HAS COLLECTIVE BARGAINING DOMESTIC VIOLENCE WORKED?

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It can’t be done alone

I want to step back a little to reflect on exactly why the idea of pursuing domestic violence rights in collective bargaining emerged in 2009. I think that the ACTU case for domestic violence leave in modern awards and the inclusion of domestic violence in an ILO convention now makes it important that we can clearly articulate why standardised domestic violence rights in the workplace are a critical part of a sophisticated and effective national and global domestic violence strategy.

I will try and be brief. An Australian domestic violence strategy took shape in the 1980s. This followed the creation in the previous decade of a number of women’s refuges by feminists, and their funding by the Whitlam Government. 1980s strategy concentrated on state based domestic violence legislation, specifically the protection order, and on improving access to public housing post-refuge. Essentially the model remained the same into the 1990s. In the best case scenario, women and their children were removed from their homes by police, placed in a refuge, granted a protection order by the courts and re-housed at some point in public housing.

The next development was the introduction of what is known as ‘integrated’ models. These were designed to be a planned, accountable and co-ordinated responses between the criminal justice and community interagency systems. First established in the ACT this model was then adopted in 2004 by the Tasmanian Government, followed by Victoria (and more than ten years later, NSW). One thing all these models have in common is the goal of supporting affected women to stay safely in their homes. Indeed, the Tasmanian program is called ‘Safe at Home’.

So what started as a crisis response by community groups of women, often using sub-standard accommodation, and underpaid or volunteer staff, grew to incorporate a state legal and housing component, though often acting independently or even at cross purposes to each other, before a number of state governments recognised they should be taking a lead role and creating an integrated state model.

But more than this, what was fundamentally emerging was the understanding that the solution to reducing the impacts of VAW and domestic violence required the involvement and support of the whole community. So in 1995 the Beijing Declaration and Platform of Action from the Fourth World Conference on Women, stated the need for:
a holistic and multidisciplinary approach to the challenging task of promoting families, communities and States that are free of violence against women.¹

This approach was understood to mean:

that holistic prevention strategies target people across the multiple settings where they interact, such as schools, workplaces, health and social services, sporting clubs and faith institutions.²

Australia has been internationally applauded for introducing a national plan to reduce violence against women and their children. The first plan 2010-2013 clearly stated what is required:

integrated governance arrangements that cut across traditional government boundaries and engage the community and private sectors. ...The National Plan is underpinned by the understanding that involving all governments and the wider community is necessary to reducing violence in the short and longer terms. No government or group can tackle this problem alone.³

Enter the workplace?

Early interest by business in domestic violence was prompted by a marketing opportunity. Liz Claiborne, a U.S. women’s clothing design business, began its involvement with domestic violence in the late 1990s. According to Jane Randel, then Vice President of Corporate Communications (2006)

We started the program really as a straight forward cause marketing campaign. It was at a time when competition was starting to increase in the apparel industry and Liz Claiborne was really fighting for editorial coverage of the brand. It was better to focus on one issue and domestic violence was the issue that required the most attention because statistically the numbers [of abuse victims] were astounding.⁴

But as the company became more educated and involved, it realised its duty to reflect the same concerns internally for its largely female workforce. According to Randel ‘It was almost hypocritical not to.’

In the Australian context there had been a series of domestic violence programs to engage employers, such as the Howard period ‘Businesses against domestic violence’. But a 2008 paper for the Australian Domestic and Family Violence Clearinghouse (ADFVCH) found that an employer led, voluntary, policy-based response had not produced widespread or

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¹ Cited in the ILO Concept Note for Australia/ILO Side Event on the impact of domestic violence in the workplace, Commission on the Status of Women 57th Session, Wednesday 6 March 2013.
² Cited in the ILO Concept Note for Australia/ILO Side Event on the impact of domestic violence in the workplace, Commission on the Status of Women 57th Session, Wednesday 6 March 2013.
⁴ Anne O’Leary Kelly, Emily Lean and Carol Reeves, and Jane Randel, 2008.Coming into the light: intimate partner violence and its effects at work, University of Arkansas Department of Management pp16-17.
sustainable results. The engagement of the Australian workplace in the wider community response to domestic violence was still seen as optional.

I think that part of the problem here is a public perception of who is affected by domestic violence, and a misconception that it is women in lower socio-economic groups or women from particular cultural groups. In other words, domestic violence does not affect women in employment. Yet two-thirds of Australian women who report violence by a current partner are in paid employment, and this was reflected in the Safe At Home programs. Many of the women affected by domestic violence who sought support from these programs to stay safely in their own homes were in paid employment, and many spoke about how important the support of their workplace had been in enabling them to make these often very difficult choices.

I was piloting the NSW 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.

In 2009 I approached a number of unions and we created the domestic violence clause. Unions at that time had no role in domestic violence strategy. Even the first draft of the Labor Government’s plan to reduce violence against women and their children in 2009 still foresaw only a role for employers in workplace responses. Unions were only mentioned along with scouts, cubs and spiritual groups, as possible conductors of attitudinal change for male members.

Fortunately the then Minister for Workplace Relations, Julia Gillard, recognised the value of collective bargaining for domestic violence, and funded a program to develop, resource and study the issue. The program, which I got to call Safe at Home, Safe at Work (a nice working synergy), conducted a national impacts of domestic violence at work survey (2011). This found that nearly a third of the Australian workers surveyed reported having experienced domestic violence. For a significant number of these, domestic violence affected their attendance, performance and safety at work. Similar surveys in another five countries have now found similar results, the latest being the Philippines.

The impacts of domestic violence at work were reflected in the costs to Australian business, not only in lost productivity and absenteeism, but also in staff turnover, recruitment and retraining. In the latest data, PwC estimates the cost of lost productivity to the Australian economy as $2.1b in 2014-2015.

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6 Australian Bureau of Statistics, 2006 Personal Safety Survey, cat.no. 4906.0, p. 34.
7 Providing for paid domestic violence leave & other workplace supports for employees experiencing domestic violence.
Unions quickly grasped the benefits of a domestic violence clause and have championed them in collective bargaining. The first domestic violence clause successfully negotiated was between the ASU and the Surf Coast Shire Council in September 2010. Five years later (September 2015) 776 agreements have contained a domestic violence clause, covering over 650,000 employees, predominantly in the private sector, across a broad range of industries such as retail, public transport, banking, education, manufacturing, airline and maritime, and including some of the country’s largest employers.11

There has also been some legislative reform. The Fair Work Act amendments in 2013 included the right to request flexible work for reasons of domestic violence. However, there remains a raft of recommendations made by the Australian Law Reform Commission inquiry into Commonwealth laws and family violence to be implemented by an insightful government.12

In a 2015 survey the costs of introducing a domestic violence clause in over one hundred workplaces were assessed.13 A third had employees who had requested domestic violence leave, typically two to three days. Employers reported positive effects including the demonstration of their commitment to their staff. In November last year fifteen Chief Executives Officers from many of Australia’s leading companies and departments endorsed paid domestic violence leave.14

So has collective bargaining domestic violence worked?

The goal of domestic violence clauses was to standardise protections for affected workers; to provide a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions. In the same way that we have sought to provide best practice and portable domestic violence protection orders across Australian states and territories.

The goal was to fully engage the workplace in the community response; to protect workers from any adverse action at work as a result of domestic violence; to provide support to affected workers getting to and leaving work; and to support affected workers and their co-workers to do their job in a safe environment.

So have we been successful? The answer is partially; it remains a job half done.

On the positive side, there does seem to have been a shift in the position of employer groups. As late as October 2014 ACCI CEO Kate Carnell was still saying about domestic violence:

Looking at extra leave is a step too far. It is not about the workplace. It is a community and societal problem that needs to be addressed but not at the expense of

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11 Department of Employment’s Workplace Agreements Database, email to author 2/2/2016.
employers. I'd be extraordinarily surprised if an employer opposed someone taking sick leave or personal leave for a domestic violence issue.\footnote{Anna Patty, Sydney Morning Herald, \textit{Domestic Violence leave - ACTU wage case application}, 28 October 2014.}

So I think it significant that the 2015 Productivity Commission inquiry into the Australian workplace relations framework noted ‘widespread acknowledgement by employers that family and domestic violence has workplace impacts.’\footnote{Productivity Commission 2015, Workplace Relations Framework, Final Report, Canberra, p.549.}

Indeed the very fact that the Productivity Commission inquired into the matter of domestic violence leave demonstrates that thanks to collective bargaining the issue is firmly on the industrial agenda.

When coverage by award variations and public service directives are added to domestic violence clauses in agreement, I estimate that over two million workers now have access to some form of domestic violence leave and other protections. This is almost certainly due to collective bargaining setting the standard.

But on the negative side, the conditions being negotiated between unions and employers are very varied indeed. This is despite the ACTU recommending 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 extra leave has always attracted the most attention but all the conditions in the clause are necessary to provide effective support.

However, evidence from several sources now suggest that there has been a concentration on the leave matters to the detriment of the other conditions. This neglect of the other important conditions, and the varied nature of the very conditions being negotiated, leads me to assess that collective bargaining has not met the goal of introducing standardised provisions.

Further, good conditions need to be introduced into informed workplaces, implemented well and monitored for the purposes of improvement. We have had no models for introducing these clauses. We lead the world. Therefore, we have a duty to test and report on their effectiveness. Despite this, there is no national training, no resourcing and no monitoring plan. Instead we are losing good resources developed specifically to assist employers and unions, leaving a vacuum.

That is why we need standardised domestic violence leave in modern awards and in an international labour convention. We need a good baseline safety net, and we need the resources to implement this new industrial practice.

Australia can and should develop a sophisticated domestic violence strategy that reduces the risk of affected women from becoming homeless and unemployed. We have made mistakes and we risk losing our world leadership in this field. Let’s finish the job and let’s get it right.