

## **Submission to Independent Review of the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022 (Cth)***

Dr Mihajla Gavin  
Senior Lecturer  
Management Department  
UTS Business School  
University of Technology Sydney  
Sydney, Australia  
[mihajla.gavin@uts.edu.au](mailto:mihajla.gavin@uts.edu.au)

Dr Ruth Weatherall  
Academic  
School of Management  
Business School  
Victoria University of Wellington  
Wellington, New Zealand  
[ruth.weatherall@vuw.ac.nz](mailto:ruth.weatherall@vuw.ac.nz)

### **1. Introduction**

Dr Mihajla Gavin (University of Technology Sydney) and Dr Ruth Weatherall (Victoria University of Wellington) make this submission to assist in the independent review of the operation and impact of the reforms to family and domestic violence leave under the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022* (hereafter, 'the reforms') on small businesses, sole traders, and people experiencing family and domestic violence.

Our expertise relates to workplace responses to domestic violence and the implementation of workplace domestic violence policies. Our submission is informed by our research on implementation of domestic violence workplace policy for organisations, which includes the operation and impact of domestic violence leave entitlements. Please see Appendix 1 for a selection of scholarly publications, public commentary, and other materials related to our research in this area.

We see the reforms as an important step in supporting people who are subjected to or impacted by family and domestic violence. However, we highlight work that remains in providing support for organisations to enact these reforms at the workplace level.

### **2. Background to the legislative reforms**

The reforms amended Australian workplace law, specifically the *Fair Work Act 2009 (Cth)*, to provide for paid family and domestic violence leave. The reforms introduced a new entitlement of 10 days' paid family and domestic violence leave under the National

Employment Standards. This leave can be accessed by full-time, part-time and casual employees, including those working for small businesses.

The United Nations recognises domestic violence as a widespread and devastating abuse on human rights and a major barrier to achieving gender equality (United Nations, 2020). To date, most responses to domestic violence have been concentrated in the areas of law reform, health, and social work. The campaign for legal and industrial protections for victims of violence from a work and employment perspective has been long and contested, primarily driven through the activism of trade unions, feminists, and academics (Ellicott, 2022).

It is only within the last five years that Australia has developed national policy providing for family and domestic violence leave. Internationally, while over the last two decades, a growing number of countries have introduced workplace laws providing for family and domestic violence leave, they continue to be few (see Gavin and Ellicott, Under Review).

In Australia, unpaid family and domestic violence leave was legislated for as an entitlement in the National Employment Standards in 2018. Before this time, workplaces may have provided for such leave via enterprise agreements or workplace policy. Further developments came with the Fair Work Commission making a provisional decision on 16 May 2022 to create a paid leave entitlement for family and domestic violence in the modern award system.

The most recent amendments to the *Fair Work Act* introduce a *paid* leave entitlement. This commenced on 1 February 2023 for full-time, part-time and casual employees of national system employers, 1 August 2023 for employees of small business employers in the national system, and for non-national system employees via ratification of ILO Convention 190 (C190 Violence and Harassment Convention, 2019).

This is a positive step in the Australian context. Enshrining a workplace entitlement to paid family and domestic violence leave provides a floor for employee rights and protections (Weatherall et al., 2021). It also reflects evidence-informed research that statutory approaches to workplace domestic violence support are critical for extending the universality of such provisions (McFerran et al., 2018; Gavin and Ellicott, Under Review).

### **3. Domestic violence: A workplace issue**

Domestic violence is a significant gendered issue, one that has historically been conceptualised as a 'private' matter, rather than a problem for workplaces which requires a workplace solution (Gavin and Weatherall, 2022).

The introduction of workplace policy and statutory laws providing for family and domestic violence leave are typically framed through business case arguments that domestic violence incurs a cost to organisations (Weatherall, 2022). Reports show that, despite violence which often prevents access to work, around two-thirds of women who experience domestic violence are in paid employment (Khadem, 2021).

A compelling body of evidence has foregrounded the argument for workplaces to take domestic violence seriously as a specific workplace problem. Domestic violence can negatively impact attendance at work, work performance, retention and service quality, which can all financially hurt businesses (Wibberley et al., 2018). For individual victims of violence, the impact of violence can result in disrupted careers, lower incomes, and concentration in low-skilled insecure work.

Leave entitlements (particularly those which are paid) can provide crucial financial support which allows a person suffering from violence to seek essential support, while minimising impact to their job security (Swanberg et al., 2012; Summers, 2022). Furthermore, as well known sites of gender inequality, workplaces may contribute to the overall conditions which make women more vulnerable to violence, such as lacking the necessary economic security to leave a violent relationship (Weatherall, 2022).

#### **4. Improving workplace responses to domestic violence**

A legislative framework which provides for (paid) family and domestic violence leave is a necessary first step as part of the responsibility of Australian workplaces to address the impact of domestic violence in the world of work. However, importantly, our research highlights that how such legislation is translated into workplace policies and subsequently enacted at the workplace level is crucial for the effectiveness of such laws (Weatherall et al., 2021). We discuss this below, referring specifically to the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022*.

##### *4.1. Framing of family and domestic violence leave*

Typically, family and domestic violence laws, when implemented at the workplace level, are framed around providing victims of violence with the support needed to leave a violent relationship and respond to the impact of violence, usually where it is not possible to do so during normal working hours. Such leave may be utilised to meet this aim, such as attending court hearings or appointments with medical or legal practitioners. However, we observe several limitations of this framing in the reforms.

Firstly, to some extent, such framing overlooks the complexity of how family and domestic violence is experienced. For instance, violence may continue long after a relationship ends, or violence between intimate partners might not present itself until after a relationship has ended (Weatherall et al., 2021). Dealing with the impact of violence and trauma may be a long-term experience, and workplace policies should adequately reflect this nuance.

Secondly, the reforms are framed so that those eligible to access leave are individuals who are 'experiencing' violence. Recommendation 206 (No. 206) of the ILO Violence and Harassment Convention, 2019 specifies that:

*19. Perpetrators of violence and harassment in the world of work should be held accountable and provided counselling or other measures, where appropriate, with a*

*view to preventing the reoccurrence of violence and harassment, and facilitating their reintegration into work, where appropriate.*

There is little guidance in the reforms on the responsibilities of workplaces in responding to those employees who perpetrate violence. Greater research and policy discussion is required on workplace responsibilities here.

Third, this framing places the responsibility on individual victims of violence to seek redress and support from their employer. This further limits the responsibilities of workplaces in preventing violence or broader strategies of workplace gender equality. As Weatherall (2022, p. 433) argues, this framing “largely overlooks the ways businesses are part of the economic and social systems which reinforce harmful assumptions about gender and violence in and through workplaces.” Disclosing the experience of violence is difficult and stigmatising, which can prevent victims from seeking support (Deen et al., 2022).

#### *4.2. Preventing workplace gender inequality*

ILO Convention 190 recognises that violence and harassment in the world of work is a gendered phenomenon. Yet, the reforms overlook the broader obligations of workplaces in preventing domestic violence through the frame of eradicating workplace gender inequality. To this end, we argue that workplace domestic violence policy should be part of a broader strategy to enhance gender equality (Gavin and Weatherall, in-press). As part of the goal of promoting gender equality within workplaces, domestic violence policies should be part of this workplace strategy. In line with C190’s position to foster “an inclusive, integrated and gender-responsive approach”, workplace policies need to also give due consideration to, and confront, behaviours of gender stereotyping and discrimination which contribute to gender-based violence and harassment.

Alongside organisational policy, workplace cultures should also foster safety and inclusion. C190 stresses the importance of fostering work cultures “based on mutual respect and dignity of the human being to prevent violence and harassment” as well as promoting “general environment of zero tolerance to violence and harassment”.

#### *4.3. Domestic violence as a workplace health and safety issue*

Domestic violence is a workplace health and safety problem. Perpetrator actions can harm and put co-workers at risk and violence is a psychosocial risk that can elevate stress, anxiety and trauma of victims. While the reforms provide a pathway to support victims of domestic violence through leave provisions, there is little in the way of understanding the duties of workplaces to address domestic violence through a work health and safety lens.

Aligned with preventing domestic violence via a strategy on workplace gender inequality, consideration should be given to designing safe workplaces focused on preventing violence and gendered harms, rather than only responding to the experience of violence as it becomes known. Importantly, C190 emphasises the need to “take into account violence and harassment and associated psychosocial risks in the management of

occupational safety and health” and “identify hazards and assess the risks of violence and harassment...and take measures to prevent and control them” as part of appropriate protection and prevention measures, as well as “the inclusion of domestic violence in workplace risk assessments” (per R206).

#### *4.4. Organisational support for implementing domestic violence policy*

The reforms to the Fair Work Act to introduce statutory paid family and domestic violence leave are a positive step to protect victims of violence. Yet we argue that more work is needed to support organisations in their implementation of these new provisions at a workplace level, particularly for small businesses. Our previous research highlights the complexities of implementing such policies in workplaces (see Weatherall et al., 2021).

We emphasise that workplaces require education and practical support to understand and manage domestic violence as a complex issue and design appropriate strategies that drive workplace gender equality, including the design of workplace policies on domestic violence (see R206). Indeed, C190 emphasises the importance of “developing tools, guidance, education and training, and raising awareness, in accessible formats”.

Such organisational support could include:

- Whole-of-organisation training for staff on responding to domestic violence matters,
- Workplace policies which recognise that support may need to be provided long after a violent relationship has ended,
- Appropriate support around performance management and development recognising that violence may impact productivity and work performance,
- Guidance for reintegration of women into the workforce,
- Appropriate support and guidance for workplaces in responding to domestic violence in the context of working from home, and
- Policies that effectively respond to perpetration of violence, in and beyond the workplace.

## Appendix 1: Selected publications and related material

- Gavin M and Ellicott S. Under Review. Domestic violence leave laws: Assessing their effectiveness for addressing domestic violence and gender inequality. In S Williamson, J Parker, N Donnelly, S Ressa and M Gavin (eds) *Research Handbook on Gender and Employment Relations*. Elgar.
- Gavin M and Weatherall R (2021) HR's role in preventing domestic violence in Australia. *HRM Online*. 22 April.
- Gavin M and Weatherall R (2022) Domestic Violence and Work: Setting a Workplace Agenda. *Labour and Industry*. 32(4): 339-348.
- Gavin M and Weatherall R (2023) Workplace support for DV victims slow in coming. *The Sydney Morning Herald*. 14 January.
- Gavin M and Weatherall R (2024) Safety at work? Assessing organisational responses to domestic violence during a global pandemic. *37<sup>th</sup> Association of Industrial Relations Academics of Australia and New Zealand Conference*. Perth, Western Australia. 1 February.
- Gavin M and Weatherall R. In-Press. Domestic Violence and Work. In J Helms Mills, AJ Mills, KS Williams and R Bendl (eds) *Elgar Encyclopedia of Gender in Management*. Elgar.
- Jury A, Thorburn N and Weatherall R (2017) "What's his is his and what's mine is his": Financial Power and Economic Abuse in Aotearoa. *Aotearoa New Zealand Social Work* 29(2): 69-82.
- Jury A, Thorburn N and Weatherall R (2018) Workers' Constructions of the "Good" and "Bad" Advocate in a Domestic Violence Agency. *Human Service Organizations: Management, Leadership & Governance*, 42(3): 318-326.
- Jury A, Thorburn N, Weatherall R and Bury K (2021) Responding to Intimate Partner Violence in Aotearoa New Zealand. *Aotearoa Handbook of Criminology*. Eds. Stanley, E., Bradley, T., & Monod de Froideville. *Auckland University Press*.
- Waller D, Chan K, Gavin M and Singh S (2024) How effective are domestic violence advertising campaigns for preventing violence against women? *The Conversation*. 3 May.
- Weatherall R (2020) Even when those struggles are not our own: Storytelling and solidarity in a feminist social justice organization. *Gender, Work & Organization*, 27(4): 471-486.
- Weatherall R (2020) Workplaces can play a big role in helping domestic violence victims. *The Sydney Morning Herald*. 26 October.

Weatherall R (2021) Reimagining Academic Activism: Learning from Anti-violence Feminist Activists. *Bristol University Press*.

Weatherall R (2022) Theorising domestic violence and work: where are we now and where to next? *Labour and Industry*. 32(4): 429-442.

Weatherall R, Gavin M and Thorburn N (2021) Safeguarding women at work (?) Lessons from Aotearoa New Zealand on effectively implementing domestic violence policies, *Journal of Industrial Relations*, 63(4): 568-590

Weatherall R, Gavin M and Thorburn N (2021) Domestic violence shock waves reach way beyond the home. *The Sydney Morning Herald*. 6 April.

## **Appendix 2: References**

Deen C. et al. (2022) Theoretical and Empirical Advancements in Intimate Partner Aggression and Violence at Work. *Academy of Management Proceedings*.  
<https://doi.org/10.5465/AMBPP.2022.11880symposium>

Ellicott SG (2022) Arriving at a social equity orientation on workplace domestic violence policy in Australia. *Labour & Industry*, 32(4): 358-379.

International Labour Organization (ILO) (2019) *Violence and Harassment Convention, 2019 (No. 190)*

International Labour Organization (ILO) (2019) *Violence and Harassment Recommendation, 2019 (No. 206)*

Khadem N (2021) Domestic violence was treated by workplaces as personal, now it's a \$2 business problem. *ABC*. 10 November.

McFerran L, Fos-Tuvera A and Aeberhard-Hodges J (2018). An employment right – standard provisions for working women experiencing domestic violence. *University of Oxford Human Rights Hub Journal*, 1: 167-198.

Summers A (2022) The choice: violence or poverty. *Labour and Industry* 32(4): 349-357.

Swanberg JE, Ojha MU and Macke C (2012) State Employment Protection Statutes for Victims of Domestic Violence: Public Policy's Response to Domestic Violence as an Employment Matter. *Journal of Interpersonal Violence* 27(3): 587-619.

United Nations (2020) *International Day for the Elimination of Violence against Women*.  
<https://www.un.org/en/observances/ending-violence-against-women-day>

Wibberley G, Bennett T, Jones C, et al. (2018) The role of trade unions in supporting victims of domestic violence in the workplace. *Industrial Relations Journal* 49(1): 69-85.