

**Development of the Australian Government's Workplace  
Domestic Violence Policy 2008–2018**

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A thesis submitted to fulfil requirements  
for the degree of Master of Philosophy

Discipline of Work and Organisational Studies

The University of Sydney Business School

The University of Sydney

June 2021

## **Statement of Originality**

This is to certify that, to the best of my knowledge, the content of this thesis is my own work.  
This thesis has not been submitted for any degree or other purposes.

I certify that the intellectual content of this thesis is the product of my own work and that all the assistance received in preparing this thesis and sources have been acknowledged.

Signature:

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## Acknowledgements

I am grateful for the guidance of my supervisors Professor Rae Cooper and Associate Professor Chris F. Wright throughout my research degree candidature. I thank them for their tremendous inspiration, feedback on my work and mentoring.

I am thankful for the constructive critique on my research as a work in progress I received from academics and fellow students in the Discipline of Work and Organisational Studies at The University of Sydney Business School.

I appreciate the feedback on my work and encouragement I received after presenting aspects of it at:

- Domestic Violence and Organizations: Creating a Dialogue between Practice and Management Studies Workshop, Sydney, 2018
- Association of Industrial Relations Academics in Australia and New Zealand (AIRAANZ) Conference, 2021.

I would like to thank the 43 participants in this research study who so generously gave their time in interviews and correspondence. Their insights were invaluable to the study.

I thank Rhonda Daniels for proofreading the thesis.

Lastly, I wish to thank my family and friends for their wonderful support for my research work.

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## Abbreviations

ACCI	Australian Chamber of Commerce and Industry
ACTU	Australian Council of Trade Unions
AHRC	Australian Human Rights Commission
AiG	Australian Industry Group
ALRC	Australian Law Reform Commission
ANROWS	Australia's National Research Organisation for Women's Safety
APS	Australian Public Service
ASU	Australian Services Union
CBA	Commonwealth Bank of Australia
COAG	Council of Australian Governments
COSBOA	Council of Small Business Organisations, Australia
Cth	Commonwealth
DSS	Commonwealth Department of Social Services
DEEWR	Department of Education, Employment and Workplace Relations
FWC	Fair Work Commission
HREOC	Human Rights and Equal Opportunity Commission
ILO	International Labour Organization
NAB	National Australia Bank
NES	National Employment Standards
NSW PSA	New South Wales Public Service Association
NTEU	National Tertiary Education Union
PWC	Price Waterhouse Coopers
RMIT	Royal Melbourne Institute of Technology
UNSW	University of New South Wales
UNESCO	The United Nations Educational, Scientific and Cultural Organization
URCOT	Union Research Centre on Organisation and Technology
VHIA	Victorian Hospitals' Industrial Association

WAD Workplace Agreement Dataset  
WESNET Women's Services Network  
WGEA Workplace Gender Equality Agency

## Abstract

This thesis investigates how and why workplace domestic violence policy was developed in Australia from 2008 to 2018. It examines workplace domestic violence policy as a type of workplace equality and gender equality policy. It analyses the extent to which traditional actors, such as unions, employer parties and components of the state, and non-traditional actors, including anti-domestic violence advocates and union members, influenced this policy development.

The thesis addresses several under-researched areas in industrial relations scholarship. First, few studies have addressed the development of workplace domestic violence policy in Australia and how and why it arose. Second, the contribution of non-traditional actors to industrial relations policy change has been neglected and under-theorised. Third, in industrial relations scholarship there have been few attempts to conceptualise changes in workplace gender equality policy and how and why it occurs.

The thesis addresses these gaps through an analytical framework comprising of systematic process analysis, analysis of traditional and non-traditional actors, and the theoretical lens of Baird's (2004, 2006, 2016) *typology of orientations*. The thesis collected data from interviews carried out with 43 traditional and non-traditional actors involved in workplace domestic violence policy development in Australia from 2008 to 2018. Interview data were supplemented by documentary analysis from a range of organisational sources.

The thesis finds that anti-domestic violence advocates and researchers discovered that welfare and business policy orientation framings were ineffective in addressing the cost of domestic violence to people experiencing it. This discovery led these non-traditional actors to convince

union, employer and state actors to develop bargaining (through collective bargaining) and workplace entitlements and legislation orientations towards domestic violence policy. Further, the thesis finds that unions quickly became strong advocates and drivers of workplace domestic violence policy and entitlements with particular success in the public sector. Overall, employer parties preferred employers to remain unregulated by the state in domestic violence policy. The thesis concludes that actors such as anti-domestic violence advocates, researchers and unions with a strong social equity orientation towards workplace domestic violence policy, informed by feminism, were able to shift the conservative Australian Government's overtly business orientation on workplace domestic violence policy towards a social equity orientation. This led to five days of unpaid domestic violence leave in Australia's National Employment Standards in 2018.

The thesis' conclusions on non-traditional actors and Baird's (2004, 2006, 2016) typology of orientations provide a substantive theory for how and why workplace domestic violence policy developed in Australia from 2008 to 2018. The thesis expands the types of "principal agency" identified in Baird (e.g., 2004, p. 269) to include non-traditional actors and their specific type. It makes a theoretical contribution by explaining the process through which non-traditional actors influenced traditional actors to engage in orientations towards workplace domestic violence policy likely to lead to social equity outcomes for employees experiencing domestic violence. The thesis calls these new dimensions of causality *causes of actor orientation and orientation change*. The thesis' findings contribute to an understanding of the interrelationship needed between policy orientation, mechanism and actor to advance workplace gender equality.

# 1. Introduction

## 1.1 Aims of the thesis

Domestic violence leave was introduced into the National Employment Standards (NES) of Australia in 2018 after appearing to be on the Australian Government's policy agenda for barely more than a year. This was a remarkable development given the slow progress historically of workplace gender equality policy in Australia and elsewhere (e.g., Baird, 2011; Baird & O'Brien, 2015; Whitehouse, 2004) and conservative Commonwealth Governments' staunch resistance to workplace legislation to address domestic violence prior to 2018. The thesis seeks to understand how and why domestic violence leave was introduced in the National Employment Standards given traditional assumptions in industrial relations scholarship that gender equality policy reform is slow moving. Analysis of industrial relations policy change usually focuses on institutions (e.g., those of the state) and interests (e.g., employer parties and unions), which have limitations in explaining this complex policy area (McLaughlin & Wright, 2018; Wilkinson & Wood, 2012). Recommendations for overcoming this potential analytical deficit have been to extend industrial relations analysis to incorporate non-traditional actors (Bellemare, 2000; Conley, 2012; Dabscheck, 1980; Heery & Frege, 2006; Kaufman, 2004; Michelson et al., 2008), including key individuals (Kaine, 2016; Kitay & Marchington, 1996; Lawrence et al., 2011). However, the influence of non-traditional actors has been little studied in industrial relations scholarship and not in depth in workplace gender equality policy. With notable exceptions, for example, Baird's (2004, 2006, 2016) *typology of orientations* formulated in the context of paid maternity and parental leave policy development, there have been few attempts to conceptualise how and why workplace policy on workplace gender equality changes.

This thesis addresses these research gaps by seeking to understand how and why the rapid reform of domestic violence policy took place in Australia from 2008 to 2018, and the roles of institutions, interests and non-traditional actors in the reform process. The thesis uses Baird's (2004, 2006, 2016) *orientations typology* to analyse these developments.

It aims to address these gaps in empirical knowledge and to conceptualise workplace domestic violence policy change by investigating:

- (a) the reasons for Australian Commonwealth Government workplace domestic violence policy change from 2008 to 2018
- (b) the roles and influence of traditional and non-traditional actors in the reform process
- (c) the applicability to these developments of Baird's (2004, 2006, 2016) *typology of orientations*.

In addition to the actors and *typology of orientations* framework, the thesis uses systematic process analysis (modelled on Hall, 2008), detailed in Chapter 3 Methodology, to answer the following central research question:

How and why was workplace domestic violence policy reform achieved in Australia from 2008 to 2018?

To assist in answering this question, the thesis asks three secondary research questions:

To what extent did (1) components of the state, (2) unions, employers and employer associations, and (3) non-traditional actors and key individuals influence the development of workplace domestic violence policy?

## **1.2 Definition of terms**

The term workplace domestic violence policy in the research questions refers to government policy. Government policy is defined here as “whatever governments choose to do or not to

do” (Dye, 2012, p. 12). What governments choose to do encompasses regulation which is defined as (Black, 2002, p. 26):

the sustained and focused attempt to alter the behaviour of others according to defined standards or purposes with the intention of producing a broadly identified outcome or outcomes, which may involve mechanisms of standard-setting, information gathering and behaviour modification.

Domestic violence is broadly defined to include not only physical violence but psychological and sexual harm from a previous or current intimate partner (United Nations General Assembly, 1993) or family member. Gender is defined as “the socially constructed characteristics of women and men (that) can be changed (World Health Organization, 2017) and gender equality as “where women and men have equal conditions for realizing their full human rights and for contributing to, and benefiting from, economic, social, cultural and political development” (UNESCO, 2003).

Workplace domestic violence policy is defined as a policy to promote workplace equality and gender equality given the high cost of domestic violence to those who experience it, recognising this cost is higher to women than men (as set out in Section 1.3 below) and that domestic violence is caused by inequality (Johnson & Gardner, 1999).

It is beyond the scope of this thesis to analyse workplace domestic violence policy on domestic violence perpetrators and on persons identifying as gender fluid.

### **1.3 Background to the policy problem**

While focusing on workplace domestic violence policy reform in Australia can help address research problems and gaps in industrial relations policy scholarship, it also relates to a major worldwide social and key policy problem. Domestic violence is prevalent in all countries (De Vries, 2015) and among people of all religions and educational backgrounds (Reece, 2006). It has considerable impact on society and workplaces in economic and non-economic terms. It diminishes the well-being of persons experiencing it (e.g., MacGregor et al., 2019; Showalter,

2016; Walby, 2009). The worldwide annual monetary cost of domestic violence in 2016–17 was calculated to exceed US\$4,400 billion, equal to more than 5% of world gross domestic product and far outweighing the total global cost of war, terrorism, assault and homicide (Hoeffler, 2017). Based on the 2012 Australian Bureau of Statistics Personal Safety Survey, the annual monetary cost of domestic violence to Australia was estimated to reach A\$22 billion in 2015 to 2016 with an additional A\$4 billion for the impact on Aboriginal and Torres Strait Islander, pregnant, disabled, and homeless women under-represented in the survey (Department of Social Services, 2016). The gendered nature of domestic violence is clear: victims in all countries are predominantly women (and children), and it impacts over 30% of women in their lifetimes and one in six men (World Health Organization, 2017). Domestic violence causes complex inequalities (Walby, 2009) in domestic and public domains (Walby, 2020). These complex inequalities contribute to exclude women from acquiring assets and power (the capacity to act) (Walby, 2020, p.428). Women experiencing domestic violence need assets and power to free themselves from such violence (e.g., Aizer, 2010; Walby, 2020; Showalter, 2016). A distressing fact is that domestic violence was the cause of death of one woman every nine days in Australia from 2014 to 2016 (Australian Institute of Health and Welfare, 2019, p. 50).

The costs of domestic violence to employees experiencing it can be severe, including loss of productivity, reduced workforce attachment and job loss (O’Leary-Kelly et al., 2008). Homelessness is a common outcome of domestic violence, exacerbated by job loss (Costello, Chung & Carson, 2005). Having a job is the best enabler for employees experiencing domestic violence to leave a violent or abusive relationship ( Showalter, 2016; Smith & Orchiston, 2012).

Domestic violence poses high costs to employers due to the incidence of absenteeism and presenteeism in employees experiencing domestic violence and, should employees leave or lose their jobs, the costs of staff turnover, recruitment, training (McFerran, 2016) and reduced



productivity (Castro-González et al., 2016). The cost to employers may also include legal liability, addressing the safety and wellness of employees and co-workers (O’Leary-Kelly et al., 2008) and reputational risk (McFerran, Fos-Tuvera & Aeberhard-Hodges, 2018).

During the period under investigation certain other countries and regions recognised the need to include paid domestic violence leave provisions in workplace legislation. For instance, paid domestic violence leave entitlements were introduced in the Canadian provinces of Manitoba and Ontario (in 2016 and 2017 respectively), and in New Zealand in 2018 (e.g., Parliament of Australia, 2019; United Nations Women, 2020). Prior to 2018 the lack of workplace domestic violence leave entitlements under Australia’s *Fair Work Act 2009* (Cth) led to the wrongful dismissal of employees experiencing domestic violence (e.g., Fair Work Commission, *Judgments of Mrs Leyla Moghimi v. Eliana Construction* [2015] and *Alexis King v. DC Lee & LJ Lyons* [2016]).

Workplace domestic violence policy and entitlements changes in Australia from 2008 to 2018 have addressed such costs as discussed in Section 1.3. Yet, prior to this thesis, there was no comprehensive policy analysis of how and why these important Australian reforms occurred.

#### **1.4 Structure of the thesis**

The thesis contains ten chapters investigating in detail how and why workplace domestic violence policy was developed in Australia from 2008 to 2018, and the role of traditional and non-traditional actors. Developments are analysed using Baird’s (2004, 2006, 2016) *typology of orientations*.

Chapter 2 reviews the academic literature relevant to answering the thesis’ research questions. Chapter 3 sets out the research design and methods. Chapter 4 presents an overview of significant workplace domestic violence policy events and outcomes during the research time period. This overview indicates how such policy was developed by Australian state and

territory governments (as employers) and the Australian Government. Chapters 5 to 8 present the research findings for each actor type by analysing their motivations and strategies in developing workplace domestic violence policy and entitlements. Chapter 9 addresses the secondary research questions by analysing the influence of each actor type on workplace domestic violence policy developments. Chapter 10 concludes by addressing the central research question, summarising the key findings and contributions to knowledge, setting out implications and limitations of the study and recommendations for future research.

## 2. Literature review

### 2.1 Research question and introduction

The primary research question is: *how and why was workplace domestic violence policy reform achieved in Australia from 2008 to 2018?* The thesis incorporates Baird's (2004, 2006, 2016) typology of orientations for analysing workplace policy through a dynamic multi-factor analytical framework. This primary research question is important as government workplace policy is seen as crucial to the advancement of gender equality at work (Baird, 2004, 2011), and workplace policy is under-researched in relation to domestic violence (e.g., McFerran, Foster-Tuvera & Aeberhard-Hodges, 2018). Much of the scholarship on effects of domestic violence in the workplace has been health focused (e.g., see MacGregor et al., 2019). These studies are excluded from the review as they do not directly relate to answering the research question. Since there is no body of literature on workplace domestic violence policy to draw on, this chapter reviews the literature from industrial relations and related fields to build insights to help understand how and why government workplace domestic violence policy reform was achieved so rapidly in Australia. From these insights adduced from the literature, a framework for this thesis' analysis is developed, building on Baird's (2004, 2006, 2016) typology of orientations.

The literature review is organised as follows. Section 2.2 argues for including Baird's (2004, 2006, 2016) orientations typology in the thesis' analytical framework. Section 2.3 reviews existing studies on government workplace domestic violence policy and entitlements. Sections 2.4 and 2.5 review the literature on barriers to workplace gender equality, focusing on Australian policy in Section 2.5. While these studies do not directly address this thesis' research problem, they may provide clues as to how and why workplace domestic violence policy and entitlements advanced in Australia. Section 2.6 presents the secondary research questions and

the dynamic multi-factor analytical framework. The chapter concludes with a summary of the literature reviewed and shows how this research informs the original research presented in the later chapters of the thesis.

## **2.2 Policy orientations**

Baird's (2004, 2006, 2016) typology of orientations appears to be an apt exploratory tool for the analysis of workplace domestic violence policy. Baird (2004, 2006, 2016) proposed three orientations to explain the Australian Commonwealth Government's approach to paid maternity and parental leave over time. The orientations were developed to explain how and why paid maternity and parental leave policy and entitlements progressed or were slow to progress in Australia (Baird, 2004, 2006, 2016). These orientations were defined by the discourse used around maternity and parental leave, who the principal agents were and what mechanisms were favoured (e.g., as set out in Baird, 2004, Table 1, p. 269). These orientations include (i) the *welfare orientation*, which was largely uncritical of the male breadwinner and female dependent model, where governments were its principal agents and legislation was the favoured mechanism; (ii) the *bargaining orientation*, with strong connections to the workplace, where unions and employers were the principal agents and the mechanisms were negotiation or arbitration leading to enterprise agreements and awards; and (iii) the *business orientation*, where employers privileged business needs over employee needs and policy is the result. Baird (2004, 2006, 2016) demonstrated empirically how these three orientations failed to deliver universal access to paid parental leave. Baird (2004, pp. 270–271, 2006, pp. 56–57, 2016, p. 101) presented the case for a (fourth) *social equity orientation*, first referred to as such in Baird (2006, p. 57). This orientation towards *social equity* draws on feminist scholars' (e.g., Colling & Dickens, 1989, 1998; Dickens, 1994; Hewlett, 2002) "notions of 'social feminism'" (Baird, 2004, p. 270). Baird's (2004, 2006, 2016) typology of orientations is one of the few attempts to conceptualise changes in workplace gender equality policy. This thesis builds on this theory

using the case of domestic violence leave policy and analysing the parties imagining and implementing the policy as well as their orientations towards it.

### **2.3 Workplace domestic violence policy reform**

Despite the critical importance of effective workplace policy and entitlements to address the impact of domestic violence in workplaces, very few studies of any country's government-initiated workplace domestic violence policy have been published. This thesis makes a novel contribution on this topic and the industrial relations literature more broadly. There were few extant studies in industrial relations literature focusing on workplace domestic violence policy development in Australia (e.g., Baird et al., 2014; McFerran et al., 2018). Further insights into domestic violence policy development in Australia are from empirical studies on the United States of America. While none of this literature in this section explicitly addresses the thesis' research question of how and why state workplace domestic violence policy was achieved so rapidly in Australia, it offers insights pertinent to answering this question.

Findings from the United States studies varied as to how and why government in that country undertook workplace domestic violence policy reform. Swanberg et al. (2012) argued that employer reluctance to address domestic violence as a workplace issue necessitated government action through workplace protections for employee victims of domestic violence. Widiss (2008) showed how anti-domestic violence advocates' success in reframing domestic violence as a public rather than a private issue helped break down barriers to workplace domestic violence legislation. Weissman (2016) highlighted how government orientation towards business and macroeconomic goal prioritisation constrained and continues to constrain development of effective workplace domestic violence policy and entitlements.

Two studies show the development of workplace domestic violence entitlements in Australia. First, McFerran et al. (2018) found that unions and anti-domestic violence advocates were the

main drivers of enterprise bargained domestic violence leave entitlements for Australian employees. The study showed how networks, partnerships with the state, individual employers and an employer association further contributed to the development of these entitlements. It is not known from McFerran et al. (2018) how and why networks and partnerships were formed between actors, including the state, to progress workplace domestic violence entitlements when these actors may previously have pursued autonomous goals. The study noted the Australian Fair Work Commission, Australia's federal industrial tribunal, was in the process of hearing the Australian Council of Trade Unions' claim commencing in late 2014 for ten days of paid domestic violence leave to be included in modern awards. A gap in knowledge is whether the Commission's decision when handed down (as discussed in this thesis) in any way influenced workplace domestic violence policy development in Australia. McFerran et al. (2018) did not investigate how and why one legislative outcome occurred (e.g., the 2013 amendment of Australia's National Employment Standards extending the right to request flexible working arrangements to employee victims of domestic violence) over another option of paid domestic violence leave.

Second, in Baird et al. (2014) an equality bargaining event for paid domestic violence leave in Australia in 2010 was weighed against Colling and Dickens' (1989, 1998) equality bargaining model. The Colling and Dickens (1989, 1998) model proposed two preconditions were necessary for the successful equality bargaining of entitlements that promoted gender equality at work: centralised bargaining, and a supportive legislative framework. Contrary to Colling and Dickens (1989, 1998), Baird et al. (2014) discovered that, despite the absence of these conditions, successful bargaining to include a paid domestic violence leave clause in a local council enterprise agreement was achieved. This was due to the availability of a model paid domestic violence leave clause and the commitment of union representatives. The study found "the bargaining relationship, the gender of the negotiators[,]... organisational characteristics"

and the employer's wish to maintain its standing of good reputation in the community were also significant (Baird et al., 2014, p. 191). Heery (2006) and Williamson (2012) found female voice to be a factor in the success of equality bargaining, but it is not known whether female voice (women individually and collectively having input into workplace decision-making) has been relevant to the rapid development of state workplace domestic violence policy in Australia. Knowledge gaps in this literature included why equality bargaining for domestic violence leave proliferated in Australia post 2010 and whether policy learning at the enterprise level in turn helped to facilitate the introduction of domestic violence leave into Australia's National Employment Standards.

To conclude, the literature in Section 2.3 cannot tell us the degree to which government reform of workplace domestic violence policy in Australia (or elsewhere) was due largely to internal or external forces within government. However, it provided theoretical propositions for how and why workplace domestic violence policy changed, and an empirically known set of actors to consider in the data analysis.

## **2.4 Historic barriers to policy innovation to promote gender equality at work**

This section briefly reviews the literature on workplace gender equality from studies of employment relations. This section identifies and understands historic barriers to policy innovation aimed at promoting gender equality at work and how barriers have been conceived in the literature. Later chapters of the thesis consider how such barriers may have impacted the development of workplace domestic violence policy. While the literature is reviewed by type of barrier, it is important to note that the barriers are inter-related.

### **2.4.1 Organisational and institutional barriers**

An extensive body of literature on workplace gender equality has considered barriers to workplace gender equality in organisations. Heery (2016) identified that while scholars'

approaches differed on how these barriers might be overcome (e.g., via sometimes overlapping unitary, pluralist or critical perspective solutions), the existence of such barriers was undisputed. Manifestations of gender inequality in workplaces included gender segregated work, the precarity of women's work, women's unequal (to men's) pay and devaluation of women's skills (Baird, 2016; Padavic & Earnest, 1994; Pocock, 2008; Power, 1975). Baird and Cooper (2009) and Cooper and Parker (2012) showed that the architecture of *sticky floors* (being stuck in a low paid job) and *glass and concrete ceilings* (preventing promotion) were enduring barriers to gender equality at work. Beirne and Wilson (2016) found that even when women gain non-gender segregated executive work, they could face a *glass cliff* barrier caused by feelings of anxiety due to colleagues not accepting them as equals or leaders. Studies further showed that, even when policy (both government and organisational) to achieve workplace gender equality may be considered optimal, such as gender mainstreaming policy in Europe, it failed in its aim (Bendle & Schmidt, 2013; Rubery, 2002; Rubery et al., 2005). Government policy aimed at making work–life balance easier, particularly for women, was shown to be undermined by workplace culture, structure and practices and wider social norms in the seven diverse countries studied (Gambles et al., 2006). How female lawmakers may have been restricted or otherwise by such barriers in governmental organisations during the development of workplace domestic violence policy is unknown.

#### **2.4.2 Social norm barriers**

Informal rules governing behaviour, known as social norms, were theorised in the literature as being both a barrier to and an explanation for policy leading to workplace gender inequality. Social norms were shown empirically to privilege the paid work of men and a belief that women's first duty is not to the paid workforce but to the unpaid care of family (Pocock, 2014; Pocock & Charlesworth, 2017). Studies argued that such norms have led to the conception of the ideal male worker, free to work without the conflicting demands of social reproduction,



and this has created a barrier to workplace gender equality (Acker, 1990; Votinius, 2006). These norms were demonstrated to have directly or indirectly led to precarity of work, unequal superannuation for women and lack of adequate provisions to help balance work and family (Baird, 2011; Jefferson, 2012; Pocock, 2008; Pocock & Charlesworth, 2017). Norms have resulted in individualist approaches to workplace gender equality policy, seen frequently to be inferior to those of a collectivist orientation (Boyle & Roan, 2004). Broadly, the aim of a collectivist approach to workplace regulation is to promote social equity through provision of universal employee rights, compared to an individualist approach where individuals bear the brunt of forming (e.g., through individual work contracts) and upholding such rights. Leira (2002) found that, in Scandinavia, when the ideology of state policy was to perpetuate traditional male breadwinner and female carer norms, workplace gender equality was hampered.

### **2.4.3 Regulatory barriers**

Norm barriers have been concomitant with structural barriers to prevent gender equality at work (Acker, 1990; Baird, 2011). For example, the norm to privilege male work was reflected in regulatory mechanisms (Burgess & Baird, 2003; Dickens, 2007). Examples in Australia were the marriage bar, discussed in Section 2.5 (Sheridan & Stretton, 2004; Williamson & Colley, 2018), and minimum wage standards based on the male breadwinner model, where a woman's basic wage was set as a lower percentage of her male equivalent's wage (Baird, 2011). The legacy of this historic wage setting of unequal pay for women persisted for a long time (Baird, 2011; Burgess & Baird, 2003; Castles, 1994). Castles (1994, p. 120) found that under the "wage-earner's welfare state" that existed in Australia for much of the twentieth century, the privileging of male breadwinners and the substitution of wages policy and regulation for social policy regulation was a barrier to workplace gender equality. The relationship between Australia's occupational welfare system and the introduction of workplace domestic violence

policy is unknown. Hecló (1972, p. 85) identified how regulatory inaction had a regulatory effect, for instance, when it prevented the removal of costs already affecting certain groups.

The literature reviewed showed that, in the context of Australia, even when legislation was in place to address workplace inequality, there was no guarantee how the legislation would operate. For example, Whitehouse and Smith (2020, p. 533) demonstrated how “accumulated structural inequalities and gendered practices” accounted for when equal remuneration provisions in Australia did not achieve their aim. Waterhouse and Colley (2010) showed that well-defined substantive provisions, such as for parental leave or the right to request flexible working arrangements, were counteracted when process provisions were weak. Belinda Smith (2011) identified limitations to equality provisions which had weak enforceability and tight eligibility conditions.

Review of the literature revealed that further barriers to policy innovation promoting gender equality at work were when male actors dominated decision-making (Franzway, 2017; Pocock, 2014) and when conservative political parties were in power (Phillips, 2006). Peetz and Murray (2017, p. 238) showed how norms held by those in power could restrict the progress of workplace gender equality. That is, following Peetz and Murray’s (2017) argument, if those in power supported the societal norm of the male breadwinner, the policy and regulation they produced would likely reflect that norm.

#### **2.4.4 Research barriers**

In the literature reviewed, numerous researchers argued that industrial relations scholarship had insufficiently addressed workplace gender inequality (e.g., Baird, 2011; Dickens, 2007; Heery, 2016; Pocock 1997, 2014; Rubery et al., 2018; Williamson & Baird, 2014). Studies showed workplace gender equality progress was hampered when its actors saw the resolution of conflict between work and family roles as solely a women’s issue (Colling & Dickens, 1998; Wajcman,

2000; Williamson & Baird, 2014) and conflated women with gender (Pocock, 1997). It is not known from the literature review whether workplace domestic violence policy has been hampered by any idea that domestic violence is solely a women's issue. Studies found norm barriers were more likely to be overcome if researchers and policymakers considered the intersections of work, the domestic sphere and community (e.g., Baird, 2008; Dickens, 2007; Eikhof et al., 2007; Kanter, 1989; Pocock, 2014; Pocock et al., 2012; Pocock & Charlesworth, 2017). Pocock (2008), Pocock & Charlesworth (2017) and Todd and Preston (2012) argued that it is imperative industrial relations scholarship addresses the intersection of work, the domestic sphere and the community since workplace gender equality has not been achieved.

In conclusion, the literature shows pervasive barriers to workplace gender equality were related to gendered societal norms, with the ramifications evident in organisational phenomena such as sticky floors, glass ceilings and financial inequality, and in state regulation. It revealed how, in Australia, the symbiosis between state wages' and social policies has had a longstanding negative impact for women. A major knowledge gap is that domestic violence, with notable exceptions (e.g., Baird et al., 2014; McFerran et al., 2018), has not been widely recognised in industrial relations literature as an historic barrier to gender equality at work, when it unequivocally has been and continues to be, as evidenced in the literature from health sciences and family violence reviewed in MacGregor et al. (2019). If there is a relationship between gendered social norms and regulations, and the development of government workplace domestic violence policy in Australia, it was not demonstrated in the literature.

## **2.5 Australian studies of workplace gender equality policy**

This section reviews literature on workplace gender equality policy in Australia for insights on what is known about how and why Australian Government workplace gender equality policy changed. Three policy areas are very significant to achieving workplace gender equality: the

marriage bar (women's entitlement to paid work), paid parental leave (the ability to combine paid work and social reproduction) and equal pay.

### **2.5.1 The marriage bar**

Historic barriers to removal of the marriage bar prohibited married women from working in the Australian Public Service from 1901 to 1966 (Colley, 2018; Sawer, 1996; Sheridan & Stretton, 2004). Sheridan & Stretton (2004) identified how social norms discouraging workplace gender equality delayed the process. This was apparent in policymakers' and their advisors' (somewhat contradictory) sentiments expressed in written communications between them that if married women were allowed to work they would preference the needs of family over employer needs, take insufficient care of their families, and disadvantage single women and male breadwinners (Sheridan & Stretton, 2004). Policymakers' arguments of synthetic turnover (the need to layoff existing staff to make way for new staff) and capital's need for a hierarchy of employees further hindered policy progress (Colley, 2018). Other barriers were competing gender equality policy demands (equal pay for women), fluctuating unemployment levels and belief that removal of the marriage bar would be unpopular with conservative voters (Sheridan & Stretton, 2004). Australia was one of only six countries listed by the United Nations in 1961 with a marriage bar (along with India, Ireland, Malaysia, South Africa and Switzerland) but this reputational risk was not strong enough to induce policymakers to remove this bar (Sheridan & Stretton, 2004).

Pressure to remove the marriage bar was found to have come from state and non-state actors of differing ideologies over a long period of time, more than eight years. The marriage bar was eventually removed in 1966 because it suited labour market needs (Colley, 2018), which outweighed social norm preconditioning (Sheridan & Stretton, 2004). These studies show that to fully understand how and why a policy changes, its long history and complex context must

be traced. Prior to this thesis, no comprehensive study had been done on workplace domestic violence policy development in Australia from 2008 to 2018.

### **2.5.2 Paid parental leave**

The literature review showed longstanding reluctance from the Commonwealth Government, unions and employers to support paid maternity and parental leave. Brennan's (2009) and Baird's (2011) empirical, socio-historic studies considered the almost 100-year long gestation of paid parental leave in Australia from its beginnings in 1912 as a non-means tested maternity allowance available to all women (although Aboriginal and Asian women were not entitled to it), to its announcement as a scheme by the Labor Commonwealth Government in 2009 and made operable in 2011. These studies showed social norm barriers to paid leave centred around lawmakers' arguments about types of women – mothers who work in the paid workforce and those who do not. Key individuals in the Liberal Party, such as the 1996 to 2007 Prime Minister John Howard, were shown to have been so strongly averse to paid leave (arguing it would discriminate against non-working mothers) that they co-opted the vocal support of United Kingdom sociologist Catherine Hakim, whose work (e.g. see Hakim, 2003) affirmed their views. Union focus on protecting male wages caused unions to sideline women's interests (Brennan, 2009). This emanated from the Commonwealth Court of Conciliation and Arbitration's 1907 establishment of the basic living wage for a man in Australia as the breadwinner for his dependent wife and children (Brennan, 2009). This concept of the male wage designed to care for dependants was shown to have been a factor in the Australian Commonwealth Government's individualist approach to maternity and parental leave, which Brennan (2009) implied further impeded the progress of this leave.

Progress towards paid maternity and parental leave was gradual and predominantly propelled by women working within the Commonwealth Parliament as MPs and outside it. Brennan (2009) and Baird (2011) found barriers were eroded variously by coalitions of female unionists,

the Human Rights and Equal Opportunity Commission, the Productivity Commission, the Australian Council of Trade Unions (ACTU) via test cases before the now superseded Arbitration Commission and the Democrats, a minor political party. Key individuals were identified as having been highly important to policy progress, including Democrats Senator Natasha Stott-Despoja (Baird, 2011; Brennan, 2009) who brought two private member's bills to the Australian Parliament for paid parental leave, and Jan Marsh, the first female researcher and advocate for the ACTU (Brennan, 2009; Baird, 2011).

Another approach to the development of paid parental leave was Baird and O'Brien's (2015) measure of generosity (the number of weeks in a paid parental leave policy) and gender equality (the extent to which paid parental leave is available to men and women). Findings were that in Australian (and United Kingdom) state paid parental leave regulations, the generosity of the entitlements grew, but that their design lacked a gender equality component (Baird & O'Brien, 2015).

### **2.5.3 Equal pay**

Research on the gender wage gap has primarily focused on legislation and tribunal decisions (Short & Nowak, 2009). However, some studies moved beyond legislative and statutory analysis to indicate historically and actor-wise how and why federal pay equality policy developed and reasons for its slow progress. From a philosophy of management lens, Boyle and Roan (2004) showed the regulatory origin of unequal pay for women was the Australian Arbitration Commission decision on a minimum wage for men in 1907. Ellem (2000) found women's basic pay rate was not significantly improved until after World War II through women's union activism. Federal policy aimed at closing the pay gap was demonstrated to have progressed due to feminism via the work of female academics and bureaucrats in the 1960s and 1970s (Boyle & Roan, 2004). During this time, the sometimes negative, sometimes supportive stance of the trade union movement through collective bargaining, awards and test cases and

the Australian Labor Party was seen (Boyle & Roan, 2004; Brennan, 2007). Rafferty (1991) found how there was a mismatch between the Commonwealth Government as a political entity overtly supportive of equal pay and the Commonwealth Government as an employer historically resistant to pay equality.

Studies reviewed found solutions to workplace pay inequality (and gender inequality in general) within existing regulatory structures. Yet these solutions could be inhibited when policy actors discounted or failed to recognise effects of gendered workplace and social norms. Whitehouse et al. (2001) highlighted the radical potential of industrial relations regulation, in that it is essentially collectivist, to materially improve the wages of large numbers of women. Whitehouse et al. (2001, p. 377) exemplified when this potential was not fulfilled due to, for instance, tribunal privileging of politically determined macroeconomic goals over wage equality. The socio-legal trend study of Todd and Preston (2012) showed how key individuals can impact regulatory effectiveness. This study identified on the one hand the promise of the equal remuneration order provisions in the *Fair Work Act 2009* and, on the other, how the then Fair Work Australia Vice President Graeme Watson disallowed a pay equity principle option in his decision in the first equal remuneration case (Todd & Preston, 2012, p. 261). Short and Nowak (2009) provided empirical evidence of policy actors' gendered attitudes impeding regulatory innovation to promote pay equality. Short and Nowak (2009, p. 262) found stakeholders responsible for equal pay outcomes interviewed for their study felt that:

gender-related socio-cultural values pervade the formal system of industrial relations as well as the wider society [and] believed that their gender-related values affected actions taken to, and decisions made in, industrial tribunals.

Short and Nowak (2009) concluded their qualitative methods, including stakeholder interviews, enabled a deeper understanding of policy change (or failure to change) than can be provided by analysis of legislation and tribunal decisions. However, as the Short and Nowak (2009) study focused on policy and lawmakers, any pressure on their decision-making from

other industrial relations actors was not illuminated, whereas other literature reviewed revealed such pressure was important to understand (e.g., Baird, 2011; Brennan, 2009).

In summary, the literature review revealed actors endogenous and exogenous to the state (and the policy ideologies they imbued) likely to be highly relevant to examining how and why workplace domestic violence policy was achieved in Australia. However, it appears there is little in the literature to help understand the causal interdependencies between such actors. The studies reviewed showed how reluctant policy actors supported policy promoting gender equality at work if there was a sound business case for the change, or the proposed policy did not largely alter the status quo. It is not known if workplace domestic violence policy was developed due to such conditions. In addition, few of the studies reviewed examined the significant contribution to government workplace policy change of non-traditional actors, such as researchers, activists, coalitions and key individuals. This thesis addresses these knowledge gaps, which are further discussed in the next section.

## **2.6 Literature relevant to the thesis' framework**

From the literature review and Baird's (2004, 2006, 2016) typology of orientations, it appears crucial to consider the contribution of traditional and non-traditional actors. Industrial relations scholarship in general is drawn on to further understand frameworks for study of industrial relations and the position of the state, unions and employers and non-traditional actors in workplace gender equality.

### **2.6.1 Innovation in industrial relations analysis**

McLaughlin and Wright (2018) presented the case for broadening concepts of actors and influences in industrial relations scholarship by highlighting how analysis of traditional actors and institutions can be augmented by considering dynamic forces of change. Similarly, Wright and Lansbury (2019) argued how study of institutions is important for understanding stability



and path dependence (the history of decisions made at critical junctures and their residual influence on subsequent decisions) but may overlook dynamic and nuanced forces of change. This thesis seeks to overcome the limitations of institutional analysis by not only analysing traditionally studied actors and institutions, but also non-traditional actors. It builds on and adapts (to suit the research problem to hand) previous integrated multi-factor frameworks for analysing policy seen, for example, in the work of McLaughlin and Wright (2018), and for analysing employment relations, as in the work of Wright and Lansbury (2019), Clibborn (2012) and Edwards et al. (2007).

### **2.6.2 The state**

Studies of the state conceived of it as a complex entity defying simple definition (Hyman, 2004). Scholars focused on grand abstractions of the role of the state, for example, as a legitimate enforcer of punishment and violence, or as distinct from civil society or omnipresent (e.g., as set out in Hyman, 2004, p. 260). Alternatively, for instance, Wilensky (2002) argued to avoid vague discussions of the state as a grand abstraction and, instead, advocated investigating the state through its components such as the executive, legislative and the judiciary. In industrial relations scholarship institutions of the state have usually been distinguished by Wilensky's means, that is, by whether their function is executive (composed of the elected government and the public bureaucracy), legislative (to create and establish laws or statutes) or judicial (to interpret and enforce the law) (Deery et al., 2001). It appears that components of the state need to be addressed before proposing theories of how and why the state advanced workplace domestic violence policy (because, say, the state was an actor supportive of workplace gender equality, or not)

Previous analysis of how components of the state advanced gender equality policy underlined the importance of "women's policy machinery" (Sawer & Turner, 2016, p. 766). The term women's policy machinery described how female policy actors inside and outside parliaments

have generated policy to improve gender equality (Sawer, 2006, pp. 103–118; 2012, p. 326; Sawer & Turner, 2016), including on domestic violence (Sawer & Turner, 2016, pp. 764–766). Sawer and Turner (2016, p. 766) argued how gender equality policy was likely to be advanced when its actors exhibited “exemplary feminist characteristics... [such as those] presenting an alternative to dominant norms”. Conversely, Sawer and Turner (2016, p.766) argued such progress is likely to be constrained when “deliberation [of equality policy was] curtailed by party interests”. How female policy actors worked to contribute to state development of workplace domestic violence policy in Australia is relatively unknown.

To understand state contribution to workplace domestic violence policy reform, the thesis asks the secondary research question:

To what extent did components of the state influence the development of workplace domestic violence policy?

### **2.6.3 Unions**

Extant research indicated that unions are powerful industrial relations actors, with historic conservatism on gender equality, but that there are instances where union support for workplace gender equality increased and is likely to continue to increase. Pocock and Brown (2009) showed how union defence of the male breadwinner long persisted. The literature (e.g., Briskin, 2014; Ellem, 2000, 2013; Forbes-Mewett & Snell, 2006; Parker, 2011) found obstacles to workplace gender equality policy were gradually able to be removed, over decades, in large part through the work of female unionists. Parker (2011, p. 399) demonstrated how this was done in New Zealand by union women’s groups’ and committees’ longstanding pursuit of a gender equality agenda with community and civil organisations. Tattersall (2005, p. 105) found that union and community partnerships and coalitions were more effective when they supplemented breadth of engagement with depth of support to enable member participation, thus increasing the likelihood that large scale power could be achieved. Union campaigns were

found to be more successful when they voiced workers' concerns, gained employee identification with the union and generated social cohesion (Badigannavar & Kelly, 2005, Ellem, 2013). Ellem (2013) and Muir (2008) found that how unions framed policy, for instance during campaigns, affected policy success.

Collective bargaining between unions and employers was identified as an important vehicle for achieving gender equality entitlements (Hayter, 2011; Ravenswood & Markey, 2011). However, weaknesses in collective bargaining were found, for instance, when bargaining occurred in male dominated industries where benefits could be seen to have accrued more to men than women (Whitehouse & Frino, 2003). Considering whether union power had declined, Heery (2018) argued that unions and social movements working together (e.g., to impact state policy) can be conceived of as *fusion*. Union renewal was found to be enhanced by informal union leadership and demobilised by union notions of *heroic leaders* (Briskin, 2011, p. 508). Briskin (2014, p. 125) detailed the long struggle of union women in Canada to pressure unions to address intersectional issues such as “child care... violence against women, pay equity and employment equity”, where each gain was seen to have caused a shift (both within and outside unions) in the boundaries of what could legitimately be conceived of as a workplace issue (Briskin, 2014, pp. 126–127). Briskin (2014, pp. 126–127), citing Briskin (2006), defined gendered social unionism as when actors reject the male breadwinner model and appreciate:

the gender specific concerns of women and men, grounded in a materialist social construction approach which recognizes such realities emerge from lived experiences rather than from any narrow biological, essentialist or ‘natural’ imperatives... and does not rely on comparative equality measures.

This aligned with Baird's (2004, 2006, 2006) concept of social equity, defined by Baird (2006, p. 57) as an orientation that:

would allow women's differences from men (in terms of child-bearing and raising), as well as their need for equality with men (in terms of their personal work and economic interests), to be affirmed and legitimated.

Thus Briskin (2006, 2014) acknowledged gender difference was but constructed grounds for gender discrimination and Baird (2004, 2006, 2016) and Briskin (2006, 2014) found the positive difference to gender equality that recognition of gender can make (e.g., via a social equity orientation and gendered social unionism).

Inhibiting and enabling forces were seen in studies of union advancement of workplace gender equality policy and entitlements in Australia. Cooper (2012) found that male dominance in unions had, by 2010, only very marginally shifted. Male dominance of unions was seen to have negatively impacted union gender equality bargaining strategy (Cooper, 2012). Power (1975) illuminated how the segregation of the male and female labour market in Australia was a reason why unions have not represented women to the same extent as men. Williamson (2012) evidenced how, during equality bargaining, gender equality issues were readily sidelined if it appeared that a work condition favourable to men would have been sacrificed. Williamson (2012) further showed how unions have not been unified on gender equality policy. Cooper, Ellem and Wright (2015) showed union influence on government in Australia was greater when the Australian Labor Party was in power and weaker when the Liberal–National Party coalition was in power. Cooper, Ellem and Wright (2015, p.1) further argued that unions’ “core-insider status in the policy-making process [had declined] since the Hawke–Keating Labor Government [1993–1996]”, coinciding with declining union membership.

From a review of the literature cited in this section, the complexity of union involvement to progress workplace gender equality, at macro (national), meso (organisational and community) and micro (individual worker) levels can be seen. Also seen are intra-meso (e.g., union official and member) and inter-meso (e.g., women’s committee and community organisation) union relationships contributing to progress workplace gender equality.

#### **2.6.4 Employer associations and employers**

The literature reviewed on employer associations focused on employer association strategy to remain relevant to members, and only very marginally dealt with employer association position on gender equality. Studies of the history of employer associations and theories of their behaviour nevertheless provided insights into why employer association positions on gender equality may have emerged, how employer associations were able to influence the state and unions, and the degree to which they represented employer position.

Studies explained how, although the industrial role of employer associations had declined, “they [had] retained lobbying and representation roles on behalf of their members” (e.g., Woolcock & Jerrard, 2009, p. 47). You (2016), p. 65) argued employer associations’ obligation to express member preference. Yet Thornthwaite & Sheldon (2012, p. 267) showed how the public stance of employer associations in Australia has not always been supported by employer association members. Barry & You (2018) and Demougin et al. (2019) identified how in maintaining relevance to members, employer associations developed their function as industrial relations actors and service providers and become more active in the policy sphere including in equality areas. Sheldon and Thornthwaite (2004) developed a model from which to measure employer association response to labour market reforms that places individual employer association response along a spectrum from traditional (supportive of industry-wide collective representation and bargaining) to progressive (supportive of individual member representation and user-pays service provision). You (2016) found employer associations could be simultaneously both not-for-profit and user-pays service providers. Goberman et al., (2020) identified employer association at large prioritisation of employer prerogative as the means these associations perceived as optimal for addressing workplace inequity Whether employer association response to the development of workplace domestic violence policy has been largely traditional or progressive is not known. Also unaddressed in this literature was the

degree to which employer association response to workplace domestic violence policy represented employer policy.

To account for union, employer and employer association contribution to workplace domestic violence policy reform, the following further secondary research question is asked:

To what extent did unions, employers and employer associations influence the development of workplace domestic violence policy?

### **2.6.5 Non-traditional actors in industrial relations**

There is debate in industrial relations literature on whether to limit industrial relations actor typologies to traditional actors, such as the state, unions and employers, or whether to expand typologies to include non-traditional actors, and, if so, how these non-traditional actors can be theorised (Bellemare, 2000; Conley, 2012; Dabscheck, 1980; Heery & Frege, 2006; Kaufman, 2004; Michelson et al., 2008). While differing in how to conceptualise non-traditional actors, these scholars nevertheless agreed that non-traditional actors were important to study. Such actors would include, for example, women's lobby groups, feminists, academics and key individuals. Heery and Frege (2006) observed that non-traditional actors' actions have been overlooked in scholarship.

The role of key individuals in impacting government policy change was noticeable in the literature reviewed on Australian workplace gender equality policy change in Section 2.5. That key individuals shaped industrial relations outcomes has long been flagged in industrial relations scholarship but remains undeveloped. In critiquing industrial relations typologies Kitay and Marchington (1996, p. 1281) argued not to "ignore the role of individuals in shaping changes in workplace relations". Lawrence et al. (2011, p. 53) argued industrial relations scholarship had neglected the importance of "institutional work... [the] notion that individuals

actively engage[d] in processes of institutional creation, maintenance, disruption and change”.

Scott (2008) showed how individual agency was enhanced by professional status.

To examine the role of non-traditional actors, including key individuals, in the development of government workplace domestic violence policy, this thesis asks the further secondary research question:

To what extent have non-traditional actors and key individuals influenced the development of workplace domestic violence policy?

## **2.7 Conclusion**

From the literature review this thesis has developed a framework to consider both traditional and non-traditional actors and the causal interdependencies between them in investigating workplace domestic violence policy change. This framework enables the thesis to address the knowledge gaps identified in the literature review, as all knowledge gaps emanate from what actors have done to develop workplace domestic violence policy. These knowledge gaps are summarised below by showing how this thesis addresses them. In examining the state’s motivations to rapidly adopt workplace domestic violence policy in Australia, this thesis builds on Baird’s (2004, 2006, 2016) framework of welfare, bargaining, business and social equity orientations of workplace gender equality policy, previously only applied to paid maternity and parental leave policy. This thesis also examines whether unions and employer parties diverged from their historical positions of reticence to promote workplace gender equality. It analyses how and why traditional and non-traditional actors may have exerted pressure on the Commonwealth Government to reform its workplace domestic violence policy.

Other factors identified in the literature may have affected workplace domestic violence policy development, including political party, the existence of available regulatory structures, gender of individual actors, social norms, evidence-based research and voter preference. The main research question is broad enough to encompass all likely policy actor contributions to this

development. The secondary research questions focus on actors likely, from the literature, to have significantly impacted government workplace domestic violence policy change.

In considering how and why a new and never studied government workplace gender equality policy came into being in Australia and using a novel framework of traditional and non-traditional actors and Baird's (2004, 2006, 2016) typology of orientations, this thesis makes an original contribution to industrial relations scholarship. The thesis' methodology is presented in Chapter 3.



## **3. Methodology**

### **3.1 Introduction**

To address the knowledge gaps outlined in Chapters 1 and 2, this chapter presents the research design and methods used to analyse how and why workplace domestic violence policy developed in Australia 2008 to 2018. The chapter proceeds by detailing and justifying the thesis' focus and timeframe in Section 3.2 and its use of primarily qualitative methodology, reliance on abductive reasoning, operationalised pragmatism and systematic process analysis in Sections 3.3 to 3.8. Sections 3.9 to 3.10 explain and justify the data collected and means of analysis. Section 3.11 concludes with a chapter summary.

### **3.2 Focus of study and timeframe**

The study is an analysis of Commonwealth Government workplace domestic violence policy from 2008 to 2018. From the literature review, this policy innovation appears atypical given the historic slow progress of reforms aimed at promoting gender equality at work. From the methodology literature, atypical cases are “ideal places to sample, as they offer a rich space to generate and test theoretical principles” (Rapley, 2014, p. 53). While they may not be representative of other cases – in this instance, of workplace gender equality policy change – they can highlight similarities and differences between them (Maxwell & Chmiel, 2014, p. 546). Even though the thesis focuses on events of the recent past, primarily those underpinning policy changes implemented in 2018, reviewing events during the preceding 10 year period is important because otherwise, “you may miss long term trends and make unsubstantiated claims about transformation” (Patmore, 2006, p. 35).

To provide context, the study starts with a brief analysis of the Commonwealth Government's workplace domestic violence policy from 1996 to 2007 under Coalition leadership. It then examines this policy from 2008, from just prior to the Australian Labor Party taking office that

year, to 2018 when the subsequent Coalition Government included five days of domestic violence leave in Australia's National Employment Standards. The study has searched for phenomena that exhibit causal complexity, such as tipping points, strategic interactions and different pathways to the same outcome (Bennett & Elman, 2006, p. 251). Both *physical* (such as policy actors' actions and specific strategies) and *mental* processes (such as policy actors' motives and orientations to policy) that led to these phenomena have been sought, identified and analysed (Maxwell, 2012, p. 658).

### **3.3 Use of qualitative methodology**

The study adopts primarily qualitative methods to meet the research aims. Qualitative methods are useful when a study aims to find "causes-of-effects" (as in how and why workplace domestic violence policy changed), rather than "effects-of-causes" as in experimental approaches (Mahoney & Goertz, 2006, p. 230). Qualitative methods are recommended when, as here, the focus "is on detailed, text-based answers that are often historical and/or include personal observations and reflection from participants in political institutions, events, issues or processes" (Vromen, 2018, p. 237). These methods lend themselves to achieving "thick description" (Geertz, 1973, p. 6), aimed for in this research. According to Cornelissen, thick description (2017, p. 372) is where the:

researcher explains a managerial or organizational setting by providing detail, by showing ramifications, and by presenting us enough of the intricacies of that setting so that we (as readers) feel we can understand it and intimately know why for example people in that setting (have taken) particular actions.

Qualitative methods are suited to answering 'how' and 'why' questions which focus on contemporary events (and events leading up to them) and where control of behavioural events is not required (Yin, 2014, p. 9) as is the case here. The research questions of the thesis demand a qualitative method.

### **3.4 Use of abductive reasoning and problematising**

The thesis uses abductive reasoning. It uses existing concepts and theories in its analysis, to gauge their explanatory power in relation to the data. This type of reasoning “emphasizes that rather than setting all preconceived theoretical ideas aside during the research project, researchers should enter the field with the deepest and broadest theoretical base possible” (Timmermans & Tavory, 2012, p. 180). In this way the thesis is guided by abductive reasoning to ultimately select “the ‘best’ explanation from competing explanations or interpretations of the data” (Bryman & Bell, 2015, p. 27). Through this it considers how the “theoretical[ly] driven areas of investigation [are] nuanced by the empirically driven data [e.g.] provided by the research participants” (Loudoun & Townsend, 2018, p. 37). This involves a process of problematising where the ideas from the literature are considered in light of emergent ones from the data. Problematising is highlighted by Alvesson and Sandberg (2011, p. 247) as useful for challenging assumptions in existing theories, such as the assumption in the literature of the persistence of historic barriers to rapid workplace gender equality policy change.

### **3.5 Systematic process analysis approach**

This study adopts systematic process analysis based on Hall’s (2008) model. A process analysis approach helps to meet the study’s aim to find causes of policy change because focusing on process and not just demonstrating relationships between variables allows conclusions about causation to be drawn (Maxwell, 2012, p. 658). Process analysis facilitates understanding of “how things evolve over time and why they evolve in this way [from accounts of] events, activities and choices ordered over time” (Langley, 1999, p. 692). As Hall (2008, p. 314) states:

Process analysis can be particularly useful when several theories alluding to rather different causal processes have been proposed to explain some phenomenon, because it mobilises multiple observations to reach fine-grained assessments about the presence of specific *causal inferences*.

The framework and theoretical insights from the literature review are used in this thesis to “mobilise multiple observations”. Such multiple observations through analysis of process enable fine-grained assessment of workplace domestic violence policy reform in Australia.

The systematic process analysis was in stages. First, institutions and actors involved in the workplace domestic violence policy domain in Australia from 2008 to 2018 were mapped. Major metropolitan news sources via Factiva database and Workplace Express, an authoritative specialised employment relations news source, were consulted using the general search term “domestic violence” to find major policy developments. This process helped create a detailed timeline of workplace domestic violence policy developments from 2008 to 2018 (and of the decade prior), set out in Chapter 4. This helped develop a map of key state, union, employer and non-traditional (including individual) actors involved in these developments. Prospective interview participants were identified and later invited to participate in the research. Documentation on workplace domestic violence leave policy was progressively collected, as detailed below under documentation.

The next stages comprised of the analysis of the thesis’ primary data. Chapter 4 analyses overall workplace domestic violence policy outcomes and events during this time. Chapter 5 analyses the evidence on non-traditional and key individual actor influence on workplace domestic violence policy. Chapter 6 focuses on unions, Chapter 7 on employer parties and Chapter 8 on components of the state.

### **3.6 Use of quantitative data**

Where appropriate, the thesis incorporates analysis of quantitative data with the primarily qualitative approach to help answer the research questions. Data and justifications for using them are set out in Section 3.9 below. Collier (2011, p. 825) indicated how, at times, producing thick description relied on analysis of quantitative data in the form of descriptive statistics. The

justification for from time to time integrating quantitative analysis into the qualitative approach is to assist to validate, explore and expand on qualitative findings

### **3.7 Combining qualitative and quantitative data analysis**

The thesis recognises debates in scholarship over the advantages and disadvantages of combining qualitative and quantitative methods, given they are underpinned by different ontological and epistemological approaches (Boaz, Davies, Fraser & Nutley, 2019, p. 212). This thesis is informed by pragmatism and does not commit to any absolutist world view. The thesis “looks to many approaches to collecting and analysing data rather than subscribing to only one way [e.g., qualitative or quantitative]” (Creswell, 2003, p. 12). Operationalised pragmatism is a dialectic philosophy involving iterative analysis and weighing up of “ideas, assumptions and approaches found in qualitative and quantitative research and in any other relevant domain” (Johnson & Christenson, 2014, p. 32). This dialectic underpins this study’s research design to help achieve the study’s aims.

Regarding why qualitative inquiry is augmented by quantitative analysis rather than vice-versa, it appears there was no well-developed theory of how and why workplace gender equality policy changes in the literature to test quantitatively. In addition, causes of workplace domestic violence policy change appeared too inherently theoretically complex to determine by regression analysis, a point made by Hall in relation to studying modern social science generally (Hall, 2008, p. 308) and John (2012, p.9) in relation to policy analysis.

### **3.8 Validity of the research design**

Questions of research validity are extensively set out in the methodological literature (e.g., Bryman & Bell, 2015, pp. 159–182, 391–425; Johnson & Christensen, 2014, pp. 277–316). The study is designed to increase the validity of the research and reduce bias. For example, it considers three types of validity (Whitfield & Strauss, 2008, p. 6): *construct validity*, the extent

to which the variables considered reflect those in the conceptual model; *internal validity*, the extent to which an identified cause equals an effect; and *external validity*, the extent to which findings can be generalised. This thesis claims a high degree of external validity in that it uses an extant theory, Baird's (2004, 2006, 2016) typology of orientations, potentially applicable to many cases of workplace policy change. It claims internal validity, or causation, because qualitative methods have been chosen that can infer causation, augmented on occasion by quantitative data analysis. The thesis claims construct validity to a considerable extent given that the thesis observes a well-conceived typology of orientations in its analysis.

### **3.9 Data collection**

#### **3.9.1 Ethics approval**

The study is approved by the University of Sydney Human Research Ethics Committee (project number 2019/425). The approval was based on the study meeting the standards in the National Statement on Ethical Conduct in Human Research 2007, updated 2018. The letter of approval from the Ethics Committee is in Appendix A and the Participant Information Statement and Consent Form are in Appendix B.

#### **3.9.2 Sampling**

The thesis used theoretical sampling to find the data sample (comprising interview participant transcripts, documents and statistical data) it needed to answer its research questions.

Theoretical sampling is (Glaser & Strauss, 1967, p. 45):

the process of data collection for generating theory whereby the analyst jointly collects, codes, and analyses his data and decides what data to collect next and where to find them, in order to develop his theory as it emerges.

The process for collecting the sample was ongoing until it reached what is described in the methodological literature as theoretical saturation, when no further data was needed to establish and form the thesis' categories and concepts (Strauss & Corbin, 1998, p. 212).

### **3.9.3 Documentation**

The documentary data was identified from searching parliamentary and other state databases and policy actor websites, from research participants who forwarded documentation to the researcher and from Google searches. The documentation includes:

- Hansard documents
- Commonwealth and State and Territory ministerial speeches, press releases, Acts of Parliament and Public Sector Awards
- reports of parliamentary committees
- reports and position papers of Commonwealth agencies: the Australian Law Reform Commission, Australian Human Rights Commission, Fair Work Commission, Productivity Commission and Workplace Gender Equality Agency
- decisions of the Fair Work Commission, and registered enterprise agreements
- reports and position papers of Safe at Home, Safe at Work Project actors, unions, employer parties and anti-domestic violence advocates
- media reports of workplace domestic violence policy outcomes and events.

Except for media reports written by journalists, the documents were produced by policy actors when developing workplace domestic violence policy and entitlements. Studying artifacts produced in natural settings, such as these documents, facilitates the transformation of data into thick description (Norum, 2008). This documentation was used to establish the occurrence of workplace domestic violence policy outcomes and events, corroborate interviewee accounts of policy change (on what happened when and which actors were involved) and as primary data to provide accounts of policy change from policy actors not able to be interviewed.

### **3.9.4 Interviews**

The thesis integrates analysis of the documentation with analysis of 45 semi-structured participant interviews with 43 participants. The participants are summarised in Table 1. An

advantage of interviews is that interviewees have the opportunity to delve deeper into meaning or correct misunderstandings between research participant and researcher. The semi-structured interviews took the form of an *interview guide approach* (Johnson & Christensen, 2014, p. 233). Interviews were based on the interview questions designed to elicit information needed to answer the research questions. All participants were asked the same or similar questions using the guide in Appendix C for consistency but not necessarily in the same order so as not to interrupt the flow of an interviewee's response. Most questions were open-ended, to facilitate exploration of issues. Interviews lasted between 25 to 90 minutes, reflecting the availability of interviewees, and took place between July and December 2019, except for three interviews conducted in September 2020, one in December 2020 and one in February 2021. Interviews were in person or through video or phone call.

Participants included traditional actors:

- Australian Commonwealth and State parliamentarians and staffers
- Australian Sex Discrimination Commissioners
- union peak body presidents, branch secretaries and officials
- employer association CEOs and officials
- employer diversity and inclusion and human resource managers.

Participants included non-traditional actors:

- anti-domestic violence advocates
- Safe at Home, Safe at Work Project actors, including researchers.

In some cases, participants gained insight into or were involved in workplace domestic violence policy and entitlements development in more than one role. For example, interviewee Ged Kearney was ACTU President and then a Commonwealth Labor parliamentarian and Pru Goward was Australian Sex Discrimination Commissioner and then a Minister in the NSW Liberal Government. All participants were involved in workplace domestic violence policy



development at some stage during 2008 to 2018. Interview participants are summarised in Table 1. Participants whose names are not listed did not want to be personally identified.

**Table 1. Interview participant details and date and order of interview**

<b>Participant number</b>	<b>Name</b>	<b>Role/s in relation to workplace domestic violence development 2008 to 2018</b>	<b>Time and mode of interview</b>
1.	Ludo McFerran	Anti-domestic violence advocate; Co-Manager, Safe at Home, Safe at Work Project	August 2019 x 2 Phone/in person
2.	Participant 2	Diversity and Inclusion Executive, Finance sector	August 2019 In person
3.	Troy Roderick	Diversity & Inclusion Executive, Telstra; Director, Strategic Initiatives & Insights, Male Champions of Change	August 2019 Video call
4.	Linda White	Assistant National Secretary, Australian Services Union	August 2019 Video call
5.	Ged Kearney	President, ACTU; MP (Cth, Labor)	August 2019 Phone
6.	Jeannie Rea	National President, NTEU	August 2019 In person
7.	Robyn Dale	Co-Manager, Safe at Home, Safe at Work Project	August 2019 In person
8.	Lisa Darmanin	Branch Secretary, Australian Services Union VIC & TAS	August 2019 In person
9.	Debra Eckersley	Executive – Human Capital, Price Waterhouse Coopers; President, United Nations Women Australia	August 2019 In person
10.	Jane Aeberhard-Hodges	Director Gender Equality Bureau, International Labour Organization	August 2019 Video call
11.	Jennifer O'Donnell-Pirisi	Women's Officer, VIC Trades Hall Council	August 2019 Video call
12.	Natalie Lang	Branch Secretary, Australian Services Union (NSW & ACT Services Branch)	September 2019 In person
13.	Angela Budai	National Policy Officer, Finance Sector Union	September 2019 December 2020 In person/phone
14.	Shabnam Hameed	Operations Officer Gender Business Dept East Asia Pacific International Finance Corporation; Former Safe at Home, Safe at Work Project Officer/Researcher; Former Officer, NSW Public Service Association	September 2019 Video call
15.	Participant 15	Senior Officer, VIC Trades Hall Council	September 2019 Video call

16.	Sophie Ismael	Legal and Industrial Officer – Gender Equity, ACTU	September 2019 Video call
17.	Kate Jenkins	Australian Sex Discrimination Commissioner	October 2019 Phone call
18.	Participant 18	Bank Executive	September 2019 Phone call
19.	Participant 19	Union Officer	October 2019 Video call
20.	Participant 20	MP (Cth, Labor)	November 2019 Phone call
21.	Pia Cerveri	OHS Organiser Training Lead, VIC Trades Hall Council	October 2019 Phone call
22.	Tanya Kovac	Chief of Staff to VIC Minister for Women and Minister for Family Violence Prevention	October 2019 Video call
23.	Sharon Claydon	MP (Cth, Labor); Chair, Federal Labor Party’s Status of Women Committee	November 2019 Phone call
24.	Participant 24	Officer, ACTU	October 2019 Phone call
25.	Dominique Lamb	CEO, National Retail Association	October 2019 Phone call
26.	Participant 26	Human Resources Manager, VIC Council	October 2019 Phone call
27.	Lisa Pusey	Program Director, Male Champions of Change	October 2019 Phone call
28.	Brendan O’Connor	Various Government ministerial positions 2007 to 2013 (Cth, Labor), Shadow Minister for Employment and Workplace Relations 2013 to 2019 (Cth, Labor)	October 2019 Phone call
29.	Alice Orchiston	Academic/Former Legal Officer, Safe at Home, Safe at Work Project	October 2019 In person
30.	Nicola Street	National Manager Workplace Relations Policy, Australian Industry Group	October 2019 Phone call
31.	Mich-Elle Myers	Women’s Liaison Officer, Maritime Union of Australia	November 2019 Phone call
32.	Mark Morey	Branch Secretary, Unions NSW	November 2019 In person
33.	Participant 33	Human Resource Management Executive, Banking industry	November 2019 Phone call
34.	Natalie Hutchins	MP (VIC), Minister for Industrial Relations 2014-2018, Minister for Women 2017-2018, Minister for the Prevention of Family Violence 2017-2018	November 2019 Phone call
35.	Tanya Plibersek	MP (Cth, Labor); Minister for the Status of Women; Cabinet Minister 2011-2013; Deputy Leader (Cth, Labor) 2013–2019	November 2019 In person

36.	Larissa Waters	Senator, Leader of the Australian Greens in the Senate	November 2019 Phone call
37.	Kate Minter	Research Director, Unions NSW	November 2019 In person
38.	Participant 38	MP (Cth, Labor)	November 2019 In person
39.	Participant 39	Parliamentary staffer, Cth.	December 2019 Phone call
40.	Pru Goward	Australian Sex Discrimination Commissioner 2001-2007; MP (NSW, Liberal), Minister for the Prevention of Domestic Violence and Sexual Assault/Minister for Women	September 2020 Phone call
41.	Karen Willis	Executive Officer, Rape & Domestic Violence Services Australia	September 2020 Phone call
42.	Maria Cirillo	Industrial and Women's Officer, NSW Public Service Association	September 2020 Phone call
43.	Stuart McCullough	Chief Executive Officer, Victorian Hospitals Industrial Association	February 2021 Phone call

Key: ACTU – Australian Council of Trade Unions; OHS – Occupational Health & Safety

### 3.9.5 Quantitative data

#### *Workplace Gender Equality Agency data*

The thesis analysed data from the Workplace Gender Equality Agency (WGEA) available online, and WGEA data requested specifically for this research, to provide evidence of the incidence over time of the introduction of unpaid and paid domestic violence leave provisions in private sector organisational policy and enterprise agreements. This data, while reliant on employer self-reporting, had the benefit of being the total population of all private sector employers required to report to WGEA from 2015 to 2018 (e.g., N = 4,891 in 2018). Any significant effect of errors that may have arisen from employer self-reporting was arguably allayed by the large population size and employer obligation not to provide false or misleading information when reporting to WGEA (Workplace Gender Equality Agency, 2021). Data was obtained from the WGEA Data Explorer to analyse the uptake of domestic violence policy and

paid and unpaid domestic violence leave provisions of organisations headed by the Male Champions of Change original group.

#### *Workplace Agreement Dataset and Fair Work Commission data*

The thesis obtained evidence of which public and private sector organisations were early to include such provisions in enterprise agreements from Workplace Agreement Dataset data, provided and analysed by the Commonwealth Department of Education, Employment and Workplace Relations. The data, extracted from the dataset and analysed by the department in 2015, set out in chronological order the enterprise agreements approved between 2010 and 2015 and the type of domestic violence leave provisions included in them. Using the Workplace Agreement Dataset data reduced the need to examine the contents of every enterprise agreement approved during this time via the Fair Work Commission database. However, the researcher checked the contents (via the Fair Work Commission database) of any enterprise agreement used in the thesis' analysis.

#### *Statistics generated from prior research*

Several actor participants in the research undertook their own statistical evaluation of aspects of workplace domestic violence policy development including the Safe at Home, Safe at Work Project's National Domestic Violence and the Workplace Survey (UNSW, 2011), the Australian Services Union and ACTU's commissioning of research by Stanford (2016) and National Retail Association research. That these studies were carried out, their findings, and how these findings were used by workplace actors were pertinent to the thesis' analysis.

### **3.10 Data analysis**

#### **3.10.1 Thematic analysis of interviews and documentation**

The interviews were analysed thematically. The use of thematic analysis "is based on the idea that codes or themes emerge from studying the interview data holistically and make it possible

to explore the resonance of themes between different interviews” (Vromen, 2018, p. 247). This assisted in arriving at the most comprehensive interpretations from multiple and alternative interpretations. The analysis was guided by the thesis’ policy orientations and actors framework, further aided by theoretical insights generated by the literature review and emergent themes. For example, following Baird (e.g., 2004, p. 269), to answer ‘how’ workplace domestic violence policy developed the analysis identified actors’ strategies for doing so, the mechanisms they used and the outcomes they achieved. To answer ‘why’ such policy was developed, actors’ motives and rhetoric were analysed. Actors’ policy orientations were determined from identifying their motives and strategies, as above.

### **3.10.2 Use of interview transcripts**

The researcher fully transcribed the interviews, read the transcripts, hand coded the data and listened to the audio recordings as many times as needed to establish concepts and categories. A tactic to commence the analysis of each interview was to identify “some outcome in the talk and work backwards to see how (and why) the parties might have reached that outcome” (Silverman, 2017, p. 154). It is noted that interview participants often seek to propagate a spin on events (Van Maanen, 1979). To overcome this risk, facts and opinions that emerged from the various sources were triangulated to reduce researcher bias. Rather than code all transcripts at the outset, coding was done in an ongoing process as individual actor and actor type contributions to the developments were considered.

### **3.10.3 Analysis of quantitative data**

#### *Workplace Gender Equality Agency data*

Bivariate analysis (Bryman & Bell, 2015, p. 351) was used to determine the percentage variation in private sector provision of paid domestic violence leave entitlements over time. The findings from this quantitative data analysis assisted to triangulate findings from data analysed qualitatively.

#### *Workplace Agreement Dataset data*

Data on enterprise agreements from 2010 to 2011 were tabulated, indicating which employers included workplace domestic violence leave in enterprise agreements during that time. This data was used to enhance the qualitative analysis.

#### **3.10.4 Integration of quantitative and qualitative data during analysis and discussion**

The thesis' ability to answer its secondary research questions would have been compromised without its occasional integration of qualitative and quantitative analysis, examples follow. Without the researcher's analysis of the WGEA data requested specifically for the thesis, the rate of private sector employer provision of paid domestic violence leave for the years 2015 to 2018 could not have been determined. Analysis of this WGEA data assisted the analysis to compare and contrast the extent to which public and private sector employers influenced workplace domestic violence policy development in Australia. Quantification of data obtained from WGEA data explorer enabled comparison and contrast of organisations headed by Male Champions of Change original group members with non-Male Champions of Change member headed organisations. The thesis could not have verified claims made by the Male Champions of Change group that its CEO members were leaders in providing workplace domestic violence policy and provisions in their organisations (Male Champions of Change, 2015) without analysis of the WGEA data.

#### **3.11 Conclusion**

The thesis uses a qualitative research design, as appropriate for the research questions. The design was used to gather and analyse the data and produce the empirical and theoretical contributions of the thesis. Quantitative analysis was integrated into the design from time to time to explore, validate and expand on findings arrived at through qualitative analysis. Chapter 4 reports analysis of workplace domestic violence policy events and outcomes from 1997 to 2018. Chapters 5 to 8 report analysis of non-traditional actor, union, employer party and state

contribution to workplace domestic violence policy development. Chapters 9 and 10 report the thesis' overall findings and conclusions.

## **4. Findings – Overview of policy events and outcomes**

### **4.1 Introduction**

This chapter traces significant events and policy outcomes in the development of workplace domestic violence policy, leave and entitlements in Australia from 2008 to 2018. To enhance understanding of this period, it includes findings of the Australian Commonwealth Government’s workplace domestic violence policy orientation from 1996 to 2003. Chapters 5 to 8 focus on how and why such rapid changes occurred in workplace domestic violence policy from 2008 to 2018.

The chapter proceeds by finding which actors undertook what type of workplace domestic violence policy reform at what time. In doing so it identifies actors’ policy orientations during 2008 to 2018 and factors influencing this. Before concluding the chapter presents these significant events and policy outcomes in a timeline in Table 3.

### **4.2 Australian Government workplace domestic violence policy 1996 to 2008**

The Liberal–National Party (Coalition) Commonwealth Government founded the Partnerships Against Domestic Violence program, which ran from 1997 to 2003 with some workplace outreach. The program was implemented by the Office of the Status of Women and involved “working with the community” to tackle domestic violence (Australian Women Against Violence Association, n.d., para. 2), including businesses. In 1999 the program provided funding to establish the Australian Domestic and Family Violence Clearinghouse, a research body at the University of New South Wales. Examples of Partnerships Against Domestic Violence program business outreach were the 2002 Breaking Point Conference on Work and Family Conflict in Melbourne (Murray & Powell, 2008) and the 2003 Phillip Morris conference on domestic violence (Sydney Morning Herald, 2003), which shared United States research on the high cost of domestic violence to workplaces (Freeman, Hagan & Winstanley,



2019). Interview participant Kate Jenkins, the Australian Sex Discrimination Commissioner 2016 to the present, attending this conference in her then role as an employment lawyer, observed:

At that point in time [domestic violence] wasn't well accepted in Australia as something that employers had anything to do with... [The conference] was the first time I had heard some really good research on how it affects workplaces as well as how it affects so many people.  
Participant 17, Kate Jenkins

The Partnerships Against Domestic Violence program encouraged business to address domestic violence through a philanthropy and corporate social responsibility frame (Murray & Powell, 2008). These Partnerships Against Domestic Violence conference events provide a snapshot of the then Commonwealth Government's laissez-faire business orientation towards the development of workplace domestic violence policy. That is, while discourse may have recognised the high cost of domestic violence to employees as well as employers, the Commonwealth Government deemed businesses to be the principal workplace domestic violence policy agents, and voluntary policies of employers to be the principal mechanism.

#### **4.3 Commonwealth agency workplace domestic violence policy 1996 to 2008**

Proposals from the Australian Human Rights and Equal Opportunity Commission (HREOC, renamed the Australian Human Rights Commission [AHRC] in 2008) and of the Australian Law Reform Commission (ALRC) for addressing domestic violence in the period 1996 to 2008 were welfare, family and (for the ALRC) criminal law centred. From 2007 to 2008 the newly appointed Sex Discrimination Commissioner Elizabeth Broderick undertook Australia-wide community consultation to research how to address gender equality issues. Consulting with community provided grassroots evidence that domestic violence was a workplace issue and problematic for businesses (AHRC, 2008). However, HREOC's report, an informal initiative, on this consultative process recommended only that the Commonwealth Government review changes to welfare and family law to determine the impact of these laws on women living with

domestic violence (AHRC, 2008, p. 1). A welfare policy orientation is evident here, conducive to female dependence on the state, with welfare and family legislation the favoured mechanisms. In a similar vein, ALRC recommendations for law reform to better address domestic violence targeted criminal law, family law and welfare regulation, in accordance with the terms of reference from the Commonwealth Attorney-General (e.g., ALRC, 2010). Thus, these Commonwealth agencies, with the ALRC under explicit direction from the Commonwealth Government, were not yet oriented towards industrial relations law as a mechanism for alleviating domestic violence.

#### **4.4 Introduction of the Fair Work system**

From 2008 to 2010 changes were made to Commonwealth and Australian states' industrial relations laws (Hancock & Lansbury, 2016) including modernisation of the workplace awards system by Fair Work Australia in 2008 (renamed the Fair Work Commission in 2013). The overarching change was the 2007 Labor Commonwealth Government's introduction of the *Fair Work Act 2009* (Cth) containing the National Employment Standards. Together, modern awards, national minimum wage orders and the National Employment Standards were designed to "make up the safety net of minimum enforceable standards" (Australian Parliament, 2020) for Australian private sector workplaces and public service employees not covered by enterprise agreements. At their inception modern awards and the *Fair Work Act 2009* (Cth) did not contain domestic violence terms but were later modified for this purpose.

The National Employment Standards provided employees with the right to request flexible working arrangements, an innovation in Australian employment law (Cooper & Baird, 2015). The Object of the *Fair Work Act 2009* (Cth) was to balance productivity and equity for the promotion of "national economic prosperity and social inclusion for all Australians" (*Fair Work Act 2009* [Cth], Division 2, s3). Provisions for doing so included enterprise-level bargaining (but not sector-level bargaining) and acknowledgment of the special circumstances

of small and medium business (*Fair Work Act 2009* [Cth] Division 2, s3). The Labor architects of the *Fair Work Act 2009* (Cth) thus oriented it towards achieving both productivity and equity, tipped towards social equity with the Act's proviso to include *all Australians* in its application. By 2010 all Australian states, except Western Australia, and territories had referred their industrial relations powers governing private sector employment to the Commonwealth (ALRC, 2011a; Roth, 2010). Accordingly, from 2010 onwards changes to enforceable private sector employment regulation (Western Australia excepted) needed to be promulgated through the national Fair Work system and changes to conditions of work for public sector employees needed to occur through enterprise bargaining.

#### **4.5 State, union, employer and non-traditional actor workplace domestic violence initiatives 2010 to 2013**

Commonwealth Government and agency, union, employer and non-traditional actor initiatives relevant to the beginnings and development of workplace domestic violence policy and employee entitlements were introduced at this time. This section presents these events and outcomes chronologically.

##### **4.5.1 2010 – Safe at Home, Safe at Work Project begins**

In 2010 anti-domestic violence advocate Ludo McFerran and the Australian Domestic and Family Violence Clearinghouse secured 18-month funding from the Commonwealth Department of Education, Employment and Workplace Relations (DEEWR) to set up and carry out the Australian Domestic and Family Violence Clearinghouse Domestic Violence Rights and Entitlements Project, known as the *Safe at Home, Safe at Work Project*, to introduce workplace protections for employees experiencing domestic violence. The project was overseen by the DEEWR which funded it first from mid-2010 to the end of 2011 and then extended it to mid-2013. During this time the project's actors, primarily its co-managers Ludo McFerran and Robyn Dale in collaboration with the Australian Domestic and Family Violence

Clearinghouse, developed and promoted workplace protections for employees experiencing domestic violence, including via submissions to government for industrial relations law reform (e.g., see Safe at Home, Safe at Work Project, 2012). The project's orientation was towards social equity and gender equality. The protections it developed and promoted for employees experiencing domestic violence were gender neutral and did not exclude men or focus on women. This project became of the utmost significance in establishing workplace domestic violence employee entitlements in Australia and worldwide, and to Commonwealth Government workplace domestic violence policy (e.g., Parliament of Australia, 2019, p. 4). Chapter 5 provides more detail.

#### **4.5.2 2010 – First enterprise-bargained domestic violence leave entitlements**

In 2010 Safe at Home, Safe at Work Project actors, in collaboration with unions, initiated the enterprise bargaining of the first two enterprise agreements to contain domestic violence leave. The first, enabling employees to take certain types of leave if they were experiencing domestic violence, was negotiated between the University of NSW and unions, the Commonwealth and Public Sector Union, Australian Manufacturing Workers Union and National Tertiary Education Union (University of NSW, 2010; FWC, AG 2010/14910). The second provided 20 days of paid domestic violence leave (FWC, AG 2010/19899) and was negotiated in September 2010 by the Australian Services Union (Victoria and Tasmanian Branch) and Surf Coast Council Victoria. This marked the advent of collectively bargained paid domestic violence leave entitlements in Australia and worldwide (Baird, McFerran & Wright, 2014).

#### **4.5.3 2010 – Male Champions of Change original group founded**

During 2010 the AHRC Sex Discrimination Commissioner Elizabeth Broderick established the Male Champions of Change group, which aimed to expand women's leadership representation in business. Founding members were CEOs of ANZ Bank, Commonwealth Bank of Australia, Deloitte Australia, Goldman Sachs, KPMG, McKinsey & Co., Qantas, Rio Tinto (Health

Safety & Environment) and Telstra (Male Champions of Change, 2020). In November 2014, the group began exploring workplace measures to address domestic violence (Male Champions of Change, 2020).

#### **4.5.4 2011 – The First National Plan augmented with workplace strategies**

The Safe at Home, Safe at Work Project became part of the First National Plan to Reduce Violence against Women and their Children 2010–2022 (the National Plan), overseen by the Commonwealth Department of Social Services. The not-for-profit organisation White Ribbon, which aimed to engage men and business to create attitudinal change to prevent domestic violence was also funded via the National Plan (Department of Social Services, 2014a). The National Plan, effective since 2011, was endorsed by the Council of Australian Governments (Australian Government, 2020). The National Council to Reduce Violence Against Women and their Children, established by the Commonwealth Government in 2008, recommended civil, criminal, and family law reform approaches be undertaken in the National Plan (Nancarrow, 2010, pp. 842–850). National Council members included the Commonwealth Minister for the Status of Women (then Tanya Plibersek, Labor). Later, the Commonwealth Government appropriated workplace strategies of the Safe at Work, Safe at Home Project for the National Plan (set out in Table 2). This added an industrial relations component to the National Plan and is the first instance of Commonwealth Government policy that endorsed workplace regulation as a response to domestic violence.

**Table 2. Introduction of domestic violence terms to the National Plan 2010–22**

<b>Strategy 1.3</b>	<b>Responsibility</b>	<b>Immediate National Initiatives</b>
Develop workplace measures to support women experiencing and escaping from domestic violence.	Commonwealth	Fund the Australian Domestic and Family Violence Clearinghouse Domestic Violence Rights and Entitlements Project.

Source: Department of Social Services (2014a, pp. 16–17)

A progress report on the First National Plan recognised the Safe at Home, Safe at Work Project's success in gaining workplace protections for employees impacted by domestic violence (Department of Social Services, 2014b). In the report the Commonwealth Government (Department of Social Services, 2014b, p. 7) acknowledged that:

This project was far-reaching with, by 2013, over one million workers across the country being protected by domestic violence clauses in workplace agreements, including employees in the New South Wales public service, Queensland Government employees, and employees of some Commonwealth departments and agencies.

This shows a bargaining orientation had been added to the Commonwealth Government's previous Partners Against Domestic Violence business orientation towards addressing the cost to workplaces of domestic violence. However, further iterations of the National Plan under the Coalition Government, in office from September 2013, have no longer included an industrial relations focus such as the work of the Safe at Home, Safe at Work Project provided. The (gender neutral titled) Australian Domestic and Family Violence Clearinghouse, home to the Safe at Home, Safe at Work Project, was disbanded and replaced in 2014 by the Coalition Government with a new research body, Australia's National Research Organisation for Women's Safety (ANROWS), which appeared not to have published information on workplace measures to address domestic violence until 2019 (ANROWS, 2019).

#### **4.5.5 Commonwealth agency workplace domestic violence policy initiatives**

Initiatives during 2011 to 2013 of the ALRC and AHRC and of the Commonwealth Government through its Workplace Gender Equality Agency (WGEA) involved workplace measures to address domestic violence.

In August 2010, the then Attorney-General of Australia, Robert McClelland, requested that the ALRC inquire into how domestic violence was treated in Commonwealth laws, including employment law (ALRC, August 2010). Recommendations from this inquiry, Family Violence

and Commonwealth Laws – Improving Legal Frameworks (ALRC, 2011b, Report 117) included:

- (a) that the Australian Human Rights Commission should examine (Recommendation 16-8) the possible basis upon which family violence could be included as a protected attribute under Commonwealth anti-discrimination law.
- (b) that the Australian Government add (Recommendation 16-4) family violence clauses in the NES, along with minimum standards for their implementation, (Recommendation 17-1) family violence as a reason for employees’ right to request flexible working arrangements and (Recommendation 17-2) additional paid family violence leave to the NES.
- (c) that Fair Work Australia should consider (Recommendation 16-6) during the 2012 review of Modern Awards, ways in which family violence terms might be included in Modern Awards and, (Recommendation 16-7) including a family violence term during the four-yearly review of Modern Awards.
- (d) that the Fair Work Ombudsman (Recommendation 16-5) “should develop a guide to negotiating family violence clauses in enterprise agreements, in conjunction with the Australian Domestic and Family Violence Clearinghouse, unions and employer organisations”.
- (e) that Safe Work Australia should consider (Recommendations 18-1 to 18-3) family violence as a research priority and the legal ramifications, monitoring and Model Codes of Practice of family violence possibly becoming a work, health, and safety issue.

Points (a) to (e) are summarised from ALRC (2011b), except for (d) which includes a quotation from it.

In December 2011, with Nicola Roxon then Attorney-General in a Labor Commonwealth Government, the ALRC and Safe at Home, Safe at Work actors held a conference where the ALRC flagged that it had found it challenging, when devising the above Fair Work Act 2009 recommendations, to meet the Act’s Object to balance productivity and equity (ALRC, 2011c). The ALRC predicted lawmakers tasked with adding domestic violence terms to the *Fair Work Act 2009* (Cth) would find meeting its Object similarly difficult (ALRC, 2011c). To ease these predicted challenges the ALRC advised that “it may be more appropriate to defer consideration of these issues as part of Fair Work Australia reviews of modern awards in 2012 and 2014” and that further significant stakeholder engagement be undertaken prior to including domestic violence terms in the National Employment Standards (ALRC, 2011c). Thus, along with recommendations for federal workplace domestic violence law reform, the

ALRC proposed a timeframe and order of actor decision-making for these proposed reforms, with Fair Work Australia decisions to come first.

During this period, the AHRC initiated workplace domestic violence regulatory developments and the Workplace Gender Equality Agency was formed. The AHRC was compelled by the above ALRC inquiry and other factors to announce, at a further December 2011 conference co-convened with Australian Domestic and Family Violence Clearinghouse and Union Research Centre on Organisation and Technology (URCOT) actors, that it and, in particular the AHRC Sex Discrimination Unit, were undertaking significant work:

on considering the impact of domestic and family violence on women, especially in the workforce (and to) explore options to expand and strengthen protection against the discrimination women endure as a result of being victims and survivors of domestic violence (AHRC, 2011)

This led to the *Exposure Draft of Human Rights and Anti-Discrimination Bill 2012* (Cth) (which did not proceed to parliamentary reading) and later, the AHRC's support for introducing domestic violence leave in modern awards and the National Employment Standards (e.g., see AHRC, 2016). In 2012 Safe at Home, Safe at Work Project actors made a submission to the Commonwealth Government in support of the proposed *Equal Opportunity for Women in the Workplace Amendment Bill 2012* (Cth). This Bill resulted in the *Workplace Gender Equality Act 2012* (Cth) and the Workplace Gender Equality Agency. The submission proposed that employers required to report to the Workplace Gender Equality Agency annually (those in the private sector with over 100 employees) should (a) report on domestic violence provisions in place in their organisation and (b) meet minimum standards for addressing workplace domestic violence policy and provisions in order to receive an Employer of Choice for Gender Equality citation (Safe at Home, Safe at Work, 2012, pp. 6–7). In 2013 the Workplace Gender Equality Agency undertook the first of these recommendations (WGEA, 2019) and the second in 2016 (WGEA, 2016).



The above cited documentation shows the close working together of the Safe at Home, Safe at Work Project and the Australian Family and Domestic Violence Clearinghouse on workplace domestic violence policy and entitlements recommendations to the Commonwealth Government from 2011 to 2013.

#### **4.5.6 2013 – ACTU support for domestic violence entitlements in National Employment Standards**

At the ACTU Congress in May 2012 the peak union body indicated its support for enhanced leave options in the *Fair Work Act 2009 (Cth)*, “including options for family and domestic violence leave” (ACTU, 2012a, p. 3). By November 2012, ACTU policy had firmed to support paid domestic violence leave, as expressed in this ACTU press release (2012b) from a White Ribbon lunch:

family violence leave provisions should provide additional paid leave for employees experiencing family violence, as well as flexible work arrangements.

At this lunch, then ACTU Secretary and White Ribbon Ambassador (The Australian, 2013)

Dave Oliver commended:

the work the Australian Domestic and Family Violence Clearinghouse [had] done to promote this issue [and that] one million Australian workers now have access to leave to deal with the effects of family violence, thanks to union negotiations  
ACTU (2012b)

The ACTU’s (2012b) press release shows it supported both the Australian Domestic and Family Violence Clearinghouse (via Safe at Home, Safe at Work actors) and White Ribbon to progress workplace domestic violence entitlements and policy. It demonstrated that at the time the ACTU supported the former to develop such entitlements and the latter to prevent domestic violence through men’s and businesses’ attitudinal change. The influence of the Safe at Home, Safe at Work Project in 2012 to promote paid domestic violence leave can thus also be seen in 2012 ACTU policy.

#### **4.5.7 2013 – Introduction of domestic violence as a term in National Employment Standards**

Many workplace actors were keen to see workplace leave and right to request entitlements for domestic violence in the *Fair Work Act 2009* (Cth), as discussed above. The *Fair Work Amendment Bill 2013* (Cth) was passed on 27 June 2013, which added only the right to request entitlements (Parliament of Australia, 2013). This was still a significant breakthrough in Australian workplace domestic violence policy and entitlements development as it was the first time in Australian legislative history that domestic violence was added as a term in federal industrial relations law.

### **4.6 State and union workplace domestic violence initiatives 2014 to 2017**

#### **4.6.1 2015 – Proliferation of public sector adoption of domestic violence leave entitlements under Labor state governments**

By the time funding of the Safe at Home, Safe at Work Project finished in the second half of 2013 and before the Labor Commonwealth Government lost office in September 2013, only New South Wales (in 2011) and the Northern Territory (in 2012) had provided domestic violence leave (primarily paid) to public sector employees. The Australian Capital Territory and Tasmania followed in 2014. In November 2015 Queensland and South Australian public servants gained paid domestic violence leave entitlements and in December 2015 Victorian public servants became entitled to 20 days of paid leave. Western Australia followed with paid leave in 2017. These were all Labor governments. Thus, Labor state and territory governments initiated domestic violence leave for public servants in all states and territories. By November 2018, the only public service that was without paid dedicated domestic violence leave was the Australian Public Service.

In contrast to the coverage of domestic violence leave in Australian state and territory public services, in 2015 the Australian Public Service Commission and the Commonwealth Government refused to include domestic violence leave in Australian Public Service

enterprise agreements. This was instigated by the “no enhancements” rule these actors had included in the Australian Public Service’s 2015 enterprise bargaining policy (Parliament of Australia, 2016). The justification for this rule was the unsubstantiated claim that Australian Public Service employees’ working conditions were already generous (Parliament of Australia, 2016). This rule was one of the factors causing Australian Public Service bargaining at that time to stall (Parliament of Australia, 2016). The bargaining impasse was referred to as “the siege of attrition” by the Senate Education and Employment References Committee inquiry it prompted (Parliament of Australia, 2016).

Most, but not all, Commonwealth agencies observed the rule. The Department of Social Services, overseers of the National Plan, removed the provision of domestic violence leave from its enterprise agreement. The Workplace Gender Equality Agency, the Department of Employment, the Department of Education and parts of the Department of Prime Minister and Cabinet kept theirs. The Australian Broadcasting Corporation argued it was not bound by the 2015 bargaining policy and introduced paid domestic violence leave in its 2016 enterprise agreement (Parliament of Australia, 2016). Accounting for these differences is beyond the scope of this research. However, 71% of Australian Broadcasting Corporation employees voted to approve the 2016 enterprise agreement (AG 2016/6788) and it contained key elements of the bargaining policy (Towell, 2016a). Thus, Commonwealth agencies, although reliant on Commonwealth Government funding, did not all acquiesce to the Commonwealth Government’s hard-line policy to discourage and disallow their agencies to bargain for dedicated domestic violence leave entitlements.

The Commonwealth Government’s position as an employer appeared to be at odds with the views of the then Prime Minister Malcolm Turnbull. For example, the Prime Minister said in Parliament in November 2015 that his government would consider domestic violence leave in the National Employment Standards but that more research was needed, such as

the Productivity Commission would undertake in its 2015 review of the Fair Work system (Osborne, 2015). At the 2015 White Ribbon parliamentary lunch Turnbull implored fellow parliamentarians and the country “to above all work together to effect this critical (anti-domestic violence) cultural change for the protection of women” (Turnbull, 2015). However, during Turnbull’s time as Prime Minister the Commonwealth Government did not support workplace domestic violence entitlements in the National Employment Standards. Turnbull was replaced as Prime Minister on 23 August 2018 (Patrick, 2018). In 2016 the above Senate Committee recommended that the Australian Public Service amend its bargaining policy for domestic violence (Recommendation 6.36, Australian Parliament, 2016):

to allow agencies and employee bargaining representatives to agree on improvements and encourage provisions in enterprise agreements that support victims of domestic violence including access to leave.

The Commonwealth Government rejected this recommendation (Australian Government, 2016). As an employer at this time, it conveyed an orientation strongly antipathetic to enterprise bargained domestic violence leave entitlements in the Australian Public Service.

#### **4.6.2 2015 – Promotion of workplace rights resulting from high profile domestic violence cases**

Real life domestic violence incidents led to workplace domestic violence policy reforms. Due to the tragic circumstances of her son’s death from family violence, Rosie Batty became a well-known anti-domestic violence campaigner in 2014. Batty was awarded 2015 Australian of the Year by the Australia Day Council, a not-for-profit Commonwealth Government owned social enterprise. In her role Batty engendered support for domestic violence leave not only from speaking to employers but to unions, federal, state and territory parliaments, the Victorian Royal Commission into Family Violence, journalists, not-for-profit organisations, and the community (e.g., Australian Broadcasting Corporation, 2015a, 2016; Hawley, Clifford &

Konkes, 2018; Sydney Morning Herald, 2015). High profile domestic violence cases were a factor driving the establishment of the Victorian Royal Commission into Family Violence (Yates, 2018), which (as discussed below) made the recommendation for paid domestic violence leave in the National Employment Standards.

#### **4.6.3 2015–2017 – Lead up to the modern awards domestic violence leave decision**

The ALRC had recommended in 2011 that the Fair Work Commission consider how family violence terms could be added to modern awards. For the 2014 review of these awards the ACTU brought the case for ten days of paid domestic violence leave and an additional two days of unpaid leave. The ACTU's submission argued that this would enable a further two million Australian employees access to domestic violence leave, adding to the one million already covered, and that paid leave could make the difference to an employee's ability to leave a domestic violence situation (ACTU, 2016).

The Productivity Commission's Workplace Relations Framework Inquiry team recommended (as the ALRC had previously done) that, before deciding on whether to include domestic violence leave in the National Employment Standards, the Commonwealth Government should wait to see if the Fair Work Commission allowed it in modern awards, which were undergoing review (Productivity Commission, 2015, p. 552). The Productivity Commission (2015, p. 552) noted that recommendations from the Victorian Royal Commission would also be available at that time.

The Victorian Royal Commission into Family Violence made recommendations for workplace domestic violence policy including one in relation to the National Employment Standards. Recommendation 190 that family violence leave in the Victorian public sector be supported by access to suitable services was in the process of being implemented at the time of writing (Victorian Government, 2020). Recommendation 191 that the Victorian Government, through

the Council of Australian Governments, encourage the Commonwealth Government to amend the National Employment Standards to include paid domestic violence leave (Victorian Government, 2020) was fulfilled by Victorian Premier Daniel Andrews at the December 2016 Council of Australian Governments meeting (Grattan, 2016). At this meeting, the Commonwealth Government agreed to further consider the matter “following the Fair Work Commission’s decision, (now) expected in early 2017” (Commonwealth Heads of Government, 2016).

#### **4.6.4 2017–2018 – Fair Work Commission decision on domestic violence leave in modern awards**

In 2017 a Full Bench of the Fair Work Commission formed the preliminary view that family and domestic violence leave provisions were necessary. Submissions from the ALRC, the AHRC and the Victorian Royal Commission into Family Violence supported the introduction of paid domestic violence leave into modern awards (Fair Work Commission, 2018). The Fair Work Commission (2018) proposed unpaid leave and rejected the ACTU’s claim arguing:

We are not satisfied, at this time, that it is necessary to provide ten days paid family and domestic violence leave to all employees covered by modern awards.

The Fair Work Commission continued to deliberate on particulars of domestic violence terms within modern awards, with the outcome of five days of unpaid family and domestic violence leave coming into effect in modern awards in August 2018 (Fair Work Commission, 2018). The Fair Work Commission proposed to review the issue in June 2021 after unpaid leave had been operating in modern awards for three years (Fair Work Commission, 2018).

#### **4.7 Australian federal political party and ACTU positions on domestic violence leave 2015–2018**

During this period pressure on the Coalition Government for domestic violence leave in the National Employment Standards grew from the ACTU, the Australian Labor Party and the Australian Greens. The Australian Services Union launched the We Won’t Wait – End

Domestic Violence Campaign for paid domestic violence leave in the National Employment Standards in 2015 (Australian Services Union, 2015), a position supported by the ACTU (ACTU, 2015). Labor policy was for five days of paid leave in November 2015 (Anderson, 2015). In November 2017, the Australian Greens stepped up pressure on both Labor and the Commonwealth Government by announcing they were bringing a bill to provide ten days of paid domestic violence leave in the National Employment Standards (Australian Greens, 2017). A week later in December 2017 Labor promised to bring a bill for ten days of paid domestic violence leave in the National Employment Standards if they won the 2019 federal election. The Australian Greens brought the *Fair Work Amendment (Improving National Employment Standards) Bill 2018* in February that year, which did not progress to a second reading. The Coalition continued to resist making a commitment on domestic violence leave until after the Fair Work Commission decision to include five days of unpaid leave in modern awards, which was made known in March 2018 (FWC [2018] FWCFB 1691), became effective in August 2018.

#### **4.8 Five days of unpaid domestic violence leave enshrined in National Employment Standards**

After five days of unpaid domestic violence leave took effect in modern awards in August 2018, the Coalition Government moved somewhat rapidly to include this same entitlement in the National Employment Standards via the *Fair Work Amendment (Family and Domestic Violence Leave) Bill 2018* (Department of Skills and Employment, 2018). When the bill was announced on 13 September 2018 and read in parliament shortly thereafter, the Minister for Jobs and Industrial Relations and Minister for Women, Kelly O'Dwyer, said the Coalition's proposed entitlement for five days of unpaid leave in the National Employment Standards:

extends the decision of the Fair Work Commission in March 2018 to grant five days' unpaid leave to employees covered by modern awards to all other employees covered by the Fair Work Act. (Department of Education, Skills and Employment, 2018)

The reference above to “*all* other employees” shows a concern for uniformity of domestic violence leave provisions for employees covered by the Fair Work system. An additional effect noted by O’Dwyer in the Bill’s second reading was that it ensured no employer, particularly small businesses, would now be unfairly treated by having to supply domestic violence leave (due to the Fair Work Commission’s modern awards decision) when other employers did not (Parliament of Australia, 2018a). Labor and Australian Greens MPs sought to amend the bill to legislate for ten days of paid domestic violence leave, which was rejected by the Coalition (Parliament of Australia, 2018b). In doing so the Coalition exhibited a far less generous social equity orientation towards domestic violence leave than had been extended by the ACTU, Labor and the Australian Greens. The bill was finally passed by both Houses of Parliament on 6 December 2018.

#### **4.9 Timeline of workplace domestic violence policy outcomes and events 1996 – 2018**

Table 3. below shows the cumulative development of significant workplace domestic violence policy outcomes and events during the period 1996 to 2018. It highlights the rapidity of workplace domestic violence policy and entitlements development in Australia. In 2009, McFerran first conceived of the idea of paid domestic violence leave. By 2010 the first of such entitlements were included in an enterprise agreement. By 2018, all workers covered by the *Fair Work Act, 2009* (Cth) had access to a minimum of five days of unpaid domestic violence leave per annum.



**Table 3. Timeline of significant events and outcomes of Australian workplace domestic violence policy development 1996-2018**

1997	Coalition Government (Cth) establishes <i>Partnerships Against Domestic Violence</i> program
2008	Australian Human Rights & Equal Opportunity Commission community consultation tour
2009	<i>Fair Work Act 2009</i> (Cth) operative from June
2010	<i>Safe at Home, Safe at Work Project</i> funded by the Commonwealth DEEWR First paid domestic violence leave clause negotiated in an enterprise agreement Sex Discrimination Commissioner establishes Male Champions of Change
2011	First <i>National Plan to Reduce Violence Against Women &amp; their Children 2010–2022</i> February: NSW Public Service staff entitled to domestic violence leave via Crown Employees (Public Service Conditions of Employment) Award 2009 ALRC recommends including domestic violence leave in enterprise agreements, modern awards and the NES AHRC canvasses domestic violence as a separate ground for discrimination
2012	ACTU policy for domestic violence to be included as a ground for the right to request flexible working arrangements in the NES Northern Territory public sector employees granted paid and uncapped domestic violence leave via Miscellaneous Leave (By-law 18)
2013	NES right to request flexible working arrangements expanded to include employees impacted by domestic violence via <i>Fair Work Amendment Bill 2013</i> Dec: Tasmanian public servants entitled to use leave if impacted by domestic violence WGEA requires employers to report on employee domestic violence provisions in place
2014	ACT public sector employees formally entitled to domestic and family violence leave
2015	ACTU claim for paid domestic violence leave in modern awards begins circa 2014–2015 Anti-domestic violence campaigner Rosie Batty made Australian of the Year Victorian Royal Commission into Family Violence begins 13-month enquiry November: South Australian and Queensland public servants eligible for paid domestic violence leave December: VIC announces 20 days of paid family violence leave for public sector permanent employees and unpaid leave for casual employees ALP pledges 5 days of paid domestic violence leave in the NES if elected in 2016 Australian Public Service Commission bargaining policy prohibits new domestic violence entitlements
2016	WGEA Employer of Choice eligibility requirement for employers to offer domestic violence provisions Productivity Commission recommends acting to include domestic violence leave in the NES should wait until the Fair Work Commission modern awards decision
2017	August: Western Australia announces 10 days of paid domestic violence leave for public servants Nov: ACTU launches We Won't Wait campaign for 10 days paid domestic violence leave in NES; Australian Greens propose bill for NES to include 10 days of paid domestic violence leave December: ALP commits to 10 days of paid domestic violence leave in the NES
2018	August: 5 days of unpaid domestic violence leave come into effect in modern awards Australian Public Service employees can access paid personal, carers or miscellaneous leave for domestic violence November: NSW public servants entitled to 10 days of paid domestic violence leave, from 1 January 2019 12 December: 5 days of unpaid domestic violence leave enshrined in NES via the <i>Fair Work Amendment (Family and Domestic Violence Leave) Bill 2018</i>

Key: ACTU – Australian Council of Trade Unions; ALP – Australian Labor Party; ALRC – Australian Law Reform Commission; AHRC – Australian DEEWR - Department of Education, Employment and Workplace Relations; NES – National Employment Standards; WGEA – Workplace Gender Equality Agency.

#### **4.10 Summary**

The thesis finds that anti-domestic violence advocate Ludo McFerran and Safe at Home, Safe at Work Project actors, funded by the Commonwealth Government, were the primary instigators of Commonwealth and State and Territory Government workplace domestic violence policy innovation in Australia. The Commonwealth Government changed from a laissez-faire business orientation on workplace domestic violence policy in 2008 to a bargaining orientation in 2013, to somewhat of a social equity orientation in December 2018 which included unpaid domestic violence leave in the National Employment Standards. Chapters 5 to 8 make further findings on how and why workplace domestic violence policy was innovated in Australia.

## **5. Findings – Non-traditional actors**

### **5.1 Introduction**

Chapter 5 expands on how and why the workplace domestic violence policy events and outcomes in Chapter 4 occurred. It presents the motivation, strategies, barriers faced, and outcomes achieved of non-traditional actors in the development of workplace domestic violence policy and entitlements in Australia. It concludes with a summary of the findings in relation to non-traditional actor contribution to workplace domestic violence policy and entitlements development.

### **5.2 Non-traditional actors**

#### **5.2.1 Ludo McFerran**

From documentary evidence and interviews for this research, anti-domestic violence advocate Ludo McFerran was recognised as the instigator of workplace domestic violence entitlements in Australia. Union actor interview participants acknowledged McFerran's role as instigator. For example,

It started with Ludo and her work with the Australian Domestic and Family Violence Clearinghouse. I think it is important that we acknowledge we are drawing on their hard work.  
Participant 12, Natalie Lang

Domestic violence leave first occurred to me with my contact with Ludo all those years ago (early 2010). I remember thinking, agreeing with Ludo that this was the missing link. This was something very practical we could do.  
Participant 5, Ged Kearney

Other interview participants of many actor types sharing this view included Jane Aeberhard-Hodges (international human rights consultant and former head of the International Labour Organization Bureau for Gender Equality), Jennifer O'Donnell-Pirisi (former Women's Officer, Victorian Trades Hall Council), Lisa Darmanin (Branch Secretary, Australian Services Union VIC and TAS Branches), Jeannie Rea (former President, National Tertiary Union) and Shabnam Hameed (Operations Officer, International Finance Corporation and formerly

Women's Industrial Officer at the NSW Public Services Association). After McFerran raised the idea of workplace domestic violence entitlements, other actors then progressed it in their own spheres of influence.

Throughout her career McFerran set out to secure the safety, wellbeing and equitable treatment in the eyes of the law of people impacted by domestic violence. McFerran's motivation for developing workplace entitlements came after observing the failure over three decades of welfare and criminal law systems to adequately secure the safety and long-term security of people, primarily women, experiencing domestic violence. McFerran helped to establish women's refuges in Glebe in inner Sydney in the 1970s and said of that time:

It wasn't as if we'd had a dozen fantastic options... these were acts of desperation.  
Participant 1, Ludo McFerran

A refuge-centric response to domestic violence came to be the norm in the domestic violence sector (Piper & Stevenson, 2019; Theobald, 2013). Through attending court with women experiencing domestic violence McFerran observed that magistrates frequently applied an archaic legal principle, *a man's home is his castle*, rather than exclude male perpetrators of domestic violence from the home, albeit that the woman who had experienced violence from a man may have had equal right to live there. To redress this inequity, in 2004 McFerran and others devised the *Staying Home, Leaving Violence Project*, funded by the NSW Government, to enable women to stay safe in their own homes free from violence. This project is still operating (NSW Government, 2020). In 2004 the Staying Home, Leaving Violence Project trialled a safe-from-violence framework from research done through the Australian Domestic and Family Violence Clearinghouse (Edwards, 2003). However, McFerran observed that while this project assisted women in the short term to keep their homes, it did not protect them from losing their jobs (and their homes as a result):

You kept hearing women a lot of times saying I'm so lucky I had a good boss. And that's where I thought, well no, it should not be a matter of luck. There was far too much evidence of people losing their jobs and not being treated decently.

Participant 1, Ludo McFerran

This confirmed for McFerran that workplace support for workers experiencing domestic violence was optional and often token, which McFerran had gleaned from employers through working on the Partners Against Domestic Violence Program 1997 to 2003:

We [anti-domestic violence advocates] worked with CEOs on the Partnerships Against Domestic Violence Program. And what they do, they have such slap-up conferences...and everyone patting themselves on the back...There was some research from UNSW that found there were some good individual [employer] responses, but it stayed discretionary.

Participant 1, Ludo McFerran

The research McFerran referred to above (Murray & Powell, 2008) also found that employer support for employees experiencing domestic violence was linked to CEO initiative, which subsided when a CEO left the company. However, McFerran explained it was not until the inaugural 2005 Australian Bureau of Statistics Personal Safety Survey (Australian Bureau of Statistics, 2006) that the full extent to which employees were being impacted by domestic violence was revealed:

It was an incredibly important piece of data for us. It goes to the issue that I've always said, domestic violence can happen to anybody.

Participant 1, Ludo McFerran

The 2005 survey showed that approximately one third of all women in paid work had been impacted by domestic violence and that 62.9% of the women surveyed who were experiencing domestic violence or had experienced it (since the age of 15) were in the paid workforce, as were 82% of men in this category (Australian Bureau of Statistics, 2006, p. 34). McFerran realised that workplace domestic violence entitlements were needed to augment welfare and criminal justice responses to domestic violence.

McFerran tenaciously sought support to make her idea of workplace domestic violence entitlements in Australia a reality. In late 2009, after a lack of response from the ACTU, McFerran recalled how she was able to interest the Australian Domestic and Family Violence Clearinghouse in her idea. They had a vacancy for a job McFerran was able to fill, from which she could work on developing workplace domestic violence entitlements, as she put it, "in her

spare time”. McFerran explained she publicised the idea of domestic violence leave with community (including business) and human rights groups. McFerran tried unsuccessfully via Women’s Services Network, Australia’s national peak body for specialist women’s and domestic violence services, also known as WESNET, to secure funding to develop workplace domestic violence entitlements. She recalled how she eventually gained support from the NSW Public Service Association and worked with them on a model paid domestic violence leave clause, in particular with the then Industrial and Women’s Officers Shabnam Hameed and Maria Cirillo. Cirillo and McFerran recalled how an opportunity arose for the Public Service Association to log a claim (as in ‘make’ a claim) for domestic violence leave entitlements in an enterprise agreement underway at the University of NSW. This led to the UNSW (Professional Staff) Agreement 2010, which included a clause for unpaid domestic violence leave, a first of its kind (AG 2010/14910, approved by the Fair Work Commission in December 2010). Domestic violence clauses were next bargained in the September 2010 Surf Coast Council Enterprise Agreement No.7 (AG 2010/19899), with its landmark entitlement of 20 days of paid domestic violence leave.

McFerran and Australian Domestic and Family Violence Clearinghouse researchers gained further external support for the concept of domestic violence leave by launching it at the University of NSW in April 2010. Tanya Plibersek (then Commonwealth Minister for the Status of Women), Ged Kearney (newly elected President of the ACTU) and Elizabeth Broderick (then Sex Discrimination Commissioner) attended. Broderick spoke at the event, acknowledging the contribution of anti-domestic violence advocates, and the shift to include workplace regulation (in the UNSW enterprise agreement) as a response to domestic violence:

I am hopeful that these sorts of provisions will be part of a continued commitment to violence prevention. I want to congratulate UNSW on hosting the Domestic and Family Violence Clearinghouse, a wonderful organisation which makes a crucial contribution to the issue nationally...I hope that what we are seeing today is the beginning of a new language and a new

model for committed employers. I look forward to being able to share this with all the employers I meet and the international human rights community more broadly.  
(Australian Human Rights Commission, 2010, p. 1)

This was the approximate time when Elizabeth Broderick and ACTU President Ged Kearney were first made aware of the concept of domestic violence leave:

Ged Kearney got this immediately as she was a nurse and she understood about the number of cases coming into triage... she became a champion from day one.  
Participant 1, Ludo McFerran

Shortly after, as shown in Chapter 4, influenced by McFerran and the Australian Domestic and Family Violence Clearinghouse, both the AHRC and the ACTU advocated for domestic violence leave provisions in Australia. Following the launch McFerran contacted Tanya Plibersek to apply for federal funding for the Australian Domestic and Family Violence Clearinghouse's workplace venture. These findings reveal the extent to which McFerran and unions were able to influence workplace domestic violence policy and entitlements development at that time:

I went to Tanya [Plibersek] and said I and we [the Clearinghouse] can't do this alone. This is taking off and we need to develop this. She said talk to [Julia] Gillard's office, she had workplace relations [as Minister for Employment and Workplace relations], and they asked us to put in a submission. Amanda Lampe was a chief advisor in Gillard's office, and she got right back in touch and said it's a great idea, tell all the unions to stop ringing us...

Once in a blue moon something happens in your life and you go, that's incredible... and they gave us the money...  
Participant 1, Ludo McFerran

The McFerran and Australian Family and Domestic Violence Clearinghouse submission became the *Safe at Home, Safe at Work Project*, funded for three years by the Commonwealth Department of Education, Employment and Workplace Relations, set out in Chapter 4. McFerran explained why development of workplace domestic violence policy progressed so rapidly after this UNSW event:

It was a whole series of discussions that had been building and then the right people at the right time, and then it went off like a bonfire... There were people like Tanya [Plibersek] and Julia [Gillard]. It was the right government at the right time. And the Human Rights Commission and the Australian Law Reform Commission. There were some very good people in these

organisations who got it very quickly and were able at that time to advance those ideas. It was an idea whose time had come.  
Participant 1, Ludo McFerran

McFerran's ideas for how to improve the lives of domestic violence victims, through workplace entitlements, were shared by Commonwealth Government actors at that time. The actor-to-actor personal connections illustrated above assisted in the transfer of McFerran's ideas to industrial relations actors empowered to act on them.

### **5.2.2 Safe at Home, Safe at Work Project**

The funding from the Commonwealth Government enabled McFerran and the Australian Domestic and Family Violence Clearinghouse to engage a small team of staff to work on the project, with expertise in employment relations and labour law and an understanding of the machinations of domestic violence (Participant 1). Sharing McFerran's motivations, they proceeded to rapidly disseminate information on workplace domestic violence entitlements to employers, unions and state actors (Participants 1 and 7). The initial primary motivation of the team was to encourage enterprise bargaining of the clauses. Along with McFerran, and supported by academics at the Australian Domestic and Family Violence Clearinghouse, team members included Robyn Dale, then director at the Union Research Centre for Organisation (Australia, also known as URCOT) and Alice (Taschina) Orchiston, a lawyer with experience at the Women's Legal Service, New South Wales, and labour law academic. The team's professional knowledge and networks facilitated its rapid outreach to unions and employers and lobbying of state bodies to progress the entitlements (Participants 1, 7, 11, 14 and 29).

With McFerran, Robyn Dale co-managed an Australia-wide strategy to contact all unions and employers:

My job was to look after the southern part of Australia. So, I had Perth, Adelaide, Victoria in particular, and Tasmania. Well, it ended up being a bit fluid because I also did a lot of work in the Northern Territory and in Queensland. My job was to work with unions and employers. I had a really good relationship with unions, and I had a fairly good relationship with a lot of



employer groups because the work of URCOT was to bring union and employer groups together.

Participant 7, Robyn Dale

Strategies to promote and explain the new workplace entitlements and to overcome barriers to their acceptability varied according to whether outreach was to unions or employers:

When I was talking to employers, we were looking at productivity benefits. We discussed being an employer of choice...there were times when unions would call me to talk to their [employers'] HR [Human Resources Departments]. I was an independent person to bring in when HR were frightened about agreeing to the clauses...

Participant 7, Robyn Dale

From Robyn Dale's perspective, barriers to union acceptance of the new workplace entitlements arose when union women's officers did not embrace the concept, union officials had experienced domestic violence, and when individual officials deemed the entitlements may prove offensive to political contacts:

People [e.g., women's officers] who had family violence in their backgrounds either thought the clauses were fantastic or they were incredibly resistant... This isn't about criticism of those people, it's about being able to sit with something where, where people didn't want it and just sit with them and take a gentle approach. And not sort of pummel them over the head with it ...other union secretaries were resistant because of personal relationships [e.g., where they] were married to someone who worked in a politician's office...

Participant 7, Robyn Dale

Such barriers were overcome, as Dale explained, as a critical mass of enterprise-bargained domestic violence leave clauses accumulated. Dale and other workplace actors provided training to help employers to implement domestic violence leave once it was in place in their organisation, to ensure as much as possible that the leave clauses effectively achieved what they were designed to do (Participants 1 and 7).

### **5.2.3 Safe at Home, Safe at Work Project research**

Scarcity of research on how domestic violence was dealt with in Australian workplaces was a further barrier to the acceptance of the need for the proposed new entitlements. This led Safe at Home, Safe at Work Project actors to design the *Safe at Home, Safe at Work? National Domestic Violence and the Workplace Survey* carried out in 2011 by the University of NSW and Micromex Research (UNSW, 2011). The research confirmed that, for the survey's over

3,600 union member participants (working largely at universities and hospitals), domestic violence was a significant workplace issue. The survey provided evidence for the need for workplace domestic violence leave and supports and was cited in the Bills Digest accompanying the Fair Work Amendment (Family and Domestic Violence Leave) Bill 2018 (Parliament of Australia, 2019). The research findings were made available on the university website, along with resources for union and employer development of workplace domestic violence entitlements.

The instrument of the *Safe at Home, Safe at Work? National Domestic Violence and the Workplace Survey* was used by researchers in other countries. Versions of the survey were carried out in New Zealand in 2013, the United Kingdom in 2014, Turkey in 2015, the Philippines in 2015, Switzerland in 2016 and Taiwan in 2017 (Domestic Violence at Work Network Surveys, 2020), informing changes in international regulation. For instance, the Canadian version of the survey (Wathen, MacGregor & MacQuarrie, 2015) influenced politicians to bring the bill leading to Ontario, Canada's 2016 adoption of paid and unpaid domestic violence leave (Legislative Assembly of Ontario, 2016). Through its survey instrument, the Safe at Home, Safe at Work Project influenced other countries to institute workplace domestic violence rights and standards, as set out in the Bills Digest (Parliament of Australia, 2019) accompanying the *Fair Work Amendment (Family and Domestic Violence Leave) Bill 2018*.

#### **5.2.4 International outreach of Safe at Home, Safe at Work Project actors**

McFerran promoted the work of the Safe at Home, Safe at Work Project internationally from 2011 to 2013 with Sex Discrimination Commissioner Elizabeth Broderick in forums with the International Labour Organization (ILO) and the United Nations (ILO, 2011, 2013). This deepened networks with the Australian Human Rights Commission, the International Labour Organization and Global Union Federations to progress the need for rights, standards and

entitlements at work to ameliorate domestic violence. This work led to the inclusion of domestic violence terms in the International Labour Organization's C190 – Violence and Harassment Convention, 2019 (Participants 1 and 10), ratified by Fiji and Uruguay at the time of writing (ILO, 2020a). The Commonwealth Government was aware of C190 developments, for instance, via their permanent representative to the International Labour Organization (Australian Government, Attorney-General's Department, 2020). In this context of gathering national and international support for workplace domestic violence entitlements, the Coalition Government's outspoken stance against domestic violence leave in the National Employment Standards became increasingly anachronistic. It was a stance at odds with *the idea whose time had come* (as McFerran described workplace domestic violence entitlements). This was a further pressure on this government to change its workplace domestic violence policy in 2018.

#### **5.2.5 Safe at Home, Safe at Work Project actors' push for legislative change**

Interview participants McFerran, Dale and Orchiston identified barriers to the 2010 to 2013 progress of workplace domestic violence rights and entitlements needing to be addressed by regulatory and law reform. Employers during this time generally preferred organisational policy to support employees impacted by domestic violence. Standards within employer domestic violence policy and enterprise bargained domestic violence clauses were uneven. For these reasons Safe at Home, Safe at Work Project actors pushed for regulatory reforms in family violence, occupational health and safety, anti-discrimination and industrial relations.

Alice Orchiston recalled her role in the project's law reform strategies from 2011 to mid-2012:

I was a lawyer working at the Women's Legal Service specialising in domestic and family violence... I had done a Masters in Labour Law and Relations... I think what was initially missing from the project was a legal, policy angle... My role was to provide input into the Australian Law Reform Commission's family violence enquiry and the specific issue papers in relation to the project. So, at that point I think there had already been a lot of consultation with unions and there was a lot of traction and momentum already, and there were lots of agreements with domestic violence clauses in them. But what was missing was the law reform aspect; so, trying to make changes to the Fair Work Act and, also pushing for guidance material on OHS law. But that did not come to fruition.

Participant 29, Alice Orchiston

First, project actors targeted the Australian Law Reform Commission 2011 family violence inquiry. The Commission accepted the Australian Domestic and Family Violence Clearinghouse's reasoning that a collectivist response to domestic violence was needed and could be achieved through statutory reform of workplace law. This is seen in the Australian Law Reform Commission's (2011c) preliminary recommendations to the Commonwealth Attorney-General:

Recommendation:

17.34 While important, the Australian Domestic and Family Violence Clearinghouse argues that mechanisms other than statutory entitlements alone are inadequate, as statutory entitlements are 'fundamental to achieving widespread change to address the impact of family violence in the workplace'. This is in part because provision of such entitlements acknowledges that 'dealing with family violence is a community rather than just an individual responsibility'. It is also important in ensuring enforceability and consistency.

17.35 Secondly, the introduction of family violence leave as part of the minimum safety net under the NES is likely to play an educative role. It gives express recognition to family violence as a national issue that has a significant impact on the Australian economy. It also recognises that both the government and workplaces have a role in, and responsibility for, responding to family violence.

This was prior to the Australian Law Reform Commission's full report *Family Violence and Commonwealth Laws, Improving Legal Frameworks* (2011b), which supported the introduction of paid domestic violence leave in the National Employment Standards (as summarised in Chapter 4). McFerran and representatives from the ACTU, Australian Chamber of Commerce and Industry, Macquarie Law School and the Department of Workplace Relations Legal Group were participants in this 2011 report's compilation. It greatly assisted the work of the Safe at Home, Safe at Work Project, as Robyn Dale recalled:

The Australian Law Reform Commission's work on this gave us a platform to try and get [domestic violence leave into] the NES... And the Australian Law Reform Commission said that in terms of their recommendations they get 98% of them up. It might then take 100 years, but they get them up. That was worth going for. And that led down the track to us seeing several politicians... We worked with the ALP women's committee... it was getting a whole range of key stakeholders to agree that this was important.

Participant 7, Robyn Dale

Boosted by the support of the Australian Law Reform Commission for the Safe at Home, Safe at Work Project's agenda, project actors then lobbied politicians and wrote submissions to the Commonwealth Government for anti-discrimination and industrial relations law reforms.

Having approached unions, employers and Commonwealth agencies, the project’s actors sought the power of elected government to change regulation to entitle all Australian workers covered by Fair Work access to workplace domestic violence entitlements. Examples of the project’s submissions to the Commonwealth Government are set out in Table 4.

**Table 4. Examples of Australian Domestic and Family Violence Clearinghouse law reform submissions to the Commonwealth Government**

<b>Date</b>	<b>Name of submission</b>	<b>Themes and purpose</b>
2011	<i>Submission to Consolidation of Commonwealth Anti-Discrimination Laws: Discussion Paper Improving Protection for Victims of Domestic Violence</i> (Orchiston, 2019)	Submission to the Attorney-General’s Department for express protections for domestic violence victims to be included in the Consolidation of Anti-Discrimination Laws; Endorsed by 86 stakeholders
March 2012	<i>Safe at Home, Safe at Work submission: Equal Opportunity for Women in the Workplace Rights and Entitlements</i> (Parliament of Australia, 2012)	Draft of specific benchmarks on domestic violence workplace rights and entitlements; For ministerial attention
April 2013	<i>Australian Domestic and Family Violence Clearinghouse Submission to the Senate Standing Committee on Education, Employment and Workplace Relations Inquiry into the Fair Work Amendment Bill, 2013</i> (Parliament of Australia, 2013a)	Recommendations to protect employees disclosing domestic violence to employers to be included in any amendment to the <i>Fair Work Act 2009</i>
May 2013	<i>Fair Work Amendment Bill – extend protection to workers experiencing Domestic Violence, Submission Number: 20.1</i> (Parliament of Australia, 2013b)	Suggested amendments to the Fair Work Amendment Bill, 2013 to clarify terms and implementation of proposed domestic violence measures; For ministerial attention

Through written submissions, McFerran and Safe at Home, Safe at Work Project actors engaged the Australian Law Reform Commission and politicians to progress the cause of workplace domestic violence rights and entitlements.

### **5.2.6 Legislative outcomes of Safe at Home, Safe at Work Project to 2013**

While the project’s successes were far-reaching, proponents felt a gap remained on occupational health and safety and anti-discrimination laws and domestic violence leave in the National Employment Standards.

Occupational Health and Safety authorities contacted by *Safe at Home, Safe at Work Project* actors were not receptive to addressing domestic violence as a work safety issue. Alice Orchiston explained:

In conversations with people who were working in that area in government, they didn't get that it could be a workplace issue... It did seem perhaps there was a gendered aspect to this because we'd only been talking to men who work in that area, and they didn't see it as something that should be on their agenda.

Participant 29, Alice Orchiston

Similarly, while changes to anti-discrimination laws proposed by Safe at Home, Safe at Work Project actors to include domestic violence as a ground for discrimination were considered by politicians, only the very minor change of the insertion of gender identity in the *Sex Discrimination Act 1984* (Cth) eventuated.

Project actors were disappointed that only the inclusion of the employee right to request flexible working arrangements was the outcome of the 2013 amendments to the *Fair Work Act 2009* (Cth):

We pushed for the leave and ended up with the right to request.

Participant 7, Robyn Dale

And a right to request was not much. Because the employer can deny that request.

Participant 29, Alice Orchiston

McFerran was concerned that Commonwealth Government oversight of the implementation of workplace domestic violence entitlements would fail if the project were to be discontinued and Labor lost power. McFerran recalled a conversation with then Minister for Workplace Relations, Bill Shorten:

Bill Shorten said, 'you've done well...Thanks Ludo, go home and put your feet up'. And I said, 'what's the plan? Because who's going to oversee this? Who is going to make sure this is well implemented? That research is kept up to date? There are a whole lot of emerging issues, like what to do with perpetrators'.

Participant 1, Ludo McFerran

From the Commonwealth Government's point of view, in mid-2013 the project had achieved its aim:

to improve the knowledge and capacity of employee organisations, employers, and employer organisations to support employees experiencing domestic or family violence.

Department of Social Services (2014a)

The Government appeared satisfied that one million workers were now covered by domestic violence clauses in enterprise agreements and that domestic violence terms were now in the National Employment Standards as a reason for the right to request flexible working arrangements (Participant 1).

When funding for the *Safe at Home, Safe at Work Project* ended in mid-2013, McFerran continued to progress workplace domestic violence rights and entitlements in Australia and internationally, for instance, via the International Labour Organization and through publishing academic articles and online print media articles (e.g., McFerran, 2015). The focus of McFerran's work continued to be to push for standardised and well implemented entitlements that would effectively meet their purpose, to ameliorate domestic violence.

### **5.2.7 Anti-domestic violence advocates**

From interviews and documentary evidence, people who had themselves experienced domestic violence became highly persuasive advocates for workplace domestic violence rights and entitlements.

Union members and delegates with first-hand experience of domestic violence convinced others of the need for workplace domestic violence entitlements. Some were co-opted by unions for this function, while others propelled themselves forward, discussed later in this chapter. From interviews, a delegate of the Victorian and Tasmanian Branch of the Australian Services Union who was also a Surf Coast Council employee decided paid domestic violence leave should be in her workplace after hearing about it at a meeting at Victorian Trades Hall Council. Coincidentally at that time in 2010 Surf Coast Council was negotiating its enterprise agreement. This delegate significantly drove the negotiations towards adopting paid domestic violence leave by putting the clause up at the bargaining table:

She [the delegate], she's like a bulldog, basically said [to us at Victorian Trades Hall Council], 'I've got my teeth in now'. And so, during negotiations she put the claim [for 20-days paid domestic violence leave on the table, which was agreed to]. We could not believe it that it took a union member to go back and dig her heels in and say because she was a victim of domestic violence.

Participant 11, Jennifer O'Donnell-Pirisi

The determination of this delegate to achieve paid domestic violence leave for her workplace was paramount in the eventuating 20 days of paid leave (Participants 8 and 11). It was a profound breakthrough in the development of workplace domestic violence entitlements, as has been documented elsewhere (e.g., Baird et al., 2014).

A Chair of the Women's Services Division of the Australian Services Union, NSW and ACT (Services) Branch, who had herself experienced domestic violence, encouraged its Branch Secretary Natalie Lang in 2015 to call for domestic violence leave in the National Employment Standards.

She was the leading voice on this matter. She said, let's do the work that has to be done to get everyone [that is, all unions] to call for legislative change, because we can't let women go without...The support we received from blue collar unions, white collar unions, service unions, right affiliated unions, left affiliated unions...it was phenomenal.

Participant 12, Natalie Lang

It became the *We Won't Wait Campaign*, overseen by the ACTU. The Chair of the Women's Services Division in 2015 used her personal experience to convince unions of the gravity and extent of domestic violence to collectively act via the ACTU to pressure the Commonwealth Government for the introduction of domestic violence leave in the National Employment Standards.

Interview participants noted how high-profile anti-domestic violence advocates Rosie Batty in 2015 and Kristy McKellar (Victorian Government, 2017) circa 2015 onwards influenced workplace actors to introduce domestic violence policies and entitlements in their organisations:

Our CEO was a member of Male Champions of Change...They had Rosie Batty talk to them and it had a significant impact on the group... [Afterwards he said] I think there's something we should do, can you go away and have a bit of a think about it...

Participant 2



The result was a workplace domestic violence policy enabling domestic violence leave. Robyn

Dale recalled that:

Rosie was an excellent campaigner... Many of the organisations that we were working with also had Rosie...and we didn't know. And not that we should have, but Rosie was all over the organisations as well... I'm not saying that Rosie therefore assisted in the family violence provisions necessarily, but what she did do was to make family violence a significant issue for everyone.

Participant 7, Robyn Dale

The tragedy of Rosie Batty's domestic violence experience engendered sympathetic mass media coverage (Hawley, Clifford & Konkes, 2018). This contributed to public support for greater societal effort to allay domestic violence, including through workplaces.

Debra Eckersley observed the help of key individual Kristy McKellar to convince employers of the need for the entitlements:

I think she [McKellar] worked in the Victorian Government...and she tells the stories in a very corporate environment of what it is like [to try to get to work when experiencing domestic violence]. It really does resonate because she was a reasonably senior person in that organisation.

Participant 9, Debra Eckersley

Like Rosie Batty, McKellar enabled workplace actors to understand the nature of family violence, that it could happen to anyone, and of practical measures they could take to alleviate it, such as by adopting workplace domestic violence policy and entitlements within their organisations. Their work assisted in de-stigmatising domestic violence.

Of the anti-domestic violence advocates with personal experience of domestic violence discussed in Section 5.2.7, it is evident that those attached to unions more affected policy and entitlements change than those who were not.

### **5.2.8 Conclusion**

The findings show that anti-domestic violence advocate Ludo McFerran ideated and instigated the commencement of paid domestic violence leave entitlements in Australia. McFerran's motivation to achieve social equity for employees experiencing domestic violence was shared

by other anti-domestic violence advocates whom she directly and indirectly influenced to promulgate the entitlements. These non-traditional actors were able to persuade sufficient union, employer and state actors to support these social equity aims leading to the rapid development of workplace domestic violence leave entitlements in Australia 2008 to 2018. These findings extend the types of principal policy agents identified in Baird (e.g., 2004, p. 269) to include non-traditional actors and their specific types.

## 6. Findings – Unions

### 6.1 Introduction

This chapter presents findings of union actors' motivations to develop workplace domestic violence entitlements. The chapter then traces how the NSW Public Service Association, Victorian Trades Hall Council and the Australian Services Union (Victorian and Tasmanian Branches) came to lead development of the entitlements. After these three case studies, the chapter presents themes from the union movement's experience of enterprise bargaining for the entitlements. Last, the chapter finds how and why unions embarked on the *We Won't Wait* campaign for the inclusion of paid domestic violence leave in modern awards and the National Employment Standards.

### 6.2 Union motivation to develop workplace domestic violence entitlements

The main reasons unions strove to develop workplace domestic violence leave entitlements were to support the financial independence of employees experiencing domestic violence, raise awareness of the extent to which domestic violence adversely impacted the lives of large numbers of people, take a leadership role in progressing these entitlements, and promote gender equality.

Unions saw the inclusion of workplace domestic violence leave entitlements would assist employees facing domestic violence, mostly women, to maintain their jobs and financial independence:

[It was] a process that provided an industrial entitlement to women in the workplace that they should have access to so that they could keep their jobs.

Participant 32, Mark Morey

This reflected that women were the main targets of domestic violence (Australian Bureau of Statistics, 2005). Interview participants saw keeping a paid job as a way to prevent women

employees faced with domestic violence from homelessness “or with any other major problem as a result of trying to leave family violence situations” (Participant 15).

To further facilitate the financial independence of employees experiencing domestic violence, unions attempted to progress paid (rather than unpaid) domestic violence leave entitlements:

Paid leave is important as we know the stats about women losing work and that they seem so much more for the worse if they don't have economic independence.

Participant 5, Ged Kearney

Unions sought, via their interactions with employers and the state, to ensure “the universality of the paid leave entitlement” (Participant 4, Linda White) for the benefit of all employees. To achieve this, men, and women in all types of employment (e.g., full-time, part-time and casual) were to be eligible for the entitlements.

Unions wanted to bring problems of domestic violence to light to employers and the public through the process of bargaining itself because bargaining provided an opportunity for unions to broach discussion of the sensitive topic of domestic violence with employers and to find measures to prevent it:

An EBA [enterprise bargained agreement] serves to bring the issue of domestic violence out from behind closed doors...it assisted in the conversation around prevention for both survivors and perpetrators, because they are both in workplaces.

Participant 8, Lisa Darmanin

This awareness-raising and solution-finding aim was enhanced by clearly naming the leave entitlement after its purpose:

If we actually had dedicated paid domestic violence leave, and that's what it's called, it sends a very clear message to the workplace, and by virtue of that, hopefully to a broader society, that domestic violence is an issue that we all have to deal with.

Participant 5, Ged Kearney

Unions saw the opportunity for unions to take a leadership role in bringing the Commonwealth Government to enact domestic violence leave in the National Employment Standards (Participants 5, 12 and 32). This recognised the domain expertise in domestic violence of leaders of the Australian Services Union due to their years of experience working with the

domestic violence sector. The Australian Services Union proposal was the *We Won't Wait* campaign, which the ACTU adopted in 2017.

It was a chance to support our female [union] leaders in a proposal they came up with which was very much worthy of support.

Participant 32, Mark Morey

A motivation to do something practical to progress workplace gender equality was highlighted:

In women's workplace entitlements and discussions, I'm always interested in what's the next thing we need to be pushing in a practical sense.

Participant 8, Lisa Darmanin

Darmanin saw the delivery of workplace domestic violence entitlements as a further interconnected part of union endeavours towards achieving gender equality at work:

In workplaces we can do so much more than just delivering on family violence. There's superannuation and the gender pay gap, pay equity, workplace flexibility. All these things are linked.

Participant 8, Lisa Darmanin

Thus, protection of the livelihoods and safety of all workers facing domestic violence and promotion of equality were reasons for union development of the entitlements.

### **6.3 Union development of workplace domestic violence entitlements 2009 to 2011**

This section presents how three union bodies, the NSW Public Service Association, Victorian Trades Hall Council and the Australian Services Union (Victorian and Tasmanian Services Branches), progressed workplace domestic violence entitlements.

#### **6.3.1 NSW Public Service Association 2009 to 2011**

This section shows how and why the NSW Public Service Association was the first union in Australia to develop a model domestic violence clause. It discovers the strategies the association used to drive, achieve and launch the first domestic violence clause in an Australian enterprise agreement. It finds how this launch led to the funding of the Safe at Home, Safe at Work Project and how the Public Service Association was a forerunner in the dissemination of information about workplace domestic violence entitlements.

The Public Service Association came to be the first union to develop the entitlements somewhat fortuitously. In 2009 its then Women's Officer, Shabnam Hameed (Participant 14), heard Ludo McFerran speak about her ideas for workplace domestic violence leave at an Amnesty International fundraiser. Hameed then invited McFerran to share her ideas for workplace domestic violence entitlements with the Public Service Association which led to collaboration between the association and McFerran to develop the entitlements.

Shabnam was pretty much the first person in the whole union movement to recognise that it [McFerran's idea for domestic violence entitlements] was important. Shabnam handed it over to me... and I developed the university strategy, which Ludo was happy with.  
Participant 42, Maria Cirillo

Hameed worked with McFerran on a survey proposal for Women's Services Network (WESNET) funding which was unsuccessful (mentioned in Section 5.2.1) and became a Public Service Association industrial officer in 2010 (and then moved circa 2011 to work on the Safe at Home, Safe at Work Project). Maria Cirillo, a Public Service Association official returning from maternity leave, became its Women's Officer in 2010. Cirillo and McFerran cited that the first work they did together was the development of a model domestic violence clause.

To ensure the model domestic violence clause was as evidence informed as possible, the Public Service Association sought the input of British public sector union, UNISON. McFerran drew Cirillo's attention to the work of UNISON (Participants 1 & 42), which in the mid-1990s developed a suite of supports for employees experiencing domestic violence (Elger & Parker, 2006), albeit these supports did not include paid domestic violence leave (Baird et al., 2014). Through an ex-NSW Public Service Association colleague of Cirillo's, who happened to be working at UNISON, Cirillo and McFerran were able to obtain information from UNISON:

It was the most up to date information around [on workplace domestic violence supports] and what had worked and hadn't worked in the workplace [and] the model clause we drafted was reliant on their experience.  
Participant 42, Maria Cirillo

When the model domestic violence clause was drafted, Cirillo’s strategy was to first *log* (or ‘make’) a claim for it to be included in a university enterprise agreement. In Cirillo’s experience as an industrial officer, universities were relatively progressive employers and sites where media coverage of bargaining issues was readily obtained. The University of NSW was targeted as it had begun negotiations with the National Tertiary Education Union and two other unions (set out in Section 4.5.2 and Table 5 below) for a new enterprise agreement. Cirillo and McFerran approached the Public Service Association’s Second Assistant Secretary “and got his support” (Participant 42) to log the clause, and that of the male union officer leading the university bargaining team (Participant 42). The outcome was the UNSW (Professional Staff) Enterprise Agreement, 2010, which included a domestic violence leave clause (FWC, AG2010/14910, pp.45-46). It stated “the University may offer employees experiencing domestic violence a broad range of support” including access to sick, compassionate and carer’s leave.

This outcome was significant as it established domestic violence as a ground for workplace entitlements. This was assisted by launching this new workplace entitlement at a UNSW event in April 2010:

It had the impact we hoped it would have, which was to have domestic violence recognised as a workplace issue... at the launch we had Ged Kearney [newly elected ACTU President], Elizabeth Broderick [Sex Discrimination Commissioner] and Tanya Plibersek [Minister for the Status of Women]. We had a high-profile university on board, and we made that public... and then leveraged off that in the union movement.  
Participant 42, Maria Cirillo

The launch led to McFerran’s introduction to Commonwealth Government actors able to assist with the funding of the Safe at Home, Safe at Work Project. Cirillo indicated that the model domestic violence leave clause developed by the Public Service Association was frequently emulated (or modified) in domestic violence leave clauses in enterprise agreements thereafter. This is evident in an examination of enterprise agreements 2010 to 2018 containing domestic violence terms.

The Public Service Association developed a mission to disseminate information about the entitlements to the union movement. Cirillo's role in 2010 focused on, in her words, "convincing the union movement that this was a workplace issue". There were obstacles:

To be honest, that was difficult. Ludo went with me... [for example] to the ACTU Women's Committee. They ended up supporting it, but only because Ged Kearney had got on board with it, following our lobbying.  
Maria Cirillo

From the experience of Cirillo, a reason for the union movement's initial reticence to embrace bargaining for workplace domestic violence entitlements was because of how hidden the issue of domestic violence was in workplaces. Cirillo explained that to counter this the Public Service Association disseminated information to unions showing the high cost of domestic violence to employees and employers.

The next strategy of the Public Service Association was to negotiate with the NSW Government and Public Service Commission for NSW public service employees to be awarded the entitlements. Cirillo and McFerran perceived that, although the NSW Labor Government led by Premier Kristina Keneally "were running on domestic violence as an issue generally" (Participant 1), the NSW Public Service Commission was slow in agreeing to the entitlements. In early 2011, just before the March 2011 NSW state election, the Public Service Association alerted the media to the apparent discrepancy between the NSW Government's outward support for measures to combat domestic violence and their public service bargaining policy (Participant 42). Cirillo recalled this resulted in the Sydney Morning Herald article, *Keneally stalls on leave for victims* (Smith, A., 2011) which quoted the Public Service Association's Assistant General Secretary Steve Turner saying:

We suspect it is being seen in the negative way as ... another condition rather than in the beneficial way as protecting women who have been victims.

This slight to the NSW Government's reputation jolted resumption of negotiations for the entitlements:



Once it was no longer negotiations with the employer, once it became a political issue for the government, they then agreed, and we were able to make it happen.

Participant 42, Maria Cirillo

Within a few weeks of the adverse publicity, the NSW Government announced that five days of paid special leave (which employees experiencing domestic violence could use) was to be made available to the state's 300,000 public sector workers. These stipulations were inserted into the Crown Employees (Public Service Conditions of Employment) Award 2009.

### **6.3.2 Victorian Trades Hall Council development of the entitlements 2009 to 2012**

The Victorian Trades Hall Council was the next union body to promulgate workplace domestic violence entitlements (somewhat simultaneously with the Public Service Association). As evidenced by Robyn Dale, Ludo McFerran and Lisa Darmanin, this was in large part due to the commitment of its Women's Officer, Jennifer O'Donnell-Pirisi, and the Victorian Trades Hall Women's Committee. O'Donnell-Pirisi recalled how the idea of domestic violence leave was raised with them. She and others from the Women's Committee were invited by Maxine Morand, the then Victorian Minister for Women, in late 2009 to Victoria's Parliament House to meet McFerran and hear about her ideas for workplace domestic violence entitlements. O'Donnell-Pirisi's experience of domestic violence as a child led to her immediate receptiveness towards McFerran's ideas. The then Secretary of Victorian Trades Hall Council, Brian Boyd, also suffered at the hands of a violent father in his formative years (McCaskie, 2010, p. 22). O'Donnell-Pirisi said that on taking the idea of workplace domestic violence entitlements back to Boyd at Trades Hall, "he thought it was a very good idea" and asked her to research its viability and report back.

To gauge union support for workplace domestic violence entitlements, from late 2009 to mid-2010, O'Donnell-Pirisi held round table meetings with union leaders and affiliates of Victorian Trades Hall Council. She recalled objections they raised included that it was a private issue and nothing to do with the workplace and that the entitlements could have unintended adverse

consequences. O'Donnell-Pirisi noted that some male and female union officials at that time were reluctant to support the entitlements:

Women thought it would be a career killer, which I was astonished about... They thought it would be a sign of weakness.

Participant 11, Jennifer O'Donnell-Pirisi

One male union official said that domestic violence leave would be abused by employees, saying crudely:

'What am I going to do now, go home and slap my wife across the face and then we'll go on a holiday for four weeks'. He chased after me apologising. I was so shocked people thought like that.

Participant 11, Jennifer O'Donnell-Pirisi

O'Donnell-Pirisi noted that she had come across similar objections and obstacles before at the outset of the union push for paid parental leave.

Until mid-2010 Victorian Trades Hall Council efforts to gather support from the union movement for the entitlements were slow. For instance, in 2009 O'Donnell-Pirisi contacted the national peak union council, the ACTU, to see if they would assist to develop and promote domestic violence leave entitlements. O'Donnell-Pirisi said they declined due to their existing commitment to build rights for paid parental leave. This was in the context of the ACTU's paid parental leave campaign nearing its finish, the imminence of the *Paid Parental Leave Act 2010* (Cth), and ACTU President Sharan Burrow's announcement in November 2009 that she was seeking election as General Secretary of the International Trade Union Federation and, if successful, would resign as ACTU President (ACTU, 2009). O'Donnell-Pirisi persevered in developing the entitlements in Victoria with McFerran's assistance:

Every Tuesday or Wednesday I worked with Ludo... and mapped what we could do. A couple of blue-collar unions liked the idea, then the Australian Services Union... but leading to that there was a lot of grunt work... But the more people pushed back the more I pushed forward.

Participant 11, Jennifer O'Donnell-Pirisi

Burrow became General Secretary of the International Trade Union Federation in 2010. O'Donnell-Pirisi explained that, through women's committees, she was from circa late 2011 onwards able to share with the International Trade Union Federation the work done in Australia

to progress workplace domestic violence entitlements. International unions later assisted in supporting development of the entitlements, for instance, in engagement with the International Labour Organization (e.g., ILO, 2017).

O'Donnell-Pirisi recalled how from mid-2010 to 2011 she and those supporting the entitlements at Victorian Trades Hall Council began to overcome union resistance to the entitlements. In mid-2010, backed by Brian Boyd and some unions such as the Australian Services Union, O'Donnell-Pirisi "took a motion to Trades Hall executive and they endorsed the clause as an industrial issue". From O'Donnell-Pirisi, this was a stepping stone to further developing workplace domestic violence policy and entitlements with unions and politicians. After Victorian Trades Hall Council endorsement of the clauses, O'Donnell-Pirisi and McFerran (from the accounts of both) wrote to all state-based trades and labour councils in Australia and lobbied Victorian and federal Labor members of parliament for their support. The ACTU was again approached and, from O'Donnell-Pirisi (as Cirillo noted above), the ACTU's new President, Ged Kearney, was highly supportive of union bargaining for domestic violence leave, as was its 2011 appointed Industrial Campaign Director, (the late) Belinda Tkalcevic. Kearney acknowledged the support the Victorian Trades Hall Women's Committee gave her:

They had a very active women's group, a women's caucus at Victorian Trades Hall. They were a very dedicated lot of women who understood it and really worked hard with me to drive it.  
Participant 5, Ged Kearney

As reported by Dale and O'Donnell-Pirisi, at the recommendation of O'Donnell-Pirisi and Victorian Trades Hall Council, Dale was hired to work on the Safe at Home, Safe at Work Project. O'Donnell-Pirisi explained how she, McFerran and Dale then worked in conjunction for the project's duration (until mid-2013) to promote the leave entitlements.

Unions began to be more persuaded to bargain for domestic violence leave clauses after female union members came forward with testimonies of the dire effects of domestic violence on their

employment (Participants 8 and 11). After hearing such testimony, for instance at conferences, O'Donnell-Pirisi recalled that many union officials became convinced of the need for the entitlements and union members commonly said that if their union did not log a claim for domestic violence leave, they would resign.

Mentoring was another successful means for Victorian Trades Hall Council to progress the entitlements. From O'Donnell-Pirisi, through the Victorian Trades Hall Council *Anna Stewart Memorial Project* (one of several of these projects run by unions in Australia) its interns were introduced to the idea of the leave. One of these interns was the delegate who, after hearing about domestic violence leave via the *Anna Stewart Memorial Project*, insisted that the Australian Services Union log a claim for domestic violence leave at her workplace, Surf Coast Council, resulting in an agreement with 20 days of paid domestic violence leave (FWC AE882682, as discussed in Section 4.5.2). After this many regional Victorian councils followed suit (e.g., see Table 5). O'Donnell-Pirisi recalled another intern who learned of the entitlements through the Anna Stewart Project was Luba Grigorovitch, then a Women's Industrial Campaign Officer at the Victorian Branch of the Rail Tram and Bus Union, who became its State Secretary in 2014. From O'Donnell-Pirisi (and interviewee Tanya Kovac) Grigorovitch was part of the Rail Tram and Bus Union negotiating team achieving the workplace domestic violence entitlements described below. The documentation further shows the forceful role of women union members in the actualisation of domestic violence leave entitlements in Australia:

RTBU Women negotiated alongside the RTBU to get a Domestic Violence Clause in a number of EBAs including Metro, V/Line and Public Transport Victoria. This provision allows for extra paid leave and other support to be given to staff members who experience domestic or family violence.  
Rail, Train and Bus Union (2020)

The first enterprise bargained Rail Tram and Bus Union leave clause gave hundreds of Victorian transport workers access to ten days of paid domestic violence leave via the Rail

Tram and Bus Union and Hodge Rail Enterprise Agreement, operative in early 2012 (FWC AE892554; Rail Tram and Bus Union, 2012). This marked early blue-collar union support for the entitlements.

O'Donnell-Pirisi said that witnessing the accumulating number and quality of workplace domestic violence clauses in enterprise agreements motivated other unions to bargain for the clauses:

A lot of unions wanted to sit on the fence and see what other unions would do. So, when other unions started to come on board... [other unions followed]. Slowly, slowly we got more clauses up in Australia.

Participant 11, Jennifer O'Donnell-Pirisi

The growing number of enterprise agreements containing domestic violence clauses could be readily witnessed by unions and employers via a system set up by the Safe at Home, Safe at Work Project. Each time an enterprise agreement was bargained, its workplace domestic violence clause or lack thereof was given a star rating and publicised on the project's website, now archived (UNSW, 2020). From O'Donnell-Pirisi and McFerran, if a clause was exemplary, such as Surf Coast Council's 2010 agreement with 20 days of paid leave, it achieved the maximum seven-star rating. A female union official working across two unions in the period (Participant 19) said that the focused approach of this system motivated union officials "to tick off the stars" for domestic violence leave, training, access to flexible work, and so forth, when negotiating enterprise agreements with employers.

A barrier to the acceptance of the need for the leave entitlements was the lack of scholarly evidence of the impact of domestic violence on Australian workplaces (Participants 1 and 11). This was counteracted by the *2011 National Domestic Violence and the Workplace Survey Safe at Home, Safe at Work Survey* (explained in Section 5.2.3). O'Donnell-Pirisi assisted in coordinating the survey with unions whose members participated in the survey. Participating unions were the Australian Education Union (Victorian Branch), Australian Services Union

(Victorian Authorities and Services Branch), National Tertiary Education Union, the NSW Nurses' Association and the NSW Teachers Federation (UNSW, 2011, p. 4). The survey found that nearly a third of its 3,611 respondents had experienced domestic violence and, of these, nearly half reported the violence affected their capacity at work and 19% reported that the violence continued at the workplace (UNSW, 2011, p. 2). O'Donnell-Pirisi recalled the survey evidence was key to many employers deciding to include the clauses in their workplace enterprise agreements, and the National Tertiary Education Union (whose members participated in the research) to bargain for the entitlements.

### **6.3.3 Australian Services Union (Victorian and Tasmanian Branch) 2010 to 2011**

The Australian Services Union's Victorian and Tasmanian Branch made early and ongoing inroads into the development of workplace domestic violence entitlements, inspiring its other branches, other unions and regional council employers to do the same.

The Australian Services Union's bargaining for the leave entitlements happened rapidly, first via opportunity rather than planning. For Australian Services Union's Branch Secretary Lisa Darmanin, the idea of workplace domestic violence leave, when they came across it through McFerran, was initially "a left of field idea we hadn't thought about". Darmanin explained that nevertheless the Australian Services Union understood domestic violence as the union represented social and community sector workers who were frontline responders to domestic violence. Darmanin also recalled that in 2007 a social work student had worked as an intern for their union on a project to bring unions and the social work community together. The result was the Walk Against Family Violence march. It was first held in 2008 and became an annual event in Victoria (Australian Association of Social Workers, 2019). Darmanin said the Australian Services Union was funded by the Victorian State Government to run the event until the Liberal Government was elected in Victoria in 2010 and then VicHealth and the Victorian Police were subsidised to run it. From Darmanin, this three-year collaboration of the Australian

Services Union and the social work community, along with the Australian Services Union's representation of frontline domestic violence workers, allowed the Australian Services Union to take the opportunity in 2010 to bargain for workplace domestic violence entitlements.

Darmanin cited that initial hesitation from Australian Services Union officials to bargain for the entitlements (prior to the Surf Coast Council negotiations) was due to the extensive nature of the model domestic violence clause developed by McFerran, the Public Service Association and Victorian Trades Hall Council:

In enterprise bargaining generally what happens is you put a claim that may be one or two paragraphs... but this was very unusual. It was pretty prescriptive. It had not just the leave but all sorts of components about the leave and supports and I think it ran to two pages.  
Participant 8, Lisa Darmanin

After the idea of domestic violence entitlements was raised, Australian Services Union officers began to openly discuss how they had represented members who had experienced domestic violence:

People started coming out and telling us about, oh yes, I represented a member, and she was hospitalised and almost killed by her partner and her employer was going to sack her... We heard that story time and again from our organisers and some delegates who would represent members in that situation where they really would have benefitted from the leave...  
Participant 8, Lisa Darmanin

Darmanin recalled that the first opportunity to bargain for the entitlements came before the Australian Services Union was ready, after one of its delegates (the Anna Stewart Memorial Project intern mentioned above) heard of the leave at Victorian Trades Hall Council:

She got the idea and talked about it with us. That's how we ended up being there. She picked it up and ran with it before we really had done the plan and before we were ready to do the education with our members about why it was an important claim.  
Participant 8, Lisa Darmanin

The result was the 2010 Surf Coast Council agreement. The Australian Services Union's success at Surf Coast Council reportedly encouraged other union branches:

Once they got it up [at Surf Coast Council in 2010] a lot of our branches took heart from that.  
Participant 4, Linda White

The Australian Services Union used publicity as a tactic to secure employer and community support for the entitlements. With the Australian Domestic and Family Violence Clearinghouse, the Australian Services Union gained national publicity for the Surf Coast Council world first paid domestic violence leave entitlement (e.g., Schneiders, 2010). Darmanin explained how Surf Coast Council wanted to avoid the negative publicity the union would have caused them had they denied their employees the entitlements (evidenced also in Baird et al., 2014, p. 200).

Afterwards the Australian Services Union Victorian and Tasmanian Branches' strategy was, Darmanin said, "to tackle local government" and then to introduce it to other industries. By the end of 2011, the Australian Services Union had successfully negotiated domestic violence entitlements with eleven Victorian regional councils (see Table 5) of the 48 in total (Regional Development Victoria, 2020). The quality of the entitlements negotiated in these agreements was somewhat uneven. For instance, the 20 days of paid domestic violence leave Moyne Council included in its agreement (AE886227) contrasted with the unspecified entitlements of the Central Goldfields agreement (AE414763), where employee leave and supports were contingent on Employee Assistance Program recommendations to management. Table 5 shows that in 2010 and 2011 the Australian Services Union led the union negotiations in 14 out of the first 20 enterprise agreements to contain domestic violence entitlements in Australia, including with the first private sector employer, TransGrid.

Table 5 also shows that bargaining for the entitlements in 2010 to 2011 was concentrated in Victoria and in the public sector. A limitation of this data is that it does not show the contribution of the Public Service Association to the bargaining of the historic first enterprise agreement with domestic violence terms at the University of NSW.



**Table 5. Identification of unions involved in the bargaining of Australian enterprise agreements with domestic violence terms 2010–2011**

Enterprise agreement no. and date	Agreement name (abbreviated)	Union bargaining teams	State/ Territory	Industry & sector
AE882682 10/12/2010	Surf Coast Shire Council	ASU, ANF, APESMA	VIC	Public Admin. & Safety
AE882853 16/12/2010	UNSW (Professional Staff)	CPSU, AMWU, NTEU	NSW, ACT	Education and Training
E883755 24/01/2011	Brimbank City Council	ASU, APESMA	VIC	Public Admin. & Safety
AE885457 10/05/2011	TransGrid Employees	ASU, CPSU, CFMEU, CEPU, APESMA	NSW	Electricity, Gas, Water & Waste Services <b>Private Sector</b>
AE885791 24/05/2011	Women's Health West	ASU	VIC	Health Care & Social Assistance <b>Private Sector</b>
AE886056 7/06/2011	PACCAR Trucks Melbourne	AMWU	VIC	Manufacturing <b>Private Sector</b>
AE886227 20/06/2011	Moyne Shire Council	ASU, LHMU, ANF, APESMA	VIC	Public Admin. & Safety
AE886707 8/07/2011	Swan Hill Rural Council	ASU, ANF, APESMA	VIC	Public Admin. & Safety
AE887206 1/08/2011	Central Goldfields Shire Council	ASU, ANF, APESMA	VIC	Public Admin. & Safety
AE887280 4/08/2011	West Gippsland Regional Library	ASU	VIC	Public Admin. & Safety
AE887970 5/09/2011	City of Greater Geelong	ASU, ANF, APESMA	VIC	Public Admin. & Safety
AE888478 22/09/2011	Whitehorse Manningham Regional Library	ASU	VIC	Public Admin. & Safety
AE888561 22/09/2011	Thoroughbred Racing SA Barrier Staff	AWU	SA	Arts & Recreation Services <b>Private Sector</b>
AE888855 13/10/2011	Catholic Healthcare Residential Aged Care	HSUA, ANF	NSW	Health Care & Social Assistance <b>Private Sector</b>
AE888881 14/10/2011	Banyule City Council	ASU, ANF, APESMA	VIC	Public Admin. & Safety
AE889326 8/11/2011	Whittlesea City Council	ASU, ANF, APESMA	VIC	Public Admin. & Safety
AE889445 11/11/2011	Loddon Shire Council	ASU, APESMA	VIC	Public Admin. & Safety
AE889633 25/11/2011	Mitchell Shire Council	ASU, ANF	VIC	Public Admin. & Safety
AE889808 2/12/2011	Eastern Ranges GP Association Inc.	ANF	VIC	Health Care & Social Assistance <b>Private Sector</b>
AE889846 5/12/2011	Presbyterian Aged Care	HSUA, ANF	NSW	Health Care & Social Assistance <b>Private Sector</b>

Key: AMWU – Australian Manufacturing Workers Union; ANF – Australian Nursing Federation; APESMA – Association of Professional Engineers, Scientists & Managers Australia; ASU – Australian Services Union; AWU – Australian Workers Union; CPSU – Community & Public Sector Union; HSUA – Health Services Union of Australia; LHMU – Liquor, Hospitality and Miscellaneous Workers Union; NTEU – National Tertiary Education Union; TWU – Transport Workers Union

Data from Workplace Agreement Database (McFerran, 2015) and the FWC website.

In summary, this section has shown the considerable influence of the Public Service Association, Victorian Trades Hall Council, and the Australian Services Union (Victorian and Tasmanian Branches) in rapidly progressing union development and negotiation of workplace domestic violence entitlements.

## **6.4 Union development of enterprise bargained domestic violence leave entitlements**

This section sets out evidence of barriers union participants perceived needed to be overcome for universal paid domestic violence leave entitlements to progress. These were initial obstacles to convince union feminists to set aside reservations they had about making domestic violence a workplace issue and to persuade union officials to name ‘domestic violence leave’ as such when negotiating these leave clauses in enterprise agreements. Further obstacles to overcome included how to make the leave available to casual workers and that, in 2010, so few employers recognised domestic violence as a workplace issue.

### **6.4.1 Women’s committee and feminist contribution**

Interviewee evidence showed that after some initial hesitation from individual and peak union women’s’ committees and feminists in deciding whether domestic violence was a union and an industrial issue, they quickly grew to support enterprise bargaining of the entitlements. For example, in the case of the National Tertiary Education Union and then of an unnamed union:

In the first round, members of the women’s committee were saying this isn’t an industrial issue. And were using arguments like management won’t go along with this. To which the answer was, well, clearly, we had to persuade them.  
Participant 6, Jeannie Rea

Rea explained how, in a matter of two days, after the women’s committee became convinced of the need for the entitlements, they then convinced the National Executive to add domestic violence leave and supports to the National Tertiary Education Union’s bargaining agenda.

A woman union spokesperson (Participant 19) cited how feminist colleagues of hers were at first sceptical of the entitlements:

From an organising perspective, people wanted delegates to take an awful amount of responsibility [e.g., to educate members about the new entitlements]. I think people thought there was going to be a freefall of counselling happening at the workplace and interference in people's lives. They panicked.

Participant 19, Female union spokesperson

The spokesperson said worry that delegates would be overly put upon “died down very quickly” as union delegates were not called upon to provide employee domestic violence counselling services (Participant 19).

#### **6.4.2 Achieving dedicated leave**

In the experience of then ACTU President Ged Kearney, unions quickly accepted that paid leave was necessary, but not all agreed it had to be dedicated leave:

There was swift acceptance of paid leave, yes, but what took a long time was to actually clarify that it had to be family and domestic violence leave.

Participant 5, Ged Kearney

Kearney said it took campaigning heavily for an estimated five years for all unions to be convinced that calling the leave *special, personal or carer's leave* was insufficient to meet the educative, social norm change purpose of the leave.

#### **6.4.3 Casual worker eligibility**

An issue for unions was how to achieve the entitlements for casual workers (Participant 7), since casual workers were not usually eligible for many types of leave (e.g., annual leave and sick leave). The early bargaining of domestic violence entitlements for casual workers in the horse industry (Thoroughbred Racing South Australia Barrier Staff Enterprise Agreement, AE888561, listed in Table 5) provided the precedent for all types of workers obtaining the leave. The existence of the agreement was publicised on the Australian Law Reform Commission website (ALRC, 2011a). Robyn Dale recalled how this bargaining outcome for casual staff was deemed a breakthrough in the development of the entitlements:

The one thing that was problematic was that casual workers weren't covered. And there was a group, AWU it was in South Australia, had got unpaid leave for casual workers in the horse industry. And that was fantastic because it meant workers' jobs were protected even though they didn't get paid.

Participant 7, Robyn Dale

The leave was made available to all types of workers in the modern awards and National Employment Standards outcomes in 2018.

#### **6.4.4 Stakeholder education**

Union leaders sought to educate workplace stakeholders about domestic violence, the need for the entitlements and, later, on the minimal cost of paid domestic violence leave in businesses where it existed. For Natalie Lang, Branch Secretary Australian Services Union (NSW & ACT Branch), one strategy was to partner with other unions where women's sector union members relayed their experiences of assisting people experiencing domestic violence:

Because we did this with other unions, as it [the union educational program] rolled out we had domestic violence workers standing on building sites at 6.00 o'clock in the morning and addressing hundreds of building workers about family violence...

Participant 12, Natalie Lang

Jeannie Rea recalled how in 2012 and 2013 the National Tertiary Education Union prepared educational materials with which to inform union bargaining teams about domestic violence, which management teams came to share, leading to an atmosphere conducive to productive bargaining of the entitlements.

We developed a set of slides, a training kit our educational officer worked on, for internal use, and then really quickly, I thought this was really nice, the management teams were saying, we've heard you've got a slideshow or training module, can we have a look at it too...

Participant 6, Jeannie Rea

Several union interviewees cited how they used established days of activism, such as White Ribbon Day (The Australian, 2013), 16 days of Activism Against Gendered Violence and International Women's Day to inform stakeholders about the connection between domestic violence and the workplace, and the need for the entitlements. This is evidenced in union publications (e.g., Australian Manufacturing Workers Union, n.d.; Maritime Union of

Australia, 2018; National Tertiary Education Union, 2016). However, the strategy of aligning with White Ribbon was questioned by some union participants. For instance, from participant Mich-Elle Myers:

We were involved in White Ribbon for a while, until they lost the plot and decided not to support the ACTU's claim for ten days paid domestic violence leave. We did approach them and said will you support our submission, and they refused... I think they didn't want to be involved because it was the unions, which was ridiculous.  
Participant 31, Mich-Elle Myers

Angela Budai, the Finance Sector Union's National Industrial and Women's Officer, explained how some smaller employers were concerned about the cost of the entitlements. Budai recalled how she encouraged undecided employers to speak to other similar-sized employers with workplace agreements that included paid domestic violence leave. The latter employers (from feedback to Budai) were able to tell undecided employers:

You know the world didn't fall in. We haven't gone broke. The paid leave is there to use when it needs to be used.  
Participant 13, Angela Budai

Budai reported that this strategy worked as undecided employers more often than not then included paid domestic violence leave in their workplace agreements.

In 2016 the Australian Services Union (NSW and ACT Branch), involved in developing the We Won't Wait campaign, sought firm evidence about the dollar cost of the entitlements to educate employers and state entities:

We approached the Australian Institute Centre for Future Work and we asked Dr Jim Stanford to put together a piece of research for us that would determine the cost of paid family violence leave. This had been one of the biggest barriers to employers agreeing to it.  
Participant 12, Natalie Lang

The resulting report (Stanford, 2016) found that the cost to businesses where the leave existed was minimal. Stanford became a witness in the Fair Work Commission modern awards review hearing in 2017 (ACTU, 2017). His evidence countered the submissions of employer associations which included hypothetical calculations of the mass uptake and huge cost to

employers of paid domestic violence leave if introduced into modern awards (FWC, 2017, 2018).

Natalie Lang recalled how the Australian Services Union used photo petitions, to be signed by the public, and practitioner round tables with the NSW Liberal Government to engender support for NSW public servants to obtain 10 days of dedicated paid domestic violence leave in their awards. This outcome was achieved in November 2018.

These examples show how unions were able to educate workplace stakeholders and the community directly and indirectly about domestic violence and the viability of paid domestic violence leave and to influence paid leave results.

#### **6.4.5 Union observation of bargaining effectiveness**

Causes for concern amongst union participants were the uneven quality of the entitlements within enterprise agreements and when employers used external parties to do the bargaining. A female union official noted that when conditions of the entitlements varied too far from the model clause, the likelihood of their effectiveness (to assist employees experiencing domestic violence) was reduced:

Where the variation occurs is from employer attitudes to things like providing evidence, some people are like, of course, don't be ridiculous, of course if you apply for the leave means you'll get the leave. And others are like, no, jump through a few hurdles, and then they may just put the words in the enterprise agreement and not support that with policies that sit underneath at the workplace.

Participant 19

This official saw that, for the entitlements to be effective, they needed to be supported by well-developed employer policy offering staff training, employee assistance programs and referral to specialist domestic violence services.

Evidence from participants from the Finance Sector Union and the National Tertiary Education Union showed that when management negotiators brought external parties to the bargaining table, these outside agents often tried to remove existing entitlements. For instance, in the

experience of the Finance Sector Union it was when commercial lawyers were brought in to bargain for finance sector employers and, in the case of the National Tertiary Education Union:

It was part of one of the problems in the universities in terms of their industrial management. They'd bring in people from outside... they didn't have any understanding of why this [domestic violence leave] was popular and also a good idea. So, they'd just come in and say we want to get rid of this, and some clearer heads might prevail, and say, no, that's not popular...  
Participant 6, Jeannie Rea

To Rea, it showed that the entitlements were not entrenched.

#### **6.4.6 Union observation of bargaining incentives**

Union participants commonly observed that parties were incentivised to bargain for the entitlements because of a belief they were doing something practical and important to alleviate domestic violence, and the kudos employers gained from including the entitlements in their workplaces.

Linda White (Participant 4) commented how when one large organisation announced they would upgrade from domestic violence policy to paid leave entitlements, it was met with joy from those present:

I'd never seen this before, and I've done bargaining many times, they [the union team], and they were hardened bargaining people, clapped when the employer said they'd put it in the EBA, and it was going to be paid. They actually clapped the company, which I've never seen before or since... People were joyous about it.  
Participant 4, Linda White

A female union official recalled that while it may have been unions that pushed for the entitlements and that management may have fought them all the way before agreeing to them, "there's always that thing of who takes credit for it" (Participant 19). The official noted that it was employers that usually did.

## 6.5 Union campaign for paid domestic violence leave in modern awards and the National Employment Standards

While union participants were proud of the number of workplace agreements containing domestic violence terms they had negotiated with employers to 2015, they were dissatisfied that too few workers had access to paid domestic violence leave.

The ACTU led the *We Won't Wait* campaign to achieve paid domestic violence leave for all Australian workers. However, the campaign originated with the Australian Services Union (NSW and ACT Branch). In 2013 the union started to lobby the Australian Labor Party to include ten days of paid leave in the National Employment Standards “as not everyone bargains” (Participant 12). As Natalie Lang explained, in the NSW community sector bargaining was not prevalent, rather it was award and government funding dependent. Lang said that the community sector supported the leave in principle but argued they were unable to afford paid domestic violence leave for their employees as their funding was so low:

This was how, over time, our interest moved to, well it needs to be a legislated entitlement. That's how we started the *We Won't Wait Campaign* and asked unions around the country to get on board with that to try and have it moved to an employment standard.  
Participant 12, Natalie Lang

ACTU President Ged Kearney provided insights into how the Australian Service Union's *We Won't Wait* Campaign gained support in the union movement. Kearney recalled that in around December 2015 (shortly after Victorian public servants gained paid domestic violence leave) the Australian Service Union (NSW & ACT Branches) started the campaign, which initially created some pique in Victoria:

I think NSW have done a fantastic job. I was thrilled... But it did create a bit of angst... amongst those people [in Victoria] that had been campaigning for it for a long time. Whereas I didn't care. It was clear to me the NSW campaign were going to be the loudest voice at the time. So, my role then was to bring all of the different campaigns together...  
Participant 5, Ged Kearney

Kearney outlined how she then went about convincing the other unions to pick up the Australian Service Union NSW's slogan, colours and campaign methods:



Believe it or not that was very difficult. And in the end, we did pull it all together... it became a national campaign, which was a good thing.  
Participant 5, Ged Kearney

The importance of this paid leave cause being an ACTU national campaign, and not just a policy, was highlighted by an ACTU officer:

Having an absolutely dedicated campaign resource at the ACTU, not a policy resource... I think that helped. The peak body actually dedicating campaign resources... policy works a lot slower than a campaign and works very differently.  
Participant 24

For the ACTU to be successful in their claim to vary modern awards to contain ten days of paid domestic violence leave, the ACTU needed to convince the Fair Work Commission that domestic violence was a workplace issue, that paid leave was necessary and that providing paid leave would balance employer and employee interests (FWC, 2017, 2018). Tactics to do this included having an array of witnesses and expert evidence from inside and outside the union movement.

The ACTU Industrial and Legal Officer, Sophie Ismael, described the diverse array of witnesses called in the modern awards case, whose evidence convinced a Full Bench of the Fair Work Commission of the need for at least unpaid domestic violence leave in modern awards:

We called trade union officials (men and women), community sector workers... We called academics who talked about the definition of family violence... and we called survivors as well. We had three confidential witnesses whose names were not revealed in court.  
Participant 16, Sophie Ismael

The witnesses successfully countered arguments from employer associations that domestic violence was not a workplace issue. Sophie Ismael stated that it was the union's position that "the evidence presented should have been enough". However, the FWC determined the provisions not to have been in existence long enough for their cost to employers to be well ascertained (FWC, 2017, 2018). The case is discussed further from the point of view of employers and the state in Chapters 7 and 8.

A union campaign tactic was to simultaneously run the claim for paid domestic violence leave in modern awards and to lobby the Commonwealth Government for its inclusion in the National Employment Standards. Lang explained that there was some deliberation in the union movement over whether they should just let the modern awards case run out. The deciding factor, from Lang, was that the union movement hoped first to secure a minimum leave standard in the National Employment Standards and then improve on that in modern awards.

Lang recalled that a tactic to progress the We Won't Wait campaign was to launch it at the NSW Labor Party annual convention in July 2017. Lang provided photographic evidence of the labour movement's overwhelming unified support for the campaign (see Image 1).

**Image 1. Photographic record of the We Won't Wait campaign launch at the NSW Labor Party annual convention 2017**



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However, the Commonwealth Government did not decide on whether to include domestic violence leave in the National Employment Standards until after the Fair Work Commission's modern awards decision. This was as until 2018 the Coalition remained staunchly opposed to introducing the leave into the National Employment Standards. Participant 24 outlined the work the ACTU did to promulgate the entitlements with cross bench and Centre Alliance MPs and Greens senators. However, they were not able to get a response from members of the Coalition.

We wrote to Kelly [O'Dwyer, then Minister for Jobs and Industrial Relations], but we also have the Australian Labor Advisory Council Mechanism [ALAC] as well where unions, the government and employers talk about industrial relations. So, we knew from ALAC that they [the Coalition] were not budging on this.

Participant 24

Lang recalled how campaign actors had written to O'Dwyer and Prime Minister Turnbull and phoned his office, but that:

We never got a meeting. Unfortunately.

Participant 12, Natalie Lang

The union arguments reached the Coalition through Senate Education and Employment Committee hearing submissions (Parliament of Australia, 2018).

## **6.6 Conclusion**

Unions rapidly adopted and developed non-traditional actors' new ideas for workplace domestic violence entitlements, including paid leave. At first they sought to progress this in earnest via enterprise bargaining, and from late 2014 onwards via modern awards and then the *Fair Work Act 2009* (Cth). Union women's committees and female union officials and members (at times in close conjunction with anti-domestic violence advocates and researchers) played a foremost role in educating the union movement at large to back the development of these entitlements.

## **7. Findings – Employer parties**

### **7.1 Introduction**

This chapter focuses on how and why employer associations and employers (including the state as an employer) contributed to the development of workplace domestic violence policy and entitlements in Australia. The chapter builds on Chapter 4's evidence of significant events and policy outcomes, and on Chapters 5 and 6's findings of the role of non-traditional actors and unions in these developments. The data showed that non-traditional actors and unions were highly influential in instigating employer association and individual employer support for workplace domestic entitlements. The outcome of the above interaction of non-traditional and traditional industrial relations actors from 2008 to 2018 was that by 2018 Australian employer parties largely supported the inclusion of domestic violence leave in the National Employment Standards and in the new ILO Violence and Harassment Convention, C190, with the expectation that the Commonwealth Government would be early to ratify it. That is, employer parties overall came to support the shift in Commonwealth Government workplace domestic violence policy orientation from a business orientation in 2011, to one by 2018 that included elements of a welfare orientation (protective of employees via statute law and in a somewhat paternalistic way) and social equity (enhancing of gender equality and a collectivist response).

### **7.2 Employer associations**

Between 2008 and 2018 Australian employer associations at large strove to prevent legal and policy challenges compelling employers to provide paid domestic violence leave. By 2018 they tempered this position to support domestic violence leave (albeit unpaid) in the National Employment Standards. This section details the motivation, strategies and outcomes of these actors' shifting stances towards workplace domestic violence policy and entitlements from 2008 to 2018.

### **7.2.1 Employer associations and business orientation**

In submissions to the 2011 Australian Law Reform Commission (ALRC) inquiry into the treatment of domestic violence in Commonwealth laws, employer associations urged the commission to recommend to the Commonwealth Government that it avoid introducing domestic violence leave in the National Employment Standards. This would enable a continuation of the status quo, where businesses self-regulated on workplace domestic violence issues. Employer associations argued that employers ought not be compelled to provide such entitlements. For example, in their submission, the peak body employer association Chamber of Commerce and Industry, Western Australia (2011, p. 5) argued that:

Enforcing new regulations on employers will only instil a feeling of direct or indirect responsibility for something that has occurred away from the workplace.

National peak body employer association, the Australian Chamber of Commerce and Industry (ACCI), raised various arguments against Commonwealth Government workplace domestic violence policy reform. It argued that, unless there was stronger evidence for the need for workplace domestic entitlements, existing Commonwealth laws sufficed to address workplace issues caused by domestic violence (ACCI, 2011, p. 3, item 18). For example, referring to existing regulation, ACCI argued that individual flexibility arrangements provided for under Section 202 of the *Fair Work Act 2009* (Cth) were suitable instruments by which to support employees experiencing domestic violence (ALRC, 2011d, item 17.17) since “these are sensitive matters best dealt with through individual mechanisms and not, on a collective basis”.

ACCI submitted to the ALRC that reforming existing laws could threaten the positive work done to date between the government, unions, the Australian Domestic and Family Violence Clearinghouse and employees to address domestic violence (ACCI, 2011, p. 3, item 13). It maintained that employers were sensitive to the issue of domestic violence and assisted employees as best they could, but that, employers, particularly small businesses, should not be

expected to be domestic violence counsellors (ACCI, 2011, p. 3, item 16). Rather, simple ideas, such as “putting a poster on a notice board with details of a dedicated contact hot line” were powerful ways employers could play their part (ACCI, 2011, p. 3, item 17). Employer associations countered evidence of the high cost of domestic violence to employees (UNSW, 2011) with claims of the likely high monetary cost of domestic violence leave to employers (ACCI, 2011).

However, the ALRC was more compelled by evidence from the Australian Domestic and Family Clearinghouse and the ACTU for the need for workplace domestic violence entitlements on a collective basis (ALRC, 2012). The ALRC (2012, p. 10, item 6.25) held that the monetary and non-monetary costs of domestic violence to employers and society needed to be considered:

Employer associations expressed significant concerns about the costs associated with the introduction of additional leave entitlements. [But, in its recommendations] the ALRC emphasised the need to factor in current monetary and non-monetary costs to the Australian economy and businesses associated with domestic violence.

The outcome was that the ALRC recommended to the Commonwealth Government that domestic violence leave entitlements be phased into national regulation (ALRC, 2012). The ALRC’s contribution to the development of workplace domestic violence policy in Australia is further evidenced in the next chapter.

Between the 2011 ALRC inquiry and employer association submissions to the 2015 Fair Work Commission case brought by the ACTU for paid domestic violence leave in modern awards, employer associations continued to oppose workplace domestic violence regulation. For example, in a continuation of ACCI’s above stated preference for individual flexibility arrangements, the Business Council of Australia objected to the addition of domestic violence as a reason for employees’ right to request flexible working arrangements in the Fair Work Amendment Bill 2013:

There is a question about why this issue is being given priority when there is already the capacity to request flexible arrangements, and when there are many other aspects of the Act which are harming competitiveness and posing a real threat to jobs.

Jennifer Westacott, CEO, Business Council of Australia  
(Schneiders & Hurst, 2013)

However, the then Labor Commonwealth Government did not uphold such objections as the entitlement was passed into law.

### **7.2.2 Gradual softening of employer association policy stance**

During the Fair Work Commission claim brought by the ACTU for paid domestic violence leave in modern awards, employer associations, with few exceptions, continued to maintain the potential high monetary cost of paid leave to employers. In the media and employer association publications, the peak body organisation advocating for small businesses, Council of Business Organisations, Australia (COSBOA) argued that if small business were obliged to pay domestic violence leave (e.g., via modern awards and the National Employment Standards) it would likely damage small business productivity:

Asking a small business person to find extra cash or extra time to manage a government-imposed process or expense does not create productivity. It does the opposite as the employer and her or his family can become stressed.  
(Smart Company, 2016)

COSBOA CEO, Peter Strong estimated that at least 50% of small businesses were operated by women who could be victims of domestic violence themselves and thus face difficulty if the Commonwealth Government compelled them to provide domestic violence leave:

If this leave were to be introduced it would mean that a woman who is both a victim and an employer could be forced to ignore her own situation to manage the exact same situation for an employee caught in that awful circumstance. There are better ways of managing the effects of domestic leave in workplaces than by putting more pressure on other victims.  
(Smart Company, 2017)

COSBOA's stance was that the Commonwealth Government should pay for domestic violence leave, as it had done for paid parental leave (Smart Company, 2016). Nicola Street (Participant 30), from national peak body employer association the Australian Industry Group (AiG), explained that AiG opposed the ACTU's claim for numerous reasons. Street noted that small

businesses especially in rural areas had limited resources to deal with workplace domestic violence issues and employee disclosure of domestic violence could result in lengthy employee absences from work:

Employers wanted to do the right thing to provide support and were naturally compassionate to particular circumstances... [but] we did have some businesses say that, in cases where there were very regular absences for a long period of time, these incidents were very challenging.  
Participant 30, Nicola Street

The above monetary and resource concerns typified employer association reasons for objecting to the ACTU's claim before the FWC for ten days of paid domestic violence leave in modern awards.

Atypical of employer associations, the National Retail Association supported the ACTU's claim (FWC, 2017, 2018). The demographics of its members' workforces and the legal experience of its CEO, Dominique Lamb (Participant 25), helped to explain the National Retail Association's divergence from other associations' positions. Lamb recalled that she gained insight into problems domestic violence caused employees through working as a volunteer for Women's Legal Services in Queensland. The National Retail Association's large retail sector employer members employed 1.2 million people and 55% of them were women and one third were youth leading Lamb to conclude that "the NRA was employing the most at-risk women [and young women] of family and domestic violence". The National Retail Association commissioned a report into the cost to their members of domestic violence:

The NRA estimate[d] that for the period 2014/15, almost 45,000 women working in the retail industry experienced some form of family or domestic violence, costing the industry approximately \$62.5 million per annum in lost productivity, absenteeism and staff turnover, with a direct cost to employers of \$1,404 for each instance.  
Fair Work Amendment (Family and Domestic Violence Leave) Bill 2018, Second Reading Speech (Parliament of Australia, 2018a)

The National Retail Association's position was that the monetary cost of domestic violence for employers and employees would be reduced if paid domestic violence leave were to become a modern awards entitlement.



During the Fair Work Commission hearing, employer association lawyers attempted, somewhat unsuccessfully, to diminish the arguments of anti-domestic violence advocates and the one employer witness providing evidence in favour of paid domestic violence leave. Price Waterhouse Cooper's Debra Eckersley recalled how, in giving evidence in support of the ACTU's claim, employer association lawyers:

basically, grilled me for 45 minutes on how generous an employer PWC was... But eventually I got a chance to say that I did not actually think that that was the point...  
Participant 9, Debra Eckersley

Eckersley's argument was that, regardless of whether Price Waterhouse Coopers was an atypical employer, its employees genuinely needed the leave. Such was the strength of the evidence given at the hearings (particularly from employees of various organisations who had themselves experienced domestic violence) of the dire need for the leave, that employer associations at large came to accept that unpaid domestic violence leave would be included in modern awards and the National Employment Standards. For example, this was seen in employer association submissions to the Fair Work Commission from 2015 onwards on the ACTU's claim for paid domestic violence leave in modern awards (FWC, 2017, 2018). Employer associations came to "advocate a cautious approach and generally submitted that unpaid leave should be limited to two or three days per annum" (Fair Work Commission, 2018). The progress of the Fair Work Commission's role in the development of workplace domestic violence policy and entitlements is detailed in Chapter 8.

Employer association submissions to the Senate Education and Employment Legislation Committee report into the Fair Work Amendment (Family and Domestic Violence Leave) Bill 2018 all supported the Bill's proposed introduction of five days of unpaid domestic violence leave in the National Employment Standards (see Table 6).

**Table 6. Senate Education and Employment Legislation Committee submissions received in relation to the Fair Work (Family and Domestic Violence Leave) Bill 2018**

Submission	Submitter	Supported the Bill	Argued for a paid domestic violence leave entitlement
1.	Dr Dorothea Anthony Argued Govt should do more to address domestic violence	✓	—
2.	Unions WA	✓	✓
3.	Employment Law Centre of WA (Inc)	✓	✓
4.	Department of Jobs and Small Business	✓	X
5.	Uniting Church in Australia, Synod of Victoria and Tasmania Argued for equality of entitlements for all workers	✓	—
6.	Victorian Hospitals' Industrial Association	✓	✓
7.	Northern Territory Working Women's Centre	✓	✓
8.	Queensland Council of Unions	✓	✓
9.	Queensland Nurses and Midwives' Union	✓	✓
10.			
11.	Australian Chamber of Commerce and Industry	✓	X
12.	National Retail Association Noted evidence of negligible cost of leave to employers	✓	—
13.	Community and Public Sector Union	✓	✓
14.	Working Women's Centre SA Inc	✓	✓
15.	Australian Nursing & Midwifery Federation	✓	✓
16.	Australian Industry Group	✓	X
17.	Australian Public Service Commission	✓	—
18.	Victorian Trades Hall Council	✓	✓
19.	Australian Services Union	✓	✓
20.	Australian Council of Trade Unions	✓	✓
21.	Commonwealth Bank of Australia	✓	—
22.	Rape and Domestic Violence Services Australia	✓	✓
23.	Queensland Government	✓	✓
24.	Catholic Women's League Australia Paid would be the ideal	✓	—
25.	Australian Human Rights Commission	✓	✓
26.	Government of Western Australia	✓	✓
27.	Unions NSW	✓	✓
28.	Victorian Government	✓	✓
29.	Australian Association of Social Workers	✓	✓
30.	National Farmers' Federation	✓	X
31.	NSW Farmers' Association	✓	X
32.	Law Council of Australia	✓	✓
33.	Australian Banking Association	✓	—
34.	Working Women Queensland Concerned definitions of DV too narrow	✓	—

Key: ✓ = supported amendment to the Bill to include paid domestic violence leave  
 — = neither supported nor opposed the inclusion of paid domestic violence leave in the NES  
 X = opposed amending the Bill to include paid domestic violence leave

Source: Australian Parliament House (2018).

Of the total 33 submissions the Committee received, seven were from employer associations. Of the submitters, the Victorian Hospitals' Industrial Association was the only employer association to support the introduction of paid domestic violence leave in the National Employment Standards. Its CEO Stuart McCullough (Participant 43) indicated how many of its members (public hospitals and standalone community health centres) were expert in the field of domestic violence. They, in collaboration with the Victorian Government, unions and the Victorian Hospitals' Industrial Association, developed and included domestic violence leave entitlements in their enterprise agreements (Participant 43). McCullough explained how by 2018 its members had had the entitlements in place for some years and the Victorian Hospitals' Industrial Association wanted to provide feedback to the Senate Committee on their (members') positive experience of this:

By the time the Senate process was underway we weren't coming to [paid domestic violence leave entitlements] from a standing start. We were looking to share our experience of what we had learnt having gone through that process [of its members' development and implementation of paid domestic violence leave] and knowing and suspecting that there may not be other employer associations saying we have it and it's working.  
Participant 43, Stuart McCullough

The Victorian Hospitals' Industrial Association submission (Parliament of Australia, 2018b, p.

3) notes the financial hardship that could result if the leave were unpaid:

We note the leave is proposed to be unpaid. Whilst the inclusion of Family and Domestic Leave supports security of employment, it is our view that financial detriment should be avoided. That is, income will likely be a critical matter for those experiencing family and domestic violence.

It was one of 20 submissions in support of paid domestic violence leave in the National Employment Standards. The National Retail Association and the Australian Banking Association submissions supported the Bill for unpaid leave and, without recommending that the National Employment Standards contain paid leave, showcased the paid leave their members offered employees, for example:

The Australian Banking Association supports the provision for family and domestic violence leave and notes that all major Australian banks provide family and domestic violence leave... One major bank has an uncapped policy...  
(Parliament of Australia, 2018b)

The Commonwealth Department of Jobs and Small Business also argued against paid leave (see Table 6). Coalition senators overseeing the inquiry upheld the minority view and recommended the Coalition Government's Bill for five days of unpaid leave be passed. The dissenting report of Opposition and Australian Greens' senators recommending 10 days of paid domestic violence leave is discussed in the next chapter.

The position of employer associations changed from resistance to the idea that domestic violence was a workplace issue in 2011 to one of support for unpaid domestic violence leave entitlements by 2018. This was reflected in the advisory services employer associations provided members and in their advocacy to the ILO. Street detailed how her role as AiG's National Workplace Manager involved running AiG's diversity network which functioned to:

regularly update members about some of the approaches as well as shared best practice within industry about how to respond to domestic violence... or in relation to the new domestic violence leave entitlements now in the NES.

Participant 30, Nicola Street

Street explained a second role of AiG was to run a member advice line, which offered "straightforward more transactional support with issues". McFerran illuminated how employer associations had prior to the ACTU case sought anti-domestic violence experts' advice on how to deal with workplace domestic violence issues:

In the past the ACCI approached me to assist them with resources and [I was] very happy to do that.

Participant 1, Ludo McFerran

This was, for instance, as the ACCI stated, in their "participation" in the Safe at Home, Safe at Work Project (ACCI, 2011, p. 1. item 4). McFerran, who was present at ILO deliberations on the development of Violence and Harassment Convention, 2019 (No. 190), explained how the Australian Chamber of Commerce and Industry's Deputy Director of Workplace Relations, Alana Matheson, was very influential in overcoming ILO employer delegates' resistance to the idea that C190 contain an accompanying recommendation for employers to provide domestic

violence leave. Matheson wrote a media article in July 2018 setting out ACCI position on the development of C190, which stated:

Many Australian employers will be unaware that discussions [regarding C190] taking place some 16,000 km away reveal real and significant impacts for the duties and costs they face... When a government ratifies an ILO convention (treaty) it agrees to bring its laws into line with globally agreed rules... The Australian Chamber of Commerce and Industry represented not only Australian employers, but employers in more than 180 countries [and argued] all participants in the treaty process must put aside any self-serving agendas to achieve the consensus required to deliver fair and workable protections for everyone who needs them: all workers and all employers.

With the above significant input from ACCI, the ILO adopted Convention 190 in June 2019.

It required governments to act to protect employees from violence impacting the workplace, especially women (ILO, 2019). It was supplemented by recommendation No. 26 (ILO, 2020)

which set out:

specific measures that can be taken [by employers and the state], including leave for victims, flexible work arrangements, temporary protection against dismissal, inclusion of domestic violence in workplace risk assessments and awareness-raising (Art. 10(f) C190, and Para. 18 R206).

Matheson's comment in July 2018 above that Australian employers needed to be aware of "real and significant...duties and costs they face" due to the imminence of C190 was premised on the assumption that the Australian Government would ratify C190 once it was adopted. However, the Australian Government has not yet ratified it, as, at the time of writing, the countries ratifying C190 were Uruguay, Argentina, Finland, and Spain (ILO, 2019).

### **7.2.3 Conclusion to Section 7.2**

In summary, nationally and internationally, Australian employer associations' orientation towards domestic violence policy and entitlements shifted from in 2011 a straightforward business orientation to a more complex one by 2018 that, with employer association support for the Coalition Government's National Employment Standards changes and International Labour Organization C190, included welfare and social equity elements.

## **7.3 Employers**

Section 7.3 shows how and why employers developed organisational workplace domestic violence policy and entitlements. The Commonwealth Government's bargaining orientation towards domestic violence leave policy under Labor mid-2010 to 2013 was replaced by the Coalition Government with an overtly business orientation after taking office in September 2013. The section first illuminates how and why workplace domestic violence leave entitlements began to proliferate in parts of the public sector from 2010. It then demonstrates how overall employers did not seek to change the Coalition Government's business orientation towards the policy. The section shows the considerable variation in the type of domestic violence employee provisions employers voluntarily provided from 2010 to 2018. It demonstrates how this variation, resulting in large numbers of employees having no access to domestic violence leave, became a reason to compel the Coalition Government to include domestic violence leave in the National Employment Standards.

### **7.3.1 Employer introduction to the idea of the entitlements 2010–2011**

Employers began to consider McFerran's new ideas for workplace domestic violence policy and entitlements from 2011 onwards, largely through the work of the Safe at Home, Safe at Work Project (until 2013) and unions. Robyn Dale and union participants uniformly recalled that negotiations for workplace domestic violence entitlements were largely initiated by unions.

### **7.3.2 Victorian local government development of entitlements and supports**

As demonstrated in Chapter 6, workplace domestic violence entitlements were rapidly included from 2010 to 2011 in Victorian regional councils. By December 2016 all but one of Victoria's local 79 councils provided their employees with some form of domestic violence leave (Government News, 2016). A Victorian regional council human resources manager (Participant 26) provided insights into how and why this occurred, including through knowledge gained from council employer networks. The participant recalled how instrumental

the Surf Coast Council employee, the *Anna Stewart Memorial Project* intern, was in convincing the council to include 20 days of paid domestic violence leave in 2010 (AE882682):

The organisation wasn't too on board with it... it was a claim that was raised along with a number of claims at the time by union reps... and wasn't given much thought...but as negotiations went on, the person [the above employee/intern/union delegate] that was passionate about the clause and why the leave was needed, spoke at meetings and negotiated it into the agreement that was adopted.

Participant 26

Participant 26 explained how in 2011 Victorian councils' shared legal counsel gave them the go-ahead to bargain for paid leave entitlements. This was given the low cost of providing the entitlements and benefit to employees:

There's an industrial relations law firm. I think they have 76 of the 79 councils signed up on a retainer. They have monthly enterprise agreements meetings [where] the lawyer's approach was, look, if this has been introduced at Surf Coast, and it's not going to impact on cost, it's a good thing to do...

Participant 26

From 2011 to 2018 with each round of enterprise bargaining many councils upgraded the quality of the workplace domestic violence entitlements they provided. For instance, Central Goldfields Shire Council first included unpaid domestic violence leave in its 2011 enterprise agreement, and in subsequent agreements included paid leave (in agreement numbers AE887206, p. 13, 2011; AE408811, p. 15, 2014 and AE427687, p. 16, 2018). This coincided with growing knowledge of the low cost of the leave in councils already providing it. The low cost of domestic violence leave to councils was because few employees accessed it (Stanford, 2016). For example, at Brimbank Council around one employee per year out of 1,100 employees used the leave for less than one week per incident (Stanford, 2016).

### **7.3.3 Development of entitlements among Australian states and territories**

This section presents evidence from employer perspectives of how and why Northern Territory, Victoria and New South Wales public service employers developed their workplace domestic violence policies and entitlements. It provides evidence of the influence of Australian state and

territories on Commonwealth Government and private sector development of workplace domestic violence entitlements.

The Northern Territory provided its public service employees with paid domestic violence leave in 2012 via Miscellaneous Leave (By-law 18). Participant 15, Shabnam Hameed, working then with the Safe at Home, Safe at Work Project recalled how:

The Northern Territory had mandatory reporting [of domestic violence] and there was concern about how that could be managed. The solution that we came up with was to ask the public service, because they were the ones that raised the question, to make sure that people knew they could ask for help but that mandatory reporting laws would also apply.  
Participant 15, Shabnam Hameed

In this way the Safe at Home, Safe at Work Project assisted the Northern Territory Government and its Office of the Commissioner for Public Employment to resolve potentially conflicting regulations between mandatory reporting of domestic violence (required under the *Domestic and Family Violence Act 2007* [NT], section 124A) and confidentiality requirements contained in domestic violence leave clauses in enterprise agreements.

As shown in Chapter 4, in December 2015 the Victorian Government announced 20 days of paid domestic violence leave for permanent public service employees and unpaid leave for casuals. Participant 34, Natalie Hutchins, Labor Victorian Minister for Aboriginal Affairs and Industrial Relations from 2014 to 2018 (and Minister for Women and for the Prevention of Family Violence 2017 to 2018) provided insights into how this came about. She realised soon after being elected to parliament in 2014 that domestic violence was a considerable problem in her own electorate:

I was having a lot of women reaching out around my electoral office and it really shocked me how many women who were seeking help had already lost their jobs.  
Participant 34, Natalie Hutchins

Hutchins decided to make introducing domestic violence leave entitlements in Victoria's public service a policy priority and enlisted both employer and employee stakeholder support for the leave entitlements (Participant 34). She knew from experience that governmental policy "can



be put on the backburner pretty quickly when key stakeholders start to openly criticise it” (Participant 34). Hutchins recalled she achieved stakeholder support through, for example, conversations with the union movement and the women’s and family violence sectors “that had been lobbying for such reforms for some time”. A strategy of Hutchins’ was to gain backing for the policy from two male dominated industrial councils, the Building Industry Consultative Council and the Transport Industry Council:

Going to those two [councils’] committees as a starting point was really important. Those two sectors that are very male dominated, and getting an understanding from them that I was going to pursue this policy and I would like their support... It took a second visit by me back to those committees with a take on the detail of what is involved for a woman with a job and experiencing family violence. In the meantime, there were some men [there] who went back to their workplaces and they actually brought stories and examples back... There was never an official resolution around [the above councils’ support for the policy] there was just general agreement at the end.

Participant 34, Natalie Hutchins

For Hutchins, a barrier to the Victorian Government’s ability to influence organisational workplace domestic violence policy was that, until December 2015, it had not made paid domestic violence leave available to its public service employees:

Now, our move as a state government was really to set the agenda in the public service as a starting point by putting this into our EBA with our public sector union which would then flow on to all of the 333 EBAs that we have across the State to be a standard clause in those. So, getting that EBA clause established in our public sector was the first big step...

Participant 34, Natalie Hutchins

Hutchins argued that “to [her] knowledge there were no press releases from any of the employer associations condemning our move on this”. In Hutchins’ view this was likely due to the above stakeholder consensus-building that had occurred prior to the public sector entitlements being announced.

Interview participant Pru Goward recalled the slow progress of governmental workplace domestic violence policy in NSW and Australia. In making these comments she drew upon her experience as Australian Sex Discrimination Commissioner 2001 to 2007 and as a NSW Coalition Government parliamentarian from 2007 to 2019. During her time as an MP Goward held various ministerial portfolios including Minister for Women and Minister for the

Prevention of Domestic Violence and Family Assault. In February 2011, the NSW Labor Government enabled public sector employees to access special leave if they were experiencing domestic violence. This was via the Crown Employees (Public Service Conditions of Employment) Award 2009. Before accessing this leave employees were required “to exhaust [their] other leave first” (NSW Government, 2018). Goward recalled that a barrier that needed to be overcome before the NSW Coalition Government would upgrade the entitlements to 10 days of paid domestic violence leave was a concern that the leave would be abused:

I certainly remember the first time I raised it with one of my cabinet colleagues. He immediately said we can't support that, it will become, the unions will turn it into a general leave entitlement, and it will lose its purpose and it could be open to exploitation... But it was just a matter of persisting... testing each of the propositions and concerns, and by the time it got to the paid leave stage, I think cabinet was perfectly comfortable with it.

Participant 40, Pru Goward

From Goward's perspective the way domestic violence leave was introduced in the NSW public sector followed a familiar policy pattern. This was to first restrict new workplace leave entitlements to unpaid or limited leave and then to extend them to paid leave “after the community became comfortable with them”. Goward added that a main driver of workplace domestic violence policy change was the:

enormous focus on domestic violence over the past ten years... When you've got the community saying to their local members of parliament that they saw this and that on television and how outraged they were, even the most recalcitrant of MPs has to start to think about it.

Participant 40, Pru Goward

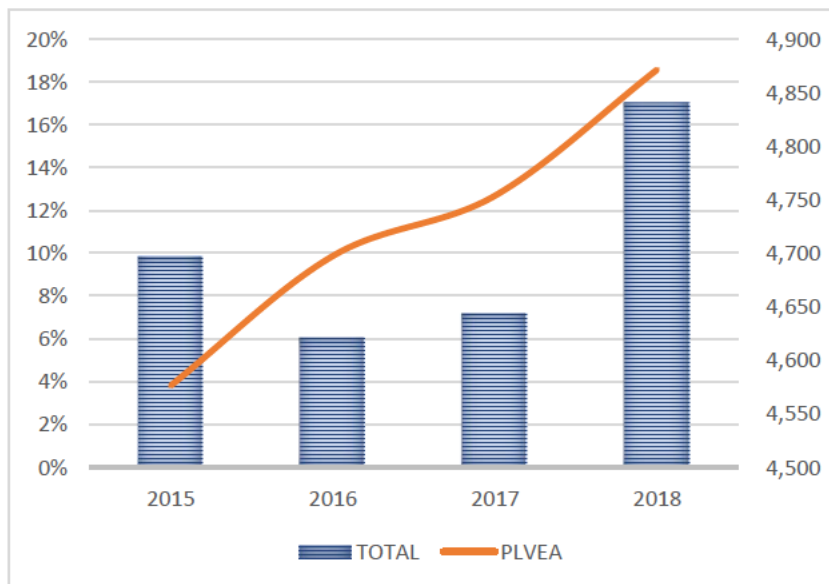
In November 2018 NSW became the last of the Australian state and territory governments to include dedicated paid domestic violence leave provisions in its public sector.

The influence of Australian state and territory workplace domestic violence policies on the Commonwealth Government's appeared minimal. For example, Labor governments in, Queensland, Victoria and Western Australia submitted to the Senate Education and Employment Legislation Committee 2018 that the National Employment Standards ought to

be amended to include *paid* domestic violence leave (see Table 6), which the Commonwealth Government did not agree to.

Workplace Gender Equality Agency data showed that private sector employer provision of paid domestic violence leave entitlements was incremental and slow, following the pattern described by Goward above. Figure 1 shows an incremental rise in private sector employer provision of paid domestic violence leave entitlements from 4% in 2015 to approximately 17% in 2018.

**Figure 1. Growth of private sector paid domestic violence leave entitlements 2015 to 2018**



Source: Produced from data requested from WGEA and analysed by the researcher for this thesis. The figure shows percentages (vertical axis on left) and numbers (vertical axis on right) of employers reporting to WGEA providing paid domestic violence leave entitlements from 2015 to 2018 (data on horizontal axis). Key: PLVEA = Paid domestic violence leave.

Of the private sector employers reporting to WGEA, only approximately 17% of them provided paid domestic violence leave entitlements in 2018, far below the 100% of Australian state and territory government employers that had by August 2017 provided their public service employees with the right to some form of paid domestic violence leave entitlement (as set out in Chapter 4). Thus, by 2018 the extent to which Australian state and territory governments

influenced private sector employers over workplace domestic violence leave rights was minimal. 7.3.4 Private sector employers as initiators of paid domestic violence leave entitlements

Of the large employers in Australia, from participant evidence, only the National Australia Bank (NAB), rather than the relevant union, initiated workplace domestic violence entitlements, as evidenced in the two participant quotes below:

I'm happy to say to you NAB took it up as an issue without the Finance Sector Union pushing for it... they were atypical.  
Participant 19

There was only one employer that drove provisions [and this was] NAB.  
Participant 6, Robyn Dale

From 2014 NAB enterprise agreements contained uncapped paid domestic violence leave (AE409100 and, in 2016, AE421335). Participant 18 recalled NAB decided to develop workplace domestic violence supports and entitlements due to NAB's deemed social responsibility and the commitment of its executives:

We were seeing both a trend and an increase in cases in domestic violence and that was impacting people's ability to perform at work and just the wellbeing aspect of it as well. So, that was the real trigger for us to say the problem is societal... given our workforce being so large, we are a representation of that being a problem in society, so we need to have a position on it... We also put it in our industrial agreement. So, then it became enshrined in the way we do business.  
Participant 18

Participant 18 elaborated how a NAB head of human resource management and corporate social responsibility operations was instrumental in gaining the board's approval for paid domestic violence leave entitlements. NAB was keen to assist and promote other organisations to enhance their entitlements in the area. For example, human resources manager interview participants (Participants 3 and 33) from other large Australian finance sector organisations recalled NAB's generosity in sharing its workplace domestic violence policy and resources with others in the sector. A NAB executive joined the CEO of Domestic Violence Victoria to implore other organisations to develop formal workplace domestic violence policies and to convey the benefits of such policy:

Today we stand behind victims of family violence in calling for greater workplace support for those affected. Only a handful of Australian employers — including NAB, Westpac, Coles, Public Transport Victoria and the City of Greater Geelong — have so far introduced formal domestic violence support policies... Victims are using provisions to varying degrees, from taking the day off to attend court, to taking extended leave to start a new life, in a new home, with their children.

(McCormack & Healey, 2014)

The work of NAB and other forerunner employers in this area inspired other employers. In the case of a non-unionised organisation, Price Waterhouse Coopers (PWC), its then executive head of human resources recalled:

I was seeing it in other organisations. Organisations like Telstra and NAB, I think were the two I was most familiar with, had put it in, and I thought, wow, we should have that in place. So, then, from there we gauged internally and externally what would that mean, and engaged the CEO... It wasn't about just putting it in leave, it was also that it enabled us to say from the top of the organisation that domestic violence happens and there's no judgment in that in relation to the victims.

Participant 9, Debra Eckersley

PWC then developed a family and domestic violence policy that included unrestricted paid leave, “financial assistance and support for people experiencing domestic violence” (PWC, 2020). According to the organisation this was part of a wider PWC strategy to enable equal opportunity for women (PWC, 2020).

From 2015 to 2016 the other three major banks in Australia provided paid domestic violence leave to their employees in agreements. Like NAB, Westpac provided paid leave entitlements (of 10 days per annum in AE416731, 2015). Australia and New Zealand Bank and Commonwealth Bank agreements referred employees to domestic violence provisions in company policy (in AE417217, 2015 and AE422385, 2016 respectively).

### **7.3.5 Private sector employer collaboration with unions to develop policy and entitlements**

There were numerous examples of how, after unions instigated negotiations for workplace domestic violence policy and entitlements, employers of diverse size and sector introduced workplace domestic violence provisions and worked with unions to stand against domestic violence. Well-publicised examples include Swinburne University, Bankwest, Blundstone and

Telstra. In 2013 Swinburne University was the first university in the country to grant its employees access to five days of paid domestic violence leave (AE411742, p. 74). The then National Tertiary Education Union National President, Jeannie Rea, recalled how, after negotiations for the provisions had finished, the University's Vice Chancellor, Linda Kristjanson, asked Rea to issue a joint press release with the university "to make a really strong statement around violence against women", which Rea agreed to. In a media article that resulted, union and employer points of view (with the shared sentiment to find measures to effectively alleviate domestic violence) are presented side by side (Hannan, 2013). The Vice Chancellor is reported as saying:

This is a significant issue for too many Australian women and men... In reaching this agreement, we want to signal very clearly to all of our people that we will be there to support them if they are experiencing domestic violence.  
(Hannan, 2013)

Bankwest is another example of employers working in tandem with unions to address domestic violence as reflected in a clause in its domestic violence enterprise agreements from 2014 to 2019 that stated:

Bankwest will, in consultation with the Finance Sector Union, develop guidelines and policies to support the implementation of this clause [which entitled employees to paid domestic violence leave and other supports].  
(Agreement Nos: AE409956, 2014, p.53; AE42171, 2016, p. 50; AE505891, 2019, pp. 35–36)

Bankwest thus committed to ongoing close collaboration with the Finance Sector Union to develop workplace domestic violence policies and entitlements. The Western Australian Government promoted Bankwest's domestic violence provisions as exemplary (Government of Western Australia, 2017). Tasmanian boot manufacturer Blundstone was inspired by union instigation of negotiations for paid domestic violence leave provisions in one of its operations to rapidly extend such provisions to all of its 90 employees in Australia and New Zealand.

The measure was flagged by unions during negotiations for a new Enterprise Bargaining Agreement [AE 414794], but Blundstone then decided promptly, unbidden by unions, to adopt it for its entire workforce [i.e., those of its employees not covered by the agreement].  
(ABC News, 2016)

The Blundstone CEO explained that “it made sense for businesses to look after their workers who experience family violence [since employers] put an enormous amount of investment in people” (ABC News, 2016). Further reasons the CEO gave for their action were that the measures could protect employees from job loss (because of domestic violence) and employers from the disruption to business this caused (ABC News, 2016).

Employees of large telecommunications employer Telstra gained paid domestic violence leave entitlements of ten days a year in 2015 (in agreement no. AE416430). Participant 3 and former Head of Diversity and Inclusion at Telstra, Troy Roderick, recalled how he spoke publicly about workplace domestic violence measures on behalf of Telstra in conjunction with ACTU President Ged Kearney at the United Nations Commission on the Status of Women session in 2017. Roderick explained how on another occasion Telstra made submissions to the Victorian Royal Commission into Family Violence “side by side with the ACTU”. To do so, perceived ideological differences with the union movement had to be maintained:

I remember the employment relations people, and the government relations people and the corporate affairs people [at Telstra] being interested in making sure that it was all very clear that we were sharing the story of the work that we had done but that we weren't necessarily standing shoulder to shoulder with the union movement.

Participant 3, Troy Roderick

These examples illustrate how and why employers and unions worked in tandem to progress workplace domestic violence policy and balanced equity needs of employees (for job and personal safety) and employers (for productivity).

### **7.3.6 Private sector employer collaboration with domestic violence experts**

In developing workplace domestic violence policies and entitlements, employers frequently sought the input of actors with domestic violence expertise. For instance, as above, NAB collaborated with the CEO of Domestic Violence Victoria. A participant from one of the major banks indicated how the bank:

partnered with UNSW and their gendered violence research network as one of our key reference points around what we should be doing for our strategy.  
Participant 33

Troy Roderick stated how Telstra sought the input of the Safe at Home, Safe at Work Project team:

They helped us understand the approach to take around perpetrators or landing somewhere in between zero tolerance and compassion.  
Participant 3, Troy Roderick

Further insights from Participant 33 were that, in developing its workplace domestic violence leave policy, the bank had sought input from anti-domestic violence advocacy organisations No To Violence and Our Watch.

### **7.3.7 Influence of Male Champions of Change organisation**

The evidence gathered showed how the employer group the Male Champions of Change (MCC), founded by then Sex Discrimination Commissioner Elizabeth Broderick in 2010, came to advocate for improving access to workplace domestic violence policy and entitlements. This advocacy resulted from MCC members' realisation that they "could not champion change without addressing domestic and family violence, whose victims were overwhelmingly women" (MCC, 2015).

Participant evidence (e.g., from Participants 13, 26 and 27) showed a common reaction of both private and public sector employers when first considering introducing domestic violence policy and entitlements was to ask how much such measures would cost. Certain MCC members initially shared this concern:

Some were concerned that it would open a floodgate. You share the statistics about the prevalence of domestic violence and some think they will see the same levels of employees accessing paid leave in their organisations. But what Members of MCC have learned, and so many other organisations who've put paid leave in place, is that there is no floodgate – it is absolutely not happening. People who need the leave are accessing it, but it is not a large number of people, nor are they accessing very many days in most cases. There is still a perceived stigma attached to domestic and family violence and this may stop employees accessing workplace support when they need it.  
Participant 27, Lisa Pusey



Like other employers, the MCC learned that the cost of the provisions was minimal (Participant 27). Growing employer knowledge of the likely minimal cost of the provisions to them corresponded with the incremental growth of the provisions in the private sector (e.g., see Figure 1).

Part of the business case for paid domestic violence leave was that providing such leave would increase employee and thus organisational productivity. Organisations KPMG and PWC, whose CEOs were MCC members, undertook extensive analysis of the Australian economy to calculate the cost of domestic violence to the Australian economy. KPMG undertook this for the Commonwealth Department of Social Services, and PWC for Our Watch and the Victorian Health Promotion Foundation (Department of Social Services, 2016, p. 37; PWC, 2015, p. 9). KPMG's and PWC's estimates of the high cost of domestic violence to business (e.g., because of employee absenteeism) supported the business case argument above. However, the evidence gathered for this thesis, including from and about MCC headed organisations, did not show that they, or private sector employers at large, were persuaded by this business case.

Analysis of data gathered from the WGEA Data Explorer of the 15 organisations presided over by the MCC original group showed the advances these organisations made to their workplace domestic violence policies from 2014 to 2018 (see Table 7). These organisations were from diverse sectors (e.g., retail, financial services, mining, telecommunication, and professional and scientific information) with employee numbers (in 2019) ranging from 1,789 (Cochlear) to 171,000 (Woolworths). Of these 15 organisations, in 2014 one third reported that they did not have any domestic violence policy, strategy or leave entitlements. By contrast, in 2018 all 15 organisations had such a policy or strategy and 11 offered paid domestic violence leave (four in enterprise agreements). This corresponded with when employers needed to meet a minimum workplace domestic violence support standard to achieve a Workplace Gender Equality Agency Employer of Choice Citation (Workplace Gender Equality Agency, 2016)

and with when employers were asked to report specifically on whether they provided *paid* domestic violence leave. Thus, Workplace Gender Equality Agency reporting requirements appear to have positively impacted employer uptake of domestic violence leave provisions in MCC member organisations.

Troy Roderick (Participant 3), former head of Telstra Diversity and Inclusion and currently MCC Director of Strategic Initiatives and Insights, explained the progressive nature of MCC groups. Roderick recalled how the Victorian group that was begun in 2015, run by Kate Jenkins, was particularly progressive. Roderick stated that “all of the members of that group have adopted unlimited paid leave”. In 2018 11 of the 15 organisations affiliated with the MCC founding group (that is, 73%) provided access to paid domestic violence leave (see Table 7), but only 30.3% of all employers reporting to the Workplace Gender Equality Agency in 2018 indicated they had such provisions (Workplace Gender Equality Agency, 2019).

The Commonwealth Bank of Australia (CBA) was the only private sector employer to make a submission to the Senate Education and Employment Legislation Committee 2018 (see Table 6). In its submission the bank promoted its own workplace domestic violence policy but made no mention of whether the National Employment Standards ought to contain paid domestic violence leave. The overall silence of employers about whether any form of domestic violence leave ought to be in the National Employment Standards indicated their preference for the Commonwealth Government to maintain its business orientation towards workplace domestic violence policy.

**Table 7. Male Champions of Change original group organisations' provision of workplace domestic violence policy and entitlements 2014 - 2018**

Year	2014		2015		2016		2017		2018	
Measures Business/ Employees	Formal Policy/ Strategy	DV leave/EA	Formal Policy/ Strategy	DV leave /EA	Formal Policy/ Strategy	DV leave type/in an EA	Formal Policy/ Strategy	DV leave /EA	Formal Policy/ Strategy	DV leave /EA
ANZ 20,851	X	X	X	X	✓	Paid DVL EA	✓	Paid DVL EA	✓	Paid DVL EA
CBA 32,845	✓	X	✓	X	✓	Paid DVL EA	✓	Paid DVL EA	✓	Paid DVL EA
Telstra 27,279	✓	X	✓	X	✓	Paid DVL EA	✓	Paid DVL EA	✓	Paid DVL EA
Network Ten 1,931	✓	X	✓	X	✓	Paid DVL	✓	Paid DVL EA	✓	Paid DVL EA
Citicorp 1,536	X	X	✓	X	✓	Paid DVL	✓	Paid DVL	✓	Paid DVL
Deloitte 9,017	✓	X	X	✓	✓	Paid DVL	✓	Paid DVL	✓	Paid DVL
IBM 4,502	✓	X	✓	X	✓	Unpaid DVL	✓	Paid DVL	✓	Paid DVL
KPMG 7,361	✓	X	✓	X	✓	Paid DVL	✓	Paid DVL	✓	Paid DVL
McKinsey 690	✓	X	✓	X	✓	Paid DVL	✓	Paid DVL	✓	Paid DVL
Rio Tinto Aluminium 3,864	X	X	X	X	X	X	X	No	X	Paid DVL
Woolworths 171,060	✓	X	✓	X	✓	Paid DVL	✓	Paid DVL	✓	Paid DVL 2019 in EA
Allens Arthur Robinson 1,308	✓	X	✓	X	✓	Unpaid DVL	✓	Unpaid DVL	✓	Unpaid DVL
Cochlear 1,748	X	X	✓	X	✓	Unpaid DVL	✓	Unpaid DVL	✓	No 2019 PDVL
Goldman Sachs 406	X	X	X	X	X	Unpaid DVL	X	Unpaid DVL	X	Unpaid DVL
Macquarie 6,465	X	X	X	X	✓	Unpaid DVL	✓	Unpaid DVL	✓	Unpaid DVL

Key: DVL = domestic violence leave; EA = enterprise agreement; X = No; ✓ = Yes

Dark shading = Paid DVL in an enterprise agreement; Light shading = paid DVL

Employees = number of employees in 2019

Policy and entitlements data from Workplace Gender Equality Agency Online Data Explorer (2020)

Founding members of Male Champions of Change were identified from the MCC webpage:

<https://malechampionsofchange.com/groups/founding-male-champions-of-change/>

### **7.3.8 Conclusion to Section 7.3**

This section has shown that many employers were motivated to develop workplace domestic violence policy and entitlements for humanitarian reasons and because the cost of providing such policy and entitlements was low and enhanced employer reputation. It shows how domestic violence leave entitlements first proliferated in Victorian councils and under Labor governments (as employers). It finds that how employers provided domestic violence leave varied from uncapped entitlements in enterprise agreements to none at all. This irregularity in provisions became a reason for the Commonwealth Government to provide domestic violence leave in the National Employment Standards.

## **8. Findings - The state**

### **8.1 Introduction**

This chapter examines Commonwealth agency and Australian Government development of workplace domestic violence policy. First it investigates Australian Law Reform Commission (ALRC), Australian Human Rights Commission (AHRC), Productivity Commission and Fair Work Commission (FWC) influence on Commonwealth Government workplace domestic violence policy development. This thesis examines the influence of these Commonwealth agencies given their large input into workplace domestic violence policy and workplace policy during this time. The chapter then provides additional insights into the interrelationship of Commonwealth components of the state and into the effects of gender and political affiliation on Commonwealth state actor ability and willingness to progress workplace domestic violence policy rapidly. It concludes with an analysis of how and why the Australian Government rapidly developed workplace domestic violence policy in 2018.

### **8.2 Commonwealth Government response to Australian Law Reform Commission policy recommendations**

Commonwealth Government workplace domestic violence policy developed relatively rapidly from 2010 to 2013 under the Labor Commonwealth Government. The Australian Labor Party was the first governing party in Australia to consider enterprise bargaining and employment law legislation as means to address domestic violence (discussed in Chapters 4 and 5). In July 2010, the Labor Attorney-General (Robert McClelland) requested that the ALRC investigate how domestic violence was treated in Commonwealth laws, including employment law. This resulted in the ALRC's year-long *Commonwealth Family Violence Inquiry 2010 to 2011*. Its purpose was to identify:

legislative arrangements across the Commonwealth... [that] impose[d] barriers to effectively supporting those adversely affected by those types of violence.  
(ALRC, 2010a)

The Government required the ALRC to make recommendations to address any such barriers.

From documentary evidence, the *Commonwealth Family Violence Inquiry* was part of a wider Government strategy to improve Commonwealth and other stakeholders' responses to domestic violence. A further element to the strategy was the ALRC's *Family Violence: A National Legal Response* inquiry into criminal, welfare, and family law responses to domestic violence. Its report was tabled in October 2010 (ALRC, 2010b). The inquiries were undertaken at around the time of the February 2011 release of the Commonwealth and Australian States' Governments' joint overarching strategy to address domestic violence, the *National Plan to Reduce Violence Against Women and their Children 2010 to 2022* (the *National Plan*).

The years 2010 to 2013 were turbulent politically. A Labor leadership spill led to Prime Minister Kevin Rudd's removal from office on 24 June 2010 (Holmes & Fernandez, 2012). Deputy Prime Minister (and previously Minister for Employment and Workplace Relations) Julia Gillard became Prime Minister and continued in this role after the federal election on 21 August 2010 which resulted in a minority government (Holmes & Fernandez, 2012), making the passage of legislation difficult for the Government. Gillard herself was removed as Prime Minister by her party on 26 June 2013, and Rudd was re-instated. The Commonwealth Government development of a bargaining orientation towards workplace domestic violence policy occurred against this backdrop of political instability.

Following its *Commonwealth Family Violence Inquiry*, the ALRC's recommendations for workplace domestic violence law reform were for the most part not adopted by Commonwealth Governments from 2011 to 2018. However, one ALRC suggestion that eventuated was that Fair Work Australia's review of modern awards (due to commence in 2012) may be an appropriate place to begin considering the addition of domestic violence terms to the Fair Work system (discussed in Section 4.5.5). This was suggested as:

15.40 ... these reviews provide a timely and constructive opportunity during which to consider the inclusion of family-violence related terms in modern awards.  
(ALRC, 2011e)

The then Government and successive Governments largely adhered to this suggestion. Fair Work Australia's deliberations were fully concluded when five days of unpaid domestic violence leave came into effect in modern awards in August 2018. This allowed Australian Governments (in particular the Coalition 2013 to 2018) to delay for more than six years any decision on whether to amend the structure of the National Employment Standards to include domestic violence leave (e.g., SBS, 2016).

The ALRC's *Commonwealth Family Violence Inquiry* concluded that there were barriers in Commonwealth legislative arrangements preventing the effective support of persons adversely affected by domestic violence. The ALRC's findings were garnered from evidence including from the 110 national consultations it undertook for the inquiry and the 165 submissions and extra contributions of expertise it received from round tables, panels and advisory committees (ALRC, 2011b). ALRC President Rosalind Croucher oversaw the inquiry. The inquiry's final report, *Family Violence and Commonwealth Laws – Improving Legal Frameworks* of 577 pages, devoted Chapters 15 to 18 of its 22 chapters to employment law (ALRC, 2011b). The ALRC made three key recommendations on the *Fair Work Act 2009* (Cth) for the Commonwealth Government to consider:

- (1) domestic violence amendments to the *Fair Work Act, 2009* (Cth) at the time of its 2012 Post-Implementation Review of the Act (Recommendation 16-1)
- (2) amending the Act to enable employees experiencing domestic violence, or those supporting such employees, the right to request flexible working arrangements (Recommendation 17-1)
- (3) amending the NES to include paid domestic violence leave (Recommendation 17-2)  
(summarised from ALRC, 2011b)

Regarding the ALRC's first recommendation, consideration of the inclusion of domestic violence terms in the *Fair Work Act 2009* (Cth) did not take place in the Post-Implementation Review of the Act (Australian Government, 2012). The second recommendation, for domestic violence terms to be included as reasons for employees' right to request flexible working

arrangements, was carried out via the *Fair Work Amendment Bill 2013*. A Labor Commonwealth MP interviewee (in office also in 2013) explained how the amendment came about after a group of Labor MPs advocated for it internally. In addition, the interviewee recalled this flexibility amendment:

had been moved at a previous Labor Party National Conference, and representations were made to the Minister for Workplace Relations at the time... and we put up a proposal, which was thankfully adopted by the Australian Parliament.

Participant 20

In 2012 Fair Work Australia published a 215-page report which found that flexibility arrangements in the National Employment Standards were seldom used (Fair Work Australia, 2012). Thus, the new National Employment Standards flexibility arrangements were unlikely to be of large cost to employers.

Regarding the third recommendation, no form of domestic violence leave was included in the *Fair Work Amendment Bill 2013*. This was despite Labor being the architects of the *Fair Work Act 2009* (Cth) and the ALRC striving to uphold and progress the social inclusion policy objective of the Act:

Of particular importance in the context of this Inquiry is the incorporation of references to, and actual entitlements based on, the concept of social inclusion.

ALRC President Rosalind Croucher (ALRC, 2012, *Submission to the Fair Work Review Panel*, p. 3)

From the evidence, the reluctance of Labor to add domestic violence leave to the Bill was due to the political and social climate. McFerran explained in an interview how:

The Labor Women's Committee were fantastic... I met with them afterwards. They were very apologetic. And the Minister was Bill Shorten, and in the end... what they told me was that they were being absolutely thumped by the Opposition and they were scared that they were going to lose most of the key reforms they were trying to get through the Fair Work Act... so domestic violence leave was one of the things that went.

Participant 1, Ludo McFerran

Tanya Plibersek (Participant 35), Minister for the Status of Women in 2013, recalled how the Labor Party was reluctant to impose a domestic violence leave reform that emanated largely



from the Government since “there was no groundswell of public demand or union demand for it at that time”. The Labor MP interviewed above reinforced this view:

At the time the representation mainly came from the union movement and domestic violence groups, and it wasn't being widely talked about in general political discourse... But once the union movement and others began highlighting this issue in the wider community then, after we'd lost government, we started to see much greater community involvement... and through various campaigns. That resulted in a change in Labor policy [to include paid domestic violence leave in the NES].

Participant 20

To conclude this section, through its *Commonwealth Family Violence Inquiry* the ALRC established workplace domestic violence policy and entitlements ideals that the Rudd–Gillard–Rudd Labor Government recognised and had an ideological affinity with. However, other socio-political forces were stronger in 2012 to 2013 and Labor largely did not act on the inquiry's recommendations when it was in office. Subsequently, Coalition Governments did not seek to enact the ALRC's recommendation for paid domestic violence leave to be included in the National Employment Standards.

### **8.3 Australian Human Rights Commission contribution**

From 2010 onwards the Australian Human Rights Commission (AHRC) advocated for innovation in workplace regulation to ameliorate the cost of domestic violence (as discussed in Chapters 4 and 5). Its strategies included working extensively with business and lobbying the Commonwealth Government.

Prominent AHRC advocates for workplace reform were Sex Discrimination Commissioners Elizabeth Broderick (2007–2015) and Kate Jenkins (2015–current). In 2010 Broderick established the Male Champions of Change (MCC) coalition (which later became a global entity) as a strategy for achieving gender equality (MCC, 2021). Jenkins presided over the Victorian group established in 2015 (MCC, 2021) before becoming Sex Discrimination Commissioner. The MCC published a report, *Playing Our Part*, in 2015, providing examples

of practical strategies to prevent and reduce the impact of domestic violence in the workplace (MCC, 2015).

In 2012 the ALRC submitted to the Post Implementation Review of the *Fair Work Act 2009* (Cth) for the Act to be amended to include paid domestic violence leave as a National Employment Standard, including to make domestic violence a protected attribute (a characteristic that cannot be discriminated against) in the Act (AHRC, 2012). In 2014 it produced its *Fact Sheet: Domestic and family violence – a workplace issue, a discrimination issue* (AHRC, 2014). The *Fact Sheet* argued that making domestic violence a ground for discrimination under the Commonwealth Sex Discrimination Act 1984 would assist to remove:

the discrimination that employees can face when they disclose their experience of domestic and family violence often [preventing] them from accessing [the right to request flexible working arrangements] under the Fair Work Act.

AHRC (2014)

Kate Jenkins (Participant 17) stated how the Commission “has had a fairly consistent position” on workplace domestic violence policy since 2014. In arriving at its policy, the AHRC, along with Australian evidence, drew on the *1993 United Nations Declaration on the Elimination of Violence Against Women*, *1979 United Nations Convention on the Elimination of All Forms of Discrimination Against Women* and ILO research on workplace gender-based violence (AHRC, 2014). Thus, in formulating its recommendations for workplace and discrimination law reform the AHRC recognised long-standing international initiatives to break down barriers to gender equality, concomitant with a social equity policy orientation.

The AHRC lobbied the Coalition Government on numerous occasions for Australian workers to have access to paid domestic violence leave. For example, the AHRC made “a plea” to the Minister for Women, Michaela Cash, in May 2016 for the Government to relent on its hardline Australian Public Service bargaining policy disallowing domestic violence leave in Commonwealth agency agreements (Towell, 2016b). The AHRC asked the Senate Education Committee hearing on the *Fair Work Amendment (Family and Domestic Violence Leave) Bill*

2018 for the Bill to include paid domestic violence leave. These suggested reforms have not taken place.

Pru Goward (Sex Discrimination Commissioner, 2001–2007) recalled that, regarding the AHRC developing workplace policy:

The Australian Human Rights Commission can often be an influencer of policy and certainly contributes strongly to debates but is remote from the actual development of policy and legislation.

Participant 40, Pru Goward

In summary, the AHRC's work to develop workplace domestic violence policy included establishing and working with the MCC Group and lobbying of the Commonwealth Government. The Sex Discrimination Commissioners successfully influenced MCC members to develop workplace domestic violence policies within their organisations. However, the progressive ideology informing the AHRC's recommendations for workplace domestic violence regulatory change was at odds with the Coalition Government's business orientation towards workplace domestic violence entitlements 2014 to circa early 2018.

#### **8.4 Productivity Commission contribution**

The Productivity Commission aligned with the Coalition Government's business orientation towards workplace domestic violence policy. In December 2014, Coalition Government Treasurer Joe Hockey asked the Productivity Commission to prepare a report on Australia's workplace relations framework to:

examine the current operation of the Fair Work Laws and identify future options to improve the laws bearing in mind the need to ensure workers are protected and the need for business to be able to grow, prosper and employ.

(Productivity Commission, 2015, p. v)

The inquiry's terms of reference required the Productivity Commission to draw on evidence from as full a range of workplace stakeholders as possible, including academia and special interest groups (Productivity Commission, 2015, pp. vi–vii). The two-volume 1173-page report resulting from this year-long inquiry included nine pages in total about domestic violence. The

Productivity Commission accepted evidence from Australian Bureau of Statistics data and the ACTU that domestic violence affected women more than men (Productivity Commission, 2015, p. 549). It surmised that imposing domestic violence leave on employers could lead to discrimination against working women and, more importantly, against working men, stating:

any obligations perceived to be costly by employers and that predominantly affect only one group of employees [in this case, women], may unwittingly lead to employment discrimination... There is therefore the risk that women may find their career and hiring prospects reduced by some employers... Moreover, to the extent the provisions are seen as largely oriented to women, men may be reticent about even requesting to use such provisions. (Productivity Commission, 2015, p. 543)

The Commission's argument that domestic violence leave may discriminate against women was taken up by Minister Cash. For example, on 27 May 2016 (three days after the AHRC lobbied Cash to remedy the Australian Public Service's bargaining policy to allow the leave to be included in federal awards):

Senator Cash told an election campaign event in Victoria on Friday morning that the entitlement might act as a "perverse disincentive" to employers considering hiring women. (Towell, 2016c)

Other Productivity Commission arguments to dissuade the Government from a paid domestic violence leave policy were similar to those of employer associations (set out in Section 7.2). These included that the high incidence of domestic violence leave in Australia could lead to the strong uptake of domestic violence leave and therefore high cost to employers (p. 549), especially to small businesses (p. 550). Cash promoted this latter argument. For example, in April 2016, in an interview for Sky News, Cash stated:

I am still considering the outcome of the Productivity Commission. What you don't want to do is put an additional impost on small business so that they end up going under because of the additional impost. (Ministers Media Centre, 2016, p. 10)

The Productivity Commission highlighted that employer policies could well assist employees experiencing domestic violence. A model workplace domestic violence policy developed by the MCC was cited as an exemplar (Productivity Commission, 2015, p. 449). The Commission noted that, while productivity may increase if employers provided more generous workplace

domestic violence leave entitlements, “there are private incentives to realise these, without necessarily requiring legislation” (Productivity Commission, 2015, p. 550). Thus, the Commission promoted a laissez-faire business orientation to addressing domestic violence and increasing workplace efficiency.

Overall, the Productivity Commission (2015, p. 550) viewed the National Employment Standards as standards that “can be expected to adapt as social norms adapt” and recommended that any decision to amend the National Employment Standards:

would need to ensure that the entitlements had broad public acceptability as well considering their more tangible costs and benefits entailed.

The National Employment Standards were developed to reflect “much of what was already consistent across awards, enterprise agreements and employment contracts” (Productivity Commission, 2015, p. 550). The Productivity Commission thus recommended that the Government observe existing social and workplace norms rather than lead social change through National Employment Standards reforms.

The Productivity Commission also advised that a decision on whether to add further domestic violence terms to the National Employment Standards should await “recommendations of a Victorian Royal Commission into Family Violence and the outcome of the Fair Work Commission modern awards hearing (Productivity Commission, 2015, p. 542). This was even though the Commonwealth Government was not bound to wait for the decisions of the Victorian Royal Commission or the Fair Work Commission, nor to act on them.

## **8.5 Fair Work Commission decisions**

Under section 156 of the *Fair Work Act 2009* (Cth), the Fair Work Commission (FWC) must review all modern awards every 4 years. Analysis of the FWC’s *Four Yearly Review of modern awards – Family and Domestic Violence Leave Clause* (FWC, 2017, FWCFB 1133) identifies

Fair Work Commissioners' differing orientations towards workplace domestic violence policy. The Full Bench hearing the ACTU's claim concerning the ACTU's proposed inclusion of a domestic violence leave clause consisted of FWC Vice President Graeme Watson, Commissioner Paula Spencer and Deputy President Anne Gooley. In January 2017, Vice President Watson announced his resignation from the FWC due to his disgruntlement with what he saw as a workplace relations system flawed by partisanship:

[where] there is an increasing awareness in the business community that the Fair Work Commission is partisan, dysfunctional and divided... I wish to contribute towards cooperative and productive workplace relations and national prosperity in the most constructive and meaningful way possible... I intend to pursue my goals directly in the business community. (Watson, January 2017)

Coalition Government MP and ex-Prime Minister Tony Abbott and Senator Eric Abetz sided with Watson's complaints (Knaus, 2017). Professor Andrew Stewart, an industrial relations expert from the University of Adelaide, rejected them, stating in the media:

"The idea that you've got a divided commission with one faction in charge, which is making anti-business decisions, well no, that's clearly wrong". (Knaus, 2017)

Before leaving, Vice President Watson published his modern awards decision in advance of other members. This was an unprecedented move. For example, Professor Anthony Forsyth from RMIT University observed:

Normally where you have three members of a commission, even if they disagree they issue their decisions at the same time... What I've never seen before is where one member actually hands down that decision in advance of the decision of the other members. (Australian Broadcasting Corporation, 2017)

Fair Work President Iain Ross referred the matter to the Federal Court to ensure the legitimacy of the existing Full Bench's decision, which delayed completion of the hearing (Australian Broadcasting Corporation, 2017).

Commissioner Watson rejected the ACTU's claim. In his decision at [7] (FWC, 2017) he recognised that the "test for assessing the claim [was] well established and involve[ed] a broad discretion and the application of ss.156 and 134 of the Act". However, in this case, Vice

President Watson chose not to exercise this broad discretion and, in his decision at [8] (FWC, 2017), supported the idea that leave entitlements ought to be established by the legislature.

Further, Vice President Watson at [13] (FWC, 2017) stated he was:

not satisfied that the family and domestic violence leave claim by the ACTU [was] necessary to provide a fair and relevant minimum safety net of terms and conditions.

Vice President Watson's reasoning showed an intrinsic trust of employers and a distrust of unions. For example, regarding employers, in Vice President Watson's view at [10] (FWC, 2017):

The best examples of an approach to the problem appear to be when employees feel they can be open with their manager, and in a cooperative and collaborative manner, develop solutions to assist the employee to deal with the issues while remaining in productive employment.

This presented a unitarist view of workplace relations where employees could depend on the benevolence of their employer. It was a view Vice President Watson would have seen frequently challenged in FWC hearings and thus was ideological. Indeed, Watson himself heard evidence that women were dismissed from work after disclosing domestic violence (e.g., see at [30] FWC, 2017). That employees could depend on the benevolence of their employers was a patriarchal view. Watson further stated at [81.3] (FWC, 2017) that fear of unions was a reason to disallow the inclusion of the leave, since, if it were allowed it:

may be seen as a precedent for similar claims that are subsequently made by the union movement [where] the ability of respondent parties and the Commission to set apart different social issues (having regard to their causes and implications) would be stymied.

Vice-President Watson's argument that including domestic violence leave in modern awards would stymie the FWC's ability to decide other separate claims on their merits was conjecture.

Vice-President Watson's reasoning displayed a reluctance to set a precedent whereby new employee entitlements could be claimed. This contrasted with the yardstick (to prevent the inclusion of domestic violence leave in modern awards) he himself set by handing down his decision ahead of other members'.

The other Full Bench members hearing the claim, Anne Gooley and Paula Spencer, disagreed with Vice President Watson's decision, grounding their reasoning in the merits of the ACTU claim and a desire to meet the requirements of modern awards:

Based on the largely uncontested evidence before us we have formed the preliminary view that it is necessary to meet the modern award objectives for provisions to be inserted in modern awards which would allow for a period of unpaid family and domestic violence leave... Such unpaid leave serves to confirm the significance of family and domestic violence leave as a workplace right and provides an employment protection in circumstances where there is a need to access such leave.

(FWC, 2017)

The majority decision highlighted the uncontested evidence between employer and employee representatives, compared with Vice President Watson decision, which foregrounded what was contested, unknown and feared. The majority decision enabled the first nationwide award entitlements to workplace domestic violence leave in Australia (albeit for five days of unpaid leave). It broke previous barriers to introducing domestic violence leave entitlements into the Fair Work system, such as the socio-political barriers faced by the 2013 Labor Government (discussed in Section 8.2 above).

## **8.6 Contributions of the non-government political parties**

### **8.6.1 Australian Greens**

The evidence showed the Australian Greens were highly motivated to gain widespread parliamentary support to improve the Commonwealth's response to domestic violence, including through workplace measures. Senator Larissa Waters (Participant 36) held the women's and domestic violence portfolio for the Australian Greens from 2013 onwards. After proposed 2015 Coalition budget cuts to frontline domestic violence services (Parliament of Australia, 2015), Waters instigated a Senate inquiry into domestic violence.

[The inquiry] ended up recommending that of course the cuts shouldn't proceed because services couldn't meet demand as it was [and the Government] then backed down. [The inquiry] helped seed the ground for future policy development.

Participant 36, Larissa Waters



After the inquiry, the Government abandoned the proposed cuts (Chan, 2015). Waters recalled how initially the Senate inquiry's members supported a recommendation for the Government to find ways to enable employees to access domestic violence leave. However, the recommendation "did not make it to the final report" (Participant 36). A second report Waters drafted made domestic violence leave its number one recommendation:

Recommendation 1

... The committee supports victims of domestic and family violence having access to appropriate leave provisions which assist them to maintain employment and financial security while attending necessary appointments such as court appearances and seeking legal advice. The Commonwealth Government should investigate ways to implement this across the private and public sector.

(Parliament House, 2015)

Waters recalled that an ACTU press release calling on the Government to include ten days of paid domestic violence leave in the National Employment Standards prompted her to adopt this as an Australian Greens' policy:

The ACTU's initial call for there to be ten days' paid leave, I certainly clocked that and then that was the genesis for our private member's bill...

Participant 36, Larissa Waters

The Australian Greens developed the *Fair Work Amendment (Improving National Employment Standards) Bill 2018*. However, a second reading did not eventuate, and the Bill was removed from notice on 21 August 2018. Three weeks later, Industrial Relations Minister O'Dwyer tabled the *Fair Work (Family and Domestic Violence Leave Amendment) Bill 2018* on 13 September 2018 (Parliament of Australia, 2018a, 2018b).

Waters recalled that the Australian Greens were the first party to endorse the ACTU's call for ten days of paid domestic violence leave in the National Employment Standards:

I can't remember when the Labor Party said they wanted it as well, but we certainly welcomed that.

Participant 36, Larissa Waters

ACTU interview participant (Participant 24) said this was awkward for the ACTU since its We Won't Wait Campaign was supported by Labor and Labor had not yet called for ten days of paid domestic violence leave in the National Employment Standards. This was resolved in

December 2017 when Labor announced they would enact ten days' domestic violence leave in the National Employment Standards if they were elected at the next election (Kemp, 2017). This election took place in May 2019 and the Coalition retained Government. Rather than debate or amend the Australian Greens' Bill for paid domestic violence leave in the National Employment Standards, the Coalition and Labor preferred to bring their own Bills.

### 8.6.2 Composition of the Australian Parliament by party and gender 2016 to 2018

In the 45<sup>th</sup> Australian Parliament (30 August 2016 to 4 April 2019), the higher the percentage of women in a political party, the more rapidly that party acted to make paid domestic violence leave in the National Employment Standards a reality. Table 8 shows that, of the main political parties, the Australian Greens had the highest percentage of women parliamentarians at 50% and was the first political party in Australia to bring a bill for paid, or any form of, domestic violence leave to the Parliament. In the 45<sup>th</sup> Parliament, 41% of Labor, 21% of Liberal and 14% of Nationals parliamentarians were women. Labor was second and the Coalition third to the Greens in the timeliness of their actions to enact paid domestic violence leave in the National Employment Standards.

**Table 8. Composition of the 45<sup>th</sup> Parliament of Australia by party and gender**

Party	House of Representatives			Senate			Total Parliament		
	M	F	%F	M	F	%F	M	F	%F
Australian Labor Party	41	28	41	12	14	54	53	42	44
Liberal Party	48	12	20	18	6	25	66	18	21
Nationals	15	1	6	3	2	40	18	3	14
Country Liberal Party				1		0	1		0
Australian Greens	1		0	4	5	56	5	5	50

(Hough, 2016)

### 8.6.3 Contribution of the Australian Labor Party from 2016

Participant and documentary evidence shows that, from 2016 onwards, there were conflicting forces affecting Labor's development of workplace domestic violence policy and entitlements.

This conflict was resolved from Labor's accumulation of evidence of the low cost of paid domestic violence leave to business, and political opportunity.

Compelling Labor to progress its workplace domestic violence policy were unions, the Federal Parliamentary Labor Party's Status of Women Committee, the support of its male leader and other senior male MPs, and its inherent social equity orientation. Ged Kearney (Participant 5) provided an example of union strategies to engage Labor to support paid domestic violence leave entitlements:

The Australian Services Union particularly pulled together a group of employers who had already introduced paid domestic and family violence leave. They pulled together survivors of family violence, they had union leaders and workers in the sector all come to Canberra... and they met with the [ALP's Status] of Women Committee and they were quite effective, I think, in getting the message across.  
Participant 5, Ged Kearney

Sharon Claydon (Participant 23) chaired the Federal Parliamentary Labor Party's Status of Women Committee and evidenced how it "became determined to try to improve on the five days leave that had originally been our position in 2016". Amongst the many Labor women committed to including paid domestic violence leave entitlements in the National Employment Standards were Ged Kearney, Tanya Plibersek, Kate Ellis and Sharon Claydon (Parliament of Australia, 2018a, 2018b). All Labor MP participants cited the support for workplace domestic violence leave of Labor leader Bill Shorten and other senior men. For example:

Bill Shorten was particularly committed to this issue... and Brendan [Employment and Workplace Relations Shadow Minister, Brendan O'Connor]. I think Brendan has played a very key role.  
Participant 38

Brendan O'Connor (Participant 28), Shadow Minister for Employment and Workplace Relations, evidenced the social equity beliefs of Labor in developing its policy for paid domestic violence leave to be included in the National Employment Standards:

We believed this was another step towards de-stigmatising the shame that women often feel, through no fault of their own, from being victims, through legitimising leave and formalising it. Yes. So, we were very proud of the policy. It was just a shame we couldn't enact it.  
Participant 28, Brendan O'Connor

O'Connor was referring to the fact that stigma was a way people, particularly women and those experiencing domestic violence, have historically been kept from social inclusion and equity (e.g., as evidenced in the work of Goffman, 1963). Thus, through its policy to legislate for domestic violence leave, Labor wanted to prevent continuation of this inequity.

Labor was constrained because it was in Opposition (from September 2013), concerned that its workplace domestic violence policy would be seen as union driven and concerned about the cost of paid domestic violence for employers. A Commonwealth Labor staffer provided insights into the restrictiveness to policy development of being in Opposition:

We've got extremely limited resources in Opposition, so predominantly we were looking for people who were advocating strongly for this policy to be providing the research that backed up their case in order for us to adopt it.

Participant 39

The staffer observed that Labor required evidence "around uptake by employers who had rolled it [paid domestic violence leave] out voluntarily". Brendan O'Connor recalled a reservation Labor initially had:

of moving from five to ten [days] was the impact on small business... But, anyway, we got there.

Participant 28, Brendan O'Connor

Labor's concern that the cost of the policy would overly burden employers was resolved through its accumulation of evidence to the contrary:

There was plenty of evidence to suggest that ten days was going to be best practice, and that it wasn't the unions that were leading those charges... [it] wasn't the thing that made or broke it, but it was definitely important to put pressure on Government to come to the party. Because otherwise they would just paint this as a Labor, union stitch-up.

Participant 23, Sharon Claydon

Tanya Plibersek (Participant 35) recalled how the Australian Services Union's gathering of evidence assisted Labor policy change:

Natalie Lang [Branch Secretary, ASU, NSW & ACT] was probably the most significant person in changing the commitment from a five-day commitment to a ten-day commitment... my advice to her early on in the campaign was talk to employers who are already doing it and show that it costs [very little] and that's what she did very effectively.

Participant 35, Tanya Plibersek

O'Connor added that there "were limited circumstances where we saw any abuse" of paid domestic violence leave entitlements. He cited Victorian Government research into the uptake of paid domestic violence leave in its public service as an example. The findings were unpublished and relayed to the public in the media (e.g., Wahlquist, 2018).

The outcome of Labor's domestic violence leave policy to the end of 2018 was to support the Coalition's *Fair Work Amendment (Family and Domestic Violence Leave) Bill 2018*. A Labor interview participant reflected on why the party supported the Bill:

Obviously, you are not going to object to a piece of legislation that has an incremental change for domestic violence but very much at odds with what has ended up being [ALP] policy.  
Participant 38

Labor via its Employment and Workplace Relations Minister Brendan O'Connor argued at the time, supported by Australian Greens MP Adam Bandt, for the Coalition to agree to ten days of paid domestic violence leave in the National Employment Standards. O'Connor added that:

It was the only legislation that has ever been before a parliament to vary the *Fair Work Act* that would actually be in excess of conditions and entitlements in federal awards and jurisdictions. So, that in itself was quite remarkable.  
Participant 28, Brendan O'Connor

However, as identified previously in this thesis, the Coalition declined to amend its Bill and the outcome of the vote on 6 December 2018 was for five days of unpaid domestic violence leave in the National Employment Standards.

## **8.7 Coalition Government development of workplace domestic violence policy 2018**

The question remains as to how and why the Coalition Government rapidly transformed its workplace domestic violence policy in 2018 from one of zero support for the introduction of any form of domestic violence leave in the National Employment Standards, to one of agreement with most other workplace stakeholders that unpaid leave ought to be added.

First, as evidenced in Chapter 7, all other workplace stakeholders submitting to the Senate inquiry into the *Fair Work Amendment (Family and Domestic Violence Leave) Bill 2018*

supported the addition of unpaid domestic violence leave as a National Employment Standard. Stakeholders included employer associations and employers, parties shown in this thesis to have largely previously agreed with the Coalition's singular business orientation towards domestic violence leave entitlements. That is, in extending its policy to impose a new unpaid leave entitlement on employers, the Coalition had the approval of employer associations and employers. By 2018 the Coalition and employer parties were aware that paid domestic violence leave was not abused in workplaces where it existed. Therefore, the impost of unpaid domestic violence leave in the National Employment Standards was likely to be of minimal economic cost to employers and not to disrupt the status quo.

Second, from participant and documentary evidence, the Coalition's workplace domestic violence policy progressed more rapidly after Kelly O'Dwyer became Minister for Women in December 2017 and Minister for Jobs and Industrial Relations in August 2018. O'Dwyer was an avowed feminist (Murphy, 2018). Brendan O'Connor (Participant 28) said how "having O'Dwyer there was probably better than some other Liberal Minister". Another Labor MP (Participant 20) added "I think that her being from the moderate faction within the Liberal Party probably helped".

As Minister for Women, O'Dwyer said she aimed to ensure "women enjoy[ed] physical security – in their homes, workplaces, online, in the street – as well as having economic security" (Dent, 2018). In November 2018, O'Dwyer worked with the not-for-profit organisation Good Shepherd to enable women to access microfinance via the Government's expansion of the "National No Interest Loan Scheme (NILS) [to] provide safe, affordable loans up to \$2,000 to victims of domestic and family violence" (Good Shepherd, 2018). This sum of \$2,000 was well under the \$18,000 the ACTU estimated it cost a person to flee domestic violence (SBS, November 2017).

Third, the FWC's modern awards majority decision was a catalyst for the Coalition to bring its *Fair Work Amendment (Family and Domestic Violence Leave) Bill 2018* to the parliament. On 26 March 2018, the day the FWC handed down its decision, O'Dwyer and Coalition MP Craig Laundy, Minister for Small and Family Business and Workplace and Deregulation issued a joint press release stating the Coalition would emulate the FWC's decision in the National Employment Standards.

The Turnbull Government will ensure that up to a further six million workers covered by the *Fair Work Act* will have access to five days unpaid family and domestic violence leave per year. This follows a decision by the independent Fair Work Commission today to provide five days of unpaid domestic violence leave per year to up to 2.3 million people on modern awards. (Ministers Media Centre, 2018)

After it was flagged in March 2018, the Bill was brought to the Parliament nine months later, within a month of O'Dwyer becoming Industrial Relations Minister. In bringing the Bill, the Coalition was keen to see that small business would not be discriminated against by the modern awards decision:

[The passage of the above Bill] ensures a level playing field for employers. Many small businesses employ their staff under a modern award and hence their staff already have access to the leave based on the Fair Work Commission's decision.

This bill will ensure big businesses, which are more likely to employ staff under enterprise agreements and individual arrangements, will also need to provide this minimum leave entitlement.

Second Reading speech of Kelly O'Dwyer, 4 December 2018 (Australian Parliament, 2018b)

It was unclear how small business was to benefit by the impost of domestic violence leave on big business. It was a somewhat strange negative conception of equality in which employers, large and small, would now be equally trammelled by the impost of domestic violence leave in the National Employment Standards. It also disregarded the different capacities of small and large business and that unpaid domestic violence leave was unlikely to burden any employer, large or small.

Members of the Coalition noted that the work of the FWC on domestic violence leave in modern awards was ongoing. For instance, Senator Marise Payne, who succeeded O'Dwyer as

Minister for Women in May 2019, “indicated it [the Commission] would revisit consideration of this issue in 2021” (correspondence to the researcher from Senator Payne). It is unknown whether the Government would emulate any further decision of the FWC, for instance, if the Commission decided to include paid domestic violence leave in modern awards.

To summarise Section 8.7, the Coalition rapidly reformed its workplace domestic violence policy in 2018 by slightly adjusting its business orientation towards this policy to include an unpaid domestic violence leave entitlement in the National Employment Standards with negligible cost to employers. Since the entitlements were unpaid, they may not fully assist employees to escape domestic violence or improve social equity.

## **8.8 Conclusion**

The Commonwealth agencies of the Australian Law Reform Commission and the Australian Human Rights Commission and the political parties the Australian Labor Party and Australian Greens became committed to a social equity orientation towards workplace domestic violence policy to be progressed through paid domestic violence leave in the National Employment Standards, which the Coalition opposed. The Coalition was sufficiently influenced to change its staunch business orientation to workplace domestic violence policy to include some social equity elements. This occurred in the context of the Coalition’s opposition to including domestic violence leave in the National Employment Standards, which stood in contrast to the support for this policy from a wide range of workplace stakeholders, including employer parties. The findings show the considerable influence of key female state actors, including Fair Work Commissioners and Australian Commonwealth and State politicians in progressing the entitlements.



## 9. Discussion

### 9.1 Introduction

This chapter revisits the research questions given the findings in Chapters 4 to 8. The primary aim of the investigation was to understand how and why workplace domestic violence policy in Australia was developed in the decade to 2018. Prior to this thesis there was very little extant literature on this national policy reform. The investigation had three secondary research questions: To what extent did (1) components of the state, (2) unions, employers and employer associations, and (3) non-traditional actors and key individuals influence the development of workplace domestic violence policy? Chapter 9 discusses and draws conclusions on the secondary research questions. Answering them assists to address the central research question which is the focus of the next chapter. To address the research questions the study employed a multi-factor analytical framework combining analysis of non-traditional, key individual and traditional industrial relations actors. Actors, events and policy outcomes were analysed through systematic process analysis (modelled on Hall, 2008). The study used Baird's (2004, 2006, 2016) typology of orientations to analyse these developments.

Previous literature (reviewed in Chapter 2) found the progress of policy aimed at enhancing gender equality at work was impeded by organisational, institutional, social norm, regulatory and research barriers. It showed how male breadwinner and ideal male worker models contributed to such barriers. Past studies found that the progress of workplace gender equality policy was overall glacial, and progress was largely driven by feminists in the form of female members of parliament, female union officials and researchers. These actors had gradually, over decades, brought unions overall, and, to a lesser extent, employer parties and the state to incrementally advance such policy. From the literature there was a vast gap in knowledge on how and why workplace domestic violence policy came into being and was advanced, both in

Australia and internationally. Extant studies covered only a small aspect of how and why workplace domestic violence policy developed in Australia. This thesis has addressed this gap in knowledge and answers how and why, despite the considerable barriers above, workplace domestic violence policy reform underwent rapid innovation in Australia from 2008 to 2018.

This chapter discusses and draws conclusions on the secondary research questions. It concludes that non-traditional actors and unions influenced policy developments to a great extent, and employers and components of the state less so. It finds that anti-domestic violence advocates, particularly a key individual amongst them, and researchers instigated the development of workplace domestic violence policy and entitlements in Australia beginning in 2009. Unions followed and promulgated workplace domestic violence policy and entitlements in earnest from 2010 to 2018. Employer parties and components of the state, to varying extents, were brought by the above actors to undertake workplace domestic violence policy and entitlements reform. These findings extend Baird's (2004, 2006, 2016) typology of orientations in two ways. First, they expand the types of "principal agency" the typology identifies (e.g., Baird, 2004, p. 269) to include non-traditional actors and their specific types and, second, they add to the typologies' dimensions of causality. The thesis calls these new dimensions *causes of actor orientation and orientation change*.

## **9.2 Influence of non-traditional actors and key individuals**

The study finds the crucial contribution of a key individual anti-domestic violence advocate, Ludo McFerran, to the imagining and development of workplace domestic violence policy in Australia (and elsewhere) and in galvanising others to follow. McFerran was the first person in Australia to have the idea of workplace domestic violence entitlements and initiate it. This non-traditional actor's outreach to other stakeholders, influencing them to in turn develop workplace domestic violence policy and entitlements, included (as set out primarily in Chapter 5):

- collaborating with research bodies, unions and components of the state
- direct lobbying of politicians
- establishing a Commonwealth Government funded Australia-wide project (the Safe at Home, Safe at Work Project operating out of the then Australian Domestic and Family Violence Clearinghouse at UNSW) to disseminate information to workplace stakeholders on workplace domestic violence leave and supports
- acting as an advisor to international human rights and workplace standards bodies
- providing expert evidence to the Fair Work Commission (during its hearing for the inclusion of domestic violence leave in modern awards)
- staging and participating in events
- carrying out research and authoring academic and media articles and reports.

The thesis's demonstration of the extraordinary depth and breadth of McFerran's work to develop workplace domestic violence policy and entitlements represents a unique contribution to scholarship.

The thesis reveals the decades (since the 1970s) of McFerran's involvement in anti-domestic violence advocacy. It confirms the argument of previous scholars (e.g., Colley, 2018) that to fully understand how and why a policy changed, its long history and complex context must be traced. It also heeds the warning of Patmore (2006) that studies need to take a long view of proceedings to avoid unfounded claims of how and why outcomes occur. The beginnings of McFerran's idea of the need for paid domestic violence leave entitlements stemmed from her experience of two, in her eyes worthwhile, but on their own inadequate governmental orientations towards domestic violence policy: the Commonwealth Coalition Government's 1997 to 2003 Partnerships Against Domestic Violence program and the NSW Government's Staying Home Leaving Violence program (operational since 2004 and instigated by McFerran

and other anti-domestic violence advocates using a model devised by UNSW academics). Working on these programs allowed McFerran to see how the laissez-faire business orientation of the former and the welfare orientation of the latter towards domestic violence policy could be augmented by a workplace entitlements orientation. This echoes the finding of Swanberg et al. (2012) that government workplace domestic violence policy in the context of the United States developed in response to employer reluctance to address domestic violence as a workplace issue. The thesis adds insight into how this happened in Australia, finding that a non-traditional actor, McFerran, was a necessary intervenor between employer neglect and government action.

The thesis finds the considerable influence of other non-traditional actors on workplace domestic violence policy and entitlements development in Australia. This includes the groundbreaking work of union interns and members (e.g., the Anna Stewart Memorial Project intern and Rail Tram and Bus Union members) at critical points during enterprise bargaining which led to the inaugural and early paid domestic violence leave clauses in enterprise agreements in Australia. Union members were crucial to convincing other union members (during meetings and on work sites) to support unions to initiate enterprise bargaining for workplace domestic violence leave. They assisted to educate Fair Work Commissioners on the need for workplace domestic violence leave in modern awards.

Non-traditional actors contributing to influencing these policy developments also included academics and researchers working at UNSW in a Commonwealth Government funded research body, the Australian Domestic and Family Violence Clearinghouse, in particular Robyn Dale, Shabnam Hameed (first with the NSW Public Service Association) and Alice Orchiston, and individual anti-domestic violence advocates such as Rosie Batty and Kristy McKellar. The thesis finds that the above actors (Dale, Hameed and Orchiston) promulgated the work of the Safe at Home, Safe at Work Project in earnest and through it successfully

influenced union and state actors to develop workplace domestic violence entitlements. Batty spoke to parliaments around Australia, the ACTU and employer organisations, and through the media, to encourage the development of workplace domestic violence policy and entitlements. Batty and McKellar had success in directly influencing certain CEOs from employer group Male Champions of Change to adopt workplace domestic violence policies in their organisations. These actors were able to gain access to CEOs of both unionised and non-unionised organisations, the latter with which McFerran and actors working on the Safe at Home, Safe at Work Project had had less influence.

Previous studies identified the importance of studying non-traditional actors in industrial relations research, as commended by Bellemare (2000), Conley (2012), Dabscheck (1980), Heery and Frege (2006), Kaufman (2004) and Michelson et al. (2008). The thesis goes beyond these studies in that it identifies the importance of non-traditional actors to a national case of policy innovation. It validates the arguments put forward by McLaughlin and Wright (2018) and Wright and Lansbury (2019) for industrial relations analysis to include dynamic forces of change. The thesis demonstrates how non-traditional actors, in energetically and emphatically stimulating the progress of workplace domestic violence policy and entitlements within existing and new systems and processes, can well be considered dynamic forces of change.

The thesis finds the considerable influence of key individuals on workplace domestic violence policy and industrial relations outcomes, deepening the insights of Kitay and Marchington (1996), Lawrence et al. (2011) and Scott (2088). This finding adds to Lawrence et al. (2011) by showing how key individuals “actively engage in processes of institutional creation, maintenance, disruption and change” (Lawrence et al., 2011, p. 53). For example, in the case of McFerran this was through her imagining of paid workplace domestic violence leave as an industrial entitlement and influencing of union, employer and state actors to establish it as such.

The thesis shows how, in the case of workplace domestic violence policy development in Australia, individual agency is enhanced by professional status. This exemplifies, in a novel context, the findings of Scott (2008). For instance, Rosie Batty's status as Australian of the Year 2015 facilitated her access to and influence on employers, who after hearing her testimony of the need for domestic violence leave in workplaces, included it in their organisations. McFerran's employment and collaboration with the Australian Domestic and Family Violence Clearinghouse lent authority to her input into the Australian Law Reform Commission's 2011 *Commonwealth Family Violence Inquiry*, which had far-reaching effects from 2011 to 2018.

This thesis finds that, in the context of Australia, key individual anti-domestic violence advocates not only worked assiduously to reframe domestic violence as a public issue, but also as a workplace issue. This compares and contrasts with Widiss (2008)'s identification of how in the context of the United States researcher reframing of domestic violence as a public rather than a private issue assisted in removing legal barriers to domestic violence policy reform. Comparable to Widiss's (2008) finding, the thesis finds researchers (e.g., from the Australian Domestic and Family Violence Clearinghouse) were instrumental in reframing domestic violence as a public issue in Australia. The thesis illuminates why and how this reframing took place. For instance, motivated to achieve social equity for persons experiencing domestic violence, McFerran and Safe at Home, Safe at Work Project actors led unions (who then led employers) towards this understanding (that domestic violence is a public rather than a private issue) and Rosie Batty led certain employers, and the public. In contrast to Widiss's (2008) finding, the thesis finds how these actors not only contributed to reframing domestic violence as a public issue but also as a workplace issue. This reframing contributed to building pressure on the Commonwealth Government to change their orientation to domestic violence policy to include workplace entitlements. Towards achieving this reframing, McFerran, Safe at Home, Safe at Work Project and union actors used research such as the *Safe at Home, Safe at Work?*

*National Domestic Violence and the Workplace Survey 2011*, which McFerran and researchers devised to provide missing evidence of employee need for the provisions in Australia. These findings of how anti-domestic violence advocates and researchers successfully reframed domestic violence as a workplace issue in Australia provide an empirical illustration of how barriers to workplace gender equality can be broken down.

To overcome workplace gender inequality, many prior studies argued the need for policy and regulation makers to consider the intersection of the domestic sphere, work and community (e.g., Baird, 2008; Dickens, 2007; Eikhof et al., 2007; Kanter, 1989; Pocock, 2014; Pocock & Charlesworth, 2017; Pocock et al., 2012). This thesis contributes to this literature through exemplifying how and why anti-domestic violence advocates, backed by research, brought policymakers to consider the nexus of these three spheres when formulating workplace domestic violence policy.

The thesis finds that anti-domestic violence advocates and researchers not only overcame the above barrier to gender equality (when policymakers neglected to consider the intersection of home, the workplace and the community), but also successfully engineered the removal of other barriers to workplace gender equality described in the literature. For example, previous scholarship found that workplace gender equality processes were hindered when its actors saw it as solely a women's issue (Colling & Dickens, 1998; Wacjman, 2000; Williamson & Baird, 2014). It cited the superiority of collectivist over individualist approaches to overcoming gender inequality at work (Boyle & Roan, 2004; Brennan, 2009) and highlighted the radical potential of industrial relations regulation, in that it is essentially collectivist, to overcome workplace inequality (Whitehouse et al., 2003). Prior studies found that social norms led to precarity of work and gender segregated work for women, women's unequal pay and superannuation in comparison to men's, and devaluation of women's skills (Baird, 2016; Baird & Cooper, 2009; Cooper & Parker, 2012; Padavic & Earnest, 1994; Pocock, 2008; Power,

1975). The thesis shows McFerran and those working with her addressed such problems. To combat the perception that domestic violence is solely a woman's issue, McFerran ensured that the model domestic violence leave clause she designed (with unions) was gender neutral. Recognising the collectivist potential of industrial relations regulation, McFerran and Safe at Home, Safe at Work actors targeted the *Fair Work Act 2009* (Cth), resulting in domestic violence leave eventually being added to it in 2018. McFerran addressed the precarity of work for women by successfully insisting (along with other advocates) that part-time and casual employees be eligible for workplace domestic violence leave entitlements in modern awards and the National Employment Standards.

The thesis finds the importance of women to workplace equality policy and entitlements development. The anti-domestic violence advocates, including key individuals, involved in developing workplace domestic violence policy and entitlements in Australia were all women. The thesis reveals how the work of non-traditional actor women from outside of parliament (i.e., they were not members of parliament) generated workplace domestic violence policy which was then further developed primarily by female unionists and female members of parliament. The thesis finds this exemplifies Sawer and Turner' (2016, p. 766) concept of "women's policy machinery". Indeed, the thesis shows that the exemplary work of McFerran and other women to generate workplace domestic violence policy further proved the Sawer and Turner (2016, p. 766) thesis that gender equality policy is likely to be advanced when its actors exhibit "exemplary feminist characteristics... such as those presenting an alternative to dominant norms".

The thesis finds a deep desire to improve the social equity of persons experiencing domestic violence was a key motivation of non-traditional actors. It finds non-traditional actors' social equity orientation stemmed from their firsthand experience of the drastic social inequities



domestic violence can cause. The thesis demonstrates how non-traditional actors, and others, were able to influence other actors to change policy orientation regarding domestic violence by suggesting that they (other actors) use industrial relations mechanisms already available to them to use. Thus, unions and employers were targeted to use enterprise bargaining and governments and government agencies to use existing industrial relations regulatory structures, including modern awards and the National Employment Standards. In this way McFerran and other non-traditional actors encouraged bargaining and workplace entitlements orientations in these other actors, whereas before a welfare orientation was largely the norm in all workplace actors towards domestic violence policy.

Baird's (2004, 2006, 2016) typology of orientations was proposed (by Baird) as a means of analysing the effectiveness of iterations of a particular workplace policy (paid maternity and parental leave) to achieve gender equality at work. This thesis deepens the use of this typology. It finds not only how effective each policy orientation was in meeting social equity goals of workplace domestic violence policy, but also (as above) how and why (a) actors' orientations (such as non-traditional actors') to workplace domestic violence policy were forged and (b) how such actors were able to influence other actors to change policy orientation.

To conclude this section, the thesis finds that one key individual anti-domestic violence advocate (Ludo McFerran) laid the foundations upon which all other actors developed workplace domestic violence policy and entitlements in Australia. McFerran was able to lay these foundations due to her insight into domestic violence policy gained from her decades of experience working to prevent and ameliorate the effects of domestic violence, including with other anti-domestic violence advocates, researchers and governments. Other anti-domestic violence advocates were critical in persuading workplace stakeholders, in particular employers, to include workplace domestic violence entitlements in enterprise agreements and organisational policies. Anti-domestic violence advocates and researchers were highly

influential in breaking down barriers to workplace gender equality to convince workplace stakeholders and the public that workplace domestic violence entitlements were timely. Baird's (2004, 2006, 2016) typology of orientations assisted to explain iterations of domestic violence policy in Australia from 2008 to 2018 (and in decades prior) and why and how anti-domestic violence advocates sought policy reform. The thesis' findings of the great extent to which non-traditional actors and key individuals influenced workplace domestic violence policy development represent an original contribution to scholarship.

### **9.3 Union influence**

The thesis also shows the great extent to which unions influenced workplace domestic violence policy development in Australia. There are four main findings leading to the thesis' conclusion that unions influenced workplace domestic violence policy developments to a great extent. First, unions and not employers (with rare exceptions) instigated negotiations for the collective bargaining of workplace domestic violence entitlements in Australia. Second, these negotiations resulted in the rapid growth of such provisions, primarily in the public sector, so that by 2015 some 586,000 employees had access to domestic violence leave entitlements (Productivity Commission, 2015, p. 545), where prior to 2010 there had been none. This figure represented a critical mass and the beginnings of the normalisation of these entitlements. Three, unions then worked towards enabling all employees in Australia to have access to paid domestic violence leave entitlements via the ACTU claim for its inclusion in modern awards and campaign for it in the National Employment Standards. Four, the study reveals how the successful outcome of the inclusion of domestic violence leave (albeit unpaid) in modern awards in 2018 triggered the Commonwealth Government to mirror these entitlements in the National Employment Standards.

The findings of past studies showed how the ACTU assisted in workplace gender equality policy development, for example, Baird (2011) and Brennan (2009) regarding paid parental

leave. Previous studies demonstrated how employers and the state could not be relied upon to provide entitlements facilitating gender equality at work (e.g., Whitehouse & Frino, 2003 regarding equal pay), particularly private sector employers (e.g., Baird & Murray, 2014 in relation to paid parental leave). This thesis finds how unions and the ACTU stepped in to redress such unreliability in employers and the state on domestic violence.

This study finds that in union development of workplace domestic violence policy and entitlements there was little sign of historic union conservatism towards such policy aimed at promoting gender equality at work. This departs from findings of previous studies on other policy areas (e.g., Pocock & Brown, 2009). The thesis demonstrates how any union resistance to workplace domestic violence policy development was short-lived. It shows that unions and key individuals within them, such as from the Victorian Trades Hall Council, the Australian Services Union and Unions NSW, were especially primed to develop the entitlements if individuals within them had witnessed close hand the inequities domestic violence can cause. The study finds that the public service union, the NSW Public Service Association, was also particularly responsive to McFerran's workplace domestic violence ideations. These actors already held a social equity orientation towards domestic violence policy and did not need much persuading by McFerran, commencing in late 2009, to extend this to a workplace entitlements orientation.

The thesis provides insights into conditions in which knowledge was shared between a same sector union internationally and how an individual union official actively scouted out a new workplace gender equality idea. It finds that McFerran was the instigator and conduit through which the NSW Public Service Association was able to gather much needed workplace domestic violence supports expertise from its fellow public service union, UNISON in the United Kingdom. It finds that opportunity was a further factor leading to union development of the entitlements. A NSW Public Service Association actor, receptive to McFerran's ideas,

heard her speaking about them at an Amnesty International meeting, leading to the Public Service Association's involvement. McFerran had sought to create such opportunities via her initial dedication to gain such support. Without this finding the answer on the extent unions influenced workplace domestic violence policy developments in Australia, for example, that they were not the initial drivers of it, would have fallen short.

Previous studies showed that the extent to which unions developed workplace entitlements and policy aimed at promoting gender equality at work was frequently dependent on the involvement and driving force of women within unions. This was demonstrated in Baird (2011) and Brennan (2009) in the context of paid maternity and parental leave; Ellem (2000) on equal pay; and Heery (2006) and Williamson (2012) on equality bargaining. The literature review found how women within unions had succeeded, incrementally and over decades (at times more rapidly than others) in removing obstacles to policy and entitlements aimed at increasing workplace gender equality (e.g., Briskin, 2014; Ellem, 2000, 2013; Forbes-Mewett & Snell, 2006; Parker, 2011). In the context of Canada, Briskin (2014) detailed the long struggle of women in unions to pressure unions to support workplace policy and entitlements that address the intersection of home and work. These past studies cited many examples of women's interests being sidelined during workplace entitlements negotiations if these interests were perceived by workplace actors to be contrary to men's (e.g., as identified in Brennan, 2009 and Williamson, 2012).

The thesis finds women in unions largely drove workplace domestic violence policy and entitlements development for the union movement in Australia. Amongst them were key individuals including Victorian Trades Hall Council's Jennifer O'Donnell-Pirisi, former ACTU President Ged Kearney, the Public Service Association's Maria Cirillo and the Australian Services Union's Natalie Lang and Lisa Darmanin. However, departing from the above literature somewhat, the thesis finds the considerable extent to which union men

supported union women to progress workplace domestic violence policy and entitlements. Male union officials successfully brought pressure to bear (e.g., via the media) on the bargaining of the first paid domestic violence leave entitlements in the 2010 Surf Coast Council enterprise agreement (AE882682) and during the 2011 negotiations for paid domestic violence leave to be inserted into the NSW Crown Employees (Public Service Conditions of Employment Award 2009). Further examples are the staunch support for these developments by the male Secretaries of Victorian Trades Hall Council and Unions NSW, and from the Maritime Union of Australia and Rail Tram and Bus Union. The thesis thus finds that unions influenced organisational workplace domestic violence policy developments in male dominated industries (and in female industries and industries in which neither gender dominated such as the financial and insurance services industry).

The thesis finds several factors account for the phenomenon of male unionists' support for workplace domestic violence policy and entitlements in Australia. One was the empathy by male and female unionists for the plight of employees experiencing domestic violence. Other factors have less certain explanatory power, such as that the domestic violence leave entitlements were not found to be in competition to male interests and that men are eligible for the entitlements. In addition, the study finds that women were leaders of unions at the forefront of workplace domestic violence policy and entitlements development in Australia. This was, for instance, in relation to the Australian Services Union, Rail Train and Bus Union, National Tertiary Education Union, Finance Sector Union and NSW Maritime Union of Australia. This somewhat contradicts Forbes-Mewett and Snell's (2006) finding that women had little structural power within unions. Thus, the thesis finds that the extent to which unions were able to influence workplace domestic violence policy and entitlements development was against a backdrop of overall male support within unions for workplace domestic violence entitlements, and prominent female union leadership of certain unions.

The thesis finds that domestic violence clauses were rapidly introduced into enterprise agreements from 2010 to 2013 through collective bargaining, enhanced by union community involvement. It confirms the findings of many prior studies of the importance of collective bargaining as an important vehicle for progressing workplace gender equality (e.g., Hayter, 2011; Ravenswood & Markey, 2011), and of union–community engagement (e.g., Parker, 2011). The thesis’ finding of the proliferation of domestic violence leave clauses in enterprise agreements after 2010 assisted to answer the gap in knowledge raised by a reading of Baird et al. (2014) on the fate of equality bargaining for domestic violence leave in Australia after the 2010 Surf Coast Council event. The thesis finds unions’ longstanding support of community events against domestic violence such as the Walk Against Family Violence in Victoria and the United Nation’s 16 Days of Activism Against Gender-based Violence. Supporting such events assisted unions to build community support for workplace domestic violence entitlements, putting indirect pressure on the Commonwealth Government to do so in the National Employment Standards. The literature showed the importance of how unions frame policy to the success of that policy (e.g., Briskin, 2006; Ellem, 2013; Muir, 2008). The thesis adds to this in finding why and how the Australian Services Union and the ACTU successfully framed domestic violence as a whole community, including workplace issue, during the We Won’t Wait campaign.

Union success in driving workplace domestic violence policy and entitlements development was due to close collaboration and partnership with external actors. This was, for instance, through unions’ close involvement in the Safe at Home, Safe at Work Project, a hybrid Commonwealth Government, anti-domestic violence advocate and academic research body endeavour. It was again when unions worked in tandem with employers to develop workplace domestic violence policy and entitlements, as at Telstra and Bankwest.

In relation to state politics, the thesis finds that unions were more successful in influencing governments in Australia to include workplace domestic violence entitlements in public and private sector regulation when Labor governments were in power. This was true at Australian State and Territory, and Commonwealth Government levels. This finding confirmed the insight of Cooper, Ellem and Wright (2015) that union influence is greater under Labor governments and less so under the Liberal–National Coalition. The study added to this understanding with its finding that the Labor Commonwealth Government was not so amenable to union overtures for the inclusion of workplace domestic violence entitlements in the National Employment Standards when Labor was threatened politically by the Liberal–National Party Opposition in 2013 and when Labor itself was in Opposition after 2013.

In summary, unions significantly and positively influenced the development of workplace domestic violence policy in Australia. The study finds that their efforts were vindicated when domestic violence terms were added to the Fair Work system in 2013 and 2018.

#### **9.4 Employer association and employer influence**

The thesis finds that employer parties influenced workplace domestic violence policy development in Australia from 2008 to 2018 to less of an extent than non-traditional actors and unions. Despite employer parties' overall resistance to the inclusion of domestic violence terms in modern awards and the National Employment Standards, they did not prevail.

Past studies found employer associations attempted to remain relevant to members (Gooberman, et al. 2020; Thornthwaite & Sheldon, 2013; You, 2016). Gooberman et al., (2020) found that, in attempting to do so, employer associations perceived employer prerogative as the optimal means of addressing workplace inequity. You (2016) argued employer association obligation to express member preference. Sheldon and Thornthwaite (2004) proposed a model from which to gauge employer association response to labour market reform on a sliding scale

of traditional (supportive of labour market reform) to progressive (supportive of user-pays provisions). It was unknown how these theories and this model would apply to workplace domestic violence policy development.

The thesis finds that employer association behaviour on domestic violence policy development both confirmed and somewhat departed from previous findings. Employer associations not only attempted to be relevant to their members on workplace domestic violence policy development but were relevant. The thesis finds that with rare exceptions, from 2010 to 2018 employer associations and employers were strongly aligned in their business orientation towards workplace domestic violence policy. It finds that, in this alignment, employer associations (e.g., in opposing the impost of domestic violence leave on employers) were fulfilling their obligation to express member preference. The thesis found instances where employer associations' positions did not accord with one another including the National Retail Association's support for paid domestic violence leave in modern awards and the Victorian Hospitals' Industrial Association's support for it in the National Employment Standards. In doing so both associations went against Australian Chamber of Commerce and Industry and AiG positions. But in both these instances these employer associations were reflecting member preferences. Further, the thesis finds that employer associations were highly reactive to both state actors (e.g., to oppose the addition of domestic violence terms in the Fair Work system) and to their employer association members to assist them to manage the cost of domestic violence to their organisations. The study's findings in relation to Sheldon and Thornthwaite's (2004) model for measuring employer association response to labour market reform are that employer association response was both traditional (supportive of industry-wide representation) and progressive (e.g., supportive of user-pays provision) in the context of workplace domestic violence policy development. Thus, the thesis' findings build on those of



previous employer association literature within the novel context of workplace domestic violence policy development.

The thesis uncovers key individuals within employer parties such as National Retail Association CEO Dominique Lamb and Price Waterhouse Coopers' (2000 to 2018) executive Debra Eckersley. Both actors, in the interests of their respective members or employees, provided evidence to the Fair Work Commission in support of paid domestic violence leave in modern awards. The thesis finds that they influenced the Fair Work Commission to the extent that it, in including unpaid domestic violence leave in modern awards, took on a workplace entitlements orientation towards domestic violence leave.

The thesis finds that actors external to employer parties compelled a gradual shift towards a workplace domestic violence entitlements orientation in employer associations and employers. However, it finds that external actors could not compel employer parties to extend their workplace domestic violence policy orientation to support for paid domestic violence leave in the National Employment Standards even though after 2016 many private sector employers began to include workplace domestic violence provisions in their organisations. Some provided generous entitlements such as unlimited or 20 days of paid domestic violence leave, particularly in the banking industry and in organisations whose CEOs were members of the Male Champions of Change employer group. However, the thesis finds no evidence of employer lobbying of the Commonwealth Government to impose paid domestic violence leave entitlements on all employers. The findings suggest possible employer motives for employer reluctance to overtly support paid domestic violence leave entitlements in the National Employment Standards. One is a recognition by employers that not all employers are equally equipped to afford such leave, particularly small business. Another is the desire in big business to keep ahead of competitors in the provision of employee benefits. The study finds this a factor motivating employers to seek Workplace Gender Equality Agency employer of choice awards

and White Ribbon accreditation. A further likely employer motive is employer reluctance to relinquish control of workplace regulation to the state.

### **9.5 Influence of components of the state**

The study finds that components of the state overall influenced workplace domestic violence policy development to less and more of an uneven extent than anti-domestic violence advocates and unions. State actors did not initiate workplace domestic violence policy development and the state's overarching actor, the Commonwealth Government, strongly resisted developing the policy from 2013 until late 2017.

The thesis finds that actors lobbying the Commonwealth Governments to develop paid domestic violence leave entitlements in the National Employment Standards from 2010 to 2018 were largely not state actors. Commonwealth Heads of Government actors (apart from the Commonwealth Government) and Commonwealth agencies that supported the inclusion of paid domestic violence leave in the Fair Work system, the Australian Law Reform Commission and the Australian Human Rights Commission, did not influence Commonwealth Governments to follow their lead. However, in 2018 the Commonwealth Government emulated the Fair Work Commission's decision to include unpaid domestic violence leave in modern awards. In the context of the above Commonwealth agency actors' formation of their orientations towards domestic violence policy, the study finds anti-domestic violence advocates and unions were greatly influential. This finding accords with Baird's (2011) and Brennan's (2009) on paid parental leave policy. A novel contribution of this study is the way it uses and builds on Baird's (2004, 2006, 2016) typology of orientations to explain such complex results. The study finds state actors could be influenced to develop workplace domestic violence policy if they were amenable to a social equity, workplace domestic violence entitlements orientation.

The thesis shows an interplay between feminist and masculinist party ideology manifest in key individual state actors. In the Coalition Commonwealth Government in late 2017 its new Minister for Industrial Relations, Kelly O'Dwyer, showed an orientation towards feminism rarely seen in Coalition Government parliamentarians during this period, or in the prior two decades (e.g., the latter is set out in Phillips, 2006). The study finds O'Dwyer's feminism led her to present a viable alternative to her Government's business orientation towards workplace domestic violence policy. It was an alternative, however, for the inclusion only of unpaid domestic violence leave in the National Employment Standards. The thesis also finds the strong orientation towards feminism of federal members of the Australian Greens (e.g., Senator Larissa Waters) and Labor (e.g., MPs Julia Gillard, Tanya Plibersek and Sharon Claydon). It uncovers a feminist orientation in the work to develop paid domestic violence leave entitlements of key individual Australian state MPs such as Labor Victoria's Natalie Hutchins and the NSW Liberal Party's Pru Goward). The thesis finds Australian Law Reform Commission (e.g., its President Rosalind Croucher) and Australian Human Rights Commission (e.g., Elizabeth Broderick and Kate Jenkins) actors supportive of paid domestic violence leave entitlements exhibited strong feminist values. The thesis's findings above, in a novel policy area, exemplify Sawyer and Turner (2016)'s argument of how feminism can lead to gender equality policy advances.

The thesis demonstrates that women parliamentarians at Australian state and Commonwealth level were crucial to the development of workplace domestic violence policy within their parties. The importance of female parliamentarians to actualising workplace entitlements aimed at promoting gender equality has been apparent since women entered Australian parliaments, such as in Colley (2018)'s study of the removal of the marriage bar. The thesis finds that whether women in parliaments have been sidelined by male interests is not clear in workplace domestic violence policy development in Australia. For instance, the thesis finds

some evidence that women in the Labor Commonwealth Government in 2013 had to forego their pursuit of paid domestic violence leave in the National Employment Standards, due to competing socio-political forces. However, the thesis finds that overall, Labor and women within its ranks enabled the development of workplace domestic violence policy to a considerable extent. This was, for instance, as in 2010 its Minister for Employment and Workplace Relations, Julia Gillard, provided Commonwealth funding for the Safe at Home, Safe at Work Project. Gillard was also the minister responsible for introducing Labor's Fair Work system in 2009 through which domestic violence leave entitlements in modern awards and the National Employment Standards were able to be created.

Somewhat ironically, the thesis finds that the political party that introduced workplace domestic violence leave into the National Employment Standards in 2018 (the Coalition) had little input into its development. Other actors external to the Coalition with a strong social equity orientation largely imposed workplace domestic violence policy on the Coalition and its more moderate members took it up. The thesis confirms Wilensky (2002)'s argument of the importance of studying the state via its components. The thesis concludes that the state influenced the development of workplace domestic violence policy to the extent that, under the influence of all its components, it is an actor in Australia (for the most part slowly and on occasion rapidly) supportive of workplace gender equality.

## **9.5 Conclusion**

The thesis concludes that foremost in influencing and initiating workplace domestic violence policy and entitlements was anti-domestic violence advocate Ludo McFerran. She was strongly supported by other non-traditional actors (anti-domestic violence advocates and researchers) and unions. The thesis concludes unions influenced workplace domestic violence policy development to a great extent. This is as, starting with the advocacy of various union women (as women's and industrial officers, in women's committees and as union members), unions

were the prime initiators and proponents of workplace domestic violence leave entitlements in enterprise agreements, and later were pivotal towards achieving this in modern awards and the National Employment Standards. Union efforts strongly contributed to the building of a critical mass of such leave clauses in workplace agreements and to the normalisation of domestic violence leave as an industrial entitlement. In this way unions considerably influenced the shift of Commonwealth Governments' domestic violence policy orientations from a welfare, criminal law and business orientation to one that included a social equity orientation achieved through workplace legislation. The thesis finds employer parties' overall reluctance to influence components of the state to advance paid domestic violence leave entitlements. While Commonwealth agencies the Australian Law Reform Commission and Australian Human Rights Commission sought to influence the Fair Work Commission and the Commonwealth Government to include paid domestic violence leave in the Fair Work system, they were unsuccessful as the result was unpaid leave in modern awards and the National Employment Standards. The thesis finds the Coalition Commonwealth Government remained uninfluenced to undertake workplace domestic violence policy reform until the Fair Work Commission, unions and political parties in opposition in 2018 presented it to them as, in effect, a fait accompli. The extent to which the above actors developed workplace domestic violence policy and entitlements in Australia from 2008 to 2018 correlated with the extent to which they supported a social equity orientation towards this policy.

Utilising Baird's (2004, 2006, 2016) typology of orientations in its analysis of the extent to which various actors influenced workplace domestic violence policy developments in Australia led the thesis to extend this typology to include non-traditional actors (and their specific types) as principal policy agents and to add dimensions of change to it, further detailed in Chapter 10.

# 10. Conclusion

## 10.1 Introduction

This chapter summarises the thesis' findings on the central research question and the contribution to scholarship. It identifies the implications of the thesis, its limitations, and recommendations for future research.

The central research question was: how and why was workplace domestic violence policy reform achieved in Australia from 2008 to 2018? In answering the central research question, the thesis has built new knowledge regarding how and why this policy was reformed during this time and theory of how and why workplace gender equality is progressed

The analytical framework incorporated systematic process analysis (modelled on Hall, 2008), analysis of traditional and non-traditional actor contribution to workplace domestic violence policy reform and entitlements development, and the lens of Baird's (2004, 2006, 2016) typology of orientations. By including non-traditional actors (including key individuals) in its analysis the thesis addressed a significant gap in scholarship on the role of non-traditional actors in industrial relations change (as set out in Bellemare, 2000; Conley, 2012; Dabscheck, 1980; Heery & Frege, 2006; Kaufman, 2004; Kitay & Marchington, 1996; Lawrence et al., 2011; Michelson et al., 2008). The thesis considers non-traditional actors in terms of industrial relations policy change. The thesis uncovered the crucial role of a particular individual, Ludo McFerran, in the invention and actualisation of workplace domestic violence entitlements and policy in Australia and the great extent to which a non-traditional actor, the Safe at Home, Safe at Work Project, contributed to it. The thesis thus delineates anti-domestic violence advocates and researchers as industrial relations actors in the case of workplace domestic violence policy change in Australia. The thesis concludes that just as Baird's (2004, 2006, 2016) typology of orientations had explanatory power for how and why paid maternity and parental leave policy

progressed in Australia, it is also instructive for workplace domestic violence policy. The thesis adds further dimensions to Baird's (2004, 2006, 2016) typology by discovering how and why, on workplace domestic violence policy, traditional and non-traditional actors' policy orientations were forged, and how actors influenced other actors to change policy orientation. Combined, the thesis' conclusions on non-traditional actors and Baird's (2004, 2006, 2016) typology of orientations provide a substantive theory for how and why workplace domestic violence policy developed in Australia from 2008 to 2018 and refine theory on how workplace gender equality policy is progressed.

## **10.2 The thesis' findings**

In addressing the primary research question the thesis concludes that workplace domestic violence policy developed in Australia from 2008 to 2018 because actors wanted to achieve social equity for employees experiencing domestic violence. The force of their actions towards a social equity orientation was ultimately stronger than the Coalition Commonwealth Government's desire to maintain a strict business orientation towards workplace domestic violence policy. The thesis concludes that actors were more likely to exhibit a social equity orientation towards workplace domestic violence policy if they had witnessed the privations domestic violence can cause, had experience working in domestic violence or equality policy spheres, identified with feminism and were women.

The thesis finds that strategies of actors seeking social equity for employees experiencing domestic violence focused on encouraging other actors to variously embark on a bargaining, business, or workplace rights and legislation orientation to workplace domestic violence policy. When these actors were unable to achieve adequate workplace provisions for employees experiencing domestic violence through collective bargaining and organisational policy, they turned their attention to government policy reform.

The thesis has shown definitively how anti-domestic violence advocates and unions succeeded in inducing a social equity orientation towards workplace domestic violence policy in other actors by breaking down historic barriers to workplace gender equality. This included when anti-domestic violence advocates (assisted by unions) reframed domestic violence as a workplace issue and a community issue, and not one to be addressed solely by individual female employees. This aligns with conclusions drawn in prior studies on how to progress workplace gender equality (e.g., Colling & Dickens, 1998; Wajcman, 2000; Williamson & Baird, 2014) and how to frame domestic violence to induce workplace policy reform (Widiss, 2008). The thesis concludes that actors who were supportive of paid domestic violence leave entitlements considered how the home, domestic violence and the community intersected. Thus, this approach towards achieving gender equality as recommended in the literature (e.g., in Baird, 2008; Dickens, 2007; Eikhof et al., 2007; Kanter, 1989; Pocock, 2014; Pocock & Charlesworth, 2017) was effective for workplace domestic violence policy development. McFerran and unions considered the precarity of women's work (e.g., as identified in Pocock, 2008) in designing a model domestic violence leave clause for full-time, part-time and casual employees.

However, the thesis finds that Commonwealth Government workplace domestic violence policy innovation in 2018 only somewhat promoted workplace gender equality. On the one hand, the 2018 policy decision to include domestic violence leave in the National Employment Standards had a high measure of gender equality because it was available to men and women. However, on the other hand, the leave was unpaid and hence not conducive to the financial independence of employees accessing it. This effect was more likely to be felt by women since women are more likely than men to be victims of domestic violence and thus more likely to access the leave. Therefore, in further answer to the primary research question on how the policy was developed in Australia, the thesis concludes that it was developed through the



breaking down of many, but not all historic barriers to policy aimed at promoting gender equality at work.

The thesis finds employer parties largely preferred the Commonwealth Government to hold a business orientation towards workplace domestic violence policy development. This orientation left it to employers to decide how to develop workplace domestic violence policy and entitlements within their organisations. Certain employers came to provide exemplary workplace domestic violence provisions to their staff, including paid domestic violence leave to full-time, part-time and casual employees. There was greater inclusion of paid domestic violence leave in organisational policy after it became known to employers that the cost of paid domestic leave would likely be very low. Exemplary employer provisions reflected employer understanding that domestic violence was a workplace issue and of the importance of paid domestic violence leave to an employee's ability to escape domestic violence. However, employer parties did not demand that such entitlements be included in the National Employment Standards.

### **10.3 Implications of the study**

The thesis shows how non-traditional actors and unions were critical to the establishment and development of workplace domestic violence policy and entitlements in organisational policy, enterprise agreements, modern awards and the National Employment Standards. Union, anti-domestic violence, researcher and key individual actors wanted all Australian employees to have access to paid domestic violence leave. This raises the question of whether the progress towards universal paid domestic violence leave entitlements in Australia set in motion by non-traditional actors and unions will continue. For this to occur, the tension inherent in the Commonwealth Government's existing workplace domestic violence policy between meeting the interests of employees and employers, particularly small business, would need to be resolved. The Commonwealth Government could include paid domestic violence leave in the

National Employment Standards and subsidise small business to pay it. The inclusion of paid domestic violence leave in the National Employment Standards would enable a social equity, more generous workplace rights policy orientation and avoid a paternalistic welfare orientation towards people experiencing domestic violence, which can lead to job loss, precarious work, and dependency on the state. Given the importance of women to the advancement of workplace domestic violence policy in Australia, the significant under-representation of women in the Commonwealth Parliament, particularly in the conservative parties, needs to be resolved.

#### **10.4 Limitations of the study and recommendations for future research**

The study has focused on Australia. There is scope for future research to examine the development of workplace domestic violence policy in other countries and regions. For example, in those which have enacted paid domestic violence leave entitlements such as Canada (in Manitoba and Ontario) and New Zealand. Future research could replicate the analytical framework of the thesis to explore workplace domestic violence policy development in different contexts, such as in different sectors and in the same sector in different countries and regions. While the thesis focused on the policy reform process, analysis of the implementation process would further enrich understanding of workplace domestic violence policy development. The thesis' analysis coincided with the advent of the COVID-19 global pandemic and its associated health, social and economic consequences. Understanding the extent to which COVID-19 impacted the operation of workplace domestic violence policy at the organisational level would further enhance scholarship.

Other potential areas for future research are the roles of union and employer politics in workplace equality policy development and the extent to which policy development is impacted by the masculinised agendas of stakeholders.

## 10.5 Conclusion

The thesis has made empirical and theoretical contributions to knowledge in the important area of workplace domestic violence policy. In finding the extraordinary extent to which a non-traditional, key individual anti-domestic violence advocate instigated and drove the development of workplace domestic violence policy and entitlements in Australia, the thesis provides new insights into the role of non-traditional actors as forces of industrial relations policy change. It refines Baird's (2004, 2006, 2016) typology of orientations for analysing workplace policy. It does so by expanding the types of "principal agency" identified in Baird (e.g., 2004, p. 269) to include non-traditional actors (and their specific types). It further refines the typology by expounding and explicating dimensions of causality within it. This is a theoretical contribution in that it explains the process through which non-traditional actors influenced traditional actors to engage in orientations towards workplace domestic violence policy likely to lead to social equity outcomes for employees experiencing domestic violence. The thesis calls the dimensions of causality it has added *causes of actor orientation and orientation change*. The thesis undertook this theory refinement while testing the explanatory power of Baird's (2004, 2006, 2016) typology for how and why workplace domestic violence policy developed so rapidly in Australia from 2008 to 2018. During the research, it became apparent that, to answer the research questions, the typology needed to include the above actors and dimensions of causality. The thesis' findings from developing Baird's (2004, 2006, 2016) typology of orientations are important to scholarship as they contribute to an understanding of the interrelationship needed between policy orientation, mechanism and actor to advance workplace gender equality.

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# Appendix A Ethics approval



Research Integrity & Ethics Administration  
HUMAN RESEARCH ETHICS COMMITTEE

Monday, 1 July 2019

Assoc Prof Rachel (Rae) Cooper  
Work and Organisational Studies; University of Sydney Business School  
Email: [rae.cooper@sydney.edu.au](mailto:rae.cooper@sydney.edu.au)

Dear Rachel (Rae),

The University of Sydney Human Research Ethics Committee (HREC) has considered your application. I am pleased to inform you that after consideration of your response, your project has been approved.

Details of the approval are as follows:

**Project No.:** 2019/425  
**Project Title:** Development of the Australian Government's workplace domestic violence policy 2008-2018  
**Authorised Personnel:** Cooper Rachel (Rae); Ellicott Susan; Wright Christopher;  
**Approval Period:** 01/07/2019 to 01/07/2023  
**First Annual Report Due:** 01/07/2020

#### Documents Approved:

Date Uploaded	Version Number	Document Name
14/04/2019	Version 1	Interview Schedule and Question Guide
15/04/2019	Version 1	Sample text inviting participation
15/04/2019	Version 1	sample passive referral text
16/04/2019	Version 1	Questionnaire item_3660-research timeline
07/06/2019	Version 2	PCF Version 2
07/06/2019	Version 2	PIS version 2_6 June_2019

#### Condition/s of Approval

- Research must be conducted according to the approved proposal.
- An annual progress report must be submitted to the Ethics Office on or before the anniversary of approval and on completion of the project.
- You must report as soon as practicable anything that might warrant review of ethical approval of the project including:
  - Serious or unexpected adverse events (which should be reported within 72 hours).
  - Unforeseen events that might affect continued ethical acceptability of the project.
- Any changes to the proposal must be approved prior to their implementation (except where an amendment is undertaken to eliminate *immediate* risk to participants).
- Personnel working on this project must be sufficiently qualified by education, training and experience for their role, or adequately supervised. Changes to personnel must be reported and approved.
- Personnel must disclose any actual or potential conflicts of interest, including any financial or other interest or affiliation, as relevant to this project.

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Research Portfolio  
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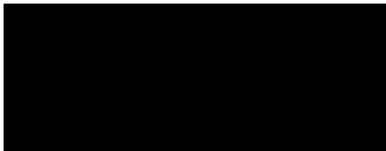
ABN 15 211 513 464  
CRICOS 00026A

- Data and primary materials must be retained and stored in accordance with the relevant legislation and University guidelines.
- Ethics approval is dependent upon ongoing compliance of the research with the *National Statement on Ethical Conduct in Human Research*, the *Australian Code for the Responsible Conduct of Research*, applicable legal requirements, and with University policies, procedures and governance requirements.
- The Ethics Office may conduct audits on approved projects.
- The Chief Investigator has ultimate responsibility for the conduct of the research and is responsible for ensuring all others involved will conduct the research in accordance with the above.

This letter constitutes ethical approval only.

Please contact the Ethics Office should you require further information or clarification.

Sincerely,



**Dr Wei Li**  
Chair  
Business Review Committee (Low Risk)

The University of Sydney of Sydney HRECs are constituted and operate in accordance with the National Health and Medical Research Council's (NHMRC) [National Statement on Ethical Conduct in Human Research \(2007\)](#) and the NHMRC's [Australian Code for the Responsible Conduct of Research \(2007\)](#)

# Appendix B Participant information statement and consent form



Discipline of Work and Organisational Studies  
The University of Sydney Business School

ABN 15 211 513 464

**PROFESSOR RAE COOPER**  
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*The University of Sydney Business School*  
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## PARTICIPANT INFORMATION STATEMENT

### Development of the Australian Government's workplace domestic violence policy 2008-2018

**(1) What is this study about?**

This research investigates the Australian Government's workplace domestic violence policy from 2008 to 2018 in light of its national and global context. The study aims to understand the institutions, interests, key individuals and other factors impacting this policy's development, focusing on the Australian Government's decision making from 2017 to 2018 and how this was arrived at over the ten years prior. This is in a policy area pertinent to the employment of large numbers of employees, not only in Australia, but worldwide. The study aims to arrive at knowledge to inform future workplace domestic violence policy. To the researcher's knowledge no study of this kind has previously been undertaken.

**(2) Who is carrying out the study?**

The study is being conducted by Susan Ellicott, postgraduate researcher, and will form the basis for the degree of Master of Philosophy at The University of Sydney under the supervision of Professor Rae Cooper and auxiliary supervision of Associate Professor Chris F. Wright, from the Discipline of Work and Organisational Studies, The University of Sydney.

The researchers declare no apparent actual or potential CONFLICTS OF INTEREST for themselves or institutions involved in this study. No direct or apparent FINANCIAL BENEFITS to the researchers or institutions involved will arise from the conduct of the research.

**(3) Who can take part in the study?**

Decision-makers, advisors and stakeholders in the development of workplace domestic violence policy.

**(4) What does the study involve for me?**

The study involves an interview about your knowledge of the development of workplace domestic violence policy. The interview will be audio recorded with your consent.

**(5) How much time will the study take?**

The interviews will generally last between sixty to ninety minutes depending on individual circumstances.

**(6) Can I withdraw from the study?**

Being in the study is completely voluntary – you are not under any obligation to consent – and if you do consent you can withdraw at any time without affecting your relationship with The University of Sydney. You can do this by contacting the researcher by email at [sell4713@uni.sydney.edu.au](mailto:sell4713@uni.sydney.edu.au).

You may stop the interview at any time if you do not wish to continue, the audio recording will be erased and the information provided will not be included in the study.

**(7) Will anyone else know the results**

All aspects of the study, including results, will be strictly confidential and only the researchers will have access to information on participants. The study's findings may be disseminated in publications but individual participants will not be identifiable in any publication unless they voluntarily choose to be identifiable and give written consent for it.

**(8) Will the study benefit me?**

The results of the study will be made available to you. This will be in the form of a report emailed to you at the completion of the study.

**(9) Are there risks or costs associated with the study?**

Aside from giving up your time we do not expect any risks or costs will be associated with the study. However, due to the sensitive nature of domestic violence, it is noted here:

*If you or someone you know is impacted by sexual assault or family violence call 1800RESPECT on 1800 737 732 or visit [www.1800RESPECT.org.au](http://www.1800RESPECT.org.au)*

**(10) What will happen to information about me that is collected during the study?**

By providing your consent, you are agreeing to us collecting personal information about you for the purposes of this research study. Your information will only be used for the purposes outlined in this Participant Information Statement, unless you consent otherwise. Your information will be stored securely in perpetuity in The University of Sydney's secure storage facility *Research Computing Optimised Storage (RCOS)* which only the three researchers, Professor Rae Cooper, Dr. Chris F. Wright and Susan Ellicott will have access to and via secure login. In this storage your identity will be kept strictly confidential (except as required by law) by the deidentification of any material resulting from your participation in the study. Any identifiers of other persons you may mention in interviews will be removed. Participant information will be deidentified in storage by being given a reference number and a general description, e.g. Participant One: Australian Government Minister, Participant Two: public servant, Participant Three: union representative, Participant Four: private sector manager, Participant Five: employer association spokesperson, and so on according to the order you participated in the study and a general description of the capacity in which you were involved in the development of workplace domestic violence policy. The information will be stored thus in the RCOS. The deidentified information may be used in future projects by the current researchers but not without your consent and nor without Human Research Ethics Committee approval.

**(11) Can I tell other people about the study?**

Yes, you are welcome to tell other people about the study.

**(12) What if I require further information?**

When you have read this information, Susan Ellicott will discuss it with you further and answer any questions you may have. If you would like to know more at any stage during the study, please feel free to contact Susan Ellicott by email: [sell4713@uni.sydney.edu.au](mailto:sell4713@uni.sydney.edu.au) and phone: 0402 922 606.

**(13) What if I have a complaint or any concerns about the study?**

Research involving humans in Australia is reviewed by an independent group of people called a Human Research Ethics Committee. The ethical aspects of this study have been approved by the Human Research Ethics Committee of the University of Sydney, protocol number 2019/425. As part of this process, we have agreed to carry out the study according to the *National Statement on Ethical Conduct in Human Research (2007)*. This statement has been developed to protect people who agree to take part in research studies.

If you are concerned about the way this study is being conducted or you wish to make a complaint to someone independent from the study, please contact The University using the details outlined below. Please quote the study title and protocol number.

The Manager, Ethics Administration, University of Sydney:  
Telephone: +61 2 8627 8176 Email: [human.ethics@sydney.edu.au](mailto:human.ethics@sydney.edu.au) Fax: +61 2 8627 8177  
*This information sheet is for you to keep.*

**PROFESSOR RAE COOPER**  
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#### PARTICIPANT CONSENT FORM

Development of the Australian Government's workplace domestic violence policy 2008-2018  
University of Sydney Human Research Ethics Approved Project number: 2019/425

In giving my consent I state that:

- I understand the purpose of the study, what I will be asked to do, and any risks/benefits involved.
- I have read the Participant Information Statement and have been able to discuss my involvement in the study with the researchers if I wished to do so.
- The researchers have answered any questions that I had about the study and I am happy with the answers.
- I understand that being in this study is completely voluntary and I do not have to take part. My decision whether to be in the study will not affect my relationship with the researchers or anyone else at The University of Sydney now or in the future.
- I understand that I can withdraw from the study at any time.
- I understand that I may stop the interview at any time if I do not wish to continue, and that unless I indicate otherwise any recordings will then be erased and the information provided will not be included in the study. I also understand that I may refuse to answer any questions I don't wish to answer.
- I understand that information provided by me during the course of the interview will be stored securely and will only be used for purposes that I have agreed to.

- I understand that the results of this study may be published, but these publications will not contain my name unless I consent to being identified using the 'Yes' checkbox below.

Yes, I am happy to be identified and for direct quotes from me to be used

No, I don't want to be identified but give consent for deidentified indirect quotes from me to be used.

In deidentifying me I understand that in any publication of the results of the study my name and job title will not appear. I understand that only the general capacity in which I have provided knowledge of the development of workplace domestic violence policy will be stated, e.g. as a member of parliament, a union or employer representative/affiliate or public servant.

I consent to:

- Audio-recording

YES  NO

I understand that the results of the study will be emailed to me in the form of a report at the completion of the study at my preferred email address below:

Email: \_\_\_\_\_

.....  
**Signature**

.....  
**PRINT name**

.....  
**Date**

## **Appendix C Sample interview questions**

1. When did you first have or hear about the idea of workplace domestic violence leave?
2. What motivated you to become/or were the reasons you became involved in this policy area?
3. Please tell me about your role in the development of it.
4. When did your involvement start and how did it progress from there?
5. What or who influenced you in developing the policy?
6. Were there any other influences?
7. What, if any, types of evidence were considered in this policy making and why?
8. How was any such evidence used?
9. Were there milestones/significant events along the way in this policy's development? If so, what please were they?
10. Were there other key individuals, organisations, agencies, or information giving bodies that influenced your decision-making/advice giving on this policy? If so, what please were they? How/why were they influential?
11. What is your opinion of the likely effectiveness of the Government's workplace domestic violence policy? Why or why not?
12. Is there anything else you would like to add?