25 September 2018

Committee Secretary

Senate Education and Employment Committee

PO Box 6100

Parliament House

Canberra ACT 2600

By email: eec.sen@aph.gov.au

Dear Committee Secretary,

**Senate Education and Employment Legislation Committee inquiry into the Fair Work Amendment (Family and Domestic Violence Leave) Bill 2018**

Thank you for the opportunity to provide a written submission to the inquiry into the Fair Work Amendment (Family and Domestic Violence Leave) Bill 2018 (the Bill).

In light of the short timeframe for this inquiry, this letter is not an exhaustive submission and will not consider each provision of the Bill. The Australian Human Rights Commission (Commission) previously made a submission to the Fair Work Commission’s Four Yearly Review of Modern Awards, in relation to the Australian Council of Trade Unions (ACTU) proposal that all Modern Awards include specific provisions relating to paid family and domestic violence leave (previous submission). The Commission’s previous submission is attached and relied upon. This letter briefly reiterates the views expressed by the Commission in that submission, in the context of the current Bill, and makes further recommendations for reform.

The Commission recognises the significant social and economic impact of family and domestic violence on the Australian community, and the disproportionate impact that this has on women and children.[[1]](#endnote-1) The financial security that paid employment affords victims/survivors of family and domestic violence not only allows them to escape becoming trapped and isolated in violent and abusive relationships, but also allows them to maintain, as far as possible, their home and standard of living.[[2]](#endnote-2)

Family and domestic violence can also seriously impair equality in employment for women. Women who experience family and domestic violence may face adverse treatment in the workplace that is specifically related to their experiences of violence. They may be denied leave or flexible work arrangements to attend violence-related matters, such as moving into a shelter; they may have their employment terminated; or they may be transferred or demoted.[[3]](#endnote-3) This treatment can exacerbate the costs and consequences of family and domestic violence.[[4]](#endnote-4)

The Commission welcomes the introduction of the Bill. The Bill’s introduction of a new entitlement in the National Employment Standards (NES) to five days of unpaid family and domestic violence leave in a 12 month period is a positive step towards ensuring a fair and relevant minimum safety net of terms and conditions for employees on a national level. The proposed amendment to the *Fair Work Act 2009* (Cth)(the Act) will ensure consistency in entitlements to unpaid family and domestic violence leave for employees in the national system. However, the Commission recommends further reform to better meet the needs of domestic violence victims/survivors, taking into account Australia’s international human rights and labour obligations.

**The Commission recommends** that the Australian Government, and the Committee in conducting its inquiry, consider introducing the following further reforms:

* amend the NES in Part 2–2 of the Act to include an entitlement to paid family and domestic violence leave (or a combination of paid and unpaid leave) for employees
* give consideration to whether an employee who is providing care or support to another person who is experiencing family and domestic violence, should be entitled to family or domestic violence leave.

**The proposed new entitlement to unpaid family and domestic violence leave**

The ACTU’s proposed ‘Revised Family & Domestic Violence Leave Clause’ sought to provide ten days paid domestic violence leave to employees, including casual employees, in all modern awards.[[5]](#endnote-5) This application was supported by the Commission.[[6]](#endnote-6) The Fair Work Commission did not grant this claim for paid family and domestic violence leave, however accepted that employees should be entitled to five days of unpaid family and domestic violence leave in a 12 month period.[[7]](#endnote-7)

The Commission understands that the entitlement in the Bill to unpaid family and domestic violence leave is consistent with the new modern award entitlement that the Fair Work Commission inserted into all modern industry and occupation awards.[[8]](#endnote-8) The Commission supports the introduction of the Bill, as it will ensure a greater level of consistency in family and domestic violence leave entitlements for employees across the national system.

The Commission has previously expressed concern that there is no comprehensive coverage of workplace protections for employees who experience family and domestic violence. While there has not been a consistent approach, there has been widespread acknowledgement in both the private and public sector of the need for employees to access leave and other protections when they are experiencing family violence. All Australian governments have recognised that employees can access their existing leave entitlements when they have experienced family violence and many state and territory governments have introduced paid family and domestic violence leave entitlements.[[9]](#endnote-9) For example, the entitlement in the Australian Capital Territory’s Enterprise Bargaining Agreement is for up to 20 days of paid family and domestic violence leave per calendar year for employees (other than casual employees). Leave for family and domestic violence purposes is in addition to other leave entitlements. Casual employees are entitled to unpaid family and domestic violence leave.[[10]](#endnote-10) Many Australian businesses also provide for paid family and domestic violence leave within company policy.[[11]](#endnote-11)

While the Commission acknowledges that the new proposed entitlement to unpaid leave in the Bill is a welcome step towards ensuring a consistent minimum safety net for employees experiencing family or domestic violence on a national level, the proposed entitlement still falls short of the paid leave entitlements afforded in many state and territory jurisdictions, and by private businesses. The Commission encourages the Australian Government to work towards achieving a uniform standard that is fair and relevant and applicable across all workplaces. The Commission reiterates its recommendation in our previous submission to the Fair Work Commission, to introduce entitlements to paid family and domestic violence leave.

The Commission supports the Bill’s proposal to make the new leave entitlements available in full to part-time and casual employees. Women who are subject to family and domestic violence have been found to have more disrupted work history, are on lower personal incomes, have had to change jobs frequently and are more likely to be employed in casual and part-time work than women with no experience of family and domestic violence.[[12]](#endnote-12)

The Commission also supports the requirement in s 106C of the Bill for employers to keep an employee’s personal information concerning their experience of family or domestic violence confidential. Research has shown that concerns about confidentiality appear to be key barriers in using family and domestic violence leave clauses.[[13]](#endnote-13) To overcome this issue, training and support must be provided to all employees—in particular, those who are likely to have an employee disclose circumstances related to family and domestic violence to them.[[14]](#endnote-14)

**Considerations for further reform**

1. **Entitlement to paid family and domestic violence leave**

In the Commission’s view, further reform is necessary to ensure a comprehensive coverage of workplace protections for employees who experience family and domestic violence and those who support them.

The Commission recommends that the Act be amended at Part 2–2 to insert into the NES an entitlement to paid family and domestic violence leave. The Commission makes no specific comment, in this submission, as to whether this should be an entitlement to a combination of paid and unpaid leave, or as to the number of days of leave. The Commission notes, as it did in its previous submission to the Fair Work Commission, that based on current practices in Australia and abroad, the period of ten days paid leave is well within the range of existing leave provisions.

The Commission’s previous submission, at Part 2, outlines Australia’s international human rights obligations as they relate to this issue. The Commission highlighted that the introduction of paid family and domestic violence leave would foster better compliance with, and promotion of, our international obligations. Part 3 (in particular, Part 3.2), of the Commission’s previous submission, focuses on the importance of financial security through paid employment for those, especially women, who are experiencing violent and abusive relationships. Part 4 of that submission explored the practices of employers providing this kind of leave in Australia and overseas—the Commission relevantly notes that New Zealand recently passed legislation granting ten days of paid leave to employees experiencing domestic violence, and caregivers of children who are victims of violence. The leave is in addition to standard holiday and sick leave entitlements.[[15]](#endnote-15)

1. **Extending leave entitlements to those supporting victims of family and domestic violence**

The Commission recommends that consideration be given to extending leave entitlements to those providing care or support to another person who is experiencing family and domestic violence.

The Australian Law Reform Commission (ALRC) in its report titled *Family Violence and Commonwealth Laws—Improving Legal Frameworks* recommended that the Australian Government should consider amending the Act to provide that an employee who is providing care or support to another person who is experiencing family violence, may request from their employer, a change in working arrangements to assist them to deal with circumstances arising from the family violence.[[16]](#endnote-16)

The ALRC’s report further stated as follows:

The ALRC agrees that an employee who is experiencing family violence, or who is required to provide care or support to another person who is experiencing family violence, should be entitled to family violence leave. The ALRC suggests that any definition of another person should include members of immediate family or household but also recognise the kinship and family relationships of Indigenous people as well as people from CALD [culturally and linguistically diverse] communities, the living arrangements and relationships of people with disability, and those in same-sex relationships.[[17]](#endnote-17)

The ALRC considered that there should be a core of basic requirements with respect to family and domestic violence leave. The report stated that:

Any family violence leave introduced under the NES should be available to employees who are victims of family violence as well as employees who need to access such leave to provide care or support to another person, for example a member of the employee’s immediate family or household who is experiencing family violence.[[18]](#endnote-18)

The Commission notes that Queensland provides access to a minimum of ten days of paid family and domestic violence leave to employees who are affected by family and domestic violence. This leave can also be taken by those supporting a person affected by the violence.[[19]](#endnote-19)

The Commission recommends that consideration be given to the ALRC’s proposal as part of the Committee’s inquiry into the Bill.

Thank you for the opportunity to provide a submission to this inquiry.

Yours sincerely,

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1. Australian Bureau of Statistics, *Personal Safety, Australia, 2016* (11 November 2017) <[http://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0](http://www.abs.gov.au/ausstats/abs%40.nsf/mf/4906.0)>; Australian Human Rights Commission, 'Children’s Rights Report 2015’ (Report, 2015) 96–168 <<https://www.humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2015>>. [↑](#endnote-ref-1)
2. Ludo McFerran, ‘National Domestic Violence and the Workplace Survey’, (National Survey, Australian Domestic and Family Violence Clearinghouse, October 2011) 2 <<https://www.arts.unsw.edu.au/media/FASSFile/National_Domestic_Violence_and_the_Workplace_Survey_2011_Full_Report.pdf>>. [↑](#endnote-ref-2)
3. Australian Human Rights Commission, Submission to the Australian Law Reform Commission, *Inquiry into Family Violence and Commonwealth Laws* (21 April 2011), [47] <<http://www.humanrights.gov.au/legal/submissions/2011/20110421_family_violence.html>>. See also Donna Chung et al, *Home Safe Home: The link between domestic and family violence and women’s homelessness* (Report, Partnerships against Domestic Violence, November 2000). <<http://wesnet.org.au/wp-content/uploads/2011/05/homesafehome.pdf>>. [↑](#endnote-ref-3)
4. Australian Human Rights Commission, Supplementary Submission to the Attorney-General’s Department, Commonwealth of Australia, *Consolidation of Anti-Discrimination Laws* (23 January 2012), [23–25] <<https://www.humanrights.gov.au/consolidation-commonwealth-discrimination-law-domestic-and-family-violence>>. See also Australian Human Rights Commission, Submission to the Australian Law Reform Commission, *Inquiry into Family Violence and Commonwealth Laws* (21 April 2011), [47] <<http://www.humanrights.gov.au/legal/submissions/2011/20110421_family_violence.html>> [↑](#endnote-ref-4)
5. Australian Council of Trade Unions, ‘Case for paid family and domestic violence leave commences at Fair Work Commission’ (Media Release, 14 November 2016). [↑](#endnote-ref-5)
6. Australian Human Rights Commission, Submission to the Fair Work Commission, *Four yearly review of modern awards—Family and domestic violence clause*, 5 October 2016, <<https://www.fwc.gov.au/sites/awardsmodernfouryr/common/am2051-sub-ahrc-120516.pdf>>. [↑](#endnote-ref-6)
7. *4 yearly review of modern awards—Family & Domestic Violence Leave Clause (AM2015/1)* (3 July 2017) FWC <<https://www.fwc.gov.au/awards-agreements/awards/modern-award-reviews/4-yearly-review/common-issues/am20151-family-and>>. [↑](#endnote-ref-7)
8. From 1 August 2018, as a result of the Fair Work Commission’s decision, a new clause providing five days of unpaid family and domestic violence leave in a 12 month period took effect in 123 modern industry and occupation awards. The new clause inserted by the Fair Work Commission only applies to employees whose employment terms and conditions are set by those awards. As the explanatory memorandum to the Bill points out, this still leaves millions of Australian employees in the national system without access to family and domestic violence leave. [↑](#endnote-ref-8)
9. See NSW Government, Department of Premier & Cabinet, *C2011-08 Support for Employees Experiencing Domestic Violence* (15 February 2011) <<https://arp.nsw.gov.au/c2011-08-support-employees-experiencing-domestic-violence>>; NSW Industrial Relations Commission, *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009*, C8041, 12 July 2012; Queensland Government, Public Service Commission, *Support for employees affected by domestic and family violence* *(Directive 04/15)* (25 November 2015) <https://www.forgov.qld.gov.au/documents/directive/0415/support-employees-affected-domestic-and-family-violence>; Northern Territory Government, Office of the Commissioner for Public Employment, *Miscellaneous Leave (By-law 18): Commissioner’s Guideline* (November 2017); Commonwealth Government, Australian Public Service Commission, *Circular 2012/3 Supporting Employees Affected by Domestic or Family Violence* (20 November 2012); Tasmanian Government, *Employment Direction No. 28: Family Violence–Workplace Arrangements and Requirements* (4 February 2013); **Fiona Richardson, Minister for Women and the Prevention of Family Violence, and Natalie Hutchins, Minister for Industrial Relations, ‘Victoria to lead the way on family violence leave’ (Media Release, 17 August 2015) <**<http://www.premier.vic.gov.au/victoria-to-lead-the-way-on-family-violence-leave>>**; Gail Gago, Minister for the Status of Women, ‘Paid leave to help break the cycle of domestic violence’ (Media Release, 25 November 2015) <**<https://www.dcsi.sa.gov.au/services/latest-news/media-releases-2015/paid-leave-to-help-break-the-cycle-of-domestic-violence>**>; Bronwen Overton-Clarke, Commissioner for Public Administration, ACT Government, ‘Leave for domestic violence purposes advice in the ACT public service’(Advice, 8 August 2016) <**<http://www.cmd.act.gov.au/__data/assets/pdf_file/0010/912934/Leave-for-Domestic-Violence-Purposes-Advice.pdf>**>; The Hon. Simone McGurk MP, Minister for Child Protection; Women’s Interests; Prevention of Family and Domestic Violence; Community Services, ‘Domestic violence victims to get the support they deserve in the workplace’, (Media Release, 14 June 2017) <**<http://simonemcgurk.com.au/domestic-violence-victims-to-get-the-support-they-deserve-in-the-workplace/>**>.** [↑](#endnote-ref-9)
10. ACT Government, ACT Public Service, *Administrative and Related Classifications: Enterprise Agreement* (2013–2017) cl F22. [↑](#endnote-ref-10)
11. See, for example, Joanna Mather and Jaclyn Keast, ‘Telstra introduces domestic violence leave’, *Australian Financial Review* (online), 13 January 2015 <<http://www.afr.com/news/policy/industrial-relations/telstra-introduces-domestic-violence-leave-20150113-12na7h>>; National Australia Bank, ‘NAB leads the industry in domestic violence support’ (Media Release, 2 June 2013) <<http://www.nab.com.au/about-us/media/media-releases-2013/nab-leads-the-industry-in-domestic-violence-support>>; Virgin Australia Group, ‘Sustainability Report’ (2015) 5 <[https://www.virginaustralia.com/cs/groups/internetcontent/@wc/documents/webcontent/~edisp/sustainability-report.pdf](https://www.virginaustralia.com/cs/groups/internetcontent/%40wc/documents/webcontent/~edisp/sustainability-report.pdf)>; Male Champions of Change, *Domestic violence is a workplace issue: Male Champions of Change call on leaders to step up together* (November 2015) <<http://malechampionsofchange.com/domestic-violence-is-a-workplace-issue/>>. [↑](#endnote-ref-11)
12. Suzanne Franzway, Carole Zufferey and Donna Chung, ‘Domestic Violence and Women’s Employment’ (Speech delivered at the Our Work, Our Lives 2007: National Conference on Women and Industrial Relations, Adelaide, 20–21 September 2007), citing Jody Raphael, ‘Domestic Violence as a Welfare-to-Work Barrier: Research and Theoretical Issues’ in Claire Renzetti et al (eds), *Sourcebook on Violence Against Women* (Sage Publications, 2001), 443–457. [↑](#endnote-ref-12)
13. Ludo McFerran, Natasha Cortis and Tahlia Trijbetz, ‘Domestic and Family Violence Clauses in your Workplace: Implementation and good practice’ (Draft Report, Social Policy Research Centre & Centre for Gender Related Violence Studies, University of New South Wales, June 2013) 9 <<https://www.arts.unsw.edu.au/media/FASSFile/Domestic_and_Family_Violence_Clauses_in_your_Workplace__Implementation_and_good_practice.pdf>>. [↑](#endnote-ref-13)
14. The ACTU has developed a set of best-practice principles for guiding the implementation of paid family violence leave provisions in workplaces. One of these principles is training and support for employees. See: Victoria, Royal Commission into Family Violence, *Summary and Recommendations* (March 2016) 85, citing the Australian Council of Trade Unions, Submission No 521 to the *Royal Commission into Family Violence*, Victorian Government (May 2015) <<http://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Reports/RCFV_Full_Report_Interactive.pdf>>. See also: Ludo McFerran, Dr Natasha Cortis and Tahlia Trijbetz, ‘Domestic and Family Violence Clauses in your Workplace: Implementation and good practice’ (Draft Report, Social Policy Research Centre & Centre for Gender Related Violence Studies, University of New South Wales, June 2013) 3. [↑](#endnote-ref-14)
15. Submissions and Advice, Domestic Violence (Enhancing Safety) Bill 2018 (NZ) <<https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/00DBHOH_BILL71935_1/tab/submissionsandadvice>>. [↑](#endnote-ref-15)
16. Australian Law Reform Commission, ‘Family violence and Commonwealth laws—improving frameworks’ Report No. 117 (November 2011) 23. [↑](#endnote-ref-16)
17. Australian Law Reform Commission, ‘Family violence and Commonwealth laws—improving frameworks’ Report No. 117 (November 2011) 426. [↑](#endnote-ref-17)
18. Australian Law Reform Commission, ‘Family violence and Commonwealth laws—improving frameworks’ Report No. 117 (November 2011) 424. [↑](#endnote-ref-18)
19. Queensland Government, Public Service Commission, *Support for employees affected by domestic and family violence* *(Directive 04/15)* (25 November 2015). [↑](#endnote-ref-19)