

An Employment Right-Standard Provisions for Working Women Experiencing Domestic Violence

Ludo McFerran, Anna Lee Fos-Tuvera and Jane Aeberhard-Hodges*

Abstract

In many countries the majority of those experiencing domestic violence are in paid employment. Maintaining employment and economic independence is a critical pathway to reducing the impacts of domestic violence of homelessness and unemployment. Yet, the workplace is not firmly part of an integrated global response to reducing the impacts of domestic violence. The link between domestic violence and the workplace is part of the current ILO debate on an international gender-based violence labour standard. There are a growing number of national strategies responding to the impacts of domestic violence that spill over into the workplace in the form of attendance, performance and safety. This article focuses on two different jurisdictional approaches, from Australia (collective bargaining) and the Philippines (national legislation) to assess the efficacy of different approaches and increase international knowledge sharing on this critical work challenge. Using comparative methodology, this article analyses the factors that have contributed to

*Ludo McFerran, retired, former research affiliate Women and Work Research Group at the University of Sydney Business School, and former National Manager Safe at Home, Safe at Work, Australia; Anna Lee Fos-Tuvera Director, Gender Equality Activities International Trade Union Confederation-Asia Pacific tuvera_anna@ituc-ap.org; Jane Aeberhard-Hodges, Senior Research Associate, United Nations Research Institute for Social Development (UNRISD) and former Director Gender Equality Bureau, ILO.

improved conditions and implementation of domestic violence rights at work, the special role of trade union bodies in driving advances and maintaining good implementation, and the challenges to further progress in areas such as small business and employed domestic violence perpetrators. The authors call on progressive employers to support the global campaign for sustainable domestic violence rights at work.

Keywords: Gender-Based Violence, Rights at Work, Australia, The Philippines

1. Introduction

Violence in and out of work, in the form of both domestic violence and sexual harassment, is a violation of human rights and impacts heavily in the workplace. All forms of violence result in a high cost for workers, employers and society in general: lost time, injuries, complaints, staff turnover, loss of skills, and reputational risk. While the discourse to date has been centred around domestic violence in national actions plans under the auspice of the UN or regional instruments, including Sustainable Development Goal 5, the spillover to workplaces has only been covered by a few recent international labour standards. The references to workplace violence have focused on specific groups of high-risk workers, such as domestic workers, persons living with HIV and Indigenous peoples. The International Labour Organization (ILO) has decided to discuss, in 2018, an international labour standard on this subject, and the link between domestic violence and the workplace is firmly part of the global debate.¹ In the context of a better future for women at work, this article enriches the knowledge base from a comparative perspective.

Defining the impacts of domestic violence that spill over into the workplace has been assisted by the study of recent developments in a number of national contexts. This includes collective bargaining and employment law reform in Australia; anti-discrimination law reform in the United States; occupational health and safety law reform in Ontario, Canada; and violence against women legislation that addresses the workplace in Spain, the Philippines and most recently Italy and New Zealand. There are many different responses to domestic violence at

¹ ILC, 'Ending Violence and Harassment Against Women and Men in the Worlds of Work' (2018) ILC, 107th Session, Report V(1), ILO, [202]-[207]; ILC, 'Provisional Records Nos 8A & 8B: Reports of the Standard-Setting Committee on Violence and Harassment Against Women and Men in the World of Work' (2018) 107th Session.

Provision for Working Women Experiencing Domestic Violence

work. By focusing on two different jurisdictional approaches, from Australia and the Philippines, to assess the efficacy of different approaches, this article increases international knowledge sharing on this critical work challenge. Using comparative methodology, this article analyses the factors that have contributed to improved conditions and implementation of domestic violence rights at work, the special role of trade union bodies in driving advances and maintaining good implementation, and the challenges to further progress. The article focuses on these two countries because of the commonalities behind their different approaches, which at first sight may appear diametrically opposed: Australian and the Philippines. In Australia, the approach is largely via domestic violence clauses in collective bargaining agreements where the direct actors in the world of work negotiate solutions through a voluntary dialogue that leads to a binding agreement. In the Philippines, the approach takes the form of legislation. Yet, in both contexts, activism and evidence-based research have been partly behind the introduction of new kinds of employment rights, such as domestic violence leave, the right to request flexible working time so as to attend to domestic violence related matters, and a broadening of existing workplace anti-discrimination rights to embrace domestic violence.

2. Case Study: Australia

A. The Conditions for Securing the Shift to Standardised Support

Recognising a gap in worker rights and protection regarding gender-based violence, Australian trade unions adopted collective bargaining in 2010 to introduce standardised rights for workers affected by domestic violence in enterprise agreements.² By December 2016, the Federal Department of Employment estimates that over two thousand agreements contained a domestic violence clause, and that in the final quarter of that year a third of all agreements approved contained a domestic violence clause, covering 75 per cent of all employees in agreements.³ While there are great variations in content, a domestic

² For a description of the Australian employment arrangement see Appendix 1.

³ Department of Employment Workplace Agreement Database data provided to McFerran 10 March 2017. Between 2013-2016 Workplace Agreement Database has estimated that 2,191 not expired agreements and potentially 2,591 still operative agreements contained a domestic violence clause, covering a range of 1,098,047 to 1,375,497 workers. The number of employees in Australia is approx 12 million.

violence clause ideally covers dedicated paid leave, flexible work arrangements, confidentiality of employee details, workplace safety plans or strategies (for example, screening of phone calls or emails), referral processes to support services, protection from discrimination or adverse action and training, among other labour rights.⁴

Building on the success of collective bargaining, and concern for workers not covered by agreements, the Australian Council of Trade Unions (ACTU) put a case before the national industrial tribunal, the Fair Work Commission (FWC), in 2016 for the inclusion of paid domestic violence leave in modern awards.⁵ Public sector unions had already begun negotiating domestic violence rights at work with Australian governments, and all have varied awards, negotiated agreements or introduced guidelines for the employer to provide domestic violence pay and support.

In October 2017, the FWC organised conferences to discuss the content of the proposed model domestic violence clause and concluded that: ‘in the event that the Full Bench adhered to the preliminary view expressed in the majority decision and determined that there should be a model unpaid family and domestic violence leave term then the conference parties propose the [compromise] model term attached.’ That model term includes the following acceptance of unpaid domestic violence leave (for victims but not perpetrators):

An employee experiencing family or domestic violence may access unpaid leave if it is necessary to deal with the impact of the family and domestic violence and it is impractical for the employee to do so outside their ordinary hours of work.

Agreements in the final quarter of 2016 containing a domestic violence clause were predominantly in the private sector (85 to 88 per cent).

⁴ These were the fields covered in the 2015 ACTU-University of New South Wales funded study of employers’ perspectives on implementation of domestic violence clauses cited see Appendix 2.

⁵ Success before the FWC would extend coverage to workers not covered by agreements and would set a national benchmark. A decision on the case was expected in 2017 but FWC proceedings were extended because a Vice President had released his (negative) decision before the other Full Bench members had finalized their decisions (Workplace Express, Saturday 29 April 2017); when other members delivered their preliminary views expressed in the majority decision that ‘all employees should have access to *unpaid* family and domestic violence leave’ (emphasis added) (*A yearly review of modern awards—Family & Domestic Violence Leave Clause* [2017] FWCFB 3494 at [6]), a number of the employer organizations reserved their right to oppose any provision of unpaid leave at the hearing of this matter.

Provision for Working Women Experiencing Domestic Violence

Note 1: The entitlement to take unpaid leave only applies to an employee subjected to family and domestic violence.

Note 2: The reasons for which an employee may take leave include making arrangements for their safety or the safety of a family member (including relocation), attending urgent court hearings, or accessing police services.⁶

Before 2010 a number of Australian programs had sought to encourage employers to opt into supportive policies on the issue of domestic violence, such as the conservative government sponsored ‘Businesses Against Domestic Violence’.⁷ Yet, the evidence was that the optional policy had not produced widespread or sustainable results.⁸ One obstacle may have been a misconception that domestic violence only affects those in lower socio-economic groups or women from certain cultural groups. This was debunked by an Australian Bureau of Statistics survey on personal safety in 2005 which found that nearly two-thirds (62.9 per cent) of Australian women who reported experiencing violence by a current partner were not in abject poverty, but in paid employment.⁹

A contributing factor that prepared the Australian world of work for a major shift in domestic violence included progress in the Australian domestic violence strategy. This strategy had taken shape in the 1980s following the creation in the previous decade of a number of women’s refuges by feminists. The strategy concentrated on a criminal justice response through state-based domestic violence legislation, creating the domestic violence protection order, and enhanced access to public

⁶ *FWC Statement* [2017] FWC 5445. The entitlement of part-time and casual employees and what quantum of unpaid leave *per annum* remains contested.

⁷ Strategic Partners Pty Ltd et al, ‘Current Perspectives on Domestic Violence: A Review of National and International Literature’ (1999) *Partnerships Against Domestic Violence* 20 <<https://wesnet.org.au/wp-content/uploads/2012/07/PADV-Lit-review.pdf>> accessed 16 July 2018.

⁸ Suellen Murray and Anastasia Powell, ‘Working It Out: Domestic Violence Issues and the Workplace’ (2018) 16 *Australian Domestic and Family Violence Clearinghouse*.

⁹ Australian Bureau of Statistics, ‘Personal Safety Survey, Australia’ (2005) Reissue 4906.0, Table 20. Similar results are reported in Sweden with sixty-seven point nine per cent (Lotta Nybergh et al, ‘Self-Reported Exposure to Intimate Partner Violence Among Women and Men in Sweden: Results From a Population-Based Survey’ (2013) 13 *BMC Public Health* 845); Rwanda fifty-two point nine per cent (Dana R. Thomson et al, ‘Correlates of Intimate Partner Violence Against Women During a Time of Rapid Social Transition in Rwanda: Analysis of the 2005 and 2010 Demographic and Health Surveys’ (2015) 15 *BMC Women’s Health* 96; and the Philippines fifty-seven per cent according to the Philippine Statistics Authority and ICF International, ‘Philippines National Demographic and Health Survey 2013’ (2014) <<https://dhsprogram.com/pubs/pdf/FR294/FR294.pdf>> accessed 3 February 2017.

housing post-refuge. Essentially the model remained the same for several decades: in the best case scenario, police removed women and their children from their homes, placing them in a refuge, the court granted them a protection order, and they may have been re-housed at some point in public housing. By the 1990s there was growing pressure to improve the options for women and children by supporting them to stay safely in their own homes, excluding the violent partner or family member if necessary. When new programs for women to stay safely in their homes were introduced, the majority of women accessing support were in some form of employment.¹⁰ Many of these women spoke about how important the support of their workplace had been in enabling them to make the often very difficult choices to stay in their homes rather than flee. Many attributed this support to the character of their employer:

*I was piloting the New South Wales Safe at Home model in the mid 2000s and was struck by the phrase 'I was lucky, I had a good boss'. Keeping the job, getting time off work to go to court, or having better security at work were real practical supports for working women struggling to hold onto their homes. Luck should have nothing to do with it.*¹¹

Evidence of the business and personal costs was another factor. The total costs of lost productivity to the Australian economy associated with domestic violence were estimated at \$484 million (AUS) in the year 2002-2003.¹² These findings were mirrored in a number of other countries.¹³

¹⁰ Ludo McFerran, 'Taking Back the Castle: How Australia is Making the Home Safer for Women and Children' (2016) Issues Paper 14 ADFVC 13.

¹¹ Ludo McFerran, 'Has Collective Bargaining Domestic Violence Worked?' (Women and Work Research Group, Business School Conference, Sydney University, 9 March 2016) <http://sydney.edu.au/business/__data/assets/pdf_file/0006/263247/Mcferran_DV@work_paper_for_IWD.pdf> accessed 2 February 2017.

¹² Access Economics Pty Ltd, 'The Cost of Domestic Violence to the Australian Economy' (2004) Office for the Status of Women Canberra <https://www.dss.gov.au/sites/default/files/documents/05_2012/cost_of_dv_to_austalian_economy_i_1.pdf> accessed 17 February 2017.

¹³ In Chile women's lost earnings as a result of severe physical domestic violence were estimated to cost 2 per cent of the country's gross domestic product in 1996 and one point six per cent in Nicaragua (Mayra Buvinic and Andrew Morrison, 'Violence as an Obstacle to Development' (1999) Inter-American Development Bank <<https://publications.iadb.org/bitstream/handle/11319/5273/Technical%20Note%204%3a%20Economic%20and%20Social%20Consequences%20of%20Violence.pdf?sequence=1>> accessed 20 February 2017. The United States lost an estimated eight million days of paid work annually, costing employers almost \$728 million (National Center for Injury Prevention and Control, 'Costs of Intimate Partner Violence Against Women in the United States' (2003) <<http://www.cdc.gov/violenceprevention/pdf/ipvbook-a.pdf>>

Provision for Working Women Experiencing Domestic Violence

Links were drawn between staying financially independent and becoming trapped in violent relationships: 'Employment is a critical pathway to ensure women's financial security. Internationally, the links between economic independence, employment and the impact of domestic violence have been steadily developing'.¹⁴

Further evidence of the effects of domestic violence in Australian workplaces was collected in a national online survey conducted in 2011 by the Australian Domestic and Family Violence Clearinghouse (ADFVC) of 3,600 members of the National Tertiary Education Union, the New South Wales Nurses Association and the Victorian branch of the Australian Services Union.¹⁵ The findings demonstrated clear impacts on the attendance, productivity and safety of employees. Nearly half of those who had experienced domestic violence reported that the violence had affected their capacity to get to work, primarily due to injury or being restrained. Nearly one in five (19 per cent) who had experienced domestic violence in the previous twelve months reported that the violence continued at the workplace: abusive phone calls, emails or texts, and the attendance of the abusive person at the workplace. In later research, the majority of workers who had experienced domestic violence (59 per cent) reported a negative effect on their work performance: feeling distracted, anxious, and unwell.¹⁶ Women's vulnerability to economic insecurity was highlighted as the decade drew on, with 2016 statistical analysis and qualitative evidence demonstrating how domestic violence contributes to alarming levels of financial stress among Australian women

accessed 17 February 2017). In the UK the estimated economic costs of domestic violence in relation to time taken off work due to injuries was £1920 million in 2008 (Sylvia Walby, 'The Cost of Domestic Violence: Up-date 2009' (2009) UNESCO Chair in Gender Research, Lancaster University <http://edvitaly-project.unimib.it/wp.../12/Cost_of_domestic_violence_update-1.doc> accessed 16 July 2018.

¹⁴ Council of Australian Governments, 'Building a Strong Foundation Safe and Free from Violence: National Implementation Plan for the First Action Plan 2010-2013' (2012) 12

<https://www.dss.gov.au/sites/default/files/documents/07_2014/first_action_plan_1.pdf> accessed 16 July 2018.

¹⁵ Ludo McFerran, 'Safe at Home, Safe at Work? National Domestic Violence and the Workplace Survey' (2011) <http://dvatworknet.org/sites/dvatworknet.org/files/Australia_survey_report_nov2011.pdf> accessed 16 July 2018.

¹⁶ Ludo McFerran, Natasha Cortis and Tahlia Trijbetz, 'Domestic and Family Violence Clauses in your Workplace: Implementation and Good Practice' (2013) Social Policy Research Centre and Centre for Gender Related Violence Studies University of New South Wales.

and recommending keeping paid employment and industrial relations protection as part of the holistic solutions.¹⁷

There was a realisation that inaction was weighing heavily on not only individuals, but also firms' bottom line and the nation's finances - something needed to be done. The conditions were right for a shift from optional to guaranteed engagement by employers. From the experience of women who thought themselves lucky to have a good boss, came the idea of a standard workplace right, a domestic violence clause.

B. Developing a Domestic Violence Clause

A draft Australian domestic violence clause was created in April 2010 through a partnership between the ADFVC¹⁸ and the public sector unions in the state of New South Wales.¹⁹ The first claim for a domestic violence clause²⁰ was made in the bargaining round for an enterprise agreement in the university sector, but first successfully negotiated in the local government sector by the Australian Services Union Victorian Authorities and Services Branch (ASU) in September 2010. The ADFVC and the unions had drawn heavily on model domestic violence agreements negotiated by UNISON, the British public service union, but one innovation in the Australian clause was the claim for *paid* leave, providing the aggrieved employee with time to do what is critically necessary in instances of domestic violence, such as going to court and obtaining a protection order. With up to twenty days paid domestic violence leave, the first Australian domestic violence clause created 'world's best practice'.²¹

The ACTU adopted the domestic violence policy at its 2012 national conference, urging all affiliates to use the clause. Within four years, 34 of the 38 ACTU affiliates had become parties to negotiating a domestic violence clause. Union support for a domestic violence clause in collective

¹⁷ Natasha Cortis and Jane Bullen, 'Domestic Violence and Women's Economic Security: Building Australia's Capacity for Prevention and Redress: Final Report' (2016) Horizons <<https://d2c0ikyv46o3b1.cloudfront.net/anrows.org.au/s3fs-public/page-attachments/ANROWS%20Horizons%20Report%20-%20Domestic%20violence%20and%20womens%20economic%20security.pdf>> accessed 16 July 2018.

¹⁸ The ADFVC (based at the University of New South Wales from 1999-2014) was effectively the national domestic and family violence centre for research, information collection and dissemination, and good practice monitoring.

¹⁹ The NSW Public Service Association and the Community and Public Service Union (CPSU) SPSF NSW Branch.

²⁰ See Appendix 2 for ACTU's model domestic violence clause.

²¹ Marian Baird, Ludo McFerran and Ingrid Wright, 'An Equality Bargaining Breakthrough: Paid Domestic Violence Leave' (2014) 56(2) *Journal of Industrial Relations* 198.

Provision for Working Women Experiencing Domestic Violence

bargaining marked a breakthrough role for Australian unions by creating a new industrial relations issue, the impacts of domestic violence at work, and a new form of paid leave.²² This elevated the workplace response out of the optional basket for employers and firmly into the mainstream national strategy on domestic violence.

C. Factors Contributing to Successful Bargaining

Some of the factors which led to early bargaining of domestic violence clauses were described in the case study by Baird et al on a domestic violence clause negotiated between a union and a local government council.²³ One factor identified was the role of the expert external agency, in this case the ADFVC, which was able to provide objective advice on domestic violence to all parties. For the ADFVC, the purpose of enforceable and standardised workplace rights in a domestic violence clause was to avoid the vagaries of managerial discretion by providing consistency and clarity for affected workers.²⁴ Critical input from women in the negotiations was a further factor, as these women were able to draw on personal experiences of domestic violence to provide authenticity to the claims. Baird et al. also described the reputation and image of the parties as a factor:

For the Union, the importance of this clause to their members, the growing proportion of female membership they aspired to represent and the awareness of the issue in the communities they dealt with, all contributed to the internal recognition of the need to support the claim. For the Council, operating and providing services in a domain where domestic and family violence was well understood and where there is a role for the Council to be a leader in addressing the problem, served to support the inclusion of the paid domestic violence leave clause.²⁵

²² Australian unions had been allocated no role in the previous national domestic violence strategy. UN and Council of Europe guidance on drawing up violence against women national action plans still does not include reference to the workplace or collective bargaining. Where the workplace is referred to it is usually in relation to employers and companies rather than trade unions.

²³ Baird et al (n 21).

²⁴ ADFVC, 'Submission to ALRC Issues Paper on Family Violence and Commonwealth Laws – Employment and Superannuation' (2011) 15 <www.arts.unsw.edu.au/media/FASSFile/Submission_in_Response_to_the_ALRC_Issues_Paper_on_Family_Violence_and_Commonwealth_Laws__Employment_and_Superannuation.pdf> accessed 2 February 2017.

²⁵ Baird et al (n 21) 204.

As more unions included domestic violence clauses in their log of claims, evidence of the effects of domestic violence in the workplace became a necessary part of negotiating. The above-mentioned 2011 ADFVC survey of 3,600 union members did just that. The findings not only demonstrated clear impacts on the attendance, productivity and safety of employees but also challenged assumptions about the link between domestic violence and the workplace. The belief that workers would be reluctant to disclose was overturned as nearly half (45 per cent) of workers with recent experience of domestic violence disclosed their situation to someone at work, although more to co-workers than management or human resources staff. Nevertheless, nearly half did disclose to a manager or supervisor, though only 10 per cent found their response helpful. This last result was less surprising as most managers and supervisors in 2011 had no training or resources in responding appropriately to domestic violence. The findings also revealed that co-workers were more affected than anticipated, having to support and protect their abused colleagues or by being directly threatened or assaulted. Besides providing important evidence to inform unions and employers of how domestic violence could spill over into the workplace, the research informed the provision of better workplace support such as the need for supervisor and manager training and the need for all-of-workplace policies to protect co-workers as well as those individuals directly involved.

These were important learning points that were later reflected in some domestic violence clauses. For example, in August 2017, Rio Tinto became Australia's first mining company to offer a comprehensive package of measures to address domestic violence in its workforce. Employees who are directly affected by family or domestic violence will be eligible for emergency accommodation, short-term financial assistance and up to ten days of dedicated leave to seek legal assistance, appear in court, attend counselling or relocate. The benefits will be extended to 19,000 workers. At-risk Rio Tinto employees will have access to safety plans to protect them while at work, including security, new telephone numbers, screening or blocking calls and email protection. Company team leaders and human resources staff will continue to be trained to recognise and respond to family and domestic violence in the workplace.

D. Partners as Factors

Forming partnerships was a significant element in progressing domestic violence rights at work. Key partners were governments: as employers and policymakers, from the pioneering engagement of local councils in

Provision for Working Women Experiencing Domestic Violence

early agreements to the provision of public sector paid domestic violence leave by states such as Victoria (twenty days) and political support for national employment law reform to include domestic violence.²⁶ There was even a Commonwealth Public Service Commission circular, issued under the National Plan to Reduce Violence against Women and their Children, permitting domestic violence leave,²⁷ use of which was apparently not tracked. The support of the national government to fund the development and implementation of standardised domestic violence rights at work was an important contributing factor. The then Commonwealth Labour Government funded a three-year program from 2010 to 2013, 'Safe at Home, Safe at Work' at the ADFVC. This support enabled the national survey on the impacts of domestic violence at work on individuals and co-workers discussed above, the creation of resource tools to inform individuals of their rights, to assist employers and unions in policy development and negotiating, and a training program for key personnel. The Labour Government also amended the national employment legislation (Fair Work Amendment Act 2013) to introduce a domestic violence provision (the right to request flexible leave). Unfortunately, the current Liberal-National Government is less supportive, blocking the inclusion of a domestic violence clause in negotiation of new Commonwealth public service agreements.²⁸

Other important partners included a number of independent statutory authorities. The Australian Law Reform Commission conducted an inquiry into Commonwealth laws and domestic violence and recommended that the government supports domestic violence clauses in enterprise agreements.²⁹ The Australian Human Rights

²⁶ Josh Gordon, 'Daniel Andrews still waiting for PM's answer on his family violence leave plans' *The Age* (Victoria, 18 October 2016) <www.theage.com.au/victoria/daniel-andrews-still-waiting-for-pms-answer-on-his-family-violence-leave-plans-20161018-gs4x9l.html> accessed 2 February 2017.

²⁷ Commonwealth Circular, 'Supporting Employees Affected by Domestic or Family Violence' (2012/3, Last updated 23 Nov 2012) clause 17 of which reads: 'In accordance with agencies' enterprise agreements, people who are affected by domestic or family violence should be allowed to access their personal leave entitlements for reasons such as: (a) Attending medical or counselling appointments; (b) Moving into emergency accommodation and seeking more permanent safe housing; (c) Attending court hearings; (d) Attending police appointments; (e) Accessing legal advice; and (f) Organising alternative care and educational arrangements for their children.'

²⁸ Noel Towell, 'Malcolm Turnbull's public servants lose domestic violence leave' *The Canberra Times* (Canberra, 8 March 2016) <www.canberratimes.com.au/national/public-service/malcolm-turnbulls-public-servants-lose-domestic-violence-leave-20160308-gndjcr.html> accessed 2 February 2017.

²⁹ Australian Law Reform Commission, 'Family Violence and Commonwealth Laws-Improving Legal Frameworks' (2012) Report 117 Recommendation 16-4 <<https://www.alrc.gov.au/publications/family-violence-and-commonwealth-laws-improving-legal-frameworks-alrc-report-117>> accessed 16 July 2018.

Commission recommended that discrimination on the grounds of domestic violence be unlawful in all areas of public life including the workplace.³⁰ The Fair Work Commission (FWC) in a landmark domestic violence and work case ordered a Melbourne employer to pay maximum compensation to a domestic violence victim unfairly sacked because her employer claimed they could not protect her from her partner who worked in the same office.³¹ This, and a further similar case,³² show that there has emerged a new principle in Australian workplace law requiring employers to provide an ‘added duty’ of care for domestic violence victims at work. This ‘added duty’ of care at work for domestic violence victims rests on the fact that they rely on workplaces for financial/economic security and physical security from abuse.

While some employer groups have been resistant to the introduction of domestic violence rights at work, insisting as recently as 2014 that the violence is a community responsibility without any workplace impacts,³³ others have been supportive. The National Retail Association (NRA) CEO has called for her members to pay domestic violence leave to affected workers.³⁴ Individual employers have taken their own initiatives. According to the Chief Executive of iconic boot-makers Blundstone, a company which adopted ten days domestic violence leave for its ninety workers: ‘We put an enormous amount of investment in people, and it disrupts small to medium size businesses a lot if they lose their good

³⁰ Australian Human Rights Commission, ‘Consolidation of Commonwealth Discrimination Law’ (2012) Supplementary Submission to the Commonwealth Attorney-General’s Department <<https://www.ag.gov.au/Consultations/Documents/ConsolidationofCommonwealthanti-discriminationlaws/Consolidation%20-%20Discussion%20Paper%20-%20Submissions%20-%2020021%20-%20Australian%20Human%20Rights%20Commission%20-%202023%20January%202012.PDF>> accessed 16 July 2018.

³¹ Chloe Taylor, ‘Landmark Case sees FWC Rule in Favour of Domestic Violence Victim’ *HRD Online*, (*HRC Online*, 27 July 2015) <<http://www.hcamag.com/hr-news/landmark-case-sees-fwc-rule-in-favour-of-domestic-violence-victim-203135.aspx>> accessed 2 February 2017.

³² *King v D.C Lee & L.J Lyons* [2016] FWC 1664.

³³ Anna Patty, ‘Domestic Violence leave - ACTU wage case application’ *Sydney Morning Herald* (Sydney, 28 October 2014) <www.smh.com.au/nsw/domestic-violence-leave--actu-wage-case-application-20141027-11ccew.html> accessed 2 February 2017.

³⁴ Renee Viellaris, ‘Retail Group Backs Proposals for Paid Leave for Staff Victims of Domestic Violence’ *The Sunday Mail (Qld)* (Queensland, 2 October 2016) <<http://online.isentialink.com/heraldsun.com.au/2016/10/01/da14dfcb-9f17-45a5-b237-e03db5b76137.html>> accessed 2 February 2017. The NRA estimates that, ‘almost 45,000 women, working within the Australian retail industry, experienced some form of family violence in 2014/15. This is approximately 6.7 per cent of the female workforce’. See National Retail Association, ‘Family Violence and the Australian Retail Industry’ (2016) <www.nra.net.au/wpcontent/uploads/2015/09/RetailFV_Mar2016_Final.pdf> accessed 2 February 2017.

Provision for Working Women Experiencing Domestic Violence

people...There is a straight out business imperative to get involved here'.³⁵ At the other end of the scale, CEOs from many of Australia's largest companies publicly endorsed paid domestic violence leave.³⁶ According to Telstra Australia, the inclusion of ten days paid domestic violence leave in their Enterprise Agreement 2015-2018 has not 'opened the floodgates' with 22 out of a workforce of 32,000 accessing the leave in the first six months, and only taking an average leave of 2.3 days.³⁷

Very similar results emerged from a 2015 survey of over one hundred private sector employers who had negotiated a domestic violence clause in their enterprise agreement.³⁸ The average paid domestic violence leave taken in a 12 month period was 43 hours, with a range of 8-202 hours. Per incident, where time off was requested, most employees took two to three days or less. Few employers reported any challenges implementing domestic violence clauses, on the contrary commenting that 'having domestic/family violence clauses demonstrated support for staff and resulted in a more positive, supportive work environment'.³⁹

The Victorian public sector provision of 20 days paid domestic violence leave had been accessed by 58 employees in the first 12 months (mid 2016-2017), requiring an average of five days leave.⁴⁰ It, therefore, appears that both the private and public sectors are embracing gender-based violence protections at work.

Yet the 'costs' of introducing paid domestic violence leave has remained a contentious issue for some, most recently raised by both the Commonwealth Government and employer groups in opposition to the

³⁵ ABC News, 'Bootmaker Blundstone offers paid domestic violence leave to employees' (*ABC News*, 2 June 2015) <<http://www.abc.net.au/news/2015-06-02/bootmaker-blundstone-offers-domestic-violence-leave-to-employees/6513744>> accessed 2 February 2017.

³⁶ Male Champions of Change, 'Playing Our Part: Workplace Responses to Domestic and Family Violence' (November 2015) <<http://malechampionsofchange.com/wp-content/uploads/2015/11/Playing-Our-Part-16-Days.pdf>> accessed 2 February 2017.

³⁷ Commonwealth Circular (n 27).

³⁸ Gendered Violence Research Network, 'Implementation of Domestic Violence Clauses – An Employers' Perspective' (2015) <<http://www.actu.org.au/media/886612/implementation-of-dv-clauses-an-employers-perspective.pdf>> accessed 16 July 2018.

³⁹ Other positive effects noted by respondents were: the clause raised awareness of the issue within the workplace and reduced stigma; enhanced the overall employer reputation and status; staff were able to take leave without stress; improved cooperation with unions which helped with bargaining; employees felt more comfortable and confident speaking to management about requesting support; and the clause contributed to morale-building within their organisation.

⁴⁰ Melissa L. Davey, 'More than 50 public sector workers claim family violence leave in Victoria' *The Guardian* (London, 8 June 2017) <<https://www.theguardian.com/society/2017/jun/09/more-than-50-public-sector-workers-claim-family-violence-leave-in-victoria>> accessed 9 June 2017.

ACTU claim for ten days paid domestic violence leave in modern awards, discussed above. The latest analysis calculates a cost neutral outcome: ‘The costs to employers associated with those payouts are likely to be largely or completely offset by benefits to employers associated with the provision of paid domestic violence leave: including reduced turnover and improved productivity’.⁴¹ While the argument for workers’ rights in situations of gender-based violence and the domestic violence spill over to workplaces is a strong one and the FCW preliminary view is favourable to *unpaid* leave, a final decision on a model domestic violence clause in modern awards is still awaited.

E. Unacceptable Variation

The major negative outcome of the collective bargaining on domestic violence in Australia has been the non-standard nature of the conditions negotiated. An analysis of clauses up to September 2015 found that the leave conditions being negotiated between Australian unions and employers varied widely.⁴² The range of variation is of concern as the ACTU had provided a model domestic violence clause to its affiliates. The model domestic violence clause is a package of supports, which includes paid domestic violence leave, but also safety planning, protection from adverse action or discrimination, training of key personnel, and referral to domestic violence experts. The dedicated leave has always attracted the most attention but all the conditions in the model clause are necessary to provide effective support, meaning that a holistic approach has the best chance of greatest sustainable impact. However, evidence from the above-mentioned employer survey (2015) now shows that there has been a concentration on the issue of leave, to the detriment of the other equally important elements of this labour protection. The neglect of other conditions, and the varied nature of the very conditions being negotiated, suggest that collective bargaining has not met the goal of introducing minimum terms and conditions. This finding supports the need for minimum standards which can only be made available in enforceable national instruments such as modern awards and employment legislation.

⁴¹ Jim Stanford, ‘Economic Aspects of Paid Domestic Violence leave provisions’ (2016) Centre for Future Work at the Australia Institute Briefing Paper 3 <http://www.tai.org.au/sites/default/files/Economic_Aspects_Domestic_Violence_Leave.pdf> accessed 16 July 2018.

⁴² Ludo McFerran, ‘Expert Report of Ludo McFerran: Analysis of Enterprise Agreements 2014–2015’ (2016) Expert witness report for ACTU, FWC hearings Section 156 – 4 Yearly Review of Modern Awards, Family and Domestic Violence Leave (AM2015/1).

Provision for Working Women Experiencing Domestic Violence

The variation in conditions that have been negotiated in Australian domestic violence clauses could have been reduced if they had been monitored, and training for negotiators provided, yet Australia has had no national monitoring system since 2013. The failure of government to commit resources to support a national implementation program also means there is currently no good practice national training or resources to assist individual workers, employers or unions. Instead, there has been a loss of the good resources developed and poorly informed trainers are stepping into the vacuum.

Nevertheless, there was a marked improvement in the standard of leave conditions in 2016. Up to September 2015, less than 30 per cent of agreements with a domestic violence clause contained a provision of dedicated paid domestic violence leave. In 2016 this rose to over two thirds (67.5 per cent), with the standard leave available being ten days. The explanation may be found in Victoria, a state responsible for two-thirds of the 2016 agreements certified by the FWC that contain a domestic violence clause. The Victorian Labour state government funded the union movement (Victorian Trades Hall Council) in 2015 to provide domestic violence at work training to unions and employers, and to monitor the conditions being negotiated in domestic violence clauses. An estimated 85 per cent of the 2016 Victorian clauses now contain dedicated paid leave, and Victoria still accounts for the bulk of clauses that provide 20 days.⁴³ While similar training and resource support could be introduced state by state, surely the lesson is that standardised provisions need good implementation and oversight strategies that stem from enforceable rights enshrined at the national and international levels.

3. Case Study: The Philippines

Several elements characterize the legislative approach of the Philippines including an early commitment to international standards on gender-based violence, public advocacy, forming of coalitions to face up to particularly high-profile situations, and later on the use of evidence based on a survey.

⁴³ WAD Data (n 3).

A. Anti-Violence Against Women and Their Children Act 2004

The Philippines is an early adopter of gender-based violence protection in the world of work: ratifying the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1981, the Optional Protocol to the CEDAW in 2003, and introducing in 2004 cutting-edge legislation to protect working women affected by domestic violence. Contributing factors may have been an improving economy⁴⁴ and relatively high rates of female participation in the labour force.⁴⁵ The early adoption of domestic violence workplace rights in Philippine legislation may also have been influenced by the process of advocacy. A decade of sustained advocacy by ‘victim - survivors, women’s human rights advocates and organisations, women legislators, government agencies and the National Commission on the Role of Filipino Women’⁴⁶ produced the Anti-Violence Against Women and Their Children Act Republic Act 9262 of 2004 (Anti-VAWC Act). Section 43 of the Act contains access to ten days paid leave and protection from adverse action and discrimination in the workplace. The consultative process of drafting the bill ‘allowed women to articulate their needs, an element of human rights perspective that has been lacking in the Philippine legislative process’.⁴⁷ This inclusive process, and the extended discussion on the scope of the bill, may have contributed to a broader understanding of

⁴⁴ World Bank, ‘Philippine Economic Update: Pursuing Inclusive Growth Through Sustainable Reconstruction and Job Creation’ (2014) Poverty Reduction and Economic Management Unit, Philippine Country Office East Asia and Pacific Region, Report No. 83315-PH. To some degree the conditions have been favourable, with the Philippine economy experiencing higher growth in recent years, yet 75 per cent of workers are poorly protected in informal employment, and the poverty incidence declining ‘only moderately between 2009-2012.’

⁴⁵ Philippines Statistical Authority, ‘National Demographic and Health Survey 2013’ (2014) <<https://dhsprogram.com/pubs/pdf/fr294/fr294.pdf>> accessed 17 July 2018. Nearly half the working age female population in the workforce and approximately 60 per cent of Filipina women who have experienced domestic violence are in employment. According to 2017 statistics, in Australia the workforce participation rate for women is 59.1 per cent. See Australian Workplace Gender Equality Agency, ‘Gender Workplace Statistics at a Glance’ (2018) <https://www.wgea.gov.au/sites/default/files/Stats_at_a_Glance.pdf> accessed 17 July 2018.

⁴⁶ Rowena V Guanzon, ‘Laws on Violence against Women in the Philippines’ (2008) UN Office on Drugs and Crime and Division for the Advancement of Women 12 <http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/expertpapers/EGMGPLVAW%20Paper%20%28Rowena%20Guanzon%29.pdf> accessed 21 January 2017.

⁴⁷ M. P. Munez, ‘Can Reforms Withstand Guns-and-Gold Politics? A Report on the Philippines’ in Friedrich Ebert Stiftung (ed) *Gaining Ground? SEA Women in Politics and Decision-Making. Ten Years After Beijing: A Compilation of Five Country Reports* (2nd ed, Philippine Office, 2005) 187 <<http://ci.nii.ac.jp/ncid/BA79087345>> accessed 21 January 2017.

Provision for Working Women Experiencing Domestic Violence

potential locations of the violence, beyond the home and including the workplace.⁴⁸

Arriving at this legislation was linked in particular to massive public reaction to the domestic violence suffered by and leading to the death, on 23 November 2001, of Maria Teresa Carlson, the wife of a local politician, who had complained about her husband's mistreatment. Once this news was out, advocates pushed the campaign to reconcile a number of pieces of draft legislation on the subject, resulting in a unity bill before Congress. Advocacy took strength through the creation of *Task Force Maria*, a coalition of at least 23 women's and people's organisations reacting to Ms Carlson's death. The Task Force took the Philippines Commission on Human Rights to task for failing to act on her publicised disclosures. The then President of the Philippines, Gloria Arroyo, signed the bill into law on International Women's Day 8 March 2004. In addition to the workplace leave, the Anti-VAWC Act includes provisions shielding victims with protection orders without having to file a case in court and recognising the 'battered woman syndrome' as a defence in litigation.⁴⁹

However, there have been problems identified by Professor Guanzon of the University of the Philippines College of Law with the implementation of the Anti-VAWC Act, and the lack of budgetary appropriation in the law for implementation:

The legislators who sponsored the Anti-VAWC Act believed that the law would be passed without serious obstacles if there was no specific amount as appropriation or funds for its implementation. They merely provided in Section 45 of the law that an amount shall be included in the annual General Appropriations Act, and the Gender and Development (GAD) budget of the mandated agencies and local governments shall be used to implement services for victims. This proved to be a crucial gap, because although the national agencies have their GAD budget (five per cent of their total budget), the elimination of violence against women and training of government personnel and support services for victims of violence against women may not be the agency's priority.⁵⁰

⁴⁸ According to *ibid* advocates discussing a proposed domestic violence Bill in 1997 wanted a broader bill that extended protection beyond the home.

⁴⁹ 'The Unhappy Life of Maria Theresa Carlson' *News Break Archive*, (*News Break Archive*, 12 December 2001) <<http://archives.newsbreak-knowledge.ph/2001/12/12/the-unhappy-life-of-maria-theresa-carlson/>> accessed on 15 January 2018.

⁵⁰ Davey (n 40). Several studies even indicated that agencies have been underspending on GAD budgets and have interpreted GAD so loosely that sports development projects and a dump/fire truck, sound system and motor vehicles for general use, for examples, have crept in as qualified for GAD funding.

Moreover, the CEDAW Committee in its 2016 Conclusions on the Philippines report stated at paragraph 25 that '[it was] concerned about ... (b) The limited scope of the [Anti VAWC Act], which is focused mainly on domestic violence by intimate partners'.⁵¹ The government's earlier reports to the CEDAW Committee openly expressed concern about finances lacking for the implementation of its plans for gender mainstreaming and described how the GAD five per cent budget appropriation is a measure to mitigate this challenge.⁵²

B. Testing the Implementation of the Act

The results of the failure to fund implementation were starkly exposed when the International Trade Union Confederation Asia-Pacific (ITUC-AP) and the Philippine affiliates⁵³ conducted a domestic violence at work survey amongst members. The ITUC-AP Senior Officer for Women and Projects received support from the ITUC-AP General Secretary to conduct online surveys in a number of Asia Pacific countries, replicating surveys which had been conducted by the ACTU and the New Zealand Council of Trade Unions (NZCTU). This was an initiative which fitted well with the current campaigns of ITUC itself.⁵⁴ The Philippines was the leading candidate to conduct the survey because of the existence of the Anti-VAWC Act, the need to establish awareness of worker's rights within the Act, and consequently to assess the level of implementation of those rights. Furthermore, the policy of industrial tripartism in the Philippines has given unions access to national decision making on worker's rights and conditions. Union bodies such as the Trade Union Congress of the Philippines (TUCP), with the support of certain trade union solidarity support organizations, have actively campaigned on issues such as sexual harassment and discrimination against women, and participated in a number of domestic violence initiatives including the establishment and operation of pre-legislation 'alternative structures' such as women's desks and support facilities lodged at the TUCP. They also supported domestic violence training for public lawyers. The TUCP

⁵¹ The CEDAW Committee, 'Concluding Observations : Philipinnes' (2016) CEDAW/C/PHL/CO/7-8.

⁵² 'Fifth and Sixth Periodic State Report: Philippines' (2004) CEDAW/C/PHL/5-6 [110]-[112].

⁵³ Referring to the Trade Union Congress of the Philippines (TUCP); Federation of Free Workers (FFW) and Sentro ng mga Nagkakaisa at Progresibong Manggagawa (SENTRO).

⁵⁴ Campaigns for the rights of domestic workers and for an ILO convention on gender based violence in the workplace.

Provision for Working Women Experiencing Domestic Violence

lobbied for the passage of ordinances which provide for the allocation of funds for domestic violence and GAD awareness programs, and the inclusion of information on violence against women in government-mandated pre-departure orientation seminars for overseas workers.

The 2015 ITUC-AP/Philippine affiliates' survey on the impact of domestic violence on workers and workplaces found that one in five respondents reported having experienced domestic violence. Of this group, 75 per cent reported that their work performance suffered, over half reported that the violence followed them into work and nearly 84 per cent reported that the violence affected their attendance at work. Yet respondents' awareness of legally mandated paid domestic violence leave was low at 39 per cent, take up of domestic violence leave was even lower, at only 23 per cent of affected workers, and one in four said employers did not 'act in a positive way when workers report their domestic violence experience.'⁵⁵ Unlike previous domestic violence at work surveys (Australia, New Zealand, UK, Turkey and Canada) the Philippine survey contained a section specifically for domestic workers, and found that despite the legal protection afforded to domestic workers, 30 per cent had experienced abuse in their employer's household, and a proportion had experienced abuse both at home and at work.

C. Effect of Survey Findings

The most positive response to the survey launched in September 2015, has been from the national organisation of human resource managers, People Management Association of the Philippines (PMAP),⁵⁶ which signed a Memorandum of Understanding (MOU) with TUCP in November 2016 to conduct joint programs to address domestic violence in the workplace. Participants at the PMAP's 52nd Annual Conference in October 2015 had expressed surprise at the survey findings presented by TUCP. PMAP will use TUCP as the provider of free resource persons and materials for training programs on domestic violence, assist TUCP in addressing queries from unionised member companies regarding domestic violence at the workplace, and communicate with all of its unionised member companies about the program.

⁵⁵ ITUC-AP, 'National Survey on the Impacts of Domestic Violence on Workers and Workplaces in the Philippines' (Launch of the joint ITUC-AP/Philippine Affiliates Research Findings and Dissemination Forum, Manila, 2015). Conducted between June-September 2015, a total of 1,084 workers completed the survey, the majority of who were from unionized enterprises, mostly in permanent and full-time positions.

⁵⁶ An organization of over 1,800 member companies and individual management executives specializing in human resources.

ITUC-AP has maintained a focus on the elimination of violence against women, in particular on domestic violence. The Regional General Council (the second highest body of the organisation) adopted two resolutions (in 2014 and 2015) signifying its firm commitment to deepening understanding of domestic violence by replicating domestic violence at work surveys in coordination with partners, and stepping up joint efforts to curb gender-based violence including domestic violence at the workplace. Two new surveys started in September 2016. Meetings of Mongolian and Taiwanese affiliates with key stakeholders resulted in initial commitments to improve laws, protection and services for workers experiencing domestic violence. Other affiliates responded positively to the call of ITUC-AP for increased engagement on gender-based violence advocacy. The Israeli trade union body HISTADRUT signed a similar cooperation agreement in November 2016 with the Presidium of Business Organizations (employers' group) on joint workplace prevention and assistance for victims.

Domestic violence also became the focus of ITUC-AP regional and affiliates' national campaigns and the subject of enterprise discussions. In particular, gender-based violence became the central theme of unions' International Women's Day (8 March 2016) and World Day for Decent Work (7 October 2016) celebrations calling for better, healthier and gender-based violence-free and supportive workplaces. Regional meetings (Bangkok 2015) and workshops (Manila 2016) discussed affiliates' on-going initiatives on domestic violence at work, identified gaps and priority areas to strengthen and advance coordinated responses and developed actions plans and strategies to promote domestic violence to employers, governments and others. Key findings of the Philippine survey and initiatives of ITUC-AP were presented to the APEC 'Enhancing Opportunity for Women in Asia Pacific Conference' in Taiwan, March 2016, and at the UN Commission on the Status of Women 60th Session side event 'Safe at Home, Safe at Work' in New York, March 2016.

As a key next step toward supporting the work of affiliates, in particular the Philippine affiliates, the Chinese Federation of Labour (CFL) in Taiwan and the Confederation of Mongolian Trade Unions (CMTU), the ITUC-AP sent a staff mission to Toronto, Canada to understand how the Canadian Labour Congress (CLC) has adapted the Unifor (Canada's largest private sector union) model of Women's

Advocate Program for other Canadian affiliates.⁵⁷ An Asia-Pacific version of the Women's Advocate Program was to be launched in 2017.⁵⁸

4. Information Sharing Internationally: Lessons from the Australian and Philippines Experiences

The developments that occurred in Australia and the Philippines represent two different strategies for protecting workers affected by domestic violence: through national legislation and collective bargaining. In both countries, the exercise of conducting national surveys to highlight the impacts of domestic violence on workers was successful in raising the awareness of union members, in providing evidence for employers and governments when negotiating agreements and law reform, and in informing the resources and training necessary for good implementation of workplace rights. One lesson that can be drawn from the Australian experience is that, once armed with the evidence, collective bargaining was effective in breaking a sense of inertia in the workplace on the issue of domestic violence. Engaged unions could break through the rhetoric that domestic violence is a personal matter that does not affect the world of work. Similarly, the unions in the Philippines were able to expose poor employer and employee awareness of legal rights and the consequences of government inactivity.

A feature of the process of evidence collection by surveys and the promotion of minimum standards and good implementation has been international cooperation. This was exemplified by the creation in 2013 of an International Domestic Violence at Work Network. The network comprises domestic violence researchers, experts, social and labour organisations, and employers.⁵⁹ An example of good cooperation is the

⁵⁷ It is an institutionalized and negotiated program which aims to create safer workplaces and communities for women by recognizing and providing support and resources for women experiencing violence and/or harassment.

⁵⁸ The International Transport Workers Federation, with support from Swedish affiliate SEKO and solidarity support organization Union to Union, is also working with affiliates in India, Nepal, Australia, Peru and Libya to develop the Canadian model of women's advocacy programmes. Source: Jodi Evans, ITF Women Transport Workers Equality Officer, email correspondence with author (7 February 2017).

⁵⁹ The international domestic violence at work network (www.dvatworknet.org) received funding from the Social Science and Humanities Council of Canada to develop knowledge of international developments. Co-ordinated by the Centre for Research and Education on Violence Against Women and Children, Western University, Ontario, the network has created a set of core domestic violence at work survey questions based on the

role taken by a number of global union federations in the network, raising the opportunity for multinationals to provide global conditions to employees. Larger corporations in financial services, transport, telecommunications and tertiary education many with global employees, dominate the agreements negotiated in Australia.⁶⁰ Vodafone, for example, with over 100,000 employees globally, was one of the first organisations in the world to introduce a mandatory minimum global maternity policy.⁶¹ Vodafone Australia introduced ten days paid domestic violence leave and could extend this entitlement to its global staff. It is hoped that other business will follow in its footsteps. Union Network International (UNI) global union has gathered information from their affiliated unions around the world for a survey on the impacts of domestic violence at work that has been translated into five languages.⁶² The UNI World Women's Committee, representing ten million women in the skills and services sectors around the world, hosted a meeting of the domestic violence at work network in their HQ in Switzerland, to present and discuss the survey. According to the UNI World Women's President: 'I think we have a key opportunity to tackle domestic violence and UNI will be calling on all affiliates to step up, lobby for an ILO convention on violence against women and men at work and transform the lives of millions all over the world'.⁶³ A good case study is presented by UNI (Case Study 5) of the South African Commercial, Catering and Allied Workers Union that used a good domestic violence legislative framework to gain leverage when negotiating domestic violence clauses in collective agreements.⁶⁴

Australian model (2011). Surveys have been conducted in Australia (2011), New Zealand (2013), the United Kingdom (2014), Canada (2014), Turkey (2015) and the Philippines (2015), collecting and analysing employees' experiences of domestic violence and how this has affected their workplaces and the workplaces responses. Findings across the surveys have consistently found similar impacts on attendance, performance and safety.

⁶⁰ Department of Employment Workplace Agreement Database, data provided to McFerran 11 October 2016. Less than 8 per cent of all agreements approved by the FWC from July-September 2015 contained a domestic violence clause, yet the workers covered by these agreements represented 64 per cent of all workers in agreements that quarter.

⁶¹ 'Vodafone Leads Way on Paid Parental Leave' (15 March 2015) <www.vodafone.com.au/media/paid-parental-leave/> accessed 2 February 2017.

⁶² Each survey, which includes a set of core questions, requires translation and customization to ensure that it makes sense in the local context and meets approval by the Western University (Ontario) Research Ethics Board.

⁶³ Email from D McGuire to McFerran (12 February 2017).

⁶⁴ Jane Pillinger, 'Violence and Harassment Against Women and Men in the World of Work: Trade Union Perspectives and Action' (2017) ILO 106

<http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_546645.pdf> accessed 17 July 2018.

Provision for Working Women Experiencing Domestic Violence

The International Transport Workers Federation (ITF) is working with affiliates in Tunisia and Egypt, who have engaged with local women's rights organisations to customise the survey for their context. The ITF now routinely incorporates domestic violence at work as an issue in any engagement with affiliates on broader gender-based violence at work.⁶⁵

Network members also contributed to European discussions of the link between domestic violence and work. The Council of Europe's Istanbul Convention on Preventing and Combating Violence Against Women and Domestic Violence unfortunately neglects the impacts on employed women and their workplaces.⁶⁶ This has left other European bodies such as the European Trade Union Confederation (ETUC) to drive better understanding of workplace responses. The ETUC gender equality work programme, adopted in 2012, set a goal to encourage trade unions to address the link between domestic violence and workplace violence. Information from affiliates confirmed that the ETUC should continue to work on this issue, which led to the project 'Safe at Home, Safe at Work' and a research report based on eleven European country case studies conducted by Jane Pillinger, a gender expert, between 2015-2016. Pillinger documents the background of European trade union activism on violence against women and sees the 'opportunity to consolidate much of this work, draw on good practices and take it a step further by influencing European decision-makers'.⁶⁷

The project found that in relation to domestic violence, the variations in collective bargaining across Europe has meant that 'unions have shaped their activities around the structures that exist'.⁶⁸ According to Pillinger, unions have been most active in Spain, UK, Italy and Denmark. In her briefing for the ETUC Safe at Home, Safe at Work Conference (2016) Pillinger found, for example, that the Spanish Organic Law 1/2004 on protection against domestic violence, which includes a

⁶⁵ See organisations in (n 56).

⁶⁶ Despite slow progress in ratifying the Istanbul Convention, a UK programme has been agreed for ratification under the Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Act 2017. Pillinger argues that the violence against women strategy of the UK has been fairly comprehensive and inclusive of the main priorities of the Istanbul Convention and does include the workplace. This is also the case of the strategies of Scotland, Wales, and Northern Ireland which explicitly include reference to the workplace. The pending ratification of the Istanbul Convention by the European Union 'will also be important for mobilising action from within the EU' (Email from Jane Pillinger to McFerran (7 February 2017)). Of concern is that Russia is one of four of the 47 member states of the Council of Europe that has neither signed nor ratified the Istanbul Convention, and has now reduced domestic violence from a criminal to an administrative offence.

⁶⁷ Email Jane Pillinger to McFerran (7 February 2017).

⁶⁸ *ibid.*

measure to enable victims of domestic violence remain in work, enabled the inclusion of domestic violence in workplace agreements and policies.

Today, many (Spanish) collective bargaining agreements, harassment and violence protocols and gender equality plans have provisions in place regarding domestic violence. Clauses include informing domestic violence victims of their rights, preventing domestic violence through training, flexible working hours, and paid and unpaid leave.⁶⁹

She cites further European examples of progress driven by unions such as training for shop stewards in Denmark on preventing and addressing domestic violence at the workplace, recognised by an annual conference and award for innovative workplace policies. In France, Pillinger lists a number of agreements that include clauses on domestic violence at La Poste, Carrefour and Peugeot Citroën.⁷⁰ Recommendations for the ETUC affiliates that emerged from the project included: women in senior negotiating positions to promote violence against women into bargaining agendas; supporting information for workers experiencing sexual harassment and domestic violence; partnering with non-governmental organizations and specialist violence against women organizations; highlighting the business arguments for tackling violence against women; and lobbying for the inclusion of measures to address domestic violence at work in collective bargaining agreements and government national actions plans on violence against women. For ETUC, specific actions include model violence against women workplace agreements for affiliates; lobbying and awareness-raising for European level organizations to include relevant clauses in future European social dialogue agreements and in future EU policies; and the development of a strong EU legal framework on violence against women at work, including rights relating to domestic violence at work.

⁶⁹ See final report Jane Pillinger, 'Safe at Home, Safe at Work: Trade Union Strategies to Prevent, Manage and Eliminate Work-Place Harassment and Violence Against Women' (2017) <<https://www.etuc.org/documents/safe-home-safe-work-final-report#.WUJqeldiM6g>> accessed 17 July 2018. See Jane Pillinger, 'Briefing on the ETUC project 'Safe at Home, Safe at Work': Trade Unions' Strategies to Prevent, Manage and Eliminate Workplace Harassment and Violence Against Women' (ETUC Conference, Madrid, 24-25 November 2016).

⁷⁰ *ibid.* The 2015 La Poste agreement on professional equality includes a chapter on violence in the workplace and domestic violence at work, covering support for victims, including housing support, a free hotline number, possibilities to relocate work, and information about specialist support organisations. The Carrefour SA Hypermarchés agreement of 2012 states that prevention of domestic violence at work is part of the company's Corporate Social Responsibility strategy to inform and train employees on the subject. PSA Peugeot Citroën's 2014 agreement includes a clause on supporting workers who are victims of domestic violence.

Provision for Working Women Experiencing Domestic Violence

The ILO, a foundation member of the abovementioned international domestic violence at work network, urged network members to conduct comparable national domestic violence at work surveys and promoted Australian collective bargaining of domestic violence as a best practice model. The ILO started its scheduled debate in June 2018 an international labour standard on violence and harassment against women and men in the world of work. An expert group meeting to advise the ILO on the issue was held in October 2016 and agreed that 'domestic violence and other forms of violence and harassment are relevant to the world of work when they impact in the workplace' (Conclusion 3) and that 'Collective agreements could address the effects of domestic violence' (Conclusion 27).⁷¹

One conclusion that can be drawn from the sharing of international and comparative knowledge on domestic violence and work is that the most effective national and international strategies should combine employment legislation, collective bargaining, anti-discrimination legislation such as operates in certain American states, occupational health and safety legislation as in the Canadian province of Ontario and employer policies being developed in countries such as Turkey. This combination would maximise the safety net and the resources for implementation. For, as the experiences in both Australia and the Philippines demonstrate, good implementation does not always follow good reform, and a key international lesson must be that the resources for implementation and monitoring are built into any national and international development. The international domestic violence at work network has monitored good practice, allowing, for example, Canadian unions to consciously react to the gaps that they have seen open up in Australia as regards training and variations. The Canadian Labour Congress provides both education and resources for union leaders and negotiators to pursue entitlements to workplace protections including paid domestic violence leave, and principles outlining what collective agreement language should, at a minimum achieve, along with model language.⁷²

⁷¹ ILO, 'Report of the Director-General: Fifth Supplementary Report - Outcome of the Meeting of Experts on Violence against Women and Men in the World of Work' (2016) GB.328/INS/17/5.

⁷² DV@Work Network, 'Impact of Domestic Violence on Workers and the Workplace: ILO Expert Group Meeting on a Convention on Violence Against Women and Men at Work' (2016) Issue Briefing 6 <<http://canadianlabour.ca/leaders-and-negotiators>> accessed 17 July 2018.

5. Emerging Issues that Must Be Addressed

A number of emerging issues continue to challenge a good practice response to domestic violence at work. The evidence of the domestic violence experienced by domestic workers, both at work and in their homes requires further research, including tracking and analysis.

As noted above in the Australian case study, the process of collective bargaining has generated a need for more empirical research into the impacts of domestic violence in the world of work. It would be really helpful for research institutions to investigate on an ongoing basis not only the incidence of the domestic violence spill over into the workplace, but also whether the policy choices - like equality or occupational safety and health legislation, penal laws, collective bargaining, or other measures - are delivering sustainable results in thwarting this violation of human rights and workplace rights to decent work.

Another urgent issue on which Australian employers are seeking guidance is whether to provide leave to employed domestic violence perpetrators.⁷³ The evidence is that the behaviour of employed domestic violence offenders in the workplace creates a parallel cost to the employer due to absences, poor performance, misuse of work time and company resources, and occupational health and safety risks.

Another enduring response gap is an appropriate strategy for small business, both for employers and employees. Small businesses are less likely to have agreements (less than 12 per cent of Australian agreements with a domestic violence clause have 1-15 employees),⁷⁴ and the cost challenges facing small business are often cited by employer groups and responsible government agencies as barriers to paid domestic violence leave.⁷⁵ Nor can the gap between permanent and casual employees to

⁷³ Michele Cranwell Schmidt and Autumn Barnett, 'Effects of Domestic Violence on the Workplace; A Vermont Survey of Male Offenders Enrolled in Batterer Intervention Programs' (2012) Vermont Council on Domestic Violence <https://www.uvm.edu/crs/reports/2012/VTDV_WorkplaceStudy2012_Presentation.pdf> accessed 17 July 2018. The evidence is that the behaviour of employed domestic violence offenders in the workplace creates a parallel cost to the employer due to absences, poor performance, misuse of work time and company resources, and occupational health and safety risks. A third of respondents took paid and unpaid time off work to be abusive or as a result of the abuse; a third made abusive and threatening calls during working hours (a third using work phones); and one in five said that they had caused or almost caused an accident because they were distracted (a finding that may be of special importance in blue collar industries).

⁷⁴ *ibid* Footnote 58.

⁷⁵ Lucille Keen, 'SMEs shouldn't have to pick up the tab for domestic violence, Kate Carnell says' *Financial Review* (Sydney, 20 June 2016) <www.afr.com/news/policy/industrial-relations/smes-shouldnt-have-to-pick-up-the-tab-for-domestic-violence-kate-carnell-says-20160620-gpn2bn> accessed 7 February 2017.

Provision for Working Women Experiencing Domestic Violence

domestic violence workplace rights be ignored. Domestic violence erodes access by working women to safe and fulltime work.⁷⁶

A final element for further research and analysis is the situation of non-standard employees. Casual workers do not have the option of timing domestic violence events when they are not at work, and are least able to afford unpaid time off work to address the crisis. This gap has been recognised by the ACTU, and casual workers are included in the paid domestic violence leave claim before the FWC, albeit after the 20 October 2017 FCW Statement still a contested part of a model domestic violence clause.

6. Conclusion

A better future for women at work is not assured. Any progress made to secure new workplace rights may be reversed in the broader context of declining union membership and the growth of precarious work that disproportionately affects women. Strong partnerships and solid empirical data on impact (via the survey methodology embraced by workers' organisations globally) have been key to progressing domestic violence workplace rights. A critical voice at this stage is that of progressive employers who have adopted standardised and guaranteed domestic violence rights for their employees, and have the evidence of the positive outcomes for having done so. These experiences now need to be heard at the national and international level in order to persuade other employers of the value of proactively understanding and responding to the impacts of domestic violence at work. Australia waited thirty-five years before the union movement on the one hand made domestic violence a national industrial relations issue and on the other hand placed the workplace firmly into national domestic violence strategy. The Philippines struck out over a decade ago with strong legislative protections that still crave full implementation in practice. These delays should not be repeated globally.

⁷⁶ Suzanne Franzway et al, 'Gendered Violence and Citizenship: the Complex Effects of Intimate Partner Violence on Mental Health, Housing and Employment' (2016) University of South Australia <<https://www.unisa.edu.au/PageFiles/71190/Gendered-Violence-and-Citizenship-report.pdf>> accessed 17 July 2018.

Appendix 1 The Australian Employment Arrangement

The Australian labour market is quite a regulated one. Ten statutory minimum employment conditions are set by the National Employment Standards (NES) in the Fair Work Act of 2009. These include ten days paid personal sick leave which may also be taken as carers leave and an unenforceable right to request flexible working in certain circumstances. Several of these standards are unavailable to casual workers, such as paid sick and holiday leave (though casuals do receive a loading on their pay partly to compensate for this). Nearly a quarter of women employees (18 per cent of men) are employed on a casual basis. A system of industry and occupational arrangements known as ‘awards’ underpin, for most of the workforce, a further set of minimum standards such as to enhanced overtime and shift payments. Award standards are set by a tribunal (the Fair Work Commission) after hearing evidence from employer and employee representatives, and are legally binding. However, employees and their employer are free to collectively bargain with or without the involvement of trade unions. Whilst NES minima cannot be undercut by collective agreements reached through bargaining, the additional award standards can sometimes be provided employees are better off overall as a result of the agreement.

The number of employees in Australia is approximately 12 million (January 2017 ABS 6202.0).

ABS 6306.0 - Employee Earnings and Hours, Australia, May 2016 shows 24 per cent of employees have had their pay set by awards and 38 per cent by collective agreements; others were negotiated individually.

Appendix 2 ACTU Clause Family and Domestic Violence

X.1 General Principles

X.1.1 [Insert employer] recognises that employees sometimes face situations of violence or abuse in their personal life that may affect their attendance or performance at work. [Insert employer] is committed to providing support to staff that experience family and domestic violence.

X.1.2 Understanding the traumatic nature of family and domestic violence [insert employer] will support their employee if they have difficulties performing tasks at work. No adverse action will be taken against an employee if their attendance or performance at work suffers as a result of experiencing family and domestic violence. An employee will not be discriminated against or have adverse action taken against them because of their disclosure of, experience of, or perceived experience of, family violence.

X.2 Definition of Family and Domestic Violence

X.2.1 For the purpose of this clause, family and domestic violence is defined as any violent, threatening or other abusive behaviour by a person against a member of the person's family or household (current or former). To avoid doubt, this definition includes behaviour that:

- (a) is physically or sexually abusive; or
- (b) is emotionally or psychologically abusive; or
- (c) is economically abusive; or
- (d) is threatening; or
- (e) is coercive; or
- (f) in any other way controls or dominates the family or household member and causes that person to feel fear for their safety or wellbeing or that of another person; or

(g) causes a child to hear or witness, or otherwise be exposed to the effects of, such behaviour.

X.3 Family and Domestic Violence Leave

X.3.1 An employee, including a casual employee, experiencing family and domestic violence is entitled to [20] days per year of paid family and domestic violence leave for the purpose of:

- (a) attending legal proceedings, counselling, appointments with a medical or legal practitioner;
- (b) relocation or making other safety arrangements; or
- (c) other activities associated with the experience of family and domestic violence.

X.3.2 In addition, an employee, including a casual employee, who provides support to a person experiencing family and domestic violence is entitled to access family and domestic leave for the purpose of:

- (a) accompanying that person to legal proceedings, counselling, appointments with a medical or legal practitioner;
- (b) assisting with relocation or other safety arrangements; or
- (c) other activities associated with the family and domestic violence including caring for children.

X.3.3 This leave will be in addition to existing leave entitlements, may be taken as consecutive or single days or as a fraction of a day, and can be taken without prior approval. X.3.4 Upon exhaustion of the leave entitlement in clause [X.3.1], employees will be entitled to up to [2] days unpaid family and domestic violence leave on each occasion.

X.4 Notice and Evidentiary Requirements

X.4.1 The employee shall give his or her employer notice as soon as reasonably practicable of their request to take leave under this clause.

Provision for Working Women Experiencing Domestic Violence

X.4.2 If required by the employer, the employee must provide evidence that would satisfy a reasonable person that the leave is for the purpose as set out in clause [X.3]. Such evidence may include a document issued by the police service, a court, a health professional, a family violence support service, a lawyer, a financial institution, an accountant or a statutory declaration.

X.4.3 The employer must ensure that any personal information provided by the employee to the employer concerning an employee's experience of family and domestic violence is kept confidential. Information will not be kept on an employee's personnel file.

X.5 Contact person

X.5.1 The [insert employer] will nominate a contact person to provide support for employees experiencing family and domestic violence and notify employees of the name of the nominated contact person. The nominated contact person must be trained in relation to family and domestic violence and privacy issues relevant to the workplace and receive paid time off work to attend such training.

X.5.2 An employee experiencing family and domestic violence may raise the issue with the nominated contact person, their immediate supervisor, Health and Safety Representatives or their union delegate/shop steward.

X.5.3 Where requested by an employee, the contact person will liaise with the employee's supervisor on the employee's behalf, and will make a recommendation on the most appropriate form of support.

X.5.4 Health and Safety Representatives and union delegates will be provided paid time off work for appropriate training in supporting employees at the workplace who are experiencing family violence.

X.6 Individual Support

X.6.1 In order to provide support to an employee experiencing family and domestic violence and to provide a safe work environment to all employees, [insert employer] will approve any reasonable request from an employee experiencing family and domestic violence for:

- (a) changes to their span of hours or pattern or hours and/or shift patterns;

- (b) job redesign or changes to duties;
- (c) relocation to suitable employment within [insert employer];
- (d) a change to their telephone number or email address to avoid harassing contact; or
- (e) any other appropriate measure including those available under existing provisions for family friendly and flexible work arrangements.

X.6.2 An employee that discloses to the nominated contact person or their supervisor that they are experiencing family and domestic violence will be offered:

- (a) access to professionals trained specifically in family and domestic violence through the Employee Assistance Program (EAP); and
- (b) a resource pack containing information in relation to external support agencies, referral services and other local employee support resources.

X.6.3 [Insert employer] will develop guidelines to supplement this clause which detail the appropriate action to be taken in the event that an employee reports family and domestic violence.

X.7 Workplace Safety

X.7.1 [Insert employer] will implement a workplace safety plan with specific measures to minimise the risk that employees will be subject to violent or abusive behaviour at work and protocols for dealing with a crisis situation.