

SENATE STANDING COMMITTEE ON EDUCATION AND EMPLOYMENT

INQUIRY FAIR WORK AMENDMENT (PAID FAMILY AND DOMESTIC VIOLENCE LEAVE) BILL
2022

Ludo McFerran AM
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I would like to congratulate the Federal Government for the introduction of the Fair Work Amendment (Paid Domestic Violence Leave) Bill 2022 and for the significant progress this represents. In this submission my substantive recommendation relates to 'Section 2. Commencement' and the need for employers to be prepared for the implementation of the entitlements. I understand that the Government will consult with experts, unions and employers to develop support resources that include training. Based on the experience gleaned from implementing domestic violence clauses since 2010, I urge the Committee to recommend that the training is based on a set of national standards and accreditation of trainer organisations.

My background

In 2008 I first raised the idea of paid domestic violence leave. I had been working in the domestic violence sector for forty years, by 2004 piloting new programs to support women and children stay safely in their homes, excluding the violence partner if necessary. Many of these women were in employment and stated that the support given to them by their employer and workplace was a critical factor in being able to stay in their homes. Many considered themselves lucky to have a supportive boss. I thought this support should be guaranteed and available to any employee experiencing domestic violence. As one woman stated: her ability to stay safely in her home was necessary to keeping her job, and she needed to keep working in order to afford her home.

I worked from the Australian Domestic and Family Violence Clearinghouse (UNSW) to develop with a number of trade unions a domestic violence clause for enterprise agreements. The clause was a package including paid domestic violence leave but also workplace safety strategies, the referral of employees to domestic violence support services, the provision of training for staff managing the workplace response, and the protection from adverse action or discrimination.

The Federal Labor Government funded the Clearinghouse to run a program we called Safe at Home, Safe at Work (2010-2013). I managed this program. Our brief included research into the scale and impacts of domestic violence in the workplace and the development of training and resources to support workplaces adopting the domestic violence clause. Since 2013 I have continued to provide training to workplaces, most recently in the NSW Health Department, and to develop our resources, most recently with colleagues from the EU and Canada on safer strategies when working from home as a result of the Covid pandemic.

Naming the leave 'domestic violence'

From day one there were concerns expressed that naming the leave as 'domestic violence' may be a barrier to disclosure and may compromise the confidentiality of the affected worker. Much discussion occurred with managers, HR staff and unions since the first domestic violence clause (2010) and disclosure and confidentiality have been major themes. The consensus was that it was important to retain the label 'domestic violence' but that the reason for the leave not be visible on payslips, but rather recorded as special leave or other leave.

A major reason for retaining the reference to domestic violence was that of safety and security for the whole workplace. In 2011 we conducted a national survey which found that the violence does follow employees into the workplace and can affect the whole workplace.¹ Security then became a key issue for everyone at work and we engaged with managers, HR staff and union delegates in order to understand how to balance the rights of the individual worker to have the matter dealt with confidentially with the need to create a safe workplace for all.

The conclusion was that the issue had to be named and the conversation had to be had in order for the issue of safety and security to be addressed. We recommended appropriate questions to ask employees about their safety getting to and leaving work, and if they were being harassed while at work. Safety strategies then had to be activated to ensure their safety and the safety of the whole workplace. We advised workplaces to clearly communicate with their employees that they understood how domestic violence could affect working people, they would support staff and would do so confidentially. When safety required the involvement of other key staff, this step was to be taken in discussion with the directly affected employee. I should also point out that our survey suggested that affected workers talk with co-workers before anyone else at work. So not only can co-workers be directly affected by any violence coming to work, but they are the first point of disclosure. We recommended that co-workers be part of the whole of work response.

National training standards and accreditation

One of our briefs at Safe at Home, Safe at Work was to develop training to support workplaces in managing the outcomes of a domestic violence clause. There were no models or blueprints for us to draw on as the bargaining of domestic violence clauses was a global first. I contracted a state-based domestic violence training provider to write the training program, but when tested we found this program inappropriate because it did not address the issue of managing the effects of the violence. Over the next three years, in collaboration with managers, HR staff and union delegates we wrote a collaborative training program

¹ Nearly one in five reported that the main effects were capacity to get to work, a negative effect on performance and the violence entering the workspace (the abusive person physically turning up, or abusive phone calls, texts and emails).

drawing on their experience of implementing the domestic violence clauses and addressing the practical challenges presented by managing domestic violence as a workplace issue.

Some examples of the challenges are:

- A common question we were asked was 'should a worker who may be a perpetrator get paid domestic violence leave?'. Our survey found that a third of workers had experienced domestic violence. This suggests that a substantial number of workers are perpetrators. Other research has found that employed perpetrators of domestic violence experience quite similar effects as employed victims: absent from work, negative work performance, but also abuse of work resources such as phones and email. So this is a further cost to workplaces that needs to be managed. But in the first instance it may not be clear to the employer if an employee seeking paid domestic violence leave to attend a domestic violence matter such as a court hearing is victim or perpetrator. We advised employers to grant the leave and allow the court to determine any restrictions on their employee if they were found to be the perpetrator, restrictions which then needed to be managed. Further granting of any leave (e.g. for counselling or other court appearances) were at the discretion of the employer.
- Many managers and HR staff were concerned about asking inappropriate questions. We recommended that did they look out for signs such as wearing long sleeves in summer to hide bruises. Instead we advised them to clearly communicate with employees that their jobs were safe, they would be supported and trained staff were available. We put the emphasis on creating a safe space where employees would feel confident to disclose.
- One knee jerk reaction to stopping an employee from being abused over their work phone was to change their work number. We thought this was counter-productive and recommended using IT to divert and save abusive calls. This would reduce the impact on the work performance, and saved messages could be used in evidence of a breach of a domestic violence protection order.
- A more recent development brought on by the COVID pandemic is working from home. Lockdowns have led to reported increases in the rates of domestic violence. Any implementation of paid domestic violence leave must address the safety of employees working from their home.

Since the first domestic violence clause in 2010 there has been a great deal of discussion and development in understanding how to safely implement and manage the impacts of domestic violence in the workplace. There are some highly skilled individuals in HR, management, unions and organisations such as Working Women's Services who have specialised in developing best practices and training. We have a depth of knowledge and experience we can draw on to assist Australian workplaces when implementing this legislation.

However, I have been concerned that since 2013 training on domestic violence in the workplace has been unregulated and not all trainer organisations appear to have the skills base to provide best practice training in actually managing domestic violence. There are expert organisations that have been providing training and who combine a good understanding of domestic violence and industrial and workplace issues. I would recommend their models for good practice and standard setting.

Training and resources for smaller businesses

I am concerned that smaller businesses receive tailored training and resources to assist them to manage this legislation. Since the first clause it has been argued that responding to domestic violence would be an onerous burden for smaller businesses, but some of the most innovative, effective and flexible examples of response I have encountered were from smaller businesses. I would draw on these positive experiences and the strength of their associations, particularly in the regions.

Concluding remarks

I would warn against maintaining an unregulated training market. Good laws badly implemented are not only ineffective but risk being dangerous for vulnerable workers. As I wanted guaranteed and standard rights for all Australian workers to support from their workplaces, I now want the best management of this support possible. This requires national training standards and an accreditation system for trainer organisations.