

IN THE FAIR WORK COMMISSION

Outline of Claim: Family and Domestic Violence

For: The Australian Council of Trade Unions (ACTU)

DATE: 28 October 2014

D No. 134/2014

Lodged by: ACTU

Address for service: Level 6, 365 Queen Street, Melbourne Victoria 3000

Tel: (03) 9664 7333

Fax: (03) 9600 0050

Email: btkalcevic@actu.org.au

1. This outline of claim is filed in response to the statement and Directions issued by the President on October 1, 2014.

Matters the ACTU wishes to pursue

2. The ACTU seeks variations to all awards in respect of the issue of family and domestic violence¹. We regard the claim as a common issue in respect of the 2014 modern award review. We do not at present have a fixed view on how the claim should be expressed as an award term, however we believe that it should include the following elements: Paid Domestic Violence leave
3. Paid domestic violence leave is designed to assist victims of domestic violence to remain in paid employment, support them through the process of escaping violence and to promote a safe and secure environment for all employees in the workplace.
4. Paid domestic violence leave recognises that employees experiencing domestic violence can least afford to take unpaid leave at a time where financial security is critical.
5. The ACTU claim is to provide 10 days paid leave (10 days unpaid leave for casual employees), based on the need, for example, to attend court appearances and related appointments, seek legal advice, and make re-location arrangements.

Right to request a change in working arrangements

6. The claim would also involve a right to workers, in connection with their disclosure of domestic violence, to request flexible working arrangements or other changes to arrangements for when, how or where work is performed (such as variations to working hours or location of work).
7. It is envisaged that such arrangements would be of assistance in (for example) ensuring the safety of the worker (co-workers and in some cases, customers of the workplace) and in working around extended travel times that could be associated with short term crisis accommodation.

¹ Please note that the United Firefighter's Union intends to advance tailored provisions of this claim in relation to awards that cover operational fire fighters including the *Firefighting Industry Award 2010*.

Other elements of the claim

8. It is critical that proper processes and procedures are put in place to support employees experiencing domestic violence to access these provisions and to clarify the roles and responsibilities of the employer and work colleagues.
9. To this end, the claim also includes incidental provisions to:
 - a) Address evidentiary and notice requirements for an application for family and domestic violence leave;
 - b) Appoint a workplace contact for employees to whom applications for the leave and requests for changes to working arrangements would be made (accessing such measures would involve disclosure of domestic violence);
 - c) Clarify the role and responsibilities of the contact person(s) to whom an employee has disclosed domestic violence;
 - d) Establish processes and procedures to ensure confidentiality for employees disclosing domestic violence;
 - e) Address any mandatory reporting and Privacy Act 1988 (Cth) requirements if relevant;
 - f) Ensure adequate training and support is provided for a contact person(s) who is likely to have an employee disclose circumstances related to domestic violence to them; and
 - g) Refer to the protections afforded by the *Fair Work Act* to persons who exercise or propose to exercise a workplace right.

The need for a safety net of support for all workers experiencing domestic violence

10. Two thirds of the over 400,000 (mostly women) who experience domestic violence each year, are in paid employment.² A recent study found that one quarter of employees had experienced domestic violence and that it had a significant effect on their employment.³

² ABS, Personal Safety, Australia, Cat. 4906.0 (2006) p.35; Access Economics, "The Cost of Domestic Violence to the Australian Economy", Report Commissioned by the Australian Government, 2004

³ Family and Domestic Violence Clearinghouse (FDVCH) *National Domestic Violence and the Workplace Survey*, conducted between February - July 2011.

11. Stalking is one of the risk factors that can lead to the victim being killed, and almost all women with violent partners who stalk them also experience harassment at their workplace⁴.
12. Employment is a key pathway for women leaving a violent relationship.⁵ The financial security that employment affords women, allows them to escape becoming trapped and isolated in violent and abusive relationships, and to maintain financial independence and, as far as possible, the ability to care for their children, maintain a decent standard of living and not be forced to leave their home.
13. There has been a shift away from the perception of domestic violence as a 'private matter' to one in which community standards now consider it unacceptable to 'turn a blind eye' to domestic violence.
14. Employers are increasingly recognising their role in not 'turning a blind eye' to perpetuating the cycle of domestic violence by supporting employees experiencing domestic violence to maintain employment and financial independence.
15. Over 1.6 million employees now have access to paid domestic violence leave negotiated in workplace agreements or in some cases, included in state awards.
16. However, women generally have low bargaining power⁶ and victims of family violence are more vulnerable to disrupted work patterns and therefore less likely to be able to negotiate domestic violence related provisions through the bargaining process.⁷
17. The system of enterprise bargaining is predicated on the capacity to tailor arrangements to the individual needs of a workplace, over an appropriate minimum safety net. Inclusion of family and domestic violence provisions in modern awards will ensure an adequate safety net of entitlements to those workers who are unable to access support through workplace bargaining alone.

⁴ Logan et al, 2007

⁵ Patton, 2003, p.71

⁶ ABS 6306.0, May 2012

⁷ M Costello, D Chung & E Carson, 'Exploring Pathways out of Poverty: Making Connections Between Domestic Violence and Employment Practices' (2005) Australian Journal of Social Issues 253, 256;

S Franzway, C Zufferey & D Chung, 'Domestic Violence and Women's Employment' (Paper presented at Our Work , Our Lives National Conference on Women and Industrial Relations, Adelaide, 2007

18. The financial effect of domestic violence on women has significant negative consequences for their long term well-being, including poverty and homelessness. The workplace, and the financial independence that employment provides women, is a critical factor in reducing women's experience of domestic violence, as well as their quality of life post experience of domestic violence.

19. Domestic violence has a significant cost on the Australian economy, effecting attendance, performance and productivity at work, loss of skilled and experienced employees and, in some instances, a negative impact on co-workers and customers.⁸

20. Safe and secure employment is a preventative measure, which is cost effective and can be delivered relatively easily and as part of a strong message of cultural intolerance towards violence against women.

⁸ Access Economics, "The Cost of Domestic Violence to the Australian Economy", Report Commissioned by the Australian Government, estimated the cost at \$8.1b in 2004.