

An International Labour Organization instrument on violence against women and men at work: The Australian influence

Jane Aeberhard-Hodges

United Nations Research Institute for Social Development (UNRISD), Switzerland

Ludo McFerran

University of Sydney Business School, Australia

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Abstract

Violence in and out of work, both domestic violence and sexual harassment, are violations of human rights and impact heavily in the workplace. All forms of violence result in a high cost for workers, employers and society in general, in lost time, injuries, complaints, staff turnover, loss of skills, and reputational risk. The International Labour Organization has decided to discuss in 2018 an international labour standard on this subject. In Australia, there has been wide recognition for some time of sexual harassment as a significant workplace issue. Now there are greater inroads toward recognizing and addressing the impact of other forms of gender-based violence in the world of work, hence the growing number of clauses in enterprise agreements and state awards aiming to mitigate the impact of domestic violence on workers, both women and men, and the movement to have clauses in modern awards that specify paid time off to allow a worker time to deal with the problem. Australian experience may help shape the proposed International Labour Organization instrument on workplace gendered violence.

Keywords

Equality, gender, international labour standards, labour law, women and work

Corresponding author:

Jane Aeberhard-Hodges, United Nations Research Institute for Social Development (UNRISD),
5bis chemin Charles-Georg, Geneva 1209, Switzerland.

Email: jane.hodges@bluewin.ch

Introduction – the impact of violence at work

Gender-based violence (GBV) at work violates not only human rights but also international labour law. The latest data on sexual violence show that it is more prevalent and more injurious than often thought. This article argues for a new international, binding instrument to bring together all existing references to eliminating GBV in the workplace.

The time is ripe for such a new treaty. The United Nations 2030 Agenda for Sustainable Development Goal (SDG) 5 is bringing welcome world attention to the problem through obliging governments to achieve gender equality and empowerment of all women and girls, and specifically eliminate all forms of violence against all women and girls in the public and private spheres (SDG target 5.2). Likewise, SDG 8.5 requires states to achieve full and productive employment and decent work for all women and men, a target that implies decent workplaces free from GBV. In addition, in late 2015 the International Labour Organization (ILO) decided to debate, in June 2018, an international labour standard on violence against women and men at work.¹ This is an opportunity to pull together various existing provisions aimed at eliminating sexual harassment and abuse and to address all types of GBV including the impact of domestic or family violence on the world of work. This article also aims to inform readers of the SDG implementation and of ILO debates on a binding international labour law treaty, using good practice from Australia.

To place the argument for a new binding treaty in context, we first outline the available data, highlighting significant research already carried out into various aspects of GBV and domestic violence in Australia and elsewhere. We then review current and past attempts to end GBV generally and in the world of work, starting with the United Nations (UN) human rights framework and referencing regional instruments. We also place particular emphasis on action taken by the ILO as the specialized agency within the UN system that is mandated, among other world of work challenges, to end sex discrimination in the world of work. We highlight how national administrations, policy and practice attempt to translate those international norms into workable domestic laws for the workplace. Following this we propose content for a new international labour standard on GBV and harassment at work, after which we reflect on how developments in Australia that acknowledge the link between domestic violence and the workplace can contribute to improvements in prevention, protection and remedial measures. Considering the lessons learned from Australia, supported by new data from surveys being replicated across countries of the global North and South, a binding international labour standard adopted by the ILO could be the best way to move forward to a world where GBV is not tolerated in law or in practice. Adopting such a treaty and having member states support it would improve the implementation of the SDGs that relate to the world of work.

The current evidence

In 2017, the data may be familiar but are difficult to compare. The World Health Organization (WHO) annual survey reveals that one in three women worldwide

have suffered sexual violence at some point by an intimate partner. These women have been coerced into sex, physically beaten and/or otherwise abused; 40–50% of women experienced unwanted sexual advances, physical contact or other forms of sexual harassment at work. Walby and Olive's (2014) survey for the European Institute for Gender Equality (EIGE) across the European Union's 28 members confirmed high rates of domestic violence,² especially against women and girls. Responses revealed that some women agreed that violent behaviour by men is sometimes acceptable, for example when a woman burnt his meal.

The 2012 Personal Safety Survey (PSS) undertaken by the Australian Bureau of Statistics (ABS) is the most comprehensive quantitative study of interpersonal violence in Australia. It is completed by 17,000 women and men with questions seeking information such as how many days were taken off work following violence. The Australian Human Rights Commission tracks the specific incidence of violence at work through its *Working Without fear: Results of the Sexual Harassment National Telephone Survey* (2012a). This report found that 25% of women had experienced sexual harassment in the workplace in the past 5 years, 90% of whom said they were harassed by a man. But sexual harassment was not confined to women as targets: one in six male respondents (16%) experienced sexual harassment in the workplace in the past 5 years. Also there was a significant increase in the number of people who have experienced victimization as a result of making a formal report or complaint about harassment.

Beyond incidence and typology surveys, research has targeted the economic cost of GBV. This attention to GBV as a violation of economic rights, as well as other human rights, commenced with a General Assembly (UN General Assembly, 2006) study. The research methodologies differ: some investigate costs to nations or regional groupings, some the losses for businesses, others include monetary estimates gauging personal impact. The 2014 EIGE survey, for example, estimated the cost to the European Union (EU) and its individual members. Using indicators on lost economic output, services (health, legal, social welfare, specialized services costs) and personal repercussions (physical and emotional impact), it found that the cost to the EU of GBV against women was €225,837,418,768, and this represented 87% of the total cost of GBV (women and men) which was estimated to be €258,728,837,747.

Data collected in a study on the impact of GBV on the Australian economy (Access Economics, 2004) estimated a cost of A\$484m in 2002/2003. And a November 2015 PricewaterhouseCoopers study estimated the cost of lost productivity to the Australian economy as A\$2.1bn in 2014–2015, with a forward estimation that costs will accumulate to A\$323.4bn over a 30-year period from 2014–2015 to 2044–2045 (PricewaterhouseCoopers, 2015). Walby's (2009) UK study found the costs to that nation amounted to £2.7bn in 2006. A USA Department of Labor enquiry revealed that costs to businesses of GBV at work had reached US\$6.7m/year. Kahui et al.'s (2014) study from New Zealand estimated that domestic violence costs employers a staggering NZ\$368m a year, with a projected increase to NZ\$3.7bn over the next 10 years. Duvvury et al. (2013) estimated the cost of domestic violence against women in Vietnam considering two elements: the

actual out-of-pocket expenditures that women incur to access medical treatment, police support, legal advice, counselling and judicial support; and additional out-of-pocket expenditure, which is the lost school fees if children miss school due to domestic violence experienced by their mothers. The research revealed the economic effects of the enormous cost of violence against women, representing nearly 1.78% of the gross domestic product in Vietnam in 2010. More importantly, estimated productivity loss due to violence indicates that women experiencing violence earn 35% less than those not abused, representing another significant drain on the national economy.

The UN Commission on the Status of Women background report³ to its 2013 session on violence against women summed up the economic argument for ending violence against women this way:

10. Violence against women and girls has devastating effects on individuals, communities and societies, and bears significant economic and social costs for countries. Cost analysis of violence against women, carried out in several areas, including Australia, Canada, England and Wales, and the United States of America, reveals that the annual cost of such violence may vary from US\$ 1.16 billion to \$32.9 billion, covering a variety of costs, ranging from responses to survivors to those related to lost productivity (see A/HRC/17/26).

Addressing GBV at international, regional and national levels

International attention to banning violence against women and girls began decades ago. Early UN instruments include the Universal Declaration of Human Rights 1948, the International Covenant on Civil and Political Rights and its sister Covenant on Economic, Social and Cultural Rights, both of 1966, and the Convention on the Elimination of All Forms of Discrimination Against Women's (CEDAW) General Recommendation 19 on Violence against Women 1992. All contain general sex equality provisions and prohibitions on violence as a human rights violation. General Recommendation 19 also explicitly proscribes sexual harassment at work and links it to economic or financial violence. Then there are a number of declaratory statements calling on State action to end GBV, such as General Assembly resolution A/RES/40/34 of 29 November 1985 proclaiming the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which does not target GBV by name, but lays down important procedural protections. The 1990s and 2000s witnessed more debate and the adoption of specific instruments of moral weight, like the Declaration on the Elimination of Violence against Women 1993;⁴ Commission on Human Rights resolution 2003/45 on the elimination of violence against women (recognizing economic exploitation as violence); and Commission on the Status of Women (CSW) agreed conclusions on the elimination and prevention of all forms of violence against women and girls 2013, which includes a thorough analysis of GBV in all its forms and gives

guidance on world of work, among other thematic areas, responses for UN Member States.⁵

The UN's 2008 'Guidelines and model framework for legislation on violence against women' provides a practical tool for states in preparing general laws to stop such violence. For example, it advises that legislation should provide that criminal sentences are commensurate with the gravity of crimes of violence against women, and sentencing guidelines should be developed to ensure consistency in sentencing outcomes to deter perpetrators. It also recommended that legislation should ensure that complainants/survivors of GBV have the right to free legal aid in all legal proceedings, especially criminal proceedings, in order to ensure access to justice and avoid secondary victimization; free court support, including the right to be accompanied and represented in court by a specialized service and/or intermediary, free of charge, as well as access to service centres in the courthouse to receive guidance and assistance in navigating the legal system; and free access to a qualified and impartial interpreter and the translation of legal documents, where requested or required.⁶

In an effort to encourage better practical collaboration on this issue, several UN entities – including the ILO, the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Development Program (UNDP), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Population Fund (UNFPA), UN-Women and WHO – adopted the first ever inter-agency Framework to underpin action to prevent violence against women. It was launched on 25 November 2015 and is a significant step forward. The Framework aims at strengthening a shared understanding and approach to prevention among different stakeholders, identifying the role that different sectors play within their mandates, and supporting the planning and implementation of evidence-informed strategies to prevent violence against women and girls.

Regional texts also call for the elimination of sexual violence, such as the Council of Europe Istanbul Convention 2011; the European Social Charter; the African Charter on Human and Peoples' Rights on the Rights of Women in Africa and its 2003 Maputo Protocol; the Association of Southeast Asian Nations' (ASEAN) Declaration on the Elimination of Violence Against Women and Elimination of Violence Against Children 2013; the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women 1994; and CARICOM's Model legislation on sexual harassment at work 1996. Although adopted across a 20-year period, these regional texts all recognize the devastating effects of GBV in the workplace and present fit-for-purpose frameworks, adapted to their socio-geographical realities, to end GBV.

These are not 'dead-letter' instruments; their implementation is regularly monitored. For example, at its March 2016 session, CSW examined follow-up given to its Agreed Conclusions of 2013. It noted that:

Good national action plans [on VAW] should include measures for prevention, support services, data collection and analysis (Finland, Namibia and Uganda) and should include specific timelines, benchmarks, the allocation of funds for their implementation, and

monitoring and evaluation mechanisms (Cambodia). In line with the Agreed Conclusions, there appears to be an increased focus on the part of Member States regarding prevention, in order to change social and cultural norms (the Philippines), including through the engagement of communities in prevention work (Australia).⁷

The implementation of SDG 5 can build on these existing domestic measures.

The ILO concern with eliminating GBV at work can be traced back to its occupational safety and health research and policy advice (Di Martino et al., 2002; McCann, 2005). In parallel the supervisory machinery has, over six decades, adopted jurisprudence on sexual harassment and abuse under the key equality Conventions, in particular Convention 111. Many international labour standards cover the issue explicitly or implicitly, and the two ILO world of work policy frameworks – the 1998 Declaration on Fundamental Rights and Principles at Work and 2008 Declaration on Social Justice for a Fair Globalization likewise imply decent work free from violence and harassment. The ILO's Discrimination (Employment and Occupation) Convention, 1958 (No. 111) has been the basis for a 2003 General Observation on how ratifying states can improve measures to eliminate this form of sex discrimination, and states' reporting on sexual harassment and workplace GBV is increasing. Additional important sectoral treaties contain references to forms of GBV: the Indigenous and Tribal Peoples' Convention, 1989 (No. 169) (Art. 10(3)); the Maritime Labour Convention (MLC), 2006; the Domestic Workers Convention, 2011 (No. 189) (Art. 5); the HIV Recommendation, 2010 (No. 200) (Para. 14(c)); the Forced Labour (Supplementary Provisions) Recommendation, 2014 (No. 203) (Para. 9(c)); and the Informality Recommendation, 2015 (No. 204) (Para.11(f)). Finally there are several treaties that do not refer explicitly to harassment, abuse or violence, but whose overall protection provisions complete the ILO's toolkit for addressing GBV, including the Migration for Employment (Revised) Convention, 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the Workers with Family Responsibilities Convention, 1981 (No. 156), the Maternity Protection Convention, 2000 (No. 183) and the Worst Forms of Child Labour Convention, 1999 (No. 182).

Recent impetus to eliminating this attack on decent work was given by the 2009 International Labour Conference (ILC) Gender Equality Conclusions calling for measures to end GBV at work. Cruz and Klinger's (2011) subsequent research was complemented by publicity and leverage at the 2013 CSW, which influenced its final Agreed Conclusions.

In addition to this political momentum, one might surmise as well that, given the piecemeal references to gender-related harassment, abuse and violence across ILO frameworks (summarized above), states were ready to explore the possibility of an omnibus instrument or pair of texts that would clarify rights and duties and collate guidelines for action. In late 2012 the ILO started considering whether to place GBV at work on the agenda of a future session of the ILC. The process was lengthy,⁸ but 3 years later it was so decided, preceded by a tripartite expert meeting on violence against women and men at work (see the meeting's 2016 Conclusions later).

In the context of the above existing global norms and the ILO's decision to work towards an all-encompassing international labour standard, it is useful to summarize national approaches in recent times to get a flavour of how the new standard might look.

States have integrated aspects of these norms into their Constitutions, labour laws, gender equality statutes, criminal and civil laws, OSH texts, public service regulations or specific GBV laws. Chappell and Di Martino (2006) and Lippel (2016) note the variety of policy responses to violence, and different models of regulatory and policy interventions. This article's authors have analysed over 70 statutes that reveal that GBV in its different forms is perceived to be and is often justiciable on a wide variety of statutory and common law grounds. It can be defined as a violation of human rights; an affront to the decent work and fundamental rights of workers; gender discrimination at work; a safety and health issue; a specific form of violence as a crime (e.g. assault and battery, rape); linked to intimate partner violence; offending the personal integrity of workers; a human resource management issue; an industrial relations and labour issue, for example as a potential threat to workers and enterprise harmony; the intersection of private and work domains; and above all a manifestation of power relations. Regarding the specific sub-categorization of GBV at work, most governments have addressed it as sexual harassment and, if they have defined the proscribed behaviour, use the internationally accepted definition that covers two types of actions. Sexual harassment can be classified as: (1) *quid pro quo* ('this for that' harassment) or (2) creating a hostile working environment. The elements of definitions include that the behaviour, measure or action was unwanted sexually oriented conduct, manifested by physical, verbal, gestural, psychological, emotional, written or graphic actions, or economic or financial pressure, occurring even once. Occasionally, the Australian good practice described in the following is being replicated. GBV at work can include domestic or intimate partner violence that spills over to the workplace, where the links are multiple because victims need jobs for economic and physical safety, as domestic violence poses health and safety risks, and because the world of work is a good channel via which to send violence prevention messages.

While all approaches may be appropriate in their own national contexts and varied legal systems, one element is sure: the spilling over of the effects of domestic violence into the world of work requires a more robust anchor in international labour law. Any new international labour standard could combine elements of all these national approaches so that an interlocking set of laws would cover all instances of GBV.

How a new international labour instrument might look, and its implementation

Based on the ideas and research gathered to date, the authors suggest that a new ILO instrument (convention or recommendation or both) should commence with

a strong statement of the overall objective, namely to equip governments as well as workers' and employers' organizations with policy guidance and tools for tackling all forms of GBV and harassment at work and convey the message that this behaviour violates workers' and human rights.

There should be a clear definition of the multiple forms of conduct covered, and a listing of the various means of applying the instrument, for example through laws and regulations, collective agreements, courts rulings, arbitration awards, or any other way that matches national conditions and is agreed to after consultation with the social partners. The text could list the groups of workers most at risk, and at-risk industries, sectors, occupations and conditions. It should give clarity to the impacts of sex and gender discrimination, but also address related socio-economic and legal issues, access to justice, occupational safety and health, and gender-responsive education. It will need to require ratifying states to adopt a national policy resulting from tripartite social dialogue, with monitoring and evaluation built in.

There should be an article requiring the collection and analysis of sex/gender-disaggregated data, with a holistic approach to identifying sources of data (going beyond workplace inspection visits to cover hot-line calls, emergency clinics, police stations, justice system case listings). Data collection could cover GBV-related absenteeism, stress and health issues, loss of productivity, job insecurity, damage to the plant, misuse of company resources by perpetrators, loss of reputation and financial penalties linked to litigation, to name but a few parameters of GBV and work faced by both victims and employers.⁹

The standard needs to articulate the roles and responsibilities of many actors (not only at the workplace, but all those required for a concerted holistic approach). Liability should be made clear in the text, for example is only the harasser responsible? only the employer? employer and harasser both? The text should stipulate prevention measures, including quality training for all parties involved in implementing the national policy, financed out of public funds so as not to burden employers and to prove the seriousness of the national policy. Such a provision could encourage states to undertake systematic workplace risk assessments.

There could be a detailed focus on complaints (labour inspection/dispute resolution/courts). Such provisions must include shifting the burden of proof from the traditional responsibility of the claimant to the defendant who – once the claimant has established a *prima facie* case of GBV and harassment, must prove that the measure complained about was not proscribed GBV at work; confidentiality of reporting mechanisms; and protection against reprisals for lodging complaints. ILC delegates should consider clarifying in the texts whether there is a place for perpetrator defences such as reasonableness in self-defence circumstances, or proportionality; and if the drafters do not consider that human rights and worker rights violations deserve mitigation through defences they should clearly reject such a stance in the debates, so that the future treaty's interpretation is crystal clear. This part should also stipulate remedies for violations (restitution,

compensation, damages both general and punitive). A section should encourage international, regional and cross-border collaboration, and give guidance for social dialogue and collective agreements, human resource policies and trade union policies, workplace support programmes; recommend areas for research and advocacy based on data collection; and suggest media materials and campaigns. A final section should make the link to the UN and the SDGs, especially SDG 5, outlining UN system-wide cooperation and the usefulness of consultation across the UN regional and multilateral systems. Including such a specific reference will enhance the implementation of SDG 5 as it pertains to the world of work, as national actors will find guidance in the new international labour standard on policy and practical measures for their own efforts to end GBV at work.

There are, of course, many more proposals regarding content that will come to light as the ILO engages in detailed national, regional and global consultations, which complement the ILO standard-setting process of eliciting government, worker and employer organizations' feedback on what the texts might contain. Following the expert meeting in October 2016, the ILO process for preparing the ILC debate on new instruments will comprise reduced time intervals for the consultation stages that form the basis of the first discussion. This means that the dispatch to member states of the ILO report containing a synopsis of GBV at work law and practice accompanied by a questionnaire will occur in April 2017. The deadline for receipt of government replies to the questionnaire is September 2017, following which the ILO will summarize responses in order to dispatch, in March 2018, a first report to member states as the basis for the June 2018 ILC debate.

Having an international GBV and harassment labour standard (ILS) and concomitant national policies and laws is a first step; but implementing them is the challenge. Any preparatory work for an ILS on this subject will need to analyse a large range of practical difficulties that states already appear to be facing regarding violence against women and girls generally. In many cases these implementation 'costs' are common to any new workplace right, in that, for example, campaigns, workplace education and training to spread knowledge and understanding of the ILC will require dedicated resources and time and political support. For a new ILS on this subject, application in practice will require engagement across a wide range of actors beyond the traditional world of work partners. The new rights may also require sophisticated and carefully planned interventions, as when new ILS were adopted on, for example, HIV and Aids and rights for domestic workers. States and their social partners will have to reflect on the theoretical and practical issues surrounding implementation of new workplace rules. For example, allowing GBV complaints to be lodged raises issues of training across not only workplace dispute resolution bodies and industrial courts, but also the normal courts. If liability in the legislation is not clearly defined, how will these institutions use the new ILS to fill any gaps or clarify an unclear provision? States should weigh up the pros and cons of implementing the ILS in legal and industrial relation systems where only the harasser/perpetrator of violence can be tried and punished, against using systems that recognize employer vicarious liability. States need to consult internally at all

levels (and within regional and global forums) on the usefulness – for preventing future GBV and for sending the strong public policy message of zero tolerance – of holding both employer and harasser liable at law. And how should national institutions decide when the source of the workplace violence is an external customer or client? Are school authorities liable for former students' or students' parents' violence? Are hospital boards liable for violence against medical staff at the hands of visiting relatives or angry friends of patients? As implementation of the new ILO instrument unfolds, states will also be able to better report on implementing SDG 5.

Reflections on collective bargaining for domestic violence leave in the Australian context

The process of introducing and implementing an international GBV labour standard that includes the workplace impacts of domestic violence has been assisted by recent developments in the Australian context, specifically by the process of collective bargaining. This part will discuss the factors that led to the adoption of collective bargaining for domestic violence leave and the challenges to further advances.

Australian trade unions adopted collective bargaining in 2010 to introduce standardized rights for workers affected by domestic violence. By June 2016 it was estimated that over a third of all employees (37.8%) covered by enterprise agreements had access to a domestic violence leave clause (Department of Employment Workplace Agreement Database, 2016) and the Australian Council of Trade Unions (ACTU) had a case before the national industrial tribunal (Fair Work Commission) for paid domestic violence leave for workers not covered by agreements. All Australian public services except Western Australia had varied awards, negotiated agreements or had introduced guidelines to provide domestic violence leave pay and support. The trade union movement, which had not previously played a leadership role in the protection of workers and members affected by domestic violence, has successfully established domestic violence as a national workplace issue that requires practical support, such as paid leave and safety planning for all workers.

A number of factors had prepared Australian workplace stakeholders for a major shift on domestic violence. National research revealed that nearly two-thirds (62.9%) of Australian women who reported violence by a current partner were in paid employment (ABS, 2005). There was growing awareness nationally of the link between financial security and becoming trapped in a violent relationship: 'Employment is a critical pathway to ensure women's financial security. Internationally, the links between economic independence, employment and the impact of domestic violence have been steadily developing' (Council of Australian Governments, 2012: 12). Yet the evidence indicated that a series of programmes encouraging optional employer policy to provide support to affected employees had not produced the widespread or sustainable change required (Murray and Powell, 2008).

A further factor was the progressive strategy being implemented by a number of state governments to involve all key sectors of society in domestic violence reduction. The addition of support programmes for women affected by domestic violence to stay safely in their homes reinforced the role of the world of work in an integrated approach, for the majority who sought support were in some form of employment (McFerran, 2007). A supportive workplace had been a critical factor for many of the affected women, though the support was understood as discretionary, attributable to being lucky enough to have a good employer (McFerran, 2016). The lack of sustainable and widespread policy change and the discretionary nature of support provided by workplaces provided the impetus for a standard workplace right, a domestic violence clause.

In April 2010 a partnership between domestic violence activists, academics and trade unionists created an Australian domestic violence clause, first logged by the New South Wales (NSW) Public Service Association (PSA) as part of bargaining for an enterprise agreement in the university sector, but first successfully negotiated by the Australian Services Union Victorian Authorities and Services Branch (ASU) with the Surf Coast Shire Council in September 2010. The Australian partnership had drawn heavily on model domestic violence agreements negotiated by the British public service union UNISON. One innovation in the Australian clause was the claim for domestic violence paid leave, in order to attend to critical matters such as court appearances for a protection order. The clause negotiated in Victoria attracted widespread interest as an additional 20 days were agreed.

The ACTU adopted the domestic violence policy at its 2012 national conference, urging all affiliates to include a domestic violence clause when negotiating agreements with employers.

By 2016 34 of the 38 ACTU affiliates had been part of negotiating a domestic violence clause. The ACTU policy marked a breakthrough role for Australian unions in national domestic violence strategy by creating a new industrial issue, the impacts of domestic violence at work, and a new form of paid leave. This replaced the option of discretionary policy by employers with enforceable and standardized rights at work, linking financial security and employment.

A number of factors that have contributed to the successful bargaining of domestic violence clauses were identified by Baird et al. (2014). These included the role of an external agency seen to be able to provide disinterested and expert advice, the involvement of women in the negotiations who were able to draw on personal experiences of domestic violence to provide authenticity to the claims, and the commitment of the parties to addressing domestic violence amongst members and community.

On a national level, forming partnerships was a significant element in progressing understanding of the link between domestic violence and work. Key partners were governments: as employers and policy makers, from the pioneering engagement of local councils in early agreements to the provision of public service paid domestic violence leave by states such as Victoria (20 days); and as political support for national employment law reform, to include domestic violence

(Gordon, 2016). The support of the Commonwealth Government to fund the development and implementation of standardized domestic violence rights at work was a further key factor. The then Federal Labor Government funded a 3-year programme from 2010 to 2013 – ‘Safe at Home, Safe at Work’ – with the brief to develop, resource, monitor and research the implementation of domestic violence clauses. This support enabled the national survey on the impacts of domestic violence at work on individuals and co-workers (McFerran, 2011), the creation of resource tools to inform individuals of their rights, the assistance of employers and unions in policy development and negotiating, and a training programme for key personnel. The Labor Government also amended the national employment legislation (Fair Work Amendment Act 2013) to introduce a domestic violence provision (the right to request flexible leave). The current Liberal-National Government is less supportive, blocking the inclusion of a domestic violence clause in negotiation of new Commonwealth public service agreements (Towell, 2016).

Other important players included the Australian Law Reform Commission (2012), which conducted an inquiry into Commonwealth laws and domestic violence, recommending that the Government supports domestic violence clauses in enterprise agreements. Likewise, the Australian Human Rights Commission (2012b) recommended that discrimination on the grounds of domestic violence be unlawful in all areas of public life including the workplace. Recently other actors have supported domestic violence rights at work, such as the Fair Work Commission (FWC). In a landmark domestic violence and work case the FWC ordered a Melbourne employer to pay maximum compensation to a domestic violence victim who was unfairly sacked because her employer claimed they could not protect her from her partner who worked in the same office. Consequently Australian law now requires employers to provide ‘added duty’ of care for domestic violence victims at work (Taylor, 2015).

While some employer groups have been resistant to the introduction of domestic violence rights at work, insisting as recently as 2014 that the violence is a community responsibility without any workplace impacts (Patty, 2014), others have been supportive. The National Retail Association (NRA) estimates that ‘almost 45,000 women, working within the Australian retail industry, experienced some form of family violence in 2014/15. This is approximately 6.7% of the female workforce’ (NRA, 2016). The NRA Chief Executive Officer (CEO) has called for her members to pay domestic violence leave to affected workers (Viellaris, 2016).

Individual employers have taken their own initiatives. According to the Chief Executive of iconic bootmaker Blundstone, a business which adopted 10 days’ domestic violence leave for its 90 workers, ‘We put an enormous amount of investment in people, and it disrupts small to medium size businesses a lot if they lose their good people ... There is a straight out business imperative to get involved here’ (ABC News online, 2015). At the other end of the scale, the leaders of many of Australia’s leading organizations publicly endorsed paid domestic violence leave (Male Champions of Change, 2015). According to Telstra Australia, the inclusion of 10 days’ paid domestic violence leave in their Enterprise Agreement 2015–2018

has not 'opened the floodgates': only 22 individuals out of a workforce of 32,000 have accessed the leave in 6 months, taking an average leave of 2.3 days (Male Champions of Change, 2015: 17).

The increasing number of agreements containing a domestic violence clause and the ACTU case for paid domestic violence leave for those workers not covered by agreements required a monitoring of conditions being negotiated and implementation practices. The University of New South Wales (UNSW) Gendered Violence Research Network (2015) with the ACTU conducted a survey of over 100 employers who had negotiated a domestic violence clause in their enterprise agreements. The average paid domestic violence leave taken in the past 12 months was 43 hours, with a range of 8 to 202 hours. Per incident, where time off was requested, most employees took 2 to 3 days or less. Employers reported that having a domestic violence clause had resulted in more positive work environments: the clause raised awareness of the issue within the workplace and reduced stigma; enhanced the overall employer reputation and status; staff were able to take leave without stress; there was improved cooperation with unions, which helped with bargaining; and employees felt more comfortable and confident speaking to management about requesting support.

Internationally, the emergence of networks that are prepared to contribute to the advancement of workplace rights and domestic violence through empirical research and qualitative analysis can be crucial in establishing prevention and protection minimum standards. For example, Australia is a founding member of an international domestic violence at work network of domestic violence researchers, experts, social and labour organizations, and employers (www.dvatworknet.org). The network received funding from the Social Science and Humanities Council of Canada to develop knowledge of international developments, and has created a set of core domestic violence at work survey questions based on the Australian model (2011). Surveys have been conducted in New Zealand, the United Kingdom, Canada, Turkey and the Philippines,¹⁰ collecting and analysing employees' experiences of domestic violence and how this has affected their workplaces and the workplaces' responses. Findings across the surveys have consistently found similar impacts on attendance, performance and safety.

Lessons from Australia as an international instrument is negotiated

The goals of introducing domestic violence rights at work were to engage the workplace in an Australian whole-of-community response to keep affected workers in their homes and in their jobs; to protect the jobs of employed people affected by domestic violence by providing support at work that is clear, certain and consistent; and to provide a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions. One lesson that can be drawn from the Australian experience is how effective collective bargaining can be in breaking through the inertia that stalls any progress on addressing domestic violence in the workplace.

Engaged unions can move employers beyond rhetoric to action. But on the negative side, the conditions being negotiated between Australian unions and employers are very varied indeed, even with the leave provisions, which should be the most straightforward. This is the case despite the ACTU recommending a model domestic violence clause to its affiliates. The model domestic violence clause is a package of supports, which includes paid domestic violence leave, but also safety planning, protection from adverse action or discrimination, training of key personnel and referral to domestic violence experts. The dedicated leave has always attracted the most attention, but all the conditions in the clause are necessary to provide effective support.

However, evidence from the aforementioned employer survey (2015) now suggests that there has been a concentration on the issue of leave, to the detriment of the other equally important conditions. This neglect of other conditions, and the varied nature of the very conditions being negotiated, suggest that collective bargaining has not met the goal of introducing minimum terms and conditions. This finding supports the need for minimum standards in national instruments such as modern awards and employment legislation, a problem that may be addressed in part if the ACTU case before the FWC for 10 days' paid domestic violence leave in 'modern awards' is successful.¹¹ Success before the FWC will extend coverage to workers not covered by agreements and would set a national benchmark. But to maximize the safety net and the resources for implementation, the most effective national approach would be to also include other legal strategies to address domestic violence in the workplace that have been adopted internationally, notably anti-discrimination legislation in a number of American states that provides protection from discrimination for domestic violence survivors, and explicit domestic violence protection in occupational health and safety legislation in Ontario.

A key international lesson is that good reforms need to be supported by broad-based training and education and carefully monitored, especially when introducing a new workplace right and the ensuing responsibilities. It was sobering to study the results of the 2015 domestic violence at work survey in the Philippines, where national violence against women legislation has provided paid domestic leave and protection from discrimination since 2004 but without a national programme to educate the workforce about their rights (ITUC Regional Organisation for Asia and Pacific (ITUC-Asia Pacific), 2015). Consequently, survey respondents' awareness of legally mandated paid domestic violence leave was low at 39%, and one in four (26%) said employers did not 'act in a positive way when workers report their DV experience'. Arguably the marked variation in conditions that have been negotiated in Australian domestic violence clauses could have been reduced if they had been monitored and supported by training and education, particularly for negotiators. The variation may bolster the argument for minimum standards in national instruments such as modern awards and employment legislation, but the loss of any monitoring process undermines the goal of 'clear, certain and consistent' workplace support articulated at the beginning of this section. Further, the failure of government to commit the resources to support a national implementation programme also means there is now no evidence-based national training or resources to assist

individual workers, employers or unions. Instead there has been a loss of the good resources developed and poorly informed trainers are stepping into the vacuum.

Clear gaps are now becoming obvious in the Australian response to domestic violence at work. For example, employers are unsure about the support they should provide to employed domestic violence perpetrators and the correct provision of leave that might apply to them as a distinct group. The evidence is that the behaviour of employed domestic violence offenders in the workplace creates a parallel cost to the employer due to absences, poor performance, misuse of work time and company resources, and occupational health and safety risks (Cranwell Schmidt and Barnett, 2012). There has been no nation-wide informed and considered debate, and employers wait for some national guidance. Another enduring gap is an appropriate strategy for small businesses that have a low rate of negotiating collective agreements (the Workplace Agreement Database suggests that less than 12% of agreements with a domestic violence clause have 1–15 employees). The challenges faced by small businesses are often cited by employer groups and responsible government agencies as barriers to paid domestic violence leave (Keen, 2016), but no study has been conducted to examine real costs or effective and flexible strategies that small businesses are using to support their staff, and small businesses are never invited to the corporate discussions of domestic violence now so popular in Australia. Nor can the gap between permanent and casual employees' access to leave entitlements be ignored. Domestic violence erodes working women's access to safe and full-time work (Franzway et al., 2015). Casual workers are least able to afford unpaid time off work to address the crisis that domestic violence generates in their lives. This gap has been recognized by the ACTU, which has included casual workers in its paid domestic violence leave claim before the FWC.

Conclusion

As women across the world are encouraged to become economically empowered and create financial independence through work, the enabling of work practices such as support for addressing domestic violence through the workplace should be standard in all countries. Although Australia continues to face challenges in the effort to extend a minimum standard of workplace protections for all workers in order to address domestic violence, many critically important lessons have been learned and domestic violence is firmly rooted as a national workplace issue. These lessons can inform a global strategy for supporting women's economic independence. The world of work is a channel via which to minimize the impacts and outcomes of domestic violence where the actors should take every measure possible to support women to stay safely in their homes, their jobs and their communities. With this in mind, the ILO tripartite meeting of experts on violence against women and men in the world of work (Geneva, October 2016) agreed that 'domestic violence and other forms of violence and harassment are relevant to the world of work when they impact in the workplace' (Conclusions adopted by the meeting, Conclusion 3) and that 'Collective agreements address the effects of domestic

violence' (Conclusion 27).¹² In adopting an international labour standard against GBV and domestic violence in the world of work, the ILO would be supporting SDG 5. By ratifying and implementing any such new binding treaty, ILO member states would also be supporting SDG 5 and assisting improved implementation of the global Agenda 2030, through the world of work. Such outcomes would be another positive step towards a world where GBV and harassment, including domestic violence, is not tolerated in law or in practice.

Authors' note

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Notes

1. ILO document GB.325/INS/2, Appendix III pp. 16–19, and para. 34 'Revised Point for Decision: ...2. The Governing Body decides: (a) to place a standard-setting item on "Violence against women and men in the world of work" on the agenda of the 107th Session (June 2018) of the Conference; and (b) to convene a tripartite meeting of experts to provide guidance on which basis the Governing Body will consider, at its 328th Session (November 2016), the preparations for the first discussion of possible instruments by the Conference.' In November 2016, the ILO extended the title of the 2018 Conference item to read "violence and harassment" (GB.328/PV, para. 357); in March 2017, the Tripartite Meeting of Experts' Report was discussed (GB.329/INS/INF/3).
2. The definition of domestic violence used for the EU's study is from the Istanbul Convention (2011): 'all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim'.
3. UN document E/CN.6/2013/4, para.10.
4. Gave the first definition: 'Violence against women' means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women and girls, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.
5. Para. 34yy directs that states 'take measures to ensure that all workplaces are free from discrimination and exploitation, violence, and sexual harassment and bullying, and that they address discrimination and violence against women and girls, as appropriate, through measures such as regulatory and oversight frameworks and reforms, collective agreements, codes of conduct, including appropriate disciplinary measures, protocols

- and procedures, referral of cases of violence to health services for treatment and police for investigation; as well as through awareness-raising and capacity-building, in collaboration with employers, unions and workers, including workplace services and flexibility for victims and survivors’.
6. Available at: www.un.org/womenwatch/daw/egm/vaw_legislation_2008/vaw_legislation_2008.htm.
 7. CSW document E/CN.6/2016/4 of 23 December 2015, para. 34.
 8. ILO Governing Body documents GB.316/INS/4, paras 67–76 (November 2012); GB.317/INS/2(Rev.), Appendix I, paras 20–29 (March 2013); GB.319/INS/2, Appendix IV (October 2013); GB.320/INS/2, Appendix III (March 2014); GB.322/INS/2, Appendix II(2), paras 14–21 (November 2014); GB.322/PV/Draft, paras 8–15 (March 2015); GB.323/INS/2, Appendix 2, paras 14–21 (October 2015); GB.325/INS/2, Appendix III, pp. 16–19 (November 2015).
 9. Proposals for how to use data to measure the cost of GBV are found in Duvvury and Walker (2013) Costing the impacts of gender-based violence to business: a practical tool Overseas Development Institute UK.
 10. New surveys are currently being conducted in Mongolia, Taiwan and Egypt. UNI Global Union is planning a survey for its membership across more than 30 countries. See surveys at <http://dvatworknet.org/research/national-surveys>
 11. At the time of writing, President Ross was seeking clarification on whether or not the FWC can make a decision after the departure of Vice President Graeme Watson, who also released his decision before the other Full Bench members had finalized their decision (Workplace Express, Saturday 29 April 2017).
 12. Governing Body document, *Fifth Supplementary Report: Outcome of the Meeting of Experts on Violence against Women and Men in the World of Work*, GB.328/INS/17/5, 328th Session, Geneva, 27 October–10 November 2016, endorsing the meeting’s Conclusions.

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Biographical notes

Ludo McFerran has been an activist in the Australian domestic violence sector since 1978. She pioneered policy on support systems to enable women and children to stay safely in their homes, and the introduction of domestic violence rights and entitlements in Australian industrial and discrimination instruments. She is a

foundation member of the International Domestic Violence at Work Network, and is currently attached to the Women and Work Research Group at the University of Sydney Business School.

Jane Aeberhard-Hodges is a post-graduate in international law and a practising solicitor. Before joining the ILO. She served in HQ and field posts covering international and comparative labour law, human rights and freedom of association. In her last decade with the Organization she directed the Gender Equality Bureau. She has published widely on labour and human rights, and designed and delivered training programmes on fundamental principles and rights at work, including gender equality, HIV/Aids and disability inclusion. Throughout her career she has represented the ILO in the UN and multilateral bodies at the highest levels, advocating for effective implementation of international labour standards. Most recently, Ms Aeberhard-Hodges is an UNRISD Senior Research Associate and edits the *International Labour Law Reports*.