the intersecting protection and support needs of those with a disability experiencing domestic and family violence.
6. *Male Victims:* More robust understanding and responses are necessary regarding the domestic and family violence experiences and associated needs of male victims.
7. *Intervention Order Issues:* Further analysis and reform is required to address issues arising from the nature of Intervention Orders as requiring no finding of guilt and the impact these orders can have on the employment of victims. Of particular concern to JobWatch is how to ensure the continued employment of victims of domestic and family violence in situations in which a perpetrator is an

employer or manager in the victim's workplace and an Intervention Order contains a distance condition.

8. *Interactions Between Different Areas of Law:* Further analysis and reform is needed regarding issues arising from the interactions between the various areas of law pertinent to domestic and family violence. Interactions between employment law, family law, criminal law, anti-discrimination law, social security and child protection need to be thoroughly examined and necessary reforms considered.
9. *Magistrate Awareness and Skills:* To make appropriate and effective decisions in cases regarding domestic and family violence, Magistrates and other key decision makers should comprehensively understand the employment context of domestic and family violence and the implications their decisions have in this context.
10. *Specialist Domestic and Family Violence Service Responses to Client Needs:* Further work is necessary to enhance specialist domestic and family violence services' responses to the employment needs of women experiencing domestic and family violence.

Conclusion

The ramifications of domestic and family violence are felt across a broad spectrum of contexts and addressing this issue responsibly requires engagement within all of these contexts.

The workplace has emerged as a key context in which the impact of domestic and family violence is felt and can also be ameliorated. The widespread implementation of legislative and practical measures to address domestic and family violence in an employment context is integral to protecting the rights, safety and

prosperity of victims and must be pursued with commitment by policy-makers and employers alike.

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