

**ACTU Submission to  
the UN Special  
Rapporteur on Violence  
against Women**

**25 January 2017**

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## INTRODUCTION

The Australian Council of Trade Unions (**ACTU**) is the peak body for Australian unions, representing 46 affiliated unions and approximately 1.8 million working Australians and their families.

Gender-based violence is one of the most prevalent human rights violations in the world. More than 35 per cent of women worldwide have experienced physical and/or sexual violence,<sup>1</sup> and between 40 per cent and 50 per cent of women experience unwanted sexual advances, physical contact or other forms of sexual harassment at work.<sup>2</sup>

Violence against women, including family and domestic violence, intimate partner violence, sexual assault and sexual harassment, affects a significant number of working Australians.

Gender equality and the elimination of violence against women is a longstanding priority for the ACTU and its affiliated unions.

## SUMMARY

The Australian union movement has been at the forefront of efforts to raise awareness internationally about the benefits of engaging workplaces as part of a broader strategy to reduce the prevalence of violence against women and minimise its impacts.

In 2015, the ACTU mounted an historic test case in Australia's national workplace relations tribunal, the Fair Work Commission (**FWC**), seeking a new minimum employment standard of up to 10 days paid leave per year for employees subjected to family and domestic violence. This test case represents the first attempt anywhere in the world to provide a nationally consistent entitlement to paid family and domestic violence leave for both public and private sector workers.

The ACTU continues to play a significant role in assisting the deliberations of the International Labour Organization (**ILO**), whose International Labour Conference (**ILC**) will begin the process of setting a new standard on violence against women and men in the world of work at its meeting in June 2018.

### ***Violence against women is a workplace issue***

Workplaces, employees, employers and their representatives have a significant role to play in a whole-of-community response to violence against women, including by:

- Ensuring employees subjected to violence outside the workplace are afforded appropriate entitlements and support, including paid leave;

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<sup>1</sup> World Health Organization, Department of Reproductive Health and Research, London School of Hygiene and Tropical Medicine, South African Medical Research Council, *Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence* (2013) p.2. See more at: <http://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures#notes>

<sup>2</sup> <http://www.ituc-csi.org/gender-based-violence>

- Taking urgent action to eliminate sexual harassment and violence at work;
- Promoting gender equality in the workplace.

### ***Family and domestic violence***

Family and domestic violence is a crime, a gross human rights violation and a pervasive social harm. Rates of family and domestic violence in Australia are at a crisis point. Family and domestic violence is the leading contributor to death, disability and ill-health among Australian women aged between 15 and 44.<sup>3</sup>

In the twelve months prior to 2012, one in 50 women, and less than one in 100 men, experienced at least once incident of violence by an intimate partner. The majority of those women (62 per cent) were employed<sup>4</sup>.

There is an undeniable connection between the personal lives of women who experience family and domestic violence and their working lives. Violence can and does occur at the workplace itself, and violence taking place outside work disrupts workplace participation in numerous ways. Depending on the circumstances, an employee experiencing family and domestic violence might be subjected to discrimination at work or receive crucial support and assistance.

The ACTU believes that all employees, regardless of their circumstances, should be entitled to support and assistance at work, including paid leave to attend to activities such as court appearances, making safety or relocation arrangements or attending counselling. There are many urgent and pressing tasks that must be attended to in a short time in order to recover from violence and leave an abusive relationship. Family and domestic violence can impact on a women's health, children, finances, housing and legal situation. Aside from the obvious trauma associated with violence and abuse, the logistical challenge of seeking support for family and domestic violence should not be underestimated. Many support services, including courts, counsellors, schools and refuges, only operate during business hours. The nature of family and domestic violence means that accessing support services is rarely something that can be done in an orderly and predictable manner outside of working hours.

Paid leave to support employees who need to attend to such matters is important for two main reasons. Firstly, it is critical that employees subjected to family violence are able to maintain the employment relationship and continuity of employment. Employment is a crucial pathway for women escaping violent relationships. Sustained periods of employment can provide financial security, independence, social networks and increased self-esteem.<sup>5</sup>

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<sup>3</sup> Victorian Health Promotion Foundation (VicHealth) – Submission to the Royal Commission into Family Violence, May 2015.

<sup>4</sup> PSS 2012, ABS Table A17 'Women's experience of violence by intimate partner during last 12 months'

<sup>5</sup> S Patton, *Pathways: How Women Leave Violent Men*, Government of Tasmania, Hobart, 2003, p xviii; R Braaf and I Barrett Meyering, *Seeking Security: Women's Economic Wellbeing During and Following Domestic Violence*, Australian Domestic and Family Violence Clearinghouse, Sydney, 2011.

Secondly, employees who are already disadvantaged by family and domestic violence should not be further disadvantaged financially by having to take time off work to deal with urgent matters related to the abuse. The cycle of violence is closely connected with gender inequality and women's lack of financial independence and security. Women who are experiencing a lack of financial independence and security are less likely to be able to escape violence.

Paid family and domestic violence leave will enable employees to escape violent relationships, attend court hearings, seek counselling and care for children and family members without jeopardising their employment. Paid family and domestic violence leave will enable employers to support their employees to maintain their connection to the workforce, reducing lost productivity and unauthorised absenteeism and improving retention rates.

Workplace laws that protect job and financial security for women seeking to escape family and domestic violence are critical in the prevention of violence against women. While there are some protections already built into the Australian workplace relations framework, they are inadequate to assist employees subjected to family and domestic violence. Existing leave entitlements can be quickly consumed and are unfit for the purposes of attending court, urgently moving out of home, or seeking specialist support services. Further, a significant number of employees in Australia are employed on a casual basis (over 45 per cent of award-reliant employees are employed on a casual basis, including 51 per cent of all award-reliant women) and have historically received very limited paid leave entitlements. This means that too many employees subjected to family and domestic violence still face an unacceptable choice between their safety and their salary.

Uniform minimum standards are necessary to ensure that no employee is forced to make this choice.

### ***The history of family and domestic violence leave***

The ACTU welcomes the increased focus on family and domestic violence in Australia by governments, communities and the private sector, and the growing recognition of the need for an effective workplace response to family and domestic violence, including paid leave.

In 2011, the Australian Law Reform Commission conducted a detailed review of Family Violence and Commonwealth Laws and recommended that the FWC consider the inclusion of a model family violence term in modern awards.<sup>6</sup>

In 2015, the Commonwealth Government Senate Committee into Financial and Public Administration conducted a lengthy review into the prevalence and impact of family and domestic violence in Australia. The Committee's first Recommendation in its report is in support of paid family and domestic violence leave "*to assist victims of family and domestic violence to maintain employment and financial security while attending necessary appointments*" arising out of the experience of family and domestic violence.<sup>7</sup>

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<sup>6</sup> Australian Law Reform Commission, *Family Violence and Commonwealth Laws: Improving Legal Frameworks*, Recommendation 16-7 at 37

<sup>7</sup> Commonwealth of Australia, Finance and Public Administration References Committee, *Domestic Violence in Australia*, 15, and see Chapter 2

Between 2014 and 2016, the Victorian Royal Commission into Family Violence comprehensively examined strategies to effectively:

- prevent family violence
- improve early intervention
- support victims
- make perpetrators accountable
- better coordinate community and government responses, and
- evaluate and measure strategies, frameworks, policies, programs and services.

In March 2016, the Royal Commission handed down a detailed report of their findings and 227 recommendations for improvements to the system, including a number in support of the provision of paid family and domestic violence leave.<sup>8</sup>

In 2010, Surf Coast Shire Council became the first employer in Australia (and possibly the world) to introduce 20 days paid family and domestic violence into its enterprise agreement. Since then, a growing number of private and public sector employers of all sizes have recognised the benefits of voluntarily providing paid leave (either through enterprise agreements or workplace policies) to help employees deal with family and domestic violence, including Price Waterhouse Coopers, Brisbane Catholic Education, Telstra, National Australia Bank, Blundstone, many local councils including Surf Coast Shire Council and Greater Dandenong Shire Council, a number of universities including Swinburne, Deakin and Latrobe, and Virgin and Qantas airways. In addition, all state and territory public sector employees in Australia (except Western Australia) now have access to some form of paid family and domestic violence leave.

Despite this strong progress, too many Australian employees still do not have access to paid family and domestic violence leave, which is why the ACTU mounted a test case in 2015 seeking paid family and domestic violence leave as a guaranteed, uniform minimum employment standard.

### ***The Australian workplace relations system***

Minimum employment conditions in Australia are contained in modern awards (there are 122 modern awards covering different industries) and the National Employment Standards in the *Fair Work Act 2009 (FW Act)*.

Together, the National Employment Standards and modern awards form a minimum safety net of enforceable terms and conditions of employment in Australian workplaces (**the employment safety net**). At least 1.86 million employees in Australia are directly reliant on the employment safety net for their terms and conditions of employment.

The employment safety net is administered by an independent statutory body called the Fair Work Commission (**FWC**). Every four years, the FWC must review modern awards to ensure that they, together with the National Employment Standards, continue to provide a “fair and relevant” employment safety net for Australian employees.

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<sup>8</sup> State of Victoria, Royal Commission into Family Violence, 2014–16.

In reviewing the modern awards, the FWC must consider a number of social objectives set out in the FW Act [s136], which include the need to promote social inclusion and equal pay for equal work, and the needs of the low paid. In performing its functions and exercising its powers, the FWC must also take into account the need to respect and value the diversity of the workforce by helping to prevent and eliminate, *inter alia*, discrimination on the basis of sex, and family or carer's responsibilities [s578(c)] and take account of Australia's international obligations [s3(a)].

### ***The ACTU's test case***

As part of the 2015 Four Yearly Review, the ACTU applied to the FWC to vary all 122 modern awards to include a new entitlement to up to 10 days per year of paid family and domestic violence leave for employees who need to attend to activities related to the experience of being subjected to family and domestic violence. The ACTU's application was opposed by employer groups including the Australian Chamber of Commerce and Industry (**ACCI**) and the Australian Industry Group (**AiG**).

The case was heard by the FWC between 14 November 2016 and 2 December 2016 and a decision is expected in early 2017.

In the test case, the ACTU presented evidence to the FWC to show that:

- Rates of family and domestic violence in Australia are at crisis levels and have been for some time;
- Family and domestic violence has a range of adverse impacts on workplace participation;
- Workplaces have a crucial role to play in responding to and preventing family and domestic violence;
- Current entitlements and protections are not adequate for employees subjected to family and domestic violence;
- Family and domestic violence costs the economy, employers and employees;
- Family and domestic violence disproportionately affects women.

In order to explain the prevalence and nature of family and domestic violence in Australia to the FWC, the ACTU relied on expert reports from:

- (a) Professor Cathy Humphreys, Professor of Social Work at the University of Melbourne;
- (b) Dr Peta, Cox Senior Research Officer at Australia's National Research Organisation for Women's Safety (**ANROWS**);
- (c) Dr Natasha Cortis, Research Fellow at the Social Policy Research Centre at the University of New South Wales
- (d) Dr Michael Flood, Associate Professor in Sociology and Australian Research Council Future Fellow at the University of Wollongong.

- (e) Ms Ludo McFerran, 'Domestic Violence at Work' Research Associate, Women and Work Research Group, Business School at The University of Sydney.

The ACTU also called a number of lay witnesses, including community sector workers, union officials and survivors of family and domestic violence to give evidence about the impact of family and domestic violence on the working and personal lives of those subjected to it, and the inability of the current workplace relations system to adequately support all employees.

The key data source for the test case was the Australian Bureau of Statistic's Personal Safety Survey (PSS).<sup>9</sup> The PSS is the most comprehensive quantitative study of interpersonal violence in Australia. It is a household study that collects data on how often violence occurs and how many people are affected by it. It was conducted in 1996 (in relation to women only), 2005, and 2012, and is currently being conducted for 2016. The PSS gathers information about the demographic details of survey participants, their experience of violence, and characteristics of eight particular types of violence.<sup>10</sup>

### ***Indirect discrimination***

In the test case, the ACTU argued that family and domestic violence is not a gender neutral phenomenon and therefore the absence of paid family and domestic violence leave impacts disproportionately on women.

The ACTU led evidence from Dr Flood to highlight to the FWC that women are three times more likely than men to be subjected to family and domestic violence,<sup>11</sup> and the impact of family and domestic violence on women is more severe, in that women are more likely than men to sustain severe or more frequent injury and fear for their lives, to be subjected to frequent, prolonged and extreme violence, and to be subject to sexual assault as part of their experience of intimate partner violence.

The ACTU argued that the absence of paid family and domestic violence leave impacts disproportionately on women for the following reasons:

- (a) Women are overwhelmingly the victims of intimate partner violence;
- (b) Women are overwhelmingly the carers for children and other dependents;
- (c) Of the 1.86 million employees covered by modern awards, 57 per cent are women, and 51 per cent of those women are in casual, and therefore unstable, employment;
- (d) Award workers are some of the lowest paid workers in Australia;
- (e) Women are overrepresented among the award reliant and low paid;<sup>12</sup>
- (f) These factors are exacerbated by the gender pay gap of approximately 17 per cent in Australia.

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<sup>9</sup> <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0>

<sup>10</sup> The eight types of violence are female and male victims of physical assault, physical threat, sexual assault, and sexual threat.

<sup>11</sup> One in four women and one in twelve men have experienced family and domestic violence since the age of 15.

<sup>12</sup> *Annual Wage Review 2015–2016* [2016] FWCFB 3500, [576].

## International obligations

The Convention on the Elimination of All Forms of Discrimination against Women (**CEDAW**) and the Convention on the Rights of the Child and the Optional Protocols, as well as other relevant conventions and treaties, provide an international legal framework and a comprehensive set of measures for the elimination and prevention of all forms of discrimination and violence against women and girls.

The ACTU (supported by the Australian Human Rights Commission<sup>13</sup>) argued that the provision of paid family and domestic violence leave is consistent with the requirement in Article 2(2) of CEDAW that Australia “*take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise*” and provide assistance to those experiencing domestic violence including by providing adequate opportunities for employment.

### *New ILO standard on gender-based violence*

Discussions are currently taking place within the International Labour Organization (**ILO**) to introduce a new international labour standard on gender-based violence at work. The International Labour Conference (**ILC**) will begin the process of setting a new standard on violence against women and men in the world of work at its meeting in June 2018. In the lead up to this meeting, the ILO Governing Body (**GB**) is reviewing violence in the world of work, including its gender dimensions, its impact on workers and enterprises, and responses in national and international laws and regulations, collective agreements and enterprise policies.

Ged Kearney, President of the ACTU, attended a Meeting of Experts on Violence against Women and Men in the World of Work from 3–6 October 2016. Australia chaired the meeting and experts were drawn from Argentina, Australia, Belgium, Canada, India, Rwanda, South Africa and Sweden. The meeting of experts adopted a number of conclusions to assist the GB with its deliberations, including that domestic violence and other forms of violence and harassment are relevant to the world of work when they impact the workplace.<sup>14</sup>

### *Domestic violence at work network*

The ACTU is also a founding member of an international domestic violence at work network ([www.dvatworknet.org](http://www.dvatworknet.org)) of researchers, experts, social and labour organisations, and employers. The network was established in 2014 with funding from the Social Science and Humanities Research Council of Canada to conduct research and mobilize knowledge about the impacts of domestic violence in the workplace. Among the first steps, it carried out a series of national surveys to learn about the impact of domestic violence on workers and the workplace. Findings across the surveys have consistently found similar negative impacts on attendance, performance and safety.<sup>15</sup>

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<sup>13</sup> AHRC’s two submissions to the FWC can be found here:

<https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/common/am2051-sub-ahrc-120516.pdf>

<https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am20151-replysub-ahrc-141016.pdf>

<sup>14</sup> International Labour Organization, Meeting of Experts on Violence against Women and Men in the World of Work, Conclusions Adopted by the Meeting, MEVWM/2016/6, Geneva, 3–6 October 2016

<sup>15</sup> There were six national surveys completed by December 2015 (Australia, Canada, New Zealand, UK, Philippines, Turkey). For further information about the surveys see:

<http://dvatworknet.org/research/national-surveys>

## CONCLUSION

The ACTU will continue to campaign for 10 days paid family and domestic violence leave as a uniform minimum employment standard in Australia, as well as advocate internationally for greater understanding of the vital role of the workplace in the prevention of all forms of violence against women.

Please contact Sophie Ismail, Legal and Industrial Officer at the ACTU on [sismail@actu.org.au](mailto:sismail@actu.org.au) or 03 9664 7218 if you would like further information about any aspect of this submission.

## REFERENCES

Full copies of the ACTU's submissions and witness statements presented to the FWC in the 2015 test case can be found at the following links:

1. Initial submissions filed 1 June 2016:

<https://www.fwc.gov.au/sites/awardsmodernfouryr/common/am2051-sub-actu-010616.pdf>

2. Reply submissions filed 5 October 2016:

- a. <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am20151-replysub-actu-051016.pdf>

- b. <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am20151-sub-actu-171016.pdf>

3. Closing submissions filed 28 November 2016:

<https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am20151-sub-actu-281116.pdf>

All documents related to the case, including the employer parties' submissions, can be found at this link:

<https://www.fwc.gov.au/awards-agreements/awards/modern-award-reviews/4-yearly-review/common-issues/am20151-family-and>

Key documents (with links embedded) relied on by the ACTU in the test case are listed below:

KPMG, <a href="#">The Cost of Violence Against Women and their Children</a> .	March 2009
KPMG, <a href="#">The Cost of Violence Against Women and their Children in Australia</a> .	May 2016
State of Victoria, <a href="#">Royal Commission into Family Violence</a> Summary and Recommendations (pages 1–106) Volume I (pages 1–74 only) Volume IV, <i>Chapter 21: Financial Security</i> (pages 93 – 133) Volume VI, <i>Chapter 37: The Workplace</i> (pages 71–97).	March 2016
Commonwealth of Australia, Finance and Public Administration References Committee, <i>Domestic Violence in Australia</i> , Chapters 1 and 2. <a href="http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Domestic_Violence/Report">http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Domestic_Violence/Report</a>	August 2015

<p>Australian Law Reform Commission, <a href="#">Family Violence and Commonwealth Laws: Improving Legal Frameworks</a></p> <p>Chapter 1 (Summary)</p> <p>Chapter 15 (Employment Law)</p> <p>Chapter 16 (Fair Work Act), and</p> <p>Chapter 17 (National Employment Standards).</p>	<p>November 2011</p>
<p>Breckenridge, Cale, Hameed, McCaskie, Tzoumakis, <a href="#">Implementation of DV Clauses – An Employer’s Perspective</a>, Gendered Violence Research Network, UNSW.</p>	<p>2015</p>
<p>Kahui, Ku, and Snively, <a href="#">Productivity Gains from Workplace Protection of Victims of Domestic Violence</a> (commissioned by the New Zealand Public Service Association).</p>	<p>March 2014</p>
<p>McFerran, Cortis and Trijbetz, <a href="#">Safe at Home, Safe at Work: Domestic Violence Clauses in Your Workplace</a> Gendered Violence Research Network, the University of New South Wales.</p>	<p>June 2013</p>
<p>McFerran (December 2011), <a href="#">Safe at Home, Safe at Work? National Domestic Violence and the Workplace Survey</a>, Australian Domestic and Family Violence Clearinghouse and Centre for Gender Related Violence at UNSW.</p>	<p>December 2011</p>
<p>Male Champions of Change (November 2015), <a href="#">Playing Our Part: Workplace Responses to Domestic and Family Violence</a>.</p>	<p>November 2015</p>

**ADDRESS**

ACTU  
365 Queen Street  
Melbourne VIC 3000

**PHONE**

1300 486 466

**WEB**

[actu.org.au](http://actu.org.au)

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