

Employers' potential liability for family and domestic violence: An Australian overview

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Abstract

This article considers a range of legal issues that arise when family and domestic violence impacts upon the workplace. It examines the available data on the costs of family and domestic violence to employers and the community. It discusses the potential for employers to be affected by Australian State and Territory criminal and related laws that are intended to protect a person from family and domestic violence. Recent cases of discrimination arising from family and domestic violence are considered with some speculations as to other possible forms of liability for employers concerning work health and safety and workers compensation laws. The Australian Fair Work Commission's determination of unpaid family domestic violence leave is also examined, as is the adoption of paid leave by some State and Territory governments and larger Australian employers. The article concludes with some reflections and speculations on how current laws may affect employers and what actions can be taken by employers to adopt supportive measures to protect employees.

JEL Codes: K32, J28, L53

Keywords

Employment conditions, family and domestic violence leave, human rights, occupational health, paid leave, workplace leave law

Introduction

Family and domestic violence (FDV) is violence involving one partner in an intimate relationship or between family members attempting, usually by physical or sometimes

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by psychological means, to dominate and control the other using physical and sexual violence; threats and intimidation; emotional and social abuse or financial deprivation.¹ Although the parameters of FDV are increasingly well understood, there is no universally accepted definition, including in Australian industrial relations law, of ‘family violence’, ‘domestic violence’, ‘family and domestic violence’, or some other terminology that most appropriately captures the range of behaviours and relationships involved.

Definitions of FDV vary across Australian Commonwealth, State, and Territory legislation. All States and Territories include physical and economic abuse, and threatening and coercive behaviour in laws relating to intervention and restraining orders.² Some jurisdictions include more specific behaviours such as threatening the death or injury of a child of the protected person,³ threatening self-harm or suicide,⁴ and contravening a Family Violence Order.⁵ Definitions of family violence are being continually amended to include behaviours not previously mentioned (Caruana, 2005). For example, in Western Australia, recent amendments to the *Restraining Orders Act 1997* (WA) extended the definition of family violence to include ‘ongoing emotionally abusive behaviour’. The Australian Law Reform Commission (ALRC) (2010: 187–188) observed, ‘disciplines other than law, for example, the social sciences and health and welfare service providers may conceptualise family violence differently’. The Australian Bureau of Statistics (ABS, 2009) notes definitions can be based on the relationship between the victim and offender, with ‘family violence’ based on interpersonal relationships, while concepts of ‘domestic violence’ may be based on living arrangements. Comprehensive definitions of FDV and child abuse under the *Family Law Act 1975* (Cth) (‘the FLA’) include a range of criminal acts and also forms of coercion, child abuse, and neglect.⁶ As a consequence of the differing definitions across different jurisdictions and discipline areas, issues may arise for employers concerning compliance with criminal laws, industrial laws, and work health laws where FDV impacts on the workplace. Nevertheless, FDV issues are now becoming broadly understood (Australian Institute of Health and Welfare, 2019), and while the primary focus of this article relates to legal issues, there are additional difficulties that contribute to discouraging disclosure of FDV and support-seeking at work. These include the role of unsupportive workplace cultures, lack of education around this topic, and the notion that home and work lives can and should be separated.

We do not suggest definitional issues alone contribute to some of the concerns raised below. A combination of factors may, for example, contribute to employers failing to accommodate the needs of a person protected by the various violence restraining or protective court orders noted below or might also lead to direct legal consequences for employers in claims for discrimination and possible actions for negligence or workers compensation.⁷ The forms of protection and remedies available for parties subjected to FDV are many and varied and the purpose of this article is to provide an overview of these issues.

This article overviews the many and varied forms of protection and remedies available for parties subjected to FDV. It considers a range of legal issues that arise when FDV impacts upon the workplace. First, the costs of FDV to employers and the community and the use of FDV Leave (FDVL) in existing industrial agreements are examined. Second, we briefly discuss the potential impact on employers of State and Territory criminal and related laws intended to protect a person from FDV. Third, recent cases of

discrimination arising from FDV are considered, together with other possible forms of employer liability arising from novel applications of work health laws, workers compensation, and negligence laws. Fourth, we discuss the Fair Work Commission's (FWC) consideration of an application to include 10 days' paid leave in all Modern Awards.⁸ The article concludes with some reflections on potential courses of action for employers and notes the current state of FDVL (Family and Domestic Violence Leave) legislation.

The direct and indirect costs of family and domestic violence in Australia

There are direct and indirect costs of FDV. There are essentially two components to indirect costs of FDV which in broad terms relate to production losses which have an impact on employers. First, an initial disruption to production is caused by short-term absence from work, so a cost is incurred until production is restored to former levels. Second, long-term costs are caused by loss of labour where there is serious injury or fatality. Short-run production costs of FDV include reduced productivity of the victim caused by injury or absence from work, absenteeism of the perpetrator and family members required to attend court, police and health care issues, costs of replacing the lost output of victims, perpetrators, family and friends with overtime by other workers, and additional administrative costs of dealing with wage issues, rosters, disciplinary matters, re-hiring and the like.

Internationally, research in the USA, New Zealand, the UK, Canada, Turkey, and the Philippines has consistently found adverse impacts of domestic violence on work attendance, performance and safety (dv@worknet, 2020; Reeves and O'Leary-Kelly, 2007, 2009; Schmidt and Barnett, 2012; Showalter, 2016; Swanberg et al., 2005, 2007; Wathen et al., 2015). A significant body of Australian research has established that continued employment is critical to preventing women from becoming economically trapped, and also in mitigating a violent relationship (Baird et al., 2014; Charlesworth and Macdonald, 2014; Chung et al., 2000; Costello et al., 2005; Murray and Powell, 2007, 2008; Patton, 2003). McFerran (2011), in a pioneering 2011 survey of Australian trade union members, concluded that FDV affected workers' capacity to work through injuries sustained and had negative effects on work performance. She noted most workers were reluctant to disclose FDV issues to management (for fear of judgement), although they were more likely to disclose to co-workers. Similar results have been found in Canada and internationally (Taylor et al., 2015; Wathen et al., 2014).

Consideration of the issue of FDV costs to the community and employers should also include research into the effects of FDV on workers. Australian research in 2015 found the majority of respondents experiencing FDV (75%) did not continue in the same workplace, and full-time employment decreased to 29.6% after separation from the violent partner. Part-time employment increased as a result of FDV and those categorised as 'not working and not seeking work' rose to 16.3% (from 6.1%) after leaving a violent relationship (Franzway et al., 2015; Zuffery et al., 2016). The Victorian Royal Commission into Family Violence noted, 'the workplace can be the only place where the victim spends time physically away from the perpetrator, giving her the space to take steps to ensure her safety' (Neave et al., 2016: 74). Hence, it recommended employers and

colleagues play an important role in helping victims recognise they are experiencing family violence and supporting them in seeking help.

Australian statistics reveal most women are reluctant to report experiences of violence to police and are less likely to report when the perpetrator is their current partner (Neave et al., 2016). Only half of women contacting police had a restraining order issued, although 58% of them experienced further violence from those partners (Mitchell, 2011). Women's reluctance to report FDV is likely to be mirrored in the workplace (Murray and Powell, 2008). Women affected by domestic violence may be subject to tactics whereby the male partner knowingly interferes with their employment. Such tactics are often used to maintain power and control, particularly concerning the woman's social and financial independence. Such tactics include destroying personal documents, preventing the woman from attending training, harassing and/or assaulting the woman when leaving to go to work, loitering around the workplace and offering to care for her children but failing to turn up (Al-Modallal et al., 2016; Chung et al., 2012; Swanberg and Logan, 2005).

Where Australian workplaces are concerned, statistics are now becoming more readily available through various sources (e.g. Australian Institute of Health and Welfare, 2019), though currently there are no legislative requirements in Australia necessitating procedures or structures to be put into place to deal with employee grievances relating to FDV (Wyborn and Miller, 2018). Case law discussed below, however, necessitates that employers must take into account the predicaments of employees faced with FDV and accommodate their reasonable requests for flexible working arrangements.

Many victims of FDV suffer economic insecurity. As Corrie (2016) notes,

. . . there are inextricable links between being a survivor of domestic and family violence and experiencing economic insecurity. . . . The need to relocate and re-establish a life after domestic and family violence is expensive, as are the processes surrounding separation, safety and untangling debt. (p. 51)

A 2004 study estimated the annual cost of FDV to the Australian economy to be around AUD8.1 billion. This estimate took into account the impact on the victim or survivors, perpetrators, children, family and friends, employers, government, and the rest of the community. It was noted 87% of the victims or survivors were women. The largest cost, pain and suffering, was estimated to average AUD224,470.00 per victim (Australian Government, 2004). In 2009, the annual cost of domestic violence to the national economy was estimated at AUD13.6 billion, projected to be AUD15.6 billion in 2021–2022. In 2009, the direct per annum cost to employers was estimated at AUD456 million, 3% of overall costs (estimated to rise to AUD609 million in 2021–2022, with the government bearing 19% of the overall costs at AUD2.945 billion per annum; Australian Government, 2009).

Family and domestic violence and the criminal law

Regardless of definitional differences, FDV involves breaches of criminal law. Accordingly, charges of assault and strangulation,⁹ stalking,¹⁰ threats and intimidation, deprivation of liberty, and sexual or indecent assault often follow when the victims seek

police assistance. All States and Territories have violence restraining, intervention or protection orders (hereafter, 'restraining orders'), allowing applicants to seek protection from abuse.¹¹ Such orders usually prevent the person restrained from making contact (e.g. through email, social media, text or phone) with, or being within a prescribed distance from, the protected person. For most people seeking protection from FDV, the first step is to seek protection orders through State and Territory courts. Similar restraints may be provided by bail conditions and police orders, for a limited period under State and Territory laws. If the parties are co-workers, an employer might be required to re-organise work schedules or tasks to prevent contact. Work health and safety laws may also be implicated, as discussed below.

The Australian Capital Territory (ACT) has enacted unique provisions under the *Domestic Violence Protection Orders Act 2008* (ACT). An employer may apply to a Magistrate for Workplace Orders where there is evidence a person will commit personal violence in relation to the workplace. Such violence includes conduct that is 'harassing or offensive to an employee in the employee's capacity as an employee at the workplace'.¹² Orders can be made under this Act to prevent an employee from entering the workplace or contacting other staff members. In addition to criminal law, there are a range of civil remedies and workplace laws that have implications for employers when FDV impacts the workplace.

Family and domestic violence and discrimination

Research has established that violence undermines the working lives of victims, family and friends. McFerran and others have found that workers affected by violence reported being distracted, tired or unwell and needed to take time off work (Costello et al., 2005 Domestic Violence Workplace Rights and Entitlements Project, 2011; McFerran, 2011; Swanberg and Logan, 2005). Women experiencing FDV are more likely to have lower personal incomes and a disrupted work history. They are more likely to change jobs at short notice, and be employed in casual or part-time work (Australian Human Rights Commission, 2014). In some more extreme cases, perpetrators may attack the victim at work or stalk the victim by emails, phone or presenting at the victim's place of work to harass the victim. Various commentators have argued that perpetrators' propensity to disrupt the workplace creates a potential for victims to be discriminated against in the workplace.¹³ Discrimination may result from the need to take sick or carer's leave, or from temporarily reduced productivity resulting from violence experienced at home. Victims may be denied leave or flexible conditions, have their employment terminated or be transferred or demoted. So far, experience of FDV is not a protected attribute under Federal anti-discrimination legislation. Recent developments in this area in cases decided by the Fair Work Commission (FWC) are discussed below.

Domestic violence discrimination and industrial relations regulation

Recently, the Australian Fair Work Commission has dedicated considerable energy to the question of FDVL. In addition, there have been several individual applications for

remedies for FDV before FWC Commissioners. For example, in *Moghimi v Eliana Construction and Developing Group Pty Ltd* (2015) FWC 4864, the applicant and former partner were co-workers but an intervention order under state law prohibited the latter from approaching or remaining within 3 m of the applicant. Following 4 days when the applicant did not attend work, a director told the applicant it would ‘not be safe or nice for [her] employment to continue’ and ‘keeping [her and her partner] in the office was a no’ (at [22]–[23]). Later, in-house legal counsel advised her that it would be easier to seek employment elsewhere, and drafted a resignation letter which she signed ‘because she felt helpless and . . . that she had no real choice’ (at [26]). The Fair Work Commission accepted that the applicant had a valid reason for her absence and had not engaged in misconduct. The Commissioner however observed,

[44] I accept that there are limits to the extent to which an employer can be expected to accommodate the private lives of employees. Ultimately employees have to be capable of performing the inherent requirements of their jobs. When seeking to accommodate the reasonable needs of employees the impact on the business will be a consideration. However, I am satisfied that . . . [the employer] did not explore all available options and discuss these matters over a reasonable period of time with those affected.

Moghimi’s case establishes that despite the absence of defined FDVL at the time of the hearing, employers are nevertheless required to accommodate an employee’s reasonable request for flexible working arrangements. The *Moghimi* decision was appealed in the Federal Court (Victoria) but with costs awarded to the employee.¹⁴ An employer’s inability to accommodate a request for flexibility in work practices and procedures, resulting in the cessation of the employee’s employment, was viewed as constructive dismissal, giving rise to an action for compensation for unfair dismissal.

In *King v DC Lee*, Ms King, an associate in a law firm, brought an application for unfair dismissal against the firm’s partners. In December 2014, the applicant became a victim of FDV at the hands of her ex-partner and as part of the subsequent prosecution process was required to be absent from work to attend a court hearing in April 2015. The partners of her firm raised performance issues, including concerns about time management. Following a period of sick leave, Ms King’s attendance was closely monitored. The applicant did not fully disclose to her employer her personal issues and the stress she was experiencing. Between July and September 2015, court hearings concerning the charges against her ex-partner were adjourned and relisted. She informed one of the solicitors of the firm about the revised dates but not about a further change of time on the new date. On returning to the office that day, she was dismissed for poor performance, time management issues and unexplained absences, which were said to amount to serious misconduct warranting summary dismissal. In determining that the dismissal was unfair, Commissioner Johns observed,

[56] Although it has not influenced my decision in relation to this matter one is left to wonder whether events might have been different if the respondent had had a policy in relation to paid domestic and family violence leave. It is not common for employers to have such a policy and I make no criticism of the respondent for not having one, but the existence of such a policy would have sent a very clear message to the respondent’s employees that it attaches no stigma

to the victims of domestic and family violence and that it would support them to recover, attend court and medical appointments, seek legal advice and make alternative living arrangements without the repercussion of adverse action being taken in relation to their employment. Increasingly, employers are turning their mind to policies in relation to paid domestic and family violence leave or the inclusion of such an entitlement in enterprise agreements. This is to be encouraged.

As a consequence of this decision, some commentators have urged employers to consider providing employees with paid family and domestic violence leave entitlements as a formal contractual entitlement. They argue that the employer will, thereby, 'send a clear message to employees that victims of domestic or family abuse will be supported, and therefore encourage employees to feel comfortable disclosing to the organisation if they are experiencing domestic or family abuse'. The Full Bench of the FWC noted the decision of Commissioner Johns when introducing 5 days' unpaid leave into Modern Awards as discussed below.

In *Wright v Callum Vacheron Wallace Bishop and Anor* (2018) QIRC 007, Ms Wright's employment was terminated after she had failed to attend work due to an incident of domestic violence that occurred the night before. The incident was described as follows (at [8]):

I called in sick due to a domestic violence incident the previous evening. I explained this to my boss Callum. I sent Callum a text saying I would be fine to work the next day. I received no response so I turned up to work on time at 9 am on Thursday morning. Callum said he was surprised to see me. I explained I needed to work as I was now homeless and needed to keep busy also. At the end of my shift (12 pm) Callum informed me that I was no longer needed as they couldn't afford to pay me. They sent an email to Help Enterprises (my employment agency as I am disabled) and explained I had 'too many personal problems'.

She lodged a complaint with the Queensland Anti-Discrimination Commission on the basis her dismissal amounted to sexual discrimination because as a woman, she had a disproportionate likelihood of being a victim of domestic violence compared to men. The employer argued that men also experienced domestic violence, and that domestic violence was not a characteristic of being a woman, an essential criterion for proving discrimination under the *Anti-Discrimination Act 1991 (Qld)*. The Commission did not accept the applicant's argument.

The intersection of the provision of leave for victims of FDV and the need to protect employment for those victims highlights the issue that women tend not to remain in their jobs if subjected to FDV in the workplace and as a result, when leaving often seek financial support from State and Federal government agencies.

Other forms of employer liability for family and domestic violence

Workers compensation

The concept of 'workplace' is malleable and overtime has expanded to include mobile facilities, fly-in fly-out accommodation and home workplaces. For example, workers compensation cases in Australia have established almost 24-hour liability for employers

who have provided accommodation for workers in remote working situations.¹⁵ The home office has also been confirmed as a workplace, a finding important at the time of writing (during the COVID-19 pandemic).

In *Workers Compensation Nominal Insurer v Hills* (2020) NSWCA 54, the New South Wales Court of Appeal affirmed a decision of the Deputy President of the Compensation Commission to find that a woman killed in her home by her husband – while under the effects of a paranoid delusion – had died in the course of her employment because the couple was conducting a financial advice business from their home. The *Hills* decision is particularly resonant given the research that the ‘lockdown’ conditions during COVID-19 have led to increased incidents of FDV (Boserup et al., 2020; Boxall et al., 2020; Bradbury-Jones and Isham, 2020; The Lookout, 2020). *Hills* confirms, consistent with a long line of authorities, injury or death arising from assault in the workplace may be compensable where the altercation is not regarded as a personal dispute, so as to take the incident out of the course of the employment, or where one of the parties (as in *Hills*) is injured or killed an unexpected event. While domestic violence may be seen as a ‘private dispute’, several cases establish that a sudden attack without warning in the workplace may occur in the course of the employment.¹⁶ Furthermore, where employers fail to act to prevent a co-worker causing or aggravating a stress-related condition or injury to another worker or former partner, workers compensation laws provide for compensation to be payable to workers who suffer work-related stress.

There is now a plethora of cases establishing that workplace bullying can give rise to employer liability for workers compensation payments.¹⁷ Failure by an employer to institute appropriate measures to protect workers from FDV may also trigger liability to pay workers compensation, provided the necessary workplace nexus is established. That nexus would be established if the employer, having been put on notice of FDV issues intruding into the workplace, took inadequate steps to protect the worker which resulted in material or significant contribution to a stress-related condition that arose in the course of the employment.

Employment law principles

General employment law principles can be applied to perpetrators of domestic violence where workplace resources such as telephones, faxes or email are used to threaten, harass or abuse co-workers or family members. Misuse of work time and/or resources may be a breach of the employment contract, especially where there are workplace policies in place preventing such use. An employer can take disciplinary action against an employee where it is alleged FDV occurring outside the workplace is linked to the individual’s employment. This can be shown where the conduct is likely to damage the relationship between the employer and the employee, or the conduct damages the employer’s interests or is incompatible with the employee’s duty as an employee.¹⁸ While it is commonplace for a variety of workers to be screened as suitable to work with children and other police checks, we speculate that in time, more employers will insist, as part of the pre-employment screening process, that applicants show a police clearance concerning family and domestic violence-related offences.¹⁹

Work/occupational health issues

Several American academic lawyers have drawn attention to the potential liability of employers who fail to provide a safe place of work where there is a threat to workers through FDV (Matejkovic, 2004; Moberly, 2018; Mollica and Danehower, 2014; Perin, 1999; Robertson, 1998). In the United States (US), where meaningful gun laws are absent, a series of cases has established that an employer who fails to protect employees against known external threats of violence may be liable in tort for damages. In several cases, the employer was held liable for failing to institute adequate systems of security, failure to warn employees of potential harm and failure to supervise staff to prevent the foreseeable intrusion (and later gun use) of a former domestic or intimate partner.²⁰ For American women, workplace violence is one of the most significant causes of workplace death (Vaughn, 2001).

Australian law, in the same way, requires that employers have a direct liability to provide a safe place of work, safe systems of work and safe equipment, and to engage competent workers. The employer cannot delegate these direct responsibilities.²¹ An employer will be indirectly liable for the negligence of an employee who, for example, injures a co-worker. The employer must take reasonable steps to protect employees from foreseeable harm even when such harm includes a criminal act.²² These issues were canvassed in *Colwell v Top Cut Foods Pty Ltd* (2018) QDC 119 where the employer respondent was held liable for damages for the personal injuries suffered by a plaintiff worker who was assaulted by a co-worker (P) who had a criminal history of serious assault, and where P had asked to be separated from the plaintiff shortly before the incident causing harm. In finding the plaintiff's injuries were foreseeable, the trial judge made reference to *Colwell* to *Gittani Stone Pty Limited v Pavkovic* (2007) NSWCA 355, where the plaintiff worker in that case was shot and wounded by a co-worker (L) after L had assaulted him some months earlier.

These cases suggest Australian courts may be moving closer to holding an employer liable for acts of domestic violence in the workplace. The plaintiff in such a case would have to show the employer had been put on notice of the violent nature of a former partner/perpetrator (as opposed to a co-worker) by direct advice or, for example, being given notice of an intervention order (as noted in the cases discussed earlier), and had failed to put in place procedures to prevent harm coming to any employees who might come into contact with that restrained person in the workplace. An important ingredient in extending the employer's liability would be establishing a history of the former partner/perpetrator being present at the workplace and showing signs of aggression.²³ This may require adequate internal security procedures and technical support, educating staff, and the review of hiring and retention policies. Examples include environmental designs which incorporate alarm systems, metal detectors, key-card access systems, video surveillance equipment and panic bar doors with outside locks. Some safety strategies may include providing photographs to security and workers of suspects, reallocating workstations, and altering employee work schedules. Employer liability may also involve training to ensure employees are aware of warning signs of potential workplace violence (Kenny, 2002: 86), and support for victims of violence to help them maintain their employment. Workplace programmes that address violence against women include the White Ribbon Workplace

Accreditation Program (Bell and Seaman, 2016; Flood, 2010). Such programmes help develop policies and guidelines to support those affected by FDV, establishing a working relationship between employers and women's service agencies, and implementing training and awareness programmes that trigger appropriate responses to situations involving violence (Chung et al., 2012). Failure by an employer to put in place such reasonable safeguards might in some cases give rise to an action in negligence.

Some provinces in Canada,²⁴ such as British Columbia,²⁵ Manitoba,²⁶ Ontario²⁷ and Alberta,²⁸ have specific work health and safety laws requiring employers to put in place policies dealing specifically with workplace violence, including consideration of FDV. For example, the Union of Public Employees and the Union for Canadian Auto Workers have developed anti-violence programmes. These programmes include kits and handbooks on building a safer community and training staff about the potential issues relating to violence against women. The Union for Canadian Auto Workers also runs a Women's Advocate Programme within workplaces to provide support for women who may be experiencing violence (Chung et al., 2012). The Australian trade union movement and the Fair Work Ombudsman have also been active in this area. As work health and safety laws in Australia will have some application to FDV, most State and Territory work health authorities have policies that support employers to develop FDV policies in the workplace (e.g. Queensland Government, 2020; Worksafe Victoria, 2021).

By statute under State and Territory work health and safety laws, a person conducting a business or undertaking is required to provide a safe place of work. This includes protecting employees from harm which might occur due to the behaviours of co-workers.²⁹ In most states, stringent practices and procedures about bullying can now be invoked to require a person conducting a business or undertaking, to act against co-workers who intimidate or threaten other co-workers.³⁰ We have been unable to find case examples of the use of work health and safety laws concerning FDV, however, we speculate these provisions could be applied to parties in family and domestic relationships. There is some support for this approach in US literature (Gaines, 2000: 139; Robertson, 1998: 643) invoking the general duty of care under US work health and safety laws. Two decisions in Queensland³¹ have established, at least in that state, that the employer has a non-delegable duty to prevent an employee from being exposed to foreseeable psychiatric injury in the course of their employment caused through the employer's failure to properly investigate and put in place appropriate procedures to deal with allegations of bullying and interpersonal conflict.

Recognising workplace bullying as being subject to work health and safety laws, we note that the universal adoption in states and territories of Provisional Improvement Notice Systems (PINS) allows appropriately credentialed workplace officials to give notice to the person conducting a business or undertaking that they may be contravening a work health and safety law requiring remedial action to be taken. PINS could be used, for example, to require a person conducting a business or undertaking to take action to put in place safeguards to prevent unsafe intrusions into the workplace and interactions between co-workers and their ex-partners who should be separated because of intervention orders. Without traversing the various definitions of bullying considered extensively elsewhere, it is clear bullying is repeated, unreasonable behaviour directed towards an employee, or group of employees, that creates a risk to health and safety, with

considerable parallels to FDV (Worth and Squelch, 2015). Work health and safety laws have been applied to deal with bullying where state authorities have issued improvement notices to require employers or persons conducting a business or undertaking to take steps to deal with bullying complaints which have included the requirement for the ‘implementation of systems ensuring regular workplace hazard and risk assessment of psychosocial risk factors’, which arguably could also embrace risk factors associated with FDV.³²

The wording of legislation allowing for the issuing of PINS is also broad enough to include situations involving domestic violence between co-workers in the workplace and may also extend to dealing with perpetrators of FDV from outside the workplace. For example, the *Work Health and Safety Act 2020 (WA)* provides that a qualified representative may issue a PIN upon a worker or person conducting a business or undertaking if they are of the opinion the worker or person conducting a business or undertaking has breached a provision of the Act (or Regulations) in circumstances in which it is likely the worker will repeat the offence. This would indicate that if there were FDV matters between co-workers, the qualified representative would be able to issue a PIN to the offending worker to put in place certain remedies, for example, referring the worker to a code of practice, ensuring the offending worker does not go within a certain distance of the co-worker, or re-locating the offending worker to another place of business, if that option is available. If the offending co-worker fails to comply with the PIN, they are deemed to have committed an offence under Section 90 of the Work Health and Safety Act (WA) 2020. This further provides a ‘safety net’ for the co-worker victim while they are at work. It may also be possible for a safety representative to issue a PIN to a person conducting a business or undertaking in the case of a worker being endangered by a perpetrator from outside the workplace where there is evidence that the perpetrator has/is likely to cause harm to a worker.

Industrial relations and legislative progress in family and domestic violence leave

Given the estimated costs of FDV to the economy and employers, the cost of introducing a FDVL provision has raised concerns for employer groups and some governments (see Cash, cited by Towell, 2016a). Yet, the cost of not introducing such a provision may be even greater. The cost of FDV to employers was cited in our introduction. More recent reports further quantify some FDV costs. The cost of lost production to the Australian economy due to violence against women (which includes non-domestic, familial or intimate violence) was estimated as AUD2.1 billion in 2014–2015 (PricewaterhouseCooper (PwC), 2015).³³ This includes the lost productivity of both victims and perpetrators due to death, illness or imprisonment, and estimated leave payments (Schmidt and Barnett, 2012).³⁴ This estimate may be high as it projects FDVL rates of between 7 and 10 days. A 2015 survey of 102 employers who had implemented some form of paid FDVL found the average paid leave taken in the past 12 months was 43 hours (5–6 days), with a range of between 8 and 202 hours (1–27 days per annum). Per incident, where time off was requested, most employees took 2–3 days or fewer off work (Australian Council of Trade Unions/University of New South Wales (ACTU/UNSW), 2015). Other data from Telstra

(one of Australia's largest employers) which allowed 10 days paid FDVL in its *Enterprise Agreement* (2015–2018) showed only 22 employees out of a then workforce of 32,000 had accessed the leave in 6 months, resulting in an average of 2.3 days taken (Male Champions of Change, 2015). Given the introduction of unpaid FDVL, there is scope for fresh investigations into the costs of FDVL to the community and employers specifically.

The Australian Council of Trade Unions (ACTU, 2018) has actively sought additional FDVL coverage through submissions for legislative reform and to the FWC for model award clauses. Union intervention concerning workplace violence is also noted by Wibberley et al. (2018). As of 2017, about 2 million workers have access to FDVL, though the Federal Government has since 2016 made it harder for its workforce to gain access to this leave (Towell, 2016b). The Commonwealth Department of Employment's Workplace Agreement Database from 1 January 2012 to 31 December 2016 showed 2593 agreements have included FDVL provisions of some kind (Harpur et al., 2017). Employers adopting domestic violence leave include Telstra, IKEA, Virgin, McDonalds, BHP, Commonwealth Bank, National Bank of Australia, and many local shire councils (Baird et al., 2014:190). Thales Marine Division has reached in its principle agreement 10 days paid FDVL (ACTU, 2019).

Many employers have shown leadership in their industries and communities, adopting a FDVL clause and quickly developing an understanding of the impacts of FDV at work. Large businesses such as the National Australia Bank (NAB), the Commonwealth Bank of Australia, and Medibank offer unlimited paid FDVL if needed (Baird et al., 2014; Marin-Guzman, 2019; Summers, n.d.). These larger Australian employers have accepted the business case for FDVL, framing their responses in terms of business costs and the benefits of retaining good staff, though they are not yet advancing moral arguments for FDV, such as those articulated by de Jonge (2018) and in the UK context by Bennett et al. (2019). Implementation leadership is not limited to bigger businesses. In 2015, the Tasmanian maker of the iconic Australian boot Blundstone adopted in its enterprise agreement a clause providing for 10 days paid FDVL for its 90 workers. According to Blundstone's CEO, 'We put an enormous amount of investment in people, and it disrupts small to medium size businesses a lot if they lose their good people . . . There is a straight-out business imperative to get involved' (ABC News, 2015).

A FWC decision of 3 July 2017 concluded that provisions should be made for FDVL but it was not satisfied 'at this time' that it was necessary to provide 10 days paid leave to all employees covered by Modern Awards ((2017) (FWCFB 3494; Roff, 2020). The FWC did consider that all employees should have access to unpaid FDVL and should also have access to personal or carers leave to achieve that purpose. The FWC rejected the employer group argument that existing flexible work arrangements were adequate to allow for FDVL, noting that often employees would be required to respond at short notice and there would not be enough time to put in place flexible arrangements which require 21 days' notice. The FWC found FDVL would promote social inclusion but was unlikely to have an impact on how work is performed or that it would impact on the principle of equal remuneration. As to the impact on business and the economy, the FWC did not consider there was adequate data to assess the impact on employers or the economy.³⁵ The FWC did not rule out the future inclusion of paid FDVL in Modern Awards.

Subsequently, on 26 March 2018, the Commission introduced 5 days' unpaid FDVL into almost all Modern Awards ((2018) FWCFB 1691).

In August 2018, the *Fair Work Amendment (Improving National Employment Standards) Bill 2018* seeking to amend the *FWA* was tabled in the Australian Parliament by Greens MP Adam Brandt. On 12 December 2018, the Morrison Conservative Coalition amended the *FWA* so that the *Fair Work Amendment (Family and Domestic Violence Leave) Act 2018* (Cth) took effect. The *FWA* now includes an entitlement to 5 days of unpaid FDVL leave as part of the National Employment Standards (NES). The new entitlement applies to all employees (including part-time and casual employees).

Reflections and conclusions

This article has provided an overview of some of the legal issues which arise when FDV interacts with the workplace. While the criminal and related laws have a role in addressing some aspects of FDV, it is also clear a range of civil and employment-related laws contribute to the polyhedron of laws aimed at reducing the impact of FDV. Linking FDV to the workplace highlights employer exposure to liability under a range of civil and employment laws as well as contributing to the debate about the costs of FDV in the workplace. Given the strong union role in Australia pushing for FDVL, this activism may later spread to the use of PINS to notify employers of issues concerning FDV.

As de Jonge (2018) has observed,

Businesses are not just economic actors, but they are, both potentially and actually, very influential members of society as well. Within that society, few would deny that the human and economic toll of domestic violence is high and increasing. It is no longer possible to believe that domestic violence is a private matter that need not be dealt with in the workplace. For most businesses, it is not a matter of if they will confront family violence, but how. Workplace practices can play a major part in determining whether or not an employee has access to safety and support during a domestic violence situation. (p. 484)

Arguably, Australia is reaching a tipping point in universally adopting paid FDVL in workplace conditions, notwithstanding the findings of the FWC. The insertion of a provision for 5 days' unpaid leave into the *FWA* signifies the recognition by law that FDV is a workplace issue and consequently places legal obligations on employers to put in place policies and procedures to assist workers faced with FDV.

Regardless of the failure of the Federal Government to date to legislate paid FDVL, the continued adoption by larger employers of paid FDVL suggests that in the not so distant future, this issue may reach a tipping point where most negotiated agreements will include paid FDVL, as employers recognise the merit of this form of leave. A change in Federal Government would almost certainly lead to further uptake in paid FDVL for Commonwealth employees (Aeberhard-Hodges and McFerran, 2018; Kaine and Boersma, 2018). A *Fair Work Amendment (Ten Days Paid Domestic and Family Violence Leave) Bill 2020*, introduced as a private member's bill by Labor's Linda Burney, was at the time of writing before the House of Representatives.

Former Australian Sex Discrimination Commissioner, Elizabeth Broderick (2012), has set out some key recommendations for employers about domestic violence. First,

employers need to identify domestic violence as a workplace issue. By starting a conversation about domestic violence, employers can send a clear message to their employees they are not alone and that they can take action to stand up to domestic violence. Second, as Wyborn and Miller (2018) suggest, implementing an FDV policy is important to encourage employees to feel comfortable to disclose their experience of violence, and receive support from their employer. A workplace FDV policy should establish a supportive environment by including FDVL in workplace agreements and providing flexible work arrangements, special leave, the ability to change extension numbers or leave a bag of belongings in a safe place, the possibility of working in another office, and domestic violence support information through workplace training and induction. Employers should display materials in the workplace raising awareness of domestic violence and implement increased security measures where appropriate, such as intruder alarms, safe parking spaces, and having emergency plans in place. Employers can also facilitate IT storage facilities for abusive emails and other messages and removal of victims' contact numbers from websites and the like. Other ways in which an employer can support an employee experiencing domestic violence are by giving them additional leave to attend medical appointments and court hearings, providing flexible working arrangements, and making available an allowance to seek counselling. Importantly, records of applications for leave and related matters need to have high levels of protection for privacy reasons. Finally, as more people work from home, and as the home becomes a workplace, the need to understand the nature and dynamics of FDV becomes all the more essential. Requiring a person to work from home may not be the safest alternative way of working.

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Notes

1. Law Reform Commission of Western Australia (2013).
2. See ss. 5 and 8 *Domestic and Family Violence Act 2017 (NT)*; ss. 5-7 *Family Violence Protection Act 2008 (Vic)*; ss. 11 and 13 *Crimes (Domestic and Personal Violence) Act 2007 (NSW)*; ss. 8, 11, and 12 *Domestic and Family Violence Protection Act 2012 (Qld)*; ss. 5A, 6 *Restraining Orders Act 1997 (WA)*; ss. 7 and 8 *Family Violence Act 2004 (Tas)*; s. 8 *Family Violence Act 2016 (ACT)*; s. 8 *Intervention Orders (Prevention of Abuse) Act 2009 (SA)*.
3. See s. 8(2) *Domestic and Family Violence Protection Act 2012 (Qld)*.
4. See s. 8 *Family Violence Act 2016 (ACT)*; s. 7 *Family Violence Protection Act 2008 (Vic)*; s. 8 *Domestic and Family Violence Protection Act 2012 (Qld)*.

5. See s. 7 *Family Violence Act 2004 (Tas)*.
6. *Family Law Act 1975 (Cth)* s. 4AB. See also section 4(1) and Part VII of the Act.
7. See *Moghimi v Eliana Construction and Developing Group Pty Ltd* (2015) FWC 4864 and *King v DC Lee* (2016) FWC 1664 discussed below.
8. Awards (Modern Awards) are legal documents that outline the minimum pay rates and conditions of employment. There are more than 100 industry or occupation awards that cover most people who work in Australia. These awards, with the National Employment Standards, provide a minimum safety net of terms and conditions of employment for all national system employees (<https://www.fwc.gov.au/awards-and-agreements/awards/modern-awards>).
9. In Queensland, specific offences also relate to non-fatal strangulation, see *Criminal Code 1899* section 315A, which provides for an offence involving choking, suffocation, or strangulation of another person, without the other person's consent where the parties are in a domestic relationship. Similar provisions have now been adopted in Western Australia and other jurisdictions.
10. In the context of the impact of stalking at work, see Logan et al. (2007).
11. See *Intervention Orders Prevention of Abuse Act 2009 (SA)*; *Family Violence Protection Act 2008 (Vic)*; and *Personal Safety Intervention Orders Act 2010 (Vic)*; *Restraining Orders Act 1997 (WA)*; *Crimes (Domestic and Personal Violence) Act 2007 (NSW)*; *Domestic and Family Violence Act (NT)*; *Family Violence Act 2004 (Tas)* and *Family Violence Act 2016 (ACT)*. The *Domestic and Family Violence Protection Orders (Interstate and Foreign Orders) Amendment Order 2017 (Qld)* was the first attempt at interstate recognition of restraining orders. It has been followed in Western Australia, see *Domestic Violence Orders (National Recognition) Act 2017 (WA)*. See, generally, *National Domestic and Family Violence Bench Book*, Australian Government Attorney General's Department (2021).
12. Section 50. The court must be 'satisfied that it is necessary to make the interim order' to ensure the safety of the employer, employee, or other people at the workplace, or to 'prevent substantial damage to the property' of the employer, employee, or other people at the workplace.
13. Orchiston and Smith (2012); Australian Human Rights Commission (2012); Parliament of Australia, 2013.
14. *Eliana Constructions and Developing Group Pty Ltd v Moghimi* (2015) FCAFC 113 noting the respondent Ms Moghimi was represented by pro bono counsel employed by Job Watch.
15. *Hatzimanolis v ANI Corporation* (1992) 173 CLR 473, *Comcare v PYVW* (2013) 250 CLR 246 and *Pioneer Studios Pty Ltd v Hills* (2015) NSWCA 222.
16. *Tarry v Warringah Shire Council* (1974) 48 WCR (NSW) 1, 6, cited by President Maxwell in *Martin v Bailey* (2009) 26 VR 270; (2009) VSCA 263, [29].
17. For example, *Hammond v Citigroup Pty Ltd* (2018) NSWCC 176 (26 July 2018).
18. *HEF of Australia v Western Hospital* (1991) 33 AILR 249; *FC Shepherd & Co Ltd v Jerrom* (1987) ICR 802; *Rose v Telstra Corporation Limited* (1998) AIRC 1592; *Appellant v Respondent* (1999) 89 IR 407; *Kewell v Coal & Allied Mining Services Pty Limited T/A Mount Thorley Operations/Warkworth Mining* (2016) FWC 6018; *Farquharson v Qantas Airways Limited*(2006) 155 IR 22; *Wakim v Bluestar Global Logistics* (2016) FWC 6992; *Cooper v Australian Tax Office* (2014) FWC 7551; *Applicant v Employer* (2015) FWC 506 (allegations of sexual misconduct); *Deeth v Milly Hill Pty Ltd* (2015) FWC 6422 (murder charges against the employee); *Sandilands v Industrial Relations Secretary on behalf of Legal Aid NSW* (2018) NSWIR Comm 1051 (assault charges outside of work hours).
19. Provisions of this kind are already in use for some elite sportspeople (Jonson et al. 2013).
20. *La Rose v State Mutual Life Assurance Co No 9322684* (214th District Ct Harris County Texas 5 December 1994); *Tepel v Equitable Life Assurance Society No 801363* (San Francisco Supreme Court 1990) and other cited by Perin (1999).

21. McLean v Tedman (1984)155 CLR 306.
22. Prince Alfred College Incorporated v ADC (2016) HCA 37, although this case involved acts of sexual abuse by a teacher against a student arguably the principles of vicarious liability discussed by the High Court extend to acts involving co-workers.
23. See, for example, Gittani Stone Pty Ltd v Pavkovic (2007) NSWCA 355 and Colwell v Top Cut Foods Pty Ltd (2018) QDC 119.
24. See, generally, Canadian Union of Public Employees (CUPE) (2018).
25. Occupational Health and Safety Regulation – defining workplace violence at para 4.27 imposing a duty on employers and employees.
26. There is a significant government support for the development of workplace violence policies under the Safe Manitoba programme. See <https://www.safemanitoba.com/Education/Pages/violence-workplace-establish-prevention-program.aspx> (accessed 22 November 2019).
27. Ontario's Occupational Health and Safety Act includes a provision for 'domestic violence' (s32.0.4). Health and Safety Guidelines titled *Workplace Violence and Harassment: Understanding the Law* have been developed by the Ministry of Labour, available at https://files.ontario.ca/wpvh_guide_english.pdf (accessed 9 April 2021).
28. In Alberta, both the Work Health and Safety Act and the Work Health and Safety Code have created duties relating to violence and harassment for employers, supervisors and workers. Workers now should refrain from causing or participating in violence or harassment, and both employers and supervisors must ensure that workers are not subjected to or participate in these behaviours at the worksite.
29. See, for example, sections 19 and 20 *Occupational Health and Safety Act 1984* (WA).
30. See, for example, Hingst v Construction Engineering (Aust) Pty. Ltd. (2018) VSC 136 and Swan v Monash Law Book Co-operative (2013) VSC 326 (26 June 2013) finding the employer liable for damages for failing to take action to prevent bullying at the workplace.
31. Hayes v State of Queensland [2016] QCA 191 and Robinson v State of Queensland [2017] QSC 165, where an award of AUD1,468,991 was made in favour of the plaintiff.
32. NSWIRComm 1078; See Killen v SafeWork NSW and NSW Rural Fire Service (2019), a case involving improvement notices to employers in relation to allegations of bullying; Reece Pty Ltd v The Worksafe Western Australia Commissioner (2015) WAIRComm 57, where the workplace inspector noted behaviour 'which may give rise to a psychological injury or harm to health' and accordingly issued an improvement notice to the employer; Kylie Wood-v-Rainbow Coast Neighbourhood Centre Inc. (2012) WAIRComm 340, where an improvement notice was issued to the employer to investigate allegations of bullying.
33. The estimates in Canada are lower, see CN Wathen et al. (2014), which estimates employer costs at Can\$77.9 million per annum, though these estimates would not include FDVL. New Zealand has recognised the 'business case' for providing support for family and domestic violence, see S Kahui et al. (2014).
34. American research has found the employed perpetrator created a parallel cost to the employer due to absence, poor performance, the misuse of work time and resources, and occupational health and safety risks.
35. This is an area of contention. See Gribbin (2016) on statement by Finance Minister Cormann concerning 'another cost to the economy' and response by the Centre for Future Work at the Australia Institute (2016).

References

- ABC News (2015) Bootmaker Blundstone offers paid domestic violence leave to employees. 2 June. Available at: <https://www.abc.net.au/news/2015-06-02/bootmaker-blundstone-offers-domestic-violence-leave-to-employees/6513744> (accessed 8 April 2021).

- Aeberhard-Hodges J and McFerran L (2018) An International Labour Organization instrument on violence against women and men at work: the Australian influence. *Journal of Industrial Relations* 60(2): 246–265.
- Al-Modallal H, Al-Omari H, Abu Jillban S, et al. (2016) Intimate partner violence and female nurses employment: disclosure and consequences. *Journal of Family* 31(2): 161–166.
- Australian Bureau of Statistics (ABS) (2009) *Conceptual Framework for Family and Domestic Violence*. Catalogue No 4529.0. Canberra: ABS.
- Australian Council of Trade Unions/University of New South Wales (ACTU/UNSW) (2015) Implementation of domestic violence clauses – An employer’s perspective. Available at: <https://www.actu.org.au/media/886612/implementation-of-dv-clauses-an-employers-perspective.pdf> (accessed 8 April 2021).
- Australian Council of Trade Unions (ACTU) (2018) Inquiry into the provisions of the Fair Work Amendment (Family and Domestic Violence Leave) Bill 2018. *Submission by the Australian Council of Trade Unions to the Senate Education and Employment Legislation Committee*. Available at: <https://www.actu.org.au/media/1385232/d184-submission-to-senate-inquiry-fair-work-amendment-family-and-domestic-violence-leave-bill-2018-24-sept-final.pdf> (accessed 8 April 2021).
- Australian Council of Trade Unions (ACTU) (2019) Thales EBA signals huge step forward for Family and Domestic Violence Leave. 31 January. Available at: <https://www.actu.org.au/actu-media/media-releases/2019/thales-eba-signals-huge-step-forward-for-family-and-domestic-violence-leave> (accessed 9 April 2021).
- Australian Government (2004) The cost of domestic violence to the Australian economy. *Women’s Safety*. Canberra, ACT, Australia: Department of Social Services. Available at: <https://www.dss.gov.au/our-responsibilities/women/publications-articles/reducing-violence/the-cost-of-domestic-violence-to-the-australian-economy> (accessed 5 April 2021).
- Australian Government (2009) The cost of domestic violence against women and their children, March. Available at: https://www.dss.gov.au/sites/default/files/documents/05_2012/vawc_economic_report.pdf (accessed 5 April 2021).
- Australian Government Attorney General’s Department et al. (2021) *National Domestic Violence Benchmark*. Available at: <https://dfvbenchmark.aija.org.au/dvbb/docs/NDFVBB-June-2021.pdf> (accessed 8 August 2021).
- Australian Institute of Health and Welfare (2019) Family, Domestic and Sexual Violence in Australia: Continuing the National Story. Cat. No. FDV 3. Canberra, ACT, Australia: AIHW.
- Australian Human Rights Commission (2012) *Submission to the Australian Law Reform Commission Inquiry into Family Violence and Commonwealth Laws: Employment and Superannuation*. 14 December. Available at: http://www.humanrights.gov.au/legal/submissions/2011/20110421_family_violence.html (accessed 7 April 2021).
- Australian Human Rights Commission (2014) Fact sheet: domestic and family violence a workplace issue, a discrimination issue. Available at: <https://www.humanrights.gov.au/our-work/family-and-domestic-violence/publications/fact-sheet-domestic-and-family-violence-workplace> (accessed 29 May 2016).
- Australian Law Reform Commission (ALRC) (2010) *Family Violence – A National Legal Response*. Report No 114, November. Canberra, ACT, Australia: Australian Government.
- Baird M, McFerran L and Wright I (2014) An equality bargaining breakthrough: paid domestic violence leave. *Journal of Industrial Relations* 56(2): 190–207.
- Bell K and Seaman C (2016) *Public Report: Case Study of White Ribbon Australia’s Ambassador Program: Men as Allies to Prevent Men’s Violence against Women*. Available at: <https://ro.uow.edu.au/sspapers/4446> (accessed 6 April 2021).

- Bennett T, Jones V and Wibberley G (2019) The legal, moral and business implications of domestic abuse and its impact in the workplace. *Industrial Law Journal* 48(1): 137–142.
- Boserup B, McKenney M and Elkbuli A (2020) Alarming trends in US domestic violence during the COVID-19 pandemic. *American Journal of Emergency Medicine* 38(12): 2753–2755.
- Boxall H, Morgan A and Brown R (2020) The prevalence of domestic violence among women during the COVID-19 pandemic. Australian Institute of Criminology, Statistical Bulletin No 28, July. Canberra, ACT, Australia: Australian Government.
- Bradbury-Jones C and Isham L (2020) The pandemic paradox: the consequences of COVID-19 on domestic violence. *Journal of Clinical Nursing* 29(13-14): 2047–2049.
- Broderick E (2012) Thinking outside the (family home) box; Domestic violence as a workplace Issue. Available at: <https://www.humanrights.gov.au/news/speeches/thinking-outside-family-home-box-domestic-violence-workplace-issue> (accessed 29 May 2016).
- Canadian Union of Public Employees (CUPE) (2018) Legislation applying to Violence and harassment in Canada by jurisdiction. Available at: <https://cupe.ca/legislation-applying-violence-and-harassment-canada-jurisdiction> (accessed 22 November 2019).
- Caruana C (2005) Family law update: changes to federal family law and state domestic violence legislation. *Family Matters* 70(March): 66–67.
- Centre for Future Work at the Australia Institute (2016) Economic aspect of paid domestic violence leave. December. Available at: https://d3n8a8pro7vnmx.cloudfront.net/theausinstitute/pages/1408/attachments/original/1482351910/Economic_Aspects_Domestic_Violence_Leave.pdf?1482351910 (accessed 14 November 2017).
- Charlesworth S and Macdonald F (2014) Women, work and industrial relations in Australia in 2013. *Journal of Industrial Relations* 56(3): 381–396.
- Chung D, Kennedy R, O'Brien B, et al. (2000) *Home Safe Home: The Link between Domestic and Family Violence and Women's Homelessness*. Adelaide, SA, Australia: Social Policy Research Group, University of South Australia.
- Chung D, Zuffrey C and Powell AQ (2012) *Preventing Violence against Women in the Workplace: An Evidence Review – Full Report*. Melbourne, VIC, Australia: Victorian Health Promotion Foundation.
- Corrie T (2016) *Economic Security for Survivors of Domestic and Family Violence – Understanding and Measuring the Impact*. Abbotsford, VIC, Australia: Good Shepherd Australia and New Zealand. Available at: <https://apo.org.au/sites/default/files/resource-files/2016-03/apo-nid66786.pdf>
- Costello M, Chung D and Carson E (2005) Exploring alternative pathways out of poverty: making connections between domestic violence and employment practices. *Australian Journal of Social Issues* 40(2): 253–267.
- De Jonge A (2018) Corporate social responsibility through a feminist lens: domestic violence and the workplace in the 21st century. *Journal of Business Ethics* 148(3): 471–487.
- Domestic Violence Workplace Rights and Entitlements Project (2011) *Domestic, Violence and the Workplace: Employee, Employer and Union Resources*. Canberra, ACT, Australia: Australian Human Rights Commission. Available at: <https://humanrights.gov.au/our-work/domestic-violence-and-workplace-employee-employer-and-union-resources-2012> (accessed 9 April 2021).
- dv@worknet (2020) Domestic violence at work network surveys. Available at: <http://dvatworknet.org/research/national-surveys> (accessed 6 May 2020).
- Fair Work Ombudsman (n.d.) Employer guide to family and domestic violence. Available at: <https://www.fairwork.gov.au/leave/family-and-domestic-violence-leave/employer-guide-to-family-and-domestic-violence> (accessed 6 April 2021).
- Flood M (2010) Where men stand: men's roles in ending violence against women. Available at: <https://www.whiteribbon.org.au/awcontent/whiteribbon/documents/White-Ribbon-Australia-Where-men-stand.pdf> (accessed 6 April; 2021).

- Franzway S, Wendt S, Moulding M, et al. (2015) *Gendered Violence and Citizenship: The Complex Effects of Intimate Partner Violence on Mental Health, Housing, and Employment*. Preliminary Report. Adelaide, SA, Australia: University of South Australia.
- Gaines JM (2000) Employer liability for domestic violence in the workplace: are employers walking a tightrope without a safety net – Comment. *Texas Law Review* 31: 139.
- Gribbin C (2016) Paid domestic violence leave ‘another cost’ to economy, Mathias Cormann says. ABC News, 11 December. Available at: <https://www.abc.net.au/news/2016-12-11/paid-domestic-violence-leave-another-cost-to-economy-cormann/8110184> (accessed 8 April 2021).
- Harpur P, Douglas H and Joo JW (2017) *Submission to the Fair Work Commission 4 Yearly Review of Modern Awards: Family and Domestic Violence Leave (AM2015/)*. Available at: <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am20151-sub-harpurand-douglas-140817.pdf> (accessed 8 April 2021).
- Jonson P, Lynch S and Adair D (2013) The contractual and ethical duty for a professional athlete to be an exemplary role model: Bringing the sport and sportsperson into unreasonable and unfair disrepute. *Australian and New Zealand Sports Law Journal* 8(1): 55–88.
- Kahui S, Ku B and Snively S (2014) Productivity gains from workplace protection of victims of domestic violence, New Zealand Public Services Association, March. Available at: https://www.ituc-csi.org/IMG/pdf/workplace_productivity_improvements_for_dv_21_may_2014.pdf (accessed 24 October 2017).
- Kaine S and Boersma M (2018) Women, work and industrial relations in Australia in 2017. *Journal of Industrial Relations* 60(3): 317–336.
- Kenny JF (2002) The process of employee violence: The building of a workplace explosion. In: Grill M, Fisher B and Bowie V (eds) *Violence at Work – Causes, Patterns and Prevention*. Cullompton, Devon: Willan Publishing, pp. 76–89.
- Law Reform Commission of Western Australia (2013) Enhancing law concerning family and domestic violence. Discussion Paper No 104. Perth, WA, Australia: Law Reform Commission of Western Australia.
- Logan L, Shannon S, Cole J, et al. (2007) Partner stalking and implications for women’s employment. *Journal of Interpersonal Violence* 22(3): 268–291.
- McFerran L (2011) *Safe at Home, Safe at Work? National Domestic Violence and the Workplace Survey*. Report, October. Sydney, NSW, Australia: University of New South Wales.
- Male Champions of Change (2015) *Playing Our Part: Workplace Responses to Domestic and Family Violence*. NSW. Technical Report, November. Available at: <http://malechampionsofchange.com/wp-content/uploads/2015/11/Playing-Our-Part-Male-Champions-of-Change-Letter.pdf> (accessed 8 April 2021).
- Marin-Guzman D (2019) CBA promises unlimited domestic violence leave. *Financial Review*, 11 October. Available at: <https://www.afr.com/work-and-careers/workplace/cba-promises-unlimited-domestic-violence-leave-20191010-p52zd5> (accessed 9 April 2021).
- Matejkovic J (2004) Which suit would you like – The employer’s dilemma in dealing with domestic violence. *Capital University Law Review* 33(2): 309–346.
- Mitchell L (2011) Domestic violence in Australia – An overview of the issues. Background note, Australian Parliamentary Library. Available at: https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/bn/2011-2012/dvaustralia (accessed 5 April 2021).
- Moberly M (2018) The workplace injunction: an emerging but imperfect weapon in the fight against domestic violence. *Journal of Gender, Social Policy and the Law* 26(3): 831–879.
- Mollica K and Danehower C (2014) Domestic violence and the workplace: the employer’s legal responsibilities. *Journal of Management and Marketing Research* 17: 2–11.

- Murray S and Powell A (2007) Family violence prevention using workplaces as sites of intervention. *Research and Practice in Human Resource Management* 15(2): 62–74.
- Murray S and Powell A (2008) *Working It Out: Domestic Violence Issues and the Workplace*. Sydney, NSW, Australia: Australian Domestic & Family Violence Clearinghouse, University of New South Wales.
- Neave M, Faulkner P and Nicholson T (2016) *Victorian Royal Commission into Family Violence*. vol. VI, March. Melbourne, VIC: Victorian Government.
- Orchiston T and Smith B (2012) Empowering victims of family violence: Could anti-discrimination laws play a role by changing workplace attitudes and practices? Australian Review of Public Affairs Research Paper No 12/32, March. Sydney, NSW, Australia: Sydney Law School.
- Parliament of Australia (2013). Senate Standing Committee on Legal and Constitutional Affairs. Report on the Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012 (2013) [3.51]–[3.60]. Available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/anti-discrimination2012/report/index (accessed 14 July 2017).
- Patton S (2003) *Pathways: How Women Leave Violent Men*. Hobart: Government of Tasmania.
- Perin SL (1999) Employers may have to pay when domestic violence goes to work (1999). *Review of Litigation* 18: 365–402.
- PricewaterhouseCooper (PwC) (2015) A High price to pay: the economic case for preventing violence against women. November. Available at: <https://www.pwc.com.au/pdf/a-high-price-to-pay.pdf> (accessed 8 April; 2021).
- Queensland Government (2020) End family and domestic violence. Available at: <https://www.cyjma.qld.gov.au/campaign/end-domestic-family-violence/resources> (accessed 6 April 2021).
- Reeves C and O’Leary-Kelly AM (2007) The effects and costs of intimate partner violence for work organisations. *Journal of Interpersonal Violence* 22(3): 327–334.
- Reeves C and O’Leary-Kelly AM (2009) *A Study of the Effects of Intimate Partner Violence on the Workplace: Final Report*. Fayetteville, AR: University of Arkansas, Department of Management.
- Robertson JC (1998) Addressing domestic violence in the workplace: an employer’s responsibility. *Law and Inequality* 16(2): 633–660.
- Roff E (2020) Family violence and the workplace: recent developments in Australian law. *Alternative Law Journal* 45(1): 45–51.
- Schmidt MC and Barnett A (2012) Effects of domestic violence on the workplace: a Vermont survey of male offenders enrolled in batterer intervention programs. January. Available at: http://www.ncdsv.org/images/VCDV_EffectsOfDVOnTheWorkplace_1-2012.pdf (accessed 6 November 2020).
- Showalter K (2016) Women’s employment and domestic violence: a review of the literature. *Aggression and Violent Behavior* 31(1): 37–47.
- Summers A (n.d.) Job security: unions are pushing to have domestic violence leave written into awards as more big companies understand that their employees could be at risk (8 April 2021). *Detail*, 11. Available at: <http://legacy.annesummers.com.au/pdf/asr11/jobsecurity.pdf> (accessed 29 May 2016).
- Swanberg J, Logan TK and Macke C (2005) Intimate partner violence, employment, and the workplace: Consequences and future directions. *Trauma, Violence, and Abuse* 6(4): 286–312.
- Swanberg J, Logan TK and Macke C (2007) Working women making it work: intimate partner violence, employment, and workplace support. *Journal of Interpersonal Violence* 22(3): 292–311.

- Swanberg JE and Logan TK (2005) Domestic violence and employment: A qualitative study. *Journal of Occupational Health Psychology* 10(1): 3–7.
- Taylor G, Bell E, Jacobson J, et al. (2015) *Addressing violence against women and girls (VAWG) through DFID's Economic Development and Women's Economic Empowerment Programmes. DFID Guidance Note – Part A*. London: VAWG Helpdesk.
- The Lookout (2020) COVID-19 and family violence FAQs, 29 April. Available at: <https://www.thelookout.org.au/family-violence-workers/covid-19-and-family-violence/covid-19-and-family-violence-faqs>
- Towell N (2016a) Domestic violence leave would mean fewer jobs for women: cash. *Canberra Times*, 27 May. Available at: <http://www.canberratimes.com.au/national/public-service/domestic-violence-leave-would-mean-fewer-jobs-forwomen-cash-20160527-gp5h1z.html> (accessed 8 April 2021).
- Towell N (2016b) Malcolm Turnbull's public servants lose domestic violence leave. *Canberra Times*, 8 March. Available at: <https://www.canberratimes.com.au/story/6052549/malcolm-turnbulls-public-servants-lose-domestic-violence-leave/> (accessed 8 April 2021).
- Vaughn LB (2001) Victimized twice – the intersection of domestic violence and the workplace: legal reform through curriculum development. *Spring Loyola Law Review* 47(1): 231–253.
- Wathen CN, MacGregor JCD and MacQuarrie BJ (2015) The impact of domestic violence in the workplace. *Journal of Occupational and Environmental Medicine* 57(7): e65–71.
- Wathen CN, MacGregor JDC and MacQuarrie BJ (2014) *Can Work Be Safe, When Home Isn't? Initial Findings of a Pan-Canadian Survey on Domestic Violence and the Workplace*. Centre for Research and Education on Violence against Women and Children. London, ON, Canada: Centre for Research and Education on Violence Against Women and Children.
- Wibberley G, Bennett T, Jones C, et al. (2018) The role of trade unions in supporting victims of domestic violence in the workplace. *Industrial Relations Journal* 49(1): 69–85.
- Worksafe Victoria (2021) Addressing family violence in the workplace. Available at: <https://www.worksafe.vic.gov.au/addressing-family-violence-workplace> (accessed 5 April 2021).
- Worth R and Squelch J (2015) Stop the bullying: the anti-bullying provisions in the *Fair Work Act and restoring the employment relationship*. *UNSW Law Journal* 38(3): 1015–1045.
- Wyborn J and Miller B (2018) The new safety net: domestic and family violence leave. *Ethos* 248 (June): 30–32.
- Zuffery C, Chung D, Franzway S, et al. (2016) Intimate partner violence: eroding women's citizenship. *Affilia* 31(4): 463–478.

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