

21 September 2017

Mrs Giulia Jones MLA (Chair)
Standing Committee on Justice and Community Safety
Legislative Assembly for the ACT
GPO Box 1020, CANBERRA ACT 2601

Dear Ms Jones MLA,

Please find enclosed a copy of the submission from UnionsACT to the Standing Committee regarding the inquiry into domestic and family violence.

UnionsACT is the peak council representing 24 unions and over 33,000 working people, their families and communities. One hundred thousand more have their conditions of employment shaped by the work of our affiliates. More than 20,000 Canberrans support the work we do through our community campaigning.

We have a long and proud history of independently and fearlessly advocating on behalf of union members, and our mission is to improve working standards and living standards for all working people.

As the leading voice for working people in the ACT, UnionsACT is pleased to make this submission to the Standing Committee.

I am pleased to provide this submission, and I hope it proves informative in your deliberations.

Yours sincerely



Alex White
Secretary
UnionsACT



Submission to

Inquiry into Domestic and Family Violence

Introduction

1. UnionsACT welcomes the opportunity to provide a submission to the Standing Committee on Justice and Community Safety in relation to its *Inquiry into Domestic and Family Violence – Policy approaches and responses*.
2. UnionsACT is the peak council for the ACT's union movement, representing 24 unions and over 33,000 union members. Many tens of thousands more have their conditions of employment shaped by the work and representation performed by our affiliates. Formed in 1931 as the Trades and Labour Council of the ACT, UnionsACT and our affiliated unions have campaigned for, and successfully won, a wide array of rights and entitlements for working people in the ACT.
3. The elimination of family and domestic violence is a priority for UnionsACT and the Australian Union movement more broadly. Unions and their members have been responding to, and campaigning on, the issue of family and domestic violence and its interaction with the workplace for many years. The first enterprise agreement clause in Australia (and to the best of our knowledge the first in the world) to provide paid family and domestic leave was negotiated by the Australian Services Union and Surf Coast Shire and Greater Geelong Council in 2010, and it has since been replicated in numerous enterprise agreements around the country.
4. The evidence and research showing the prevalence and seriousness of FDV across the Australian community is over-whelming and incontrovertible.¹ One in six women, and one in 20 men, has experienced at least one incident of violence from a current or former partner since the age of 15. It is accepted that

¹ For example: [Commonwealth of Australia, Finance and Public Administration References Committee, Domestic Violence in Australia, August 2015](#) ; [KPMG, The Cost of Violence Against Women and their Children in Australia, May 2016](#) ; [State of Victoria, Royal Commission into Family Violence, March 2016](#) ; [Australian Law Reform Commission, Final Report Family Violence and Commonwealth Laws— Improving Legal Frameworks, February 2012](#) ; [NSW Department of Premier and Cabinet, Stop the Violence End the Silence, June 2010](#); [South Australia, Taking a Stand: Responding to Domestic Violence, October 2014](#) ; [Queensland, Not Now Not Ever, Queensland Government Special Taskforce, February 2015](#)

the whole community must play a part in eliminating family and domestic violence. This submission will outline the significant role that workplaces in particular play in responding to, and preventing, family and domestic violence.

5. UnionsACT submits that appropriate workplace support, including at a minimum 10 days standalone paid family and domestic violence leave, is essential to an effective whole of community response to family and domestic violence. No employee should be forced by the lack of adequate employment support to make the choice between being safe and being poor.

Family and Domestic Violence is a workplace issue

6. Family and domestic violence is a workplace issue for the following reasons:
 - a. The majority of people subjected to family and domestic violence are also in paid employment;
 - b. Family and domestic violence often directly affects the work attendance and/or performance of employees subjected to it;
 - c. Family and domestic violence can and does occur at the physical workplace; and
 - d. Employment and financial security are the primary factors determining whether a person remains in, escapes from or returns to a violent or abusive relationship. Employment and financial security gives people the means to avoid and/or leave violent or abusive relationships.
7. The Victorian Royal Commission into Family and Domestic Violence found that women subjected to family 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 also heard evidence that “financial security is a significant protective factor in victims gaining freedom from abusive partners”.²

Family and Domestic Violence disproportionately affects women

8. Women are disproportionately affected by family and domestic violence in two ways. First, the prevalence statistics reveal that women are three times more likely than men to be subjected to family and domestic violence. While there is no dispute that men can be and are victims of family and domestic violence, most intimate partner violence is by men against women.
9. Second, the impact of family and domestic violence on women is more severe than men. An expert report prepared for the Fair Work Commission in

² Royal Commission Report, Volume IV, Chapter 21 ‘Financial Security’, 93.

proceedings relating to the ACTU's application for paid Family and Domestic Violence Leave in awards shows that women are more likely than men to sustain severe or more frequent injury, and fear for their lives. The nature of the experience also differs according to gender. Women are more likely than men 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: of victims of intimate partner violence, 12 times as many women as men suffered sexual assault.³

10. The impact of this is exacerbated by the fact that women are:
 - a. Disproportionately responsible for unpaid domestic and family work, including the care of children;
 - b. Over-represented among the award-reliant and low paid, and experience a gender pay gap of over 15 per cent in Australia.

Existing minimum workplace entitlements are not adequate

11. While some good progress has been made through enterprise bargaining and workplace policies, outcomes are variable and there are still too many Australian employees subjected to family and domestic violence that do not have access to appropriate support, including paid family and domestic violence leave, when needed.
12. Existing paid leave entitlements to personal/carers, annual and long service leave (noting that most casual employees do not even have access to these supports) are often quickly consumed and/or not able to meet the needs of persons affected by family and domestic violence.
13. Workplaces must be required by law to provide a minimum level of support for any of their employees subjected to family and domestic violence. In the submission of UnionsACT, the minimum support necessary is access to up to 10 days paid family and domestic violence leave. Paid leave is crucial because it allows an employee to take an absence from work to attend necessary appointments with medical, legal or financial professionals, or to make arrangements to relocate or ensure their children's protection, without suffering financial disadvantage. Paid leave is an important tertiary prevention measure, in that it not only helps people recover from existing violence but supports employees to safely and permanently escape from dangerous relationships, thus helping to reduce or eliminate future violence.
14. Employers should also be encouraged to provide additional support where appropriate, including training for managers, access to contact officers and flexible working arrangements.

³ [*Dr Michael Flood, Expert Report, 26 May 2016*](#)

15. UnionsACT notes that the ACT Government supports up to 10 days paid family and domestic violence leave for all workers. We congratulate the ACT Government in its position, and acknowledge that family violence leave is available to ACT Government employees through collective agreements.

Recent Fair Work Commission decision

16. On 3 July 2017, the Full Bench of the Fair Work Commission (FWC) made a preliminary decision to provide unpaid family and domestic violence leave in modern awards.⁴ UnionsACT is disappointed that a decision to provide *paid* leave was not made on this occasion. However, UnionsACT welcomes the following findings made by the FWC in relation to the need for standalone family and domestic violence leave, which support the submissions of UnionsACT to this Inquiry:

- 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;⁵
- 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;⁶
- c. Existing entitlements, such as the right to request a flexible working arrangement, personal leave, and annual leave, are insufficient to meet all the circumstances faced by employees who experience family and domestic violence;⁷
- d. Existing remedies such as rights to sue for unfair dismissal and adverse action are insufficient to protect employees from adverse workplace outcomes as a result of domestic violence. Leave would “confirm the significance of family and domestic violence leave as a workplace right” and provide an “employment protection in circumstances where there is a need to access such leave”;⁸

⁴ 4 Yearly Review of Modern Awards – Family and Domestic Violence Leave Clause [2017] FWCFB 3494 (Majority Decision), [119]

⁵ Paragraphs [49], [54], [56], [116] of the FWC decision

⁶ Paragraph [51] of the FWC decision

⁷ Paragraphs [42]-[46], [55] of the FWC decision

⁸ Paragraphs [45], [119] of the FWC decision

- e. For some employees affected by family and domestic violence, resignation is the only option. The provision of leave would mean employees would not have to make this choice.⁹

Policy outcomes sought by the Australian Union movement

17. UnionsACT supports the position of the Australian Union movement, that the following policy outcomes are essential steps in order to eliminate family and domestic violence, end all violence against women and achieve gender equality in every Australian workplace:
 - a. The inclusion of a minimum of 10 days paid family and domestic violence leave in all modern awards and the National Employment Standards, including access for casual employees;
 - b. Amendments to the *Sex Discrimination Act 1985*, the *Fair Work Act 2009* and relevant state legislation to prohibit adverse action or discrimination against employees on the grounds that they are, have been or are perceived to be subjected to family and domestic violence;
 - c. Ensuring that the need to prevent and eliminate family and domestic violence and violence against women is considered in any review of Occupational Health & Safety Laws;
 - d. Ensuring that appropriate and adequate data is collected by relevant agencies in cooperation/consultation with each other;
 - e. Establishment of a national mechanism for monitoring and reporting on the utilisation of family and domestic violence leave clauses in workplaces;
 - f. Ensuring that the Australian Government actively supports the development of, and ratifies, the new ILO standard on Gender based Violence and Injury at Work.
18. UnionsACT would be happy to provide further information on any of the above matters if required.

⁹ Paragraph [61] of the FWC decision