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**Re: ALRC Issues Paper on Family Violence and Commonwealth Laws –  
Employment and Superannuation**

The National Network of Working Women's Centres (NWWC) are pleased to have the opportunity to submit this response.

The NWWC's have for many years provided a service to predominantly non union, vulnerable women workers with a range of workplace issues. Because of the close relationships of trust that develop between staff and clients, we are often privy to disclosures of domestic and family violence which have impacted adversely on the employment relationship.

Our Centres have a long history of raising domestic and family violence as a workplace issue. More recently we have worked collaboratively with the Domestic Violence Clearinghouse, the Domestic Violence service sector and unions to address the issue of domestic and family violence where it impacts on women workers and their workplaces.

In 2005 - 2007 the Working Women's Centre in SA was a community partner in research conducted by Suzanne Franzway, Carole Zuffrey and Donna Chung at the University of South Australia on 'Domestic Violence and Women's Employment' and have been involved in ongoing work with the Office for Women on the development and implementation of a Women's Safety Strategy. All Centres have been exploring areas of law reform to ensure that the particular needs of working women who experience family violence can be addressed.

In addition to our response we also include a copy of a recent paper entitled "Domestic violence discrimination in the workplace: is statutory protection necessary", authored by Alana Heffernan and Lee Matahaere who are Industrial Officers with the Queensland Working Women's Service.

As outlined in the above paper, NWWC consider that anti-discrimination law reform could be an effective means of laying down the foundations for protecting employment and reducing the effects of domestic violence in the workplace arena. Protections would then flow on to Queensland workers under the General Protections/Unlawful Dismissal provisions of the *Fair Work Act 2009* (Cth) and the *Industrial Relations Act 1999* (Qld), as both provide that dismissals in contravention of the *Anti-discrimination Act 1991* are deemed unlawful

Our submission includes a number of relevant case studies. Names and other identifying

details have been changed to ensure confidentiality.

We have not included responses to all questions, just those where the experiences of our staff and clients can be adequately represented.

We are happy to be contacted about this submission.

Yours sincerely

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## **Family Violence and Commonwealth Laws – Employment and Superannuation National Network of Working Women’s Centres - Response to Issues Paper of the Australian Law Reform Commission**

**Question 1**           What barriers, if any, do employees who are experiencing family violence currently face in disclosing family violence in employment-related contexts?

- Loss of job.
- Not being considered for work if a disclosure of family violence is made at interview.
- Shame.
- An escalation of violence from a partner if they become aware that a disclosure of family violence has been made.
- Risking disclosure of their details or whereabouts by the employer or other person in the workplace, perhaps to the detriment of them and their children’s safety.
- Judgemental attitudes and responses from the people they disclose to, whether that be workmates, the Union or OHS representative or the employer.
- Fears about the safety of their workmates and having to shoulder the responsibility of that, rather than the partner who is causing the threats or violence being seen as 'responsible'.
- Fears about their own safety.
- Using up all leave options and thus having no leave entitlements to access if they or their children become ill.

A longer discussion of these issues is found in 'Domestic Violence and Women's Employment' – Franzway, Zuffrey and Chung, already alluded to in the Issues Paper.

*Pam worked for a trade business, running their office and accounts. She confided in her boss that she had some personal issues and took a week off to sort them out. During her time off she asked that her employer not inform her husband where she was or that she was having time off work.*

*When she returned to work she found that her boss had breached her confidence and had told her husband that she had taken time off. She was also handed a letter of warning stating that as the business had a duty of care to the other employees and couldn't guarantee their safety if Pam's husband returned to the workplace they didn't want her back at work until she could guarantee that she had sorted out her personal life.*

**Question 2**           What impact might disclosure of family violence by employees have on the responsibility or liability of employers, union delegates or others?

- The workplace will have a duty of care under occupational health and safety legislation if a risk or a potential risk of accident or injury is likely to occur at the workplace (including workplace car parks, work functions outside of the worksite, etc) when such a risk is reported to them. Employers, union delegates or others may respond proactively and opt to put in place a risk management plan as outlined under the various OHS Acts but most often what we see is that women are asked to leave.
- Mandatory reporting especially in the NT under the *Domestic and Family Violence Act 2007* (NT). This aspect requires broad consultation with specialist providers in the domestic violence sector.

(1) Mary had worked for 2 months and in that time had been promoted to Manager. Her husband had come in to the workplace one day and caused problems. After another incident at home she rang her boss to say she would be in a bit late as she was at the police station reporting a domestic violence incident and had been delayed. He sacked her as he said she was just too difficult.

(2) A group of union women workers contacted our Centre expressing concerns about one of their co-workers. Their workmate would often go 'missing' for periods of time during the work day, return late from lunch and so on. She had been performance counselled by the Boss with her union rep present. The union rep was at her wit's end on how to help as she was trying hard to keep the employment relationship going. The worker's friends suspected that their workmate was experiencing family violence – they had seen bruising injuries. They had also seen that in her locker she had all her personal belongings like her passport, jewellery, make-up and clothing. They suspected that on occasions she slept at work. They had tried repeatedly to talk with her to see what help they could organise but she would never disclose what the real problem was.

**Question 3** Does the administration of the Job Seeker Classification Instrument encourage job seekers to disclose the existence of sensitive information such as family violence? Have reforms implemented in 2009 affected the frequency with which family violence is disclosed?

- Working Women's Centres' experience of this question is limited but we have been asked on occasions to write a letter or call a staff member at Centrelink to verify that a woman has disclosed she has experienced or is experiencing domestic violence and that as a result of this has lost her job. Clearly we cannot give testimony to violence we have not witnessed but we can state that a woman has disclosed this as part of her consultation with us and that she has cited family violence as the reason for losing her job. This is often useful for women who have no income as it means they don't usually have to wait for the qualifying period.

**Question 8** Should the Australian Government amend s 65 of the *Fair Work Act 2009* (Cth) to include experiencing family violence as a basis upon which an employee may request flexible working arrangements?

**Question 9** Should the Australian Government amend the National Employment Standards under the *Fair Work Act 2009* (Cth) to provide for a minimum statutory entitlement to family violence leave?

**Question 10** If the National Employment Standards under the *Fair Work Act 2009* (Cth) should be amended to provide for a minimum statutory entitlement to family violence leave: (a) under what circumstances should employees be entitled to take such leave; (b) how many days should employees be entitled to take; and (c) should such leave be paid or unpaid?

Access to leave and flexible work arrangements that support workers during times of family violence would enhance the participation and job security of these particular

employees. A minimum statutory entitlement in addition to sick/carer's leave may be the most appropriate mechanism. Access to all other leave entitlements at this time without adverse action would also be a way of providing support and income for this group.

Amending s65 to include domestic violence as a basis for which flexible work arrangements may be requested could be useful. However there are limitations with only having a right to request and not an entrenched clear entitlement. Access to flexible work arrangements including reduction of hours or taking of unpaid or paid leave may support the person who has experienced domestic violence to make the necessary domestic adjustments as well as provide time for legal proceedings or for recovery. The timeframes for making such a request would also have to be significantly less than those in the current s 65 (21 days) because of the unpredictable nature of domestic violence.

The inclusion of minimum statutory leave provisions and access to flexible work arrangements for family violence leave may also be a useful way to educate and raise awareness with employers about the prevalence and impact of domestic violence within the workforce.

*WWC SA was contacted by Lucille's father, who was referred by a SafeWork SA Inspector. He encouraged Lucille to phone us. Lucille's husband had found a text message on her mobile from a co-worker which said 'I'm sitting at your desk.' This co worker was from interstate and had been flown in for the day. He sent the text to Lucille as a courtesy. She worked part time and wasn't at work that day. The husband became extremely angry when he saw the text message, rang the workplace and told them, 'The last person who had a crush on my wife spent 6 months in hospital.' Lucille then fled, taking the children with her. Her husband and two of his mates then spent the day outside the workplace in the city and watched everyone who left to see if they could identify the person who may have sent the text. The interstate worker had already been flown back to his home due to the threat. This all happened on a day when Lucille did not work anyway. When she got back to work the employer summoned Lucille to his office. Lucille let him know that she had left her husband. The employer said, 'I can't believe you have the audacity to think you can have your job back.' The husband had told her to 'pack her shit and get out' which she had done. Lucille felt she was not currently at risk but would be once her husband learnt that this was final. She made it quite clear to the employer that she had no intention of resigning, that she was the victim and not responsible for her husband's behaviour, that she loved her job, that she'd left her husband, that she had two children to support and now had to find a new home and that there had never been any performance issues in the past.*

Model Clause example:

**S 65 Requests for flexible working arrangements**

Employee may request change in working arrangements

(1) An employee who is a parent, or has responsibility for the care, of a child may request the employer for a change in working arrangements to assist the employee to care for the child if the child:

- (a) is under school age; or
- (b) is under 18 and has a disability.

Note: Examples of changes in working arrangements include changes in hours of work, changes in patterns of work and changes in location of work.

- (2) The employee is not entitled to make the request unless:
- (a) for an employee other than a casual employee - the employee has completed at least 12 months of continuous service with the employer immediately before making the request; or
  - (b) for a casual employee - the employee:
    - (i) is a long term casual employee of the employer immediately before making the request; and
    - (ii) has a reasonable expectation of continuing employment by the employer on a regular and systematic basis.

**(3) An employee who is a victim of domestic violence may request the employer, regardless of size of the organisation, for a change in working arrangements for a temporary period.**

Formal requirements

- (3) The request must:
- (a) be in writing; and
  - (b) set out details of the change sought and of the reasons for the change.

Agreeing to the request

- (4) The employer must provide temporary access to leave provisions upon request and in respect of longer term arrangements provide the employee a written response to the request within 7 days, stating whether the employer grants or refuses the request.
- (5) The employer may refuse the request only on reasonable business grounds.
- (6) If the employer refuses the request, the written response under subsection (4) must include details of the reasons for the refusal.

The insertion of a clause in section 65 may also assist in the recognition that domestic violence impacts on the whole family group or those living in the immediate domestic environment and that children may also have special needs at this time.

Children who are exposed to domestic violence, especially repeated incidents of violence, are at risk, both immediately and in the future. This is a time when children are likely to need care and attention more than ever. In order to minimise the risk of long-term damage, child witnesses to domestic violence need the safety and security of their environment to be restored.

**The relevant NES entitlement to request flexible working arrangements** - allows parents or carers of a child under school age or of a child under 18 with a disability, to request a change in working arrangements to assist with the child's care. If an additional standard that specifically allows for an entitlement is not included as a NES, then an alternative could be to include a statement within the explanatory notes on the NES entitlement for a right to request flexible arrangements for those victims to support the children under their care. In most workplaces there is no formal flexible work request 'form' that an employer must make available to employees in order for a worker experiencing family violence to clearly plan and discuss with the employer a considered flexible work proposal. Approval may rely on the victim's ability to make a 'reasonable' and feasible flexible work proposal and the employer's ability to assess the personal need for flexibility and to understand the positive and negative implications of the decision on the change.

The victim of domestic violence is often a casual employee with little bargaining power.

While the employer must have 'reasonable' grounds to refuse a flexible work request the employee may not be advised nor made aware of the more global implications for the organisation when making the request. The grounds an employer could refuse may include but are not limited to costs, an inability to make staff changes, detrimental impact on quality or performance, too little work available when the employee proposes to work / too much when they will be absent or planned structural changes. An employer must provide evidence that they have taken conclusive steps to investigate the flexible work request or other alternative options. If the request is declined the victim of domestic violence should have alternative options including access to leave without adverse action.

**The relevant NES entitlement for Personal / carer's leave and compassionate leave is:** - 10 days paid personal / carer's leave, two days unpaid carer's leave as required, and two days compassionate leave (unpaid for casuals) as required. An addition of the words 'victim of domestic violence' could be included here to broaden access to leave entitlements to provide broader access to these entitlements.

Before making specific recommendations about the period of leave that an employee may be entitled to, specific to domestic violence, a meta analysis of available research should be conducted to discover average or median periods of the duration of the most significant impacts of domestic violence. Each case will be unique so there is benefit in having a combination of available paid and unpaid leave as well as flexible work arrangement provisions. Amendments to the Fair Work Act in any area to assist with support of victims of family violence needs to articulate the responsibilities of employers as well and specify examples of relevant leave, flexible working arrangements, including changes to working times and work location, telephone number and email address.

The agreement that has been made between Torquay-based Surf Coast Shire and the Australian Services Union should be considered as a practical example of entrenching an employee's entitlement to leave under family violence circumstances. This leave covers domestic violence that includes physical, sexual, emotional, financial, verbal or emotional abuse by a family member, maintains privacy and allows 20 days leave (paid and unpaid) under specific circumstances.

*Kelly worked for a short time in a small boutique in a regional town. Her husband came in to the store and went 'nuts'. The store owner lives interstate so didn't know about the incident but other women who worked there rang and told him. Kelly had to go to have a CAT scan because her husband had hit her so hard. She let the owner know about this. He then told her she had to choose between her job and the cat scan – he said 'you can't have both.' Kelly was then dismissed for very vague reasons – 'it's not working out, etc'. Kelly rang HR who told her she would be paid a week's notice but the payment never appeared. When she rang to enquire again, HR told her that she wouldn't be getting it as she'd been dismissed for gross and wilful misconduct. When she asked what this meant she was told there was an accusation of stealing but they couldn't give any details of what or when she had allegedly stolen something. Kelly asked if she had stolen something then why hadn't she been told and why hadn't it been reported to the police. She was given no reason. Kelly now works in the shop next door.*

**Question 11**      What steps could be taken to ensure that employees who are experiencing family violence are better able to access individual flexibility arrangements

made under s 202 of the *Fair Work Act 2009* (Cth)?

- Provisions for individual flexibility arrangements currently exist in the *Fair Work Act 2009* (Cth) but in our experience are weak in application, or more correctly not likely to be negotiated by low paid, low status, vulnerable non unionised women workers.
- Most women who contact Working Women's Centres do not have enterprise agreements. Most women are unaware of what regulates the terms and conditions of their employment. The level of knowledge and negotiation skills required to access IFA's is high.
- IFA's are more suited to highly unionised workplaces. Most women who use the services of our Centres are not union members, nor are their workplaces unionised.
- Women experiencing family violence normally need something flexible in place quickly and at short notice. For example women workers may have to attend their children's school at short notice if her abusive partner is threatening her safety and that of her children, she may need to go to the police or attend a medical appointment. IFA's do not really take these emergencies that require flexibility into account.
- The process for the application and determination of the 'better off overall test' is vague, entered into privately between the employer and employee and such agreements do not need pre-approval by Fair Work Australia. Working Women's Centres have concerns about the rights and entitlements of vulnerable women workers who enter in to these arrangements. As such IFA's are difficult to monitor.
- If there is a fault in the flexibility agreement terms then it has to be identified and then raised as a general protections matter – women experiencing family violence would first of all have to identify that there is an issue and they already have enough on their plates dealing with family violence without having to enter in to another round of dispute with their employer, which inevitably increases the fears and risks of loss of employment.
- Negotiating an IFA requires a high level of knowledge of workplace rights by an employee.
- An IFA would have to satisfy the 'meet the genuine needs of the employer' provision. Our experience of most employers is that they don't see an employee's need to attend to anything to do with family violence as their issue – they would see that they have no 'genuine need' in this case. (It is our view that family violence could be seen to fit within the scope of 'family responsibilities or sex discrimination' within Australian Human Rights Law but there is no widespread acceptance of this by the employer community.)
- The scope of an IFA is limited by the flexibility term in the agreement itself ie the flexibility term must designate those provisions of the agreement that can be varied.

**Question 12** Should the inclusion of family violence clauses in enterprise agreements be encouraged? If so, what provisions should such clauses contain?

- It is the view of NWWC's that the inclusion of family violence clauses in enterprise agreements is a positive move to protect the safety and industrial rights of women who have experienced family violence, which has resulted in a negative impact on their work entitlements.
- There is probably more widespread acceptance by workplaces of adopting a policy position in relation to domestic and family violence but this does not provide the strength of clauses in enterprise agreements. Enterprise agreements have genuine engagement of all parties in their development. Policy positions do not often have

the involvement of workers in an enterprise and are often framed too loosely to have any effective application in a workplace.

- NWWC's are happy with the current model clauses put forward by the DV Clearinghouse as a benchmark for such clauses. NWWC's encourage enterprises to improve on these clauses but do not support efforts to offer less than these clauses. The current clauses have been developed by skilled practitioners with years of experience in the domestic and family violence arenas and in conjunction with industrial relations advisors and unions and as such are seen as best practice and world leading at this stage.

**Question 13** What other measures could be introduced to ensure employers are responsive to the needs of employees who are experiencing family violence?

- Training and awareness raising re safety for women experiencing domestic and family violence where this impinges on the workplace – to be undertaken by employers, managers, supervisors and employees.

*At an educational institution there had been an increase in reports from female staff and students of family violence impacting negatively on their work and study. There were a number of reports of abusive and violent partners coming on to the Campus and causing problems. One female student had been reported as a 'missing person' by her husband when she did not come home after class one evening. There were widespread fears that she had been abducted, later proved incorrect when the family violence she had been experiencing came to light. This had led to her leaving her husband and seeking refuge in a safe place. A number of initiatives were suggested including a safe room from which staff and students could make phone calls if they feared for their safety from abusive partners or ex partners and a scheme for women to be accompanied to their vehicles by the security guard. These initiatives were discredited by the largely male OHS Consultative Committee who claimed they were private matters and shouldn't be addressed by the worksite. Committee members were invited to participate in an experiment late one evening after all the Campus lights had been turned off (the Campus was set in bushland quite removed from residential or business areas.) Committee members were asked to imagine that their mobile phones were not working and that someone known to be threatening to them had 'promised to get them after dark.' The challenge was to find the nearest place from which to make a phone call. This was 3 kms away at a service station. After this experience Committee members were much more convinced of the need to provide safety measures.*

- Model safety plans that take account of the need for confidentiality and safety at work for women experiencing family violence including such measures as training employees not to give out information about another employee eg in response to a telephone call by a partner not saying, 'Oh she's out at the café next to work getting her lunch' but rather 'She's not available to talk at the moment.'
- Links with Domestic Violence shelters and organisations like Working Women's Centres in their local area. These organisations often run training on domestic and family violence, which raises awareness at the workplace level on what is appropriate and inappropriate in terms of addressing disclosures of violence.

**Question 14** In practice, are existing terms in modern awards sufficient to respond to the needs of employees experiencing family violence?

It is the view of NWWC's that existing modern awards do not adequately respond to the needs of employees experiencing family violence. Women are more likely to be award reliant than men and are more likely to experience family violence. It is our experience that women are too scared to speak up at work when family violence is impacting adversely on their work performance and that managerial discretion to grant considerations of domestic violence is unevenly and unfairly applied.

**Question 15** Should s 139(1) of the Fair Work Act 2009 (Cth) be amended to allow the inclusion of a matter related to family violence in the allowable matters in modern awards?

Yes, this is the recommendation of NWWC's in consultation with unions and the Domestic Violence Clearinghouse.

**Question 16** In practice, are employee's experiences of family violence being considered in unfair dismissal cases as part of the 'harsh, unjust or unreasonable' formulation?

It is the experience of NWWC's that on the whole employees who have experienced family violence which has resulted in their dismissal do not feel safe to raise this as part of the consideration of their termination at conciliation. Women's reluctance to raise family violence as a contributing factor is often because of reasons already cited – the stigma, the fear of judgemental responses or of discrediting the violence. Where there are other factors present to argue a dismissal has been 'harsh, unjust or unreasonable' our advocates would most likely stick to these but this does not address the power of silencing the issue of family violence and prevents it from ever gaining legitimacy as a genuine consideration when a woman experiencing family violence is terminated. It is the view of the NWWC's that there is a basic inequality before the law for women who experience family violence and that a consideration of family violence written into law, incorporated into practice accompanied by appropriate training and awareness raising and sensitive handling will go a long way to addressing this inequality. In many cases women who have been informed of their rights to lodge an unfair dismissal application decide not to do so as there is no assurance that their matter will be dealt with sensitively. Our experience is that there are cases that would settle at conciliation but we often lose contact with clients who are fleeing family violence situations. If women had more faith in a system that adequately and appropriately addressed their situation when family violence is present we would be able to convey a more hopeful outlook to women making unfair dismissal applications.

For many women experiencing family violence the barriers to lodging an unfair dismissal may already be too high. A 14 day period in which to lodge is not realistic when a woman may have the re-location of her family to organise. In addition the application fee may provide a disincentive to lodge for a woman already experiencing financial hardship after losing her income (even acknowledging capacity to have the fee waived).

Further, unfair dismissal laws require the worker to be an employee and will not protect an independent contractor (a common status for a number of workers). Anti-discrimination laws do not have such requirements. Unfair dismissal laws require an employee to have fulfilled a qualification period, which is either six months or a year, while anti-discrimination law doesn't. Many women experiencing family violence have an employment pattern that is short and disrupted. Unfair dismissal laws require the complaint to be lodged within 14

days of the termination, while anti-discrimination laws allow for a year. Unfair dismissal will only address termination, not just unfavourable treatment (as one of the case studies demonstrates).

With respect to remedies, unfair dismissal complaints will only address lost earnings, and the maximum capable of being awarded is six months pay. The anti-discrimination jurisdiction is uncapped, with applicants being able to request damages, which can include both compensatory damages and general damages for hurt and humiliation. Finally, unfair dismissal laws do not provide automatic protection like anti-discrimination laws do. Once a complaint is made, the Tribunal member must decide whether the termination was harsh, unjust or unreasonable. This is a largely discretionary decision, with no specific statutory definitions that must be considered by the member.

**Question 17** If employees' experiences of family violence are not being raised or considered in unfair dismissal cases, in what other ways do victims of family violence raise the issue, where violence caused or affected the termination of their employment?

Women will raise the issue of family violence if there is a relationship of trust, where she feels she won't be punished further and where she can receive appropriate referrals to services where her confidentiality is assured. Working Women's Centres are well placed to address the whole needs of women workers who have experienced family violence. The re-introduction of Working Women's Centres in NSW and Tasmania along with States and Territories which do not provide such Centres is a matter currently under consideration by the Commonwealth and needs to be progressed as a matter of urgency. Given the high rates of family violence experienced by women in Australia, measures to address and prevent this issue by providing appropriate and skilled workers has the potential to increase economic security for individual women and productivity for the nation.

**Question 18** In practice, how effective are the current grounds under ss 351(1) and 772(1)(f) of the *Fair Work Act 2009* (Cth), were an employee has been discriminated against for reasons arising from their experiences of family violence?

**Question 19** Should family violence be inserted into ss 351(1) and 772(1)(f) of the *Fair Work Act 2009* (Cth) as a separate ground of discrimination?

**Question 20** In practice, are ss 352 and 772(1)(a) of the *Fair Work Act 2009* (Cth) sufficient to protect employees who are experiencing family violence from having their employment terminated while they are absent from work as a result of a family violence-related or induced illness or injury?

The current legislation under ss 352(1) and 772(1)(f) does not specify domestic violence as an attribute for the purpose of discrimination or breach of the legislation and protection for employees is only available through inference in very narrow circumstances. The Regulations provide that any injury must be of a kind that is covered by a medical certificate and injury resultant from domestic violence may or may not be subject to medical practitioner access.

The Working Women's Centres are aware that many women are further victimised through adverse action in their workplaces when domestic violence occurs. It is apparent that many employers have a low tolerance for the issue and the subsequent possible or perceived effects on employee performance or attendance. This includes short-term casual employment, disciplinary processes, being treated less favourably or being terminated.

*Jane, a casual employee working regular and systematic hours was asked to take three weeks unpaid leave because her ex-husband was loud and abusive towards her at her place of employment. The reason given for this treatment was that because of her ex-husband's behaviour her employer could not guarantee a safe workplace for all staff.*

Without General Protections against adverse action that specifically identifies domestic violence as potential grounds for discrimination women (victims) are at risk of actions by employers that would otherwise be protected against less favourable treatment or adverse action.

*Anne was in an abusive relationship and subject to domestic violence. She was employed as a casual employee. After her employer became aware of the situation the organisation indicated it was prepared to relocate her providing she left the partner. If she failed to provide a written statement indicating she had left, the transfer would be withdrawn.*

This adverse treatment could not be addressed through current anti-discrimination measures provided for in the Fair Work Act. If domestic violence victim status were a stand-alone attribute, the law may have protected Anne.

*Holly had been with her organisation for over four years. She was a single mother and had a DVO against her ex-husband. Holly was late for work on three occasions in four years. The organisation had a policy that employees would receive a formal warning on the second occasion of lateness to work in a six-month period. Holly received a formal warning. After a subsequent assault resulting in facial injuries she was again late. She was terminated.*

In this case Holly may have been able to argue temporary absence due to illness and injury, or possibly family responsibilities, however no redress was apparent to her and she indicated it was 'too hard' to try to uphold these rights.

The current legislation does not clearly protect vulnerable employees who are the victims of family violence. The need to attempt to 'absorb' the domestic violence into an already existing s. 351 or s.772 attribute in order to gain protection under the Act means the case

is inherently weak and relying on generally untested interpretation. It also has the ability to perpetuate the stigma attached to domestic violence victim status. Clauses should be inserted in these sections of the Fair Work Act 2009 (Cth) to ensure the victims are protected.

Model Clause example

S 351 Discrimination

- An employer must not take adverse action against a person who is an employee, or prospective employee, of the employer because of the person's race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- **An employer must not take adverse action against a person who is an employee, or prospective employee, of the employer because they are a victim of domestic violence. (circumstances identified in the explanatory notes).**

S 772 (1) new part (i)

**i) due to being a victim of domestic violence**

**Question 21** What measures would improve employers' understanding of their obligations to protect the safety of workers threatened by family violence in the workplace?

- Appropriate training and awareness raising.
- Development and promulgation of a national best practice resource.
- Unfortunately, instances where family violence has intruded into the workplace in our experience are not dealt with well, are seen as 'private matters' and too often result in serious injury or death, often witnessed by workmates. An incident of this type is not the ideal way nor indeed the time to learn about an appropriate preventative response.
- Access to information on family violence and its impact on workplaces, along with information on the responsibilities and obligations of employers.
- Employer associations to make clear statements against family violence and about the need to positively address the impact of family violence on employees and their workplaces.
- Training for OHS inspectors on family violence and its potential risk to workplaces but also training on positive ways to address and prevent the impact of family violence on workplaces.
- Include modules on family violence in OHS qualifications and in Health and Safety Rep training.
- Linking with outcomes of coroners' investigations of workplace deaths resulting from family violence will better enable all parties who are involved in such incidents to work out appropriate proactive plans to prevent such deaths. Evidence indicates that where a workplace death due to family violence occurs there are many signals and 'pressure points' where effective intervention would have prevented the death.

**Question 22** Should the definition of 'notifiable incident' in the Safe Work Australia Model Bill be amended to include acts or threats of violence, including family violence, directed toward workers? If so, how?

- Yes, to ensure clarity, awareness and more responsiveness. It is the belief of NWWC's that OHS laws already address the duty of care to provide a safe workplace and that includes threats from persons known to a worker whilst at their place of work from a partner or ex partner, family member or kin, however this obligation is not widely recognised by many workplaces. More needs to be done to ensure that workplaces understand the magnitude of the threat of family violence as a workplace issue at all levels.
- Wording could be incorporated in the Act or by regulation or Code of Practice which all carry legal weight. This is preferable to Guidance Notes as laws, regulations and Codes are taken more seriously in a preventative environment.
- By including acts or threats of violence including family violence as a notifiable incident, an employer would then be bound to report it to the regulator and the employer would need to keep records of those incidents or potentially face fines.
- Having an incident of family violence as a notifiable incident means that an employer can ignore the situation. It would also help to reinforce that acts or threats of violence, including family violence is a workplace OHS issue and needs to be regarded with as much seriousness as that of machine related injuries, hazardous substances and other highly regarded workplace hazards and risks.
- Care needs to be taken however that a workplace response is an appropriate one and not one that discriminates against or disadvantages a worker who has been the target of the violent action or threat. We have some concern that what appears to be a common response to raising an issue of family violence ie termination not be further facilitated by employers ill equipped or unwilling to deal with notifiable incidents according to the law.
- Records of notifiable incidents of family violence in a workplace may be useful for people experiencing this as evidence in other jurisdictions, however all of the appropriate cautions re privacy and confidentiality need to be carefully applied.

**Question 23** Should family violence as an occupational health and safety risk be addressed in the regulations, a code of practice, or guidance material? How would its inclusion in any of these affect the likelihood that employers will be aware of, and responsive to, the occupational health and safety risks posed by family violence?

- See previous answer

**Question 24** What steps should an employer be required to take in assessing and responding to risks associated with family violence entering the workplace? In what ways might workplace risks associated with family violence be minimised or eliminated?

*Sophia worked as a community support worker. She was experiencing domestic violence from her husband who was also coming in to Sophia's workplace. She was often late for work and the violence was impacting on her performance generally. Sophia was terminated for performance issues (lateness).*

*Sophia then left the relationship. She has an AVO against her husband which covers her in her workplace.*

*Sophia applied to work at another organisation. She did very well at the interview and was sure they would offer her work which they did. The new employer then rang the former employer for a reference. He told them that she'd had heaps of personal and family problems, that there'd been issues with attendance and that the abusive husband had been coming on to work premises causing problems.*

*The new workplace has not withdrawn the offer of work but have requested a statutory declaration from her saying she has nothing to do with her ex husband (they are emailing her what they want her to sign). They also want a copy of the AVO as they say it covers them (our view is that the order covers Sophia's safety, not theirs).*

*Her question to us is 'Can they do this?'*

- Sophia's situation demonstrates an attempt by an employer 'to do the right thing' but in our view is punitive, heavy handed and misguided. This demonstrates the need for best practice approaches to be developed by specialists in family violence and work.

**Question 25** What requirements, suggestions or information should be included in regulations, codes of practice or guidance materials addressing family violence as an occupational health and safety risk?

- See answer above

**Question 32** Are there any other ways in which Commonwealth employment, occupational health and safety or superannuation law could be improved to protect the safety of those experiencing family violence?

Given the size and scope of the threat of family violence to women workers and their workplaces there is a clear need to do more than what is currently undertaken. It might be that family violence is best addressed through all forms of legislation that impact on work, including discrimination law or it may be that the seriousness of this issue requires a specialist family violence agency or Commission with all the powers similar to existing Commissions. All parties in employment relationships would benefit from specialist assistance in dealing with this issue.