

**SUBMISSION TO THE FAIR WORK COMMISSION
4 YEARLY REVIEW OF MODERN AWARDS
FAMILY AND DOMESTIC VIOLENCE LEAVE (AM2015/1)**

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1 Interested Parties

Dr. Paul Harpur is a Senior Lecturer at the University of Queensland, where his research and teaching expertise are in the areas of disability rights, work health and safety, and anti-discrimination laws. Professor Heather Douglas researches in the areas of domestic and family violence and has published widely on legal responses to domestic and family violence and child protection. Dr Harpur and Professor Douglas have published in Australia and internationally on employment, criminal justice and anti-discrimination laws. Ji Won Joo is a student at the University of Queensland, in her penultimate year of Bachelor of Arts and Laws (Hons).

2 Purpose

As interested parties, we make this submission to support the Fair Work Commission (FWC) in the exercise of adopting unpaid (and paid) domestic and family leave clause into modern awards.

3 Domestic and Family Violence and the Workplace: Qualitative Research

With the support of an Australian Research Council Future Fellowship, Professor Douglas has performed a longitudinal study in Australia to examine how women who experience domestic violence engage with law.¹ Professor Douglas recruited 65 women to take part in the three waves of data collection over a four-year period. The collection took place at approximately eight-month intervals. The focus of the interviews was on women's choices about legal engagement and their personal experience of engaging with the legal system. A number of themes emerged from this research, and one of the themes was workplace responses to domestic and family violence. For the purpose of this submission, extracts from the transcribed interviews from the study (referred to as the Douglas study) have been included to illustrate some of the issues interviewees raised about workplace responses to domestic and family violence. Pseudonyms have been used to protect the identities of the interviewees.

3.1 Women's comments about domestic and family violence and work.

A common issue reported by survivors in the Douglas study was that during the violent relationship perpetrators isolated them from their networks demanding they forego their employment and their economic independence. Women who are in abusive relationships may face extreme pressure from their violent abuser to leave work. For example Kristy explained:

¹ Project website: Using Law and Leaving Domestic Violence: <https://law.uq.edu.au/research/our-research/using-law-and-leaving-domestic-violence> (FT140100796).

He didn't like ... my work ... because it's a male dominated industry ...He was threatening to come up to my work and give his two cents worth and make a scene so that I would lose my job if I didn't leave.

Susan explained:

He said you need to prove yourself to me and prove you can be a trustworthy member of this family. I have all this recorded... I have to sell my properties, I have to quit my job.

In other circumstances survivors report that their abusive partners pressured them to go to work, even when they were unwell. For example Janet explained:

I went to the doctors and I was really sick with a urine infection. The doctor said you're going to have to not go to work for a couple of days, you're really sick. I wanted to go. She goes darling, you need to rest. He's like no, she's got to go to work today. She's got to go to work today. She has to go to work.

Other women reported that they were forced to work while their abusive partner stayed at home refusing to work, sometimes gambling or 'stealing' the income.

In some cases abusers made continuing paid work very difficult for the survivor both before and after separation. Jacinta explained:

He's called my job and make me, you know, ra-ra-ra, and he just threatened every area of my life really. Then in April, this is beginning of April, I was so tired, I work five or six nights a week, I don't get a lot of sleep, and he kept ringing.

In some cases relevant government departments have been notified of complaints about the survivor, probably by the perpetrator. On occasions the complaints have led to the woman being stood down from her employment for a period of time while the complaints are investigated. For the three women in the Douglas study for whom this occurred the complaints were unfounded. The disruptions were stressful for the women and the complaints were another aspect of the controlling behaviour of the perpetrator.

In other cases abusers have contacted the survivor's supervisor directly to make allegations and to embarrass the survivor. For example Janet explained:

He did degrade me a lot. I was at work one day and he was there and my boss [was there]. He turned around and started telling him about our sex life and how good I am.

In some cases where survivors had separated from abusers, abusers stalked survivors' workplaces and sometimes were violent at the workplace. For example Melissa explained:

[He] would ring my old workplace - I'm still employed by them - and say, Melissa's a drug addict, she's stealing and ripping off. You know, like anything to try and - it was like, I'm feeding your kids with this money.

Melissa observed: 'He came [to work] to smash the car, all the windows around the car. So, no, it's not good.'

Survivors escaping domestic and family violence often experience significant emotional trauma. For some survivors this can take time to overcome to enable them to return to work.

Francis explained:

...because of all the mental and the breakdown, trauma and everything that I was suffering I wasn't...coping well enough to go back to work.

Lisa said:

I went in for the interview, they rang me back, I got the job. I was going to start training. I had a couple of days before I started and then I rang up and backed out of it ... I didn't take the job. But I'm moving forward, but I'm still holding myself back.

3.2 *Women's comments about Employer Assistance in response to Domestic and Family Violence*

Interviewees in the Douglas study reported that some employers had altered working arrangements of survivors to reduce the risk of contact with abusers and implemented a range of other strategies. These included allowing the employee to take on other duties or work from other offices when there were issues. For example Carol explained:

...so they moved me to [another office] for a fortnight until we were absolutely sure he wasn't in Australia. So work are really supportive.

Bianca explained:

I unilaterally moved to [other town] just to feel safe, pretty much, and because I can also work from [other town] because we have an office there and my employer has been very understanding of all of this. (30)

In terms of leave, employers had enabled survivors to access annual leave in creative ways, access personal sick leave, long service leave and unpaid leave to attend to the various issues arising from the domestic and family violence. Faith explained:

I was able to access special leave for that with pay. Now since we've gone from the DV to the family court even though it's really an extension of the DV, I can't access that pay but they've let me access my long service leave for everything to do with court stuff. So rather than take a week off I can take a day off when needed. So it's been really, really good. I mean I'm lucky that I'm in a position where I've got long service leave otherwise I would have been in even more financial hardship.

However, not all employers have been supportive. An example involved an employer who had adopted a policy of granting employees domestic and family violence leave. The survivors abuse had occurred prior to this policy coming in and they had used up their annual leave, sick leave and long service leave. The employer decided not to enable the employee to reimburse their leave balances with the additional leave that existed in the new policy. This meant the survivor had used up years of accrued leave and missed the opportunity to use the leave in the way intended. Bianca explained:

So [domestic violence leave] came in in 2015 and I tried to make a case to my employer that the reason I now have very limited leave is because I had to take it due to domestic violence and a direct impact on my situation now is my diminished leave balance. But no, they wouldn't buy it.

4 *Precedents: Unpaid Domestic Violence Leave in Other Jurisdictions*

Workplace laws in many countries already require employers to take various steps to manage employees who are experiencing domestic violence. Such laws include domestic

violence criminal laws, work health and safety laws, anti-discrimination laws and some industrial relations laws.

4.1 *Canada*

In Canada, only one province – Manitoba – has paid domestic violence leave.² Under this legislation, employees experiencing domestic violence are entitled to five paid days of leave and a further five days of unpaid leave. The federal Canadian government is considering providing federal employees a right to paid domestic violence leave. Other Canadian provinces, such as Ontario, are also considering whether paid and unpaid domestic violence leave should be implemented.³

4.2 *New Zealand*

New Zealand does not currently have a statutory right to paid domestic violence leave, though many employers offer employees such leave anyway. In New Zealand, the prevalence of paid domestic violence leave is influencing public debate on the question of whether or not New Zealand's statutes should enshrine such a right in law.⁴

4.3 *The United Kingdom*

In 2015, the UK amended its domestic violence laws to make psychological abuse a crime but did not introduce a statutory right to domestic violence leave.

4.4 *The United States of America*

While unpaid leave is available in some jurisdictions within the US, such as the Illinois Victims' Economic Security and Safety Act, other states provide employees access to existing paid leave. The Act itself does not provide other additional leave, but instead enables employees to access existing leave in new ways.⁵ In Minnesota and the state of Washington, employees are allowed to use their sick leave if they are experiencing family violence.⁶ The US Congress is considering far more expansive laws that will increase employees' overall entitlement to leave, such as an Act that would provide employees a right to paid leave to help escape domestic violence.⁷

5 Appropriate Period of Domestic Violence Leave

Dr. Harpur has investigated and summarised data from the Commonwealth Department of Employment's Workplace Agreement Database from 1 January 2012 to 31 December 2016. These data pertains to provisions in enterprise agreements, but not in modern awards, as it is not coded in the Database. 2593 Agreements have been analysed. The findings of from analysed agreements are as follows:

- 1526 agreements have incorporated Domestic Violence clauses;
- 1524 agreements provide Paid Domestic Violence leave;

² *The Employment Standard Code*, SM 2017, c E110, 59.11.

³ Domestic and Sexual Violence Workplace Leave to the Accommodation and Training Act 2016, Bill 26.

⁴ Domestic Violence—Victims' Protection Bill 2016.

⁵ Paul Harpur, *Paid domestic violence leave: how do other countries do it?* (10 October 2016) The Conversation, <<https://theconversation.com/paid-domestic-violence-leave-how-do-other-countries-do-it-66052>>

⁶ *Women's Economic Security Act of 2014*, M.S. §181.9413, Chapter 239 (2014).

⁷ Sotiropoulos Anastasia, 'Words Can Cut the Deepest Wounds: Why the Family Medical Leave Act Should Be Amended to Expand Protection for Victims of Domestic Violence' (2016) 65 DePaul Law Review 1361

- 1506 agreements provide access to other leave, including Domestic Violence leave;
- 235 agreements provide carer's leave to support Domestic Violence survivors; and
- 170 agreements incorporated right to request flexible working agreements.

Period of leave provided by those agreements are as follows:

- 1033 agreements provide leave of 10 days;
- 96 agreements provide leave of 5 days;
- 11 agreements provide leave of 3 days; and
- 38 agreements provide leave of 2 days.

Based on such findings, we submit that appropriate period of domestic violence leave the Act should incorporate is 5 days paid and 5 days unpaid leave.

6 Appropriate Circumstances for Unpaid Leave

From Dr. Harpur's collected data, Jiwon Joo has analysed 40 agreements that extend beyond a single jurisdiction. After analysis, it is clear that a majority of the agreements require the employee to provide evidence that would satisfy a reasonable person that the leave is for the purpose of domestic and family violence.

Examples of documents that should be deemed to satisfy a reasonable person that the leave is for domestic violence should include, for example, a statement issued by the police service, a court, a doctor (including a medical certificate), district nurse, maternal and child health care nurse, a family violence support service, a lawyer or a statutory declaration.