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30 September 2011

Executive Director  
Australian Law Reform Commission  
PO Box 3708  
Sydney NSW 2001

Dear Sir/Madam,



I write to you in relation to the discussion paper into Family Violence – Commonwealth Laws.

Business SA is South Australia's leading business membership organisation, representing thousands of businesses through direct membership and affiliated industry associations. We represent businesses across all industry sectors, ranging in size from micro-business to multi-national companies.

Business SA acknowledges the efforts of government and community in combating family violence and these efforts are strongly supported by South Australian businesses. Family violence is a serious societal issue, an issue often kept undisclosed.

Development of a common set of guiding principles for supporting the reduction of family violence that includes provision of: Seamlessness, Fairness, Accessibility and Effectiveness of services are supported by Business SA.

Creating a universal definition of "family violence" to be embedded in appropriate Commonwealth Law will reduce confusion. Such a definition however, must be agreed to by all sectors in line with International conventions.

Access Economics prepared a report "*The cost of domestic violence to the Australian economy*" in 2004 for the Office of the Status of Women in Canberra. Highlighted in this report is the already considerable cost to the Australian economy of domestic and family violence, including:

- An estimated \$8.1 billion (in 2002-03) to the Australian economy
- An estimated \$483.9 million (in 2002-03) in lost productivity
- An estimated 752,000 (in 2002-03) lost days from paid work (victim and perpetrator)

Direct costs to businesses estimated by Access Economics in 2002-03 from domestic violence were in excess of \$175 million and costs included:

- Absenteeism from work (including incarceration of perpetrators)
- Decreased productivity at work
- Costs associated with permanent loss of labour, due to victims being unable to maintain employment

The Australian Law Reform Commission's (ALRC) recently released discussion paper highlights a number of challenging proposals that if implemented will place additional burden on businesses.

Business SA supports all positive action in eliminating family violence. ALRC acknowledge reasons for possible disclosure by a person experiencing family violence (Chapter 14 Paragraph 17) and they then go on to acknowledge also that victims may be reluctant to disclose family violence (Chapter 14 Paragraph 18). Businesses cannot be expected to support a person who fails to accurately inform the business of the situation. This must be considered in any changes proposed by ALRC to the *Fair Work Act 2009 (Cth)*.

Clarification is sought as to why ALRC is proposing a number of changes to the *Fair Work Act 2009 (Cth)* when, ALRC itself "*considers obligations such as employer duties of care are already sufficiently broad to cover any responsibility arising from disclosure of family violence by an employee*" (Chapter 14 Paragraph 34).

## **Privacy**

Removal of the employee records exemption for private sector organisations as suggested by the Office of the Australian Information Commissioner (OAIC), poses serious complex implications for employers especially of small and medium enterprises. Business SA supports the view of the Australian Chamber of Commerce and Industry (ACCI) that "*it is the experience of many thousands of employers that they treat these matters with the utmost confidentiality and would not seek to break that trust and confidence with their valued staff*".

There is no empirical evidence to suggest that the removal of employee record exemption will encourage employee disclosure of family violence. Business SA would however, support developing best practice guidance material to support business in the development of privacy systems.

## **Data**

Proposals 14-3 and 14-4 aim at addressing data collection required to inform FWA on family violence, highlighting the current lack of data available to inform any proposed changes adequately. Both of the above proposals seek amendments to the *Fair Work Act 2009 (Cth)* in relation to the effect of family violence on the employment of those experiencing it, failing to acknowledge employers current practices to support such employees. Support by employers comes at a cost and comprehensive data collection must be balanced against ensuring business implications and costs are captured. We must be mindful that businesses cannot be expected to assist employees if the employee does not make disclosure.

## **Pre-Employment**

The independence of a person involved in family violence has been identified as being strongly linked to their employment status. It is extremely important for any person to be work ready prior to any work placement or employment referral. Therefore it is important for all pre-employment services to be appropriately resourced to provide appropriate supportive and restorative services. A comprehensive pre-employment program will provide maximum opportunity for success in the transition from unemployment to employment.

Proposal 15-5 seeks to amend the Job Seeker Classification Instrument to include "family violence" as a new and separate category of information. Introduction of a separate category for family violence will not necessarily bring about disclosure of a violent situation. Business SA supports all attempts to support a disclosure of family violence. Acts of violence are a criminal matter and must be treated and supported as such.

## **Fair Work Australia**

Business SA does not condone any form of violence and supports ACCI's view that employers value their staff. However proposals under section 16 of the discussion paper will place substantial pressure on our members.

Current National Employment Standards (NES) provide ample provisions to cover family violence in the workplace and there is no empirical evidence to suggest that proposal 16-1 is required. The NES currently accounts for ten (10) separate conditions. Consideration must be given to how the proposed additional arrangements can be monitored and verified by an employer. In Business SA's opinion the proposed amendment is not required.

Introducing separate conditions for family violence has the potential to create complexity and confusion for both employees and employers. Consideration for equality in workplace conditions is required. Business SA supports the comments of ACCI "*when Tribunals and Parliaments decide to create rights on the basis of defined attributes, there would be a long queue of interest groups and individuals that would want their particular attribute or characteristic recognised*".

## **Statutory Entitlement**

Business SA does not support proposals 16-2, 16-3 or 16-4 to amend the *Fair Work Act 2009 (Cth)* to include a new statutory entitlement of 10 days additional paid leave, either as family violence leave or amended personal/carers leave.

Many businesses are small to medium enterprises without dedicated Human Resource services, with the business owner often working alongside the employee. These business owners will continue to support and provide assistance wherever they can but cannot be forced to take on additional regulatory obligations that are beyond the workplace and are of a personal and private nature to the employee.

Current anecdotal evidence suggests current leave entitlements can be misused by some and amendments to include an additional 10 days of leave (under NES that would also be subject to accrual) may be open for unscrupulous behaviour and abuse, once again missing the intended objective of supporting the genuine employee. The genuineness of an application for such leave is an area of concern.

### **Enterprise Agreements and Modern Awards**

Fair Work Australia defines, "*Enterprise agreements are agreements made at an enterprise level between employers and employees about terms and conditions of employment*"<sup>1</sup>. Enterprise agreements are a voluntary negotiation and as such mandatory clauses should be kept to a minimum. Business SA once again supports the development of material in relation to Best Practice guides to support and benefit employees and employers but not mandatory clauses in enterprise agreements.

Proposals 17-4 and 17-5 focus on the pending reviews of FWA review of the modern awards in 2012 and 2014. Business SA is of the view that the provisions currently provided are sufficient and the inclusion of family violence clauses into modern awards is not required.

Fair Work Australia must decide upon the internal training of its members however the proposal of extending the time frame for exceptional circumstances in dismissal claims on the grounds of family violence should be considered carefully. FWA has conceded that not all employees will disclose the situation of violence making it very difficult for employers to plan and operate their business when a staff member has extended breaks with no reasonable explanation.

### **Occupational Health and Safety**

The development of additional guidance and educative material is supported by Business SA. However it is our opinion there are many aspects of the Model Act, Regulations and Codes of Practice to offer support and a comprehensive duty of care to all employees.

Should you require any further information or have any questions, please contact Rick Cairney, Director of Policy, Business SA on (08) 8300 0060 or [rickc@business-sa.com](mailto:rickc@business-sa.com).

Yours sincerely

A handwritten signature in black ink that reads "Peter Vaughan". The signature is written in a cursive, flowing style.

Peter Vaughan

**Chief Executive Officer**

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<sup>1</sup> Fair Work Australia [www.fwa.gov.au](http://www.fwa.gov.au)