



Inquiry into family, domestic and sexual violence

Australian Council of Trade Unions submission to the House
Standing Committee on Social Policy and Legal Affairs

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Introduction

Since its formation in 1927, the Australian Council of Trade Unions (**ACTU**) has been the only national peak trade union body in Australia. The ACTU's 43 affiliated unions and State and regional trades and labour councils are made up of about 1.8 million members working in a range of industries and occupations in the public and private sectors; many of whom have been at the forefront of Australia's public health, economic and policy response to the COVID-19 crisis.

Work has always had a central role to play in advancing gender equity and preventing violence against women, through promoting equitable workplace cultures, increasing women's economic security and supporting women experiencing and escaping from family and domestic violence. The role of work has never been more important to the advancement of gender equality and the prevention of violence against women. Prior to the COVID-19 pandemic, women were already disadvantaged in our workplace relations system. The pandemic has exacerbated these inequities, including further increasing the risks of violence against women, both at work and at home. The next National Action Plan to Reduce Violence against Women and their Children must address these matters.

The Standing Committee on Social Policy and Legal Affairs has been asked to inquire into and report on family, domestic and sexual violence to inform the next *National Plan to Reduce Violence against Women and their Children*, including the following matters:

- a) Immediate and long-term measures to prevent violence against women and their children, and improve gender equality.*
- b) Best practice and lessons learnt from international experience, ranging from prevention to early intervention and response, that could be considered in an Australian context.*
- c) The level and impact of coordination, accountability for, and access to services and policy responses across the Commonwealth, state and territory governments, local governments, non government and community organisations, and business.*
- d) The way that health, housing, access to services, including legal services, and women's economic independence impact on the ability of women to escape domestic violence.*
- e) All forms of violence against women, including, but not limited to, coercive control and technology-facilitated abuse.*
- f) The adequacy of the qualitative and quantitative evidence base around the prevalence of domestic and family violence and how to overcome limitations in the collection of nationally consistent and timely qualitative and quantitative data including, but not limited to, court, police, hospitalisation and housing.*
- g) The efficacy of perpetrator intervention programs and support services for men to help*

them change their behaviour.

h) The experiences of all women, including Aboriginal and Torres Strait Islander women, rural women, culturally and linguistically diverse women, LGBTQI women, women with a disability, and women on temporary visas.

i) The impact of natural disasters and other significant events such as COVID-19, including health requirements such as staying at home, on the prevalence of domestic violence and provision of support services.

j) The views and experiences of frontline services, advocacy groups and others throughout this unprecedented time.

k) An audit of previous parliamentary reviews focussed on domestic and family violence.

l) Any other related matters.

The ACTU welcomes the opportunity to make a submission addressing a number of the matters listed above. A number of our affiliates have also made separate submissions, which we endorse.

Executive Summary

The Australian Union movement has played a leading role in the global campaign to prevent violence and harassment against women at work and at home, including making a minimum of 10 days paid family and domestic violence leave per year accessible for every Australian worker.

The right to be free from violence and harassment is a workplace right, a human right, and a health and safety right.¹ Decent work is absolutely central to the economic security and health and safety of women, and measures to address gender inequity at work play a crucial part in the prevention of violence against women.

The evidence and research showing the prevalence and seriousness of violence against women across the Australian community is overwhelming and incontrovertible. Violence affects women from all walks of life: 1 in 3 Australian women (34.2%) has experienced physical and/or sexual violence; and 1 in 4 Australian women (23.0%) has experienced physical or sexual violence by current or former intimate partner since age 15.² People with disabilities, LGBTIQ and culturally diverse communities face particular challenges.³ In 2014–15, Aboriginal and Torres Strait Islander women were 32 times as likely to be hospitalised due to family violence assaults as non-Indigenous

¹ Australian Human Rights Commission, *Respect@Work: Sexual Harassment National Inquiry Report*, (2020) at pp 26 and 73

² <https://www.ourwatch.org.au/quick-facts/#key-statistics-on-violence-against-women-in-australia>

³ Victorian Royal Commission into Family Violence, Volume 5, Chapter 26 - Family Violence and Diversity

women.⁴ Intimate partner violence is the third greatest health risk factor for women aged 25-44⁵ and a leading driver of homelessness for women.⁶ Violence and harassment against women remains prevalent and grossly under-reported in Australian workplaces, with workers in insecure employment particularly at risk.

The 12-year *National Plan to Reduce Violence against Women and their Children 2010-2022* (the **National Plan**) was endorsed by the Council of Australian Governments in February 2011. It has been implemented through four separate three-year plans, each focusing on five or six priority areas: [First Action Plan: Building Strong Foundations \(2010 to 2013\)](#); [Second Action Plan: Moving Ahead \(2013 – 2016\)](#); [Third Action Plan - Promising Results \(2016–2019\)](#); [Fourth Action Plan – Turning the Corner \(2019-2022\)](#). The three-year Plans acknowledge the role of employers and workplaces in supporting women and preventing violence to varying degrees. The First Plan in particular recognised that employers and workplaces have a key role to play in the advancement of gender equality and the prevention of violence against women (pp 14, 16) and the Third Plan reiterated the need to embed gender equality in workplace culture and increase women’s workforce participation and economic security (p 10).

Recommendations

The next National Plan must expressly recognise family, domestic and sexual violence against women as a workplace issue, and provide specific detail on the need to promote gender equity and better health and safety for women at work through the following key measures:

- 1. A minimum of 10 days paid family and domestic violence leave for every worker**
- 2. Reduce insecure work, including a clear and fair definition of casual worker and stronger rights for workers to convert to permanent employment**
- 3. Stronger rights for workers to bargain together for safer and fairer workplace conditions and measures to protect and strengthen Awards**
- 4. Measures to protect and strengthen Superannuation**
- 5. A stronger mandate for the Fair Work Commission to proactively tackle gender inequity across all of its functions, including better pay equity provisions and an expert Gender Equity Panel**

⁴ SCRGSP (Steering Committee for the Review of Government Service Provision) 2016. [Overcoming Indigenous Disadvantage: key indicators](#). Canberra: Productivity Commission

⁵ Australian Institute of Health and Welfare (AIHW) 2019. [Family, domestic and sexual violence in Australia: continuing the national story](#). Cat. no FDV 3. Canberra: AIHW.

⁶ Mission Australia 2018. [Out of the Shadows: domestic and family violence](#), a leading cause of homelessness in Australia.

6. *A new capacity for the Fair Work Commission to deal with sexual harassment and discrimination matters as recommended by the Sex Discrimination Commissioner's Respect@Work report*
7. *A new Model Work Health and Safety (WHS) Regulation on Psychosocial Risks at Work, which provides clear duties on employers to manage the risks of violence and harassment at work, as recommended by the Sex Discrimination Commissioner's Respect@Work Report and the Boland Review into Australia's Model WHS Laws*
8. *Guaranteed access to secure, quality Family Friendly Working Arrangements for all those workers who need them*
9. *Universal access to quality, affordable Early Childhood Education and Care*
10. *A Model WHS Regulation and Code of Practice which addresses both the physical and psychosocial impacts of COVID-19, including increased risks of violence and harassment*
11. *A minimum of 10 days Paid Pandemic Leave for every worker*
12. *Ratification of the ILO Convention on Violence and Harassment 2019 (C.190)*

The National Plan must address the impacts of the COVID-19 crisis on women, including the need for a proper gender analysis of the impact of policy decisions and interventions, equal representation on all COVID-19 committees, and investment in jobs for women during the recovery phase.⁷

Family, Domestic and Sexual Violence against Women is a Workplace issue

Family, domestic and sexual violence against women is a workplace issue. It is a workplace issue because it can and does occur at work or using work resources; it is a workplace issue because it impacts significantly on women's ability to attend and participate in work; it is a workplace issue because financial stability and employment are absolutely crucial to enable women to leave violent relationships and to recover from violence.⁸ It is a workplace issue because violence against women is estimated to cost the Australian economy about \$22 billion per year, including \$1.3 billion in lost productivity, victim and perpetrator absenteeism, and the cost of replacing employees who have left the workforce, either through injury or death, due to family and domestic violence.⁹

⁷ See [ACTU Submission to Select Committee on COVID-19, 28 May 2020](#); and <https://www.actu.org.au/actu-media/media-releases/2020/unions-launch-plan-for-jobs-led-reconstruction>

⁸ See for example: K Valentine and J Breckenridge, 'Responses to family and domestic violence: supporting women?', *Griffith Law Review*, 25(1), 2016, pp. 41–2; and L McFerran, [Safe at home, safe at work? National domestic violence and the workplace survey 2011](#), Australian Domestic and Family Violence Clearinghouse, University of New South Wales, October 2011.

⁹ Price Waterhouse Coopers, *A High Price to Pay: The Economic Case for Preventing Violence Against Women*, 2015; and KPMG, *The Cost of Violence Against Women and their Children* (KPMG 2009 Report), 2016

The first paid family and domestic leave entitlements were included in collective agreements negotiated by the ASU and lodged with the Fair Work Commission in 2010.¹⁰ While the majority of employers (60%) now provide some form of support for workers experiencing family and domestic violence, only 30.3% provide paid leave, leaving far too many Australian workers still facing the impossible choice between their safety and their paycheck.¹¹

The need for universal paid family and domestic violence leave

For permanent employees subjected to violence, existing leave entitlements are quickly consumed and/or unfit for purpose. For the more than 2 million Australian workers employed casually, over half of whom are women, there are no paid leave entitlements to rely on at all.¹² This regulatory gap means that Australian workers subjected to violence face an unacceptable choice between their safety and their wages. New minimum standards are necessary to ensure that no employee is ever forced to make this choice. Paid family and domestic violence leave would enable employees to do what is necessary to escape and recover from violent relationships, including attending court hearings, seeking counselling and other support, and caring for children and family members affected by violence, without the risk of jeopardising their employment or losing income. It would enable employers to support their employees to maintain their connection to the workforce, reducing lost productivity and unauthorised absenteeism, and improving retention rates.

On 26 March 2018, the Full-Bench of the Fair Work Commission (**the Commission**) varied all modern awards to include a new entitlement to 5 days unpaid family and domestic violence leave.¹³ The Commission's decision followed an application by the ACTU under s 156 of the *Fair Work Act 2009 (FW Act)* to vary all modern awards to include an entitlement to 10 days paid family and domestic violence leave. The ACTU's application was the subject of extensive and detailed evidence and submissions from the ACTU and two principal employer parties, the Australian Industry Group and the Australian Chamber of Commerce and Industry, before the Commission over five hearing days. The ACTU called evidence from six expert witnesses and 18 lay witnesses, including community sector workers and survivors of family and domestic violence, to explain the workplace impact of family and domestic violence and the crucial importance of paid leave. The Commission also heard evidence and submissions from Price Waterhouse Coopers and the

¹⁰ M Baird, L McFerran and I Wright, '[An equality bargaining breakthrough: paid domestic violence leave](#)', *Journal of Industrial Relations*, 56(2), 2014, p. 190.

¹¹ <https://www.wgea.gov.au/sites/default/files/documents/2018-19-Gender-Equality-Scorecard.pdf> at p 8

¹² ABS Labour Force, Detailed, Quarterly, May 2020 (Cat. No. 6291.0.55.003).

¹³ 4 Yearly Review of Modern Awards – Family and Domestic Violence Leave Clause [2017] FWCFB 3494

Victorian Government about their experiences of providing paid family and domestic violence leave to their staff. After hearing all the evidence, the Commission found that:

(a) Family and domestic violence is a significant problem which has a significant impact on affected individuals and the community, and which has a real and tangible impact on employees and employers in the workplace.¹⁴

(b) The evidence established that circumstances faced by employees who experience family and domestic violence, by contrast with other forms of interpersonal crime or hardship, requires a special response.¹⁵

(c) Existing entitlements, such as the right to request a flexible working arrangement, personal leave, and annual leave, do not meet the needs of employees subjected to family and domestic violence.¹⁶

The Full-Bench said:

*We accept the evidence that the provision of paid leave would assist employees who experience family and domestic violence. It would obviously reduce the financial impact of the consequences of the violence. We accept the evidence that employees who experience family and domestic violence face financial difficulties as a result of the family and domestic violence such as relocation costs or becoming a sole parent. Having to lose pay at the same time because of the need to attend to the consequences of family and domestic violence would add to the financial burden faced by these employees. We therefore, would have no difficulty in concluding that the provision of paid leave would be a desirable outcome.*¹⁷

However, because the FW Act requires a party to show that an award variation is not only desirable and supported by probative evidence, but also ‘necessary’, the Commission was not able to grant the ACTU’s application for 10 days paid leave. The outcome of this case shows that the current rules make it too difficult for employees to win important improvements to minimum working conditions, even when they are overwhelmingly supported by the evidence.

While the provision of 5 days unpaid leave is a step in the right direction, it falls well short of what is required. Economic security is the primary factor determining whether a person subjected to family and domestic violence remains in, escapes from or returns to a dangerous relationship. Family and domestic violence impacts many aspects of a person’s life, including in the areas of

¹⁴ Ibid at [49], [56], [116]

¹⁵ Ibid at [51]

¹⁶ Ibid at [42]–[46], [55].

¹⁷ Ibid at [60]

health, children, access to legal and financial resources, and accommodation. There are many urgent tasks that must be attended to in order to recover from violence and/or to leave an abusive relationship. Aside from the obvious trauma associated with violence, the sheer logistical challenge of dealing with the effects of family and domestic violence is significant. Members of the Australian Services Union in New South Wales who are frontline workers in the family and domestic violence sector have recently estimated that leaving an abusive relationship and finding a new, safe place to live can cost on average \$18,250 and take 141 hours.

Many services, including courts, banks, counsellors, schools, and refuges, only operate during business hours. Further, 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. Paid leave allows an employee to take an absence from work to attend necessary appointments, or to make arrangements to relocate or ensure their children's protection, without suffering financial disadvantage. This not only supports people subjected to current violence, but also facilitates safe escape from dangerous situations, helping to reduce or eliminate future violence.

Without economic resources, leaving a violent relationship is extremely difficult. Research confirms that economic disadvantage is "a barrier to achieving safety, security, independence, and wellbeing following violence", and, conversely that economic security gives women "alternatives to abusive relationships, and the means to avoid and leave abusive partners".¹⁸ Following extensive consultation, hearings, and research, the Victorian Royal Commission into Family and Domestic Violence Report found that people subjected to family and domestic violence "are more likely than other women to experience financial difficulty and many women experience poverty as a result of family violence, regardless of their prior economic circumstances." The Commission heard evidence that "financial security is a significant protective factor in victims gaining freedom from abusive partners".¹⁹

Investments in women's safety pay off; research conducted in New Zealand shows that for every woman whose experience of violence was prevented as a result of the workplace protections in a particular year, an average of \$3,371 (a conservative estimate) in production-related costs are avoided. In July 2018, New Zealand passed legislation providing for 10 days paid family and domestic violence leave.²⁰

¹⁸ Cortis N & Bullen J (2015), *Building effective policies and services to promote women's economic security following domestic violence: state of knowledge paper*, Australia's National Research Organisation for Women's Safety, Landscapes, Issue 07, August at pp 2 and 8

¹⁹ Victorian Royal Commission into Family Violence Report, Volume IV, Chapter 21 'Financial Security', 93

²⁰ Kahui S, Ku B, Snively S, Productivity Gains from Workplace Protection of Victims of Domestic Violence (commissioned by the New Zealand Public Service Association), March 2014; <https://www.sbs.com.au/news/new-zealand-brings-in-paid-domestic-violence-leave>

A number of inquiries and reviews have highlighted the significance of the workplace in responding to family and domestic violence, and the importance of paid leave specifically.²¹ During the Modern Award test case, the Commission heard significant evidence about the connection between financial and economic security and recovery from family and domestic violence. For example, Marilyn Beaumont, a public health specialist and workplace consultant, gave evidence that while poor socio-economic wellbeing can result from family and domestic violence, adverse impacts on health and wellbeing can be minimised by a supportive workplace, which can be encouraged by the provision of paid leave.²² A survivor of family and domestic violence gave evidence that she utilised paid leave provided by her employer to attend meetings with her solicitor and to attend court, and that the paid entitlement assisted her to meet legal costs arising from the violence of over \$6,000.²³

A minimum safety net standard of 10 days paid family and domestic violence leave has developed over a number of years as a consequence of the input of experts in the field and negotiations at the workplace level between employers and employees. Evidence provided to the Commission during the Modern Award test case shows that at least 10 days is an industrial norm among the many workplaces which already provide access to paid family and domestic violence leave. For example, the evidence of Debra Eckersley of Price Waterhouse Coopers was that their decision to provide at least 10 days leave was informed by their own research which had revealed a ‘common standard’ of 10 days, as well as the advice of experts in the field of family and domestic violence.²⁴ Many workplaces covered by enterprise agreements provide significantly more paid leave to their employees, for example 15 or 20 days.²⁵

The evidence presents a clear picture of the central importance of employment and financial security to recovery and escape from family and domestic violence. Conversely, lack of financial security can have a profoundly negative impact on a person’s ability to recover from or escape violent situations. Julie Kun, CEO of WIRE Women’s Services, explained in evidence that in practice,

²¹ Commonwealth of Australia, Domestic Violence in Australia, Senate Inquiry, August 2015 (Senate Inquiry Report); Australian Law Reform Commission, Final Report Family Violence and Commonwealth Laws— Improving Legal Frameworks (ALRC Report 117), February 2012; New South Wales, Stop the Violence, End the Silence, NSW Government, June 2010: <http://arp.nsw.gov.au/c2011-08-support-employees-experiencing-domestic-violence>; South Australia, Taking a Stand: Responding to Domestic Violence, October 2014; Queensland, Not Now, Not Ever, Queensland Government Special Taskforce, February 2015; Victoria, Victorian Royal Commission into Family Violence, March 2016

²² 4 Yearly Review of Modern Awards – Family and Domestic Violence Leave Clause [2017] FWCFB 3494 - Witness statement of Marilyn Beaumont (tendered and marked as Exhibit B7) at [22], [28]–[41], [48]–[50]; and see Transcript, Tuesday 15 November 2016, PN 1304.

²³ 4 Yearly Review of Modern Awards – Family and Domestic Violence Leave Clause [2017] FWCFB 3494 - Statement of Confidential Witness 1 (tendered and marked as Exhibit B23)

²⁴ 4 Yearly Review of Modern Awards – Family and Domestic Violence Leave Clause [2017] FWCFB 3494 - Transcript, 17 November 2016, PN 1890 and PN 1893.

²⁵ 4 Yearly Review of Modern Awards – Family and Domestic Violence Leave Clause [2017] FWCFB 3494 - Witness Statement of Ludo McFerran, (tendered and marked as Exhibit B16)

women without paid leave entitlements have to choose between being safe and being poor.²⁶ This is not a choice any worker should have to make in modern Australia.

The impact of a new minimum entitlement to 10 days paid family and domestic violence leave on employers is likely to be minimal. The available evidence suggests that only relatively small numbers of employees seek to access the leave. Employers who already provide paid family and domestic violence leave to their employees confirm that implementation costs are manageable.²⁷ A 2016 Australia Institute Report calculated that (based on ABS data and other sources) the overall costs to Australian employers of providing paid family and domestic violence leave to all workers would be in the range of about \$85 to \$120 million a year – “so small it would be difficult to measure: we estimate that incremental payments to workers taking the leave would amount to one fiftieth of one percent (0.02%) of current payrolls.”²⁸ Figures from the Victorian and Western Government confirm that while employees are seeking to access paid leave entitlements (vindicating the need for it), take-up rates are manageable. In Victoria, about 216,000 public sector employees have had access to 20 days paid family and domestic violence leave since mid-2016. In the one year since the introduction of the measure, 58 leave claims have been made, which equates to 0.02% of the employee population. On average, employees took 5.1 days of family violence leave per claim, totalling 295.5 days.²⁹ Public sector employees in Western Australia have had access to 10 days paid family and domestic violence leave since August 2017. Figures show that 80 full days and 480 hours in part days were accessed by employees between 18 August 2017 and 17 February 2018, totalling about 150 days.³⁰

The ACTU strongly urges the Committee to recommend that the next National Plan specify that 10 days paid family and domestic violence leave in the national employment standards is an essential measure to support women recovering from or escaping from violence.

Gender inequality in Australian workplaces

Australia’s labour market is characterised by significant gender-based inequalities. Priority areas for action are discussed below.

²⁶ 4 Yearly Review of Modern Awards – Family and Domestic Violence Leave Clause [2017] FWCFB 3494 - Witness Statement of Julie Kun, (tendered and marked as Exhibit B12) at [22], [46]–[58].

²⁷ Implementation of Domestic Violence Clauses – An Employer’s Perspective, Gendered Violence Research Network, University of NSW, Sydney, November 2015.

²⁸ Stanford, J, Economic Aspects of Paid Domestic Violence Leave Provisions, Centre for Future Work at the Australia Institute, 2016

²⁹<https://www.theguardian.com/society/2017/jun/09/more-than-50-public-sector-workers-claim-family-violenceleave-in-victoria>

³⁰<http://www.abc.net.au/news/2018-08-21/wa-public-servants-have-used-150-days-of-domestic-violenceleave/10144296>

Violence and harassment at work

Gender-based violence and harassment is prevalent and grossly under-reported in Australian workplaces, with workers in insecure employment particularly susceptible. Almost 10,000 people responded to the ACTU's 'sexual harassment in the workplace' survey between 18 September and 30 November 2018. Two in three women and one in three men told us they have been subjected to one or more forms of sexual harassment at work. Only a quarter of people who were harassed made a formal complaint, less than half reported the incident and 40% told no one at all, because workers do not believe that the current rules will deliver them justice.³¹

Stronger employment, workplace health and safety and anti-discrimination laws are urgently needed address this systematic problem.³² In March 2020, the Sex Discrimination Commissioner released an important report, 'Respect@work', which finds that our laws are failing to keep workers safe and makes 55 recommendations for reform, including:

- Stronger work health and safety laws to make sure that employers are obliged to tackle the underlying causes of sexual harassment at work;
- Better access to justice for workers through a quick, easy new complaint process in our workplace laws;
- Stronger powers for the Sex Discrimination Commissioner to investigate industries which are rife with sexual harassment, such as retail and hospitality, and positive duties on employers;
- Ratification of the ILO's Convention on Violence and Harassment at Work 2019 (C.190).³³

Sexual harassment happens because gender inequality is ingrained in our workplaces. Respect@Work shows that urgent action to prevent sexual harassment and to tackle the underlying causes of sexual harassment and gendered violence is needed. The ACTU has joined with the #Power2Prevent group of over 100 community organisations to call on the Government to urgently implement the Sex Discrimination Commissioner's recommendations.³⁴

³¹ ACTU, 'Sexual Harassment in Australian Workplaces: Survey results' (Report 2018)

³²http://humanrights.gov.au/sites/default/files/2019-05/submission_306_-_australian_council_of_trade_unions_actu.pdf

³³<https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>

³⁴<https://www.legalaid.vic.gov.au/about-us/news/australian-government-must-act-on-sexual-harassment-report-recommendations>

The gender pay gap and gender segregation

While there are a number of ways to measure the gender pay gap, all data sources show ongoing gender pay gaps. The national gender pay gap is currently 13.9%, which means women working full-time earn \$242.90 a week less than men working full-time.³⁵ The pay gap differs from jurisdiction to jurisdiction, with Western Australia recording the highest gender pay gap at 22.1%.³⁶ It is crucial to note the limitations of various measures of the gender pay gap. Average Weekly Ordinary Time Earnings (AWOTE), which is used to measure the national gender pay gap, only compares the ordinary time weekly earnings of men and women. It excludes overtime or bonuses or other top-ups, which often are significant contributors to the gender pay gap. When Full-Time Earnings (FTE) are measured, the gap increases to 17%, and has persisted at this level since the early 1990s, in spite of the growth in women's education and experience. Significantly, both the AWOTE and FTE measures exclude women who work less than full-time hours, which means that the true gap between men and women's earnings is significantly underestimated by these measures because they fail to capture women's reduced working hours, which are due in significant part to unpaid domestic and care work commitments. When the average weekly earnings (AWE) of men and women workers are measured, the gender pay gap rises to 31.4%.³⁷

Australia's workforce is highly gender segregated, with industries and occupations dominated by women characterised by lower wages and fewer protections. Comparing the mean wages of award-reliant men and women over the period 2008-2014, research finds a 'strong penalty for working in an industry that is typically female', for both male and female employees, suggesting that 'the award system sets systematically lower minimums the more heavily an industry employs women.'³⁸ Women are more likely than men to be both low-paid employment and award reliant - 54.1% of women are low paid and 57.4% are award reliant, and 55.2% of adult employee women are both low-paid and award-reliant. Low-paid, award reliant employees are concentrated in Retail (18.4%) and Accommodation and food services (20.2%).³⁹ Industries dominated by women have high levels of award reliance: 44.9% of the workforce in Accommodation and food services is award reliant;

³⁵ ABS Full-Time Adult Average Weekly Ordinary Time Earnings (AWOTE) 2020

³⁶<https://www.wgea.gov.au/data/fact-sheets/australias-gender-pay-gap-statistics#:~:text=This%20data%20includes%20superannuation%2C%20bonuses,than%20women%20working%20full%20time.>

³⁷ ACTU Initial Submission to the Annual Wage Review at [459]-[460], Figure 112

³⁸ Barbara Broadway Roger Wilkins, *Working Paper Series: Probing the Effects of the Australian System of Minimum Wages on the Gender Wage Gap*, December 2017 at 20

³⁹ [Wilkins R & Zilio F \(2020\), Prevalence and persistence of low paid award-reliant employment, Fair Work Commission Research Report 1/2020](#), pp 11 and 20, Table 3 and Table 8

31.7% in Healthcare and Social Assistance and 30.1% in Retail.⁴⁰ The majority of workers in all of these sectors are women.⁴¹

A number of measures must be taken to close the gender pay gap, including better pay equity provisions, stronger rights for workers to bargain together for safer and fairer workplace conditions, and measures to protect and strengthen Awards. The Commission should have a clear mandate to address gender equity issues across all of its functions and an expert Gender Equity Panel should be established.

The retirement income gap

The vast majority (90%) of women will retire with inadequate retirement savings. In 2010, one in five women yet to retire had no superannuation at all.⁴² Women currently retire with 47% less superannuation than men and 40% of older single retired women live in poverty and experience economic insecurity in retirement.⁴³ One of the Government's first responses to the COVID-19 crisis was to allow individuals experiencing hardship to access up to \$10,000 of their superannuation before July and a further \$10,000 between July and September this year. The program has recently been extended until December. There is strong preliminary evidence that this policy will further entrench the retirement income gap and harm women's economic security. For example:

1. HESTA data on members accessing their super under the COVID-19 Early Release of Super scheme reveals a high proportion of younger women have effectively drained their super, decreasing their balances by between 60-78%.⁴⁴
2. AMP analysis found that 21% of women were withdrawing their starting super balances, compared to 17% of men. Further, Female AMP clients were also withdrawing a larger proportion of their super than men and were more likely to clear out their entire super savings (14%) compared to their male counterparts (12%).⁴⁵
3. Recent research by Bankwest Curtin Economics Centre found women make up a greater share of the casual workforce overall at 55% with some experts estimating that workers who withdraw \$20,000 now could lose more than 100,000 by the time they retire.⁴⁶

⁴⁰ [Fair Work Commission, Statistical report—Annual Wage Review 2019–20, Version 14, 18 June 2020, p 64 Table 7.1](#)

⁴¹ ABS, Characteristics of Employment, August 2019

⁴² KPMG, She's Price(d)less: The economics of the Gender Pay Gap, October 2016, p 2

⁴³ Not So Super, For Women: Superannuation and Women's Retirement Outcomes

⁴⁴ <https://www.hesta.com.au/about-us/media-centre/Early-release-super-scheme-sees-younger-women-drain-super-HESTA.html>

⁴⁵ <https://corporate.amp.com.au/newsroom/2020/MAY/early-super-release-gender-data>

⁴⁶ Referenced in ASU Submission to Select Committee on COVID-19, 4 June 2020 - <file:///C:/Users/sismail/Downloads/asu-submission-200604.pdf>

Women's ability to make up for their decreased superannuation through future earnings is already compromised due to the gender pay gap, and is now further reduced due to the pandemic related job losses and reduction of hours outlined below. The Government's policy has in effect meant that the most impacted workers and those least able to pay for it have had to fund their own COVID-19 recovery. The availability of early access to superannuation may also expose women in violent relationships to further financial abuse and coercion.

The ACTU's submission to the retirement income review outlines the measures necessary to protect and strengthen superannuation for women.⁴⁷

Insecure work

Women are overrepresented among the insecure workforce: 25% of all women employed are paid casual rates, compared with 19.0% of men; and 56.9% of all casual employees are women.⁴⁸ Insecure work is found across all industries, but is concentrated in industries in which the majority of employees are women: 945,000 women are in casual work in four large industries, namely Retail, Accommodation and food services, Education and training and Health care and social assistance (ABS 2019). These four industries are the most feminised (68% of workers are women) and the most casualised (32% of workers are casual).

Evidence shows that insecure workers are more likely to be unsafe at work for a range of reasons, including inadequate training and induction, fear of reprisals for speaking out about safety concerns, lack of access to participation and consultation processes, lack of regulatory oversight, poor supervision, inadequate access to effective safety systems and exposure to frequent restructures and down-sizing. Collective bargaining is the most effective way for workers to address these types of issues. However, the Fair Work Act's restrictive and confusing bargaining rules, including an inflexible focus on enterprise level bargaining, lock many women workers out of the benefits of bargaining for safer, fairer workplaces.

Starkly illustrating the connection between insecure work and poor safety outcomes, close to half of all sexual harassment perpetrated in the workplace in the last five years occurred within the four above mentioned industry groups: namely health care and social assistance, retail trade, education and training, and accommodation and food services.⁴⁹

⁴⁷ <https://www.actu.org.au/our-work/policies-publications-submissions/2020/living-well-after-work>

⁴⁸ See ACTU Initial Submission to the Annual Wage Review, at [485] <https://www.fwc.gov.au/documents/wage-reviews/2019-20/submissions/actu-sub-awr1920.pdf>; Annual Wage Review 2018-19 [2019] FWCFB 3500 at [71] and [399]

⁴⁹ Australian Human Rights Commission, Everyone's Business: Fourth National Survey on Sexual Harassment in Australian Workplaces (2018) 60.

The ACTU recommends that the National Plan calls for action as a priority to reduce insecurity at work.⁵⁰

The gendered impact of COVID-19

Women are and will continue to be disproportionately impacted by the social and economic impacts of the COVID-19 crisis for some time to come. The crisis has exacerbated existing inequalities and exposed deep flaws in Australia's economic and workplace systems that must be urgently addressed. As outlined, economic security and gender equitable workplaces are central to the prevention of violence against women. Prior to the COVID-19 crisis, the Workplace Gender Equality Agency estimated that it will take 50 years for the gender pay gap to be closed at the levels of progress being achieved at the time.⁵¹ We cannot allow this crisis to expand that already unacceptable timeframe.

Essential but undervalued

During public health emergencies, much of the work done by women, despite its critical and often dangerous nature, is either underpaid or unpaid. Women comprise the majority of workers on the frontlines of the response to COVID-19, including in health, education, early childhood education and care, community services, aged care, disability support, cleaning, and retail. As outlined above, industries dominated by women are characterised by lower wages and fewer protections. For example, in 2018-19, the gender pay gap in the health workforce was 15.9%⁵² and the sector is characterised by high numbers of casuals with no paid leave entitlements. The COVID-19 pandemic will exacerbate these inequalities as women in service and care industries are expected to work longer hours with no or limited compensation during this crisis, often in hazardous conditions without sufficient protective equipment or other support.⁵³ The crisis unfolding in aged care is a clear example.⁵⁴

One crucial measure that should be immediately provided is paid pandemic leave for all workers. Working women should never be forced to choose between going to work sick or being able to pay their bills and feed their families, particularly during the current crisis. Employers, workers and the community all need the confidence that as the risk of community transmission grows, there is no

⁵⁰ https://www.actu.org.au/media/1033868/insecure-work_final-18052018-final.pdf

⁵¹ <https://www.smh.com.au/business/workplace/australias-gender-pay-gap-to-last-another-for-50-years-20170727-gxjmay.html>

⁵² <https://www.wgea.gov.au/data/wgea-research/australias-gender-equality-scorecard/2018-19-gender-equality-scorecard>

⁵³ See for example: <http://anmf.org.au/news/entry/federal-government-needs-to-be-clear-on-strategies-to-prevent-spread-of-cov>

⁵⁴ <https://www.smh.com.au/national/this-time-it-s-bad-healthcare-workers-on-edge-as-patient-numbers-surge-20200717-p55d15.html>

financial punishment for those who need to be tested or who need to self-isolate. Some businesses and governments are already committing to policies offering paid special leave during the pandemic, and the Commission has recently decided to provide paid pandemic leave to aged care workers following an application by the ACTU and health unions,⁵⁵ but this urgently needs to be made universal. By creating a paid pandemic leave provision in the NES and state based industrial instruments, governments will ensure that workers, their families and communities are given adequate protection and support.

Unpaid care and domestic work

Women carry out more than 75% of the world's unpaid domestic and care work; on average 3.2 times more than men. There is no country where women and men share of unpaid domestic and care work equally.⁵⁶ Australia is one of the most unequal countries in the OECD in this regard.⁵⁷

A 2017 study by PwC found that Australian women undertake 76% of childcare, 67% of domestic work, 69% of care for adults, and 57% of volunteering; a total contribution of 20% of the Australian economy.⁵⁸ The disruptive effects of these responsibilities on women's employment, in particular the 'motherhood pay penalty', are well-documented. Women bear negative financial impacts as they leave the workforce or transition to lower paid and/or less secure work in order to try to accommodate parenting and caring responsibilities.⁵⁹

The care of school-aged children following school closures and for ill and vulnerable family members affected by COVID-19 will fall disproportionately on women and exacerbate this inequality even further. A study performed by Professor Lyn Craig at the University of Melbourne identified an average of 6 hours per day of additional care work was required during the peak of the first wave of the COVID crisis, with mothers performing twice as much care work (4 hours) than fathers (2 hours). There was also an increase of 1 hour 10 min per day of housework for women compared with a 30 minute increase for men.⁶⁰ It will be crucial for government and employer measures to support a more even distribution of unpaid domestic and care work, not only during this crisis but on an ongoing basis.⁶¹

⁵⁵<https://www.fwc.gov.au/documents/sites/health-sector-pandemic-leave/decisions-statements/2020fwcfb3940.pdf>

⁵⁶ https://www.ilo.org/wcmsp5/groups/public/-/dgreports/-/gender/documents/publication/wcms_732791.pdf

⁵⁷ R Cooper, M Foley and M Baird, *Women at Work: Australia and the United States*, The United States Studies Centre at the University of Sydney, 15

⁵⁸ PwC, *Understanding the unpaid economy*, 2017

⁵⁹ Dr Siobhan Austen, *The Effects of Parenthood and other Care Roles on Men's and Women's Labour Force Participation and Experiences of Paid Work*, May 2017 at [5].

⁶⁰<https://www.abc.net.au/news/2020-06-20/coronavirus-covid19-domestic-work-housework-gender-gap-women-men/12369708>

⁶¹ <https://www.abc.net.au/news/2020-03-23/coronavirus-isolation-could-strain-relationships-at-home/12068104>

Our legal framework already provides insufficient support for working parents and carers: rights to request flexible work and extended parental leave under the FW Act are unenforceable, unlike all other safety net entitlements.⁶² The need for guaranteed, enforceable access to secure, quality reduced hours working arrangements, with a right to revert to former hours once caring responsibilities cease, as well as access to quality, affordable early childhood education and care, is more important than ever.

Job losses

ABS statistics show that 325,000 women became unemployed in April 2020, representing 55% of all jobs lost over that period. Women's hours worked also reduced 11.5% compared to just a 7.5% drop for male workers. This is directly connected to women's overrepresentation in insecure and low-paid work. These are groups which, due to the nature of the crisis and gaps in the Government's response, were the first to experience losses during the crisis. COVID-19 job losses in female-dominated industries such as retail, hospitality and aviation have been particularly severe.⁶³ Women will also bear the impact of closing universities, schools and childcare centres: 63.4% of the education and training workforce and 95.6% of early education and care workers are women.⁶⁴

This all combines to leave women more vulnerable to unemployment, financial stress, poverty, and homelessness during this crisis: factors which drastically decrease a women's chance of escaping from a violent relationship. Government must acknowledge the gendered impacts of the COVID-19 crisis and implement responses that address these impacts. Gaps in programs like JobKeeper that leave workers who are predominantly women without support must be closed. Investment during the recovery phase must deliver quality jobs for women.

Increased risks of gendered violence

Family and domestic violence can become more frequent and severe during periods of emergency.⁶⁵ The COVID-19 pandemic has increased the risks of violence against women, both at work and at home.

Frontline workers in care and service industries are facing increased risks of violence and harassment from anxious and stressed customers, patients and clients as financial and other

⁶² see [ACTU submissions](#) to 4 yearly review of modern awards – Family Friendly Work Arrangements [2018] FWCFB 6863

⁶³ WGEA's 2018-19 Gender Equality Scorecard shows that women make up 79.9% of the healthcare and social assistance workforce, 57.7% of the retail workforce, and 52.9% of the accommodation and food services workforce.

⁶⁴ <https://www.wgea.gov.au/sites/default/files/documents/2018-19-Gender-Equality-Scorecard.pdf> at p 17

⁶⁵ <https://pubmed.ncbi.nlm.nih.gov/32281158/>

pressures take their toll on the mental health of the public.⁶⁶ For example, 85% of SDA members already experienced abuse and violence from customers pre-pandemic.⁶⁷ In a survey of SDA members in WA, 63% said abuse and violence was 'worse' or 'much worse' and 22% had experienced violent behaviours from customers during the pandemic, including coughing and spitting. A further 33% said they witnessed violent behaviour towards others. The International Council of Nurses has received highly concerning reports of increasing violence aimed specifically at nurses and other healthcare workers who are on the frontline of the COVID-19 pandemic, including ostracism, abuse and physical assault because they have been in close contact with COVID-19 patients.⁶⁸

A recent survey shows that two-thirds of women who experienced physical or sexual violence by a current or former cohabiting partner since the start of the COVID-19 pandemic said the violence had started or escalated in the three months prior to the survey.⁶⁹ The pandemic is exponentially increasing the financial, health and domestic pressures on households, while at the same time increasing women's isolation and reducing their financial and job security. People experiencing family and domestic violence are already likely to be financially disadvantaged by their situation. As outlined, COVID-19 will exacerbate this, particularly for low-paid and casual workers, the majority of whom are women. Many will lose hours, be stood down or lose their jobs altogether. As outlined above, job and economic security makes women less able to escape and recover from family and domestic violence situations. Gaps in the government's Job Keeper wage subsidy will leave many of these workers without sufficient support: over 1 million casual workers have less than 12 months service, a large number of whom have family and caring responsibilities. Workers already struggling to access medical, legal and other support services without paid leave will be made even more vulnerable by the COVID-19 pandemic.

Due to social distancing requirements arising from the COVID-19 pandemic, around a third of the workforce is now working from home.⁷⁰ Many workers greatly value the ability to work from home for many reasons, including that it may reduce costs and inconvenience and assist with managing family and caring responsibilities. Post-pandemic, workers should have the right to choose to continue to work from home. However, for people experiencing domestic or family violence, home may not be a safe place to work and attending work may provide a safe-haven and a means of accessing vital support. It is crucial that governments and employers take reasonable steps to

⁶⁶ See for example <https://www.shoppingcentrenews.com.au/shopping-centre-news/industry-news/sda-nra-scca-urge-the-community-to-respect-our-retail-workers/>

⁶⁷ <https://national.sda.com.au/saferstores/>

⁶⁸ <https://www.icn.ch/news/governments-must-act-curb-violence-against-nurses-who-are-working-covid-19-patients>

⁶⁹ https://www.aic.gov.au/sites/default/files/2020-07/sb28_prevalence_of_domestic_violence_among_women_during_covid-19_pandemic.pdf

⁷⁰ Alison Pennington and Jim Stanford, Working from Home: Opportunities and Risks, April 2020, p 3

ensure the health and safety of these women. Work Health and Safety laws apply equally to work from home.⁷¹ Employers have a duty to do what is reasonably practicable to ensure workers and others are not exposed to risks to their health and safety while undertaking work from home, including from family and domestic violence.⁷² Employers must take a systematic approach to managing risk with the aim of eliminating the risk, or if this is not possible, minimising the risk as far as is reasonably practicable. If it is not possible to make work safe and healthy at home, an alternative work environment must be provided. Consultation with workers and their unions is a requirement of the law in relation to the management of all work health and safety risks; and is equally applicable to risks of violence arising from work or from home. Workers themselves are best placed to know what the issues are and how to manage them. Employers are obliged to do what is reasonably practicable to identify potential risks, such as providing a safe environment for disclosure, assuring confidentiality and not requiring workers to provide unnecessary personal details. Employers must ensure they consult with workers and their representatives on what measures would make work safer, including where family and domestic violence is occurring at home. Feedback from our affiliates is that employers at this stage are failing to consult employees on the risks of family and domestic violence. This presents not only a serious risk of harm to workers, but also a risk of legal liability for employers, as courts increasingly recognise employer responsibilities in relation to work from home and family and domestic violence.⁷³

A number of measures should be taken to ensure that employers properly understand and implement their obligations in relation to managing the risk of violence and harassment of workers at work and at home:

1. Urgently implement a new Model WHS Regulation and Code on COVID-19 risks at work, which provides employers with clear requirements on the management of psychosocial risks including increased exposure to violence and harassment during the pandemic.
2. Urgently develop and implement a Model Regulation and Code/s of Practice on managing psychosocial risks at work, including violence and harassment, which provides clear guidance to employers on their duties and obligations.
3. The *ILO Convention on Violence and Harassment 2019 (C.190)* provides a clear framework for employers and governments to reduce the risks of violence and harassment at work,

⁷¹<https://www.safeworkaustralia.gov.au/covid-19-information-workplaces/industry-information/general-industry-information/working-home>

⁷²<https://www.safeworkaustralia.gov.au/covid-19-information-workplaces/industry-information/retail/family-domestic-violence?tab=tab-toc-employer>

⁷³<https://womensagenda.com.au/latest/landmark-ruling-deems-employer-liable-for-an-employee-killed-by-her-partner-while-working-from-home/>

including family and domestic violence. With COVID-19 increasing the risks of violence against women at work and at home, urgent ratification of this Convention has become more important than ever.

Conclusion

Work has never been more important to the advancement of gender equality and the prevention of violence against women. Prior to the COVID-19 pandemic, women were already disadvantaged in our workplace relations system. The pandemic has exacerbated these inequalities, including further increasing the risks of violence against women, both at work and at home.

The ACTU strongly urges the Committee to recommend that the next National Plan specifically recognise violence against women as a workplace issue and include greater emphasis and specific detail on the crucial role of work in the advancement of gender equality and the prevention of violence against women, as outlined in this submission. We would be happy to provide additional detail on any aspect of the submission if required.

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