



30 September 2011

The Executive Director  
Australian Law Reform Commission  
GPO Box 3708  
SYDNEY NSW 2001

51 Walker Street,  
North Sydney NSW 2060  
Australia

ABN 76 369 958 788

Tel: 02 9466 5566  
Fax: 02 9466 5599

Email: [cwlth\\_family\\_violence@alrc.gov.au](mailto:cwlth_family_violence@alrc.gov.au)

Dear Executive Director

**Re. *Family Violence - Commonwealth Laws Discussion Paper***

The Australian Industry Group (Ai Group) welcomes the opportunity to comment upon the proposals in the ALRC's *Family Violence – Commonwealth Laws Discussion Paper* (the Discussion Paper).

Ai Group is one of the largest national industry bodies in Australia, representing employers in the manufacturing, construction, automotive, food, transport, information technology, telecommunications, printing, on-hire and other industries.

Family violence is an important community problem and Governments, police forces, Courts, community services organisations, professionals, the media, employers and employees have important roles to play in addressing the problem.

In general, we believe that the Discussion Paper does not strike the right balance. The Paper includes a large number of proposals which would have a substantial impact upon employers, with the impact extending far beyond addressing the needs of employees who are victims of family violence.

Employers would most likely be willing participants in workable initiatives to address the community problem of family violence. Unfortunately, the heavy handed approach in the Discussion Paper risks the creation of negative views amongst employers from the start, rather than seeking to engage them in a positive way.

Family violence is an issue which some employers have begun to address through employee support programs and other initiatives. Also, it is common for employers to provide access to various forms of leave and flexible work arrangements where an employee is a victim of family violence.

Whilst many employers would not perceive family violence to be an issue which requires specific workplace solutions, beyond those generally available, there is widespread recognition of the importance of the issue.

## **Employer policies**

In Ai Group's view, the most obvious and practical way to assist employers to play a role in addressing the community problem of family violence is to assist them to develop appropriate workplace policies. This could take the form of:

- Providing information to employers about family violence and how they can assist in addressing the problem and supporting employee victims;
- Providing model workplace policies with options.

Many employers would no doubt be supportive of implementing appropriate workplace policies to address family violence, to the extent that it is a workplace issue, if handled in an appropriate way. This would include ensuring that industry associations like Ai Group are involved in the development of the model policies. It would also be important to ensure that any model policies are flexible and designed to enable employers to tailor them to meet the needs of their business.

Ai Group is aware of various draft enterprise agreement clauses which have been developed with the union movement and which various parties are pressing. Such an approach has not been effective to date and is highly unlikely to be effective in the future.

The key to success with this important issue is to engage with employers in a positive way not to encourage the pursuit of industrial claims.

Family violence must be treated with sensitivity and is appropriately dealt with through workplace policies.

## **Education**

Ai Group is supportive of the ALRC's proposal (14-2) for the Australian Government to fund a national education and awareness campaign about family violence in the employment context, provided that the content is appropriate. The education campaign should be developed in consultation with industry representative bodies such as Ai Group.

## **The need for employer flexibility**

The maintenance of flexibility in the workplace is essential to ensure that employers are able to respond to the needs of employees, where operational requirements permit. This includes ensuring that unnecessary barriers to flexibility are not imposed under workplace laws, awards or enterprise agreements in areas such as working hours and annual leave.

## **Ai Group's views on specific questions and proposals**

The following sections outline our views on some of the questions and proposals in the Discussion Paper relating to workplace relations, Occupational, Health and Safety (OHS) and related issues:

**Proposal 3-5:** *The Fair Work Act 2009 (Cth) should be amended to provide for a consistent definition of Family Violence.*

Ai Group is not convinced that any changes need to be made to the *Fair Work Act* to address the community problem of family violence. As set out above, this is an issue best dealt with through workplace policies and education.

**Proposal 3-6:** *The following guidelines and materials should be amended to provide for a consistent definition of family violence:*

- *DEEWR and Job Services Australia Guidelines, Advices and Job Aids;*
- *Safe Work Australia Codes of Practice and other materials;*
- *Fair Work Australia material; and*
- *Other similar material.*

Ai Group is not convinced that any changes need to be made to Safe Work Australia Codes of Practice or other materials. In Ai Group's view, family violence is not generally an OHS issue. Further, we are not convinced of the need for any changes to be made to Fair Work Australia materials. To the extent that family violence is a workplace issue, it is best dealt with through workplace policies and education.

**Question 14-1:** *In addition to removal of the employee records exemption in the Privacy Act 1988 (Cth), what reforms, if any, are needed to protect the personal information of employees who disclose family violence for the purposes of accessing new entitlements such as those proposed in Chapters 16 and 17?*

**Proposal 14-1:** *There is a need to safeguard the personal information of employees who have disclosed family violence in the employment context. The Office of the Australian Information Commissioner and the Fair Work Ombudsman should, in consultation with unions and employer organisations:*

- (a) develop a model privacy policy which incorporates consideration of family violence-related personal information; and*
- (b) develop or revise guidance for employers in relation to their privacy obligations where an employee discloses, or they are aware of, family violence.*

Ai Group opposes the removal of the employee records exemption in the *Privacy Act*. Employers need to keep and utilise employee records for a wide range of legitimate business purposes, including the efficient operation of the business and compliance with legal obligations under industrial, OHS, workers' compensation and other laws.

Ai Group supports the development of guidance materials to assist employers to understand their privacy obligations where an employee discloses, or becomes aware of, family violence.

**Proposal 14-2:** *The Australian Government should initiate a national education and awareness campaign about family violence in the employment context.*

Ai Group supports this proposal, provided that the content is appropriate. The education campaign should be developed in consultation with industry representative bodies such as Ai Group.

**Proposal 14–3:** Section 653 of the Fair Work Act 2009 (Cth) should be amended to provide that Fair Work Australia must, in conducting the review and research required under that section, consider family violence-related developments and the effect of family violence on the employment of those experiencing it, in relation to:

- (a) enterprise agreements;
- (b) individual flexibility arrangements; and
- (c) the National Employment Standards.

Ai Group does not support this proposal. Family violence should not be treated as an industrial issue. To the extent that family violence is a workplace issue, it is best dealt with through workplace policies and education.

**Question 14–2:** In addition to review and research by Fair Work Australia, what is the most appropriate mechanism to capture and make publicly available information about the inclusion of family violence clauses in enterprise agreements?

Family violence should not be treated as an industrial issue. It is not appropriate for Fair Work Australia to promote the inclusion of family violence clauses in enterprise agreements.

**Question 14–3:** How should Fair Work Australia collect data in relation to the incidence and frequency with which family violence is raised in unfair dismissal and general protections matters?

Ai Group is not convinced of the need to collect this data. In Ai Group's experience the incidence of family violence being raised in unfair dismissal and general protections matters is very rare.

**Proposal 14–4:** In the course of its 2012 and 2014 reviews of modern awards, Fair Work Australia should consider issues relating to data collection.

Family violence is not an appropriate subject matter for awards. To the extent that family violence is a workplace issue, it is best dealt with through workplace policies and education.

**Proposal 16–1:** Section 65 of the Fair Work Act 2009 (Cth) should be amended to provide that an employee who is experiencing family violence, or who is providing care or support to a member of the employee's immediate family or household who is experiencing family violence, may request the employer for a change in working arrangements to assist the employee to deal with circumstances arising from the family violence.

*This additional ground should:*

- (a) remove the requirement that an employee be employed for 12 months, or be a long-term casual and have a reasonable expectation of continuing employment on a regular and systemic basis, prior to making a request for flexible working arrangements; and
- (b) provide that the employer must give the employee a written response to the request within seven days, stating whether the employer grants or refuses the request.

Ai Group opposes the proposed extension of the right to request provisions. The existing provisions were the subject of a lengthy consultation process during the development of the *Fair Work Act*. The formality of section 65 is not needed for employers and employees to agree on flexible work arrangements, including arrangements to address issues relating to family violence. This is acknowledged by the explanatory memorandum for the *Fair Work Bill* which explains:

*“270. An employee who is not eligible to request flexible working arrangements under this Division (e.g., because they do not have the requisite service) is not prevented from requesting flexible working arrangements. However, such a request would not be subject to the procedures in this Division.”*

It would not be practicable to remove the eligibility period. Permanent employees with 12 months' service and long term casuals have well established working arrangements, unlike new employees and short-term casuals.

Similarly, it would not be practicable to limit the employer response time to seven days. This is an inadequate period of time for an employer to fully consider a formal request for flexible working arrangements and determine its response. The current 21 days allows the employer time to consider the options available to accommodate the request. A shorter period than 21 days would lead to a more rushed response from the employer with more requests rejected.

**OPTION ONE: Proposal 16–2**

**Proposal 16–2:** *The Australian Government should amend the National Employment Standards under the Fair Work Act 2009 (Cth) to provide for a new minimum statutory entitlement to 10 days paid family violence leave. An employee should be entitled to access such leave for purposes arising from the employee's experience of family violence, or to provide care or support to a member of the employee's immediate family or household who is experiencing family violence.*

Ai Group opposes this proposal. A number of existing categories of leave would potentially be available to employees who are victims of family violence. Any additional issues relating to leave should be dealt with through workplace policies.

**OPTION TWO: Proposals 16–3 and 16–4**

**Proposal 16–3:** *The Australian Government should amend the National Employment Standards under the Fair Work Act 2009 (Cth) to provide for a minimum statutory entitlement to an additional 10 days paid personal/carer's leave. An employee should be entitled to access the additional leave solely for purposes arising from the employee's experience of family violence, or to provide care or support to a member of the employee's immediate family or household who is experiencing family violence.*

**Proposal 16–4:** *The Australian Government should amend the National Employment Standards under the Fair Work Act 2009 (Cth) to provide that an employee may access the additional personal/carer's leave referred to in*

*Proposal 16–3:*

- (a) because the employee is not fit for work because of a circumstance arising from the employee's experience of family violence; or*
- (b) to provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support as a result of their experience of family violence.*

Ai Group opposes this proposal. A number of existing categories of leave would potentially be available to employees who are victims of family violence. Any additional issues relating to leave should be dealt with through workplace policies.

**Proposal 17–1:** *The Fair Work Ombudsman should develop a guide to negotiating individual flexibility arrangements to respond to the needs of employees experiencing family violence, in consultation with the Australian Council of Trade Unions and employer organisations.*

The Fair Work Ombudsman already has a guide on Individual Flexibility Arrangements (IFAs) that was developed in consultation with Ai Group, the ACCI and the ACTU. Ai Group is concerned that the existing IFA provisions are not working effectively and we have proposed to the Government that various changes be made to the *Fair Work Act* to ensure a workable structure for IFAs. The parameters and conditions for individual flexibility need to be set out in the Act, with no ability for awards or agreements to detract from that framework. Also, leave provisions need to be included within the scope of the arrangements.

**Proposal 17–2:** *The Australian Government should encourage the inclusion of family violence clauses in enterprise agreements. Agreements should, at a minimum:*

- (a) recognise that verification of family violence may be required;*
- (b) ensure the confidentiality of any personal information disclosed;*
- (c) establish lines of communication for employees;*
- (d) set out relevant roles and responsibilities;*
- (e) provide for flexible working arrangements; and*
- (f) provide access to paid leave.*

**Proposal 17–3:** *The Fair Work Ombudsman should develop a guide to negotiating family violence clauses in enterprise agreements, in conjunction with the Australian Domestic and Family Violence Clearinghouse, the Australian Council of Trade Unions and employer organisations.*

Ai Group does not support these proposals. Family violence should not be treated as an industrial issue. To the extent that family violence is a workplace issue, it is best dealt with through workplace policies and education.

**Question 17–1:** *Section 352 of the Fair Work Act 2009 (Cth) prohibits employers from dismissing an employee because they are temporarily absent from work due to illness or injury. Regulation 3.01 of the Fair Work Regulations 2009 (Cth) prescribes kinds of illness or injury and outlines a range of other requirements. In what ways, if any, could the temporary absence provisions be amended to protect employees experiencing family violence?*

We do not support any changes to Section 352 or Regulation 3.01. In some circumstances these provisions have application to victims of family violence.

**Proposal 17–4:** *In the course of its 2012 review of modern awards, Fair Work Australia should consider the ways in which family violence may be incorporated into awards in keeping with the modern award objectives.*

**Proposal 17–5:** *In the course of its first four-yearly review of modern awards, beginning in 2014, Fair Work Australia should consider the inclusion of a model family violence clause.*

Family violence is not an appropriate subject matter for awards. To the extent that family violence is a workplace issue, it is best dealt with through workplace policies and education.

**Proposal 17–6:** *Fair Work Australia members should be provided with training to ensure that the existence of family violence is adequately considered in deciding whether there are 'exceptional circumstances' under s 394(3) of the Fair Work Act 2009 (Cth) that would warrant the granting of a further period within which to make an application for unfair dismissal.*

The concept of *exceptional circumstances* under section 394(3) of the *Fair Work Act* is broad enough for a member of the Tribunal to take into account family violence when determining whether to allow an extension for an unfair dismissal application.

**Question 18–1:** *What reforms, if any, are needed to occupational health and safety law to provide better protection for those experiencing family violence? For example, should family violence be included in the National Work Health and Safety Strategy?*

**Proposal 18–1:** *Safe Work Australia should include information on family violence as a work health and safety issue in relevant Model Codes of Practice, for example:*

- (a) 'How to Manage Work Health and Safety Risks';*
- (b) 'Managing the Work Environment and Facilities'; and*
- (c) any other code that Safe Work Australia may develop in relation to other topics, such as bullying and harassment or family violence.*

**Proposal 18–2:** *Safe Work Australia should develop model safety plans which include measures to minimise the risk posed by family violence in the work context for use by all Australian employers, in consultation with unions, employer organisations, and bodies such as the Australian Domestic and Family Violence Clearinghouse.*

**Proposal 18–3:** *Safe Work Australia should develop and provide education and training in relation to family violence as a work health and safety issue in consultation with unions, employer organisations and state and territory OHS regulators.*

**Proposal 18–4:** *Safe Work Australia should, in developing its Research and Data Strategy:*

- (a) identify family violence and work health and safety as a research priority; and*
- (b) consider ways to extend and improve data coverage, collection and analysis in relation to family violence as a work health and safety issue.*

Chapter 18 of the Discussion Paper attempts to draw a link between family violence and OHS. Whilst family violence is an important community problem, we do not agree that there is a sufficient nexus between family violence and OHS to warrant the development of OHS Codes etc. To the extent that family violence is a workplace issue, it is best dealt with through workplace policies and education.

We are disappointed that many of the proposals in the Discussion Paper are unworkable and inappropriate. We urge the ALRC to carefully consider the views of Ai Group and other employer representatives in framing its final recommendations. As stated above, employers would most likely be willing participants in workable initiatives to address the community problem of family violence but employers need to be engaged in a positive way.

We would be happy to expand on our views should the ALRC wish us to do so.

Yours sincerely



**Stephen Smith**  
Director – National Workplace Relations